RESOLUTION - ACTION REQUESTED 2020-219

MEETING: April 28, 2020

TO: The Board of Supervisors

FROM: Mike Healy, Public Works Director

RE: Approve Budget Action and Agreement ($878,471) with Williams Excavating for the Repair of Ben Hur Rd

RECOMMENDATION AND JUSTIFICATION:
Approve an Agreement with Williams Excavating for the Permanent Repair of Ben Hur Road; and Authorize the Board of Supervisors Chair to Sign the Agreement. Approve a Budget Action Recognizing the FHWA Project Funding Establishing an Account to Pay Invoices from While We Await Federal Reimbursement ($878,471.00).

As the Board of Supervisors is aware, our region was the recipient of tremendous storm activity in February 2017 which caused significant damage to critical infrastructure to roads in Mariposa County. In some cases, the damage far exceeded the ability of County Staff to effect repairs. These storm events were significant in magnitude that the Governor of the State of California had included the County in an emergency proclamation for Federal Disaster Funding.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
On March 28, 2017, Resolution 2017-163 the Board approved the Public Works Director to Accept Bid Proposals and Award Construction Contract.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Staff will not be able to effect the repairs necessary in an efficient manner.

FINANCIAL IMPACT:
This is a FHWA Funded 2017 Storm Damage Project Project which is funded at 100% with zero local share.

ATTACHMENTS:
Budget Acton Ben Hur (PDF)
Bid Opening Check List - Ben Hur Rd (PDF)
FHWA Approved Damage Assessment Form (PDF)
Additional Funding Authorization FHWA Ben Hur (PDF)
Email from FHWA re additional funds for Ben Hur (DOCX)
Keith Williams Excavating 20-048 Ben Hur Rd (PDF)
Resolution - Action Requested 2020-219

RESULT: ADOPTED [UNANIMOUS]
MOVER: Merlin Jones, District II Supervisor
SECONDER: Marshall Long, District III Supervisor
AYES: Smallcombe, Jones, Long, Cann, Menetrey
# BUDGET ACTION FORM

<table>
<thead>
<tr>
<th>FUND</th>
<th>DEP/DIV</th>
<th>ACCOUNT</th>
<th>DESCRIPTION</th>
<th>PROJECT</th>
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<td>4602</td>
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<td>Extra Help</td>
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<td>Transfer Out</td>
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<td>51,407</td>
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<tr>
<td>524</td>
<td>1325-309</td>
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<td>Transfer In</td>
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<tr>
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<td>0602</td>
<td>Ben Hur Road (FHWA)</td>
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<td>878,471</td>
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**TOTALS**

- 26,700
- 26,700

## TRANSFER BETWEEN FUNDS

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<td>1325-309</td>
<td>1600</td>
<td>Transfer In</td>
<td>(51,407)</td>
<td></td>
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</table>

**TOTALS**

- 0
- 0

**ACTION REQUESTED:** (Check all that apply)

(X) Budget appropriation by Board of Supervisors (50% Vote Required): Amending the total amount available in the county budget, or in any one fund of the budget, or transferring appropriation from Contingencies

( ) Transfer by Board of Supervisors (3/5ths Vote Required): Moving existing appropriations from one budget to another, or between categories within a budget unit.

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**DEPT HEAD SIGNATURE**

**APPROVED BY RES NO.**

\[20-219\]

**CLERK \[LeRock\]**

**DATE \[4/28/20\]**

**DEPARTMENT**

Public Works

**AUDITOR'S USE ONLY**

BA #

Budget Revision Form Revised 07/2000
COUNTY OF MARIPOSA (Owner)
Public Works
4639 Ben Hur Road, Mariposa, California 95338

CONSTRUCTION SERVICES AGREEMENT

Repair of Ben Hur Road
Agreement No. 20-048
Project # 0301-1702-10
DATE: 04/07/2020

1. IDENTIFICATION OF CONTRACTOR:

CONTRACTOR: Keith Williams Excavation 5177 Goins Way, Mariposa, CA 95338

LICENSE NO: 435145

2. SCOPE OF THE WORK

See Scope of Work attached as Appendix A

3. COMPENSATION FOR WORK. Contractor’s total compensation for the Work performed under this Agreement (Contract Sum) is $851,770.60, to be paid as (check one): (1) □ lump sum; (2) X lump sum with progress payments; (3) X per attached schedule of rates and charges, up to a guaranteed not-to-exceed amount of $851,770.60. All payments (check one): X shall □ shall not be subject to a five percent (5%) retention.

Contractor’s hourly rates are listed in Exhibit A, Scope of Work and Cost Proposal. In the event payments to Contractor equal the “not to exceed” amount, and absent a written modification to this Agreement signed by the Owner, Contractor shall complete all services required under this Agreement without further compensation or cost reimbursement.

4. SCHEDULE OF PERFORMANCE FOR THE WORK. Contractor shall commence and complete the Work by the following dates:

Commencement Date shall be on the date established in the Notice to Proceed. Owner reserves the right to modify or alter the Commencement Date of the Work.

Substantial Completion Date: Within _____45____ calendar days of Commencement Date.

Final Completion Date: Within _____15____ calendar days of Substantial Completion.

4.01 Liquidated Damage Amounts.

A. As liquidated damages for delay Contractor shall pay Owner Two Hundred Fifty dollars ($250.00) for each Day that expires after the time specified herein for Contractor to achieve Substantial Completion of the entire Work, until achieved.

B. As liquidated damages for delay Contractor shall pay Owner Two Hundred Fifty dollars ($250.00) for each Day that expires after the time specified herein for Contractor to achieve Final Completion of the entire Work, until achieved.

4.02 Scope of Liquidated Damages

Keith Williams Excavating 20-047 - 1 Ben Hur Rd.
A. Contractor and Owner agree that because of the nature of the Project, it would be impractical or extremely difficult to fix the amount of such actual damages incurred by Owner because of a delay in completion of all or any part of the Work. Contractor and Owner agree that specified measures of liquidated damages shall be presumed to be the amount of such damages actually sustained by Owner, and that because of the nature of the Project, it would be impracticable or extremely difficult to fix the actual damages.

B. Liquidated damages for delay shall cover administrative, overhead, interest on bonds, and general loss of public use damages suffered by Owner as a result of delay. Liquidated damages shall not cover the cost of completion of the Work, damages resulting from Defective Work, lost revenues or costs of substitute facilities, or damages suffered by others who then seek to recover their damages from Owner (for example, delay claims of other contractors, subcontractors, tenants, or other third-parties), and defense costs thereof. Owner may deduct from any money due or to become due to Contractor subsequent to time for completion of entire Work and extensions of time allowed pursuant to provisions hereof, a sum representing then-accrued liquidated damages.

5. TERMS AND CONDITIONS.

5.01 Contractor shall perform the Work in accordance with the terms and conditions of this Agreement and the following attachments (together, Contract Documents):

A. Appendix A – Scope of Work and Contractor Cost Proposal
B. Appendix B – General Conditions
C. Appendix C – Insurance
D. Appendix D – Construction Performance Bond
E. Appendix E – Construction Labor and Materials Payment Bond
F. Appendix F – Supplemental Conditions, if applicable
G. Appendix G - Delays resulting from the COVID19 virus outbreak

5.02 The Contract Documents are the sole and exclusive provisions that govern the Work described herein. Any provision contained in any purchase order issued in connection with this Agreement or the Work described herein shall be null and void and shall have no force or effect.

5.03 Agreement number must appear on all invoices and correspondence. Send invoices in duplicate immediately upon performance of Work ordered hereon to:

County of Mariposa, 4639 Ben Hur Rd, Mariposa, CA 95338

COUNTY OF MARIPOSA
By: [Signature]
Kevin Cann, Chairman
Board of Supervisors
By: Marshall Long, Vice-Chair

CONTRACTOR:
Name: Keith Williams Excavating

By: [Signature]

ATTEST:
By: [Signature]
Rene LaRoche
Clerk of the Board

APPROVED AS TO FORM:
By: [Signature]
Steven W. Dahlem
County Counsel

Keith Williams Excavating
20-047 - 2
Ben Hur Rd.
Appendix A to Construction Services Agreement

SCOPE OF WORK

Consists of export and import of materials, debris removal, grading, compaction, and aggregate base and asphalt concrete roadway work, and reestablish drainage flows (ditches, over side and down drains). Construct wing wall extensions, per Caltrans Standard D84, on the west side of the box culvert, reestablish roadway slope embankments with engineer fill material and compact, and place erosion control (riprap and slurry or seed and matting).

(End of Appendix A)
<table>
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<tr>
<th>ITEM</th>
<th>ITEM DESCRIPTION</th>
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<th>QTY</th>
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BASE BID SCHEDULE FOR BEN HUR ROAD TOTAL IN FIGURES BID ITEMS 1to21: $851,770.60

AMOUNT OF BASE BID, WRITTEN OUT:

Eight-hundred fifty-one thousand, seven-hundred seventy and sixty cents DOLLARS

PRINT NAME OF BIDDER: Keith Williams

SIGNATURE OF BIDDER: [Signature]

CONTRACTORS LICENSE NUMBER: 435145

PUBLIC WORKS CONTRACTOR REGISTRATION (PWCR) NUMBER: 1000064935
LIST OF SUBCONTRACTORS

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

List license and Public Works Contractor Registration (PWCR) number of each sub-contractor.

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<tr>
<th>Name, Address &amp; License Number</th>
<th>Bid Item #</th>
<th>Description of Work</th>
<th>Value of Work</th>
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<td>Force Traffic Control, Inc. PO Box 1107 Exeter, CA 93221 CA Lic. #790502 DIR #1000065521 DBE #29335</td>
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<tr>
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Appendix B to Construction Services Agreement

GENERAL CONDITIONS

ARTICLE 1 TERMS OF PERFORMANCE

1.01 Construction Services Agreement (Agreement) Force and Effect. The provisions of the Agreement and other Contract Documents constitute the entire agreement between the Contractor and Owner regarding the Work described herein. No representation, term or covenant not expressly specified in the Contract Documents shall, whether oral or written, be a part of this agreement. The Agreement and other Contract Documents shall govern the Work described herein (whenever performed), and shall supersede all other purchase orders and agreements between Contractor and Owner; and any proposal, with respect to the Work described herein.

1.02 No Modification or Waiver. The Contract Documents may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved by fully authorized representatives of Owner and Contractor. Contract Documents headings are for convenience only and do not affect the construction of the Contract Documents.

1.03 Performance of Work/No Assignment. Time is of the essence in the performance of the Work. Contractor will perform the Work in a skillful and workmanlike manner; comply fully with criteria established by Owner, and with applicable laws, codes, and all applicable industry standards. Contractor shall maintain its work area in a clean and sanitary condition, clear debris and trash at the end of each work day, and shall not damage or disrupt any property unless specifically part of the scope of the Agreement. Contractor shall not assign any portion of the Work or otherwise assign the Agreement without prior written approval of Owner, and any assignment without Owner’s prior written approval shall be null and void. (Contractor shall remain responsible for compliance with all terms of the Contract Documents, regardless of the terms of any such assignment.) The Contractor shall permit Owner (or its designees) access to the work area, Contractor’s shop, or any other facility, to permit inspection of the Work at all times during construction and/or manufacture and fabrication. The granting of any progress payment, and any inspections, reviews, approvals or oral statements by any Owner representative, or certification by any governmental entity, shall in no way limit Contractor’s obligations under the Contract Documents. Either party’s waiver of any breach, or the omission or failure of either party, at any time, to enforce any right reserved to it, or to require strict performance of any provision of the Contract Documents, shall not be a waiver of any other right to which any party is entitled, and shall not in any way affect, limit, modify or waive that party’s right thereafter to enforce or compel strict compliance with every provision hereof. Owner shall have, at all times, set-off rights with respect to any payment and Contractor’s failure to perform the terms of the Contract Documents.

ARTICLE 2 LEGAL AND MISCELLANEOUS

2.01 Records and Payment Requests. Contractor shall submit all billings with all necessary invoices or other appropriate evidence of proper performance, after which Owner shall make payment within thirty (30) days. Upon Owner’s written request, Contractor shall make available to Owner, its authorized agents, officers, or employees, any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the Work or the expenditures and disbursement charged to Owner, and all correspondence, internal memoranda, calculations, books and accounts, records documenting its Work under the Agreement, and invoices, payrolls, timescards, records and all other data related to matters covered by the Agreement. Contractor shall furnish to Owner, its authorized agents, officers, or employees, such other evidence or information as Owner may require with regard to the Work or any such expenditure or disbursement charged by Contractor. Contractor shall maintain all such documents and records prepared by or furnished to Contractor during the course of performing the Work for at least five years following completion of the Work, except that all such items pertaining to hazardous materials shall be maintained for at least thirty (30) years. Contractor shall permit Owner to audit, examine and make copies, excerpts and transcripts from such records. The State of California or any federal agency having an interest in the subject of the Agreement shall have the same rights conferred to Owner by this section. Such rights shall be specifically enforceable.

2.02 Independent Contractor. Contractor is an independent Contractor and does not act as Owner’s agent in any capacity, whatsoever. Contractor is not entitled to any benefits that Owner provides to Owner employees including, without limitation, insurance, worker’s compensation benefits or payments, pension benefits, health benefits or insurance benefits. Terms within the Contract Documents regarding directives apply to and concern the result of the Contractor’s provision of Work not the means, methods, or scheduling of the Contractor’s Work. Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures with respect to its provision of Work under the Contract Documents. Contractor shall pay all payroll taxes imposed
by any governmental entity and will pay all other federal, state, or local taxes not specifically identified in the Contract Documents as Owner’s responsibility.

In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the Public Employees Retirement System (CalPERS) to be eligible for enrollment in CalPERS as an employee of Owner, Contractor shall indemnify, defend, and hold Owner harmless for the payment of any employee and/or employer contributions for CalPERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of Owner.

2.03 Indemnity/Liability. Contractor shall defend, indemnify, and save harmless, to the fullest extent permitted by law, the Owner and each of its board members, officers, directors, representatives, agents, employees, and volunteers (Owner Indemnities), against all claims, suits, actions, loss, cost, damage, expense, and liability arising from or related to bodily injury to or death of any person or damage to any property, or resulting from any breach and/or Contractor’s negligence in performing the Work pursuant to the Contract Documents. Notwithstanding any provision of the Contract Documents, Owner shall not be liable to Contractor or anyone claiming under it, in contract or tort, for any special, consequential, indirect or incidental damages arising out of or in connection with the Contract Documents or the Work. Owner’s rights and remedies, whether under the Agreement or other applicable law, shall be cumulative and not subject to limitation. Contractor’s obligations to defend, indemnify, and save harmless the Owner Indemnities are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained within this Agreement. Contractor’s responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law.

2.04 Defective Work; Warranties. Contractor warrants that all construction services shall be performed in accordance with generally accepted professional standards of good and sound construction practices, all Contract Documents requirements, and all laws, codes, standards, licenses, and permits. Contractor warrants that all materials and equipment shall be new, of suitable grade of their respective kinds for their intended uses, and free from defects. Contractor hereby grants to Owner for a period of one year following the date of completion its unconditional warranty of the quality and adequacy of all of the Work including, without limitation, all labor, materials and equipment provided by Contractor and its Subcontractors of all tiers. If either prior to completion of the Work, or within one year after completion, any Work (completed or incomplete) is found to violate any of the foregoing warranties (Defective Work), Contractor shall promptly, without cost to Owner and in accordance with Owner’s written instructions, correct, remove and replace the Defective Work with conforming Work, and correct, remove and replace any damage to other Work or other property resulting therefrom. If Contractor fails to do so, Contractor shall pay all of the Owner’s resulting claims, costs, losses and damages. Where Contractor fails to correct Defective Work, or defects are discovered outside the correction period, Owner shall have all rights and remedies granted by law.

2.05 Compliance with Laws; Conflict of Interests. Contractor agrees to comply with all applicable federal and state laws, regulations and policies, as amended, including those regarding discrimination, unfair labor practices, anti-kick-back, collusion, and the provisions of the Americans with Disability Act. Contractor, its officer, partners, associates, agents, and employees, shall not make, participate in making, or in anyway attempt to use the position afforded them by the Contract Documents to influence any governmental decision in which he or she knows or has reason to know that he or she has a financial interest under applicable state, federal and local conflict of interest regulations. Contractor warrants that no person or agency has been employed or retained to solicit or obtain the Agreement upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. 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, sexual orientation, or sexual identity as prohibited by state or federal law.

2.06 Termination; Suspension; Disputes. Owner may direct Contractor to terminate, suspend, delay, interrupt or accelerate Work, in whole or in part, for such periods of time as Owner may determine in its sole discretion. Owner will issue such directives in writing, and may do so, in whole or in part, for its convenience or due to Contractor’s fault. Owner will compensate Contractor for extra costs resulting from such directives only to the extent that Owner issues such directives for its convenience and not due to Contractor’s fault (but Owner shall not compensate Contractor for costs, profit or overhead anticipated to be earned or incurred on Work terminated for Owner’s convenience.) Contractor shall continue its Work throughout the course of any dispute, and Contractor’s failure to continue Work during a dispute shall be a material breach of the Contract Documents. All claims by Contractor against Owner shall be submitted in writing to Owner, and shall be governed by Public Contract Code Sections 9204, 20104 – 20104.6, after which time the one year time period

Keith Williams Excavating

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Ben Hur Rd.
in Government Code Section 911.2 shall be, pursuant to Government Code Section 930.2, reduced to 90 days. Should Contractor be terminated for default, and such termination is subsequently determined to be wrongful, such termination will be converted to a termination for convenience as provided herein.

2.07 Execution; Venue; Limitations. The Agreement shall be deemed to have been executed in County of Mariposa, California. Enforcement of the Contract Documents shall be governed by the laws of the State of California, excluding its conflict of laws rules. Except as expressly provided in the Contract Documents, nothing in the Contract Documents shall operate to confer rights or benefits on persons or entities not party to the Agreement. As between the parties to the Agreement, any applicable statute of limitations for any act or failure to act shall commence to run on the date of Owner’s issuance of the final Certificate for Payment, or termination of the Contract Documents, whichever is earlier, except for latent defects, for which the statute of limitation shall begin running upon discovery of the defect and its cause.

2.08 Employee Wages; Records; Apprentices. Contractor shall pay prevailing wages to its employees on any contract in excess of $1,000.00 (one thousand dollars). Copies of the prevailing rate of per diem wages are on file at Owner’s principal office. Contractor shall comply with the 8-hours per day/40 hours per week/overtime/working hours restrictions for all employees, pursuant to the California Labor Code. Contractor and all subcontractors shall keep and maintain accurate employee payroll records for Work performed under the Agreement. The payroll records shall be certified and submitted as required by law, including Labor Code Section 1771.4 (if applicable) and 1776, including (if the Agreement is awarded on or after April 1, 2015 or continues on or after January 1, 2016) to the Labor Commissioner no less frequently than monthly. Contractor shall comply fully with Labor Code Section 1777.5 in the hiring of apprentices for work relating to the Agreement. If the Agreement exceeds $2,000 and is funded with federal funds, then Contractor shall pay federal Davis Bacon wages and comply with applicable federal requirements.

2.09 Mandatory Contractor and Subcontractor Registration. Pursuant to Labor Code Section 1771(a), Contractor represents that it and all of its Subcontractors are currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5. Contractor covenants that any additional or substitute Subcontractors will be similarly registered and qualified.

2.10 Worker’s Compensation. Pursuant to Labor Code Sections 1860 and 1861, in accordance with the provisions of Section 3700 of the Labor Code, every contractor will be required to secure the payment of compensation to his employees. Contractor represents that it is aware of the provisions of Labor Code Section 3700 that 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 Contractor shall comply with such provisions before commencing the performance of the Work.

2.11 Construction Performance Bond; Construction Labor and Materials Payment Bond; Securities in Lieu of Retention Escrow Account.

A. If Contract Sum under the Agreement exceeds (or is expected to exceed) $15,000, Contractor shall provide a construction performance bond in form attached hereto as Appendix D – Construction Performance Bond, and a construction labor and material payment bond, in accordance with Civil Code Section 9550 and in form attached hereto Appendix E – Construction Labor and Materials Payment Bond. Contractor may not substitute cash in lieu of the required bond(s).

B. If the Agreement specifies performance retention, Contractor may elect to substitute securities or direct payment to an escrow account, pursuant to Public Contract Code Section 22300 (incorporated herein by this reference).

2.12 Earthwork and Underground Facilities. If the Work involves digging trenches or other excavations that extend deeper than four feet below the surface, Contractor shall notify Owner in writing of any material that Contractor believes may be hazardous waste that is required to be removed in accordance law, subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to bidders prior to the deadline for submitting bids, or unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents, pursuant to Section 7104 of the Public Contract Code. For any Work involving trench shoring that costs in excess of $25,000, Contractor shall submit and Owner (or a registered civil or structural engineer employed by Owner) must accept, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches, pursuant to Labor Code Section 6705. If such plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer. Consistent with Government Code Section 4215, as between Owner and Contractor,
Owner will be responsible for the timely removal, relocation, or protection of existing main or trunk line utility facilities located on the Site only if such utilities are not identified in the Contract Documents or information made available for bidding.

2.13 **Public Records Act.** Contractor is aware that this Agreement and any documents provided to the Owner 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 it considers to be confidential under the California Public Records Act. To the extent that Owner agrees with that designation, such information will be held in confidence whenever possible. All other information will be considered public.

2.14 **Claims.** Contractor is hereby informed that Public Contract Code Section 9204 provides:

A. Should any clarification, determination, action or inaction by Owner, Work, or any other event, in the opinion of Contractor, exceed the requirements of or not comply with Contract Documents, or otherwise result in Contractor seeking additional compensation in time or money or damages for any reason (collectively "Disputed Work"), then Contractor and Owner will make good faith attempts to resolve informally any and all such issues, claims and/or disputes. Before commencing the Disputed Work, or within seven Days after Contractor's first knowledge of the Disputed Work, whichever is earlier, Contractor shall file a written notice and cost proposal for the Disputed Work with County stating clearly and in detail its objection and reasons for contesting the Work or interpretation is outside the requirements of Project Documents. If a written notice and cost proposal for Disputed Work is not issued within this time period, or if Contractor proceeds with the Disputed Work without first having given the notice required by this paragraph, Contractor shall waive its rights to further claim on the specific issue.

B. Owner will review Contractor's timely notice and cost proposal for Disputed Work and provide a decision. If, after receiving the decision, Contractor disagrees with it or still considers the Work required of it to be outside of the requirements of Project Documents, it shall so notify Owner, in writing, within seven Days after receiving the decision, by submitting a notice of potential claim, stating that a formal claim will be issued. Within 30 Days of receiving the decision, Contractor shall submit its claim in the form specified herein and all arguments, justification, cost or estimates, schedule analysis, and detailed documentation supporting its position. Contractor's failure to furnish notification within seven Days and all justifying documentation within 30 Days will result in Contractor waiving its right to the subject claim.

C. **Claim Format**

1. A. Contractor shall submit the claim justification in the following format:
   (a) Cover letter and certification;
   (b) Summary of claim, including underlying facts, entitlement, schedule analysis, quantum calculations, Project provisions supporting relief;
   (c) List of documents relating to claim including Specifications, Drawings/Plans clarifications/requests for information, schedules, notices of delay, cost calculations and any others;
   (d) Chronology of events and correspondence;
   (e) Analysis of claim merit;
   (f) Analysis of claim cost; and
   (g) Attach supporting documents referenced in paragraph 2.14.C.1(c), above.

D. **Required Provisions on Contract Claim Resolution**

1. Public Contract Code Section 9204 specifies provisions on resolving contract claims of any size, and Public Contract Code Section 201014, et seq., specifies required provisions on resolving contract claims less than $375,000. Those statutes constitute a part of this Contract. In the event any other Contract provision violates such statutes, the applicable statute controls.

2. Public Contract Code Section 9204 provides:
   (a) For the purposes of this section, "Claim" means a separate demand by Contractor for (1) a time extension, (2) payment or money or damages arising from Work done by or on behalf of Contractor arising under the Contract Documents and payment of which is not otherwise expressly provided for or the Claimant is not otherwise entitled to, or (3) an amount the payment of which is disputed by Owner.
   (b) Procedure:
(1) Upon receipt of a Claim the Owner shall conduct a reasonable review of the Claim and within 45 days, or if Owner’s governing body must approve Owner’s response to the Claim and the governing body has not met within the 45 days then within three (3) days of the governing body’s meeting, shall provide Contractor with a written statement identifying what portion of the claim is disputed and what portion is undisputed. Should Owner take no action on the Claim within 45 days of submission, it shall be deemed denied.

(2) If the Contractor disputes Owner’s response to its Claim, including a failure to respond, it may submit via registered mail or certified mail, return receipt requested, a written demand for an informal conference to meet and confer for settlement of the issues in dispute. Owner shall schedule such a meet and confer conference within 30 days for settlement of the dispute. Within ten (10) days of the meet and confer conference Owner shall provide Contractor with a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed. If the Contractor disputes Owner’s statement it shall inform Owner and they shall mutually agree to a mediator within 10 business days of the written statement.

(3) Owner shall pay the undisputed portions of the Claim within 60 days of the issuance of a written statement identifying an undisputed portion.

(4) Any disputed portion of the Claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with the Owner and the claimant sharing the associated costs equally. The Owner and claimant shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the Claim remaining in dispute shall be subject to applicable procedures outside this section.

(5) For claims under $375,000, unless the parties agree otherwise in writing, mediation pursuant to these provisions shall excuse the mediation obligation under Public Contracting Code section 20104.4(a).

(6) The parties may mutually agree, in writing, to waive the mediation requirements of this subsection and proceed to the commencement of a civil action.

(7) Failure by the Owner to respond to a Claim from a Contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A Claim that is denied by reason of the public entity’s failure to have responded to a Claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the Claim or the responsibility or qualifications of the claimant.

(8) Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

(9) If a Subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against Owner because privity of contract does not exist, the Contractor may present to the Owner a claim on behalf of a Subcontractor or lower tier subcontractor. A Subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that the Contractor present a claim for work which was performed by the Subcontractor or by a lower tier subcontractor on behalf of the Subcontractor. The Subcontractor requesting that the Claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the Contractor shall notify the Subcontractor in writing as to whether the Contractor presented the claim to the Owner and, if the original Contractor did not present the claim, provide the Subcontractor with a statement of the reasons for not having done so.

(10) Nothing in this section shall impose liability upon an Owner that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.
3. To the extent applicable, Public Contract Code Section 20104, et seq., provide.

(a) For the purposes of this section, "Claim" means a separate demand by Contractor of $375,000 or less for (1) a time extension, (2) payment or money or damages arising from Work done by or on behalf of Contractor arising under the Contract Documents and payment of which is not otherwise expressly provided for or the Claimant is not otherwise entitled to, or (3) an amount the payment of which is disputed by Owner. Separate Contractor Claims that together total more than $375,000 do not qualify as a "separate demand of $375,000 or less," as referenced above, and are not subject to this section.

(b) Caution. This section does not apply to tort claims, and nothing in this section is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 and Chapter 2 of Part 3 of Division 3.6 of Title 1 of the Government Code.

(c) Procedure:

(1) The Claim must be in writing, submitted in compliance with all requirements of General Conditions including, without limitation, the time prescribed by and including the documents necessary to substantiate the Claim. Nothing in this section is intended to extend the time limit or supersede notice requirements for the filing of claims as set forth in the General Conditions or elsewhere in the Contract Documents.

(2) For Claims of fifty thousand dollars ($50,000) or less, Owner shall respond in writing within forty-five (45) days of receipt of the Claim, or Owner may request in writing within thirty (30) days of receipt of the Claim, any additional documentation supporting the Claim or relating to any defenses or claims Owner may have against Claimant. If additional information is thereafter required, it shall be requested and provided in accordance with this section upon mutual agreement of Owner and Claimant. Owner’s written response to the Claim, as further documented, shall be submitted to Claimant within fifteen (15) days after receipt of further documentation or within a period of time no greater than taken by Claimant in producing the additional information, whichever is greater.

(3) For Claims over Fifty Thousand Dollars ($50,000) and less than or equal to $375,000: Owner shall respond in writing within sixty (60) days of receipt of the Claim, or Owner may request in writing within thirty (30) days of receipt of the Claim, any additional documentation supporting the Claim or relating to any defenses or claims Owner may have against Claimant. If additional information is thereafter required, it shall be requested and provided in accordance with this section, upon mutual agreement of Owner and Claimant; Owner’s written response to the Claim, as further documented, shall be submitted to Claimant within thirty (30) days after receipt of further documentation or within a period of time no greater than taken by Claimant in producing the additional information, whichever is greater.

(4) Meet and Confer. If Claimant disputes Owner’s written response, or Owner fails to respond within the time prescribed above, Claimant shall notify Owner, in writing, either within fifteen (15) days of receipt of Owner’s response or within fifteen (15) days of Owner’s failure to timely respond, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon demand Owner will schedule a meet and confer conference within thirty (30) days for settlement of the dispute.

(5) Following the meet and confer conference, if the Claim or any portion remains in dispute, Claimant may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time Claimant submits its written claim as set forth herein, until the time that Claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.
(End of Appendix B)
Appendix C to Construction Services Agreement

INSURANCE

1. **Commercial General Liability Insurance**, written on an “occurrence” basis, which shall provide coverage for bodily injury, death and property damage resulting from operations, liability for slander, false arrest and invasion of privacy, blanket contractual liability, broad form endorsement, and completed operations, personal and advertising liability, with limits of not less than [US$1,000,000] general aggregate and [US$1,000,000] each occurrence, subject to a deductible of not more than [US$1,000] payable by Contractor.

2. **Business Automobile Liability Insurance** with limits not less than [US$1,000,000] each occurrence including coverage for owned, non-owned and hired vehicles, subject to a deductible of not more than [US$1,000] payable by Contractor.

3. **Workers' Compensation Employers' Liability** limits not less than [US$1,000,000] each accident, [US$1,000,000] per disease and [US$2,000,000] aggregate. Contractor's Workers' Compensation Insurance policy shall contain a Waiver of Subrogation against the County of Mariposa, its board members, officers, directors, officials, agents, employees and volunteers. In the event Contractor is self-insured, it shall furnish Certificate of Permission to Self-Insure signed by Department of Industrial Relations Administration of Self-Insurance, State of California.

4. Any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the Owner Indemnities as Additional Insureds. The requirements for coverage and limits shall be the greater of either the minimum coverage and limits specified in this Agreement or the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured.

5. Insurance policies in this Appendix C shall contain an endorsement containing the following terms:

5.01 Owner Indemnities shall be named as Additional Insureds, but only with respect to liability arising out of the activities of the named insured, and there shall be a waiver of subrogation as to each named and Additional Insured. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Owner has received a waiver of subrogation endorsement from the insurer.

5.02 The policies shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability.

5.03 Written notice of cancellation, non-renewal or of any material change in the policies shall be mailed to County of Mariposa thirty (30) days in advance of the effective date thereof.

5.04 Contractor insurance shall be primary insurance as to Owner and no other insurance or self-insured retention carried or held by any named or Additional Insureds other than Contractor shall be called upon to contribute to a loss covered by insurance for the named insured.

6. Certificates of Insurance and Endorsements shall have clearly typed thereon the Project Name, shall clearly describe the coverage and shall contain a provision requiring the mailing of written notices of cancellation described in clause 5.03 above. Contractor shall furnish the Owner with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the Owner before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor’s obligation to provide them. The Owner reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

7. All policies of insurance shall be placed with insurers acceptable to Owner. The insurance underwriter(s) must be duly licensed to do business in the State of California and (other than for workers' compensation) must have an A. M. Best Company rating of [A-,VII] or better. Required minimum amounts of insurance may be increased should conditions of Work, in the opinion of Owner, warrant such increase. Contractor shall increase required insurance amounts upon direction by Owner.

8. The insurance coverage limits may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also

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Ben Hur Rd.
apply on a primary and non-contributory basis for the benefit of Owner and Additional Insureds, to the extent required by this Agreement, before the Owner's insurance or self-insurance may be called upon to protect Owner as a named insured.

9. All self-insured retentions (SIR) must be disclosed to Owner for approval and shall not reduce the limits of liability coverage. Policies containing and SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named Contractor/named insured or Owner.

10. Contractor agrees to include with all subcontractors in their subcontracts the same requirements and provisions of this Agreement that is required of Contractor including, without limitation, the indemnity and insurance requirements to the extent they apply to the scope of the subcontractor's work. Subcontractors hired by Contractor shall agree to be bound to Contractor and Owner in the same manner and to the same extent as Contractor is bound to Owner under this Contract and its accompanying documents. Subcontractors shall further agree to include these same provisions with any lower tier subcontractors. A copy of the indemnity and insurance provisions of this Agreement will be furnished to the Subcontractor upon request. Contractor shall require all subcontractors to provide a valid Certificate of Insurance and the required endorsements included in the subcontract agreement, and will provide proof of compliance to the Owner prior to commencement of any work by the subcontractor.

11. Special Risks or Circumstances: County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

(End of Appendix C)
**CERTIFICATE OF LIABILITY INSURANCE**

**DATE (MM/DD/YYYY)**: 4/14/2020

**PRODUCER**
Leap/Carpenter/Kemps Insurance Agency
3187 Collins Dr.
Merced CA 95348

**INSURED**
Keith Williams Excavation
5152 Goins Way
Mariposa CA 95338

**CONTACT NAME**: Sherry Yorks, CRIS
**PHONE**: 209-386-5070
**FAX**: 209-385-6114
**ADDRESS**: sylorks@ckinsurance.com

**INSURER(S) AFFORDING COVERAGE**
- **INSURER A**: HDI Global Insurance Company
  - **NAIC #**: 41343
- **INSURER B**: Benchmark Ins. Company
  - **NAIC #**: 41394
- **INSURER C**: Scottsdale Insurance Co.
  - **NAIC #**: 41297

**CERTIFICATE NUMBER**: 1095003564

**COVERAGE**

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES** *(ACORD 101, Additional Remarks Schedule, may be attached if more space is required)*

Project: 0301-1702-19 - BEN HUR ROAD - PM 19.600 TO PM 25.570 - PERMANENT REPAIRS - Federal Project NFR 40A0 Mariposa County Department of Public Works is included as additional insured in respects to General Liability per written contract. Waiver of subrogation applies.

**CANCELLATION**

**SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.**

**AUTHORIZED REPRESENTATIVE**
Sherry Yorks

**CERTIFICATE HOLDER**
Mariposa County Department of Public Works
4639 Ben Hur Road
Mariposa CA 95338

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**TABLE**

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

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<tr>
<th>Name Of Additional Insured Person(s) Or Organization(s)</th>
<th>Location And Description Of Completed Operations</th>
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<tr>
<td>Blanket as required by written contract and effective during the policy period as stated on the policy declarations.</td>
<td>Primary Insurance applies: It is agreed that such insurance as is afforded by this policy for the benefit of the additional insured shown shall be primary insurance, and any other insurance maintained by the additional insured(s) shall be excess and noncontributory as respects any claim, loss or liability allegedly arising out of the operations of the named insured or its subcontractors, provided however that this insurance will not apply to any claim loss or liability which is determined to be solely the result of the additional insured’s negligence or solely the additional insured’s responsibility. This insurance also does not apply to any structure intended to be occupied as a private residence, not including apartments.</td>
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Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

   However:

   1. The insurance afforded to such additional insured only applies to the extent permitted by law; and

   2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:

   If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

   1. Required by the contract or agreement; or

   2. Available under the applicable Limits of Insurance shown in the Declarations;

   whichever is less.

   This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.
THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED CONSTRUCTION PROJECT(S) GENERAL AGGREGATE LIMIT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Designated Construction Project(s):

This endorsement applies only to your projects away from premises owned by or rented to you.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I – Coverage A, and for all medical expenses caused by accidents under Section I – Coverage C, which can be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:

1. A separate Designated Construction Project General Aggregate Limit applies to each designated construction project, and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.

2. The Designated Construction Project General Aggregate Limit is the most we will pay for the sum of all damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", and for medical expenses under Coverage C regardless of the number of:
   a. Insureds;
   b. Claims made or "suits" brought; or
   c. Persons or organizations making claims or bringing "suits".

3. Any payments made under Coverage A for damages or under Coverage C for medical expenses shall reduce the Designated Construction Project General Aggregate Limit for that designated construction project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Designated Construction Project General Aggregate Limit for any other designated construction project shown in the Schedule above.

4. The limits shown in the Declarations for Each Occurrence, Damage To Premises Rented To You and Medical Expense continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Designated Construction Project General Aggregate Limit.
B. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I – Coverage A, and for all medical expenses caused by accidents under Section I – Coverage C, which cannot be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:

1. Any payments made under Coverage A for damages or under Coverage C for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-completed Operations Aggregate Limit, whichever is applicable; and

2. Such payments shall not reduce any Designated Construction Project General Aggregate Limit.

C. When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor the Designated Construction Project General Aggregate Limit.

D. If the applicable designated construction project has been abandoned, delayed, or abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same construction project.

E. The provisions of Section III – Limits Of Insurance not otherwise modified by this endorsement shall continue to apply as stipulated.
WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Person Or Organization:

Blanket as required by written contract
and effective during the policy period as stated on the policy declarations.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following is added to Paragraph 8. Transfer Of Rights Of Recovery Against Others To Us of Section IV – Conditions:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.
THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

<table>
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<tr>
<th>Name Of Additional Insured Person(s) Or Organization(s)</th>
<th>Location(s) Of Covered Operations</th>
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<tr>
<td>Blanket as required by written contract and effective during the policy period as stated on the policy declarations.</td>
<td>Primary Insurance applies: It is agreed that such insurance as is afforded by this policy for the benefit of the additional insured shown shall be primary insurance, and any other insurance maintained by the additional insured(s) shall be excess and noncontributory as respects any claim, loss or liability allegedly arising out of the operations of the named insured or its subcontractors, provided however that this insurance will not apply to any claim loss or liability which is determined to be solely the result of the additional insured's negligence or solely the additional insured's responsibility.</td>
</tr>
</tbody>
</table>

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. **Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.
C. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or

2. Available under the applicable Limits of Insurance shown in the Declarations; whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.
Appendix D to Construction Services Agreement

CONSTRUCTION PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

1. THAT WHEREAS, County of Mariposa, a political subdivision of the California State of California (Owner) has awarded to Keith M. Williams dba Keith Williams Excavation, as Principal, a Construction Services Agreement, dated the 7th day of April, 2020 (Agreement), titled THE PERMANENT REPAIR OF BEN HUR ROAD PROJECT in the amount of $851,770.60, which Agreement is by this reference made a part hereof, for the work described as follows:

(Describe Agreement Work) Permanent repair of Ben Hur Road.

2. AND WHEREAS, Principal is required to furnish a bond in connection with the Agreement, guaranteeing the faithful performance thereof;

3. NOW, THEREFORE, we, the undersigned Principal and U.S. Specialty Insurance Company as Surety are held and firmly bound unto Owner in the sum of 100% OF THE CONTRACT SUM to be paid to Owner or its successors and assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

4. THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal, or its heirs, executors, administrators, successors, or assigns approved by Owner, shall promptly and faithfully perform the covenants, conditions, and agreements of the Agreement during the original term and any extensions thereof as may be granted by Owner, with or without notice to Surety, and during the period of any guarantees or warranties required under the Agreement, and shall also promptly and faithfully perform all the covenants, conditions, and agreements of any alteration of the Agreement made as therein provided, notice of which alterations to Surety being hereby waived, on Principal's part to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify, defend, protect, and hold harmless Owner as stipulated in the Agreement, then this obligation shall become and be null and void; otherwise it shall be and remain in full force and effect.

5. No extension of time, change, alteration, modification, or addition to the Agreement, or of the work required thereunder, shall release or exonerate Surety on this bond or in any way affect the obligation of this bond; and Surety does hereby waive notice of any such extension of time, change, alteration, modification, or addition.

6. Whenever Principal shall be and declared by Owner in default under the Agreement, Surety shall promptly remedy the default, or shall promptly:

6.01 Undertake through its agents or independent contractors, reasonably acceptable to Owner, to complete the Agreement in accordance with its terms and conditions and to pay and perform all obligations of Principal under the Agreement including, without limitation, all obligations with respect to warranties, guarantees, indemnities, and the payment of liquidated damages; or

6.02 Obtain a bid or bids for completing the Agreement in accordance with its terms and conditions, and, upon determination by Owner of the lowest responsible bidder, reasonably acceptable to Owner, arrange for a contract between such bidder and Owner and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Sum, and to pay and perform all obligations of Principal under the Agreement including, without limitation, all obligations with respect to warranties, guarantees, and the payment of liquidated damages; but, in any event, Surety's total obligations hereunder shall not exceed the amount set forth in the third paragraph hereof. The term "balance of the Contract Sum," as used in this paragraph, shall mean the total amount payable by Owner to the Principal under the Agreement and any amendments thereto, less the amount Owner paid to Principal.

7. Surety's obligations hereunder are independent of the obligations of any other surety for the performance of the Agreement, and suit may be brought against Surety and such other sureties, jointly and severally, or against any
one or more of them, or against less than all of them without impairing Owner's rights against the others. Surety may not use Contractor to complete the Agreement absent Owner's written consent.

8. No right of action shall accrue on this bond to or for the use of any person or corporation other than Owner or its successors or assigns.

9. Surety may join in any proceedings brought under the Agreement and shall be bound by any judgment.

10. Correspondence or claims relating to this bond shall be sent to Surety at the address set forth below.

IN WITNESS WHEREOF, we have hereunto set our hands this ___8th___ day of ___April____, 2020.

<table>
<thead>
<tr>
<th>CONTRACTOR AS PRINCIPAL</th>
<th>SURETY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Keith M. Williams dba Keith Williams Excavation</td>
<td>U.S. Specialty Insurance Company</td>
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<td>Company:</td>
<td>Company:</td>
</tr>
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<td>(Corp. Seal)</td>
<td>(Corp. Seal)</td>
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<td>Signature</td>
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<td></td>
<td>Teresa R. Liles</td>
</tr>
<tr>
<td>Keith M. Williams</td>
<td>Name</td>
</tr>
<tr>
<td>Name</td>
<td>Attorney-in-Fact</td>
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<td>501 W. Broadway, Ste. 1470</td>
</tr>
<tr>
<td>Title</td>
<td>Street Address</td>
</tr>
<tr>
<td>5177 Goins Way</td>
<td>San Diego, CA 92101</td>
</tr>
<tr>
<td>Street Address</td>
<td>City, State, Zip Code</td>
</tr>
<tr>
<td>Mariposa, CA 95338</td>
<td></td>
</tr>
</tbody>
</table>

(End of Appendix D)
CONSTRUCTION LABOR AND MATERIAL PAYMENT

BOND KNOW ALL PERSONS BY THESE PRESENTS:

1. THAT WHEREAS, the County of Mariposa, a political subdivision of the California State of California (Owner) has awarded to Keith M. Williams dba Keith Williams Excavation, as Principal, a Construction Services Agreement, dated the 7th day of April, 2020 (Agreement), titled THE PERMANENT REPAIR OF BEN HUR ROAD PROJECT located at Mariposa, CA in the amount of $851,770.60, which Agreement is by this reference made a part hereof, for the work described as follows:

(Describe Agreement Work) Permanent Repair of Ben Hur Road

2. AND WHEREAS, Principal is required to furnish a bond in connection with the Agreement to secure the payment of claims of laborers, mechanics, material suppliers, and other persons as provided by law;

3. NOW, THEREFORE, we, the undersigned Principal and U.S. Specialty Insurance Company as Surety, are held and firmly bound unto Owner in the sum of 100% OF THE CONTRACT SUM ($851,770.60), for which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

4. THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal, or its heirs, executors, administrators, successors, or assigns approved by Owner, or its subcontractors shall fail to pay any of the persons named in California Civil Code Section 9100, or amounts due under the State of California Unemployment Insurance Code with respect to work or labor performed under the Agreement, or for any amounts required to be deducted, withheld, and paid over to the State of California Employment Development Department from the wages of employees of Principal and subcontractors pursuant to California Unemployment Insurance Code Section 13020 with respect to such work and labor, that Surety will pay for the same in an amount not exceeding the sum specified in this bond, plus reasonable attorneys' fees, otherwise the above obligation shall become and be null and void.

5. This bond shall inure to the benefit of any of the persons named in California Civil Code Section 9100, as to give a right of action to such persons or their assigns in any suit brought upon this bond. The intent of this bond is to comply with the California Mechanic's Lien Law.

6. Surety, for value received, hereby expressly agrees that no extension of time, change, modification, alteration, or addition to the undertakings, covenants, terms, conditions, and agreements of the Agreement, or to the work to be performed thereunder, shall in any way affect the obligation of this bond; and it does hereby waive notice of any such extension of time, change, modification, alteration, or addition to the undertakings, covenants, terms, conditions, and agreements of the Agreement, or to the work to be performed thereunder.

7. Surety's obligations hereunder are independent of the obligations of any other surety for the payment of claims of laborers, mechanics, material suppliers, and other persons in connection with the Agreement; and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing Owner's rights against the other.

8. Correspondence or claims relating to this bond shall be sent to Surety at the address set forth below.

IN WITNESS WHEREOF, we have hereunto set our hands this 8th day of April, 2020.

CONTRACTOR AS PRINCIPAL
Keith M. Williams dba Keith Williams Excavation
Company: (Corp. Seal)

Signature

Keith M. Williams
Name

SURETY
U.S. Specialty Insurance Company
Company: (Corp. Seal)

Signature

Teresa R. Liles
Name

Keith Williams Excavation
20-047 - 15

Ben Hur Rd.
<table>
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<th>Attorney-in-Fact</th>
</tr>
</thead>
<tbody>
<tr>
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<td>Title</td>
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<tr>
<td>5177 Goins Way</td>
<td>501 W. Broadway, Ste. 1470</td>
</tr>
<tr>
<td>Street Address</td>
<td>Street Address</td>
</tr>
<tr>
<td>Mariposa, CA 95338</td>
<td>San Diego, CA 92101</td>
</tr>
<tr>
<td>City, State, Zip Code</td>
<td>City, State, Zip Code</td>
</tr>
</tbody>
</table>

*(End of Appendix E)*
POWER OF ATTORNEY
AMERICAN CONTRACTORS INDEMNITY COMPANY  TEXAS BONDING COMPANY
UNITED STATES SURETY COMPANY  U.S. SPECIALTY INSURANCE COMPANY

KNOW ALL MEN BY THESE PRESENTS: That American Contractors Indemnity Company, a California corporation, Texas Bonding Company, an assumed name of American Contractors Indemnity Company, United States Surety Company, a Maryland corporation and U.S. Specialty Insurance Company, a Texas corporation (collectively, the "Companies"), do by these presents make, constitute and appoint:

Michael D. Kemps, Michael J. Carpenter, Ruth B. Halstead, Sherry L. Yorks,
Teresa R. Liles or Christine M. Ballenger of Merced, California

its true and lawful Attorney(s)-in-fact, each in their separate capacity if more than one is named above, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, undertakings or other instruments or contracts of suretyship to include riders, amendments, and consents of surety, providing the bond penalty does not exceed $2,000,000.00. This Power of Attorney is granted under and by authority of the following resolutions adopted by the Boards of Directors of the Companies:

Be it Resolved, that the President, any Vice-President, any Assistant Vice-President, any Secretary or any Assistant Secretary shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

Attorney-in-Fact may be given full power and authority for and in the name of and on behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements or indemnity and other conditional or obligatory undertakings, including any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts, and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be binding upon the Company as if signed by the President and sealed and affixed by the Corporate Secretary.

Be it Resolved, that the signature of any authorized officer and seal of the Company herebefore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signature or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached.

IN WITNESS WHEREOF, The Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 1st day of June, 2018.

AMERICAN CONTRACTORS INDEMNITY COMPANY  TEXAS BONDING COMPANY
UNITED STATES SURETY COMPANY  U.S. SPECIALTY INSURANCE COMPANY

State of California
County of Los Angeles

By: [Signature]

Daniel P. Aguilar, Vice President

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

On this 1st day of June, 2018, before me, Sonia O. Carrejo, a notary public, personally appeared Daniel P. Aguilar, Vice President of American Contractors Indemnity Company, Texas Bonding Company, United States Surety Company and U.S. Specialty Insurance Company who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature (seal)

L. Kio Lo, Assistant Secretary of American Contractors Indemnity Company, Texas Bonding Company, United States Surety Company and U.S. Specialty Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Companies, which is still in full force and effect; furthermore, the resolutions of the Boards of Directors, set out in the Power of Attorney are in full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the seals of said Companies at Los Angeles, California this 8th day of April, 2020.

Corporate Seals
Agency No. 2426

Kio Lo, Assistant Secretary

visit tmhcc.com/surety for more information
ACKNOWLEDGMENT

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

State of California
County of Merced

On April 8, 2020 before me, Yolanda R. Ochoa, Notary Public
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature Yolanda R. Ochoa (Seal)
APPENDIX F


Requirements under the Uniform Rules. A non-Federal entity’s contracts must contain the applicable contract clauses described in Appendix II to the Uniform Rules (Contract Provisions for non-Federal Entity Contracts Under Federal Awards), which are set forth below. 2 C.F.R. § 200.326. For some of the required clauses we have included sample language or a reference a non-Federal entity can go to in order to find sample language. Please be aware that this is sample language only and that the non-Federal entity alone is responsible ensuring that all language included in their contracts meets the requirements of 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II. We do not include sample language for certain required clauses (remedies, termination for cause and convenience, changes) as these must necessarily be written based on the non-Federal entity’s own procedures in that area.

1. Remedies.

   a. **Standard**: Contracts for more than the simplified acquisition threshold ($150,000) must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. See 2 C.F.R. Part 200, Appendix II, ¶ A.

   b. **Applicability**: This requirement applies to all FEMA grant and cooperative agreement programs.

2. Termination for Cause and Convenience.

   a. All contracts in excess of $10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement. See 2 C.F.R. Part 200, Appendix II, ¶ B.

   b. **Applicability**: This requirement applies to all FEMA grant and cooperative agreement programs.


   b. **Key Definitions**.
(1) **Federally Assisted Construction Contract.** The regulation at 41 C.F.R. § 60-1.3 defines a “federally assisted construction contract” as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

(2) **Construction Work.** The regulation at 41 C.F.R. § 60-1.3 defines “construction work” as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

c. **Applicability.** This requirement applies to all FEMA grant and cooperative agreement programs.

d. **The regulation at 41 C.F.R. Part 60-1.4(b) requires the insertion of the following contract clause:**

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

(1) 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.

(2) 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 considerations for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he 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.

(4) 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.

(5) 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 his 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.

(6) In the event of the contractor's noncompliance with the nondiscrimination 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 as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 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.”

4. **Davis Bacon Act and Copeland Anti-Kickback Act.**

   a. **Applicability of Davis-Bacon Act.** The Davis-Bacon Act only applies to the emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. **It does not apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program.**

   b. All prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40

c. In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week.

d. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

e. In contracts subject to the Davis-Bacon Act, the contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations at 29 C.F.R. Part 3 (Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States). The Copeland Anti-Kickback Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to FEMA.

f. The regulation at 29 C.F.R. § 5.5(a) does provide the required contract clause that applies to compliance with both the Davis-Bacon and Copeland Acts. However, as discussed in the previous subsection, the Davis-Bacon Act does not apply to Public Assistance recipients and subrecipients. In situations where the Davis-Bacon Act does not apply, neither does the Copeland “Anti-Kickback Act.” However, for purposes of grant programs where both clauses do apply, FEMA requires the following contract clause:

“Compliance with the Copeland “Anti-Kickback” Act.

(1) Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

(2) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

a. **Applicability:** This requirement applies to all FEMA grant and cooperative agreement programs.

b. Where applicable (see 40 U.S.C. § 3701), all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 5. See 2 C.F.R. Part 200, Appendix II, ¶ E.

c. Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

d. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

e. The regulation at 29 C.F.R. § 5.5(b) provides the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act:

> "Compliance with the Contract Work Hours and Safety Standards Act.

(1) **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **Violation: liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work...
done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) **Withholding for unpaid wages and liquidated damages.** The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.”

6. **Rights to Inventions Made Under a Contract or Agreement.**

   a. **Stafford Act Disaster Grants.** This requirement **does not apply to the Public Assistance, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of “funding agreement.”**

   b. If the FEMA award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by
FEMA. See 2 C.F.R. Part 200, Appendix II, ¶ F.

c. The regulation at 37 C.F.R. § 401.2(a) currently defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

7. Clean Air Act and the Federal Water Pollution Control Act. Contracts of amounts in excess of $150,000 must contain a provision that requires the contractor to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Violations must be reported to FEMA and the Regional Office of the Environmental Protection Agency. See 2 C.F.R. Part 200, Appendix II, ¶ G.

a. The following provides a sample contract clause concerning compliance for contracts of amounts in excess of $150,000:

"Clean Air Act"

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FEMA.

"Federal Water Pollution Control Act"

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) The contractor agrees to report each violation to the (name of the state agency or local or Indian tribal government) and understands and agrees that the (name of the state agency or local or Indian tribal
government) will, in turn, report each violation as required to assure notification to the (name of recipient), Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by FEMA.”

8. Debarment and Suspension.

a. **Applicability:** This requirement applies to all FEMA grant and cooperative agreement programs.


c. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities. See 2 C.F.R. Part 200, Appendix II, ¶ H; and *Procurement Guidance for Recipients and Subrecipients Under 2 C.F.R. Part 200 (Uniform Rules): Supplement to the Public Assistance Procurement Disaster Assistance Team (PDAT) Field Manual* Chapter IV, ¶ 6.d, and Appendix C, ¶ 2 [hereinafter *PDAT Supplement*]. A contract award must not be made to parties listed in the SAM Exclusions. SAM Exclusions is the list maintained by the General Services Administration that contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM exclusions can be accessed at [www.sam.gov](http://www.sam.gov). See 2 C.F.R. § 180.530; *PDAT Supplement*, Chapter IV, ¶ 6.d and Appendix C, ¶ 2.

d. In general, an “excluded” party cannot receive a Federal grant award or a contract within the meaning of a “covered transaction,” to include subawards and subcontracts. This includes parties that receive Federal funding indirectly, such as contractors to recipients and subrecipients. The key to the exclusion is whether there is a “covered transaction,” which is any nonprocurement transaction (unless excepted) at either a “primary” or “secondary” tier. Although “covered transactions” do not include contracts awarded by the Federal Government for purposes of the nonprocurement common rule and DHS’s implementing regulations, it does include some contracts awarded by recipients and subrecipient.

e. Specifically, a covered transaction includes the following contracts for goods or services:
(1) The contract is awarded by a recipient or subrecipient in the amount of at least $25,000.

(2) The contract requires the approval of FEMA, regardless of amount.

(3) The contract is for federally-required audit services.

(4) A subcontract is also a covered transaction if it is awarded by the contractor of a recipient or subrecipient and requires either the approval of FEMA or is in excess of $25,000.

d. The following provides a debarment and suspension clause. It incorporates an optional method of verifying that contractors are not excluded or disqualified:

"Suspension and Debarment"

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by (insert name of subrecipient). If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to (name of state agency serving as recipient and name of subrecipient), the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions."


a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.

b. Contractors that apply or bid for an award of $100,000 or more must file the required certification. See 2 C.F.R. Part 200, Appendix II, ¶ I; 44 C.F.R. Part 18; PDAT Supplement, Chapter IV, 6.c; Appendix C, ¶ 4.

c. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or

d. The following provides a Byrd Anti-Lobbying contract clause:

"Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient."

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

(To be submitted with each bid or offer exceeding $100,000)

The undersigned [Contractor] certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an 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.

2. 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, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The Contractor, [Keith Williams], certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., apply to this certification and disclosure, if any.

[Signature]

Signature of Contractor's Authorized Official

[Keith Williams, Owner]

Name and Title of Contractor's Authorized Official

[04/07/2000]

Date


a. Applicability: This requirement applies to all FEMA grant and cooperative agreement programs.


c. The requirements of Section 6002 include procuring only items designated in guidelines of the EPA at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of
competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired by the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

d. **The following provides the clause that a state agency or agency of a political subdivision of a state and its contractors can include in contracts meeting the above contract thresholds:**

“(1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

(i) Competitively within a timeframe providing for compliance with the contract performance schedule;

(ii) Meeting contract performance requirements; or

(iii) At a reasonable price.

(2) Information about this requirement, along with the list of EPA-designate items, is available at EPA’s Comprehensive Procurement Guidelines web site, [https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program](https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program).”

11. **Additional FEMA Requirements.**

   a. **The Uniform Rules authorize FEMA to require additional provisions for non-Federal entity contracts.** FEMA, pursuant to this authority, requires or recommends the following:

   b. **Changes.**

   To be eligible for FEMA assistance under the non-Federal entity’s FEMA grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope. FEMA recommends, therefore, that a non-Federal entity include a changes clause in its contract that describes how, if at all, changes can be made by either party to alter the method, price, or schedule of the work without breaching the contract. The language of the clause may differ depending on the nature of the contract and the end-item procured.

   c. **Access to Records.**

   All non-Federal entities must place into their contracts a provision that all contractors and their successors, transferees, assignees, and subcontractors acknowledge and
agree to comply with applicable provisions governing Department and FEMA access to records, accounts, documents, information, facilities, and staff. See DHS Standard Terms and Conditions, v 3.0, ¶ XXVI (2013).

d. The following provides a contract clause regarding access to records:

"Access to Records. The following access to records requirements apply to this contract:

(1) The contractor agrees to provide (insert name of state agency or local or Indian tribal government), (insert name of recipient), the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract."

12. DHS-Seal, Logo, and Flags.

a. All non-Federal entities must place in their contracts a provision that a contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval. See DHS Standard Terms and Conditions, v 3.0, ¶ XXV (2013).

b. The following provides a contract clause regarding DHS Seal, Logo, and Flags:

"The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval."


a. All non-Federal entities must place into their contracts an acknowledgement that FEMA financial assistance will be used to fund the contract along with the requirement that the contractor will comply with all applicable federal law, regulations, executive orders, and FEMA policies, procedures, and directives.

b. The following provides a contract clause regarding Compliance with Federal Law, Regulations, and Executive Orders: “This is an acknowledgement that FEMA financial assistance will be used to fund the contract only. The contractor
will comply will all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.”

14. **No Obligation by Federal Government.**

a. The non-Federal entity must include a provision in its contract that states that the Federal Government is not a party to the contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

b. The following provides a contract clause regarding no obligation by the Federal Government: “The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.”

15. **Program Fraud and False or Fraudulent Statements or Related Acts.**

a. The non-Federal entity must include a provision in its contract that the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to the contract.

b. The following provides a contract clause regarding Fraud and False or Fraudulent or Related Acts: “The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor’s actions pertaining to this contract.”

END OF APPENDIX F
APPENDIX G

The Contractor shall not be held liable for any impacts, delays, labor overruns, material overruns and/or cost overruns related to its Work stemming from the current flu epidemic, and/or COVID-19 (Coronavirus epidemic) as defined by the United States Centers for Disease Control and Prevention. The Contractor shall further be entitled to a change order for any and all time and costs associated with said epidemic(s).

In order to limit the potential impact to the project as described above, the Contractor is required to contact the County at the earliest possible opportunity so that the most appropriate project decisions can be made. Furthermore, the Contractor is expected to document all items affecting the potential project cost increase or delay to ensure it is directly caused by COVID-19.