Exhibit 2

Madera County Master Contract #011

MADERA COUNTY MASTER CONTRACT NO. 011
(Resource Management Agency - Construction Agreement)

AGREEMENT

1. **SCOPE OF WORK**. CONTRACTOR shall perform the work and services set forth in COUNTY's Procurement and Contract Requirements and Specifications ,a copy of which is attached to the Master Cover Sheet (hereinafter, also, "MCS"),and CONTRACTOR's proposal, a copy of which is attached to the Master Cover Sheet. CONTRACTOR shall perform the work in conformity with the specifications contained in COUNTY's Procurement and Contract Requirements and Specifications, including the furnishing of all labor, material, equipment, supervision and transportation necessary for a successful completion of the work.

2. **PAYMENT**. As consideration for the Work performed herein, COUNTY shall pay CONTRACTOR in accordance with MCS. When the CONTRACTOR determines that it has completed the Work, CONTRACTOR shall notify the COUNTY. COUNTY shall inspect the work. If the work is not acceptable to COUNTY, COUNTY shall indicate to CONTRACTOR in writing the specific portions or items of work that are unsatisfactory or incomplete. Once CONTRACTOR determines that it has completed the incomplete or unsatisfactory work, CONTRACTOR may request a reinspection by COUNTY. COUNTY shall pay CONTRACTOR the Total Contract Price promptly upon receipt of a release of claims from the CONTRACTOR pursuant to Civil Code section 3262 and COUNTY's acceptance of work. COUNTY shall withhold funds from final payment in accordance with Section 9203 of the Public Contract Code but shall release all retained undisputed funds, in accordance with Sections 7107 of the Public Contract Code. If a dispute arises between the CONTRACTOR and COUNTY, COUNTY may withhold an amount from the final payment [only if there are progress payments] not to exceed one hundred and fifty percent (150%) of the disputed amount.

3. **EXTRA WORK**. No extra work shall be performed or changes made except pursuant to a written change order from COUNTY stating that the extra work or the change is authorized, and no claim for an additional sum shall be valid unless the COUNTY approves the extra work or change.

4. **OBLIGATION OF CONTRACTOR**. In executing this Agreement, CONTRACTOR obligates itself to completely and satisfactorily perform all the terms hereof. COUNTY shall have the right to reject any and all materials and work that does not conform to this Agreement.

5. **LICENSING**. At all times during the Term of this Agreement, CONTRACTOR shall maintain such valid California contractor's licenses as are required by law for the work.

6. **FORCE MAJEURE**. Neither party will be responsible for delays in performance beyond its reasonable control, including, but not limited to, fire, flood, act of God or restriction of civil or military authority.

6.01 **Force Majeure and Delays in Performance**. CONTRACTOR shall not be responsible for delay caused by circumstances beyond its reasonable control, including but not limited to: strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of COUNTY to furnish timely information, and faulty performance or nonperformance by COUNTY, COUNTY's independent consultants or contractors, or other government agencies. CONTRACTOR shall not be liable for damages arising out of any such delay, nor shall CONTRACTOR be deemed to be in default of this Agreement as a result thereof.

7. **ENTIRE AGREEMENT**. This Agreement and Master Contract Cover Sheet and any exhibits specified in the Master Contract Cover Sheet and attached thereto and incorporated by reference, COUNTY's Procurement and Contract Requirements and Specifications and CONTRACTRACTOR's Proposal above, and the Standard Contract described in Section 36 and attached hereto, represents the entire and integrated Agreement between COUNTY and CONTRACTOR and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by a subsequent written agreement signed by both parties. In the event that the terms of the Master Cover Sheet and this Agreement conflict with each other, the terms of the Master Cover Sheet shall control over this Agreement and both the Master Cover Sheet and this Agreement shall control over Contractor's Proposal.

8. **NON-ASSIGNMENT**. CONTRACTOR shall not assign or transfer this Agreement, or any interest therein, without the prior written consent of COUNTY. This Section shall not limit CONTRACTOR's subcontracting portions of the work under this Agreement to designated subcontractors.

9. **INDEMNITY AND HOLD HARMLESS**. CONTRACTOR shall indemnify and hold harmless COUNTY, its officers, employees, and agents, from any loss, cost, expense (including attorney's fees), damage, claim or liability, resulting from, arising out of, or in any way connected with the performance of this Agreement by CONTRACTOR, its officers, employees, or agents, regardless of the negligence of COUNTY, its officers, employees, and agents, except where such loss, cost, expense, damage, claim or liability results from sole negligence or willful misconduct on behalf of COUNTY, its officers, employees, or agents.

10. **INSURANCE**. CONTRACTOR shall obtain all insurance required under this Section and provide satisfactory proof of same to COUNTY. COUNTY's approval of such proof of insurance is a precondition to CONTRACTOR commencing or continuing work under this Agreement. CONTRACTOR shall maintain in effect the required insurance throughout the life of the Agreement and failure to do so is a material breach. Such insurance shall contain a provision preventing cancellation without thirty (30) days prior notice to COUNTY in writing at the address of COUNTY (Attention: Risk Manager) at 200 West Fourth Street, Madera, California, 93637. CONTRACTOR shall not allow any subcontractor to commence work on any subcontract until the insurance required of the subcontractor has been obtained, and proof thereof provided to and approved by COUNTY. Certificates evidencing the issuance of the following insurance shall be filed with COUNTY within ten (10) days after the date of the Notice of Award.

10.01 **Workers' Compensation Insurance**. CONTRACTOR shall obtain and maintain in effect during the life of this Agreement, Workers' Compensation Insurance for all of its employees to be engaged in work, with a minimum coverage limits as required by the State of California. In case of any work subcontracted, CONTRACTOR shall require each subcontractor to provide Workers' Compensation Insurance for all subcontractor employees engaged in such work unless CONTRACTOR's Workers' Compensation Insurance provides coverage to subcontractor employees.

Workers' Compensation Insurance provides coverage to subcontractor employees.

10.02 **Liability**. Without limiting CONTRACTOR's indemnification of COUNTY, CONTRACTOR shall provide at its own expense and maintain in effect at all times during the term of this Agreement general liability insurance with minimum liability limits as specified in the Master Cover Sheet with insurance companies licensed in the State of California and acceptable to COUNTY's Risk Manager. CONTRACTOR shall provide at its own expense and maintain in effect at all times during the term of this Agreement vehicle liability insurance as to both owned and non-owned vehicles, with minimum liability limits as specified in the Master Cover Sheet, with insurance companies licensed in the State of California and acceptable to COUNTY's Risk Manager. Proof of insurance shall be provided to COUNTY in writing at the address of COUNTY (Attention: Risk Manager), 200 West Fourth Street, Madera, California, 93637.

10.03 **Subcontractor's Insurance**. CONTRACTOR shall require each subcontractor to obtain and maintain in effect during the life of its subcontract insurance policies with minimum limits equal to the amount required of CONTRACTOR.

10.04 **Scope of Insurance and Special Hazards**. The Insurance required under paragraphs 11.02 and 11.03 hereof shall provide adequate protection for CONTRACTOR and its subcontractors, respectively, against damage claims which may arise from operations under this Agreement, whether such operations be by the insured or by anyone directly or indirectly employed by the insured; and also against any special hazards which may be encountered in the performance of this Agreement. The insurance required under paragraphs 11.02 and 11.03 hereof shall name COUNTY, its officers, employees, and agents as additional insureds.

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11. **TERMINATION**.

11.01 **Termination Without Cause**. COUNTY shall have the right to terminate this Agreement without cause by giving CONTRACTOR thirty (30) days prior written notice of its intention to terminate pursuant to this provision, specifying the date of termination.

11.02 **Termination For Improper Consideration**. COUNTY may, by written notice to CONTRACTOR, immediately terminate the right of CONTRACTOR to proceed under this Agreement if it is found that consideration, in any form, was offered or given by CONTRACTOR, either directly or through an intermediary, to any COUNTY officer, employee, or agent with the intent of securing this Agreement or securing favorable treatment with respect to the award, amendment, or extension of this Agreement or the making of any determinations with respect to CONTRACTOR's performance pursuant to this Agreement. In the event of such termination, COUNTY shall be entitled to pursue the same remedies against CONTRACTOR as it could pursue in the event of default by CONTRACTOR. CONTRACTOR shall immediately report any attempt by a COUNTY officer, employee, or agent, to solicit such improper consideration. The report shall be made either to the COUNTY department head charged with the supervision of the employee, or to COUNTY Administrative Officer. Improper consideration may include, but is not limited to, cash, discounts, service, provision of travel or entertainment, or tangible gifts.

11.03 **Termination For Insolvency**. COUNTY may terminate this Agreement immediately in the event any of the following occurs:

11.03.1 CONTRACTOR becomes insolvent by failing to pay its debts for at least sixty (60) days in the ordinary course of business or cannot pay its debts as they become due.

11.03.2 Filing of a voluntary or involuntary petition regarding CONTRACTOR under the federal Bankruptcy Code.

11.03.3 Appointment of a receiver or trustee for CONTRACTOR.

11.03.4 Execution by CONTRACTOR of a general assignment for the benefit of creditors.

12. **REMEDIES UPON BREACH**. If CONTRACTOR materially breaches the terms of this Agreement, subject to the indemnification provisions of Section 10, above, COUNTY shall have all of the following remedies:

12.01 Immediately terminate the Agreement with CONTRACTOR;

12.02 Retain the plans, specifications, drawings, reports and other design documents prepared by CONTRACTOR;

12.03 Complete the unfinished work, under this Agreement, with a different contractor.

13. **RECORDS AND AUDIT**. CONTRACTOR shall maintain complete and accurate records with respect to the services rendered and the costs incurred under this Agreement. All such records shall be prepared in accordance with generally accepted accounting principles, shall be clearly identified, and shall be kept readily accessible. Upon request, CONTRACTOR shall make such records available to COUNTY's auditor and to the auditor's agents and representatives, for the purpose of auditing and/or copying such records, for a period of five (5) years from the date of final payment under this Agreement.

14. **OWNERSHIP AND RETENTION OF DOCUMENTS**. All plans, specifications, reports and other documents prepared by CONTRACTOR pursuant to this Agreement shall become the property of COUNTY upon completion of all services and receipt by CONTRACTOR of all compensation due under this Agreement. CONTRACTOR shall not apply for copyrights or patents on all or any part of the work (including drafting of plans, specifications, reports and other documents) performed under this Agreement. It is understood and agreed that the plans and specifications prepared by CONTRACTOR are intended for one-time use on the Project only.

15. **CALIFORNIA PUBLIC RECORDS ACT**. Any documents submitted by CONTRACTOR, all information obtained in connection with COUNTY's right to audit and inspect CONTRACTOR's documents, books, and accounting records pursuant to the "Records and Audit" section of this Agreement, and those documents which were required to be submitted in response to the solicitation process for this Agreement, become the exclusive property of COUNTY, and shall be regarded as public records

under the California Public Records Act, Government Code section 6250 et seq. (hereinafter "CPRA"). Exceptions to disclosure will be those provided in the CPRA and which are marked "trade secret," "confidential," or "proprietary." COUNTY shall not in any way be liable or responsible for the disclosure of any such records including, without limitation, those so marked, if disclosure is required by law, or by an order issued by a court of competent jurisdiction. In the event COUNTY is required to defend an action on a CPRA request for any of the aforementioned documents, information, books, records, and/or contents of a proposal marked "trade secret," "confidential," or "proprietary," CONTRACTOR agrees to defend and indemnify COUNTY from all costs and expenses, including reasonable attorney's fees, in action or liability arising under the CPRA.

16. **GOVERNING LAW**. This Agreement shall be governed by and interpreted under the laws of the State of California. The parties agree that this Agreement was executed in and shall be performed in Madera County, California. CONTRACTOR waives the removal provisions of California Code of Civil Procedure section 394.

17. **DISPUTE RESOLUTION**. If a dispute arises out of or relating to this Agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by non-binding mediation before resorting to litigation or some other dispute resolution procedure, unless the parties mutually agree otherwise in writing. The parties shall mutually select the mediator, but in case of disagreement, lot from among two nominations provided by each party shall select the mediator. The parties shall split all costs and fees required by the mediator equally; otherwise, each party shall bear its own costs of mediation. If mediation fails to resolve the dispute within thirty (30) days, either party may pursue litigation to resolve the dispute.

18. **ATTORNEY'S FEES AND COSTS**. If either party to this Agreement shall bring or participate in any action for relief arising out of this Agreement, the losing party shall pay to the prevailing party a reasonable sum for attorney's fees (including the value of County Counsel services) incurred in bringing such action or enforcing any judgment granted therein, all of which shall be deemed to have accrued upon the commencement of such action and shall be paid whether or not such action is prosecuted to judgment.

19. **PREVAILING WAGE AND LABOR CODE**. CONTRACTOR shall comply with the prevailing wage provisions of the California Labor Code and the prevailing wage rate determinations of the Department of Industrial Relations. These rates are on file at COUNTY Resource Management Agency, 2037 West Cleveland Avenue, Madera, California, 93637. Copies of prevailing wage rates are available upon request, and CONTRACTOR must post a copy of these rates at the job site. CONTRACTOR and all subcontractors shall comply with all Labor Code provisions, which include but are not limited to prevailing wages, employment of apprentices, hours of labor, and debarment of contractors and subcontractors.

20. **FURTHER ASSURANCES**. Each party agrees to execute any additional documents and to perform any further acts that may be reasonably required to affect the purposes of this Agreement.

21. **DUTY OF LOYALTY**. CONTRACTOR acknowledges that the work to be performed under this Agreement will be solely for the benefit of COUNTY and that CONTRACTOR owes its duties of performance and loyalty to COUNTY and not to any other person or entity. CONTRACTOR also acknowledges and agrees that no provision of this Agreement shall in any way inure to the benefit of any third person or entity so as to constitute any such person or entity a third-party beneficiary of this Agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person or entity not a party hereto.

22. **ASSURANCES OF NON-DISCRIMINATION**. CONTRACTOR expressly agrees that it will not discriminate in employment or the provision of services on the basis of any characteristic or condition upon which state or federal law or regulation prohibits discrimination.

23. **NOTICES**. Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed to the parties' respective representatives for this Agreement whose names and contact information is set forth in the Master Cover Sheet.

Notice delivered personally or sent by facsimile transmission is deemed to be received upon receipt. Notice sent by first-class mail shall be deemed received on the

fourth day after the date of mailing. Either party may change the above address by giving written notice to the other party pursuant to this paragraph.

24. **AUTHORIZATION WARRANTY**. CONTRACTOR represents and warrants that the person executing this Agreement on CONTRACTOR's behalf is an authorized agent who has actual authority to bind CONTRACTOR to the terms and conditions of this Agreement.

25. **CONFLICT OF INTEREST**. No COUNTY employee whose position with COUNTY enables such employee to influence the award of this Agreement or any competing agreement, and no spouse, registered domestic partner or economic dependent of such employee, shall be employed in any capacity by CONTRACTOR or have any other direct or indirect financial interest in this Agreement. CONTRACTOR shall comply with all conflict of interest laws, ordinances, and regulations now in effect or hereafter to be enacted during the term of this Agreement. CONTRACTOR warrants that it is not now aware of any facts that create a conflict of interest. If CONTRACTOR hereafter becomes aware of any facts that might reasonably be expected to create a conflict of interest, it shall immediately make full written disclosure of such facts to COUNTY. Full written disclosure shall include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances. Failure to comply with the provisions of this section shall be a material breach of this Agreement.

26. **DAMAGE TO COUNTY PROPERTY**. CONTRACTOR shall repair, or cause to be repaired, at its own cost, any and all damage to COUNTY facilities, buildings or grounds caused by CONTRACTOR, its officers, employees, or agents, or its subcontractors. Such damage repair shall be made immediately after CONTRACTOR has become aware of such damage, but in no event later than thirty (30) days after the occurrence. If CONTRACTOR fails to make timely repairs, COUNTY may make any necessary repairs, and all costs incurred by COUNTY in doing so shall be repaid by CONTRACTOR by cash payment upon COUNTY's demand.

27. **EMPLOYMENT ELIGIBILITY VERIFICATION**. CONTRACTOR warrants that it fully complies with all federal and state statutes and regulations regarding the employment of aliens and others and that all of its employees performing work under this Agreement meet the citizenship or alien status requirements set forth in federal and state statutes and regulations. CONTRACTOR shall obtain, from all employees

performing work hereunder, all verification and other documentation of employment eligibility status required by federal and state statutes and regulations, including, but not limited to, the Immigration Reform and Control Act of 1986 (Pub. L. 99-603), or as they currently exist and as they may be hereafter amended. CONTRACTOR shall retain all such documentation for all covered employees for the period described by law. CONTRACTOR shall indemnify, defend, and hold harmless COUNTY and its officers, employees, and agents from employer sanctions and any other liability which may be assessed against CONTRACTOR or COUNTY or both in connection with any alleged violation of any federal or state statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Agreement.

28. **FAIR LABOR STANDARDS**. CONTRACTOR shall comply with all applicable provisions of the federal Fair Labor Standards Act and shall indemnify, defend and hold harmless COUNTY and its officers, employees and agents from any and all liability, including, but not limited to, wages, overtime pay, liquidated damages, penalties, court costs, and attorneys' fees arising under any wage and hour law, including, but not limited to, the Fair Labor Standards Act, for work performed by CONTRACTOR's employees for which COUNTY may be found jointly or solely liable.

29. **WAIVER**. No waiver by COUNTY of any breach of any provision of this Agreement shall constitute a waiver of any other breach or of any other provision. Failure of COUNTY to enforce at any time, or from time to time, any provision of this Agreement shall not be construed as a waiver thereof. The rights and remedies set forth in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

30. **SURVIVAL OF OBLIGATIONS**. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between the parties shall survive the completion of the services hereunder and/or the termination of this Agreement.

31. **SECTION HEADINGS**. The section headings, enumeration, and sequence of sections appearing herein are for convenience purposes only and shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning or intent of the provisions of this Agreement.

32. **SEGREGATION**. In the event that one or more provisions of this Agreement may be deemed unenforceable, the remainder of the Agreement shall continue in full force and effect.

33. **PERFORMANCE AND PAYMENT BONDS REQUIRED**.

33.01 **Performance Bond**. CONTRACTOR shall execute and provide to COUNTY concurrently with this Agreement a Performance Bond in the amount equal to one hundred percent (100%) of the contract price of this Agreement, in a form approved by COUNTY. No payment will be made to CONTRACTOR until such bond has been received and approved by COUNTY.

33.02 **Payment Bond**. CONTRACTOR shall execute and provide COUNTY concurrently with execution of this Agreement a Payment Bond in an amount equal to one hundred percent (100%) of the contract price of this Agreement, and in a form approved by COUNTY. No payment will be made to CONTRACTOR until such bond has been received and approved by COUNTY.

33.03 **Bond Provisions**. Should, in COUNTY's sole opinion, any bond become insufficient or any surety be found to be unsatisfactory, CONTRACTOR shall renew or replace the affected bond within ten (10) days of receiving notice from COUNTY. In the event the surety or CONTRACTOR intends to reduce or cancel any required bond, at least thirty (30) days prior written notice shall be given to COUNTY, and CONTRACTOR shall post acceptable replacement bonds at least ten (10) days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under this Agreement until any replacement bonds required by this Section are accepted by COUNTY. To the extent, if any, that the Total Contract Price is increased in accordance with the Agreement, CONTRACTOR shall, upon request of COUNTY, cause the amount of the bond to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to COUNTY. To the extent available, the bonds shall further provide that no change or alteration of the Agreement (including, without limitation, an increase in

the Total Contract Price, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to CONTRACTOR, will release the surety. If CONTRACTOR fails to furnish any required bond, COUNTY may terminate the Agreement for cause. The premium for any renewed or replacement bond shall be borne by CONTRACTOR.

33.04 **Admitted Surety Insurer**. Only bonds executed by an admitted surety insurer, as defined in California Code of Civil Procedure Section 995.120, shall be accepted. The surety must be a California-admitted surety with a current A.M. Best's rating no less than A:VIII and satisfactory to COUNTY. If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with Section 995.660 of the California Code of Civil Procedure, and proof of such is provided to COUNTY.

34. **STANDARD LANGUAGE**. The provisions contained in Standard Contract Language, a copy of which is attached hereto as Exhibit "A," and incorporated herein by this reference, shall be applicable to the performance of this Agreement.

35. **LIQUIDATED DAMAGES**. If CONTRACTOR fails to complete all work by the date set forth in Section 2, hereof, barring the existence of a force majeure condition, liquidated damages in the amount of specified in MCS shall be withheld from CONTRACTOR for each day beyond the time of completion stated in Section 2, together with any authorized extension. Damages shall continue until all work is completed.

36. **TIME**. Time is of the essence in this Agreement.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above-written.

COUNTY OF MADERA

Chairman, Board of Supervisors

3/17/2009

ATTEST:

Clerk, Board of Supervisors

Approved as to Form:
RISK MANAGEMENT

By:

Approved as to Legal Form:
COUNTY COUNSEL

By:

ACCOUNT NUMBER(S)

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EXHIBIT "A"

STANDARD CONTRACT LANGUAGE

1. Buy American:
(a) In General.—It is the sense of Congress that, to the extent practicable, all equipment and products purchased with funds made available under this Act [33 U.S.C. 1251 et. Seq. and in accordance with section 215 of the Clean Water Act] should be American made.

2. Equal Opportunity Clause.
In compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity" and as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFG chapter 60) the contractor shall agree to comply to said orders, including but not limited to as follows:

During the performance of this contract, the contractor agrees as follows:

a. The contractor will 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 will, 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 will 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 will 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.

e. The contractor will 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 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 canceled, 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 will include the portion of the sentence immediately preceding paragraph (2) 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.

The contractor further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in Federally assisted construction work; provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality, or subdivision of such government which does not participate in work on or under the contract.

The contractor agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The contractor further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of

September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, government contracts and Federally assisted construction contracts, pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

3. Federal Equal Employment Opportunity Construction Contract Specifications.

a. As used in these specifications:

i. "Covered area" means the geographical area described in the solicitation from which this contract resulted.

ii. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority.

iii. "Employer identification number" means the Federal social security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

iv. "Minority" includes:

(1) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin).

(2) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race).

(3) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, southeast Asia, the Indian subcontinent or the Pacific Islands).

(4) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

b. Whenever the contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include

in each subcontract in excess of $10,000 the provisions of these specifications and the notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

c. If the contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the plan area (including goals and timetables) shall be in accordance with that plan for those trades which have unions participating in the plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or subcontractor participating in an approved plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the plan's goals and timetables.

d. The contractor shall implement the specific affirmative action standards provided in paragraphs g.i. through g.xvi. of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in geographical areas where they do not have a Federal or Federally-assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs or from Federal procurement contracting officers. The contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

e. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

f. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment

opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

g. The contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:

i. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each construction project. The contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

ii. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

iii. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the contractor may have taken.

iv. Provide immediate written notification to the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or woman sent by the contractor or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.

v. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor.

The contractor shall provide notice of these programs to the sources compiled under 7.b. above.

vi. Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

vii. Review at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions, including specific review of these items with on-site supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

viii. Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's EEO policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.

ix. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

x. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after-school summer and vacation employment to minority and female youth both on the site and in other areas of a contractor's workforce.

xi. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60.3.

xii. Conduct at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

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

xiv. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

xv. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

xvi. Conduct a review, at least annually, of all supervisors' adherence to and performance under the contractor's EEO policies and affirmative action obligations.

h. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7.a. through 7.p.). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7.a. through 7.p. of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.

i. A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the contractor has achieved its goals for women

generally, the contractor may be in violation of the Executive Order if a specific minority group of women is under-utilized).

j. The contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex or national origin.

k. The contractor shall not enter into any subcontract with any person or firm debarred from government contracts pursuant to Executive Order 11246.

l. The contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

m. The contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph g of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

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

o. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area resident.

p. By the submission of this bid, the bidder, offeror, applicant, or subcontractor certifies that he/she does not maintain or provide for his/her employees any

segregated facility at any of his/her establishments, and that he/she does not permit employees to perform their services at any location under his/her control where segregated facilities are maintained. He/she certifies further that he/she will not maintain or provide for employees any segregated facilities at any of his/her establishments, and he/she will not permit employees to perform their services at any location under his/her control where segregated facilities are maintained. The bidder, offeror, applicant, or subcontractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause of this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas,* transportation and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, habits, local custom, or otherwise. He/she further agrees that (except where he/she has obtained identical certifications from proposed subcontractors for specific time periods) he/she will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity Clause; that he/she will retain such certifications in his/her files; and that he/she will forward the following notice to such proposed subcontractors (except where proposed subcontractors have submitted identical certifications for specific time periods).

*Parking lots, drinking fountains, recreation or entertainment areas.

4. Anti-Lobbying Certification

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and no more than $100,000 for such failure.

Contractor certifies, to the best of his or her knowledge or belief, that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of

any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

6. Audits and access to records:
Contractor agrees that the County of Madera, Environmental Protection Agency, the Comptroller General of the United States, or any authorized designated representative(s), shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this agreement. Contractor agrees to maintain such records for possible audit for a minimum of (3) three years after final payment, unless a longer period of record retention is stipulated. Contractor agrees to allow auditor(s) access to such records during normal business hours and to allow interview of any employees who might reasonably have information related to such records. Further, contractor agrees to include a similar right of the state to audit records and interview staff in any subcontract related to the performance of this agreement.

7. Clean Air Act (42 U.S.C. 1857 (h))/Clean Water Act (33 U.S.C. 1368 § 508/Executive Order 11738/ and Environmental Protection Agency (40 CFR part 15):

Contracts and subcontracts of amounts in excess of $100,000 shall require contractor to agree and comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 1857 (h)), Clean Water Act (33 U.S.C. 1368 § 508, Executive Order 11738, and Environmental Protection Agency (40 CFR part 15). Violations shall be reported to the federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

8. Contract Work Hours and Safety Standards Act (40 USC 327-330):

For contracts in excess of $2,000 for constructions contracts and $2,500 for all other contracts that include the employment of a mechanic or labor, a provision that requires compliance with Section 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330), as supplemented by the Department of Labor regulations (29 CFR, Part 5). Under Section 103, the contractor must compute the wages of mechanics and laborers on the basis of a standard work day of eight hours and a standard work week of 40 hours. Work that exceeds the standards must be compensated at least 1 1/2 times the basic pay rate for overtime hours worked. These requirements do not apply to the purchase of supplies or materials ordinarily available on the open market or contracts for transportation. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surrounding or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or

materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

9. Copeland "Anti-Kickback" Act (18 USC 874):

Contractor agrees to and shall include in all contracts and subgrants in excess of $2,000 for construction or repair awarded by recipients and sub recipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 USC 874), as supplemented by Department of Labor regulations (29 CFR Part 3). The Act provides that each contractor or sub recipient shall be prohibited from including, by any means, any person employed in the construction, completion, or repair of public works, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the agency immediately.

10. Davis Bacon Act, as amended (40 USC 276a to a-7)

As required by the Federal Granting agency, contractor agrees to and shall include in all contracts and sub contracts provision for compliance with Davis Bacon Act (40 USC 276a-a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provision Applicable to Contracts Governing Federally Financed and Assisted Construction". Under this Act the contractor is required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in the wage determination made by the Secretary of Labor. In addition, contractors are required to pay wages not less than once a week. The contractor shall place a copy of the current prevailing wage determination issued by the Department of Labor at the job site.

11. Copyrights (41 CFR 105-71.134):

The federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use and to authorize others to use for federal government purposes; a) the copyright in any work developed under the grant, subgrant, or contract under a grant or subgrant; b) any rights of copyright to which the grantee, subgrantee, or contractor purchases ownership with grant support.

12. Debarred and suspended parties:

All contractors and subcontractors must not make any award or permit any award at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal Assistance programs under Executive Order 12549, "Debarment and Suspension". Contractor and subcontractor shall completed a Self Certification and submit to the awarding agency prior to commencing work.

END OF DOCUMENT