

**TRC Engineers, Inc.**

**Project Planning and Design Services**

**AGREEMENT FOR SERVICES # AGMT 05-798**

**Amendment I**

**THIS AMENDMENT I** to that Agreement for Services # AGMT 05-798 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 Imbsen & Associates, Inc., a corporation duly qualified to conduct business in the State of California, whose principal place of business is 9912 Business Park Drive, Suite 130, Sacramento, California 95827, and TRC Engineers, Inc., a corporation duly qualified to conduct business in the State of California, whose principal place of business is 21 Griffin Road North, Windsor, Connecticut 06095; whose California headquarters address is 21 Technology Drive, Irvine, California 92618; and whose local office address is 9912 Business Park Drive, Suite 130, Sacramento, California 95827, (hereinafter referred to as "Consultant");

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

**WHEREAS**, Imbsen & Associates, Inc. has been engaged by County to provide project planning and engineering design services for the Department of Transportation pursuant to Agreement for Services # AGMT 05-798, incorporated herein and made by reference a part hereof; and

**WHEREAS**, Imbsen & Associates, Inc. has transferred its engineering employees to TRC Engineers, Inc. effective April 1, 2007 and the parties hereto desire to amend their Agreement to reflect this change; and

**WHEREAS**, Imbsen & Associates, Inc. and TRC Engineers, Inc. have requested that County accept work under the Agreement by TRC Engineers, Inc.; and

**WHEREAS**, Imbsen & Associates, Inc. will remain liable for all obligations, covenants and conditions, and/or liabilities for services already performed under the terms and conditions of Agreement for Services # AGMT 05-798, as approved by the Board of Supervisors and executed on November 8, 2005; and

**WHEREAS**, TRC Engineers, Inc. will assume all of Imbsen & Associates, Inc.'s duties, responsibilities and obligations under the Agreement, including providing outstanding duties and responsibilities associated with project planning and engineering design services under the terms and conditions of Agreement for Services # AGMT 05-798 and this Amendment; and

**WHEREAS**, TRC Engineers, Inc., acknowledges and agrees that all existing indemnity and

insurance obligations will remain in full force and effect for the duration of Agreement for Services # AGMT 05-798, and as thereafter required by the Agreement and this Amendment; and

**WHEREAS**, this Amendment I to the Agreement, as requested by Imbsen & Associates, Inc. and TRC Engineers, Inc. will not alter or delay the services to be performed under the Agreement nor result in an increase in the agreed upon compensation; and

**WHEREAS**, County will accept this Amendment I and will consent to the assignment of the subject Agreement by Imbsen & Associates, Inc. and the assumption of the Agreement by TRC Engineers, Inc. on the condition that TRC Engineers, Inc. shall fulfill all of the terms and conditions of this Amendment I and the original Agreement for Services # AGMT 05-798; and

**WHEREAS**, the parties hereto desire to amend Agreement for Services # AGMT 05-798 to clarify the Task Order requirements and to add construction support services to the scope of work, amending **ARTICLE I Scope of Services** and adding Amended Exhibit A; and

**WHEREAS**, the parties hereto desire to amend Agreement for Services # AGMT 05-798 to extend the expiration date of the Agreement, amending **ARTICLE II Term**; and

**WHEREAS**, the parties hereto desire to amend Agreement for Services # AGMT 05-798 to clarify County's invoicing requirements, amending **ARTICLE III Compensation for Services**; and

**WHEREAS**, the parties hereto desire to amend Agreement for Services # AGMT 05-798 to modify the requirements for progress reporting, amending **ARTICLE IV Progress Reports**; and

**WHEREAS**, the parties hereto desire to amend Agreement for Services # AGMT 05-798 to modify the ownership of data requirements, amending **ARTICLE VI Ownership of Data**; and

**WHEREAS**, the parties hereto desire to amend Agreement for Services # AGMT 05-798 to revise the assignment and delegation requirements of the Agreement, amending **ARTICLE X Assignment and Delegation**; and

**WHEREAS**, the parties hereto desire to amend Agreement for Services # AGMT 05-798 to update the notices recipients, amending **ARTICLE XV Notice to Parties**; and

**WHEREAS**, the parties hereto desire to amend Agreement for Services # AGMT 05-798 to modify the indemnity provision for services rendered after December 31, 2006, amending **ARTICLE XVI Indemnity**; and

**WHEREAS**, the parties hereto desire to amend Agreement for Services # AGMT 05-798 to update the insurance requirements, amending **ARTICLE XVII Insurance**; and

**WHEREAS**, the parties hereto desire to amend Agreement for Services # AGMT 05-798 to update the requirements regarding conflicts of interest , amending **ARTICLE XIX Interest of Consultant**; and

**WHEREAS**, the parties hereto desire to amend Agreement for Services # AGMT 05-798 to correct a typographical error in the Article number referring to the Cost Principles Article, amending **ARTICLE XXVII Audit & Inspection of Records**; and

**WHEREAS**, the parties hereto desire to amend Agreement for Services # AGMT 05-798to update the Disadvantaged Business Enterprise requirements, amending **ARTICLE XXXV Disadvantaged Business Enterprise (DBE) Considerations** and adding **Amended Exhibit E**; and

**WHEREAS**, the parties hereto desire to amend Agreement for Services # AGMT 05-798 to include the Standard Agreement for Subcontractor/DBE Participation, amending **ARTICLE XXXVI DBE Participation Requirements** and adding **Exhibit F**; and

**WHEREAS**, the parties hereto desire to amend Agreement for Services # AGMT 05-798to include certain additional nondiscrimination and fair employment practices provisions, amending **Article XXXVII Nondiscrimination** and adding **Exhibits G and H and Appendices A through D to Exhibit H**; and

**WHEREAS**, the parties hereto desire to amend Agreement for Services # AGMT 05-798 to change County's Contract Administrator, amending **ARTICLE XXXVIII Contract Administrator**; and

**WHEREAS**, the parties hereto desire to amend Agreement for Services # AGMT 05-798 to identify Consultant's Project Manager, adding **ARTICLE XLII Consultant's Project Manager**; and

**WHEREAS**, the parties hereto desire to amend Agreement for Services # AGMT 05-798 to include County business license requirements, adding **ARTICLE XLIII Business License**; and

**WHEREAS**, the parties hereto desire to amend Agreement for Services # AGMT 05-798 to include the required nonlobbying certification for federal-aid contracts, adding **ARTICLE XLIV Prohibition of Expending County, State or Federal Funds for Lobbying** and adding **Exhibit I**; and

**WHEREAS**, the parties hereto desire to amend Agreement for Services # AGMT 05-798 to include requirements for compliance with federal Disability Acts, adding **ARTICLE XLV Compliance with Disability Acts**;

**NOW, THEREFORE**, the parties hereto agree to the assignment of the subject Agreement from Imbsen & Associates, Inc to TRC Engineers, Inc. effective upon full execution of this Amendment and agree that for all work performed subsequent to the effective date of this Amendment, Imbsen & Associates, Inc. shall no longer be a party to the Agreement and, to that end, the term "Consultant," as used in the Agreement, shall hereby be amended to include only TRC Engineers, Inc. Accordingly, as of the effective date of this Amendment, TRC Engineers, Inc., shall be solely responsible for executing the work required under the Agreement and this Amendment in accordance with all of the terms and conditions set forth in the original Agreement and this Amendment. However, Imbsen & Associates, Inc. shall remain liable, jointly and severally, for all work performed under the Agreement prior to the effective date of this Amendment and, for such work, shall remain bound by the indemnity and insurance obligations it assumed in the original Agreement. Additionally, the parties do hereby agree that Agreement for Services # AGMT 05-798 shall be amended to read as follows:

## **ARTICLE I**

**Scope of Services:** Consultant agrees to furnish personnel, subconsultants and services necessary to provide project planning and engineering services including, but not limited to, those tasks and deliverables as identified in Amended Exhibit A, marked "Amended Scope of Work," incorporated herein and made by reference a part hereof.

Consultant's services are to be provided specifically in support of Highway Bridge Replacement and Rehabilitation (HBRR) and Highway Bridge Program (HBP) funded projects included in County's five-year capital improvement program, and generally in support of other County activities as required. The actual number of issues addressed, levels of service provided and associated levels of effort will vary depending on project conditions, means and methods employed, and the levels of support required by County as described in the individual Task Orders issued pursuant to this Agreement.

Before proceeding with any work 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 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, subconsultants (if required), any task-related mileage budget, if applicable, and any necessary permits on a task-by-task basis. Following the meeting, Consultant shall provide the Contract Administrator with a written scope of work, 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 the 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, and no payment will be made for amounts in excess of the not-to-exceed amount of the Task Order.

Funding from various local, state and federal sources may be utilized to fund certain assignments to be performed under this Agreement and as a consequence, the

requirements (other than those incorporated herein below) of the funding agencies related to those grants will be incorporated into the provisions of the specific Task Orders issued for those assignments.

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 XV, 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 exceeds the cumulative total of the not-to-exceed Contract amount.

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. Where Consultant produces drawings as a part of a Task Order, they shall be produced in AutoCAD Land Development Desktop 2i or latest release. Newer versions of software may be used if approved by the County's Contract Administrator. Failure to submit the requested deliverables in the format required shall be grounds for termination of the Agreement, as provided in Article XIV, Default, Termination, and Cancellation.

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 subconsultant for services rendered under this Agreement.

## **ARTICLE II**

**Term:** This Agreement shall become effective when fully executed by both parties hereto and shall expire upon the later of County's recordation of the Notice of Completion for the Green Valley Road at Tennessee Creek Bridge Replacement Project or resolution of all construction claims, if any, associated with that Project.

## **ARTICLE III**

**Compensation for Services:** For services provided herein, including all deliverables described in individual Task Orders issued pursuant to this Agreement and including the progress reports required in Article IV, Progress Reports, below, County agrees to pay Consultant monthly in arrears. Payment shall be made within thirty (30) days following County receipt and approval of itemized invoice(s) detailing services rendered.

For the purposes hereof, the billing rates shall be in accordance with Exhibit B, marked "Hourly Billing Rates," incorporated herein and made by reference a part hereof. Exhibit B

lists rates that are valid through December 31, 2007. For any billing rate revisions necessary after December 31, 2007, Consultant shall submit a new proposed Hourly Billing Rate Schedule which shall require written approval and acceptance by County's Contract Administrator, prior to the new rates becoming effective.

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 amend the Task Order.

The total amount of this Agreement, as amended, inclusive of all costs, Task Orders and all work of subconsultants and expenses shall not exceed \$520,000.

Reimbursement for mileage expenses to Consultant for Consultant's staff or for any subconsultants authorized herein, if applicable, shall not exceed the lesser of (1) the rates to be paid to County employees under the current Board of Supervisors Travel Policy at the time the mileage expenses are incurred; or (2) the rates authorized to be paid to exempt non-represented (rank and file) State employees under the current State Department of Personnel Administration (DPA) rules at the time the mileage expenses are incurred. References to the DPA rates and Consultant's responsibilities for cost differences and any overpayments are more fully described in Article XXVI, Cost Principles, Section D below. Travel costs (i.e., overnight lodging, meals, parking, airfare, bridge tolls, etc.) will not be reimbursed for any services performed under this Agreement by Consultant or by any authorized subconsultants.

Itemized invoices shall follow the format specified by County and shall reference this Agreement number, the County-provided work order number and Task Order number both on their faces and on any enclosures or backup documentation. Consultant shall bill County for only one Task Order per invoice. Consultant shall attach a copy of each notification to proceed required under the provisions of Article I, Scope of Services, and copies of any progress reports required under the provisions of Article IV, 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. Any invoices that include subconsultant costs shall be accompanied by backup documentation to substantiate Consultant's cost for the subconsultant services being billed. 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.

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 XIV, Default, Termination, and Cancellation.

#### **ARTICLE IV**

**Progress Reports:** Upon issuance of 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 once per month. 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 Task Order. Progress reports shall include the total number of hours worked by Consultant and any authorized subconsultants 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**

**Ownership of Data:** Upon completion or earlier termination of all Services under this Agreement, ownership and title to all reports, documents, plans, tracings, maps, survey notes and sketches, charts, specifications, estimates, bid documents, computations, compilations and any and all other materials or data produced or obtained as part of this Agreement will automatically be vested in County without restriction or limitation on their use, and no further agreement will be necessary to transfer ownership to County. Copies may be made for Consultant's records, but shall not be furnished to others without written authorization from County. Such deliverables shall be deemed works made for hire and all rights in copyright therein shall be retained by County. Consultant shall furnish County all necessary copies of data, including data stored in electronic format, needed to complete the review and approval process of the Services provided under this Agreement.

#### **ARTICLE X**

**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, County may, through its Contract Administrator, authorize Consultant to utilize specific subconsultants for the particular tasks, work and deliverables identified in individual Task Orders issued pursuant to this Agreement. Said authorization and approval shall be sought and obtained by Consultant prior to subconsultants' commencement of any work under this Agreement.

Consultant shall require each subconsultant, to the extent of the work to be performed by the subconsultant, to be bound to Consultant by the terms of this Agreement and to assume toward Consultant all of the obligations and responsibilities that Consultant, by this Agreement, assumes toward County.

If a subcontract for work or services to be performed by such firms exceeds \$25,000, the subcontract shall contain all of the required provisions of this Agreement.

For the Green Valley Road at Tennessee Creek Bridge Replacement Project (Project #77109), Consultant shall be authorized to utilize the subconsultants identified in Imbsen & Associates, Inc.'s Proposal dated September 20, 2005. Changes to the subconsultants identified in Imbsen's September 20, 2005 Proposal, if any, shall be specified in advance in the individual Task Orders approved by the Contract Administrator and issued pursuant to this Agreement.

Consultant is responsible for performing the work required under this Agreement in a manner acceptable to County. Notwithstanding any provision to the contrary, at no time shall County be obligated to pay separately for subconsultant services.

#### **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 shall be addressed as follows:

To County:

With a copy to:

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

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

Attn.: Richard W. Shepard,  
Director of Transportation

Attn: Tim C. Prudhel,  
Contract Services Officer

or to such other location as County directs.

Notices to Consultant shall be addressed as follows:

TRC Engineers, Inc.  
9912 Business Park Drive, Suite 130  
Sacramento, California 95827

Attn.: Mark A. Imbriani, P.E.,  
Project Manager

or to such other location as Consultant directs.



## **ARTICLE XVI**

**Indemnity:** For services rendered pursuant to this Agreement for the period commencing with the effective date of the Agreement and continuing through December 31, 2006, the following provision shall apply:

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.

For services rendered pursuant to this Agreement on or after January 1, 2007, the following provision shall apply:

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 XVII**

**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.

In addition, Consultant shall ensure that all subconsultants authorized pursuant to the individual Task Orders issued under this Agreement shall maintain workers' compensation, general liability, auto liability and professional liability insurance as specified above and shall provide County with proof of same.

#### **ARTICLE XIX**

**Interest of Consultant:** Consultant covenants that Consultant presently has no personal interest or financial interest, and shall not acquire the 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, nor any firm affiliated with Consultant will bid on any construction contract for any construction project resulting from this Agreement. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.

Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, for any construction project resulting from this Agreement.

Consultant further certifies that neither Consultant, nor any firm affiliated with Consultant, will bid on any construction subcontracts included within the construction contract. Additionally, Consultant certifies that no person working under this contract 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 XXVII**

**Audit & Inspection of Records:** Consultant shall maintain and make available to the FHWA, 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, 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 XXIV, Compliance with Federal and State Requirements and Article XXVI, Cost Principles, herein. 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 first-tier subconsultants authorized under this Agreement.

## **ARTICLE XXXV**

**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 Amended 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 XXXVI**

### **DBE Participation Requirements:**

- 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 XXXVII**

### **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 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 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. The Congress of the United States, the Legislature of the State of California and the Governor of the State of California, each within their respective jurisdictions, have prescribed certain nondiscrimination requirements with respect to contract and other work financed with public funds. Consultant agrees to comply with the requirements of Exhibit G, marked "Fair Employment Practices Addendum" and the requirements of Exhibit H, marked "Nondiscrimination Assurances," including Appendices A through D to Exhibit H, both of which Exhibits and the Appendices to Exhibit H are

incorporated herein and made by reference a part hereof. Consultant further agrees that any agreement entered into by Consultant with a third party for the performance of project-related work shall incorporate Exhibits G and H and Appendices A through D to Exhibit H as essential parts of such agreement to be enforced by that third party as verified by County.

- D. 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 XXXVIII**

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

The Agreement is further amended to add the following Articles:

#### **ARTICLE XLII**

**Consultant's Project Manager:** Consultant designates Mark A. Imbriani, P.E., 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 XLIII**

**Business License:** County's Business License Ordinance provides that it is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of El Dorado County without possessing a County business license unless exempt under County Ordinance Code Section 5.08.070. Consultant warrants and represents that it 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 XLIV**

##### **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 I 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 XLV**

**Compliance with Disability Acts:** Consultant shall comply with: (a) Section 504 of the Rehabilitation Act of 1973 which prohibits discrimination on the basis of disability in federally assisted programs; (b) the Americans with Disabilities Act (ADA) of 1990 which prohibits discrimination on the basis of disability irrespective of funding; and (c) all applicable regulations and guidelines issued pursuant to both the Rehabilitation Act and the ADA.

Except as herein amended, all other parts and sections of Agreement for Services # AGMT 05-798 shall remain unchanged and in full force and effect.

**Requesting Department and Contract Administrator Concurrence:**

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

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

**IN WITNESS WHEREOF**, the parties hereto have executed this Amendment I to Agreement for Services # AGMT 05-798 on the dates indicated below, the latest of which shall be deemed to be the effective date of this Amendment.

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

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

Board of Supervisors  
"County"

Attest:  
Cindy Keck  
Clerk of the Board of Supervisors

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

**-- IMBSEN & ASSOCIATES, INC. --**

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
Mark A. Imbriani, P.E.,  
Vice President  
"Assignor"

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
Robert Schamber, P.E.,  
Corporate Secretary

**-- TRC ENGINEERS, INC. --**

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
Leonard Sequeira  
Senior Vice President  
"Assignee" / "Consultant"

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
Martin H. Dodd  
Corporate Secretary