Senior Center, Archive and Library Emergency Generator System

Request for Proposals

Tuolumne County is soliciting proposals for the design and installation of an emergency generator system for the Tuolumne County Senior Center, Archives and Library in Sonora California.

The Project

This project will entail the installation of the electrical generator, automatic transfer switch and all associated electrical equipment to operate all three buildings. The location of the proposed work will be at the Tuolumne County Senior Center, Archives and Library Buildings at 540 Greenley Road in Sonora, CA 95370.

Timeline

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
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</thead>
<tbody>
<tr>
<td>Release of Published RFP</td>
<td>04/26/2021</td>
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<tr>
<td>Mandatory Project Tour</td>
<td>05/03/2021 10:00 AM</td>
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<tr>
<td>Deadline for all questions</td>
<td>05/17/2021</td>
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<tr>
<td>Deadline RFP Submission</td>
<td>05/24/2021 3:00 PM</td>
</tr>
<tr>
<td>Contract Executed (Tentative)</td>
<td>05/31/2021</td>
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Scope of Work

1. Contractor will provide all necessary labor, equipment and incidental supplies to complete the following project requirements:
   a. Installation of a generator with the appropriately sized automatic transfer switch (ATS) for the unit.
   b. Installation of all the necessary wiring and equipment to power all three facilities on the new system.
2. All work shall be completed in accordance with industry standard practices.
3. Contractors shall not visit the project site prior to mandatory job inspection date.
4. Contractor will provide any necessary precautions to prevent damage to the road providing access to the project site.
5. The Contractor will be responsible for the proper handling of all waste and clean up from the project. All disposal and transportations costs will be the contractor’s responsibility.
6. Contractor will provide a project schedule to the Tuolumne County Facilities Manager prior to project commencement.
7. Contractor will contact USA - Underground Service Alert 48 hours before any trenching to verify the location of any buried underground utilities.
8. Any trenching in existing asphalt will be saw cut prior to excavation.
9. All trenches in existing asphalt will be back filled with two sack sand slurry to a level providing for 2 inches of hot asphalt concrete to finish grade.
10. Contractor will use appropriate safety measures to provide a safe working area for all employees and the general public.
11. Dust control will be implemented at all times on site.
12. All work will be completed during normal working hours.

**Minimum Wages**

Minimum wage rates for this project are predetermined by the Director of Industrial Relations, pursuant to California Labor Code, Part 7, Chapter 1, Article 2, Sections 1779, 1773, and 1773.1. A copy of such minimum wage rates is on file at Facilities Management Office located at 9 Calaveras Street, Sonora, CA, copies of which are available to any interested party on request. A copy of the determination of the Director of Industrial relations of the prevailing rate per diem wages is to be posted on the job site.

**DIR Registration and Notice**

To be qualified to bid on, be listed in a bid proposal or engage in the performance of any public work contract subject to Labor Code section 1720, contractors and subcontractors must be registered with the Department of Industrial Relations. Please see http://www.dir.ca.gov/Public-Works/PublicWorks.html for more information. No contract will be entered into without proof of the contractor’s and subcontractors’ current registration with the Department of Industrial Relations to perform public work. If awarded a contract, the bidder and its subcontractors, of any tier, shall maintain active registration with the Department of Industrial Relations for the duration of the project.

This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Each contractor and subcontractor must furnish certified payroll records to the Labor Commissioner at least monthly.

The County is required to provide notice to DIR of any public work contract subject to prevailing wages within five (5) days of the award.
Safety

The Contractor shall comply with all applicable provisions of the California Occupational Safety and Health Act of 1973, including any amendments thereto, and the rules, standards, orders and regulations prescribed by the Occupational Safety and Health Standards Board and the Division of Industrial Safety in the California Department of Industrial Relations. Contractor shall further comply with all other applicable safety laws, ordinances and regulations.

Insurance

The Contractor, prior to beginning work on the subject Contract, shall furnish to the County a Certificate of Insurance setting forth that, in the event of accident or occurrence which may give rise to a claim to lawsuit against the County or its officers and employees, he has in full force and effect Bodily Injury Liability and Property Damage Liability Insurance.

A. **Workers Compensation** - in compliance with the statutes of the State of California.

B. **General Liability** – insurance with a minimum limit of liability per occurrence of $1,000,000 for bodily injury and $100,000 for property damage. The Certificate of Insurance shall indicate the.

C. **Automobile Liability** – insurance with a minimum limit of liability per occurrence of $1,000,000 for bodily injury and $100,000 for property damage. This insurance shall cover for bodily injury and property damage, owned automobiles, and non-owned automobiles.

Said Certificate of Insurance shall be in a form acceptable to the County and shall provide that the County, its officers, agents, and employees are additional insured under such a policy. Copies of a Certificate of Insurance form and Additional Insured Endorsement form acceptable to the County may be obtained from the County Risk Manager, County Administrative Center, 2 South Green Street, Sonora. The policy may not be canceled or reduced in coverage until after 30 days written notice. Wording to this effect shall be on the policy.

Qualifications

Prior to award of the contract, the Contractor shall possess a **C10- Electrical Contractor’s License** issued by the State of California Contractor’s Licensing Board. Failure of the bidder to obtain the required license before award of the contract constitutes a failure to execute the contract.
Proposals

Proposals shall be sealed when delivered; envelope shall be marked with the Project Name, Bid Date and Time; no FAX responses will be accepted. Bidder’s name and return address must also appear on the envelope. Proposals shall be submitted to Ed Hoag, Facilities Manager: hand delivered or overnight delivery to 9 Calaveras St., Sonora, California 95370 or via mail to 2 South Green St., Sonora CA 95370. It is the sole responsibility of the bidder to send or deliver its bid, so that it is received by the time and date required, regardless of postmark. Any bid received after said time and/or date, or at a place other than the stated address, cannot be considered and will not be accepted. No e-mailed or facsimile bids will be considered.

All costs incurred in the preparation of a proposal are the responsibility of each proposer and will not be reimbursed by the County.

The County shall receive the proposals no later than 3:00 PM May 24, 2021 at which time said bids will be opened and publicly read.

Conditions

A Mandatory job site inspection is scheduled for May 3, 2021 at 10:00 AM. Bidders will meet at the Tuolumne County Senior Center building front door located at 540 Greenley Road, Sonora CA. Contractor’s contact is Ed Hoag, at Facilities Management, 9 Calaveras Street, Sonora, 209-533-5660.

Prices

The sum stated in the bid, for which the bidder offers to perform the work described in the bidding documents, are the base to which work may be added or deducted, at the discretion of the Tuolumne County Facilities Manager, for sums stated in the alternate bids if such are noted in the description of the work.

Bonds

BIDDER’S BOND

A bidder’s bond, cash, certified check, cashier’s check, or letter of credit from a bank in an amount of at least ten percent (10%) of the amount bid, is required for bids over $25,000. The County of Tuolumne reserves the right to reject any or all bids and to waive any irregularities in the bidding.
PERFORMANCE & PAYMENT BOND

A faithful performance bond and a payment bond (labor and materials) each in the sum of 100% of the total contract price are required as follows:

- Total Contract Price: $0 to $4,000 ...............None
- Total Contract Price $4,001 to $10,000 ........ 50% Performance only
- Total Contract Price $10,001 and up ............ Both 100% Performance and 100% Payment

The only acceptable form of bonding the construction contract is through a Surety Company. (cash, certified check, etc. are not acceptable).

Selection Process

The proposals will be evaluated based on the total cost of the work (total cost of work shall be defined as base bid plus any awarded alternates), possession of the necessary license(s) and experience and ability to successfully complete the work. The County retains the right to reject any/all bids it deems unsatisfactory and to wave any deficiency in the proposal if deemed to be immaterial.

Time for Completing the Work

Contractor shall complete the services within Sixty (60) calendar days of receiving notice from the County of acceptance of the Contractor’s proposal or 30 days after the equipment delivery dates.

Funding Availability

A. It is mutually agreed that if the County budget of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the County shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.

B. If funding for any fiscal year is reduced or deleted by the County budget for purposes of this program, the County shall have the option to either cancel this Agreement with no liability occurring to the County, or offer an Agreement amendment to Contractor to reflect the reduced amount.
Contact Person:

Ed Hoag
Facilities Manager
Mailing Address:
2 South Green Street
Sonora, California 95370
(209) 533-5660
Ehoag@co.tuolumne.ca.us
Attachment A

BID FORM

County of Tuolumne Emergency Generator System

<table>
<thead>
<tr>
<th>NAME OF BIDDER:</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>BUSINESS MAILING ADDRESS:</td>
<td></td>
</tr>
<tr>
<td>CITY, STATE, ZIP:</td>
<td></td>
</tr>
<tr>
<td>BUSINESS STREET ADDRESS:</td>
<td></td>
</tr>
<tr>
<td>CITY, STATE, ZIP:</td>
<td></td>
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<tr>
<td>TELEPHONE:</td>
<td>(   )</td>
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<tr>
<td>FAX:</td>
<td>(   )</td>
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<tr>
<td>E-mail address:</td>
<td></td>
</tr>
<tr>
<td>Contractor License No.:</td>
<td></td>
</tr>
<tr>
<td>DIR Registration Number</td>
<td></td>
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</tbody>
</table>

Services requested to be accomplished and referred to herein are to purchase and install the specified emergency backup generator for the County of Tuolumne Senior Center, Archive and Library at 540 Greenley Road, Sonora, CA 95370, with supporting electrical work. The work shall be in accordance with the Request for Proposals – Tuolumne County Senior Center, Archive and Library Generator System Project.

If this bid is accepted and the undersigned fails to enter into the agreement and provide insurance and bonds as specified herein within eight (8) days, not including Sundays and legal holidays, after Contractor has received notice from the County of Tuolumne that the Agreement has been awarded, the County of Tuolumne may, at its option, determine that Contractor has abandoned the Agreement and thereupon this bid and the acceptance thereof shall be null and void.

The undersigned, as Contractor, declares that the only person or parties interested in this Bid as principals, are those named herein; this Bid is made without collusion with any other person, firm, or corporation; it has carefully examined the locations of the proposed work and the proposed form of Agreement, and, it proposes and agrees that, if this bid is accepted, it will contract with the County of Tuolumne, in the form of the copy of the Agreement annexed hereto, to provide all necessary labor, equipment, tools, materials (except as otherwise specified in the Agreement), and incidentals necessary to accomplish the services specified in the Agreement in the manner and time therein prescribed and according to the requirements of the County of Tuolumne as therein set forth, and that it will take in full payment therefore the following item prices, to wit.

...
Attachment B

Plans Specifications

Plans and specifications can be purchased through Sonora Blueprint & Copy Co., 19515 Village Dr. Ste A. Sonora, CA 95370. Phone number 209-532-5223. Project plans can also be viewed at the County of Tuolumne Facilities Management office at 9 Calaveras Street, Sonora, CA 95370. Phone number 209-533-5660.

INSTALLATION:
☐ All equipment shall be installed by the contractor in accordance with the final submittals and contract documents.
☐ Equipment shall be installed in accordance with the manufacturer's instructions as well as instructions included in the listing or labeling of UL listed products.
☐ Contractor will provide ALL labor and materials to complete the installation of the generator.
☐ Contractor will restore any landscaping, asphalt, concrete, etc. disturbed by the install to its original state or approved alternative. Any damage to the County of Tuolumne’s property caused by the installation of the generator will be repaired at the contractor’s expense.
☐ Contractor will make all connections to the building’s panel boxes, required interfaces with the electric company and provide any/all enhancements or updates to the electrical lines.
☐ All wiring is to be copper THHN, THWN, XHHW insulation. Generator controller communications and remote annunciator communications cables to be as specified by the manufacturer.
☐ All wiring will be installed in compliance of code.

ACCEPTANCE:
Contractor will provide field acceptance testing which will include a full load test (2 hours) at 100% with an electrical inspector on site. A portable load bank will be provided by contractor. Contractor will provide reports to owner and engineer after conclusion of test/start-up.
## Attachment C

### BID SCHEDULE

<table>
<thead>
<tr>
<th>ITEM NO.</th>
<th>(P) (F) (S) ITEM NO. (Note 1)</th>
<th>DESCRIPTION</th>
<th>TOTAL QUANTITY</th>
<th>UNIT</th>
<th>UNIT COST</th>
<th>AMOUNT</th>
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<tbody>
<tr>
<td>1</td>
<td></td>
<td>250 kW, 480/277 Volt 60 hz diesel generator set with integral 800 gal fuel tank.</td>
<td>1</td>
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<tr>
<td>2</td>
<td></td>
<td>1000A, 480/277V Main switchboard, with integral automatic transfer switch.</td>
<td>1</td>
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<td>$</td>
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<tr>
<td>3</td>
<td></td>
<td>Parts &amp; materials as needed, including but not limited to; conduit/piping, electrical wiring, fasteners, breakers, trenching equipment pad and misc. parts.</td>
<td>1</td>
<td>$</td>
<td>$</td>
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<tr>
<td>4</td>
<td></td>
<td>Generator installation and <strong>all associated labor</strong>, including but not limited to; packing, delivery, setup, electrical work, and final testing.</td>
<td>1</td>
<td>$</td>
<td>$</td>
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<tr>
<td>5</td>
<td></td>
<td>5-Year Extended Manufacturer’s Warranty</td>
<td>1</td>
<td>$</td>
<td>$</td>
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<td>6</td>
<td></td>
<td>Training / Manuals</td>
<td>1</td>
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**TOTAL BID**

(Note 1) P- Denotes Partial Pay; F- Denotes Final Pay.

(1) IN CASE OF DISCREPANCY BETWEEN THE UNIT PRICE AND THE TOTAL SET FORTH FOR A UNIT BASIS ITEM, THE UNIT PRICE SHALL PREVAIL

(2) ANY ALTERATIONS, MODIFICATIONS OR CHANGES TO THIS BID SCHEDULE SHEET BY THE BIDDER WILL BE GROUNDS FOR BID REJECTION
LIST OF SUBCONTRACTORS

Failure to list all subcontracts greater than 1/2 of 1% of the contract amount is subject to penalties of up to 10% of the subcontract amount & may also be grounds for disciplinary action by the Contractors State License Board. Any changes in subcontractors must be approved by the County of Tuolumne in advance.

<table>
<thead>
<tr>
<th>Name, Location &amp; Contractor’s License Number</th>
<th>DIR registration number (if required)</th>
<th>Bid Item Number</th>
<th>Description of Work</th>
<th>Value of Work</th>
</tr>
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The bidder’s execution and endorsement on the signature portion of the Bid Form shall also constitute an endorsement and execution of the following certifications which are a part of this document:
LABOR CODE SECTION 1861 CERTIFICATION

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 the work of this contract.

PUBLIC WORKS CONTRACTOR REGISTRATION CERTIFICATION

Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. See http://www.dir.ca.gov/Public-Works/PublicWorks.html for additional information.

No contract will be entered into without proof of the contractor’s and subcontractors’ current registration with the Department of Industrial Relations to perform public work.

Bidder hereby certifies that it is aware of the registration requirements set forth in Labor Code sections 1725.5 and 1771.1 and is currently registered as a contractor with the Department of Industrial Relations.

Name of Bidder: ____________________________

DIR Registration Number: ____________________

Bidder further acknowledges:

1. Bidder shall maintain a current DIR registration for the duration of the project.

2. Bidder shall include the requirements of Labor Code sections 1725.5 and 1771.1 in its contract with subcontractors and ensure that all subcontractors are registered at the time of bid submittal and maintain registration status for the duration of the project.

3. Failure to submit this form or comply with any of the above requirements may result in a finding that the bid is non-responsive.

Signature: ________________________________

Name and Title: __________________________

Dated: _________________________________
The Contractor’s license number and expiration date are stated under penalty of perjury.

Licensed in accordance with an act providing for the registration of contractors:

<table>
<thead>
<tr>
<th>License No.:</th>
<th>Exp. Date:</th>
<th>Classifications:</th>
</tr>
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<table>
<thead>
<tr>
<th>Print Name and Title of Bidder</th>
<th>Signature of Bidder</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Business Address</th>
<th>Place of Business</th>
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</table>

CONTRACTOR'S CERTIFICATION

The undersigned further certifies that the Bidder who submitted the Bid to which this certification is attached, is appropriately licensed by, and in good standing with, the California Contractors’ State License Board, and is not listed on the federal Consolidated List of Debarred, Suspended, and Ineligible Contractors.

SIGNATURE OF:

Bidder if Bidder is an individual:

(Name of Bidder)

Partner if Bidder is a partnership:

(Name of Partner)

Officer if Bidder is a corporation:

(Name of Officer)
AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT ("Agreement") is made and entered into this _____ day of _______, 20__, by and between the County of Tuolumne, a political subdivision of the State of California, ("County"), and ______________, a ("Contractor"), pursuant to the following terms and conditions.

W I T N E S S E T H:

1. TERM

The term of this Agreement shall commence on the date first hereinabove written, and shall continue until all authorized work is approved by the County or [                          ], whichever is earlier.

2. SERVICES

Contractor shall perform [                          ] as described in Exhibit A, "Scope of Work," which is attached hereto and incorporated herein by reference. Contractor shall provide all staffing and materials necessary to perform the Scope of Work.

3. COMPENSATION

Contractor shall be compensated for services performed in an amount not to exceed [                          ]. The Contractor’s hourly rates are listed in Exhibit B, "Cost Proposal." The County shall pay Contractor within thirty (30) days of receipt of an approved invoice. In the event payments equal the “not to exceed” amount, Contractor shall complete all services required under this Agreement without further compensation or cost reimbursement.

4. INSURANCE

A. The Contractor shall provide at its own expense and maintain at all times the following insurance with insurance companies licensed in the State of California and shall provide evidence of such insurance to the County as may be required by the Risk Manager of the County. The Contractor’s insurance policy(ies) shall be placed with insurer(s) with acceptable Best’s rating of A:VII or with approval of the Risk Manager. The Contractor shall provide notice to the Risk Manager of the County by
registered mail, return receipt requested, thirty (30) days prior to cancellation or material change for all of the following stated insurance policies:

i. **Workers’ Compensation Coverage** – Workers’ Compensation Insurance and Employer’s Liability Insurance for employees in accordance with the laws of the State of California (including requiring any authorized subcontractor to obtain such insurance for its employees).

ii. **General Liability Coverage** - Commercial general liability insurance with a minimum liability limit per occurrence of one million dollars ($1,000,000) for bodily injury and one hundred thousand dollars ($100,000) for property damage. If a commercial general liability insurance form or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Coverage shall be included for premises, operations and broad form contractual.

iii. **Automobile Liability** insurance with a minimum limit of liability per occurrence of $1,000,000 for bodily injury and $100,000 for property damage. This insurance shall cover for bodily injury and property damage, owned, hired and non-owned vehicles.

iv. **Professional Liability**: Professional errors and omissions liability for protection against claims alleging negligent acts, errors or omissions which may arise from Contractor’s operations under this Agreement, whether such operations be by Contractor or by its employees, subcontractors, or subconsultants. The amount of this insurance shall not be less than one million dollars ($1,000,000) per claim with an aggregate limit of five million dollars ($5,000,000). Contractor agrees to maintain the required coverage for a period of three (3) years after the expiration of this Agreement and any extensions thereof.

B. **Policy Endorsements**: Each general liability and automobile liability insurance policy shall be endorsed with the following specific provisions:

i. The County, its elected or appointed officers, officials, employees, agents and volunteers are to be covered as additional insureds (“County additional insureds”).

ii. This policy shall be considered, and include a provision it is, primary as respects the County additional insureds, and shall not include any special limitations to coverage provided to the County additional insureds. Any insurance maintained by the County, including any self-insured retention the County may have, shall be considered excess insurance only and shall not contribute with it.
iii. This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.

iv. The insurer waives all rights of subrogation against the County additional insureds.

v. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County additional insureds.

C. Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by the Risk Manager. At the County’s option, Contractor shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

D. Unsatisfactory Policies: If at any time any of the policies or endorsements be unsatisfactory as to form or substance, or if an issuing company shall be unsatisfactory, to the Risk Manager, a new policy or endorsement shall be promptly obtained and evidence submitted to the Risk Manager for approval.

E. Failure to Comply: Upon failure to comply with any of these insurance requirements, this Agreement may be forthwith declared suspended or terminated. Failure to obtain and/or maintain any required insurance shall not relieve any liability under this Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the indemnification obligations.

5. HOLD HARMLESS/INDEMNIFICATION

Contractor shall indemnify, defend, save, protect and hold harmless County, its elected and appointed officials, officers, employees, agents and volunteers (collectively, “County”) from any and all demands, losses, claims, costs, suits, liabilities and expenses for any damage, injury or death (collectively, “Liability”) arising directly or indirectly from or connected with the services provided hereunder which is caused, or claimed or alleged to be caused, in whole or in part, by the negligence or willful misconduct of Contractor, its officers, employees, agents, contractors, consultants, or any person under its direction or control and shall make good to and reimburse County for any expenditures, including reasonable attorney’s fees, the County may make by reason of such matters and, if requested by County, shall defend any such suits at the sole cost and expense of Contractor. Contractor’s obligations under this section shall exist regardless of concurrent negligence or willful misconduct on the part of the County or any other person; provided, however, that Contractor shall not be required to indemnify County for the proportion of Liability a court determines is attributable to the negligence or willful misconduct of the County.

If such indemnification becomes necessary, the County Counsel for the County shall have the absolute right and discretion to approve or disapprove of any and all counsel employed to
defend the County. This indemnification clause shall survive the termination or expiration of this Agreement.

6. INDEPENDENT CONTRACTOR

It is understood that Contractor, in the performance of the services agreed to be performed, shall act as and be an independent contractor and shall not act as an agent or employee of the County. Contractor shall obtain no rights to retirement benefits or other benefits which accrue to County’s employees, and Contractor hereby expressly waives any claim it may have to any such rights. All employees, agents, contractors, subcontractors hired or retained by the Contractor are performing in that capacity for and on behalf of the Contractor and not the County. The County shall not be obligated in any way to pay any wage claims or other claims made against the Contractor by any such employee, agent, contractor or subcontractor, or any other person resulting from the performance of this Agreement.

7. ASSIGNMENT

This Agreement is for the professional services of the Contractor and it shall not assign, subconract or sublet any part of this Agreement without the express prior written consent of County. Any assignment without the express prior written consent of the County is VOID.

8. NOTICE

Any and all notices, reports or other communications to be given to County or Contractor shall be given to the persons representing the respective parties at the following addresses:

CONTRACTOR:  COUNTY:
Ed Hoag
County of Tuolumne
2 South Green Street
Sonora, CA 95370
Fax: (209) 533-5660

9. COMPLIANCE

Contractor shall comply with all federal, state and local laws, codes, ordinance and regulations applicable to Contractor’s performance under this Agreement, including, but not limited to, laws related to prevailing wages. Specifically, Contractor shall not engage in unlawful employment discrimination, including, but not limited to, discrimination based upon a person’s race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, gender, citizenship or sexual orientation, as prohibited by state or federal law.
10. **PUBLIC RECORDS ACT**

Contractor is aware that this Agreement and any documents provided to the County may be subject to the California Public Records Act and may be disclosed to members of the public upon request. It is the responsibility of the Contractor to clearly identify information in those documents that it considers to be confidential under the California Public Records Act. To the extent that the County agrees with that designation, such information will be held in confidence whenever possible. All other information will be considered public.

11. **ENTIRE AGREEMENT AND MODIFICATION**

This Agreement contains the entire agreement of the parties relating to the subject matter of this Agreement and supersedes all prior agreements and representations with respect to the subject matter hereof. This Agreement may only be modified by a written amendment hereeto, executed by both parties, however, matters concerning the scope of services which do not affect the agreed price may be modified by mutual written consent of the Contractor and the [ ]. If there are exhibits attached hereto, and a conflict exists between the terms of this Agreement and any exhibit, the terms of this Agreement shall control.

12. **ENFORCEABILITY AND SEVERABILITY**

The invalidity or enforceability of any term or provisions of this Agreement shall not, unless otherwise specified, affect the validity or enforceability of any other term or provision, which shall remain in full force and effect.

13. **TERMINATION AND RIGHTS UPON TERMINATION**

A. This Agreement may be terminated upon mutual written consent of the parties, or as a remedy available at law or in equity. In the event of the termination of this Agreement, Contractor shall immediately be paid all fees earned as of the effective date of termination.

B. Either party may terminate this Agreement for convenience upon [ ] calendar days’ written notice to the other party. Upon termination for convenience, Contractor shall be entitled to compensation for services performed acceptably up to the effective date of termination, as set forth in Exhibit B.

C. Should Contractor default in the performance of this Agreement or materially breach any of its provisions, County, at its option, may terminate this Agreement by giving written notification to Contractor. The termination date shall be the effective date of the notice. For the purposes of this subsection, default or material breach of this Agreement shall include, but not be limited to, any of the following: failure to perform required services in a timely manner, willful destruction of County property, dishonesty, or theft.
D. If County terminates this Agreement for default or material breach, then Contractor shall be liable for any reasonable costs in excess of the Agreement amount incurred by County in order to complete Exhibit A, “Scope of Work.” In addition, Contractor understands and agrees that County may, in County’s sole discretion, refuse to pay Contractor for that portion of Contractor’s services which were performed by Contractor prior to the termination date and which remain unacceptable to County as of the termination date.

14.  NO WAIVER

The failure to exercise any right to enforce any remedy contained in this Agreement shall not operate as to be construed to be a waiver or relinquishment of the exercise of such right or remedy, or of any other right or remedy herein contained.

15.  DISPUTES

Should it become necessary for a party to this Agreement to enforce any of the provisions hereof, the prevailing party in any claim or action shall be entitled to reimbursement for all expenses so incurred, including reasonable attorney’s fees.

It is agreed by the parties hereto that unless otherwise expressly waived by them, any action brought to enforce any of the provisions hereof or for declaratory relief hereunder shall be filed and remain in a court of competent jurisdiction in the County of Tuolumne, State of California.

16.  CAPTIONS

The captions of this Agreement are for convenience in reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

17.  NUMBER AND GENDER

In this Agreement, the neutral gender includes the feminine and masculine, the singular includes the plural, and the word “person” includes corporations, partnerships, firms or associations, wherever the context so requires.

18.  MANDATORY AND PERMISSIVE

“Shall” is mandatory. “May” is permissive.

19.  SUCCESSORS AND ASSIGNS

All representations, covenants and warranties specifically set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.
20. COUNTERPARTS

This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

21. OTHER DOCUMENTS

The parties agree that they shall cooperate in good faith to accomplish the object of this Agreement and, to that end, agree to execute and deliver such other and further instruments and documents as may be necessary and convenient to the fulfillment of these purposes.

22. CONTROLLING LAW

The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California.

23. AUTHORITY

Each party and each party’s signatory warrant and represent that each has full authority and capacity to enter into this Agreement in accordance with all requirements of law. The parties also warrant that any signed amendment or modification to the agreement shall comply with all requirements of law, including capacity and authority to amend or modify the Agreement.

24. NEGOTIATED AGREEMENT

This Agreement has been arrived at through negotiation between the parties. Neither party is to be deemed the party which prepared this Agreement within the meaning of California Civil Code section 1654. Each party represents and warrants that in executing this Agreement it does so with full knowledge of the rights and duties it may have with respect to the other party. Each party also warrants and represents that it has received independent legal advice from its attorney with respect to the matters set forth in this Agreement and the rights and duties arising out of this Agreement, or that such party willingly foregoes any such consultation.

25. NO RELIANCE ON REPRESENTATIONS

Each party warrants and represents that it is not relying and has not relied upon any representation or statement made by the other party with respect to the facts involved or its rights or duties. Each party understands and agrees that the facts relevant, or believed to be relevant to this Agreement, have been independently verified. Each party further understands that it is responsible for verifying the representations of law or fact provided by the other party.
26. WARRANTY

County has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor hereby warrants that all work shall be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor’s work by County shall not operate as a waiver or release.

27. FUNDING AVAILABILITY

It is mutually agreed that if the County budget of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the County shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement. Contractor’s assumption of risk of possible non-appropriation is part of the consideration for this Agreement. County budget decisions are subject to the discretion of the Board of Supervisors.

If funding for any fiscal year is reduced or deleted by the County budget for purposes of this program, the County shall have the option to either cancel this Agreement with no liability occurring to the County, or offer an Agreement amendment to Contractor to reflect the reduced amount.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day APPROVED AS TO LEGAL FORM:

By: [ ], County Counsel

COUNTY OF TUOLUMNE

By: Tracie Riggs
County Administrative Officer

CONTRACTOR

By:

APPROVED AS TO LEGAL FORM:
| By: [ ] | County Counsel |

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This page contains a table with a single entry: **By: [ ], County Counsel**.