

**Blackburn Consulting**  
**Construction & Engineering Support Services**  
**for the**  
**White Meadows Road Slipout Project**  
**AGREEMENT FOR SERVICES # *AGMT 07-1504***

**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 Blackburn Consulting, a corporation duly qualified to conduct business in the State of California, whose principal place of business is 11521 Blocker Drive, Suite 110, Auburn, California 95603 (hereinafter referred to as "Consultant");

**R E C I T A L S**

**WHEREAS**, County has determined that it is necessary to obtain a consultant to assist its Department of Transportation in providing construction and engineering support services for the White Meadows Road Slipout Project; 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 federal, state and local laws and ordinances applicable to the work, including compliance with prevailing wage rates and their payment in accordance with California Labor Code, Section 1775; 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's services are to be provided specifically in support of the White Meadows Road Slipout Project (hereinafter referred to as "Project").
- B. Consultant shall perform all professional and technical services, work and tasks required to accomplish the objectives set forth herein, and shall provide and make available Consultant's own personnel, materials, vehicles and equipment necessary to assist the Department with construction and engineering support services for the Project, which will include, but shall not be limited to those tasks and deliverables as identified in Exhibit A, marked "Scope of Work," incorporated herein and made by

reference a part hereof. The Contract Administrator shall issue Consultant a written Notice to Proceed for Items of Work A, B and C as identified in Exhibit A, and may also issue Notices to Proceed for Supplemental Items of Work D, E and F, if required. Consultant shall not commence work on any Items of Work until receiving the Notice to Proceed.

- C. In addition to the specific services identified in Exhibit A, "Scope of Work," this Agreement may also include Optional Tasks including, but not limited to, additional items of work to supplement, expand or otherwise modify the items of work identified in Exhibit A, including items of work that are deemed critical by the Contract Administrator to the furtherance of the Project.

Before proceeding with any work concerning Optional Tasks under this Agreement, the parties will identify the specific services to be provided for each assignment in individual Task Orders to be issued in accordance with this Agreement. The specific services for each Optional Task assignment shall be determined at a meeting or telephone conference between Consultant and County's Contract Administrator, or designee, to discuss the needs, applicable standards, required deliverables, specific Consultant staff and any required permits, if applicable, on a task-by-task basis. Following the meeting, Consultant shall provide the Contract Administrator with a written scope of work for the Optional Task, a schedule including a list of tasks with 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 written approval, authorization, and written notification to proceed from County's Contract Administrator, prior to commencement of the work. No payment will be made for any Optional Task work performed prior to approval of the Task Order, and no payment will be made for amounts in excess of the not-to-exceed amount of the Task Order.

Consultant shall provide the Contract Administrator with the names and titles of Consultant's representatives that are authorized to bind Consultant by signing Task Orders and Task Order Amendments on Consultant's behalf. Consultant's notification of individuals authorized to execute Task Orders and Task Order Amendments on Consultant's behalf shall be communicated to County in accordance with the provisions of Article XVII, Notice to Parties of this Agreement.

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 before or after the period of performance in the Task Order, unless County's Contract Administrator and Consultant amend the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement, nor the cumulative total of the not-to-exceed Contract amount.

- D. If a submittal is required to be an electronic file, Consultant shall produce the file in Microsoft Word 2003, Microsoft Excel 2003 and other engineering software used for analytical purposes. Newer versions of software may be used if approved by County's Contract Administrator or designee. Failure to submit the requested deliverables in the format required shall be grounds for termination of the

Agreement, as provided in Article XVI, Default, Termination, and Cancellation herein.

- E. Consultant shall be responsible for all matters related to Consultant's personnel and operations, including, but not limited to:
  - 1) Assigning qualified personnel to perform the required services and work and to prepare the deliverables required by the Agreement.
  - 2) Reviewing, monitoring, training and directing Consultant's personnel.

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.

## **ARTICLE II**

**Term:** This Agreement shall become effective when fully executed by both parties hereto and shall expire December 28, 2007.

## **ARTICLE III**

### **Compensation for Services:**

- A. For services provided herein, including all deliverables described in the Scope of Work or in individual Task Orders issued for Optional Tasks, if any, in accordance with Article I, Scope of Services, and including the progress reports required by Article V, Progress Reports below, County agrees to pay Consultant within thirty (30) days following County receipt and approval of itemized invoices detailing services rendered. For the purposes hereof, the billing rates shall be in accordance with Exhibit B, marked "2007 Fee Schedule," incorporated herein and made by reference a part hereof. The hourly rates listed in Exhibit B are inclusive of vehicles (including mileage), computers, cellular phones (including monthly charges) and Nuclear Moisture/Density Gauges.

The total amount for services to be provided under Items of Work A, B and C as identified in Exhibit A hereto shall not exceed \$40,650, inclusive of all expenses.

The total amount for services, if any, to be provided under Items of Work D, E and F as identified in Exhibit A hereto shall not exceed \$6,890, inclusive of all expenses.

The total amount for all Optional Tasks, if any, which may be assigned pursuant to any Task Orders issued in accordance with this Agreement, shall not exceed \$2,460, inclusive of all Task Orders and expenses. The not-to-exceed amount of each individual Task Order so assigned shall not exceed the amount specified in each Task Order.

The total amount of this Agreement, including all of the services detailed in Exhibit A and including any Optional Tasks which may be assigned, and inclusive of all costs, expenses and Task Orders shall not exceed \$50,000.

- B. Travel costs (i.e., overnight lodging, meals, parking, airfare, bridge tolls, etc.) will not

be reimbursed for any services performed under this Agreement.

- C. Itemized invoices shall follow the format specified by County and shall reference this Agreement number, the County-supplied work order number and Task Order numbers, if applicable, both on their faces and on any enclosures or back-up documentation. If Task Orders are issued pursuant to this Agreement, Consultant shall bill County for only one Task Order per invoice. Consultant shall attach copies of any progress reports required under the provisions of Article V, Progress Reports, 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. Invoices shall be mailed to County at the following address:

County of El Dorado  
Department of Transportation  
2850 Fairlane Court  
Placerville, California 95667  
Attn: Administration Division – Accounts Payable

or to such other location as County directs.

- D. In the event that Consultant fails to deliver, in the format specified, the deliverables required by this Agreement, County at its sole option may delay the monthly payment for the period of time of the delay, cease all payments until such time as the required deliverables are received, or proceed as set forth in Article XVI, Default, Termination, and Cancellation.

#### **ARTICLE IV**

**Standards for Work:** Services rendered under this Agreement shall be performed in accordance with the guidelines set forth in the *Caltrans Construction Manual*, *Caltrans Materials Testing Manual*, *Caltrans Surveys Manual*, *Caltrans Local Assistance Procedures Manual*, the El Dorado County Department of Transportation's Quality Assurance Program, ASTM testing procedures, 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 in accordance with good engineering practices.

Consultant has full responsibility for the accuracy and completeness of the deliverables, estimates, tests, reports and such other documents that may be required for the items of work assigned. Assistance, cooperation and oversight by County, Caltrans, FHWA or other regulatory agencies will not relieve Consultant of this professional responsibility.

All work must be performed and work products prepared in a format and manner customarily anticipated by the appropriate approving agencies.

#### **ARTICLE V**

**Progress Reports:** Upon issuance of a Notice to Proceed or a Task Order, Consultant shall submit progress reports to the Contract Administrator at intervals that are commensurate with the requirements of the tasks and the items of work being performed

and based upon a mutually agreeable schedule. At a minimum, Consultant shall submit progress reports bi-weekly. The reports shall be sufficiently detailed for the 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 circumstances encountered so that remedies can be developed. County's review of these reports will ensure that Consultant's work meets a level of acceptability as determined by the Contract Administrator, and Consultant shall be required to modify its work as necessary to meet that level of acceptability as defined by the Contract Administrator. Separate detail shall be provided for each ongoing item of work. Progress reports shall include the total number of hours worked by Consultant and shall include 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**

**Licenses:** Consultant represents that it is duly licensed in good standing by the State of California to perform the services under this Agreement, and that Consultant shall maintain said licenses in good standing throughout the term of this Agreement.

#### **ARTICLE VII**

**Business License:** The County Business License Ordinance provides that 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 shall comply with all of the requirements of the County Business License Ordinance prior to beginning work under this Agreement and at all times during the term of this Agreement.

#### **ARTICLE VIII**

**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 IX**

**Changes to Agreement:** This Agreement may be amended by mutual consent of the parties hereto. Amendments may be made to permit mutually acceptable changes in the scope, character or complexity of the work if such changes become desirable or necessary as the work progresses. Appropriate extensions of time in case of unavoidable delays and for consideration of warranted adjustments in payment may also be accomplished by amendments to the Agreement. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

## **ARTICLE X**

**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 XI**

**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, 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 XII**

**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.

## **ARTICLE XIII**

**Independent Contractor/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 the terms of this Agreement. Consultant exclusively assumes responsibility for acts of its employees, associates, and subcontractors, 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. 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.

## **ARTICLE XIV**

**Prevailing Wage:** County requires Consultant's services on public works project(s) involving local, state and/or federal 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. In the event of conflict between applicable federal and state provisions, the higher prevailing wage rate will apply. 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 offices of the District Director of Transportation for the district in which the work is situated. Changes, if any, to the general prevailing wage rates will be available at the

same location. The federal minimum wage rates are determined by the United States Secretary of Labor and may be examined at the office described above. 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 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 shall also conform to and be bound by the provisions of Labor Code Sections 1810 through 1815.

## **ARTICLE XV**

**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 XVI**

### **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 at 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 day's 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 XVII

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

With a Copy to:

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

Attn: Tim C. Prudhel,  
Contract Services Officer

or to such other location as County directs.

Notices to Consultant shall be addressed as follows:

Blackburn Consulting  
11521 Blocker Drive, Suite 110  
Auburn, California 95603

Attn.: Patrick F. Fischer, Vice President

or to such other location as Consultant directs.



## **ARTICLE XVIII**

**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, 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, contractors and subcontractors. This duty of Consultant includes the duty of defense, inclusive of that set forth in California Civil Code Section 2778. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement.

## **ARTICLE XIX**

**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 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 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. 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 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 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 general and excess 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 County's Risk Management Division as essential for protection of County.

## **ARTICLE XX**

**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 XXI**

**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. Consultant hereby certifies that neither Consultant, its employees, subconsultants (if any are authorized herein), nor any firm affiliated Consultant providing services under this Agreement prepared the Plans, Specifications and Estimates (PS&E) for any construction project included within this Agreement. An affiliated firm is one which is subject to the control of the same persons through joint-ownership, or otherwise.

Consultant further certifies that neither Consultant, any subconsultants authorized herein (if any), nor any firm affiliated with Consultant, will bid on any construction subcontracts included within any construction contract associated with this Agreement. Additionally, Consultant certifies that no person working under this Agreement is also employed by the construction contractor for any project included within this Agreement.

Any subcontract in excess of \$25,000 entered into as a result of this contract shall contain all of the provisions of this Article.

#### **ARTICLE XXII**

**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 XXIII**

**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 XXIV**

**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 XXV**

**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 XXVI**

**Compliance with Federal and State Requirements:** County may be eligible for Federal assistance or grants as well as for State funds as reimbursement for all or a portion of for the Work to be provided under this Contract. As a requirement of County's use of Federal and State funds should they become available, County is required to comply with certain Federal and State contracting requirements and to extend these requirements to all third party contracts. Consultant shall comply with all applicable provisions of Federal and State regulations, including those required by the Federal Highway Administration (FHWA), Federal Emergency Management Agency (FEMA) and State Office of Emergency Services (OES) regulations and related executive orders regarding the use, expenditure, control, reporting, allowable costs and management of such funds as applicable. Failure of Consultant to comply with any federal or state provision may be the basis for withholding payments for charges made by Consultant and for such other remedies as may be appropriate including termination of this Agreement. Consultant shall further comply with any flow-down or third-party contracting provisions which may be required under the Federal and State regulations and which may apply to Consultant's subcontracts, if any, associated with this Agreement.

## **ARTICLE XXVII**

**Working Office:** Consultant shall establish a working office at a place acceptable to County. The parties hereto acknowledge and agree that Consultant's offices located at 11521 Blocker Drive, Suite 110, Auburn, California 95603 are acceptable to County.

## **ARTICLE XXVIII**

**Cost Principles:** The Federal Acquisition Regulations in Title 48, CFR, Part 31 et seq. are the governing factors regarding allowable elements of cost for all services to be performed under this Agreement.

- A. Consultant shall comply with Office of Management and Budget Circular A-87, Cost Principles for State and Local Government, and with Federal administrative procedures pursuant to 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, and 49 CFR, Chapter 1, Parts 31 et seq., Federal Acquisition Regulations System, insofar as those regulations may apply to Consultant. This provision shall apply to every sub-recipient receiving funds as a Consultant or subconsultant under this Agreement.
- B. Any expenditures for costs for which Consultant has received payment or credit that are determined by subsequent audit to be unallowable under Office of Management

and Budget Circular A-87, 48 CFR, Parts 31 et seq. or 49 CFR, Part 18 are subject to repayment by Consultant to County.

- C. Travel and per diem reimbursements, if applicable, will be allowable as project costs only after those costs are incurred and paid for by Consultant. For the purposes of this Agreement, travel and per diem costs will not be reimbursed for any services performed by Consultant.
- D. Notwithstanding any other provision of this Agreement to the contrary, payments to Consultant for mileage, travel or subsistence expenses, if applicable, for Consultant's staff claimed for reimbursement shall not exceed the lesser of (1) the rates to be paid to County employees under the current Board of Supervisors Travel Policy in effect at the time the expenses are incurred; or (2) the rates authorized to be paid to exempt non-represented State employees under current State Department of Personnel Administration (DPA) rules. If the rates invoiced are in excess of those authorized DPA rates, then Consultant is responsible for the cost difference and any overpayments shall be reimbursed to County on demand. For the purposes of this Agreement, travel and subsistence expenses shall not be reimbursed, and Consultant's hourly billing rates are inclusive of mileage expenses.
- E. Consultant shall establish and maintain accounting systems and records that properly accumulate and segregate funds received under this Agreement by line item. The accounting systems of Consultant shall conform to Generally Accepted Accounting Principles (GAAP), shall enable the determination of incurred costs at interim points of completion, and shall provide support for reimbursement of payment vouchers or invoices.

## **ARTICLE XXIX**

**Audit & Inspection of Records:** Consultant shall maintain and make available to the FHWA, FEMA, State, the California State Auditor, and County or to any duly authorized representative of the United States Department of Transportation, the State or County all books, papers, job cost records, detailed cost estimates, claims, and accounts, including payment, property, payroll, personnel, subconsultant records (if any) and financial records related to or which arise out of the work or under terms of this Agreement. Consultant shall maintain such books, records, data and documents in accordance with generally accepted accounting principles and in accordance with the provisions of Article XXVI, Compliance with Federal and State Requirements and Article XXVIII, Cost Principles above. These books, papers, records, claims and accounts shall be made available for examination during normal business hours and shall be readily available and accessible at Consultant's principal place of business in California, for audit during normal business hours at such place of business. Consultant shall provide office space, photocopies and other assistance to enable audit or inspection representatives to conduct such audits or inspections. This right to audit books and records directly related to this Agreement shall also extend to all subconsultants (if any) authorized under this Agreement. Consultant shall incorporate this provision in any subcontract entered into as a result of this Agreement and shall require its subconsultants (if any) to agree to cooperate with the listed agencies by making all appropriate and relevant project records available to those agencies for audit and copying.

### **ARTICLE XXX**

**Record Retention:** All of Consultant's books, papers, job cost records, detailed cost estimates, claims, and accounts, including payment, property, payroll, personnel, subconsultant (if any) records, and financial records related to or which arise out of the work or under terms of this Agreement shall be retained for access, inspection and/or audit by the FHWA, FEMA, State, County or their duly authorized representatives for at least three (3) years after County's final payment to Consultant under this Agreement. Consultant shall incorporate this provision in any subcontract entered into as a result of this Agreement.

### **ARTICLE XXXI**

**Covenant Against Contingent Fees:** By executing this Agreement, Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working for Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this Agreement. For breach or violation of this warranty, County shall have the right to annul this Agreement without liability or at its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee. The parties hereto have acknowledged this covenant against contingent fees and Consultant has duly executed Exhibit C, marked "Certification of Consultant," and County has duly executed Exhibit D, marked "Certification of Local Agency," both of which exhibits are incorporated herein and made by reference a part hereof.

### **ARTICLE XXXII**

**Design Standards:** Consultant shall perform all services under this Agreement in conformance with applicable Federal, State and local design standards or other standards for work performance stipulated in Article I, Scope of Services or elsewhere in this Agreement.

### **ARTICLE XXXIII**

**Documentation:** Consultant shall document the results of its work to the satisfaction of County and if applicable, the State, FEMA and the FHWA. This may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of the Agreement objectives.

### **ARTICLE XXXIV**

**Patent Rights:** Applicable patent rights provisions described in 41 CFR 1-9.1 regarding rights to inventions are hereby included in this Agreement as applicable. Consultant shall incorporate this provision in its subcontracts, if any, in excess of \$25,000.

### **ARTICLE XXXV**

**Copyrights:** County may permit copyrighting reports or other Agreement products. If copyrights are permitted, FEMA, the FHWA and State shall have the royalty-free non-exclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for government purposes. Consultant shall incorporate this provision in its subcontracts, if any, in excess of \$25,000.

## **ARTICLE XXXVI**

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

## **ARTICLE XXXVII**

**Disadvantaged Business Enterprise (DBE) Considerations:** Consultant must give consideration to DBE firms as specified in 23 CFR 172.5(b) and in Appendix A to Part 26 of 49 CFR, and in Exhibit E marked, "Notice to Bidders/Proposers Disadvantaged Business Enterprise Information," incorporated herein and made by reference a part hereof. Consultant shall ensure that certified DBE firms have the opportunity to participate in the performance of this Contract and Consultant shall take all necessary and reasonable steps for such assurance.

## **ARTICLE XXXVIII**

### **DBE Participation:**

- A. This Agreement is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." It is the policy of County that certified DBE firms shall have the maximum opportunity to participate in the performance of Contracts financed in whole or in part with federal funds. Consultant shall ensure that certified DBE firms, as defined in the Code of Federal Regulations, have the maximum opportunity to participate in the performance of this Contract and shall take all necessary and reasonable steps, as set forth in said Part 26, for such assurance. Consultant, if it obtains DBE participation on this Contract, will assist Caltrans in meeting its federally mandated statewide overall DBE goal.
- B. DBE and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of agreements financed in whole or in part with federal funds. Consultant, subrecipient or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. Consultant shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT- assisted agreements. Failure by Consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as County deems appropriate.
- C. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this Article.
- D. A sample agreement is attached hereto as Exhibit F, marked "Standard Agreement for Subcontractor/DBE Participation," and is incorporated herein and made by reference a part hereof.

## **ARTICLE XXXIX**

### **Nondiscrimination:**

- A. In connection with its performance under this Agreement, Consultant shall comply

with all applicable nondiscrimination statutes and regulations during the performance of this Agreement including, but not limited to the following: Consultant, its employees, subconsultants (if any) and representatives shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age, or sex; Consultant shall, unless exempt, comply with the applicable provisions of the Fair Employment and Housing Act (Government Code, Sections 12900 et seq.) and applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Sections 7285.0 et seq.); the applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 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, its employees, subconsultants (if any) and representatives shall give written notice of their obligations under this clause as required by law.

- B. Where applicable, Consultant shall include the nondiscrimination and compliance provisions in any of its agreements that affect or are related to the services performed herein.
- C. Consultant's signature executing this Agreement shall provide any certifications necessary under the federal laws and the laws of the State of California, including but not limited to Government Code Section 12990 and Title 2, California Code of Regulations, Section 8103.

## **ARTICLE XL**

### **Debarment and Suspension Certification:**

- A. Consultant's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that Consultant has complied with Title 49, Code of Federal Regulations, Part 29, Debarment and Suspension Certificate, which certifies that it or any person associated therewith in the capacity of the owner, partner, director, officer or manager, is not currently under suspension, debarment, voluntary exclusion or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted or had a civil judgment rendered against it by a court of competent jurisdiction in any manner involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to County.
- B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Consultant responsibility. Disclosures must indicate to whom exceptions apply, initiating agency and dates of action.

## **ARTICLE XLI**

### **Prohibition of Expending County, State or Federal Funds for Lobbying:**

- A. Consultant, by its signature herein, certifies to the best of its knowledge and belief that:



1. No state, federal or County appropriated funds have been paid, or will be paid by-or-on behalf of Consultant to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.
  2. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; the Consultant shall complete and submit "Standard Form-LLL, Disclosure Form to Report Lobbying," in accordance with its instructions, which form and instructions are attached hereto as Exhibit G and are incorporated herein and made by reference a part hereof.
- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- C. Consultant also agrees by signing this document that it shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000, and that all such subrecipients shall certify and disclose accordingly.

## **ARTICLE XLII**

### **Disputes:**

- A. Any dispute, other than audit, concerning a question of fact arising under this Contract that is not disposed of by agreement shall be decided by a committee consisting of the County's Contract Administrator and the Director of Transportation, or designee, which may consider written or verbal information submitted by Consultant.
- B. Not later than thirty (30) days after completion of all work under the Contract, Consultant may request review by the Director of Transportation of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute, nor its consideration by the committee will excuse Consultant from full and timely performance in accordance with the terms of this Contract.

## **ARTICLE XLIII**

**Inspection of Work:** Consultant shall permit County, the state, FEMA and the FHWA to review and inspect the project activities and files at all reasonable times during the performance period of this Contract, including review and inspection on a daily basis.

## **ARTICLE XLIV**

### **Safety:**

- A. Consultant shall comply with OSHA regulations applicable to Consultant regarding necessary safety equipment or procedures. Consultant shall comply with safety instructions issued by County's Safety Officer and other County representatives. Consultant's personnel and any subconsultants authorized herein shall wear hard hats and safety vests at all times while working on construction project sites.
- B. Pursuant to the authority contained in Section 591 of the Vehicle Code, County has determined that there are areas that may be within the limits of certain projects that are open to public traffic. Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14 and 15 of the Vehicle Code. Consultant shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.
- C. Consultant must have a Division of Occupational Safety and Health (CAL-OSHA) permit(s), as outlined in California Labor Code Sections 6500 and 6705, prior to the initiation of any practices, work, method, operation, or process related to the construction or excavation of trenches which are five (5) feet or deeper.
- D. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this Article.

## **ARTICLE XLV**

### **Claims Filed by County's Construction Contractors:**

- A. If claims are filed by County's construction contractors relating to work performed by Consultant's personnel or subconsultants (if applicable), and additional information or assistance from Consultant's personnel or subconsultants is required in order to evaluate or defend against such claims, Consultant agrees to make its personnel and/or subconsultants available for consultation with County's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.
- B. Consultant's personnel and subconsultants, if any, that County considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from County. Consultation or testimony will be reimbursed at the rates that are indicated in Exhibit B of this Agreement.
- C. Services of Consultant's personnel or subconsultants (if any are authorized herein) in connection with County's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this agreement in order to finally resolve the claims.

- D. Any subcontract in excess of \$25,000 entered into as a result of this contract shall contain all of the provisions of this Article.

#### **ARTICLE XLVI**

**National Labor Relations Board Certification:** In accordance with Public Contract Code Section 10296, Consultant hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Consultant within the immediately preceding two-year period, because of Consultant's failure to comply with an order of a federal court that orders Consultant to comply with an order of the National Labor Relations Board.

#### **ARTICLE XLVII**

**Evaluation of Consultant:** Consultant's performance will be evaluated by County. A copy of the evaluation will be sent to Consultant for comments. The evaluation together with the comments shall be retained as part of the contract record.

#### **ARTICLE XLVIII**

**Rebates, Kickbacks or Other Unlawful Consideration:** Consultant warrants that this Contract was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any County employee. For breach or violation of this warranty, County shall have the right in its discretion; to terminate the Contract without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

#### **ARTICLE XLIX**

**Consultant Assurances:** By executing this Agreement, Consultant certifies that it:

1. Will give County, the awarding agency, the Comptroller General of the United States, and if appropriate, the state, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
2. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gains.
3. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.), which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
4. Will comply with all federal statues relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683 and 1685-1686) which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794) which prohibits discrimination

on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107) which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 93-255) as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616) as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for federal assistance is being made, and (j) the requirements on any other nondiscrimination statute(s) which may apply to the application.

5. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.O. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved state management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.O. 93-205).

6. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

7. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and preservation of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

8. Will comply with Standardized Emergency Management (SEMS) requirements as stated in the California Emergency Services Act, Government Code, Chapter 7 of Division 1 of Title 2, Section 8607.1(e) and CCR Title 19, Sections 2445, 2446, 2447 and 2448.

9. Will assist County in causing to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984 and the Single Audit Act Amendments of 1996.

10. Will comply with all applicable requirements of all other state and federal laws, Executive Orders, regulations and policies governing this Project.

11. Will not make any award or permit any award (contract or subcontract) to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549 and 12689, "Debarment and Suspension."
12. Will abide by all administrative, contractual or legal remedies in instances where Consultant violates or breaches contract terms, and will comply with sanctions and penalties as the Contract Administrator deems appropriate.
13. Will comply with the termination for cause and termination for convenience provisions of the Contract including the manner by which such termination may be effected and the basis for settlement afforded by those provisions.
14. Will comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Chapter 60).
15. Will comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3).
16. Will comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented in Department of Labor regulations (29 CFR part 3).
17. Will comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5).
18. Will comply with County's requirements and regulations as directed by the Contract Administrator pertaining to: (a) reporting; (b) patent rights with respect to any discovery or invention which arises or is developed in the course of or under this Contract; and (c) copyrights and rights in data.
19. Will comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857 [h]), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).
20. Will comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. : 94-163, 89 Stat. 871).

Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this Article.

## **ARTICLE L**

**Contract Administrator:** The County Officer or employee with responsibility for administering this Agreement is Richard W. Shepard, P.E., Director, Department of Transportation, or successor.

**ARTICLE LI**

**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 LII**

**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 LIII**

**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 & Contract Administrator Concurrence:**

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

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

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

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

Board of Supervisors  
"County"

Attest:  
Cindy Keck  
Clerk of the Board of Supervisors

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

**-- BLACKBURN CONSULTING --**

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
Patrick F. Fischer  
Vice President  
"Consultant"

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
Corporate Secretary