

**ATTACHMENT TO ITEM
7.d.**

**Construction and Funding Agreement
Between
County of El Dorado &
South Tahoe Public Utility District**

This **Construction and Funding Agreement** (“Agreement”), entered into on _____, 2023, by and between the County of El Dorado, a political subdivision of the State of California, referred to as “COUNTY,” and the South Tahoe Public Utility District, a California public utility district, referred to as “DISTRICT” at South Lake Tahoe, California, with reference to the following facts and intentions:

Recitals

1. COUNTY secured funding, prepared contract documents, will advertise, and intends to award and administer a construction contract for the approved work, to be completed by the lowest responsive and responsible bidder, for installation of improvements for the Meyers Stream Environment Zone/Erosion Control Project, Contract No. 7377, CIP 36107007, referred to herein as “PROJECT.”
2. DISTRICT owns and maintains potable water utility facilities within the limits of the PROJECT which the DISTRICT will need to relocate due to accommodate the new storm drain system being installed.
3. DISTRICT prepared plans and specifications titled, “Meyers Stream Environment Zone - Erosion Control Project – Waterline Relocation” for relocation of the existing water main that is in conflict with a proposed storm drain to be installed with the PROJECT. The installation of DISTRICT water system facilities will be included as part of the PROJECT (referred to as “DISTRICT WORK.”).
4. DISTRICT acknowledges that it has reviewed the PROJECT plans and specifications for the DISTRICT WORK and agrees in principal to the construction in the manner proposed.
5. DISTRICT agrees to pay COUNTY for the approved DISTRICT WORK, on the basis of identified bid items for the PROJECT, which are incorporated by this reference into this Agreement.
6. The parties define below the terms and conditions under which the DISTRICT WORK is to be financed, constructed, and owned.

NOW THEREFORE, the parties agree as follows:

I. COUNTY Agrees:

1. To perform the DISTRICT WORK in accordance with the PROJECT plans and specifications in order to achieve its intended purpose.
2. The DISTRICT WORK performed by COUNTY or on its behalf by a licensed contractor, shall be monitored for compliance with the PROJECT plans and specifications by DISTRICT personnel or designated representative however COUNTY will provide overarching project management.
3. To permit DISTRICT personnel to monitor, participate, and perform any additional quality assurance measures as deemed necessary for compliance of the DISTRICT WORK with DISTRICT standards and practices for the DISTRICT WORK that the COUNTY is performing for the DISTRICT.
4. For each pay period and upon completion of the DISTRICT WORK, and all work incidental thereto, to furnish the DISTRICT with a detailed statement of construction costs, the basis of which is identified bid items for the PROJECT subject to payment from DISTRICT.
5. To the extent that the guarantees or bonds required by COUNTY’s contracts for the PROJECT that pertain to the DISTRICT WORK, COUNTY agrees to enforce its rights thereunder in order to protect the DISTRICT’S interests in the potable water utility facilities.

6. After completion of the DISTRICT WORK, COUNTY agrees to enforce any contractor or product manufacturer warranties or guarantees for the portion of the DISTRICT WORK that COUNTY is performing for the DISTRICT for the benefit of DISTRICT.
7. To indemnify, defend and hold harmless the DISTRICT, its elected officials, officers, employees and agents from and against all liability, claims, demands, costs, charges and expenses (including, without limitation, attorney's and expert witness fees and other expenses of litigation) and causes of action of whatsoever character on account of loss or damage to the DISTRICT'S water utility facilities that are relocated or modified pursuant to this Agreement and as part of the PROJECT and loss of use thereof, or for bodily injury to or death of any persons (including, without limitation, property, employees, subcontractors, agents, and invitees of each party hereto) arising out of or in any way connected with the PROJECT, and arising from any cause whatsoever. The sole exception to this indemnity is liability, claims, suits, damages, or expenses that are proximately caused by, and in direct proportion to, the active negligence or willful acts of DISTRICT, its elected officials, officers, employees, and agents, or as expressly prescribed by statute.

II. DISTRICT Agrees:

1. To open an account with the California Asset Management Program ("CAMP") and deposit an amount equal to the Maximum Authorized Payment Amount set forth in Section 6, below, and to increase the amount of the deposit if the parties mutually agree to an increase in the cost of the DISTRICT WORK.
2. To pay the COUNTY for the DISTRICT WORK performed, as shown on the PROJECT plans and specifications and any additional work to DISTRICT'S potable water utility systems that is found necessary during construction that is first approved in writing by the DISTRICT.
3. To review each detailed statement of construction costs from the COUNTY and authorize payment to the COUNTY from the CAMP account within 30 days of receipt of each detailed statement of construction costs for the DISTRICT WORK; subsequent to final acceptance of the DISTRICT WORK by DISTRICT and payment for the DISTRICT WORK by COUNTY to its contractor.
4. To perform, at no cost to COUNTY, any additional quality assurance measures as DISTRICT deems necessary, beyond that which is currently scheduled for and identified in the PROJECT plans and specifications.
5. To accept ownership of the completed DISTRICT WORK.

III. Mutually Agreed:

1. Upon completion of the DISTRICT WORK to be performed by COUNTY in accordance with the PROJECT plans and specifications, the DISTRICT WORK shall become the property of DISTRICT. Deviations from the PROJECT plans and specifications for the DISTRICT WORK, initiated by either COUNTY or DISTRICT, shall be agreed upon by both parties by Amendment.
2. Modifications to the DISTRICT WORK shall be mutually agreed upon by the parties to this Agreement and memorialized in an Amendment to this Agreement.
3. If the PROJECT is canceled or modified so as to eliminate the necessity of the DISTRICT WORK; COUNTY will notify DISTRICT in writing and either party may then terminate this Agreement. The DISTRICT shall pay COUNTY for any portion of the DISTRICT WORK completed prior to termination.
4. COUNTY agrees to pay the contractor for work completed on the identified bid items, which are incorporated by this reference as the DISTRICT WORK, subject to payment from the DISTRICT as

provided above. Any changes in quantities of the bid items shall be agreed to by both COUNTY and DISTRICT. DISTRICT is authorized to approve up to 125% of the SUBTOTAL PAYMENT for the DISTRICT WORK of the identified bid items herein which are based on the Unit Cost contract price for lowest responsive and responsible bidder for the PROJECT.

5. That the parties will be relieved of their respective duties and obligations hereunder if performance of this Agreement is prevented by the elements, natural disaster or acts of God, or if they are ordered or enjoined from performing hereunder by any court or regulatory agency having jurisdiction. Either party may discontinue performance of its duties and obligations hereunder if, after notice from the non-breaching party that the other party has breached any term or condition of this Agreement, and the breaching party has not commenced to timely cure the breach.
6. That the PROJECT bid items (by No.) representing the DISTRICT WORK are as follows:

Item No.	Bid Item Description	Units	Est. Qty	Unit Price	% for Payment	Amount
1	Mobilization and demobilization	LS	1	\$45,000	100%	\$45,000
2	Erosion Control	LS	1	\$2,500	100%	\$2,500
3	Groundwater Dewatering	LS	1	\$50,000	100%	\$50,000
4	Traffic Control	LS	1	\$5,000	100%	\$5,000
5	Sheeting, Shoring and Bracing	LS	1	\$5,000	100%	\$5,000
6	Potholing	LS	1	\$5,000	100%	\$5,000
7	8-inch C900 Watermain	LF	705	\$220	100%	\$155,100
8	3/4-inch Water Service	LF	3	\$4,000	100%	\$12,000
9	1-inch Water Service	EA	4	\$5,000	100%	\$20,000
10	Fire Hydrant Installation	EA	1	\$15,000	100%	\$15,000
11	Tie-In #1 – Apache and San Bernardino	LS	1	\$20,000	100%	\$20,000
12	Tie-In #2 – Geronimo and San Bernardino	LS	1	\$15,000	100%	\$15,000
13	Demo Fire Hydrants	EA	1	\$1,750	100%	\$1,750
14	Cut, Cap and Abandon Existing Mains	EA	2	\$1,000	100%	\$2,000
15	4-inch Trench Patch	SF	2,820	\$12.00	100%	\$33,840
16	3-inch Miscellaneous Paving	SF	250	\$17.50	100%	\$4,375
17	Contingency – Unknown Conditions	LS	1	\$10,000	100%	\$10,000
18	Additional 1-foot depth of Excavation, Backfill and vertical pipe/fittings	LF	40	\$15	100%	\$600
				SUBTOTAL	Payment	\$402,165

Contingency for changes in quantity (25%) \$100,541
Maximum Authorized Payment Amount \$502,706

IV General Provisions

1. Notices. Any notice required to be given under this Agreement shall be in writing and either served personally or sent prepaid, first class mail. Any such notice shall be addressed to the other party at the address set forth below. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.
2. If to COUNTY:

John Kahling
 Deputy Director of Transportation
 County of El Dorado
 2441 Headington Road
 Placerville, CA 95667

Provide a copy to: County Counsel
 County of El Dorado
 330 Fair Lane

Placerville, CA 95667

If to DISTRICT South Tahoe Public Utility District
 Attn: John Thiel, General Manager
 1275 Meadow Crest Drive
 South Lake Tahoe, CA 96150

Provide a copy to: Gary M. Kvistad
 Brownstein Hyatt Farber Schreck, LLP
 1021 Anacapa Street, Second Floor
 Santa Barbara, CA 93101

3. No Waiver. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision under this Agreement.
4. Dispute Resolution. The parties to this Agreement agree that their respective staffs shall meet and confer in good faith for the purposes of resolving any dispute under this Agreement. If the meet and confer between staff is unsuccessful to resolve the dispute, the COUNTY Chief Administrative Officer and the DISTRICT General Manager shall then meet and confer in attempt to resolve the dispute. If the dispute is still not resolved, either party may file an action in court.
5. Controlling Law Venue. This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be held exclusively in the Superior Courts in the County of El Dorado, South Lake Tahoe Division.
6. Amendments. This Agreement may be modified or amended only by a written document executed by both DISTRICT and COUNTY and approved as to form by the COUNTY Counsel.
7. Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.
8. Entire Agreement. This Agreement constitutes the complete and exclusive statement of Agreement between DISTRICT and COUNTY. All prior written and oral communications, including correspondence, drafts, memoranda, and representations, are superseded in total by this Agreement.
9. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.
10. Authority to Enter Agreement. COUNTY and DISTRICT have all requisite power and authority to conduct its business and to execute, deliver, and perform the WORK defined in this Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party.
11. No Third party Beneficiaries. This Agreement shall not be deemed to confer any rights upon any individual or entity which is not a party to this Agreement and the parties expressly disclaim any such third-party benefit.

Requesting Department Concurrence:

By: _____
Rafael Martinez, Director
Department of Transportation

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first written above.

-- COUNTY OF EL DORADO --

By: _____

Board of Supervisors
"County"

Attest:
Kim Dawson
Clerk of the Board of Supervisors

By: _____
Deputy Clerk

-- SOUTH TAHOE PUBLIC UTILITY DISTRICT --

David Peterson, Board President
South Tahoe Public Utility District

Attest:

Melonie Guttry, Clerk of the Board

**ATTACHMENT 1
TO ITEM 7.e.**

South Tahoe
Public Utility District
1275 Meadow Crest Drive
South Lake Tahoe CA 96150
(530) 544-6474 FAX (530) 541-0614

Memorandum

To: Board Members
John Thiel, General Manager

Fr: Heidi Baugh, Purchasing Agent

Re: 2023 Barton Area Valve Installation Project

Date: April 14, 2023

On Friday, April 14, 2023, at ten o'clock A.M. we received and opened two (2) sealed bids via the District's electronic bidding format for the above-referenced project. Bids ranged from a low of \$340,265 to \$440,973. The engineer's estimate was approximately \$311,000. A careful review and analysis of each bid showed deviations listed on the attached sheet. See attached spreadsheets for a full breakdown of each bid.

Haen Constructors (Haen) is the low bidder. Haen's bid showed only minor deviations or omissions.

I contacted the Contractors License Board and was given the following information:

- License Number 1045625 is current and active.
- The company is a corporation.
- Haen holds a Class A – General Engineering license.
- Haen's CA DIR registration is current and was at the time of bid opening.

South Tahoe Public Utility District
 Bid Results for Project Barton Area Valve Installation Project

Issued on 03/31/2023; Bid due on April 14, 2023 10 AM

				LAFLEUR EXCAVATING, INC.		HAEN CONSTRUCTORS	
Item#	Description	U/M	Qty	Unit Price	Line Total	Unit Price	Total
1	Mobilization and Demobilization (not to exceed 10% of Total)	LS	1	\$16,500.00	\$16,500.00	\$38,280.00	\$38,280.00
2	Erosion Control	LS	1	\$6,500.00	\$6,500.00	\$9,000.00	\$9,000.00
3	Ground Water Dewatering	LS	1	\$5,500.00	\$5,500.00	\$2,000.00	\$2,000.00
4	Sheeting, Shoring, and Bracing or equivalent method	LS	1	\$8,000.00	\$8,000.00	\$31,250.00	\$31,250.00
5	Traffic Control	LS	1	\$6,050.00	\$6,050.00	\$15,625.00	\$15,625.00
6	4" Line Stop on Steel Main	EA	2	\$17,405.00	\$34,810.00	\$36,000.00	\$72,000.00
7	4" Cut-in Valve	EA	4	\$12,565.00	\$50,260.00	\$14,063.00	\$56,252.00
8	6" Cut-in Valve	EA	2	\$13,115.00	\$26,230.00	\$14,438.00	\$28,876.00
9	8" Cut-in Valve	EA	1	\$13,665.00	\$13,665.00	\$15,858.00	\$15,858.00
10	8" Insertion Valve	EA	1	\$29,650.00	\$29,650.00	\$40,250.00	\$40,250.00
11	Fire Hydrant Installation with 4" mainline valve	EA	2	\$17,050.00	\$34,100.00	\$21,000.00	\$42,000.00
12	Intertie - South Ave & 4th Street	LS	1	\$42,000.00	\$42,000.00	\$29,469.00	\$29,469.00
13	4" Asphalt Permanent Patch	SF	1500	\$19.50	\$29,250.00	\$21.60	\$32,400.00
14	Raise Buried Valve in Caltrans ROW	LS	1	\$12,750.00	\$12,750.00	\$2,713.00	\$2,713.00
15	Unknown Conditions	LS	1	\$25,000.00	\$25,000.00	\$25,000.00	\$25,000.00
TOTAL:					\$340,265.00		\$440,973.00

2023 Barton Area Valve Installation Project Summary of Bids Reviewed
Bid Opening: 4/14/2023 at 10:00 o'clock a.m.

Deviations, omissions, and information gathered during bid analysis of the lowest bids:

Haen Constructors

- Page 9, Bidder's General Information, Item #1, address is different from that on Contractor's State License Board site. I contacted the bidder and verified that both the POBox address and the street address in South Lake Tahoe are good addresses for this company.
- Page 9, Bidder's General Information, Item #3, the contractor's license expiration date was not included. This information was obtained during the review of Contractor's license on the Contractor's State License Board site. License is current and active.
- Page 9, Bidder's General Information, Item #5, "Name, address, and telephone number of surety company and agent who will provide the required bonds on this contract" failed to list the agent's name. Information was obtainable via original hard copy Bid Bond documents submitted prior to bid deadline.
- Page 19, Certification by Contractor's Insurance Broker, was not signed. Because there is no statutory requirement for this form, and its omission does not create a material advantage, we requested and received this form, fully executed, before the end of the bid closing date.

LaFleur Excavating Inc.

- No original hard copy bid bond was received prior to bid deadline. As of end of business day on the bid deadline date, no original bid bond was received. During discussion with bidder, he acknowledged he missed this requirement.
- Page 9, Bidder's General Information, Item #1, address is different from that on Contractor's State License Board site. I contacted the bidder and verified that both the POBox address in Orangevale and the street address in Roseville are good addresses for this company.
- Page 9, Bidder's General Information, Item #5, "Name, address, and telephone number of surety company and agent who will provide the required bonds on this contract", phone number provided was for the agent, who indicated the bid bond was valid. I called the surety's "attorney in fact" broker to verify. Have not heard back.
- Page 13, Subcontractor Listing, failed to identify the percentage of work to be provided by the subcontractor.
- Page 15, Bid Bond, photocopy of bid bond uploaded with bid documents to Planetbids did not include the required Power of Attorney authorizing representative of bonding company (making the bid bond incomplete). No original hard copy of the bid bond was received.
- Page 19, Certification by Contractor's Insurance Broker. During investigation to verify the listed liability insurance company is authorized to do business in

California, I consulted the California Department of Insurance website. I noticed that the insurance company in question showed the License Status as “withdrawn”. I left messages with the CDI as well as with the insurance agent for clarification. During conversation with insurance agent he indicated that this was a surprise to him. While I was on the phone with him, he contacted another individual who explained that there are basically two types—admitted and surplus lines (approved/not admitted or non-admitted). I consulted the CDI site again for the List of Approved Surplus Line Insurers and was not able to find the liability insurance company in question identified on that list. I have an email into our JPIA Risk Management Group regarding this matter; I believe that their insurance company would not meet our spec’d requirements which state, “All insurance required by this section shall be placed with insurance companies authorized by the State of California to transact insurance business in the State of California....”.

**ATTACHMENT 2
TO ITEM 7.d.**

South Tahoe

Public Utility District

Memorandum

Date: April 18, 2023

To: Board of Directors
John Thiel, General Manager

From: Adrian Combes, Senior Engineer

Subject: Recommendation for Bid Award
2023 Barton Area Valve Installation Project

Bids were opened on Friday, April 14, 2023, at 10:00 a.m. Two (2) bids were received. The bid amounts were \$340,265 and \$440,973. The Engineer's Estimate for the project was \$311,000. A summary of all bids received, including bid irregularities, is included in the attached memorandum.

As indicated in the attached memorandum and summary by the Purchasing Agent, Staff has found irregularities in both bids received. There is an important distinction, however, between irregularities that are immaterial and ones that are material. Immaterial irregularities may be waived by the Governing Board, in its discretion. Material irregularities generally give the bidder an unfair competitive advantage or contain errors that would permit the bidder to withdraw its bid. Material irregularities may not be waived.

The apparent low bid received from LaFleur Excavating, Inc. did not include a hard copy, original Bid Bond (Bid Security) at the time of bid opening as required by the contract specifications and California law. The second apparent low bid received from Haen Constructors did include an original, hard copy Bid Bond at the time of bid opening.

It has been a long-standing requirement of the District that a valid original Bid Security be provided to the District at the time of bid opening. The requirement for a valid, hard copy original Bid Bond is listed in the second paragraph in the Invitation to Bid as well as on page 4, second paragraph of the General Bid Instructions, Terms & Conditions. It is in the opinion of staff that if the District does not have a valid Bid Security in hand, a bidder could have the opportunity to withdraw their bid which provides a material advantage over other bidders.

Additionally, during investigation to verify the listed liability insurance company for LaFleur Excavating, the insurance company in question showed the license status as "withdrawn". After following up with the District's Insurance company (JPIA) and consulting with the California Department of Insurance website, this appears to also be a material irregularity that would deem the low bidder non-responsive. We have inquiries into their insurance

company as well as ours and have not been able to finalize this determination, however because of the issue with the bid bond, this is a moot point. Staff recommends that the Board find LaFleur Excavating, Inc. non-responsive and reject their bid based on the absence of a hard copy bid bond, a material deviation from the Bid Security Requirements.

As indicated in the summary prepared by the Purchasing Agent, there are four minor deviations with the bid received from Haen Constructors. The minor deviations do not impact the bid price and have not provided Haen with a competitive advantage over other bidders, thus they may be waived by the Board as immaterial deviations.

Staff recommends that the Board 1) Find the bid received from LaFleur Excavating, Inc. to be non-responsive and reject their bid 2) Find minor irregularities in the bid from Haen Constructors to be immaterial and waive immaterial irregularities; and 3) Award Project to the lowest responsive, responsible bidder, Haen Constructors. in the amount of \$440,973.