

**Nichols Consulting Engineers, Chtd.
 As-needed National Pollutant Discharge Elimination System
 Program Support and Planning Services**

AGREEMENT FOR SERVICES # AGMT 06-1013

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 Nichols Consulting Engineers, Chtd., a Nevada corporation duly qualified to conduct business in the State of California, whose principal place of business is 1885 S. Arlington Avenue, Suite 111, Reno, Nevada 89509, and whose local office address is 1201 K Street, Suite 1100, 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 (DOT) on an as-needed basis with National Pollutant Elimination System (NPDES) Program support and planning services for the West Slope and the Tahoe Basin; and

WHEREAS, Consultant has represented to County that it is specially trained, experienced, expert, and competent to perform the special services required hereunder, and County has determined to rely upon such representations; and

WHEREAS, it is the intent of the parties hereto that such services be in conformity with all applicable state and local laws; and

WHEREAS, County has determined that the provision of such services provided by Consultant are in the public's best interest, and authorized by El Dorado County Charter, Section 210(b)(6) and/or Government Code Section 31000;

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

ARTICLE I

Scope of Services:

- A. Consultant shall perform all professional and technical services, work, and tasks required to accomplish the objectives set forth herein, on an as-needed basis for County's DOT, and shall provide and make available Consultant's own personnel, materials, subconsultants, vehicles, and equipment necessary to perform various planning and implementation tasks to assist DOT with County's NPDES Program. Tasks may include, but are not limited to, development of the Tahoe Basin Storm Water Management Plan (SWMP), assistance with financial planning associated with implementation of the Tahoe Basin SWMP, assistance with implementation and administration of County's NPDES Program, preparation of annual reports to the Regional Water Quality Control Boards, public outreach, evaluation of the implications of legal authority issues pending County Counsel's analysis/opinion,

negotiations with Regional Water Quality Control Board staff on behalf of County, and coordination efforts with public agencies and other County departments related to implementation of the Tahoe Basin and West Slope NPDES Program.

- B. The specific services for each assignment shall be determined at a meeting or telephone conference between the Consultant and a County DOT representative to discuss the needs, required deliverables, specific Consultant staff, subconsultants (if required), and mileage budget on a task-by-task basis. Following the meeting, Consultant shall provide DOT with a scope of work, a schedule, including a list of tasks with milestone completion dates and a target completion date for the overall scope of work, and a not-to-exceed cost to complete the work (Task Order), which shall require approval, authorization, and notification to proceed from County's Contract Administrator, prior to commencement of the work. No payment will be made for any work performed prior to approval of the Task Order.

The period of performance for Task Orders shall be in accordance with dates specified in each Task Order. No payment will be made for any work performed after the period of performance in the Task Order, unless County's Contract Administrator and Consultant's Project Manager amend the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement.

- C. County shall review and approve Consultant's progress through County's Contract Administrator, or designee, at key points, as specified in each Task Order. Milestone reviews shall be performed for the specific products and deliverables listed in each Task Order. Milestones may only be changed by agreement between County's Contract Administrator and Consultant's Project Manager.
- D. If a submittal is required to be an electronic file, Consultant shall produce the file in Microsoft Word 2003, Microsoft Excel 2003, Primavera P3e/c, and other engineering software used for analytical purposes. Failure to submit the requested deliverables in the format required shall be grounds for termination of the Agreement, as provided in Article XIV.
- E. County shall provide a work order number and task code for each Task Order.
- F. Consultant's Project Manager shall be responsible for all matters related to Consultant's personnel, subconsultants, and operations, including, but not limited to:
1. Assigning qualified personnel to perform the required Task Order work.
 2. Reviewing, monitoring, training and directing Consultant's personnel and subconsultants.

All of the tasks included in this Article 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 subconsultants for services rendered under this Agreement.

ARTICLE II

Term: This Agreement shall become effective when fully executed by both parties hereto and shall expire May 1, 2008.

ARTICLE III

Compensation for Services:

- A. For services provided herein, including all deliverables described in the individual Task Orders, County agrees to pay Consultant within thirty (30) days following County receipt and approval of itemized invoice(s) and progress reports detailing services rendered. For the purposes hereof, the billing rates shall be in accordance with Exhibit A, marked "Fee Schedule," incorporated herein and made by reference a part hereof. The total amount payable by County for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless County's Contract Administrator and Consultant's Project Manager amend the Task Order. The total amount of this Agreement shall not exceed \$350,000, inclusive of all work of subconsultants and expenses.
- B. Reimbursement for mileage expenses, if applicable, shall not exceed the rates to be paid to County employees under the current Board of Supervisors Travel Policy at the time the mileage expenses are incurred. Mileage reimbursement rates apply to Consultant and to any subconsultants authorized under this Agreement. Travel costs (i.e., overnight lodging, meals, parking, airfare, bridge tolls, travel hours, etc.) will not be reimbursed for any services performed under this Agreement by Consultant or any authorized subconsultants.
- C. Itemized invoices shall follow the format specified by County and shall reference this Agreement number, the County-supplied work order number and task code both on their faces and on any enclosures or back-up documentation. Consultant shall bill County for only one Task Order per invoice.

ARTICLE IV

Progress Reports: Upon issuance of a Task Order, Consultant shall submit progress reports at an interval that is commensurate with the needs of the task(s) and based upon a mutually agreeable schedule. At a minimum, Consultant shall submit progress reports once a month. The reports shall be sufficiently detailed for County's Contract Administrator, or designee, to determine if Consultant is performing to expectations and is on schedule, to provide communication of interim findings, and to afford occasions for airing difficulties or special problems encountered so remedies can be developed. Separate detail shall be provided for each ongoing Task Order. Progress reports shall include the total number of hours worked by Consultant, and any authorized subconsultants.

ARTICLE V

Licenses: Consultant represents that it and any and all subconsultants employed under this Agreement are duly licensed in good standing by the State of California to perform the services contemplated under this Agreement, and that Consultant and all subconsultants shall maintain said licenses in good standing throughout the term of this Agreement.

ARTICLE VI

Ownership of Data: Upon completion or earlier termination of all services under this Agreement, ownership and title to all reports, documents, plans, maps, specifications, estimates, compilations and any and all other materials or data produced as part of this Agreement will automatically be vested in County and no further agreement will be necessary to transfer ownership to 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 project.

ARTICLE VII

Consultant's Project Manager: Consultant designates Jason Drew 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 individual Task Orders issued including, but not limited to (1) assigning qualified personnel to perform the work and to prepare the deliverables required by the Task Orders; and (2) reviewing, monitoring, training and directing Consultant's personnel and any subconsultants authorized herein.

ARTICLE VIII

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 Consultant's Project Manager or subconsultants, which shall be established at the issuance of each Task Order, without prior written approval by County's Contract Administrator.

ARTICLE IX

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 agreed that in all matters pertaining to this Agreement, Consultant shall act as Consultant only to County and shall not act as Consultant to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with Consultant's responsibilities to County during the term hereof.

ARTICLE X

Confidentiality: Consultant 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 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 XI

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. Notwithstanding this Article, Consultant is authorized to utilize the specific subconsultants authorized in individual Task Orders issued pursuant to this Agreement for the particular tasks, work, and deliverables identified therein. At no time shall County be obligated to pay separately for subconsultant services. 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 the obligations and responsibilities that Consultant, by this Agreement, assumes toward County.

ARTICLE XII

Independent Consultant/Liability: 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 terms of this Agreement. Consultant exclusively assumes responsibility for acts of its employees, associates, and subconsultants, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

Consultant shall be responsible for performing the work under this Agreement in a safe, professional, skillful, and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees and subconsultants. 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 or subconsultants.

ARTICLE XIII

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 may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

ARTICLE XIV

Default, Termination, and Cancellation:

A. Default: Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (Time to Cure), then such party shall be in default. The Time to Cure may be extended in the discretion of the party giving notice. 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.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the Time to Cure has expired.

B. Bankruptcy: This Agreement, at the option of County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Consultant.

C. Ceasing Performance: County may terminate this Agreement 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 in whole or in part upon seven (7) calendar days written notice by County for any reason. If such prior termination is effected, County will pay for satisfactory services rendered prior to the effective dates, as set forth in the Notice of Termination provided to Consultant, and for such other services which County may agree to in writing as necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the contract. 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 for default, County reserves the right to take over and complete the work by contract or by any other means.

ARTICLE XV

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

With a Copy to:

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

Attn.: Robert S. Slater
Deputy Director, Engineering

Attn.: Tim C. Prudhel
Contract Services Officer

or to such other location as County directs.

Notices to Consultant shall be addressed as follows:

Nichols Consulting Engineers, Chtd.
1885 S. Arlington Avenue, Suite 111
Reno, Nevada 89509

Attn.: Jason Drew, Senior Scientist

or to such other location as Consultant directs.

ARTICLE XVI

Indemnity: To the fullest extent allowed by law, Consultant shall defend, indemnify, and hold County harmless against and from any and all claims, suits, losses, damages, and liability for damages of every name, kind and description, including attorneys fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic losses, which are claimed to or in any way arise out of, directly or indirectly, or are connected with: (1) any negligent (whether passive or active) act, error or omission; or willful misconduct of Consultant, its subconsultant(s) agents or employee(s) or any of these; or (2) any breach of any statutory, regulatory, contractual or legal duty of any kind related, directly or indirectly, to the services, responsibilities or duties required of Consultant by this Agreement. This duty of Consultant to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

ARTICLE XVII

Insurance: Consultant shall provide proof of a policy of insurance satisfactory to the El Dorado County 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 of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
- 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 the El Dorado County 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 the 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. In the event said insurance coverage expires at any time or times during the term of this contract, 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 contract upon the occurrence of such event. New certificates of insurance are subject to the approval of the 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 30-day prior written notice to County; and
 2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, but only insofar as the operations under this Agreement are concerned. This provision shall apply to all liability policies except Automobile Liability, Workers' Compensation and Professional Liability insurance policies.
- I. Consultant's insurance coverage shall be primary insurance as respects the 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 as respects 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 the 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 the Risk Management Division as essential for protection of County.

In addition, Consultant shall ensure that all subconsultants maintain Workers' Compensation, general liability, auto liability and professional liability insurance as specified above and shall provide County with proof of same.

ARTICLE XVIII

Interest of Public Official: No official or employee of County who exercises any functions or responsibilities in review or approval of services to be provided by Consultant under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or the interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any such official or employee of County have any interest, direct or indirect, in this Agreement or the proceeds thereof.

ARTICLE XIX

Interest of Consultant: Consultant covenants that Consultant presently has no personal interest or financial interest, and shall not acquire same in any manner or degree, in either: 1) any other contract connected with or directly affected by the services to be performed by this Agreement; or, 2) any other entities connected with or directly affected by the services to be performed by this Agreement. Consultant further covenants that in the performance of this Agreement no person having any such interest shall be employed by Consultant.

ARTICLE XX

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 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 XXI

Taxpayer Identification Number (Form W-9): All independent contractors or corporations providing services to County must file a Department of the Treasury Internal Revenue Service Form W-9, certifying their Taxpayer Identification Number.

ARTICLE XXII

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 XXIII

Year 2000 Compliance: Consultant agrees that all hardware and software developed, distributed, installed, programmed, or employed as a result of this order will comply with ISO 9000 date format to correctly manipulate and present date-sensitive data.

Upon delivery of product and thereafter, the date and date logic component shall effectively and efficiently operate using a four-digit year.

Upon written notification by County of any hardware or software failure to comply with ISO 9000 date format, Consultant will replace or correct the failing component with compliant hardware or software immediately, at no cost to County.

ARTICLE XXIV

Contract Administrator: The County Officer or employee with responsibility for administering this Agreement is Robert S. Slater, Deputy Director, Engineering, Department of Transportation, or successor.

ARTICLE XXV

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 XXVI

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

ARTICLE XXVII

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.


Requesting Department Concurrence:

By: 
Richard W. Shepard, P.E.
Director of Transportation

Dated: 4/3/00

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated below, the latest of which shall be deemed to be the effective date of this Agreement.

-- COUNTY OF EL DORADO --

By: 
JAMES R. SWEENEY
Board of Supervisors
"County"

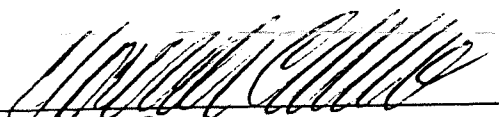
Dated: 4/18/06

Attest:
Cindy Keck
Clerk of the Board of Supervisors


By: 
Deputy Clerk

Dated: 4/18/06

-- NICHOLS CONSULTING ENGINEERS, CHTD. --

By: 
Claude Corvino
President
"Consultant"

Dated: 4/7/06

By: 
Debra Smith
Chief Financial Officer

Dated: 4/7/06

Nichols Consulting Engineers, Chtd.



Exhibit A

Fee Schedule

Effective through May 1, 2008

PROFESSIONAL SERVICES

Consulting Vice President	\$195/hour
Principal	\$180/hour
Associate	\$125/hour
Senior	\$115/hour
Project	\$90/hour
Staff	\$80/hour

TECHNICAL SERVICES

Senior Designer	\$90/hour
Senior Technician/Inspector	\$80/hour
CAD Draftsman	\$70/hour
Project Administrator	\$70/hour
Engineering Technician	\$65/hour
Field Technician	\$60/hour
Technical Word Processing	\$55/hour
Clerical	\$50/hour

CONTRACT LABOR

From time to time, Nichols Consulting Engineers, Chtd. retains outside Professional and technical labor, other than subconsultants, on a temporary basis to meet peak workload demands. Such contract labor will be charged at the rates shown above.

LITIGATION SUPPORT

Expert testimony in depositions, hearings, mediations, and trials will be charged at 300% of the above rates.

EQUIPMENT

CADD/Microcomputer	\$15/hour
Truck	\$12/hour

Vehicle Mileage: Reimbursement for mileage expenses, if applicable, shall not exceed the rates to be paid to County employees under the current Board of Supervisors Travel Policy at the time the mileage expenses are incurred. Mileage reimbursement rates apply to Consultant and to any subconsultants authorized under this Agreement.

Falling Weight Deflectometer Testing ..	(separate fee schedule available upon request)
Asphalt Coring	(separate fee schedule available upon request)
Environmental Equipment	(separate fee schedule available upon request)

OUTSIDE SERVICES

Rental of equipment not ordinarily furnished by Nichols Consulting Engineers, Chtd. and all other costs identifiable to an assignment, such as special printing, photographic work, authorized subconsultants (other than contract labor), etc. cost+15%

COMMUNICATION/ REPRODUCTION

In-house costs for long-distance telephone, faxing, postage, printing and copying project labor charges x 5%



SCHEDULE OF PLOTTER CHARGES

PLOTTER CHARGES	
Black and White Sheets (up to 24 x 36).....	\$3.00/sheet
Black and White Sheets (larger sizes)	\$.50/sf
Color Sheets (up to 24 x 36)	\$6.00/sheet
Color Sheets (larger sizes)	\$1.00/sf
Mylar Sheets.....	\$14.00/sf
Graphic Color Sheets	\$7.50/sf

OTHER CHARGES	
Specialized plotting or graphic services.....	Cost +15%
