

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the "Agreement") is made and entered into effective May 12, 2010 (the "Effective Date"), by and between Yubacon, Inc. ("Yubacon"), Michael Murray, the El Dorado Irrigation District ("EID"), the County of El Dorado (the "County"), John Kahling, Keith Harvey, Matt Smeltzer, Cindy Megerdigian, George Jackson, First Northern Bank (the "Bank"), and Arch Insurance Company ("Arch").

RECITALS AND DEFINITIONS

- A. "Party" or "parties" means or refers to any party executing this Agreement.
- B. "Affiliates" of a party means and refers to such party's former or present heirs, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, assigns, members, former shareholders, shareholders, former partners, partners, partnerships, members, parents, subsidiaries, affiliated and related entities, officers, directors, principals, agents, servants, employees, representatives, and all persons, firms, associations and/or corporations connected with them, including, but not limited to, their insurers, sureties, attorneys, consultants, and expert witnesses.
- C. "Project" means and refers to the work of public improvement commonly known as the El Dorado Hills Phase 1.2A – Saratoga Way Project, County of El Dorado Department of Transportation Contract No. 71321.
- D. The "Civil Action" means and refers to the civil action entitled Yubacon, Inc. v. El Dorado Irrigation District, et al., El Dorado County Superior Court, Case No. PC20070379.
- E. The "Arbitration" means and refers to the arbitration proceeding entitled Yubacon, Inc. v. El Dorado County Department of Transportation, Office of Administrative Hearings, Case No. A0001607.
- F. On or about April 20, 2004, the EID and the County entered into a written agreement entitled the Construction Responsibility and Reimbursement Agreement ("Reimbursement Agreement"), which, among other things, allocated responsibility for the costs of the Project between EID and the County.
- G. In September of 2004, Yubacon contracted with the County to construct the Project.
- H. The parties have been or may be involved in various claims and disputes arising out of or related to the planning, design, engineering, development, administration, construction, observation, inspection, testing, supervision, manufacture, marketing, provision of materials, performance of services, repair, maintenance, and other alleged acts, omissions, and representations by the County, EID, John Kahling, Keith Harvey, Matt Smeltzer, Cindy

Megerdigian, and George Jackson, and their respective affiliates, in connection with the Project (the "Disputes").

I. On or about June 21, 2007, Yubacon filed its complaint in the Civil Action. Yubacon contends in its amended complaint that various alleged acts and failures to act by EID and John Kahling, Keith Harvey, Matt Smeltzer, Cindy Megerdigian, and George Jackson, who are current or former employees of the County and EID, caused Yubacon to sustain damages.

J. On or about June 20, 2007, Yubacon filed a complaint in the Arbitration. Yubacon contends in its complaint that various alleged acts and failures to act by the County caused Yubacon to sustain damages.

K. Beginning on December 23, 2008, eighteen days of hearings were intermittently conducted in the Arbitration. The last hearing was conducted on May 6, 2009. On January 19, 2010, the arbitrator issued his final award. The arbitrator awarded Yubacon a portion of its claimed damages, pre-judgment interest on these damages, and a portion of its claimed attorney's fees and other legal expenses.

L. The arbitrator's award included the amount of \$20,646.00, which was attributed by the arbitrator to the pass-through claim of West Concrete, Inc., a subcontractor of Yubacon (the "West Concrete Claim").

M. Arch, and First Northern Bank claim to have secured interests in the arbitration award and the proceeds of any settlement of the Disputes, the Civil Action, or Arbitration.

N. The County has filed a petition to vacate, or in the alternative, correct the arbitration award under Civil Code of Procedure section 1288, which will be heard on August 5, 2010.

O. The jury trial in the Civil Action is currently scheduled to commence on June 14, 2010.

P. This Agreement is made and entered into by and among the parties hereto to settle, resolve, satisfy, and discharge the above-referenced claims and disputes as to all parties hereto with respect to the released matters defined below.

TERMS AND CONDITIONS

For valuable consideration, receipt of which is hereby acknowledged, the parties, and each of them, acknowledge and agree as follows:

1.0 Release and Discharge By Yubacon, Arch, and the Bank

In consideration for the full and timely performance of all terms and conditions of this Agreement in the manner prescribed herein, Yubacon, Arch, and the Bank, on behalf of themselves and their respective affiliates, hereby completely release and forever discharge the County, EID, John Kahling, Keith Harvey, Matt Smeltzer, Cindy Megerdigian, and George

Jackson, and their respective affiliates of and from any and all claims, demands, obligations, actions, and rights for the recovery of damages, costs, losses, attorney's fees and legal costs, expenses, and compensation of any nature whatsoever, whether based on a tort, contract, or other theory of recovery, which Yubacon, Arch, and the Bank, and their respective affiliates had, have, or may hereafter acquire, by reason of any matter or cause arising out of or relating to the Project, the Disputes, the subject matter of the Civil Action, the subject matter of the Arbitration, the West Concrete Claim, and any and all related impacts, if any, on the business operations of Yubacon.

2.0 Waiver of Unknown Claims by Yubacon, Arch, and the Bank

Yubacon, Arch, and the Bank, on behalf of themselves and their respective affiliates acknowledge and agree that there is a risk that, subsequent to the execution of this Agreement, Yubacon, Arch, and the Bank, and their respective affiliates may incur, suffer or sustain injury, loss, damage, costs, attorney's fees and legal costs, expenses, or any of these, which are in some way arising out of or relating to the Project, Disputes, the subject matter of the Civil Action, the subject matter of the Arbitration, the West Concrete Claim, and any and all impacts, if any on the business operations of Yubacon, which are unknown and unanticipated at the time this Agreement is executed or not presently capable of being ascertained. Yubacon, Arch, and the Bank, on behalf of themselves and their respective affiliates, further acknowledge that there is a risk that such damages as are presently known may hereafter become more serious than Yubacon, Arch, and the Bank, and their respective affiliates now expect or anticipate. Nevertheless, Yubacon, Arch, and the Bank, on behalf of themselves and their respective affiliates, acknowledge and agree that this Agreement has been negotiated and agreed upon in light of that realization and Yubacon, Arch, and the Bank, on behalf of themselves and their respective affiliates, hereby expressly waive all rights Yubacon, Arch, and the Bank, and their respective affiliates may have related to such unknown and unanticipated claims.

Yubacon, Arch, and the Bank, on behalf of themselves and their respective affiliates, further acknowledge and agree that Yubacon, Arch and the Bank, and their respective affiliates have had the benefit and advice of counsel and hereby expressly waive all rights under section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

3.0 Mutual Releases by the County and EID

In consideration for the full and timely performance of all terms and conditions of this Agreement in the manner prescribed herein, the County and EID, on behalf of themselves and their respective affiliates, hereby completely release and forever discharge one another and their respective affiliates of and from any and all claims, demands, obligations, actions, and rights for the recovery of damages, costs, losses, attorney's fees and legal costs, expenses, and

compensation of any nature whatsoever, whether based on a tort, contract, or other theory of recovery, which the County and EID, and their respective affiliates had, have, or may hereafter acquire, by reason of any matter or cause arising out of or relating to the Reimbursement Agreement, the subject matter of the Civil Action, and the subject matter of the Arbitration.

4.0 Settlement Payments

The County shall deliver or cause to be delivered a check or draft in the amount of Six Hundred Thousand Dollars (\$600,000.00), payable to the "Salamirad Morrow PC Client Trust Account," within thirty days (30) of the effective date of this Agreement, provided that this Agreement has first been executed by all parties.

EID shall deliver or cause to be delivered a check or draft in the amount of Six Hundred Thousand Dollars (\$600,000.00), payable to the "Salamirad Morrow PC Client Trust Account," within thirty days (30) of the effective date of this Agreement, provided that this Agreement has first been executed by all parties.

Yubacon, on behalf itself and its affiliates, represents and warrants that the Taxpayer Identification Number for the Salamirad Morrow PC Client Trust Account is 27-1610315.

Yubacon shall maintain a portion of the settlement proceeds in the amount of \$20,646.00 in the Salamirad Morrow PC Client Trust Account until Yubacon provides the County with a conditional waiver and release upon final payment conforming to the requirements of Civil Code section 3260 executed by West Concrete, Inc. Within thirty (30) days of the disbursement of this portion of the settlement proceeds, Yubacon shall provide the County with an unconditional waiver and release upon final payment executed by West Concrete, Inc., conforming to the requirements of Civil Code section 3260.

5.0 Indemnity

Yubacon shall defend, indemnify, and hold harmless the County, EID, and their respective affiliates from and against any and all claims, demands, liabilities, damages, costs, and actions for payment for labor, materials and/or equipment by any subcontractor, material supplier, equipment provider, and the respective affiliates of each of them, arising out of or relating to the Project, regardless of whether such claims, demands, liabilities, damages, costs and actions arise out of, either in whole or in part, the active negligence, whether real or alleged, of the County, EID, and their respective affiliates.

6.0 Agreement Not To Prosecute

Yubacon, on behalf of itself and its affiliates, shall not commence or prosecute, or knowingly cause to be commenced or prosecuted, any action, arbitration, administrative proceeding, or criminal complaint against the County, EID, and their respective affiliates, including, but not limited to, John Kahling, Keith Harvey, Matt Smeltzer, Cindy Megerdigian, George Jackson, and Glenn Glatfelter. Yubacon, on behalf of itself and its affiliates, further agrees not to knowingly or intentionally assist in any way, shape or form in the commencement or prosecution of any such action, arbitration, administrative proceeding, or criminal complaint,

except for the reasonable provision of information in response to any inquiries from any public agencies.

7.0 Prohibition on Disparagement

Yubacon and Michael Murray covenant and agree that they shall, within thirty (30) days of execution of this Agreement, issue signed letters to the El Dorado County District Attorney and California Board of Registration of Professional Engineers and Land Surveyors advising that all disputes between them and the County, EID, and their respective present and former employees have been satisfactorily resolved and settled by mediation, and that Yubacon and Michael Murray will not pursue any claims or demands for any legal action by the District Attorney or the Board of Registration against any employee, past or present, of the County or EID.

The parties, on behalf of themselves and their respective affiliates, covenant and agree that they shall not, by written, verbal, or electronic communication, make any public statements disparaging the other parties and their affiliates relating to the Project or other projects prior to the date of this Agreement.

8.0 Confidentiality And Covenant Not To Publish

Except as otherwise provided by law, the parties on behalf of themselves and their respective affiliates, agree not to initiate communications for the purpose of disclosing, advertising, or publicizing in any way, including but not limited to, via newspapers, magazines, jury verdict publications, law firm marketing brochures or materials, television, radio, newsletters, the Internet, or other publications, the amounts to be paid or received, either separately, individually, or collectively by any party or the total amount of the settlement payments, except as specifically set forth herein. However, nothing in this Agreement shall prohibit the parties and their respective affiliates from disclosing the settlement amounts to their accountants, financial, business or tax advisors, attorneys, and immediate family members.

9.0 Determination of Good Faith Settlement

The County or EID may file an application or motion for determination of a "good faith settlement" in the Civil Action or a subsequent action. If requested, the other parties shall join in any motion and provide and file any physical, testimonial, and/or documentary evidence reasonably necessary to assist the court in determining that the settlement is in "good faith" within the meaning of California Code of Civil Procedure section 877.6 and relevant case law.

10.0 Enforcement

The parties hereby acknowledge and agree and stipulate that each has the right to enforce any provision of this Agreement by filing any appropriate action, proceeding, or motion, including, but limited to, a motion pursuant to sections 664.6 and 664.7 of the California Code of Civil Procedure, in the Superior Court of the County of El Dorado. The parties further

acknowledge and agree that the court shall retain jurisdiction over the parties to hear any motion brought pursuant to sections 664.6 or 664.7.

11.0 Attorney's Fees

The parties shall bear all attorney's fees and legal costs arising from the actions of their own counsel in connection with the Project, the Disputes, the subject matter of the Civil Action, the subject matter of the Arbitration, the Reimbursement Agreement, this Agreement, the matters and documents referred to herein, and all related matters.

12.0 Captions

The captions to the sections or subsections of this Agreement are solely for the convenience of the parties, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

13.0 Survival Of Rights And Obligations

This Agreement does not apply to any rights or obligations arising out of this Agreement, and all such rights and obligations shall survive the execution of this Agreement.

14.0 Interpretation

This Agreement is drafted by counsel for the County as an accommodation to the parties and is the product of deliberation between counsel. In the event of any dispute surrounding its interpretation, each Plaintiff, on behalf of itself and his or her respective affiliates, agrees and acknowledges that this Agreement shall not be construed against the drafter and hereby expressly waives all rights under Section 1654 of the California Civil Code, which provides as follows:

IN CASES OF UNCERTAINTY NOT REMOVED BY THE PRECEDING RULES, THE LANGUAGE OF A CONTRACT SHOULD BE INTERPRETED MOST STRONGLY AGAINST THE PARTY WHO CAUSED THE UNCERTAINTY TO EXIST.

15.0 Compromise

This Agreement is a compromise of doubtful and disputed claims and shall never at any time or for any purpose be considered as an admission of liability and/or responsibility on the part of any party, and the payment of any sum of money in consideration for the execution of this Agreement and performance of the obligations herein shall neither constitute nor be construed as an admission of liability and/or responsibility by any party, each of which continues to deny such liability and disclaim such responsibility.

16.0 Representation Of Comprehension Of Document

In entering into this Agreement, the parties represent that the parties have relied upon the advice of their attorneys, who are the attorneys of their own choice, concerning the legal and

income tax consequences of this Agreement; that the terms of this Agreement have been completely read and explained to the parties by their attorneys; and that the terms of this Agreement are fully understood and voluntarily accepted by the parties.

17.0 Warranty Of Capacity To Execute Agreement

The parties represent and warrant that no other person or entity has, or has had, any interest in the claims, demands, obligations, or causes of action referred to in this Agreement, except as otherwise set forth herein; that the parties have the sole right and exclusive authority to execute this Agreement and receive the sums specified in it; and that the parties have not sold, assigned, transferred, conveyed, or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this Agreement.

18.0 Governing Law

This Agreement shall be construed and interpreted in accordance with the laws of the State of California.

19.0 Additional Documents

The parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

20.0 Successors In Interest

This Agreement shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors and assigns of the parties.

21.0 Effectiveness

This Agreement shall become effective immediately following execution by each of the parties.

22.0 Entire Agreement

This Agreement contains the entire agreement among the parties relating to the settlement, resolution, satisfaction, and discharge of the released matters described above. This Agreement has not been executed in reliance on the basis of any other oral or written representations or terms, and no such extrinsic oral or written representations or terms shall modify, vary, or contradict the terms hereof.

23.0 Dismissals with Prejudice

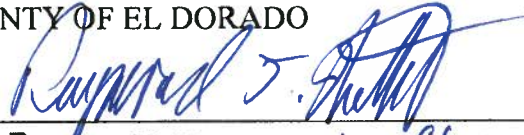
Yubacon shall cause its complaint in the Civil Action to be dismissed with prejudice within ten (10) business days of the delivery and receipt of the settlement proceeds in accordance with Section 4.0 herein.

24.0 Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and which together shall constitute one and the same Agreement.

COUNTY OF EL DORADO

Dated: 5-18-10

By: 
Its: Raymond J. Nutting, Vice Chair

ATTEST: SUZANNE ALLEN de SANCHEZ,
Clerk of the Board of Supervisors

By: 
NARS

Dated: _____

By: _____
John Kahling

Dated: _____

By: _____
Keith Harvey

Dated: _____

By: _____
Matt Smeltzer

Dated: _____

By: _____
Cindy Megerdigian

Dated: _____

By: _____
George Jackson

Dated: _____

By: _____
Michael Murray

YUBACON, INC.

Dated: _____

By: _____
Its: _____

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COUNTY OF EL DORADO

Dated: _____

By: _____

Its: _____

Dated: 05/14/10

By: 
John Kahling

Dated: _____

By: _____
Keith Harvey

Dated: _____

By: _____
Matt Smeltzer

Dated: _____

By: _____
Cindy Megerdigian

Dated: _____

By: _____
George Jackson

Dated: _____

By: _____
Michael Murray

YUBACON, INC.

Dated: _____

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By: _____

Its: _____

Dated: _____

By: _____

John Kahling

Dated: 5/18/10

By: 

Keith Harvey

Dated: _____

By: _____

Matt Smeltzer

Dated: _____

By: _____

Cindy Megerdigian

Dated: _____

By: _____

George Jackson

Dated: 5/12/10

By: 

Michael Murray

YUBACON, INC.

Dated: 5/12/10

By: 

Its: President

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Dated: _____

By: _____

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Dated: _____

By: _____

Keith Harvey

Dated: 5/18/10

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Matt Smeltzer

Dated: _____

By: _____

Cindy Megerdigian

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By: _____

George Jackson

Dated: _____

By: _____

Michael Murray

YUBACON, INC.

Dated: _____

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Dated: _____

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Keith Harvey

Dated: _____

By: _____

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Dated: 5/14/10

By: 

Cindy Megerdigian

Dated: _____

By: _____

George Jackson

Dated: 5/12/10

By: 

Michael Murray

YUBACON, INC.

Dated: 5/12/10

By: 

Its: President

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By: _____
Its: _____

Dated: _____

By: _____
John Kahling

Dated: _____

By: _____
Keith Harvey

Dated: _____

By: _____
Matt Smeltzer

Dated: _____

By: _____
Cindy Megerdigian

Dated: 5-13-10

By: George Jackson
George Jackson

Dated: 5/12/10

By: Michael Murray
Michael Murray

YUBACON, INC.

Dated: 5/12/10

By: Michael Murray
Its: President

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COUNTY OF EL DORADO

Dated: _____

By: _____

Its: _____

Dated: _____

By: _____

John Kahling

Dated: _____

By: _____

Keith Harvey

Dated: _____

By: _____

Matt Smeltzer

Dated: _____

By: _____

Cindy Megerdigian

Dated: _____

By: _____

George Jackson

Dated: 5/12/10

By: *Michael Murray*

Michael Murray

YUBACON, INC.

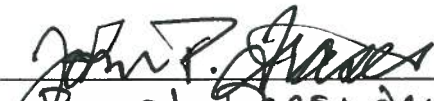
Dated: 5/12/10

By: *Michael Murray*

Its: *President*

EL DORADO IRRIGATION DISTRICT

Dated: May 24, 2010

By: 
Its: Board President

ARCH INSURANCE COMPANY

Dated: _____

By: _____
Its: _____

FIRST NORTHERN BANK

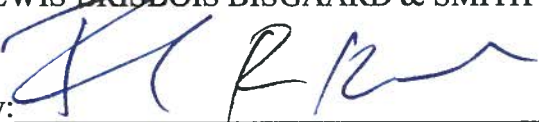
Dated: _____

By: _____
Its: _____

APPROVED AS TO FORM:

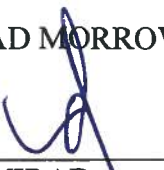
LEWIS BRISBOIS BISGAARD & SMITH LLP

Dated: 05-12-2010

By: 
FRANK R. PERROTT
Attorneys for Respondent COUNTY OF EL DORADO and Defendants JOHN KAHLING, MATT SMELTZER, and KEITH HARVEY


SALAMIRAD MORROW PC

Dated: 5-12-2010

By: 
ALI SALAMIRAD
Attorneys for Petitioner/Plaintiff YUBACON, INC.

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD

Dated: 5/12/10

By: 
James P. Wiezel
Attorneys for Defendants EL DORADO IRRIGATION DISTRICT, CINDY MEGERDIGIAN, AND GEORGE JACKSON

Dated: _____

Dated: 5/17/2010

Dated: _____

Dated: 05-17-2010

Dated: 5-12-2010

Dated: 5/12/10

EL DORADO IRRIGATION DISTRICT

By: _____

Its: _____

ARCH INSURANCE COMPANY

By: [Signature]

Its: EXECUTIVE BOND COUNSEL

FIRST NORTHERN BANK

By: _____

Its: _____

APPROVED AS TO FORM:

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: [Signature]

FRANK R. PERROTT

Attorneys for Respondent COUNTY OF EL DORADO and Defendants JOHN KAHLING, MATT SMELTZER, and KEITH HARVEY

SALAMIRAD MORROW PC

By: [Signature]

ALI SALAMIRAD

Attorneys for Petitioner/Plaintiff YUBACON, INC.

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD

By: [Signature]

James P. Wiesel

Attorneys for Defendants EL DORADO IRRIGATION DISTRICT, CINDY MEGERDIGIAN, AND GEORGE JACKSON

Dated: _____

Dated: _____

Dated: 6/8/2010

Dated: 05-12-2010

Dated: 5-12-2010

Dated: 5/12/10

EL DORADO IRRIGATION DISTRICT

By: _____

Its: _____

ARCH INSURANCE COMPANY

By: _____

Its: _____

FIRST NORTHERN BANK

By: [Signature]

Its: VICE PRESIDENT

APPROVED AS TO FORM:

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: [Signature]

FRANK R. PERROTT

Attorneys for Respondent COUNTY OF EL DORADO and Defendants JOHN KAHLING, MATT SMELTZER, and KEITH HARVEY

SALAMIRAD MORROW PC

By: [Signature]

ALI SALAMIRAD

Attorneys for Petitioner/Plaintiff YUBACON, INC.

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD

By: [Signature]

James P. Wiesel

Attorneys for Defendants EL DORADO IRRIGATION DISTRICT, CINDY MEGERDIGIAN, AND GEORGE JACKSON

EL DORADO IRRIGATION DISTRICT

Dated: _____

By: _____

Its: _____

ARCH INSURANCE COMPANY

Dated: _____

By: _____

Its: _____

FIRST NORTHERN BANK

Dated: _____


By: _____

Its: _____

APPROVED AS TO FORM:

LEWIS BRISBOIS BISGAARD & SMITH LLP

Dated: 05-12-2010

By: 

FRANK R. PERROTT
Attorneys for Respondent COUNTY OF EL DORADO and Defendants JOHN KAHLING, MATT SMELTZER, and KEITH HARVEY

SALAMIRAD MORROW PC

Dated: 5-12-2010

By: 

ALI SALAMIRAD
Attorneys for Petitioner/Plaintiff YUBACON, INC.

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD

Dated: 5/12/10

By: 

James P. Wiesel
Attorneys for Defendants EL DORADO IRRIGATION DISTRICT, CINDY MEGERDIGIAN, AND GEORGE JACKSON