

# ***CONSTRUCTION SERVICES AGREEMENT***

## **For Construction Phase II of State Route (SR) 12/26 Intersection Improvements Project Calaveras County, California**

THIS AGREEMENT (Agreement) is made and entered into this 9<sup>th</sup> day of **June, 2015**, between the **COUNTY OF CALAVERAS**, a political subdivision of the State of California (County), and **GEORGE REED, INC.** (Contractor), a California Corporation for construction services, collectively referred to as "Parties."

### **RECITALS**

WHEREAS, professional construction services are needed for construction of the SR 12/26 Intersection Improvements Project; and

WHEREAS, this expertise is not available from within County forces; and

WHEREAS, the Contractor has represented to the County that it has the necessary training, experience, skills, and competency to provide the services, goods, and materials that are described in the Agreement and is qualified and willing to provide the County the professional services needed for this project; and

WHEREAS, the Contractor understands that the County is relying upon those representations in entering into this Agreement.

NOW, THEREFORE, the County and the Contractor agree as follows:

### **TERMS & CONDITIONS**

#### ***SECTION 1 SCOPE OF WORK***

The Contractor shall provide all labor, materials, equipment, and related resources necessary to complete the services described in the project plans, the Bid Book, Special Provisions, and Revised Standard Specifications which are attached to this Agreement and incorporated by reference. The Contractor shall mobilize the necessary equipment and supplies to the jobsite at the intersection of SR 12/26 in Valley Springs, California as described in the Agreement and Special Provisions, as requested by and in a manner satisfactory to the Director of Public Works or his/her designee (for the purposes of this Agreement, this individual shall be referred to as the "County Project Manager").

The Contractor hereby represents that before bidding; Contractor staff carefully evaluated the project, visited the site of the work, and fully informed themselves as to all existing conditions at the site and limitations of information provided by the County regarding the site. The Contractor further represents that they are satisfied as to the nature and location of the work, the general and local conditions, conditions of the site, availability of labor, materials on the site, the kind of equipment needed, the requirements of various trades or crafts needed to perform the work and all other matters which in any way affect the work or cost. The Contractor agrees that their failure to become acquainted with all available information concerning conditions

shall not relieve them from their bid or their responsibility for estimating properly the difficulties or cost of the work, or the requirements for any trade, craft, or portion of the work.

The Contractor further represents that the Agreement price shall include everything necessary for the completion of work and fulfillment of this Agreement for Construction Services within the time specified including, but not limited to, furnishing all materials, equipment, tools, plant and other facilities, and all management, superintendence, labor and services. The Agreement price includes allowances for all Federal, State and local taxes and payment of the prevailing wages required by applicable law. All such work shall be in strict accordance with applicable local, State, and Federal laws, regulations, and guidelines and shall comply with industry standards.

The County will provide access to the site at mutually-agreeable days and times. All work shall be done in a manner that offers minimum interference and disruption to the normal activities of the site. Contractor must comply with all site security guidelines.

Upon completion of work to the satisfaction of the County, all Contractor's equipment, materials, debris, and scraps shall be, immediately removed from the site.

## ***SECTION 2      AGREEMENT TERM***

### **2.1    COMMENCEMENT AND COMPLETION**

The work shall be commenced on the date specified in the County's "Notice to Proceed" and shall be fully completed no later than **80 working days**, or such additional time as may have been provided by Change Order. If substantial progress has not been made within 15 days following notice, then the County shall have the option of terminating the Agreement. Under no circumstances shall the Contractor begin work or incur costs associated with this Agreement without a Notice to Proceed from County.

### **2.2    TIME IS OF THE ESSENCE**

If the work is not completed in the time specified, including such extensions of time as may have been granted for unavoidable delays, the Contractor will be assessed damages for delay in accordance with the liquidated damages provision herein.

### **2.3    AGREEMENT EXTENSION**

Notwithstanding the term set forth above in Section 2.1, and unless this Agreement is terminated by either party prior to its termination date, if it is determined to be necessary the County has the option to extend the term of the Agreement for up to 90 working days. The County will notify the Contractor in writing if an extension of the Agreement has been authorized.

### **2.4    DELAY**

The Contractor specifically acknowledges and agrees that a time extension is the sole remedy for delays caused by the County, and agrees to make no claim for additional damages for such delay. Contractor shall be entitled to a price adjustment with such time extension Change Order, but such price adjustment shall be limited to Contractor's direct additional costs to perform the Agreement subject to verification by the County.

### SECTION 3 AGREEMENT PRICE

County shall pay Contractor for the full and complete performance of this Agreement not to exceed one million two hundred and ten thousand, seven hundred thirty-one and ninety cents dollars (\$1,210,731.90) for the work outlined in Section 1 and as shown below.

Item No.	Item Description	Unit of Measure	Estimated Quantity	Unit Price	Amount
1	Construction Surveys	LS	1	\$ 13,000.00	\$ 13,000.00
2	Storm Water Sampling and Analysis	LS	1	\$ 450.00	\$ 450.00
3	Lead Compliance Plan	LS	1	\$ 1,600.00	\$ 1,600.00
4	Progress Schedule (Critical Path Method)	LS	1	\$ 2,750.00	\$ 2,750.00
5	Construction Area Signs	LS	1	\$ 2,750.00	\$ 2,750.00
6	Traffic Control System	LS	1	\$ 45,000.00	\$ 45,000.00
7	Traffic Cone	EA	99	\$ 16.50	\$ 1,633.50
8	Type III Barricade	EA	4	\$ 22.00	\$ 88.00
9	Temporary Pavement Marking (Paint)	SQFT	133	\$ 3.30	\$ 438.90
10	Temporary Traffic Stripe (Paint)	LF	10700	\$ 0.50	\$ 5,350.00
11	Traffic Plastic Drum	EA	28	\$ 49.50	\$ 1,386.00
12	Temporary Pavement Marker	EA	309	\$ 4.40	\$ 1,359.60
13	Temporary Railing (Type K)	LF	1140	\$ 22.00	\$ 25,080.00
14	Temporary Alternative Crash Cushion	EA	10	\$ 5,250.00	\$ 52,500.00
15	Job Site Management	LS	1	\$ 6,000.00	\$ 6,000.00
16	Prepare Storm Water Pollution Prevention Plan	LS	1	\$ 2,000.00	\$ 2,000.00
17	Rain Event Action Plan	EA	10	\$ 100.00	\$ 1,000.00
18	Storm Water Sampling and Analysis Day	EA	10	\$ 300.00	\$ 3,000.00
19	Storm Water Annual Report	EA	1	\$ 275.00	\$ 275.00
20	Temporary Cover	SQYD	1000	\$ 3.50	\$ 3,500.00
21	Temporary Check Dam	EA	4	\$ 40.00	\$ 160.00
22	Temporary Drainage Inlet Projection	EA	13	\$ 135.00	\$ 1,755.00
23	Temporary Fiber Roll	LF	498	\$ 3.00	\$ 1,494.00
24	Temporary Silt Fence	LF	715	\$ 2.00	\$ 1,430.00
25	Temporary Construction Entrance	EA	2	\$ 715.00	\$ 1,430.00
26	Street Sweeping	LS	1	\$ 36,500.00	\$ 36,500.00
27	Temporary Concrete Washout	EA	2	\$ 825.00	\$ 1,650.00
28	Temporary Fence (Type ESA)	LF	299	\$ 3.00	\$ 897.00
29	Remove Yellow Thermoplastic Traffic Stripe (Hazardous Waste)	LF	3870	\$ 1.50	\$ 5,805.00
30	Remove Thermoplastic Traffic Stripe	LF	3430	\$ 0.50	\$ 1,715.00
31	Remove Thermoplastic Pavement Markings	SQFT	517	\$ 3.00	\$ 1,551.00
32	Remove Pavement Markers	EA	182	\$ 2.00	\$ 364.00
33	Remove Roadside Sign	EA	2	\$ 275.00	\$ 550.00
34	Remove Drainage Facility	EA	2	\$ 550.00	\$ 1,100.00
35	Remove Overside Drain	EA	1	\$ 1.00	\$ 1.00

36	Remove Pipe	LF	252	\$ 13.00	\$ 3,276.00
37	Remove Headwall	EA	1	\$ 2,500.00	\$ 2,500.00
38	Relocation Roadside sign	EA	18	\$ 185.00	\$ 3,330.00
39	Cold Plane Asphalt Concrete Payment	SQYD	641	\$ 1.00	\$ 641.00
40	Remove Concrete Curb	LF	30	\$ 1.00	\$ 30.00
41	Remove Concrete Sidewalk	LF	30	\$ 1.00	\$ 30.00
42	Remove Concrete (Curb and Gutter)	LF	159	\$ 1.00	\$ 159.00
43	Remove Concrete (Miscellaneous)	LS	1	\$ 1.00	\$ 1.00
44	Clearing and Grubbing	LS	1	\$ 18,000.00	\$ 18,000.00
45	Roadway Excavation	CY	4200	\$ 37.00	\$ 155,400.00
46	Structure Excavation (Retaining Wall)	CY	39	\$ 97.00	\$ 3,783.00
47	Structure Backfill (Retaining Wall)	CY	10	\$ 145.00	\$ 1,450.00
48	Imported Borrow	CY	1650	\$ 1.00	\$ 1,650.00
49	Subgrade Enhancement Geotextile, Class B2	SQYD	5270	\$ 2.50	\$ 13,175.00
50	Hydroseed	SQFT	38800	\$ 0.10	\$ 3,880.00
51	Class 2 AB	CY	3680	\$ 50.00	\$ 184,000.00
52	HMA (Type A)	TON	2110	\$ 78.00	\$ 164,580.00
53	Temporary HMA (Type A)	TON	70	\$ 150.00	\$ 10,500.00
54	Place HMA (Type E)	LF	693	\$ 5.50	\$ 3,811.50
55	Place HMA (Misc)	SQFT	265	\$ 20.00	\$ 5,300.00
56	Structure Concrete, Retaining Wall	CY	20	\$ 510.00	\$ 10,200.00
57	Minor Concrete (Minor Structure)	CY	24	\$ 1,650.00	\$ 39,600.00
58	Minor Concrete (Backfill)	CY	28	\$ 305.00	\$ 8,540.00
59	Bar Reinforcing Steel (Retaining Wall)	LB	950	\$ 0.40	\$ 380.00
60	Furnish Single Sheet Aluminum Sign	SQFT	90	\$ 20.00	\$ 1,800.00
61	Roadside Sign - One Post	EA	15	\$ 100.00	\$ 1,500.00
62	18" RCP	LF	213	\$ 100.00	\$ 21,300.00
63	24" RCP	LF	549	\$ 72.00	\$ 39,528.00
64	36" RCP	LF	401	\$ 85.00	\$ 34,085.00
65	Minor Concrete (Curb)	CY	17	\$ 550.00	\$ 9,350.00
66	Detectable Warning Surface	SQFT	141	\$ 22.50	\$ 3,172.50
67	Minor Concrete (Misc Construction)	CY	25	\$ 550.00	\$ 13,750.00
68	Minor Concrete (Curb & Gutter)	CY	65	\$ 550.00	\$ 35,750.00
69	Minor Concrete (Driveway)	CY	25	\$ 550.00	\$ 13,750.00
70	Minor Concrete (Sidewalk)	CY	19	\$ 550.00	\$ 10,450.00
71	Minor Concrete (Curb Ramp)	CY	5	\$ 550.00	\$ 2,750.00
72	Minor Concrete (Stamped Concrete)	CY	22	\$ 550.00	\$ 12,100.00
73	Misc Iron & Steel	LB	3830	\$ 4.25	\$ 16,277.50
74	Object Marker (Type K-1)	EA	5	\$ 57.00	\$ 285.00
75	4" Thermoplastic Traffic Stripe	LF	7210	\$ 0.55	\$ 3,965.50
76	6" Thermoplastic Traffic Stripe	LF	1380	\$ 0.80	\$ 1,104.00
77	Thermoplastic Pavement Markings	SQFT	1730	\$ 3.80	\$ 6,574.00

78	4" Thermoplastic Traffic Strip (Broken 36-12)	LF	1620	\$ 0.35	\$ 567.00
79	4" Thermoplastic Traffic Stripe (Broken 17-7)	LF	694	\$ 0.35	\$ 242.90
80	Pavement Marker (Retroreflective)	EA	210	\$ 3.10	\$ 651.00
81	Lighting	LS	1	\$ 50,000.00	\$ 50,000.00
82	Mobilization (10%)	LS	1	\$ 72,000.00	\$ 72,000.00
<b>Total Bid</b>					<b>\$ 1,210,731.90</b>

### 3.1 INVOICE CONTENT

Invoices or applications for payment to the County shall be detailed and shall contain full documentation of all work performed and all reimbursable expenses incurred. Where the scope of work on the Agreement is divided into various tasks, invoices shall detail the related expenditures accordingly. Labor expenditures need documentation to support time, subsistence, travel and field expenses. No expense will be reimbursed without adequate documentation. This documentation will include, but not be limited to, receipts for material purchases, rental equipment and subcontractor work.

### 3.2 CHANGES IN THE WORK

County may order additions, deletions, or revisions in the work which shall be authorized by a written Change Order. Circumstances may occur where Contractor may need to apply for a change in the Agreement. Such changes must be applied for in writing in advance by Contractor and approved prior to commencing the additional work. Changes in Agreement price due to change orders shall be established either by (1) unit prices (where bidding was done by unit price), (2) based on the actual cost of the work (including but not limited to all labor and materials) plus an amount not to exceed 15 percent (15%) for overhead and profit together, or (3) by mutual acceptance of a lump sum.

## **SECTION 4 MATERIALS**

All materials and equipment to be provided to County by Contractor shall be of good quality and new unless the Agreement provides otherwise. Whenever materials are specified or described in the Agreement Specifications by using the name of a proprietary item or a particular supplier, it is intended to establish the type, function, and quality required. Any substitutions must be expressly consented to by County in advance of installation or use.

## **SECTION 5 WARRANTY AND CORRECTION PERIOD**

If, within one year after the date of completion and County's acceptance of the work (or such longer period of time as may be prescribed by law or regulations), any work is found to be defective, Contractor shall promptly, without cost to County and in accordance with County's written instruction, either correct such defective work, or, if it has been rejected by County, remove it from the site and replace it with non-defective work. If Contractor is unable to promptly and properly correct any defective work, County may at its option have the work corrected by such other means as County deems appropriate and hold Contractor liable for all direct, indirect, and consequential costs caused by such defective work. The warranty shall apply to all work found to be "defective" which is attributable to the quality or quantity of the materials used, the quality of the workmanship or for lack of proper performance under the

Agreement. The warranty obligation shall not limit the County's right to otherwise seek damages in the event of any failure by Contractor to properly perform under this Agreement.

## **SECTION 6 NOTICES**

Any notice, demand, request, consent, approval or communication that any party desires or is required to give any other party shall be in writing and either be delivered personally, by pre-paid first-class mail, by facsimile, or by electronic mail (email). Regardless of the method of transmittal, acknowledgment of receipt by the other party is required. Any such writing shall be addressed as follows:

### **COUNTY**

Jeff Crovitz, P.E., Director  
Calaveras County Public Works  
891 Mountain Ranch Road  
San Andreas, CA 95249  
Phone 209-754-6401  
Fax 209-754-6664  
[jcrovitz@co.calaveras.ca.us](mailto:jcrovitz@co.calaveras.ca.us)

### **CONTRACTOR**

Ed Berlier, Vice President  
George Reed, Inc.  
P.O. BOX 4760  
Modesto, CA 95352  
Phone 209-523-0734  
Fax 209-523-4927  
Email [gmocontracting@georgereed.com](mailto:gmocontracting@georgereed.com)

## **SECTION 7 LUMP SUM PAYMENTS**

Payment in full for the completed project will not be due until at least 30 working days after completion of the project. Acceptance of final payment will be deemed a waiver of all claims except those which are timely made pursuant to the claims provision of this Agreement.

## **SECTION 8 PROGRESS PAYMENTS**

### **8.1 EXTENDED PROJECTS**

Where the time anticipated to complete the scope of work exceeds 45 days, the Contractor may apply for progress payments on a monthly basis. To initiate a progress payment, the Contractor shall submit a signed application for payment covering the work completed to date ("Progress Work"), accompanied by supporting documentation to the County's satisfaction. Monthly progress payments shall be made subject to a five percent (5%) withhold as specified therein. Therefore, progress payments will be in an amount equal to ninety-five percent (95%) of the Progress Work. The total amount withheld by the County shall not exceed five percent (5%) of the total contract price.

Once each month, County shall cause an estimate to be made covering the work completed as of the date of the estimate. No materials shall be paid for until incorporated into the work.

### **8.2 PAYMENT OF PROGRESS PAYMENT**

County will submit each progress pay estimate to Contractor. Upon receipt back from Contractor of a signed copy of the pay estimate, County shall process the pay estimate for payment. The amount approved by County will become due 30 days after receipt of the signed progress pay estimate. Payment shall be made by County to Contractor unless County has knowledge of claims or liens filed in connection with the work.

### 8.3 SCHEDULE OF VALUES

The Bid Book values established for the work will serve as the basis for progress payments and will be incorporated into a form of application for payment acceptable to County. Progress payments on account of unit price work will be based on the number of units completed.

### 8.4 AMOUNTS OF PROGRESS PAYMENT

Prior to completion, progress payments will be in an amount equal to:

**8.4.1 Ninety- Five Percent (95%) of Completed Work.** Ninety-Five percent (95%) of the work completed, and

**8.4.2 Agreement Balance.** Thirty days after recordation of a Notice of Completion by the County, County will pay an amount sufficient to increase total payment to Contractor to one hundred percent (100%) of the Agreement price, less such amounts as County shall determine in accordance with this Agreement.

**8.4.3 Escrowed Security Alternation.** The Contractor may elect to receive 100% of payments due under this Agreement from time to time, without retention of any portion of the payment by the County, by depositing securities of equivalent value with County in accordance with the provisions of Section 4590 of the *California Government Code*. Securities eligible for investment shall include those listed in Section 16430 of the *California Government Code*, or bank or savings and loan certificates of deposits. Such securities, if deposited by the bidder, shall be valued by County whose decision on the valuation of the securities shall be final. The bidder shall be the beneficial owner of any securities substituted for money withheld and shall receive any interest thereon. These deposited funds shall be covered by an escrow agreement in a form approved by the County.

### 8.5 COUNTY MAY REFUSE TO MAKE PAYMENT

County may refuse to make payment of the full amount or any part if, in County's opinion, it would be incorrect to make such payment. County may also refuse to make any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payments previously recommended, to such extent as may be necessary in County's opinion to protect County from loss because:

**8.5.1 Defective Work.** The work is defective, or completed work has been damaged requiring correction or replacement,

**8.5.2 Reduction in Price.** The Agreement price has been reduced by written amendment or change order,

**8.5.3 Required Corrections.** Contractor has been required to correct defective work or complete work, or

**8.5.4 Suspension or Termination.** Of County's actual knowledge of the occurrence of any of the events enumerated in paragraphs relating to suspension of work and termination.

**8.5.5 Liens or Claims.** County may refuse to make payment of the full amount because claims have been made against County on account of Contractor's performance or furnishing of the work or liens have been filed in connection with the work or there are other items entitling County to a set-off against the amount recommended, but County must give Contractor immediate written notice stating the reasons for such action.

#### **8.6 CONTRACTOR'S WARRANTY OF TITLE**

Contractor warrants and guarantees that title to all work, materials and equipment covered by any application for payment, whether incorporated in the project or not, will pass to County no later than the time of payment free and clear of all liens.

#### **8.7 COMPLETION AND FINAL INSPECTION**

When Contractor considers the entire work ready for its intended use, Contractor shall notify County in writing as set forth in Section 6 above, that the entire work is completed. Within a reasonable time thereafter, County and Contractor shall make an inspection of the work to determine the status of completion. If County does not consider the work complete, County will notify Contractor in writing as set forth in Section 6 above, giving the reasons therefore. If County considers the work incomplete, County will prepare and deliver a list of items to be completed or corrected before final payment. Contractor shall immediately take such measures as are necessary to complete or correct the listed items.

#### **8.8 ACCEPTANCE AND APPLICATION FOR PAYMENT**

After Contractor has completed all such measures to remedy deficiencies to the satisfaction of County and delivered all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, marked-up record documents, property owner's releases and other documents, and after County has indicated that the work is acceptable, Contractor may make application for final payment. In lieu thereof and as approved by County, Contractor may furnish receipts or releases in full; an affidavit of Contractor that the releases and receipts include all labor, services, material and equipment for which a lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the work for which County or County's property might in any way be responsible, have been paid or otherwise satisfied; and consent of the surety, if any, to final payment. If any subcontractor or supplier fails to furnish a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to County to indemnify County against any lien.

#### **8.9 FINAL PAYMENT**

If, on the basis of County's review of the final application for payment and accompanying documentation, County is satisfied that Contractor's obligations have been fulfilled, County will, within ten days after receipt of the final application for payment, process the application for payment. Otherwise, County will return the application to Contractor, indicating in writing the reasons for refusing to make final payment, in which case Contractor shall make the necessary corrections and resubmit the application. Thirty days after presentation to County of the application and accompanying documentation, in appropriate form and substance, or 30 days after recording of a Notice of Completion,



whichever date is later, and the amount will become due and will be paid by County to Contractor.

#### **8.10 CONTRACTOR'S CONTINUING OBLIGATION**

Contractor's obligation to perform and complete the work shall be absolute. Neither the issuance of a Certificate of Substantial Completion, nor any payment by County to Contractor, nor any use or occupancy of the work or any part thereof by County, nor any act of acceptance by County nor any failure to do so, nor any review and approval of a shop drawing or sample submission, nor the issuance of a Notice of Acceptability, nor any correction of defective work by County will constitute an acceptance of work or a release of Contractor's obligation to perform the work.

### ***SECTION 9 ATTACHMENTS***

Attachments referred to herein are included and by this reference incorporated herein.

- Appendix A: Bid Book
- Appendix B: Special Provisions and Revised Standard Specifications
- Appendix C: Project Plans
- Appendix D: Environmental Commitment Record/Mitigation Measure Monitoring Plan
- Appendix E: Certificate of Liability Insurance, Worker's Compensation Insurance Certificate, and Certificate of Self-Insured Workers' Compensation
- Appendix F: Performance Bond
- Appendix G: Payment Bond
- Appendix H: Exhibit 15-G Bidder DBE Information
- Appendix I: DBE Good Faith Efforts

### ***SECTION 10 PERFORMANCE AND PAYMENT BONDS***

Pursuant to the provisions Public Contract Code Section 20129(b) and *Civil Code* Section 2845, the Contractor shall, prior to the performance of any work covered by this Agreement, provide to County in such form as may be acceptable to County, a "performance bond" guaranteeing the faithful and timely performance of the work to be performed under this Agreement and guaranteeing the work for a period of one full year from the date of the completion of work (which shall be evidenced by the filing of a Notice of Completions by County) and a separate "payment" guaranteeing payment to any laborer, subcontractor and/or material supplier for the work under this Agreement.

#### **10.1 BONDS**

Contractor shall furnish two bonds each in the amount of 100 percent (100%) of the Agreement price, one as security for the faithful performance of the work, and the other as security for the faithful payment and satisfaction of all persons furnishing materials and performing labor for the project. The labor and materials bonds shall remain in effect until the Notice of Completion is issued. The performance bond shall remain in effect until the running of the warranty period. The bonds shall be issued by a corporation duly licensed surety company and accompanied by a certified copy of the authority to act.

For projects \$25,000 or less the County can determine that bonds are not required. The Contractor shall furnish bonds in the amount of 100 percent (100%) of the Agreement price, or may post negotiable securities in accordance with the following procedures:

Negotiable securities shall be endorsed over to the County and shall be held by County under a surety deposit agreement until Contractor has fully complied with all applicable laws and provisions of the County's Public Works Agreement prerequisite to the release thereof. An administrative fee shall be charged by County for the execution of the surety deposit agreement in the amount of \$100.00. The Director of Public Works or his or her designee shall be authorized to execute all security deposit agreements, the form of which shall be as approved by the County Counsel.

**10.1.1 Default.** In the event of a default by Contractor, County shall notify Contractor and request specifics of the default and shall extend a reasonable time to Contractor to cure same or to pay such damages as County may reasonably assess under the terms of the Public Works Agreement. County shall not release the bonds or security until Contractor has fully performed under the Agreement. If Contractor fails to promptly cure any breach or to pay such damages as may have been reasonably assessed after notification of the breach and/or of the assessment of damages, County shall proceed to sell the securities and/or make demand on the bonds.

**10.1.2 County Reserves the Right.** County reserves the right to accept or to reject the tender or any bond or security as being sufficient to protect the interest of the County. The bond underwriter shall have a minimum rating of A (Excellent) by A.M. Best.

## ***SECTION 11      SUSPENSION OF WORK***

County may, at any time and without cause, suspend the work or any portion thereof for a reasonable period of time by notice in writing to Contractor.

## ***SECTION 12      TERMINATION OR ABANDONMENT***

Except as limited by law or regulation, County may terminate this Agreement upon the occurrence of any one or more of the following events.

### **12.1    VOLUNTARY BANKRUPTCY CODE**

If Contractor commences a voluntary case under any chapter of the Bankruptcy Code (Title 11, United States Code), as now or hereafter in effect, or if Contractor takes any equivalent or similar action by filing a petition or otherwise under any other Federal or State law in effect at such time relating to the bankruptcy or insolvency;

### **12.2    PETITION BANKRUPTCY CODE**

If a petition is filed against Contractor under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against Contractor under any other Federal or State law in effect at the time relating to bankruptcy or insolvency;

### **12.3 GENERAL ASSIGNMENT**

If Contractor makes a general assignment of its obligations and/or compensation under this Agreement;

### **12.4 ENFORCING A LIEN**

If a trustee, receiver, custodian or agent of Contractor is appointed under applicable law or under Agreement, whose appointment or authority to take charge of property of Contractor is for the purpose of enforcing a lien against such property or for the purpose of general administration of such property for the benefit of Contractor's creditors;

### **12.5 INABILITY TO PAY**

If Contractor admits in writing an inability to pay its debts generally as they become due;

### **12.6 FAILURE TO PERFORM WORK**

If Contractor fails to perform the work in accordance with the Agreement documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the time schedule);

### **12.7 DISREGARDS ORDINANCES OR LAWS**

If Contractor disregards ordinances, laws or regulations of any public body having jurisdiction;

### **12.8 DISREGARDS COUNTY SUPERVISORY STAFF**

If Contractor disregards the authority of County's supervisory staff;

### **12.9 VIOLATION OF PROVISIONS**

If Contractor otherwise violates in any substantial way any provisions of the Agreement including any and all documents attached to or referenced by this Agreement.

County may, after giving Contractor seven days written notice, terminate the services of Contractor, exclude Contractor from the site and take possession of the work, incorporate in the work all materials and equipment stored at the site or for which County has paid Contractor but which are stored elsewhere, and finish the work as County may deem expedient. In such case Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the Agreement price exceeds the direct, indirect and consequential costs of completing the work (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court costs) such excess will be paid to Contractor. If such costs exceed such unpaid balance, Contractor shall be liable to pay the difference to County. When exercising any rights or remedies under this paragraph, County shall not be required to obtain the lowest price for the work performed. Where Contractor's services have been terminated by County, the termination will not affect any rights or remedies of County against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by County will not release Contractor from liability.

## ***SECTION 13 LIQUIDATED DAMAGES***

If the work is not completed by Contractor in the time specified in Section 2 of the Agreement, or within any period of extension authorized pursuant to a duly issued Change Order, Contractor acknowledges and admits that the County will suffer damage, and that it is

impracticable and infeasible to fix the amount of actual damages. Therefore, it is agreed by and between the Contractor and the County that the Contractor shall pay to the County as fixed and liquidated damages, and not as a penalty, a sum equal to one-half of one percent of the Agreement price, or the sum of two hundred fifty dollars (\$250.00), whichever is greater, for each calendar day of delay until the work is completed and accepted, and that both Contractor and Contractor's surety shall be liable for the total amount thereof, and that the County may deduct said sums from any monies due or that may become due to Contractor, prior to determining the final amount due to Contractor.

***SECTION 14 THIS SECTION IS RESERVED AND NOT APPLICABLE TO THIS AGREEMENT***

***SECTION 15 RISK OF LOSS***

Liability for loss or damage to equipment, materials, work completed or services occurring on or off the site shall be the responsibility of Contractor. Liability for completed work shall not be assumed by County until both the work has been completed and County has accepted the work as complete.

Contractor shall be solely responsible for any and all damages extending from the performance of this project including but not limited to any landscaping and parked vehicles. Contractor shall restore all damaged property to its original condition at Contractor's expense.

***SECTION 16 INDEPENDENT CONTRACTOR LIABILITY AND INSURANCE***

It is understood and agreed by all the parties hereto that Contractor is an independent Contractor and that no relationship of employer-employee exists between the County and Contractor. Neither Contractor nor Contractor's assigned personnel shall be entitled to any benefits payable to employees of the County. Contractor shall have no claim against County for employee rights or benefits, including, but not limited to, seniority, vacation time, vacation pay, sick leave, personal time off, overtime, medical, dental or hospital benefits, civil service protection, disability retirement benefits, paid holidays or other paid leaves of absence. Contractor shall indemnify and hold County harmless from any and all claims that may be made against the County based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement or any services provided pursuant to this Agreement.

Contractor shall be liable for all damages and injury which shall be caused to County or any other property on or in the vicinity of the work or which shall occur to any person or persons or property whatsoever arising out of the performance of this Agreement. Contractor, at his/her own cost and expense, shall procure and maintain during his/her performance of this Agreement, a policy of liability and other insurance acceptable to County and an admitted California surety as is appropriate and/or as may be required in the special conditions, for the work being performed and furnished and which will provide complete protection to the County.

Policies shall be payable on a "per occurrence" basis unless County specifically consents to a "claims made" basis. The policy will name the County, its Officers, Agents, Subcontractors, and Employees as additional insurers in amounts not less than:

1. \$500,000.00 for injury to or death of one person and, subject to such limitation for injury to or death of one person, of not less than \$1,000,000.00 for injury to or death of two or more persons as a result of any one accident or incident.
2. \$500,000.00 for damage to or destruction of any property of others.
3. Or as an alternative to 1 and 2 above, \$1,000,000.00 bodily injury and property damage combined.

The above referenced policy of insurance shall contain a provision that the insurance provided by the policy shall be primary as to any other insurance available to the additional insured and a provision requiring that written notice be given County at least 30 days prior to cancellation or reduction of any coverage required by this Agreement. Should any such notice be given before completion of the work hereunder, or should any such policy be cancelled before completion of said work, County may renew the policy or procure a new policy conforming herewith and deduct the cost thereof from any amounts of money due Contractor.

**SECTION 17      WORKER’S COMPENSATION**

Contractor shall provide Worker’s Compensation coverage as required by State Law, and prior to commencing services pursuant to this Agreement shall file the following statement with the County Risk Manager in a form substantially as set forth below:

**WORKERS’ COMPENSATION CERTIFICATION**

*I am aware of the provisions of Section 3700 of The California Labor Code, which require every employer to be insured against liability for Worker’s Compensation or to undertake self-insurance in accordance with the provision of that Code, and I will comply with such provisions before commencing the performance of the work of this Agreement*

*The person executing this certificate on behalf of Contractor affirmatively represents that he/she has the requisite legal authority to do so on behalf of Contractor, and that both the person executing this Agreement on behalf of Contractor and Contractor understands that the County is relying on this representation in entering onto this Agreement.*

Initials: \_\_\_\_\_

**SECTION 18      LICENSES, PERMITS, AND TAXES**

Unless otherwise provided in the special Agreement provisions, Contractor shall obtain and pay for all construction permits, licenses or other permits necessary to complete the work and shall be liable for all governmental charges, inspection fees, utility connection charges, sales, consumer, use and other taxes.

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

Contractor represents and warrants to County that it has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for Contractor to practice its profession. Contractor represents and warrants to County that Contractor shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits and approvals which are legally required for Contractor to practice its profession at the time the services are performed.

### ***SECTION 19 INDEMNIFICATION***

The Contractor shall indemnify and hold harmless County, its elected representatives, officers, agents, and employees from and against claims, demands, losses, defense costs (including reasonable attorney fees), expenses or liability of any kind or nature, for personal injury, death, or property damage to the extent arising out of:

1. Any negligent act, error or omission, or willful act by Contractor, its officers, agents, or employees, in performing the services, responsibilities or duties required of the Contractor by this Agreement; or
2. Any breach of any statutory, regulatory, contractual, or legal duty of any kind related, directly or indirectly, to the services, responsibilities or duties required of the Contractor by this Agreement
3. In providing any defense under this Section, Contractor shall use counsel reasonably acceptable to the County.

### ***SECTION 20 COVENANT AGAINST CONTINGENT FEES***

The Contractor warrants that he/she has not employed or retained any company or person, other than a bona fide employee working for the Contractor, to solicit or secure this Agreement, and that he/she has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making this Agreement. For breach or violation of this warranty, the County shall have the right to annul this Agreement without liability or in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

### ***SECTION 21 GENERAL COMPLIANCE WITH LAWS AND FEES***

The Contractor shall be required to comply with all Federal, State and local laws and ordinances applicable to the performance of the work covered by this Agreement.

### ***SECTION 22 ARBITRATION***

The provisions of *Public Contract Code* Section 20104, Resolution of Construction Claims, shall apply. Any dispute litigated in state court shall be governed by *Public Contracts Code* Section 20104.4.

### **SECTION 23      PREVAILING WAGE RATES**

In accordance with the provisions of Section 1770 and 1773 of the *Labor Code*, the County of Calaveras has determined the general prevailing rate of wages applicable to the work to be done. These rates are on file in the Department of Transportation. The Contractor shall post a copy of the wage rates on the job site. Pursuant to *California Labor Code* Section 1775, Contractor shall forfeit a penalty for each worker paid less than the prevailing rates for such work or craft, and said amounts shall be distributed pursuant to the requirements of said Section 1775. Any employee whose type of work is not covered by any of the classified wage rates shall be paid not less than the rate of wage listed for the classification which most nearly corresponds to the type of work to be performed.

### **SECTION 24      EMPLOYMENT OF APPRENTICE LABOR**

Reference is hereby made to Section 1777.5 of the *Labor Code* of the State of California, which regulations shall govern the employment of apprentices on the work. Compliance with this Section shall be the responsibility of the Contractor.

### **SECTION 25      SUBLETTING AND PERSONNEL ASSIGNMENTS**

The Contractor acknowledges and agrees that the subletting or transfer of any portion of the work covered by this Agreement, except as otherwise provided herein, shall be prohibited.

Contractor shall assign only competent personnel to perform services pursuant to this Agreement. In the event that County, in its sole discretion, at any time during the term of this Agreement, desires the removal of any person or persons assigned by Contractor to perform services pursuant to this Agreement, Contractor shall remove any such person immediately upon receiving written notice from County of its desire for removal of such person or persons.

### **SECTION 26      PAYROLL RECORDS**

Contractor shall be responsible for keeping accurate payroll records as required by *California Labor Code* Section 1776.

### **SECTION 27      NONDISCRIMINATION**

Throughout the duration of this Agreement, Contractor shall not unlawfully discriminate against any employee of the Contractor or of the County or applicant for employment or for services or any member of the public because of race, religion, color, national origin, ancestry, physical or mental disability, medical condition, marital status, age, sex or sexual orientation. Contractor shall ensure that in the provision of services under this Agreement, its employees and applicants for employment and any member of the public are free from such discrimination.

Contractor shall comply with the provisions of the Fair Employment and Housing Act (*Government Code* Section 12900, et seq.). The applicable regulations of the Fair Employment Housing Commission implementing *Government Code* Section 12900, set forth in Chapter 5, Division 4 of Title 2 of the *California Code of Regulations* are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor shall also abide by the Federal Civil Rights Act of 1964 and all amendments thereto, and all administrative rules and regulations issued pursuant to said Act. Contractor shall give written notice of its obligations under this clause to any labor agreement. Contractor shall include the non-discrimination and

compliance provision of this paragraph in all subcontracts to perform work under this Agreement.

***SECTION 28 GOVERNMENT CODE SECTION 7550***

The Contractor acknowledges his/her obligation with respect to the required notice under Government Code Section 7550 on any documents or written reports prepared.

***SECTION 29 CONFLICT OF INTEREST RESTRICTIONS***

No official of the County who is authorized in such capacity and on behalf of the County to negotiate, make, accept or approve, or to take part in negotiating, making, accepting, or approving any architectural, engineering, inspecting, construction or material supply contract or any subcontract in connection with the construction of the project, shall become directly or indirectly interested personally in this Agreement or in any part thereof. No officer, employee, architect, attorney, engineer, or inspector of or for the County who is authorized in such capacity and on behalf of the County who is in any legislative, executive, supervisor, or other similar function in connection with the construction of the project, shall become directly or indirectly interested personally in this Agreement or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the project.

***SECTION 30 WAIVER OF RIGHTS***

Any waiver of or failure by the County or any of its officers, agents or employees or the failure of the County or its officers, agents or employees to take action with respect to any right conferred by this Agreement to the County shall not be deemed to be a waiver of any additional or subsequent right conferred to the County by this Agreement or of any other terms, covenants or conditions of this Agreement. Similarly, any breach by the County or any of its officers, agents or employees of term, covenant, or conditions under this Agreement shall not be deemed to be a subsequent breach of the same, or a breach of any other term, covenant or condition of this Agreement by the County.

***SECTION 31 SUCCESSOR AND ASSIGNS***

This Agreement shall be binding upon the heirs, successors, executors, administrators and assigns of the respective parties hereto.

***SECTION 32 SEVERABILITY***

If any provision to this Agreement is declared or found to be illegal, unenforceable, or void, then both parties shall be relieved of all obligations arising under such provisions, and the remainder of this Agreement shall not be affected by such declaration or finding and each provision not so affected shall be enforced to the fullest extent permitted by law.

***SECTION 33 CONFLICT***

In case of conflict between this Agreement for Contractor Services and the Proposal Forms, Contract and Special Provisions, the Proposal Forms, Contract and Special Provisions shall take precedence over and be used in lieu of the conflicting portions.



**SECTION 34 EXECUTION OF AGREEMENT**

IN WITNESS WHEREOF, the parties hereto have hereunto executed this Agreement the day and year first above written.

**GEORGE REED, INC.**  
a California Corporation

**COUNTY OF CALAVERAS**  
**DEPARTMENT OF PUBLIC WORKS**

\_\_\_\_\_  
Ed Berlier, *Vice President*

\_\_\_\_\_  
Jeff Crovitz, PE, *Director*

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**ATTEST:**

**COUNTY OF CALAVERAS**

\_\_\_\_\_  
Clerk of the Board of Supervisors,  
County of Calaveras

\_\_\_\_\_  
Chair, Board of Supervisors

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Megan Stedtfeld, County Counsel

**APPENDIX A**  
**BID BOOK**

# **APPENDIX B**

## **SPECIAL PROVISIONS AND REVISED STANDARD SPECIFICATIONS**

# **APPENDIX C**

## **PROJECT PLANS**

# **APPENDIX D**

**ENVIRONMENTAL COMMITMENT RECORD/  
MITIGATION MEASURE MONITORING PLAN  
(ECR/MMMP)**

# **APPENDIX E**

## **CERTIFICATE OF INSURANCE**

# **APPENDIX F**

## **PERFORMANCE BOND**

# **APPENDIX G**

## **PAYMENT BOND**



# **APPENDIX H**

**EXHIBIT 15-G (BIDDER DBE INFORMATION)**

# **APPENDIX I**

**EXHIBIT 15-H (GOOD FAITH EFFORTS)**