

**Johal Enterprises Inc.**

**Hauling Services for Road Maintenance Projects**

**AGREEMENT FOR SERVICES # AGMT 08-1782**

**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 Johal Enterprises Inc., a corporation duly qualified to conduct business in the State of California, whose address is 7731 Bradshaw Road, Sacramento, California 95829 (hereinafter referred to as "Contractor");

**R E C T A L S**

**WHEREAS**, County has determined that it is necessary to obtain a Contractor to provide trucking services to transport road materials for various Department of Transportation (hereinafter referred to as "Department") maintenance projects; and

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

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

**WHEREAS**, County has determined that the provision of such services provided by Contractor 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 Contractor mutually agree as follows:

**ARTICLE I**

**Scope of Services:** Contractor agrees to furnish personnel, services, trucks and equipment necessary to transport road materials from various points of purchase to designated stockpile locations or work sites, as requested by the Department. The dollar amount for each specific hauling assignment shall be quoted in advance on a per-job basis, and shall be approved by the Contract Administrator, prior to commencement of the work for each assignment. All work and services provided under this Agreement shall be performed in accordance with the terms and conditions identified in Exhibit A, marked "Trucking Requirements," incorporated herein and made by reference a part hereof.

**ARTICLE II**

**Term:** This Agreement shall become effective when fully executed by both parties hereto and shall expire twelve (12) months thereafter.

### **ARTICLE III**

**Compensation for Services:** For services provided herein, County agrees to pay Contractor monthly in arrears. Payment shall be made 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 "Fee Schedule," incorporated herein and made by reference a part hereof.

The total amount of this Agreement shall not exceed \$150,000, inclusive of all expenses.

Itemized invoices shall follow the format specified by County and shall reference this Agreement number both on their faces and on any enclosures or back-up documentation. 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.

### **ARTICLE IV**

**Changes to Agreement:** This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

### **ARTICLE V**

**Contractor 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, Contractor shall act as Contractor only to County and shall not act as Contractor 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 Contractor's responsibilities to County during the term hereof.

### **ARTICLE VI**

**Confidentiality:** Contractor 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. Contractor, and all Contractor'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 VII**

**Assignment and Delegation:** Contractor is engaged by County for its unique qualifications and skills as well as those of its personnel. Contractor 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 VIII**

**Independent Contractor/Liability:** Contractor 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. Contractor exclusively assumes responsibility for acts of its employees and associates as they relate to services to be provided under this Agreement during the course and scope of their employment.

Contractor 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 Contractor or its employees.

## **ARTICLE IX**

**Licenses:** Contractor warrants and represents it maintains a valid Motor Carrier Permit issued by the California Department of Motor Vehicles. Contractor's Motor Carrier Permit number is CA 0345294. Each driver performing hauling services under this Agreement must possess a Class "A" commercial California driver license, in good standing, in accordance with the California Vehicle Code and in compliance with all federal regulations.

## **ARTICLE X**

**Drug and Alcohol Testing:** Contractor warrants that it is in compliance with the Federal Motor Carrier Safety Administration's (FMCSA) alcohol and drug testing rules for drivers who possess commercial driver licenses.

## **ARTICLE XI**

**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 XII**

### **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 Contractor.
- C. **Ceasing Performance:** County may terminate this Agreement in the event Contractor ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. **Termination or Cancellation without Cause:** County may terminate this Agreement in whole or in part upon seven (7) calendar days' written notice by County for any reason. If such prior termination is effected, County will pay for satisfactory services rendered prior to the effective dates, as set forth in the Notice of Termination provided to Contractor, 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, Contractor 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 XIII**

**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  
2441 Headington Road  
Placerville, California 95667

Don Spear,  
Highway Superintendent

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 Contractor shall be addressed as follows:

Johal Enterprises Inc.  
7731 Bradshaw Road  
Sacramento, California 95829

Ravi Johal, President

or to such other location as Contractor directs.

#### **ARTICLE XIV**

**Indemnity:** Contractor 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 or consequential losses, which are claimed to, or in any way arise out of, or are connected with Contractor's services, operations or performance hereunder, regardless of the existence or degree of fault or negligence on the part of County, Contractor, subcontractor(s) and employee(s) of any of these, except for the sole, or active negligence of County, its officers and employees, or as expressly provided by statute. This duty of Contractor to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

#### **ARTICLE XV**

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

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Contractor 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 Contractor in performance of the Agreement.
- D. In the event Contractor 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 Contractor 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 Contractor 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, Contractor shall immediately provide a new certificate of insurance as evidence of the required insurance coverage. In the event Contractor 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 Contractor 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.

Contractor'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 Contractor'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 Contractor 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 Contractor's obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.
- N In the event Contractor cannot provide an occurrence policy, Contractor 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 XVI**

**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 Contractor 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 XVII**

**Interest of Contractor:** Contractor covenants that Contractor 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. Contractor further covenants that in the performance of this Agreement no person having any such interest shall be employed by Contractor.

#### **ARTICLE XVIII**

**California Residency (Form 590):** All independent Contractors 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. Contractor 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 Contractor during the term of this Agreement. This requirement applies to any agreement/contract exceeding \$1,500.

#### **ARTICLE XIX**

**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 XX**

**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. Contractor 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 XXI**

**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 XXII**

**Year 2000 Compliance:** Contractor 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, Contractor will replace or correct the failing component with compliant hardware or software immediately, at no cost to County.

#### **ARTICLE XXIII**

**Contract Administrator:** The County Officer or employee with responsibility for administering this Agreement is Don Spear, Highway Superintendent, Department of Transportation, or successor.

#### **ARTICLE XXIV**

**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 XXV**

**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 XXVI**

**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.



**Contract Administrator Concurrence:**

By: Don Spear  
Don Spear  
Highway Superintendent  
Department of Transportation

Dated: 7/1/08


**Requesting Department Concurrence:**

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

Dated: 7/1/08

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:   
**RON BRIGGS** *Vice Chairman*  
Board of Supervisors  
"County"

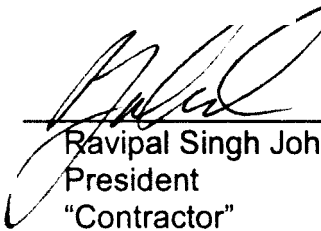
Dated: 7-1-08

Attest:  
Cindy Keck  
Clerk of the Board of Supervisors

By:   
Deputy Clerk

Dated 7-1-08

-- JOHAL ENTERPRISES INC

  
Ravipal Singh Johal  
President  
"Contractor"

Dated: 7/1/08

  
Corporate Secretary

Dated: 7/1/08

## **Johal Enterprises Inc.**

### **Exhibit A**

#### **Trucking Requirements**

Contractor shall perform all work and services under this Agreement in accordance with the following requirements:

##### **Drivers**

Drivers shall be experienced in driving 5 axle transfer trucks and 3 axle dump trucks, and materials hauling and materials transfer operations. Drivers shall be experienced in the operation of their trucks and equipment and in all procedures related to operating trucks and equipment with a paving machine. Drivers shall obtain proper directions to job locations in order to arrive promptly at the designated delivery location.

##### **Equipment**

Equipment shall be safe and in good working order. Truck and trailer boxes shall be cleaned daily before loading at the asphalt plant. Trucks shall be equipped with a full set of tools and equipment required for the performance of the work, including, but not limited to, shovels and asphalt release agent sprayers. Truck and trailer boxes shall be in good working order with latches that are secure. Transfer rails and any equipment aiding the transfer of boxes shall be in good working order. Truck brakes shall be adjusted equally daily to prevent wheel lockup.

##### **Asphalt Plant Procedures**

Drivers shall:

- arrive at the plant with clean trailer boxes;
- load at the pre-determined time established by the Highway Superintendent, or his designee;
- proceed to the weight scales immediately after loading, receive a weight tag and proceed to the designated job site without delay.

##### **Transfer Location Procedures**

Drivers shall:

- disconnect and transfer trailers at the pre-determined transfer location and proceed to the job site immediately;
- park trucks off of the roadway whenever possible and place cones around any truck or trailer remaining in the roadway;
- return to the transfer location after emptying both boxes, secure boxes and trailers and return to the asphalt plant if instructed to do so by the Highway Superintendent, or his designee, or sign out to end the shift;
- leave the transfer location free of asphalt, trash or any other debris left by trucks or drivers.

## **Job Site Procedures**

Drivers shall:

- drive safely and professionally in and around job site;
- follow instructions given by the Highway Superintendent or his designee;
- not turn around at any private driveway or private road;
- not track dirt or other debris over freshly oiled tack surface unless directed to do so by the Highway Superintendent or his designee;
- not drive on freshly laid asphalt unless directed to do so by the Highway Superintendent, or his designee;
- remain in the truck at all times while on the job site except as required to repair the truck, or other equipment or as directed by the Highway Superintendent or his designee;
- proceed to the transfer location without delay after emptying boxes at the job site.

**Johal Enterprises Inc.**

**Exhibit B**

**Fee Schedule**

Services shall be billed at the base billing rate indicated below plus or minus the fuel surcharge percentage based upon the Weekly Retail On-Highway Diesel Prices for California posted at the website for the Energy Information Administration (EIA), Official Energy Statistics at: <http://tonto.eia.doe.gov/oog/info/wohdp/diesel.asp>. The EIA Weekly Retail On-Highway Diesel Prices are updated each Monday. The surcharge shall be calculated based upon the diesel price for the week the services are performed.

Should the EIA cease publication of the Weekly Retail On-Highway Diesel Prices for California, Contractor and County's Contract Administrator shall agree in writing to a new index to be used for determining a mutually acceptable fuel surcharge. Should Contractor and County fail to agree on a mutually acceptable index within thirty (30) days from the date the EIA ceases publication of the Weekly Retail On-Highway Diesel Prices for California, County may terminate this Agreement without prejudice.

**Base Billing Rate**

Transfer Dump Truck .....	\$83.11 per hour
10-Wheel Dump Truck .....	\$76.11 per hour

Rates will be billed to the nearest one-tenth (1/10<sup>th</sup>) of an hour, calculated on a round trip basis.

**Fuel Surcharge**

A cost of \$4.75 per gallon of diesel fuel shall be considered the baseline price per gallon, or a 0% surcharge.

Any increase over or decrease under the baseline fuel price per gallon of \$4.75 will result in a 1% fuel surcharge or fuel surcharge credit for every ten cent increase or decrease in the price per gallon of diesel based upon the EIA Weekly Retail On-Highway Diesel Prices for California. **No allowance will be made, nor will the results be rounded, for differences of less than ten cents per gallon.**

The increase over, or decrease under, the cost per gallon of \$4.75 will be determined as follows:

- 1 EIA Weekly Retail On-Highway Diesel Prices for California for the week the service is performed (updated each Monday);
2. Less baseline rate of \$4.75;

3. Equals increase or decrease in the EIA Weekly Retail On-Highway Diesel Prices for California compared to baseline rate;
4. 1% fuel surcharge or fuel surcharge credit for every full ten cent increase or decrease calculated in number 3 above.

**Sample Fuel Surcharge Calculation:**

EIA Weekly Retail On-Highway Diesel Prices for California as of 6/30/08	\$4.928
Less baseline price per gallon	<u>\$4.750</u>
Increase in diesel fuel price per gallon	\$ .178
Rounding <b>down</b> to 10 cents (1% for every <b>full</b> 10 cent increase)	
1% surcharge for every 10% increase results in 1% surcharge.	

**Sample Billing Rate Calculation:**

Base Billing Rate for Transfer Dump Truck	\$ 83.11 per hour
1% Calculation	<u>    x.1%</u>
1% Fuel Surcharge Amount	\$     .83
 Base Billing Rate	 \$ 83.11 per hour
Add fuel surcharge amount (above)	\$ <u>   .83</u> per hour
Adjusted Billing Rate	\$ 83.94 per hour