

# DKS Associates

## As-Needed Traffic Engineering and Transportation Planning

### AGREEMENT FOR SERVICES #9303

**THIS AGREEMENT**, made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County"), and DKS Associates, a corporation duly qualified to conduct business in the State of California, whose principal place of business is 1050 SW 6<sup>th</sup> Avenue, Suite 600, Portland, Oregon 97204 and whose local address is 428 J Street, Suite 340, Sacramento, California 95814 (hereinafter referred to as "Consultant").

### RECITALS

**WHEREAS**, County has determined that it is necessary to obtain a consultant to assist its Department of Transportation, in providing as-needed traffic engineering and transportation planning services;

**WHEREAS**, Consultant has represented to County that it is specially trained, experienced, is an expert, and competent to perform the special services described in ARTICLE I Scope of Work; that it is an independent and bona fide business operation, advertises and holds itself as such, is in possession of a valid business license, and is customarily engaged in an independently established business that provides similar services to others; and County relies upon those representations;

**WHEREAS**, it is the intent of the parties hereto that such services be in conformity with all applicable state and local laws and ordinances applicable to the work, including compliance with prevailing wage rates and their payment in accordance with Labor Code, section 1775;

**WHEREAS**, County has determined that the provision of such services provided by Consultant are in the public's best interest and that there are specialty skills, qualifications, and equipment not expressly identified in County classifications involved in the performance of the work in accordance with El Dorado County Ordinance Code, Chapter 3.13.030(b), El Dorado County Charter, section 210(b)(6), and/or Government Code section 31000;

**WHEREAS**, on December 5, 2024, Consultant was formally awarded competitive Request for Proposals (RFP) 24-0102 to provide as-needed traffic engineering and transportation planning services for the Department of Transportation;

**NOW, THEREFORE**, County and Consultant mutually agree as follows:

### ARTICLE I

**Scope of Work:** Consultant is engaged in the business of doing the services and tasks required under this Agreement, including those services and tasks that are identified in individual Task Orders or Work Orders issued pursuant to this Agreement, and those services and tasks that are reasonably necessary for the completion of the work identified in the Scope of Work.

Consultant shall furnish, at Consultant's own cost and expense, all personnel, subconsultants, services, tools, vehicles, and equipment or any other materials, necessary to perform the services and tasks required under this Agreement, including those services and tasks that are identified in the Scope of Work, and those services and tasks that are reasonably necessary for the completion of the work identified in the Scope of Work. Services shall include at a minimum:

- Preparing or reviewing transportation impact studies.
- Preparing or reviewing traffic reports for discretionary applications.
- Reviewing traffic engineering improvements such as traffic signals, freeway interchanges, and intersection configurations.
- Development of and review of traffic modeling and forecasts.
- Reviewing traffic signal designs.
- Preparing or reviewing transportation system management plans.
- Preparing or reviewing congestion management plans.
- Preparing or reviewing Level of Service (LOS) studies.
- Preparing or reviewing Vehicle Miles Travelled (VMT) studies.
- Traffic planning services associated with the implementation of County's General Plan.
- Assistance with development and implementation of traffic impact fee programs in support of County's General Plan implementation efforts.

Consultant's review of transportation impact studies shall produce, at a minimum, a transmittal letter to County summarizing the review findings. The transmittal letter shall be provided in hard copy and in electronic format compatible with County's software (Microsoft Word). Turnaround time for transportation impact study reviews shall not be more than two (2) weeks. Should Consultant be unable to meet the required turnaround time relative to a specific review, Consultant agrees to notify the Contract Administrator within five (5) days of receipt of the plans of any additional time necessary to needed to complete the review.

Deliverables and schedules for other studies shall be included in the individual Task Orders or Work Orders for the specific studies.

For each as-needed work assignment, the specific services for each assignment shall be determined at a meeting, by email, or telephone conference between County's Contract Administrator and Consultant. For each work assignment, Consultant shall provide a written quote to County's Contract Administrator. Upon receipt and approval of each quote, County's Contract Administrator will issue a separate written Task Order or Work Order to Consultant for each as-needed work assignment identifying the specific site where the work will be performed, any required deliverables, including reports or other documents to be supplied in connection with the work assignment, a description of the work or other services to be performed, a specific date by which the work shall be completed, and a not-to-exceed cost to complete the work. Consultant shall not

commence work until receiving the written Task Order or Work Order. No payment will be made for any work performed prior to approval and full execution of the Task Order or Work Order or beyond the earlier of the expiration date of the Task Order or Work Order or expiration of the underlying Agreement, and no payment will be made for amounts in excess of the not-to-exceed amount of the Task Order or Work Order.

County's Contract Administrator, or designee, will issue a written Task Order for work assignments where the not-to-exceed cost itemization is greater than \$50,000. County's Contract Administrator, or designee, will issue a written Work Order for work assignments where the not-to-exceed cost itemization is \$50,000 or less.

In no event, however, will the Contract Administrator issue a Task Order for work assignments if the not-to-exceed cost itemization is greater than \$250,000 without prior Board of Supervisors approval.

The period of performance for Task Orders and Work Orders shall be in accordance with dates specified in each Task Order or Work Order. No payment will be made for any work performed before or after the period of performance in the Task Order or Work Order unless County's Contract Administrator and Consultant amend the Task Order or Work Order. No Task Order or Work Order will be written which exceeds the cumulative total of the not-to-exceed dollar amount of this Agreement. No Task Order or Work Order will be written which extends beyond the expiration date of this Agreement.

Consultant acknowledges that the work performed must meet the approval of County, and therefore County reserves the right to monitor the work to ensure its satisfactory completion.

Deliverables shall be submitted via electronic file and Consultant shall produce the file using Microsoft (MS) Office 365 applications (specifically, MS Word, MS PowerPoint, and MS Excel). Signed reports shall be submitted in Adobe portable document format (PDF). All deliverables shall be submitted in the language, format and design that are compatible with and completely transferable to County's computer, and that are acceptable to County's Contract Administrator. Newer versions of software may be used and other types of software used for analytical purposes may be authorized if approved in advance of the submittal by County's Contract Administrator. Consultant shall submit all deliverables to County's Contract Administrator in accordance with completion time schedules identified in the individual Task Orders or Work Orders issued pursuant to this Agreement. Failure to submit the required deliverables in the format required may be grounds for termination of the Agreement, as provided in ARTICLE XXIII, Default, Termination, and Cancellation, herein.

Consultant shall perform the services and tasks required under this Agreement in a safe, professional, skillful, and workmanlike manner. Consultant is responsible for ensuring that its employees, as well as any subconsultant if applicable, perform the services and tasks required under this Agreement accordingly. All of the services included in the Scope of Work, or in the individual Task Orders or Work Orders issued pursuant to this Agreement, are the responsibility of Consultant unless specifically described as a task or item of work to be provided by County. Consultant shall be responsible for the supervision, administration, and work performed by any subconsultant for services rendered under

this Agreement. County shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to Consultant or its employees, agents, associates, representatives, or subconsultants.

**ARTICLE II**

**Term:** This Agreement shall become effective upon final execution by both parties hereto and shall expire three (3) years thereafter.

**ARTICLE III**

**Compensation for Services:** For services provided herein, including any deliverables that may be identified in the individual Task Orders or Work Orders issued pursuant to this Agreement, County agrees to pay Consultant upon the satisfactory completion and County’s acceptance of each work assignment in arrears. Payment shall be made within forty-five (45) days following County receipt and approval of invoices detailing the services rendered.

For the purposes hereof, the billing rates shall be in accordance with the following:

<b>Job Classification</b>	<b>Hourly Rates 2025-2027</b>
Principal / Director	\$295.00 to \$390.00
Senior Engineer/Planner	\$265.00 to \$355.00
Engineer/Planner	\$195.00 to \$310.00
Associate Engineer/Planner	\$155.00 to \$220.00
Assistant Engineer/Planner	\$110.00 to \$175.00
Graphics/CADD	\$90.00 to \$250.00
Administrative	\$90.00 to \$205.00

The above rates include standard overhead (direct cost) items.

Any job classification not specifically listed above shall be quoted on a per job basis and approved by County’s Contract Administrator through a fully executed Task Order or Work Order.

Consultant shall not charge overtime, double time, after-hours, weekend, or County-recognized holiday rates.

**Direct Expenses**

The rates in the table below apply to Consultant’s non-standard direct cost items. All outside services and expenses are billed at cost.

Item	Rate
Personal Auto Use	See Below*
Delivery	Actual Cost
Teleconferences, Long Distance Phone	Actual Cost
Outside Printing and Binding	Actual Cost
PDA's (Personal Digital Assistants)	\$2 per day

The rates listed above may be adjusted annually with thirty (30) days advanced written notice from Consultant and written approval by County's Contract Administrator. The rate increase shall not exceed four percent (4%) annually as of January 1 each calendar year. Any rate increases authorized by County's Contract Administrator shall not increase the total not-to-exceed amount of the Agreement.

Notwithstanding any other provision of this Agreement to the contrary, payments to Consultant and subconsultants for travel, lodging, per diem, and mileage expenses (\*), if applicable, for Consultant's or subconsultant's claims for reimbursement shall not exceed the rates to be paid to County employees under the current Board of Supervisor's Travel Policy in effect at the time the expenses are incurred, without markup. Any individual travel expense exceeding one hundred dollars (\$100) and any work requiring overnight stay must be approved in advance by County's Contract Administrator or designee. Consultant and subconsultant are responsible for canceling hotel rooms before the cancellation period ends and should record the cancellation number in case of disputes. Consultant and subconsultant shall not be reimbursed for "no-show" hotel charges unless there are unavoidable reasons for not cancelling the room and County's Contract Administrator or designee has determined that the reasons are valid. Any reimbursements for such expenses, if any, will only be made if such expenses are included in the fully executed Task Orders or Work Order issued pursuant to this Agreement.

Subconsultant's services authorized herein, shall be invoiced at Consultant's cost, with a ten percent (10%) markup, for the services rendered. Rates and fees, included in such costs, will require prior authorization from County's Contract Administrator or successor. Any invoices that include subconsultant services shall be accompanied by backup documentation to substantiate Consultants costs for the services being billed on those invoices.

The total amount of this Agreement shall not exceed \$300,000, inclusive of all Task Orders and Work Orders and amended Task Orders or Work Orders, all work of subconsultants, and all costs, taxes, and expenses. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this Agreement through Task Orders or Work Orders.

Itemized invoices shall follow the format specified by County and shall reference this Agreement number and the County supplied Task Order or Work Order both on their faces. Consultant shall attach copies of any progress reports required under the provisions of ARTICLE V, Progress Reports, herein, that relate to the services being billed, as backup documentation to any invoices submitted for payment under the terms of this Agreement. Copies of documentation attached to invoices shall reflect

Consultant's charges for the specific services billed on those invoices. Consultant shall bill County for only one (1) Task Order or Work Order per invoice. Invoices shall be mailed to County at the following address:

County of El Dorado  
Department of Transportation  
2850 Fairlane Court  
Placerville, California 95667

Attn.: Lindsay Tallman  
Administrative Analyst

or to such other location as County directs.

In the event that Consultant fails to deliver the documents or other deliverables required by the individual Task Orders or Work Orders issued pursuant to this Agreement, County at its sole option may delay the payment for the period of time of the delay, cease all payments until such time as the deliverables are received, or proceed as set forth herein below in ARTICLE XXIII, Default, Termination, and Cancellation, herein.

#### **ARTICLE IV**

**Taxes:** Consultant certifies that as of today's date, it is not in default on any unsecured property taxes or other taxes or fees owed by Consultant to County. Consultant agrees that it shall not default on any obligations to County during the term of this Agreement.

#### **ARTICLE V**

**Progress Reports:** Consultant shall submit written progress reports to County's Contract Administrator at intervals that are commensurate with the requirements of the items of work and tasks being performed and based upon a mutually agreeable schedule. At a minimum, Consultant shall submit progress reports once per month. Consultant shall prepare the reports in a sufficiently detailed manner for County's Contract Administrator to determine if Consultant is performing to expectations and is on schedule to provide the services and deliverables described in the Scope of Work, to provide communication of interim findings, and to afford occasions for airing difficulties or special circumstances encountered so that remedies can be developed. County shall review the report to ensure that Consultant's services and deliverables adhere to current County requirements applicable to the project as determined by County's Contract Administrator, and Consultant shall modify its work if the County's Contract Administrator determined it is necessary to meet current County requirements applicable to the project. Consultant shall include in a progress report the total number of hours worked by Consultant and any authorized subconsultants; a descriptions of the tasks and work performed, including a description of any deliverables submitted during the reporting period; and the anticipated tasks, work, and deliverables proposed for the subsequent reporting period. Any invoices submitted by Consultant for payment under the terms of this Agreement shall include copies of the progress reports that relate to the services being billed on those invoices.

#### **ARTICLE VI**

**Ownership of Data:** Upon completion or earlier termination of all services under this Agreement, or upon the completion or earlier termination of services provided in accordance with individual Task Orders or Work Orders issued pursuant to this

Agreement, ownership and title to all reports, documents, plans, maps, specifications, estimates, compilations, photographs, videos, and any and all other materials or data produced or obtained as part of this Agreement will automatically be vested in County without restriction or limitation on their use, and no further agreement will be necessary to transfer ownership to County. Copies may be made for Consultant's records, but shall not be furnished to others without prior written authorization from County's Contract Administrator. Such deliverables shall be deemed works made for hire and all rights in copyright therein shall be retained by County. Consultant shall furnish County all necessary copies of data, including data stored in electronic format, needed to complete the review and approval process of the services and deliverables provided under this Agreement.

#### **ARTICLE VII**

**Standards for Work:** Services rendered under this Agreement shall be performed in accordance with and full compliance with the 2004 El Dorado County General Plan, Highway Capacity Manual (Transportation Research Board, 2021), the Trip Generation Manual 11<sup>th</sup> Edition (Institute of Traffic Engineers), and all other applicable Caltrans, Federal Highway Administration (FHWA), federal, state and local laws, County guidelines and accepted industry standards, and shall be performed in a safe, professional, skillful and workmanlike manner.

#### **ARTICLE VIII**

**Consultant's Project Manager:** Consultant designates Josh Pilachowski, Senior Transportation Engineer, License number 2763 as its Project Manager for this Agreement. Consultant's Project Manager, or County approved designee, shall be accessible to County's Contract Administrator, or designee, during normal County working hours and shall respond within twenty-four (24) hours to County inquiries or requests. Consultant's Project Manager shall be responsible for all matters related to Consultant's personnel, operations, and any subconsultants authorized under this Agreement including, but not limited to, (1) assigning qualified personnel to perform the required work and to prepare the deliverables required by this Agreement; (2) reviewing, monitoring, training, and directing Consultant's personnel and any subconsultants authorized herein; and (3) providing qualified and appropriate traffic control services for field work.

#### **ARTICLE IX**

**Prevailing Wage (Where Required):** County requires Consultant's services on public works project(s) involving local and/or state funds to which prevailing wage requirements may apply. As a consequence, Consultant shall comply with all applicable state and federal prevailing wage rates, statutes, rules, and regulations then in effect. Consultant shall use the general prevailing wage rates determined by the Director of Industrial Relations for the county in which the work is to be done, which are available at the principal office of County's Department of Transportation. Changes, if any, to the general prevailing wage rates will be available at the same location.

Future effective general prevailing wage rates which have been predetermined and are on file with the California Department of Industrial Relations are referenced but not printed in the general prevailing wage rates.

Consultant shall comply with all applicable wage requirements, as set forth in Labor Code sections 1770, et seq., 1773.2, 1775, 1776, 1810, and 1813. In accordance with the provisions of Labor Code section 1810, eight (8) hours of labor shall constitute a legal day's work upon all work done hereunder, and Consultant and any subconsultant authorized under this Agreement shall also conform to and be bound by the provisions of Labor Code sections 1810 through 1815.

#### **ARTICLE X**

**Apprentices:** Attention is directed to Labor Code sections 1777.5, 1777.6, and 1777.7 and 8, California Code of Regulations section 200, et seq. To ensure compliance and complete understanding of the law regarding apprentices, and specifically the required ratio thereunder, each Consultant or subconsultant should, where some question exists, contact the Division of Apprenticeship Standards, 455 Golden Gate Avenue, San Francisco, CA 94102, or one of its branch offices prior to commencement of work on this Agreement. Responsibility for compliance with this Article lies with Consultant.

It is County policy to encourage the employment and training of apprentices on public works contracts as may be permitted under local apprenticeship standards.

#### **ARTICLE XI**

**Certified Payroll (Where Applicable):** As required under the provisions of Labor Code section 1776, Consultant and any subconsultants, if any are authorized herein, shall keep accurate payroll records as follows:

- A. The payroll records shall show the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Consultant or subconsultants in connection with the services provided under this Agreement.
- B. A certified copy of all payroll records enumerated above shall be available for inspection at all reasonable hours at the principal office of Consultant as follows:
  - 1. Make available or furnish to the employee or his or her authorized representative on request.
  - 2. Make available for inspection or furnished upon request to a representative of County, the State Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the State Department of Industrial Relations.
  - 3. Make available upon request by the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either County, the State Division of Labor Standards Enforcement, or the State Division of Apprenticeship Standards. The requesting party shall, prior to being provided the records, reimburse the costs of preparation by Consultant, subconsultant, and the entity through which the request was made. The public shall not be given access to the records at the principal office of Consultant.



4. All Consultants and subconsultants must furnish electronic certified payroll records directly to the Department of Industrial Relations.

## **ARTICLE XII**

**Registration of Consultants:** No Consultant or subconsultant may bid on any public work project, be listed in a bid proposal for any public works project, or engage in the performance of any contract for public work unless registered with the Department of Industrial Relations pursuant to Labor Code sections 1725.5 and 1771.1. Public work projects are subject to compliance, monitoring, and enforcement by the Department of Industrial Relations.

Consultant shall post job site notices as prescribed by 8 California Code of Regulations section 16451.

## **ARTICLE XIII**

**Records Examination and Audit Requirements:** Consultant and its subconsultants, if any are authorized hereunder, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the Agreement, including but not limited to, the costs of administering the various aspects of the Agreement. In accordance with Government Code section 8546.7, all of the above-referenced parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three (3) years from the date that final payment by County and all other pending matters are closed. Representatives of County, the California State Auditor, and any duly authorized representative of other government agencies shall have access to any books, documents, papers, and records that are pertinent to the Agreement for audit, examination, excerpts, and transactions and copies thereof shall be furnished upon request.

## **ARTICLE XIV**

**Payment of all Federal, State, or Local Taxes:** Any federal, state, or local tax payable on the articles furnished by Consultant under this Agreement shall be included in rates quoted herein and shall be paid by Consultant.

## **ARTICLE XV**

**Compliance with all Applicable Laws:** Consultant shall conform to and abide by all applicable federal, state, and local building, labor, environmental and safety laws, ordinances, rules, and regulations. All work and materials shall be in full accordance with the latest rules and regulations of the State Fire Marshal, safety orders of the Division of Industrial Safety, California Electrical Code, California Building Code, California Plumbing Code, and any and all other applicable laws and regulations. Nothing in this Agreement, including but not limited to, any directions, plans or specifications provided to Consultant, is to be construed to permit work not conforming to these codes.

## **ARTICLE XVI**

**Reporting Accidents:** Consultant shall prepare and submit to County (within twenty-four [24] hours of such incidents) reports of accidents at the site and anywhere else work under this Agreement is in progress in which bodily injury is sustained or property loss in excess of five hundred dollars (\$500.00) occurs.

## **ARTICLE XVII**

**Changes to Agreement:** This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto. There shall be no change in subconsultants, which shall be established at the issuance of individual Task Orders or Work Orders, without prior written approval by County's Contract Administrator.

## **ARTICLE XVIII**

**Consultant to County:** It is understood that the services provided under this Agreement shall be prepared in and with cooperation from County and its staff. It is further understood that this Agreement does not create an exclusive relationship between County and Consultant, and Consultant may perform similar work or services for others. However, Consultant shall not enter into any agreement with any other party, or provide any information in any manner to any other party, that would conflict with Consultant's responsibilities or hinder Consultant's performance of services hereunder, unless County's Contract Administrator, in writing, authorizes that agreement or sharing of information.

## **ARTICLE XIX**

**Confidentiality:** Consultant and any subconsultants authorized under this Agreement shall maintain the confidentiality and privileged nature of all records, including billing records, together with any knowledge therein acquired, in accordance with all applicable state and federal laws and regulations, as they may now exist or may hereafter be amended or changed. Consultant, and all Consultant's staff, employees, and representatives, including any subconsultants authorized herein, shall not use or disclose, directly, or indirectly at any time, any said confidential information, other than to County's Department of Transportation or to such other person with County's consent for the purpose of, and in the performance of, this Agreement. This confidentiality provision shall survive after the expiration or earlier termination of this Agreement.

## **ARTICLE XX**

**Assignment and Delegation:** Consultant is engaged by County for its unique qualifications and skills as well as those of its personnel. Consultant shall not subcontract, delegate, or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County. County may, at its sole discretion, through its Contract Administrator, authorize Consultant to utilize subconsultants for services performed in ARTICLE I, Scope of Work, for the particular tasks, work and deliverables identified therein or as identified in the individual Task Orders or Work Orders issued pursuant to this Agreement. Said authorization and approval shall be sought and obtained by Consultant prior to subconsultants' commencement of any work under this Agreement. Specific subconsultants shall be authorized in individual Task Orders or Work Orders issued pursuant to this Agreement. Consultant shall require each subconsultant, to the extent of the work to be performed by the subconsultant, to be bound to Consultant by the terms of this Agreement and to assume toward Consultant all of the obligations and responsibilities that Consultant, by this Agreement, assumes toward County.

## **ARTICLE XXI**

**Independent Consultant:** The parties intend that an independent consultant relationship will be created by this contract. Consultant is, and shall be at all times, deemed

independent and shall be wholly responsible for the manner in which it performs services required by the terms of this Agreement. Consultant exclusively assumes responsibility for acts of its employees, agents, affiliates, and subconsultants, if any are authorized herein, as they relate to the services or work to be performed under this Agreement during the course and scope of their employment by Consultant. Those persons will be entirely and exclusively under the direction, supervision, and control of Consultant.

County may designate the tasks to be performed and the results to be accomplished under this Agreement, provide information concerning the work or services, approve or disapprove the final work product and/or services provided, and set deadlines for the completion of the work or services, but County will not control or direct the manner, means, methods, or sequence in which Consultant performs the work or services for accomplishing the results. Consultant understands and agrees that Consultant lacks the authority to bind County or incur any obligations on behalf of County.

Consultant, including any subconsultant or employees of Consultant, shall not receive, nor be eligible for, any benefits County provides for its employees, including, but not limited to, vacation pay, paid holidays, life insurance, health insurance, social security, disability insurance, pension, or 457 plans. Consultant shall not receive, nor be eligible for, workers' compensation, including medical and indemnity payments. County is not responsible for withholding, and shall not withhold, Federal Income Contribution Act amounts or taxes of any kind from any payments which it owes Consultant. Consultant shall not be subject to the work schedules or vacation periods that apply to County employees.

Consultant shall be solely responsible for paying its employees, and for withholding Federal Income Contribution Act amounts and other taxes, workers' compensation, unemployment compensation, medical insurance, life insurance, or any other benefit that Consultant provides for its employees.

Consultant acknowledges that it has no authority to bind the County or incur any obligations on behalf of the County with regard to any matter, and shall not make any agreements or representations on the County's behalf.

## **ARTICLE XXII**

**Fiscal Considerations:** The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, County is subject to the provisions of Article XVI, section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment, or services not budgeted in a given year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products or equipment subject herein. Such notice shall become effective upon the adoption of a final budget, which does not

provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce or order a reduction in the budget for any County department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of County, this Agreement and any Task Orders or Work Orders issued pursuant to this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

## **ARTICLE XXIII**

### **Default, Termination, and Cancellation:**

A. 1. Termination by Default: If either party becomes aware of an event of default, that party shall give written notice of said default to the party in default (notice) that shall state the following:

- a. The alleged default and the applicable Agreement provision, and
- b. That the party in default has ten (10) days upon receiving the notice to cure the default (Time to Cure).

If the party in default does not cure the default within ten (10) days of the Time to Cure, then such party shall be in default and the party giving notice may terminate the Agreement by issuing a Notice of Termination. The party giving notice may extend the Time to Cure at their discretion. Any extension of Time to Cure must be in writing, prepared by the party in default for signature by the party giving notice, and must specify the reason(s) for the extension and the date in which the extension of Time to Cure expires.

2. If County terminates this Agreement, in whole or in part, for default:

- a. County reserves the right to procure the goods or services, or both, similar to those terminated, from other sources and Consultant shall be liable to County for any excess costs for those goods or services. County may deduct from any payment due, or that may thereafter become due to Consultant, the excess costs to procure from an alternate source.
- b. County shall pay Consultant the sum due to Consultant under this Agreement prior to termination, unless the cost of completion to County exceeds the funds remaining in the Agreement. In which case the overage shall be deducted from any sum due Consultant under this Agreement and the balance, if any, shall be paid to Consultant upon demand.
- c. County may require Consultant to transfer title and deliver to County any completed work under the Agreement.

3. The following shall be events of default under this Agreement:

- a. Failure by either party to perform in a timely and satisfactory manner any or all of its obligations under this Agreement.
  - b. A representation or warranty made by Consultant in this Agreement proves to have been false or misleading in any respect;
  - c. Consultant fails to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement, unless County agrees, in writing, to an extension of the time to perform before that time period expires.
  - d. A violation of ARTICLE XXXII, Conflict of Interest.
- B. Bankruptcy: County may terminate this Agreement immediately in the case of bankruptcy, voluntary or involuntary, or insolvency of Consultant.
- C. Ceasing Performance: County may terminate this Agreement immediately in the event Consultant ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. Termination or Cancellation without Cause: County may terminate this Agreement or any Task Orders or Work Order issued pursuant to this Agreement, in whole or in part, for convenience upon thirty (30) calendar days' written Notice of Termination. If such termination is effected, County will pay for satisfactory services rendered before the effective date of termination, as set forth in the Notice of Termination provided to Consultant, and for any other services that County agrees, in writing, to be necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the Task Order or Work Order or the total amount of the Agreement, as applicable. Upon receipt of a Notice of Termination, Consultant shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the Notice directs otherwise. In the event of termination, County reserves the right to take over and complete the work by contract or by any other means.

#### **ARTICLE XXIV**

**Notice to Parties:** All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be in duplicate and addressed as follows:

To County:

County of El Dorado  
Department of Transportation  
2850 Fairlane Court  
Placerville, California 95667

Attn.: Zach Oates  
Senior Civil Engineer

With a copy to:

County of El Dorado  
Chief Administrative Office  
Procurement and Contracts Division  
330 Fair Lane  
Placerville, California 95667

Attn.: Michele Weimer, MPA, CPPO  
Procurement and Contracts Manager

or to such other location as County directs.

Notices to Consultant shall be addressed as follows:

DKS Associates  
428 J Street, Suite 340  
Sacramento, California 95814

Attn.: Peter Coffey, Chief Executive Officer

or to such other location as Consultant directs.

#### **ARTICLE XXV**

**Change of Address:** In the event of a change in address for Consultant's principal place of business, Consultant's Agent for Service of Process, or Notices to Consultant, Consultant shall notify County in writing as provided in ARTICLE XXIV, Notice to Parties. Said notice shall become part of this Agreement upon acknowledgment in writing by County's Contract Administrator, and no further amendment of the Agreement shall be necessary provided that such change of address does not conflict with any other provisions of this Agreement.

#### **ARTICLE XXVI**

**Indemnity:** To the fullest extent allowed by law, Consultant shall defend, indemnify and hold harmless the County and its officers, agents, employees, and representatives from and against any and all claims, actions, losses, injuries, damages, or expenses of every name, kind, and description, including litigation costs and reasonable attorney's fees incurred, brought for or on account of, injury to or death of any person, including but not limited to workers, County employees, officers, or agents, and the public, or damage to property, which arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, its officers, agents, employees, volunteers, representatives, Consultant's, and subconsultants. This duty of Consultant includes the duty of defense, inclusive of that set forth in Civil Code section 2778 and is subject to any limit provided for in Civil Code section 2782.8(a) of the cost to defend charged to Consultant. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement, provided that the County's failure to immediately or timely notify Consultant does not limit or waive Consultant's defense and indemnity obligations in this Article. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement.

The indemnity obligation owed is independent of the obligation to obtain insurance coverage sufficient to protect the County, as described in ARTICLE XXVII, Insurance.

These obligations owed the County under this provision shall survive the termination of this Agreement.

## **ARTICLE XXVII**

**Insurance:** Consultant shall provide proof of a policy of insurance satisfactory to County's Risk Management Division and documentation evidencing that Consultant maintains insurance that meets the following requirements:

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Consultant as required by law in the State of California.
- B. Commercial General Liability Insurance (providing scope of coverage equivalent to ISO policy form CG 00 01) of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage, including but not limited to endorsements for the following coverage: premises, personal injury, operations, products and completed operations, blanket contractual, and independent Consultants' liability and a \$2,000,000 aggregate limit. County, including, without limitation, its officers, officials, employees, and volunteers shall be named as an additional insured on ISO form CG 2010 1185, or its equivalent.
- C. Automobile Liability Insurance of not less than \$1,000,000 is required in the event motor vehicles are used by Consultant in performance of the Agreement.
- D. In the event Consultant is a licensed professional and is performing professional services under this Agreement, Professional Liability Insurance is required with a limit of liability of not less than \$1,000,000.
- E. Consultant shall furnish a certificate of insurance satisfactory to County's Risk Management Division as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to County's Risk Management Division, or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.
- G. Consultant agrees that the insurance required herein shall be in effect at all times during the term of this Agreement, inclusive of the guarantee/warranty period specified hereinbelow. In the event said insurance coverage expires at any time or times during the term of this Agreement, Consultant shall immediately provide a new certificate of insurance as evidence of the required insurance coverage. In the event Consultant fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event. New certificates of insurance are subject to the approval of County's Risk Management Division, and Consultant agrees that no work or services shall be performed prior to the giving of such approval.

- H. The certificate of insurance must include the following provisions stating that:
1. The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to County; and
  2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- I. Consultant's insurance coverage shall be primary insurance in respect to County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, employees, or volunteers shall be in excess of Consultant's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to, and approved, by County. At the option of County, either: The insurer shall reduce or eliminate such deductibles or self-insured retentions in respect to County, its officers, officials, employees, and volunteers; or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to County, its officers, officials, employees, or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Consultant's obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.
- N. In the event Consultant cannot provide an occurrence policy, Consultant shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- O. The certificate of insurance shall meet such additional standards as may be determined by the contracting County department, either independently or in consultation with County's Risk Management Division as essential for protection of County.
- P. Consultant shall ensure that all subconsultants authorized pursuant to this Agreement shall maintain workers' compensation, general liability, automobile liability, and professional liability insurance as specified above and shall provide County with proof of same if requested.

## **ARTICLE XXVIII**

**Licenses:** Consultant hereby represents and warrants that Consultant and any of its subconsultants employed under this Agreement has all the applicable licenses, permits,



and certifications that are legally required for Consultant and its subconsultants to practice its profession or provide the services or work contemplated under this Agreement in the State of California. Consultant and its subconsultants shall obtain or maintain said applicable licenses, permits, or certificates in good standing throughout the term of this Agreement.

#### **ARTICLE XXIX**

**Business License:** County's Business License Ordinance provides that it is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of El Dorado County without possessing a County business license unless exempt under County Ordinance Code section 5.08.070. Consultant warrants and represents that it and any of its subconsultants employed under this agreement shall comply with all of the requirements of County's Business License Ordinance, where applicable, prior to beginning work under this Agreement and at all times during the term of this Agreement.

#### **ARTICLE XXX**

**Force Majeure:** Neither party will be liable for any delay, failure to perform, or omission under this Agreement that is due to any cause that it is beyond its control, not due to its own negligence, and cannot be overcome by the exercise of due diligence. In that event, the affected party will:

1. Promptly give written notice to the other of the fact that it is unable to so perform and the cause(s) that is beyond its control.
2. Once the cause(s) has ceased, provide written notice to the other party and immediately resume its performance under this Agreement.

For purposes of this Article, "cause that is beyond its control" includes labor disturbances, riots, fires, earthquakes, floods, storms, lightning, epidemics, war, disorders, hostilities, expropriation or confiscation of properties, failure of and delays by carriers, interference by civil or military authorities, whether legal or de facto, and whether purporting to act under some constitution, decree, or law, or otherwise, or acts of God.

#### **ARTICLE XXXI**

**Waiver:** No failure on the part of the parties to exercise any rights under this Agreement, and no course of dealing with respect to any right hereunder, shall operate as a waiver of that right, nor shall any single or partial exercise of any right preclude the exercise of any other right. The remedies herein provided are cumulative and are not exclusive of any other remedies provided by law.

#### **ARTICLE XXXII**

**Conflict of Interest:** The parties to this Agreement have read and are aware of the provisions of Government Code section 1090, et seq. and the Political Reform Act of 1974 (section 87100, et seq.), relating to conflict of interest of public officers and employees. Individuals who are working for Contractor and performing work for County and who are considered to be consultant within the meaning of Title 2 California Code of Regulations section 18700.3, as it now reads or may thereafter be amended, are required to file a statement of economic interest in accordance with County's Conflict of Interest Code. County's Contract Administrator shall at the time this Agreement is executed make an

initial determination whether or not the individuals who will provide services or perform work pursuant to this Agreement are consultants within the meaning of the Political Reform Act and County's Conflict of Interest Code. Statements of economic interests are public records subject to disclosure under the California Public Records Act.

Contractor covenants that during the term of this Agreement neither it, or any officer or employee of Contractor, has or shall acquire any interest, directly or indirectly, in any of the following:

1. Any other contract connected with, or directly affected by, the services to be performed by this Agreement.
2. Any other entities connected with, or directly affected by, the services to be performed by this Agreement.
3. Any officer or employee of County that are involved in this Agreement.

If Contractor becomes aware of a conflict of interest related to this Agreement, Contractor shall promptly notify County of the existence of that conflict, and County may, in its sole discretion, immediately terminate this Agreement by giving written notice of termination specified in ARTICLE XXIII, Default, Termination, or Cancellation.

Pursuant to Government Code section 84308 (SB 1439, the Levine Act), Contractor shall complete and sign the attached Exhibit A, marked "California Levine Act Statement," incorporated herein and made by reference a part hereof, regarding campaign contributions by Contractor, if any, to any officer of County.

### **ARTICLE XXXIII**

#### **Nondiscrimination:**

- A. County may require Consultant's services on projects involving funding from various state and/or federal agencies, and as a consequence, Consultant and its subconsultants, if any, shall comply with all applicable nondiscrimination statutes and regulations during the performance of this Agreement including but not limited to the following: Consultant and its employees, subconsultants, and representatives shall not unlawfully discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, military and veteran status of any person, marital status, age, sex, gender, gender identity, gender expression, or sexual orientation. Consultant and its subconsultants shall, unless exempt, comply with the applicable provisions of the Fair Employment and Housing Act (Government Code, section 12900, et seq.) and applicable regulations promulgated thereunder (2 California Code of Regulations, section 11000, et seq.); the applicable regulations of the Fair Employment and Housing Commission implementing Government Code, section 12990, set forth in Subchapter 5 of Chapter 5 of Division 4.1 of Title 2 of the California Code of Regulations incorporated into this Agreement by reference and made a part hereof as if set forth in full; and Title VI of the Civil Rights Act of 1964, as amended. Consultant and its employees and representatives shall give written notice of their obligations under this clause as required by law.

- B. Where applicable, Consultant shall include these nondiscrimination and compliance provisions in any of its agreements that affect or are related to the services performed herein.
- C. Consultant's signature shall provide any certifications necessary under the federal laws, the laws of the State of California, including but not limited to Government Code section 12990 and 2 California Code of Regulations, section 11102.

#### **ARTICLE XXXIV**

**California Residency (Form 590):** All independent consultants providing services to County must file a State of California Form 590, certifying their California residency or, in the case of a limited liability company or corporation, certifying that they have a permanent place of business in California. Consultant will be required to submit a Form 590 prior to execution of this Agreement, or County shall withhold seven (7) percent of each payment made to Consultant during the term of this Agreement. This requirement applies to any agreement/contract exceeding \$1,500.

#### **ARTICLE XXXV**

**County Payee Data Record Form:** All independent consultants or corporations providing services to County who do not have a Department of the Treasury Internal Revenue Service Form W-9 (Form W-9) on file with County must file a County Payee Data Record Form with County.

#### **ARTICLE XXXVI**

**Resolution of Claims:** Consultant's attention is invited to Public Contract Code section 20104, et seq., for resolution of construction claims, and specifically section 20104.2. Claims pertaining to this Agreement shall be governed by the provisions of those sections. Your attention is directed to Public Contract Code section 9204, which describes procedures for the resolution of claims on public works projects. Among other things, section 9204 requires the claimant to furnish reasonable documentation to support a claim, requires the public entity to respond to the claim within forty-five (45) days of receipt of the claim, and allows for the claimant to demand an informal meet and confer conference for settlement of the issues in dispute. For any portion of a claim that remains in dispute, section 9204 requires submission of the claim to nonbinding mediation. Additionally, section 9204 requires the public entity to make any payment due on an undisputed portion of the claim within sixty (60) days of the public entity's written response and to pay interest at the rate of seven percent (7%) per annum on any amounts not paid in a timely manner. The claims procedures described herein and in any other contract documents are in addition to the procedures required by section 9204 and, in the event of a conflict between those various procedures, the more stringent procedures will control.

#### **ARTICLE XXXVII**

**California Forum and Law:** Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.

## **ARTICLE XXXVIII**

**Consultant's Endorsement on PS&E/Other Data:** If applicable, the responsible Consultant shall sign all plans, specifications, estimates (PS&E), and all engineering data furnished by it and, where appropriate, indicate its registration number.

## **ARTICLE XXXIX**

**Contract Administrator:** The County Officer or employee with responsibility for administering this Agreement is Zach Oates, Senior Civil Engineer, Department of Transportation, or successor.

## **ARTICLE XL**

**Authorized Signatures:** The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties the obligations set forth herein.

## **ARTICLE XLI**

**Electronic Signatures:** Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement, are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic Signature means any electronic visual symbol or signature attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or email electronic signatures, pursuant to the California Uniform Electronic Transactions Act (Civil Code sections 1633.1 to 1633.17) as amended from time to time.

## **ARTICLE XLII**

**Partial Invalidity:** If any provision, sentence, or word of the Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions, sentences, or words will continue in full force and effect without being impaired or invalidated in any way.

## **ARTICLE XLIII**

**No Third-Party Beneficiaries:** Nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this Agreement.

## **ARTICLE XLIV**

**Counterparts:** This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

## **ARTICLE XLV**

**Entire Agreement:** This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties, and they incorporate or supersede all prior written or oral agreements or understandings.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the dates indicated below.

**-- COUNTY OF EL DORADO --**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Board of Supervisors  
"County"

Attest:  
Kim Dawson  
Clerk of the Board of Supervisors

By: \_\_\_\_\_  
Deputy Clerk

Dated: \_\_\_\_\_

**-- DKS ASSOCIATES --**

By: *Peter L. Coffey*  
Peter L. Coffey (Mar 7, 2025 08:24 PST)

Dated: 03/07/2025

Peter Coffey  
Chief Executive Officer  
"Consultant"

By: *Michael Thomas*  
Michael Thomas (Mar 7, 2025 08:35 PST)

Dated: 03/07/2025

Mike Thomas  
Chief Financial Officer

**DKS Associates**  
**Exhibit A**  
**California Levine Act Statement**

**California Levine Act Statement**

California Government Code section 84308, commonly referred to as the "Levine Act," prohibits any officer of El Dorado County from participating in any action related to a contract if he or she accepts, solicits, or directs any political contributions totaling more than two hundred and fifty dollars (\$500) within the previous twelve (12) months, and for twelve (12) months following the date a final decision concerning the contract has been made, from the person or company awarded the contract. The Levine Act also requires disclosure of such contribution by a party to be awarded a specific contract. An officer of El Dorado County includes the Board of Supervisors, any elected official, and the chief administrative officer (collectively "Officer"). It is the Consultant's responsibility to confirm the appropriate "Officer" and name the individual(s) in their disclosure.

Have you or your company, or any agent on behalf of you or your company, made any political contribution(s), or been solicited to make a contribution by an Officer or had an Officer direct you to make a contribution of more than \$500 to an Officer of the County of El Dorado in the twelve months preceding the date of the submission of your proposals or the anticipated date of any Officer action related to this contract?

YES  NO

If yes, please identify the person(s) by name:

Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any political contribution(s) of more than \$500 to an Officer of the County of El Dorado in the twelve months following any Officer action related to this contract?

YES  NO

If yes, please identify the person(s) by name:

Answering YES to either of the two questions above does not preclude the County of El Dorado from awarding a contract to your firm or any taking any subsequent action related to the contract. It does, however, preclude the identified Officer(s) from participating in any actions related to this contract.

03/07/2025  
Date

*Peter L. Coffey*  
Peter L. Coffey (Mar 7, 2025 08:24 PST)  
Signature of authorized individual

DKS Associates  
Type or write name of company

Peter L. Coffey  
Type or write name of authorized individual