

HDR Construction Control Corporation
Construction Engineering and Construction Support Services
for the
Durock Road/Business Drive Intersection Signalization Project
AGREEMENT FOR SERVICES # AGMT 10-53008

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 HDR Construction Control Corporation, a Nebraska corporation duly qualified to conduct business in the State of California, whose principal place of business is 8404 Indian Hills Drive, Omaha, Nebraska 68114 and whose local office address is 2365 Iron Point Road, Suite 300, Folsom, California 95630, (hereinafter referred to as "Consultant");

RECITALS

WHEREAS, County has determined that it is necessary to obtain a consultant to assist its Department of Transportation with construction engineering and construction support services for its Durock Road/Business Drive Intersection Signalization Project;

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;

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;

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 County's Durock Road/Business Drive Intersection Signalization 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 personnel, materials, equipment and services necessary to provide construction engineering and construction support services, and other project delivery support services generally including, but not limited to, those tasks identified in Exhibit A, marked "Base Scope of Work," incorporated herein and made by reference a part hereof. Deliverables for the specific items of work to be

provided under the Base Scope of Work shall be as specified therein, shall be prepared using the software described in Section F of this Article and shall be submitted in accordance with the timeframes specified in Exhibit A hereto. Modifications to the deliverables required, to the completion times specified in Exhibit A hereto or to the software requirements may only be made in accordance with the prior written approval of County's Contract Administrator as specified in the individual Work Orders issued pursuant to this Agreement.

County's Contract Administrator will issue Consultant written Work Orders specifying the items of work to be assigned to Consultant under the Base Scope of Work. Each written Work order shall include a description of the work to be performed; the required deliverables, including reports or other documents to be supplied in connection with the work assignment; the timeframes for performing the work and for submitting the deliverables and a not-to-exceed cost to complete the work. Work Orders may be issued for some or all of the items of work identified in Exhibit A hereto and may include entire items of work or only portions of some items of work. Each Work Order issued for Base Scope items of work will also describe any exceptions to the personnel or other modifications to the items of work or deliverables identified in Exhibit A hereto. Consultant shall not commence work until receiving the written Work Order for each item of work assigned. No payment will be made for any work performed prior to the date specified in the written Work Order.

- C. Contingency Provisions - In the event that construction of the Project is significantly delayed or if the performance period of the construction contract for the Project is extended, and at the Contract Administrator's sole discretion, Consultant may be required to perform additional work on certain elements of Base Scope items of work that could not be anticipated in the amounts budgeted for the Base Scope. In these instances, the Contract Administrator may elect to issue Work Order Amendments to Consultant for such contingency work utilizing some or all of the funds budgeted for such contingency work under this Agreement. These contingency provisions shall apply only to Base Scope items of work.

Should Consultant's services be required under the contingency provisions of this Agreement, County's Contract Administrator will issue Consultant written Work Order Amendments specifying the Base Scope items of work or portions thereof that will be modified as a result of a significant delay or extension of time under County's construction contract. Each written Work Order Amendment shall include a description of the work to be modified; the required additional deliverables, if any, including reports or other documents to be supplied in connection with the contingency work; the revised timeframes for performing the work and for submitting the deliverables and a revised not-to-exceed cost to complete the work. Each Work Order Amendment issued for contingency work, if any, will also describe any exceptions to the personnel or other modifications to the items of work identified in Exhibit A hereto. Consultant shall not commence any contingency work until receiving the written Work Order Amendment for each contingency item of work assigned. No payment will be made for any contingency work performed prior to the date specified in the written Work Order Amendment.

All of the tasks assigned to Consultant under the Base Scope of Work or the tasks, if any, assigned to Consultant under the Contingency provisions of this Agreement, shall be the responsibility of Consultant, unless specifically described as a task or item of work to be provided by County as set forth herein below.

- D. In addition to the specific services identified in Exhibit A, "Base Scope of Work" hereto or as assigned to Consultant as contingency work hereunder, this Agreement may also include Optional Tasks, as subsequently identified during the course of work under this Agreement by the Contract Administrator. Such Optional Tasks may supplement, expand or modify the Base Scope of Work or may include, but not be limited to, tasks that are deemed critical by the Contract Administrator to the furtherance of completing the Project, including items of work necessary to support the construction activities for 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 such assignment in individual Task Orders to be issued in accordance with this Agreement.

The specific services for each assignment for Optional Tasks 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 other pertinent requirements on a task-by-task basis. Following the meeting, Consultant shall provide County's Contract Administrator with a written scope of work for the Optional Task, a schedule including a list of tasks with completion dates, a target completion date for the overall scope of work, and a not-to-exceed cost itemization to complete the work (resulting in a 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 and full execution 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 issued for Optional Tasks, if any, shall be in accordance with the 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 issued which extends beyond the expiration date of this Agreement, or which exceeds the cumulative total of the not-to-exceed dollar amount allocated for Optional Tasks under this Agreement.

- E. County shall review Consultant's progress at key points as specified in the Base Scope of Work for the Project and in each Task Order issued for Optional Tasks, if any. Milestone reviews shall be performed for the specific products and deliverables listed in the Base Scope of Work and in each Task Order as applicable. Milestones may only be changed by written agreement between County's Contract Administrator and Consultant's Resident Engineer.

- F. If a submittal or Task Order deliverable is required to be an electronic file, Consultant shall produce the file using Microsoft Office 2003 applications (specifically, MS Word, MS Project and MS Excel). Signed reports shall be submitted in Adobe portable document format (PDF). Electronic AutoCAD 2010 or AutoCAD Civil 3D 2010 format shall be used for submittal of plans or other similar documents as specified by the Contract Administrator. All maps will be produced in MicroStation and shall be submitted in that format. All digital photographs shall be submitted on CD-ROMs in jpeg format with a minimum resolution of 2816 X 2112. All deliverables shall be submitted in language, format and design that are compatible with and completely transferable to County's computer and engineering applications and that are acceptable to County's Contract Administrator. Newer versions of software may be used and other types of software used for analytical purposes may be authorized if approved in advance of the submittal by County's Contract Administrator.

Consultant shall submit all deliverables to County's Contract Administrator in accordance with completion time schedules identified in Exhibit A hereto or as specified in the individual Task Orders for Optional Tasks, if any, that are issued pursuant to this Agreement. Failure to submit the required deliverables in the formats required shall be grounds for termination of the Agreement, as provided in Article XVI, Default, Termination, and Cancellation herein.

ARTICLE II

Term: This Agreement shall become effective when fully executed by both parties hereto and shall expire upon the later of ninety (90) days after County's recordation of the Notice of Acceptance for the Project, or the resolution of all construction claims, if any, associated with the Project.

ARTICLE III

Compensation for Services: For services provided herein, including all of the deliverables required by the individual Work Orders issued pursuant to this Agreement and in the individual Task Orders for Optional Tasks, if any are issued pursuant to this Agreement, and including the progress reports required by Article V, 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 invoices detailing the 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.

For the purposes of budgeting the items of work identified in Exhibit A, Base Scope of Work, herein, and for establishing the not-to-exceed amount for contingency work, if any, associated with Base Scope items of work and for establishing the total amount for Optional Tasks that may be assigned under this Agreement, the maximum allowable billing amounts (not-to-exceed amounts) for each item of work and for contingency work and Optional Tasks are described in Exhibit C, marked "Cost Proposal," incorporated herein and made by reference a part hereof. The amounts indicated in Exhibit C represent the composition of the total not-to-exceed budget for the various items of work identified therein. In the performance of the scope of services to be provided under this Agreement, Consultant may request to reallocate the expenses listed in Exhibit C among the various Base Scope items of work identified therein, subject to the Contract Administrator's written approval. In no event shall the not-to-exceed amount of the Base Scope of Work, inclusive of the amount specified for "Contingency," be exceeded, nor shall the amounts identified as Contingency or Optional Tasks be exceeded, nor shall the total not-to-exceed dollar amount of the Contract be exceeded.

The total amount for services to be provided under the Base Scope of Work identified in Exhibit A hereto, exclusive of any contingency work, shall not exceed \$140,636.84 inclusive of all Work Orders, costs and expenses.

The total amount for all services, if any, to be provided under the Contingency Provisions of this Agreement shall not exceed \$15,000 inclusive of all Work Order Amendments, costs and expenses.

The total amount for services to be provided under the Base Scope of Work identified in Exhibit A hereto, inclusive of all contingency work, shall not exceed \$155,636.84 inclusive of all Work Orders, Work Order Amendments, costs and expenses.

The total amount for all Optional Tasks, if any, which may be assigned in accordance with this Agreement, shall not exceed \$18,578.16 inclusive of all Task Orders and all costs and expenses. The not-to-exceed amount of each individual Task Order so assigned shall not exceed the amount specified in each Task Order, unless County's Contract Administrator and Consultant amend the Task Order in writing.

The total amount of this Agreement, including all of the services assigned under the Base Scope of Work; all of the services, if any, assigned under the Contingency Provisions of this Agreement and including all Optional Tasks, if any, which may be assigned; and inclusive of all Work Orders, Work Order Amendments, costs, expenses and Task Orders shall not exceed \$174,215.

Itemized invoices shall follow the format specified by County and shall reference this Agreement number, the County-supplied Work Order Number and, if applicable, the County-supplied Task Order number, both on their faces and on any enclosures or backup documentation. If Task Orders for Optional Tasks are issued pursuant to the provisions of this Agreement, Consultant shall bill County for only one (1) Task Order per invoice.

Consultant shall attach copies of any progress reports required under the provisions of Article V, Progress Reports herein that relate to the services being billed to every invoice 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.

In the event that Consultant fails to deliver, in the formats specified, the deliverables, documentation and progress reports 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, documentation or progress reports are received, or proceed as set forth below in Article XVI, Default, Termination, and Cancellation herein.

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 Local Assistance Procedures Manual* 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.

All of Consultant's services and deliverables must adhere to current County, Caltrans and federal requirements for project development and shall be made available to County and to Caltrans for review and approval at the appropriate stages or upon request by the Contract Administrator.

Consultant has full responsibility for the accuracy and completeness of the deliverables, reports and such other documents that may be required for the tasks or 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: Consultant shall submit written progress reports to the Contract Administrator at intervals that are commensurate with the requirements of the items of work and tasks being performed and based upon a mutually agreeable schedule. At a minimum, Consultant shall submit written progress reports once per month. The reports shall be sufficiently detailed for the Contract Administrator 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. Each progress report shall also include the specific narratives as required by the various items of work and more fully described in Exhibit A hereto. 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 certified or licensed in good standing by the State of California to perform the services contemplated under this Agreement, and that Consultant shall maintain said certificates and licenses in good standing throughout the term of this Agreement.

ARTICLE VII

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

ARTICLE VIII

Consultant's Resident Engineer: Consultant designates Greg Zeiss, P.E., as its Resident Engineer for services to be provided under this Agreement. Consultant's Resident Engineer, or a 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 Resident Engineer shall be responsible for all matters related to Consultant's personnel and operations under this Agreement including, but not limited to (1) assigning qualified personnel to perform the required work and to prepare the deliverables required by the Agreement; and (2) reviewing, monitoring, training and directing Consultant's personnel.

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 or to Work Orders or Task Orders issued pursuant to the Agreement. Said amendments shall become effective only when in writing and when fully executed by duly authorized officers of the parties hereto. There shall be no change in Consultant's Resident Engineer without the prior written approval of County's Contract Administrator.

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:

- A. Consultant shall maintain the confidentiality and privileged nature of all records, including billing records, all financial, statistical, personal, technical, or other data and information relative to County's operations 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 such confidential information, other than to County's Department of Transportation for the purpose of, and in the performance of, this Agreement.
- B. Permission to disclose information on one occasion shall not authorize Consultant to further disclose such information, or disseminate the same on any other occasion.
- C. Consultant shall not comment publicly to the press or any other media regarding this Agreement or County's actions on the same, except to County's staff, Consultant's own personnel involved in the performance of this Agreement, at public hearings or in response to questions from a Legislative committee.
- D. Consultant shall not issue any news release or public relations item of any nature whatsoever, regarding work performed or to be performed under this Agreement without prior review of the contents thereof by County, and receipt of the Contract Administrator's written permission.
- E. All information related to any construction estimates prepared or otherwise obtained in the performance of this Agreement is confidential, and shall not be disclosed by Consultant to any entity other than to County.
- F. In accordance with the provisions of the Freedom of Information Act (FOIA) and

County's grant funding requirements, nothing in this Article shall be construed to limit public access to grant or agreement records, except when such records would have been exempted from disclosure pursuant to "Freedom of Information" regulations (5 U.S.C. 552).

- G. 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. For the purposes of this Agreement, no subconsultants are authorized. If this Agreement is later amended to allow Consultant to utilize subconsultants, that Amendment will specify that, (1) Consultant shall require each subconsultant, to the extent of the work to be performed by the subconsultant, to be bound to Consultant by all of the terms of this Agreement and to assume toward Consultant all of the obligations and responsibilities that Consultant, by this Agreement, assumes toward County; and (2) any subcontract entered into as a result of an Amendment to this Agreement allowing the use of subconsultants shall contain all of the required provisions of this prime Contract.

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 subconsultants, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

Consultant shall be responsible for performing the work under this Agreement in a safe, professional, skillful, and workmanlike manner, in accordance with good engineering practices, 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 and/or state funds to which prevailing wage requirements may apply. As a consequence, Consultant shall comply with all applicable state prevailing wage rates, statutes, rules and regulations then in effect. Consultant shall use the general prevailing wage rates determined by the Director of Industrial Relations for the county in which the work is to be done, which are available at the 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.

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

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

As required under the provisions of Labor Code Section 1776, Consultant shall keep accurate payroll records. Certified copies of all payroll records shall be made available for inspection at all reasonable hours at Consultant's principal office.

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 or any Work Order or Task Order issued pursuant to this Agreement, in whole or in part upon seven (7) calendar days' written notice by County for any reason. If such prior termination is effected, County will pay for satisfactory services rendered prior to the effective dates, as set forth in the Notice of Termination provided to Consultant, and for such other services which County may agree to in writing as necessary for contract resolution. In no event, however, shall County be obligated to pay more than the not-to-exceed amount of the Work Order or Task Order or the total amount of the contract, as applicable. Upon receipt of a Notice of Termination, Consultant shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the Notice directs otherwise. In the event of termination 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
 2441 Headington Road
 Placerville, California 95667
 Attn.: Kris Payne,
 Supervising Civil Engineer

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:

HDR Construction Control Corporation
 2365 Iron Point Road
 Suite 300
 Folsom, California 95630
 Attn.: Timothy R. Fleming, P.E.,
 Senior 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 the State of California (State) and their 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 and State 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 the 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 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 shall disclose any financial, business, or other relationship with County that may have an impact upon the outcome of this Contract, or any ensuing County construction project. Consultant shall also provide County with a list of current clients who may have a financial interest in the outcome of this Contract, or any ensuing County construction project, which will follow.

Consultant hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this Agreement.

Consultant hereby certifies that neither Consultant, its employees, nor any firm affiliated with Consultant providing services on this Project prepared the Plans, Specifications, and Estimates for any construction project included within this Contract. 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, 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 Contract.

Except for subcontractors whose services are limited to materials testing, no subcontractor who is providing service on this Contract shall have provided services on the design of any project included within this Contract. For the purposes of this Agreement, no subcontractors are authorized.

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

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 XXV

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 XXVI

Compliance with State and Local Agency Requirements: County may rely on state funds and on local agency or other grant funds for all or a portion of the funding for the services to be provided herein. As a requirement of County's use of state and local agency grant funds, County is required to comply with certain contracting requirements and to extend those requirements to all third party contracts. Consultant shall comply with all applicable provisions of federal, state and local agency regulations, including grant funding requirements, regulations, and related executive orders regarding the use, expenditure, control, reporting, allowable costs and management of such funds. The following Office of Management and Budget (OMB) Circulars, as applicable, and as implemented by various parts of the Code of Federal Regulations (CFR), are incorporated by reference and made a part of this Agreement:

2 CFR Part 225, "Cost Principles for State, Local, and Indian Tribal Governments (formerly OMB Circular A-87)"

Circular A-133, revised June 26, 2007, "Audits of States, Local Governments, and Non-Profit Organizations"

Copies of the OMB Circulars are available on the internet at:
<http://www.whitehouse.gov/omb/circulars/index.html>.

Failure of Consultant to comply with any federal, state or local agency 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, state or local agency 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 2365 Iron Point Road, Suite 300, Folsom, California 95630 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 2 CFR Part 225, Cost Principles for State and Local Governments, 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 2 CFR Part 225, 48 CFR, Parts 31 et seq. or 49 CFR, Part 18 are subject to repayment by Consultant to County.
- C. Travel and subsistence (per diem) reimbursements, if applicable, and third-party contract reimbursements to subconsultants will be allowable as Project costs only after those costs are incurred and paid for by Consultant.
- D. Notwithstanding any other provision of this Agreement to the contrary, payments to Consultant for travel and subsistence (per diem) and mileage expenses, if applicable, for Consultant's staff or for subconsultants 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 rank and file state employees under the then current State Department of Personnel Administration (DPA) rules. If the rates invoiced are in excess of these authorized rates, then Consultant is responsible for the cost difference and any overpayments shall be reimbursed to County upon demand. For the purposes of this Agreement, no separate reimbursement for Consultant's mileage or travel and subsistence (per diem) expenses (which are included in Consultant's hourly billing rates) shall be allowed.
- 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 and Inspection of Records: For the purpose of making audit, examination, excerpts and transcriptions, Consultant shall maintain and make available to the State, the California State Auditor, the Comptroller General of the United States and County or to any duly authorized representative of the United States Department of Transportation, the State or County all books, documents, papers, records, 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 XXVI, Compliance with State and Local Agency 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 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 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 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 State, the California State Auditor and County or their duly authorized representatives for at least four (4) years after County's final payment to Consultant under this Agreement. The rights of access in this section shall not be limited to any required retention period but shall last as long as the records are kept. Consultant shall incorporate this provision in any subcontract entered into as a result of this Agreement.

ARTICLE XXXI

Design Standards: Consultant shall perform all services under this Agreement in conformance with applicable federal, state and local design standards and as stipulated in Article IV, Standards for Work hereinabove.

ARTICLE XXXII

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

ARTICLE XXXIII

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 XXXIV

Copyrights: County may permit copyrighting reports or other Agreement products. If copyrights are permitted, the 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 XXXV

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

ARTICLE XXXVI

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. The Governor of the State of California and the Legislature 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 D, marked "Fair Employment Practices Addendum," 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 Exhibit D (with the third party's name replacing Consultant) as an essential part of such agreement.
- 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.

- D. Where applicable, Consultant shall include these nondiscrimination and compliance provisions in any of its agreements that affect or are related to the services performed herein.

ARTICLE XXXVII

Compliance with Disability Act: Consultant shall comply with the Americans with Disabilities Act (ADA) of 1990 which prohibits discrimination on the basis of disability and shall comply with all applicable regulations and guidelines issued pursuant to the ADA.

ARTICLE XXXVIII

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 XXXIX

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 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 Agreement, or upon completion of any individual item of work under the Base Scope of Work herein or under any individual Task Order for Optional Tasks, if any, issued pursuant to this Agreement, 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.

- D. Consultant's failure to follow this dispute resolution procedure shall constitute a waiver of such claims and a bar to further proceedings.

ARTICLE XL

Inspection of Work: Consultant and any subconsultants authorized herein shall permit County and the state 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 XLI

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 XLII

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, 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 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 same rates that are being paid for Consultant's personnel services under Exhibit B hereto.

ARTICLE XLIII

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 XLIV

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 XLV

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 XLVI

Contracting with Small and Minority Firms and Women's Business Enterprises: It is a national policy to award a fair share of contracts to small and minority business firms. County is strongly committed to the objectives of this policy and encourages all Consultants to take affirmative steps to ensure such fairness.

- A. Consultant shall take all necessary affirmative steps to assure that minority firms, and women's business enterprises are used when possible.
- B. Affirmative steps shall include:
 - 1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - 2. Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
 - 3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business and women's business enterprises;
 - 4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business and women's business enterprises;
 - 5. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce as appropriate, and

6. Requiring the prime consultant, if subcontracts are to be let, to take the affirmative steps listed in Section B 1 through 5 above.

Contractor shall take all necessary affirmative steps to assure that minority firms, women's business enterprises and labor surplus area firms are used when possible.

ARTICLE XLVII

Enforcement: In addition to any other remedies County may have, pursuant to 49 CFR Part 18.43, the following enforcement provisions shall apply to this Agreement:

- A. *Remedies for noncompliance.* If Consultant materially fails to comply with any term of this Agreement, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, County may take one or more of the following actions, as appropriate in the circumstances:
 1. Temporarily withhold cash payments pending correction of the deficiency by Consultant or more severe enforcement action by County;
 2. Disallow (that is, deny use of funds) all or part of the cost of the activity or action not in compliance;
 3. Wholly or partly suspend or terminate the current funding for Consultant's program (or activities under the Agreement);
 4. Withhold further awards (funds) for the program (or activities under the Agreement); or
 5. Take other remedies that may be legally available.
- B. *Hearings, appeals.* In taking an enforcement action, County will provide Consultant an opportunity for such hearing, appeal, or other administrative proceeding to which Consultant is entitled under any statute or regulation applicable to the action involved.
- C. *Effects of suspension and termination.* Costs of Consultant resulting from obligations incurred by Consultant during a suspension or after termination of an award (or this Agreement) are not allowable unless County expressly authorizes them in the notice of suspension or termination or subsequently. Other Consultant costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:
 1. The costs result from obligations which were properly incurred by Consultant before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable; and,
 2. The costs would be allowable if the award (or Agreement) were not suspended or expired normally at the end of the funding period in which the termination takes effect.

D. *Relationship to debarment and suspension.* The enforcement remedies identified in this Article, including suspension and termination, do not preclude Consultant from being subject to "Debarment and Suspension" under E.O. 12549 (see Article XXXVIII, Debarment and Suspension Certification, hereinabove).

ARTICLE XLVIII

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 XLIX

Contract Administrator: The County Officer or employee with responsibility for administering this Agreement is Kris Payne, Supervising Civil Engineer, Construction Division, Department of Transportation, or successor.

ARTICLE L

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 LI

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 LII


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: _____
Kris Payne
Supervising Civil Engineer
Construction Division
Department of Transportation

Dated: _____

Requesting Department Concurrence:

By: 
James W. Ware, P.E.
Director of Transportation

Dated: 10/7/10

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:
Suzanne Allen de Sanchez
Clerk of the Board of Supervisors

By: _____ Dated: _____
Deputy Clerk

-- HDR CONSTRUCTION CONTROL CORPORATION --

By: _____ Dated: _____
Timothy R. Fleming, P.E.
Senior Vice President
"Consultant"

By: _____ Dated: _____
Louis Pachman
Corporate Secretary

HDR Construction Control Corporation

Exhibit A

Base Scope of Work

Base Scope of Work Table of Contents

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GENERAL PROVISIONS:

The work under this Base Scope of Work will be performed and/or managed by the HDR Construction Control Corporation (HDR) Resident Engineer (HDR RE) with the assistance of either an HDR inspector or a County-provided inspector (hereinafter on-site inspector), as specified in the individual Work Orders issued pursuant to this Agreement.

The Durock Road/Business Drive Intersection Signalization Project (Project) files shall be managed and administered by the HDR RE.

DELIVERABLES:

Unless otherwise indicated below, the HDR RE shall submit hard copy deliverables via US Mail or in-person delivery and electronic copy deliverables via email to County’s Contract Administrator (CA). All deliverables, whether hard copy or electronic versions, shall be prepared and submitted in accordance with the computer and software requirements of Section F of Article I, Scope of Services, of this Agreement. All digital photographs shall be submitted on CD-ROMs in jpeg format with a minimum resolution of 2816 X 2112. The CA’s current address is 2441 Headington Road, Placerville, CA 95667 and the CA’s email address is kris.payne@edcgov.us. Changes to the CA’s physical or email address will be transmitted to HDR in accordance with the provisions of Article XVII, Notice to Parties, of this Agreement.

Unless otherwise directed by the CA, the Project files shall be located at HDR's local office, shall be made available to County upon request and shall be delivered to the CA at the completion of the Project in accordance with the provisions of Item of Work F herein.

Item of Work A. Construction Inspection

In accordance with the CA's directives and the current edition of the *Caltrans Construction Manual*, the HDR RE or on-site inspector shall perform construction inspection activities for the Project including, but not limited to, the following:

1) Construction Inspection:

The HDR RE with the assistance of the on-site inspector shall check the quality and quantity of the work performed by County's Construction Contractor and any subcontractors and any utility companies. The HDR RE shall ensure County's Construction Contractor, subcontractor and utility company compliance with the construction contract documents, copies of which shall be provided to the HDR RE by County. Items to be inspected shall include, but shall not be limited to, construction materials, methods, techniques and sequences. The HDR RE shall ensure that the on-site inspector prepares Daily Inspection Reports for the Project each day that County's Construction Contractor, subcontractors or a utility company works on site. The CA shall provide the Daily Inspection Report form to the HDR RE. The Daily Inspection Reports shall document items including, but not limited to, the following:

- a. The date and the day of the week;
- b. Labor (names of personnel, names of their respective companies and their respective labor classifications);
- c. Equipment (type, make, model, company that owns or is using the equipment and County's Construction Contractor's equipment identification numbers);
- d. Weather;
- e. Number of hours that labor and equipment were used on respective contract items of work;
- f. Number of hours that labor and equipment were used on respective CCOs;
- g. Number of hours that labor and equipment were idle;
- h. Specific times (e.g., 7:30 a.m. – 11:30 a.m., 12:30 p.m. – 4:00 p.m.) that the on-site inspector was on site;
- i. Narrative section that includes all pertinent observations and discussions that occurred that day, a general description of the work performed that day and lists and locations of the construction contract item quantities constructed that day.

Deliverables: The HDR RE or on-site inspector shall place the completed originals of the previous week's Daily Inspection Reports in the Project files before noon every Monday.

2) As-Built Plans:

During construction, the HDR RE shall compile as-built plans by making notes and sketches on a set of Project plans, which will be provided to the HDR RE by County, that show changes made to the contract plans that did not require CCOs. In addition, the HDR RE shall incorporate changes implemented by CCOs into the contract plans by making notes and sketches on the as-built plans or by placing supplemental or replacement sheets included with the CCOs directly into the as-built plans.

Deliverables: The HDR RE shall keep as-built plans on file in the Project files.

3) Digital Photography:

The HDR RE or on-site inspector shall take digital photographs of the progression of work on a daily basis.

Deliverables: The HDR RE or on-site inspector shall place digital photographs on HDR's secure, dedicated computer on a weekly basis. The HDR RE or on-site inspector shall place copies of the digital photographs on CD-ROMs and place the CD-ROMs in the Project files on a monthly basis.

Item of Work B. Construction Administration

In accordance with the CA's directives and the current edition of the *Caltrans Construction Manual*, the HDR RE or on-site inspector shall provide construction administration services including, but not limited to, the following:

1) Project Coordination:

The HDR RE shall serve as County's point of contact with County's Construction Contractor, utility companies, design engineers, local residents and business owners and all other Project stakeholders and shall generate and collect data and correspondence pertaining to these Project coordination activities.

Deliverables: The HDR RE or on-site inspector shall place all data and correspondence pertaining to Project coordination in the Project files within five (5) working days of sending or receiving such correspondence.

2) Records Maintenance:

The HDR RE shall maintain the Project files in an organized, efficient, logical manner that is consistent with the CA's directives and the current edition of the *Caltrans Construction Manual*.

Deliverables: The HDR RE shall ensure that all Project filing is performed on at least a weekly basis, except filing that is required on a more frequent basis as specified elsewhere in this Agreement, in the individual Work Orders issued or in the individual Task Orders, if any, issued for Optional Tasks pursuant to this Agreement.

3) Correspondence:

The HDR RE shall prepare all Project-related correspondence including, but not limited to, letters, emails, memoranda and reports sent to all the Project stakeholders including, but not limited to, County's Construction Contractor, utility companies, design engineers, local residents and local businesses.

Deliverables: When requested by the CA, the HDR RE shall provide copies of any Project-related correspondence to the CA via email or fax, as directed by the CA. The HDR RE or on-site inspector shall place hard copies of all correspondence in the Project files within one (1) working day of creating or receiving such correspondence.

4) Weekly Meetings with Construction Contractor:

The HDR RE shall facilitate and attend meetings with County's Construction Contractor on a weekly basis. The HDR RE or on-site inspector shall generate a meeting agenda and minutes for each meeting. Items covered at each meeting shall include, but not be limited to, upcoming schedule, status of submittals, CCOs, Requests for Information (RFIs), current issues on the Project and overall progress of the Project. The HDR RE may invite other stakeholders to the meetings when appropriate.

Deliverables: The HDR RE or on-site inspector shall place meeting agendas in the Project files within two (2) working days before each meeting date and the HDR RE or on-site inspector shall place meeting minutes in the Project files within two (2) working days after each meeting date.

5) Special Coordination Meetings:

When circumstances warrant, or at the direction of the CA, the HDR RE shall facilitate special meetings to discuss items including, but not limited to, special construction activities, construction impacts on traffic and local businesses, coordination with utility companies and scheduling of extended road closures. The HDR RE shall generate a meeting agenda and minutes for each meeting.

Deliverables: The HDR RE or on-site inspector shall place meeting agendas in the Project files within two (2) working days before each meeting date and the HDR RE or on-site inspector shall place meeting minutes in the Project files within two (2) working days after each meeting date.

6) Schedule Management:

The HDR RE shall verify County's Construction Contractor's compliance with all schedule requirements contained in the construction contract documents. The HDR RE shall monitor and review the Construction Contractor's progress relative to the Construction Contractor's schedule. By consulting with the CA, negotiating with County's Construction Contractor and enforcing the requirements contained in the construction contract documents, the HDR RE shall minimize delays caused by issues including, but not limited to, right-of-way delays, utility work, CCOs, inclement weather and unforeseen conditions. The HDR RE shall notify County's Construction Contractor and the CA when County's Construction Contractor fails to keep pace with its construction schedule.

Deliverables: The HDR RE shall place all data and correspondence pertaining to schedule management in the Project files within five (5) working days of creating or receiving such data or correspondence. HDR's monthly progress reports to the CA as required by Article V, Progress Reports, of this Agreement shall include a narrative describing County's Construction Contractor's progress relative to its construction schedule. These narratives shall include discussions of the factors that have impacted or that may impact County's Construction Contractor's progress.

7) Labor Compliance:

The HDR RE shall verify that County's Construction Contractor submits certified payroll data in accordance with the CA's directives, the current edition of the *Caltrans Construction Manual* and the requirements contained in the construction contract documents. The HDR RE shall review County's Construction Contractor's certified payroll data for compliance with the construction contract documents and State and Federal labor compliance regulations.

Deliverables: The HDR RE shall place all data and correspondence pertaining to labor compliance in the Project files within five (5) working days of creating or receiving such data or correspondence. The HDR RE shall place County's Construction Contractor's certified payroll submittals in the Project files within one (1) week of receipt from the Construction Contractor. The HDR RE shall notify County's Construction Contractor of any certified payroll issues via email or letter and shall provide copies of such emails or letters to the CA within two (2) working days of discovering the issues.

8) Payment Recommendations:

In accordance with the construction contract documents, the CA's directives and the current edition of the *Caltrans Construction Manual*, the HDR RE shall generate monthly progress pay estimates to be used by County to pay County's Construction Contractor. The CA shall provide the format for the monthly progress pay estimates to the HDR RE. The HDR RE shall base the monthly progress pay estimates upon

quantity calculation sheets for each contract item that show the calculations, measurements or estimates made to support payment. The CA shall provide the format for the quantity calculation sheets to the HDR RE. The HDR RE shall inform County's Construction Contractor of quantities for each item being paid each month prior to the HDR RE finalizing the monthly progress pay estimates so that any disputes regarding the amounts to be paid can be negotiated by the HDR RE and County's Construction Contractor.

Deliverables: The HDR RE shall place all data and correspondence pertaining to payment recommendations in the Project files within five (5) working days of creating or receiving such data or correspondence. The HDR RE shall submit progress pay estimates to the CA on or before the 22nd of every month. If the 22nd falls on a weekend or a holiday, then the HDR RE shall submit the progress pay estimate to the CA on the first working day thereafter. Each of HDR's monthly progress reports to the CA as required by Article V, Progress Reports, of this Agreement shall include a narrative that discusses the Project's fiscal status including, but not limited to, total amounts paid to date on contract items and CCOs and an analysis of the Project's contingency balance.

9) Submittal Management:

As submittals are received by the HDR RE from County's Construction Contractor, the HDR RE or on-site inspector shall enter information for each submittal into a submittal log including, but not limited to, date received, submittal description, party responsible for review, response due date, actual response date and submittal approval/rejection status. When HDR is not responsible for the submittal review, the HDR RE shall perform an initial review for submittal completeness and shall then forward the submittal to the party responsible for review of the submittal or return it to County's Construction Contractor for modification and resubmittal. When HDR is responsible for the submittal review, the HDR RE shall review the submittal and respond in a timely manner consistent with the construction contract documents, the CA's directives and the current edition of the *Caltrans Construction Manual*.

Deliverables: The HDR RE or on-site inspector shall place all data pertaining to submittals (including, but not limited to, submittals, analysis data or calculations, correspondence and a copy of the submittal log) in the Project files within five (5) working days of creating or receiving such data. The HDR RE shall review all of County's Construction Contractor's submittals and when HDR is responsible for the submittal review, the HDR RE shall respond via email or letter (as appropriate and as directed by the CA) within the timeframes contained in the construction contract documents. When HDR is not responsible for the submittal review, the HDR RE shall perform an initial review for submittal completeness, ensure that the submittal is logged by either the on-site inspector or the HDR RE, and forward the submittal to the party responsible for review or return it to County's Construction Contractor for modification and resubmittal within one (1) working day of receipt of the submittal from County's Construction Contractor.

10) RFIs:

As RFIs are received from County's Construction Contractor, the HDR RE or on-site inspector shall enter the date received into a RFI log. The RFI log shall contain information for each RFI including, but not limited to, date received, RFI description, party responsible for review, target response date, actual response date and RFI open/closed status. When HDR is not responsible for the RFI review, the HDR RE shall perform an initial review for RFI clarity and completeness and shall then forward the RFI to the party responsible for review or return it to County's Construction Contractor for modification and resubmittal. When HDR is responsible for the RFI review, the HDR RE shall review the RFI and respond to County's Construction Contractor within five (5) working days of RFI receipt from County's Construction Contractor.

Deliverables: The HDR RE or on-site inspector shall place all data and correspondence pertaining to RFIs in the Project files within five (5) working days of creating or receiving such data or correspondence. The HDR RE shall review all of County's Construction Contractor's RFIs and when HDR is responsible for the RFI review, the HDR RE shall respond to County's Construction Contractor via email or letter (as appropriate and as directed by the CA) within five (5) working days of RFI receipt from County's Construction Contractor. When HDR is not responsible for the RFI review, the HDR RE shall perform an initial review for RFI clarity and completeness, ensure that the RFI is logged by either the on-site inspector or the HDR RE, and forward the submittal to the party responsible for review of the RFI or return the submittal to County's Construction Contractor for modification and resubmittal within one (1) working day of receipt of the RFI from County's Construction Contractor.

11) CCOs:

When the HDR RE believes a CCO is warranted, the HDR RE shall discuss the situation with the CA and shall obtain the CA's written concurrence that the CCO is necessary. After receiving the written concurrence from the CA that a CCO is necessary, the HDR RE shall generate a CCO and a CCO transmittal memorandum in accordance with the construction contract documents, the CA's directives and the current edition of the *Caltrans Construction Manual*.

Deliverables: The HDR RE shall place each CCO and all data pertaining to CCOs (including, but not limited to, County's Construction Contractor's cost proposals, correspondence, cost analyses and design information) in the Project files within five (5) working days of creating or receiving such data. The HDR RE shall email or hand deliver each CCO to County's Construction Contractor for its signature within two (2) working days of receiving the required written concurrence from the CA.

12) Notices of Potential Claim (NOPC):

The HDR RE shall endeavor to resolve contractual issues at the lowest level possible through negotiations with County's Construction Contractor. When it becomes apparent that a NOPC is going to be filed, the HDR RE shall immediately notify the CA. The HDR RE shall keep records of all NOPC-related data including, but not limited to, Daily Inspection Reports, letters, emails, written records of telephone conversations and pictures in separate subcategories of file Category 62, Disputes, (in accordance with the current edition of the *Caltrans Construction Manual*) specific to each NOPC. The HDR RE shall require County's Construction Contractor to comply with all requirements in the construction contract documents relative to NOPCs. The HDR RE or on-site inspector shall log the status of all NOPC documentation received. All of the HDR RE's responses to County's Construction Contractor regarding NOPCs shall be reviewed and approved by the CA prior to the HDR RE's transmittal of the responses to County's Construction Contractor.

Deliverables: The HDR RE or on-site inspector shall place all data and correspondence pertaining to NOPCs in the Project files within five (5) working days of creating or receiving such data or correspondence.

Item of Work C. Construction Engineering

In accordance with the CA's directives and the current edition of the *Caltrans Construction Manual*, the HDR RE shall provide construction engineering services including, but not limited to, the following:

- 1) Shoring and excavation plan review, analysis, and responses to County's Construction Contractor;
- 2) Calculation, analysis, and review of temporary and finished elevations;
- 3) Development, analysis and review of revisions to the construction contract documents for incorporation into CCOs;
- 4) Analysis of Portland cement concrete and asphalt concrete mix designs;
- 5) Shop drawing and working drawing review, analysis and responses to County's Construction Contractor.

Deliverables: The HDR RE shall place all data, calculations and correspondence pertaining to construction engineering in the Project files within five (5) working days of creating or receiving such data, calculations or correspondence.

Item of Work D. Water Pollution Control

In accordance with the CA's directives and the current edition of the *Caltrans Construction Manual*, the HDR RE shall provide water pollution control services including, but not limited to, the following:

- 1) The HDR RE shall verify County's Construction Contractor's compliance with all water pollution control requirements contained in the construction contract documents;
- 2) The HDR RE shall verify County's Construction Contractor compliance with County's Construction Contractor's approved SWPPP. The HDR RE shall verify that any updates to County's Construction Contractor's approved SWPPP are submitted, reviewed and approved in accordance with the requirements in the construction contract documents;
- 3) The HDR RE shall perform inspections of County's Construction Contractor's water pollution control measures deployed at the Project site in accordance with the intervals described in the construction contract documents and before, during and after rain events. The HDR RE shall coordinate inspections by State and Federal regulatory agencies at the Project site whenever such agencies request such inspections.

Deliverables: The HDR RE shall place all data and correspondence pertaining to water pollution control in the Project files within five (5) working days of creating or receiving such data or correspondence.

Item of Work E. Claims Analysis

In accordance with the CA's directives and the current edition of the *Caltrans Construction Manual*, the HDR RE shall provide claims analysis services including, but not limited to, the following:

- 1) The HDR RE shall review, analyze and propose recommendations for any claims submitted by County's Construction Contractor after issuance of the Project's Proposed Final Estimate;
- 2) The HDR RE shall generate claim position letters for each claim and shall submit the letters for review and approval by the CA prior to the HDR RE's transmittal of the claim position letters to County's Construction Contractor;
- 3) The HDR RE shall generate an as-built schedule of the Project based on the on-site inspector's Daily Inspection Reports for use in analyzing schedule-related claims submitted by County's Construction Contractor;
- 4) As directed and in consultation and coordination with the CA, the HDR RE shall represent County in any Board of Review, mediation, deposition, or arbitration initiated as a result of claims submitted by County's Construction Contractor and the HDR RE shall prepare a proposed outline of the HDR RE's presentation for any such proceeding;
- 5) The HDR RE shall plan, schedule and execute reviews and analysis of claims such that all claim-related deadlines and milestones contained in the construction contract documents are met.

Deliverables: The HDR RE shall place all data and correspondence pertaining to claims in the Project files within five (5) working days of creating or receiving such data or correspondence. The HDR RE shall submit claim position letters via email to the CA at least two (2) weeks prior to the required date of delivery to County's Construction Contractor. If applicable, the HDR RE shall submit a proposed outline of the presentation that the HDR RE will make to a Board of Review via email to the CA at least one (1) week prior to a Board of Review meeting. If mediation, deposition or arbitration proceedings are required, the HDR RE shall submit a proposed outline of the HDR RE's presentation via email to the CA at least one (1) week prior to any such proceeding.

Item of Work F. Project Closeout

In accordance with the CA's directives and the current edition of the *Caltrans Construction Manual*, the HDR RE shall perform Project closeout duties including, but not limited to, the following:

- 1) Completion of as-built plans;
- 2) Preparation of the Proposed Final Estimate;
- 3) Planning, scheduling and facilitating a "lessons learned" meeting, including preparation of the meeting agenda and minutes, at which the HDR RE, County and its design engineers will review and analyze aspects of the Project that could be improved prior to implementation of future projects;
- 4) Transmittal of the final Project files and all related materials to the CA.

Deliverables: The HDR RE shall place all data and correspondence pertaining to Project closeout in the Project files within five (5) working days of creating or receiving such data or correspondence. The HDR RE shall hand deliver one (1) complete hard copy of as-built plans to the CA within sixty (60) calendar days of County's final acceptance of the Project. The HDR RE shall email the Proposed Final Estimate to the CA within one (1) week of receiving an email request for the Proposed Final Estimate from the CA. The HDR RE or on-site inspector shall place the meeting agenda and minutes for the "lessons learned" meeting in the Project files within two (2) working days of the meeting date. The HDR RE shall hand deliver the complete final Project files and all related hard copy materials and shall transmit all electronic versions of documentation to the CA within two (2) working days of completing all of the required Project closeout activities described herein or as specified by the CA.

HDR Construction Control Corporation

Exhibit B

Fee Schedule

<u>Classification</u>	<u>Hourly Billing Rates</u>	<u>Overtime Billing Rates</u>	<u>Premium Billing Rates</u>
Resident Engineer	\$165	\$165	\$165
Assistant RE/Inspector	\$129	\$156	\$182

Explanation of Rates:

1) All Billing Rates include vehicles, mileage, mobile phones, standard computer equipment, digital still cameras, employee safety equipment and small field tools such as hand levels and tape measures. All Billing Rates also include direct labor, benefits and general and administrative overhead costs.

2) Hourly Billing Rates include the first eight (8) hours Monday through Friday. Overtime Billing Rates include any hours after the first eight (8) hours, up to twelve (12) hours Monday through Friday, and the first eight (8) hours on Saturday. Premium Billing Rates include any hours after the first twelve (12) hours Monday through Friday, any hours after the first eight (8) hours on Saturday and all hours on Sunday.

HDR Construction Control Corporation

Exhibit C

Cost Proposal*

Base Scope of Work

Item of Work A.	Construction Inspection	\$	57,178.08
Item of Work B.	Construction Administration	\$	57,178.08
Item of Work C.	Construction Engineering	\$	1,429.45
Item of Work D.	Water Pollution Control	\$	12,865.07
Item of Work E.	Claims Analysis	\$	3,409.45
Item of Work F.	Project Closeout	\$	8,576.71
	Labor Total	\$	140,636.84
	Base Scope of Work Total (exclusive of Contingency)	\$	<u>140,636.84</u>

Contingency for Additional Services Related to Extended Duration of County's Construction Contract for the Project** \$ **15,000.00**

Total Proposed Base Scope Cost Estimate (including Contingency) \$ **155,636.84**

Optional Tasks

Total for Optional Tasks \$ **18,578.16**

Total Proposed Budget Cost Estimate \$ **174,215.00**

*All amounts and their distribution among Items of Work are estimates only. This Exhibit represents the composition of the total not-to-exceed budget for the various items of work identified herein. In the performance of the scope of services to be provided under this Agreement, Consultant may request to reallocate the amounts listed above among the various Base Scope items of work identified herein, subject to the Contract Administrator's written approval. In no event shall the not-to-exceed amount of the Base Scope of Work, inclusive of the amount specified for Contingency for Additional Services Related to Extended Duration of County's Construction Contract for the Project ("Contingency") (\$155,636.84) be exceeded, nor shall the amount identified as Contingency (\$15,000) be exceeded, nor shall the amount allocated for Optional Tasks (\$18,578.16) be exceeded, nor shall the total not-to-exceed dollar amount of the Contract (\$174,215.00) be exceeded.

**At the Contract Administrator's sole discretion, the use of funds for Contingency shall be as specified in the individual Work Order Amendments issued pursuant to Section C of Article I, Scope of Services, of this Agreement.

HDR Construction Control Corporation

Exhibit D

Fair Employment Practices Addendum

1. In the performance of this Agreement, HDR Construction Control Corporation, will not discriminate against any employee for employment because of race, color, sex, sexual orientation, religion, age, ancestry or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave or disability leave. HDR Construction Control Corporation will take affirmative action to ensure that employees are treated during employment, without regard to their race, color, sex, sexual orientation, religion, ancestry or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave or disability leave. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. HDR Construction Control Corporation shall post in conspicuous places, available to employees for employment, notices to be provided by State setting forth the provisions of this Fair Employment section.

2. HDR Construction Control Corporation, its consultant(s) and all subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.), and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12900(a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Each of HDR Construction Control Corporation's consultants and all subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements, as appropriate.

3. HDR Construction Control Corporation shall include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts to perform work under this Agreement.

4. HDR Construction Control Corporation will permit access to the records of employment, employment advertisements, application forms and other pertinent data and records by County, State, the State Fair Employment and Housing Commission or any other agency of the State of California designated by State, for the purposes of investigation to ascertain compliance with the Fair Employment section of this Agreement.

5. Remedies for Willful Violation:

(a) County may determine a willful violation of the Fair Employment provision to have occurred upon receipt of a final judgment to that effect from a court in an action to which HDR Construction Control Corporation was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that HDR Construction Control Corporation has violated the Fair Employment Practices Act and had issued an order under Labor Code Section 1426 which has become final or has obtained an injunction under Labor Code Section 1429.

(b) For willful violation of this Fair Employment Provision, County shall have the right to terminate this Agreement either in whole or in part, and any loss or damage sustained by County in securing the goods or services thereunder shall be borne and paid for by HDR Construction Control Corporation and by the surety under the performance bond, if any, and County may deduct from any moneys due or thereafter may become due to HDR Construction Control Corporation the difference between the price named in the Agreement and the actual cost thereof to County to cure HDR Construction Control Corporation's breach of this Agreement.