

**Universal Field Services, Inc.**

**Appraisal Services Agreement**

**AGREEMENT FOR SERVICES # AGMT 06-1302**

**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 Universal Field Services, Inc., an Oklahoma corporation duly qualified to conduct business in the State of California, whose mailing address is Post Office Box 35666, Tulsa, Oklahoma 74153, and whose local office address is 1600 Sacramento Inn Way, Suite 216, Sacramento, California 95815-3461, (hereinafter referred to as "Consultant");

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

**WHEREAS**, County has determined that it is necessary to obtain appraisal consultant services to assist its Department of Transportation with respect to appraisals and real property acquisition and relocation services; and

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

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

**WHEREAS**, County has determined that the provision of such services provided by Consultant are in the public's best interest, and are authorized by El Dorado County Charter, §210(b)(6) and/or Government Code §31000;

**NOW, THEREFORE**, for and in consideration of the covenants and conditions set forth herein, County and Consultant mutually agree as follows:

**ARTICLE I**

**Scope of Services:**

- A. Consultant shall perform all professional and technical services, work, and tasks required to accomplish the objectives set forth herein, for County's Department of Transportation, and shall provide and make available Consultant's own personnel, subconsultants, materials, and equipment necessary to perform the services, work, and tasks designated herein (hereinafter referred to as "Services"). Services shall include, but not be limited to:
  - 1. Planning: Reviewing environmental impacts and public involvement, providing right of way cost analyses, ownership and title data, certification requirements, identification requirements, and identification of acquisition status of necessary rights of way for the purpose of advancing projects to construction;

2. Appraisals: Providing opinions of value supported by presentations of sufficient relevant market information, including valuation data, and the appraiser's analysis of that information;
  3. Property Acquisition: Providing assistance to County with public contact, coordination with title companies and other agencies in the preparation of documentation needed to fulfill contractual obligations between County and property owners, and assistance with eminent domain proceedings;
  4. Relocation Assistance: Performing tasks related to relocation assistance in connection with pre-condemnation proceedings as assigned;
  5. Proceedings: Providing testimony regarding the Services performed, and expert testimony, for any subsequent eminent domain or inverse condemnation proceedings that pertain to or relate to the Services performed herein.
  6. Additional Requirements:
    - a. All deliverables shall be in duplicate.
    - b. Consultant shall provide a Caltrans Title VI Brochure to each property owner upon initiation of the appraisal process.
    - c. If a "Full Take" acquisition is involved, Consultant shall provide a copy of the Caltrans Relocation Guide to each property owner upon initiation of the appraisal process.
    - d. All appraisals require an "Administrative Draft" to be submitted to the Right of Way Manager for review, prior to the production of the final report.
    - e. All appraisals must be individually bound appraisal reports (no "Master Appraisals").
- B. County shall provide Consultant the following, where applicable, in connection with the Services to be performed under this Agreement:
1. Copies of any maps, drawings, exhibits, legal descriptions, title reports or other documents pertaining to the project that County may have in its possession.
  2. Interface between Consultant and other County departments, including the County Assessor, Recorder and Surveyor Offices.
  3. Permits or rights of entry licenses necessary for Consultant to perform its work on the affected parcels.
  4. Right of way stake-outs of the affected properties when requested.

- C. **Task Orders Required:** The specific Services for each assignment shall be determined at a meeting or telephone conference between Consultant and County's Contract Administrator, or designee, to discuss the needs, applicable standards, required deliverables, specific Consultant staff, subconsultants (if required) and any necessary permits on a task-by-task basis. Following each meeting, Consultant shall provide the Contract Administrator with a written scope of work, a schedule and a not-to-exceed cost to complete the work (Task Order), which shall require written approval, authorization and notification to proceed from the Contract Administrator, prior to commencement of the work.

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 XVI of this Agreement. No payment will be made for any work performed prior to approval of the written Task Order, and no payment will be made for amounts in excess of the not to exceed amount of any Task Order.

The period of performance for Task Orders shall be in accordance with dates specified in each Task Order. No payment will be made for any work performed after the period of performance in the Task Order, unless County's Contract Administrator and Consultant amend the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement, nor the cumulative total of the not-to-exceed Contract amount.

All of the tasks included in the Scope of Services are the responsibility of Consultant, unless specifically described as a task or item of work to be provided by County. Consultant shall be responsible for the supervision, administration and work performed by any subconsultants for services rendered under this Agreement.

Consultant shall attach a copy of each notification to proceed, as backup documentation, to any invoices submitted for payment under the terms of this Agreement. Copies of notices attached to invoices shall reflect Consultant's charges for the specific support or review services billed on those invoices.

- D. **Deliverables:** Deliverables will be specified by County for each individual assignment, and specific task assignments and work requirements will be specifically identified on a project by project basis. Failure to submit the required deliverables in the format specified shall be grounds for termination of the Agreement, as provided in Article XV, or for delay or cessation of payments by County as provided in Section C of Article III hereunder.
- E. **Consultant Reporting:** Reports on services rendered by Consultant shall be submitted to County in the format, and under the conditions specified by County.

## ARTICLE II

**Term:** This Agreement shall become effective when fully executed by the parties hereto and shall expire two years thereafter.

## ARTICLE III

### **Compensation for Services:**

- A. For services provided herein, including all deliverables described in the individual Task Orders issued pursuant to this Agreement, County agrees to pay Consultant within thirty (30) days following County's receipt and approval of itemized invoices detailing the services rendered. For the purposes hereof, billing rates shall be in accordance with Exhibit A, marked "Fee Schedule," incorporated herein and made by reference a part hereof.

Reimbursement for mileage expenses, if applicable, shall not exceed the rates to be paid to County employees under the current Board of Supervisors Travel Policy at the time the mileage expenses are incurred. Mileage reimbursement rates apply to Consultant and to any subconsultants authorized under this Agreement.

The total amount of this Agreement, inclusive of all costs and Task Orders and inclusive of all work of subconsultants and expenses, shall not exceed \$100,000.

- B. Itemized invoices shall follow the format specified by County and shall reference this Agreement number, the Task Order number and project title, both on their faces, and on any enclosures or back-up documentation. Invoices shall be mailed to County's Contract Administrator at the following address:

County of El Dorado  
Department Of Transportation  
2850 Fairlane Court  
Placerville, CA 95667  
Attn: Elizabeth B. Diamond

- C. In the event that Consultant fails to deliver, in the format specified, the deliverables required under this Agreement, County at its sole discretion may delay payment for the period of time of the delay in receiving the deliverables in proper form, may cease all payments until such time as the required deliverables are received, or may terminate the Agreement as set forth in Article XV below.

## ARTICLE IV

**Prevailing Wage:** In the event County requires Consultant's services on projects involving local, state and/or federal funds to which prevailing wage requirements may apply, Consultant shall comply with all applicable state and federal prevailing wage rates, statutes, rules and regulations then in effect. In the event of conflict between applicable federal and state provisions, the higher prevailing wage rate will apply. Consultant shall use the general prevailing wage rates determined by the Director of Industrial Relations for the county in which the work is to be done, which are available at the offices of the District Director of Transportation for the district in which the work is situated. Changes, if any, to

the general prevailing wage rates will be available at the same location. The federal minimum wage rates are determined by the United States Secretary of Labor and may be examined at the office described above. Future effective general prevailing wage rates which have been predetermined and are on file with the California Department of Industrial Relations are referenced but not printed in the general prevailing wage rates.

#### **ARTICLE V**

**Standards For Work:** All services rendered shall be performed in accordance with the guidelines set forth in the Caltrans Right of Way Manual; the Federal Highway Administration (FHWA) Right of Way Project Development Guide; all other applicable Caltrans, FHWA, state and local public agency guidelines; federal, state and local laws, including but not limited to, applicable provisions of the California Business and Professions Code, and accepted industry standards.

#### **ARTICLE VI**

**Inspection of Work:** Consultant shall permit appropriate County representatives to review and inspect Consultant's work on each applicable project or task at all reasonable times during the performance of this Agreement.

#### **ARTICLE VII**

**Safety:** Consultant shall comply at all times with Federal and State Occupational Safety and Health Administration regulations regarding safety equipment or procedures necessary for the performance of its services under this Agreement.

#### **ARTICLE VIII**

**License:** Consultant represents that it and any and all subconsultants employed under this Agreement are duly licensed in good standing by the State of California to perform the services under this Agreement, and Consultant and all subconsultants shall maintain said licenses in good standing throughout the term of this Agreement.

#### **ARTICLE IX**

**Consultant's Project Manager:** Consultant designates James H. Finnegan as its Project Manager for this Agreement. Consultant's Project Manager, or County-approved designee, shall be accessible to County's Contract Administrator, or designee, during normal County working hours and shall respond within twenty-four (24) hours to County inquiries or requests. Consultant's Project Manager shall be responsible for all matters related to Consultant's personnel, operations and any subconsultants authorized under individual Task Orders issued including, but not limited to (1) assigning qualified personnel to perform the work and to prepare the deliverables required by the Task Orders; and (2) reviewing, monitoring, training and directing Consultant's personnel and any subconsultants authorized herein.

#### **ARTICLE X**

##### **Changes to Agreement:**

- A. This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto. There shall be no change in Consultant's Project Manager or subconsultants without prior written approval by County's Contract Administrator.

- B. Should changes in the Scope of Services occur such that additional services and compensation beyond those contemplated by the parties under this Agreement are required, Consultant shall immediately notify the Contract Administrator in writing of those conditions. The additional work shall not be performed until County authorization is received, and an appropriate amendment is fully executed by the parties. No reimbursement for any additional services will be paid to Consultant without County's prior written authorization/amendment.

## **ARTICLE XI**

### **Consultant to County:**

- A. Consultant is engaged by County for its unique qualifications and skills. Consultant shall perform the services contemplated herein with resources available within its own organization, and no portion of the work pertinent to this Agreement shall be subcontracted, delegated or assigned, in whole or in part, without written authorization by the Contract Administrator. Notwithstanding this Article, Consultant is authorized to utilize any specific subconsultants authorized in individual Task Orders issued pursuant to this Agreement, for the particular tasks, work and deliverables identified therein. At no time shall County be obligated to pay separately for subconsultant services. Consultant shall require each subconsultant, to the extent of the work to be performed by the subconsultant, to be bound to Consultant by the terms of this Agreement and to assume toward Consultant all of the obligations and responsibilities that Consultant, by this Agreement, assumes toward County.
- B. Consultant shall furnish, at Consultant's own expense, all materials and equipment necessary to carry out the terms of this Agreement. Consultant shall be liable for any personal injury or property damage resulting from the use, misuse or failure of such equipment, and shall indemnify and hold County harmless, and defend County in accordance with the indemnity provision provided in Article XVII, of this Agreement.
- C. No sums due pursuant to this Agreement shall be assigned, mortgaged or hypothecated in any respect without the express written consent of the Contract Administrator. Notice of any such requested assignment or hypothecation shall be furnished promptly to the Contract Administrator.
- D. 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 XII**

### **Confidentiality and Ownership of Data:**

- A. Consultant shall maintain the confidentiality and privileged nature of all records, including billing records, together with any knowledge therein acquired, in accordance with all applicable state and federal laws and regulations, as they may

now exist or may hereafter be amended or changed. Consultant, and all Consultant's staff, employees, and representatives, including any subconsultants authorized herein, shall not use or disclose, directly or indirectly at any time, any said confidential information, other than to the County Department of Transportation for the purpose of, and in the performance of, this Agreement. This confidentiality provision shall survive after the expiration or earlier termination of this Agreement.

- B. Upon completion or earlier termination of services under this Agreement, ownership and title to all appraisals, reports, documents, maps, specifications, estimates, and similar documents produced as part of this Agreement will automatically be vested in County, and no further agreement will be necessary to transfer ownership to County. Consultant shall furnish County all data, including data stored in electronic format, needed to complete the transfer of ownership and possession to County.
- C. All financial, statistical, personnel, technical or other data and information relative to County operations, which is designated confidential by County and made available to Consultant in order to carry out the services contemplated under this Agreement shall be protected by Consultant from unauthorized use or disclosure.
- D. Permission granted by County to disclose information on one occasion or at public hearings held by County relating to this Agreement shall not authorize Consultant to further disclose such information or disseminate the same on any other occasion.
- E. Consultant shall not comment publicly to the press or any media regarding this Agreement or County's actions on the same, except to County staff, Consultant's own personnel involved in the performance of this Agreement, at public hearings or in response to questions from County's Board of Supervisors.
- F. Consultant shall not issue any news release or public relations item of any nature whatsoever regarding services 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.

### **ARTICLE XIII**

**Independent Consultant/Liability:** Consultant is, and at all times shall be, deemed an independent contractor 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, and County shall not be responsible for preventing risk to Consultant or Consultant's employees, agents, associates, or representatives.

Consultant shall be responsible for performing the work under this Agreement in a safe, professional, skillful and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees and subconsultants. 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 or subconsultants.

## **ARTICLE XIV**

**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 XV**

### **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 in the discretion of the party giving notice. Any extension of Time to Cure must be in writing, prepared by the party in default for signature by the party giving notice, and must specify the reason(s) for the extension and the date in which the extension of Time to Cure expires.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the Time to Cure has expired.

- B. **Bankruptcy:** This Agreement, at the option of County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Consultant.
- C. **Ceasing Performance:** County may terminate this Agreement in the event Consultant ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.



- D. Termination or Cancellation without Cause: County may terminate this Agreement in whole or in part upon seven (7) calendar 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 total amount of the contract. Upon receipt of a Notice of Termination, Consultant shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the Notice directs otherwise. In the event of termination for default, County reserves the right to take over and complete the work by contract or by any other means.
- E. Cancellation: Notwithstanding any other provision to the contrary, County may cancel this Agreement and have no further obligation hereunder as set forth in Article XIV, entitled "Fiscal Considerations."
- F. Completion of Work: In the event of termination of the Agreement, County reserves the right to take over and complete any work, service, or task by contract or by other means.

**ARTICLE XVI**

**Notice to Parties:** All notices to be given by the parties hereto shall be in writing and served by depositing same in a United States Post Office, postage prepaid and return receipt requested. Notices to County shall be in duplicate and addressed as follows:

To County:

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

Attn.: Elizabeth B. Diamond,  
 Deputy Director, West Slope  
 Engineering and Project Delivery

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:

Universal Field Services, Inc.  
 1600 Sacramento Inn Way, Suite 216  
 Sacramento, California 95815-3461

Attn.: James H. Finnegan,  
 Senior Vice President

or to such other location as Consultant directs.

## **ARTICLE XVII**

**Indemnity:** To the fullest extent allowed by law, Consultant shall defend, indemnify, and hold County and the California Tahoe Conservancy (CTC) harmless against and from any and all claims, suits, losses, damages, and liability for damages of every name, kind, and description, including attorneys' fees and costs incurred, brought for, or on account of, injuries to, or death of, any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to, or in any way arise out of, or are connected with Consultant's services, operations or performance hereunder, regardless of the existence or degree of fault or negligence on the part of County, Consultant, subcontractor(s) and employee(s) of any of these, except for the sole, or active negligence of County, its officers and employees, or as expressly provided by statute. This duty of Consultant to indemnify and save County and CTC harmless includes the duties to defend set forth in California Civil Code Section 2778.

## **ARTICLE XVIII**

### **Cooperation:**

- A. Each party shall cooperate with the other in the defense of any claim or legal proceeding brought by a third party involving this Agreement and each party agrees to make its personnel available for consultation with the other for testimony, if necessary, at depositions and at trial or arbitration proceedings.
- B. Any consultation for expert testimony that may be required by County not part of the indemnity provisions, now or in the future, will be reimbursed at the same rates that are being paid for Consultant's personnel services while this Agreement is in effect along with County's standard reimbursement rate for mileage.

## **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. 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.
- 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 and the California Tahoe Conservancy, its officers, officials, employees, and volunteers are included as additional insureds, but only insofar as the operations under this Agreement are concerned. This provision shall apply to all liability policies except Workers' Compensation and Professional Liability insurance policies.
- I. Consultant's insurance coverage shall be primary insurance as respects 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 County, its officers, officials, employees or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Consultant's obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.
- N. In the event Consultant cannot provide an occurrence policy, Consultant shall provide insurance covering claims made as a result of performance of this

Agreement for not less than three (3) years following completion of performance of this Agreement.

- O. The certificate of insurance shall meet such additional standards as may be determined by the contracting County department, either independently or in consultation with County's Risk Management Division as essential for protection of County.

In addition, Consultant shall ensure that all subconsultants maintain workers' compensation, general liability, automobile liability and professional liability insurance as specified above and shall provide County with proof of same.

#### **ARTICLE XX**

**Interest of Public Official:** No official or employee of County who exercises any functions or responsibilities in review or approval of services to be provided by Consultant under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or the interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any such official or employee of County have any interest, direct or indirect, in this Agreement or the proceeds thereof.

#### **ARTICLE XXI**

**Interest of Consultant:** Consultant covenants and represents that Consultant presently has no personal interest or financial interest, and shall not acquire same in any manner or degree, in either: 1) any other contract connected with or directly affected by the services to be performed by this Agreement; or, 2) any other entities connected with or directly affected by the services to be performed by this Agreement. Consultant further covenants and represents that in the performance of this Agreement no person having any such interest shall be employed by Consultant.

#### **ARTICLE XXII**

##### **Prohibition on Proprietary Interests:**

- A. Consultant acknowledges that the services called for may involve appraisal activity performed in accordance with the standards set forth in this Agreement, including for the purpose of establishing fair and just compensation to property owner(s) in accordance with California eminent domain law, and that in order to fulfill the intent and purpose of this Agreement, Consultant must remain disinterested in property pertaining to or related to the services that Consultant performs under this Agreement. Consultant warrants and represents that by signature of this Agreement, it: 1) currently does not have, nor will it acquire, any interest in the property related to the services performed; 2) does not have, nor will it acquire, any interest in or share in any sales commission generated by the transaction for which appraisal services are performed; and, 3) does not have, nor will it pursue or acquire, any agreement or understanding with any person or selling agency for a commission, percentage, brokerage, or contingency fee on behalf of itself, or said person or selling agency.
- B. In the event that Consultant violates this Article, in addition to all other remedies that

County has pursuant to the provisions of this Agreement, and/or applicable law, County shall have the right, at its option and in its sole discretion, to rescind and annul this Agreement without liability, and to pay for only non-appraisal related services performed under this Agreement, if any, or to terminate the Agreement and offset payment for the value of the services performed by the recovery of the full amount of any commission, percentage, brokerage, or contingency fee, as well as damages suffered by County.

#### **ARTICLE XXIII**

**California Residency (Form 590):** Any independent Consultant providing services to County must file a State of California Form 590, certifying its California residency or, in the case of a corporation, certifying that it has 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 XXIV**

**Taxpayer Identification Number (Form W-9):** Any independent contractor or corporation providing services to County must file a Department of the Treasury Internal Revenue Service Form W-9, certifying its Taxpayer Identification Number.

#### **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**

**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 XXVII**

**Contract Administrator:** The County Officer or employee with responsibility for administering this Agreement is Elizabeth B. Diamond, Deputy Director, West Slope Engineering and Project Delivery, Department of Transportation, or successor.

#### **ARTICLE XXVIII**

**Compliance with Federal and State Requirements:** County is relying on federal and state assistance or grants for all or a portion of the funding for the services to be provided

under this Agreement. As a requirement of County's use of these funds, County is required to comply with certain federal and state requirements and to extend these requirements to its third party contracts. Consultant shall comply with all applicable provisions of federal and state regulations, including those required by the United States Department of Agriculture/ United States Forest Service (USFS), the United States Department of the Interior Bureau of Reclamation (BOR) and the California Tahoe Conservancy (CTC) including grant funding requirements and any 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:

*Circular A-87*, revised May 10, 2004, "Cost Principles for State, Local, and Indian Tribal Governments"

*Circular A-102*, as amended August 29, 1997, "Grants and Cooperative Agreements with State and Local Governments"

*Circular A-110*, as amended September 30, 1999, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations"

*Circular A-133*, revised June 27, 2003, "Audits of States, Local Governments, and Non-Profit Organizations"

Copies of OMB Circulars are available on the Internet at:

<http://www.whitehouse.gov/omb/grants/html>.

Failure of Consultant to comply with any federal or state provision may be the basis for withholding payments for charges made by Consultant and for such other remedies as may be appropriate including termination of this Agreement.

Consultant shall further comply with any flow-down or third-party contracting provisions which may be required under the federal and state regulations and which may apply to Consultant's subcontracts, if any, associated with this Agreement.

## **ARTICLE XXIX**

**Grant Funding Agreement Requirements:** Consultant shall comply with all applicable provisions of County's grant funding agreements and related documents with USFS, BOR and CTC including the applicable requirements of 7 CFR 3015, 7 CFR 3016, 7 CFR 3017, 7 CFR 3018, 7 CFR 3052, 43 CFR 12, 43 CFR 18, 43 CFR 42 and the cost principles of 2 CFR 225 and 48 CFR 31.2 as applicable. Consultant shall include those provisions, if applicable, in any of its agreements for goods or services that affect or are related to the services performed herein and shall ensure that any clauses required by federal or state statutes and executive orders and their implementing regulations are also incorporated as applicable, including, but not limited to, the following:

- A. Remedies/Termination:** Consultant shall comply with the requirements of Article XV of this Agreement regarding administrative, contractual, or legal remedies in instances of default, termination or cancellation and with other terms and conditions of this Agreement and County's grant funding agreements that provide for such sanctions and penalties as may be appropriate in instances where contract terms are violated or breached.
- B. Contract Work Hours and Safety Standards:** Consultant shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5).
- C. Reporting:** Consultant shall comply with the reporting requirements specified in Article I, Scope of Services of this Agreement and with such other County reporting requirements and regulations as may be required by the Contract Administrator. Consultant shall fully cooperate with County to support the reporting requirements imposed by County's grant funding agreements insofar as they may apply to this Agreement, including but not limited to, assisting County in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), Executive Order (EO) 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
- D. Copyrights and Rights in Data:** Consultant shall comply with Article XII, Confidentiality and Ownership of Data and with Section J, Copyrights of this Article XXIX, Grant Funding Agreement Requirements regarding requirements and regulations pertaining to copyrights and rights in data. County and its granting agencies have the right to obtain, reproduce, publish or otherwise use any data produced under this Agreement and to authorize others to receive, reproduce, publish or otherwise use such data for government purposes.
- E. Access to Records:** County, federal agencies, the Comptroller General of the United States, the CTC, the California Auditor General or any of their duly authorized representatives shall have the right of access to any books, documents, papers, or other records of the Consultant which are directly pertinent to this Agreement or to County's grant funding agreements and related documents for the purpose of making audit, examination, excerpts, and transcriptions. Consultant shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of this Agreement, including but not limited to, the costs of administering the contract. 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.
- F. Record Retention:** All records associated with this Agreement shall be retained by Consultant for three (3) years after County makes final payment and all other pending matters are closed. If any audit, litigation, or other action involving the records is started before the end of the three (3) year period, the records must be retained until all issues arising out of the action are resolved or until the end of the three (3) year period, whichever is later. Where applicable, Consultant shall include this record

retention provision in any of its own agreements that affect or are related to the services performed herein and shall require that access to the records shall be provided to County as well as to Consultant and to agencies of the federal and state governments.

- G. Environmental Compliance:** Consultant shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), EO 11738, and Environmental Protection Agency regulations (40 CFR part 15). Consultant shall further comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and EO 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205). Consultant shall also comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
- H. Energy Efficiency:** Consultant shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P. L. 94–163, 89 Stat. 871).
- I. Inventions and Patents:** The allocation of rights including patents in inventions shall be determined in accordance with the “Government Patent Policy” (President’s Memorandum for Heads of Executive Departments and Agencies, February 18, 1983) and OMB Circular A–124.
- J. Copyrights:** This section applies to the copyright in any original work of authorship prepared with grant support. Additionally, if ownership of a copyright or of any of the exclusive rights comprising a copyright is purchased with grant support, this section applies to the purchased copyright or rights. County and the granting agencies reserve a royalty-free, nonexclusive, and irrevocable license to exercise, and to authorize others to exercise, the rights for government purposes and to authorize others to do so. Subject to this license, the owner is free to exercise, preserve, or transfer all its rights. Consultant shall ensure that no agreement is entered into for transferring the rights which would conflict with the nonexclusive license of County or the granting agencies.
- K. Debarment and Suspension:** As a condition of participation in this Agreement, Consultant must comply with the requirements of subpart C of 7 CFR 3017 and with subpart C of 43 CFR 42, Governmentwide Debarment and Suspension, regarding



Responsibilities of Participants Regarding Transactions. Consultant shall not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs under EO 12549, "Debarment and Suspension."

**L. Lobbying Restrictions:** Consultant shall comply with the requirements of 7CFR 3018 and 43 CFR 18 regarding restrictions on lobbying. Section 1352, Title 31, United States Code prohibits federal funds from being expended by County or any lower tier subrecipient of a federal-aid contract to pay for any person for influencing or attempting to influence a federal agency or Congress in connection with the awarding of any federal-aid contract, the making of any federal grant or loan, or the entering into of any cooperative agreement. Certification and disclosure shall be required of all subrecipients at all tiers. Consultant shall ensure that the certification language required by 7 CFR 3018 and 43 CFR 18 is included in any of its agreements that affect or are related to the services performed under this Agreement and that all subrecipients certify and disclose accordingly.

**M. Equal Employment Opportunity:** Consultant shall comply with the requirements of EO 11246, "Equal Employment Opportunity," as amended by EO 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

**N. Nondiscrimination:**

1. Federal Requirements: Consultant shall comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statutes under which County's applications for Federal assistance were made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the federal funds used to fund this Agreement.

2. State Requirements: Consultant shall comply with all applicable

nondiscrimination statutes and regulations during the performance of this Agreement including but not limited to, the following: Consultant and its employees 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 and its employees and representatives shall give written notice of their obligations under this clause as required by law. Where applicable, Consultant shall include the nondiscrimination and compliance provisions in any of its agreements that affect or are related to the services performed herein. Consultant's signature herein shall provide any certifications necessary under the federal laws, 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. Failure of Consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination or such other remedy, as County deems appropriate.

**O. Drug-Free Workplace:** Consultant agrees to maintain a drug-free workplace in accordance with Government Code Section 8355, et seq. by doing all of the following:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the workplace, and specifying actions that will be taken against employees for violations of this prohibition;
2. Establishing a Drug-Free Awareness Program to inform employees about (1) the dangers of drug abuse in the workplace; (2) the Consultant's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) penalties that may be imposed upon employees for drug abuse violations;
3. Submitting a drug-free workplace certification form to County;
4. Providing that every employee who performs work under this Agreement:
  - a. Will receive a copy of Consultant's drug-free policy statement, and
  - b. Will agree to abide by the terms of Consultant's statement as a condition of employment under this Agreement.

**P. Inspection:** County's granting agencies and their representatives shall have the right to inspect and evaluate the work performed or being performed under this Agreement, and the premises where the work is being performed at all reasonable times and in a manner that will not unduly delay the work. If such inspection or evaluation is performed on the premises of Consultant, Consultant shall furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

**Q. 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.

1. Consultant shall take all necessary affirmative steps to assure that minority firms, and women's business enterprises are used when possible.

2. Affirmative steps shall include:

(a) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(b) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(c) 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;

(d) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(e) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce as appropriate, and

(f) Requiring the prime contractor/consultant, if subcontracts are to be let, to take the affirmative steps listed in 2 (a) through (e) above.

**R. Notice Regarding Buy American Act:** In accordance with federal statutes and regulations, Consultant is advised that it is and has been the sense of Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available through federal agencies should be American-made. This provision shall remain in effect unless revoked by a future specific act of Congress.

**S. Seat Belt Use Policies:** In accordance with 43 CFR 12 and EO 13043, Consultant is encouraged to adopt and enforce on-the-job seat belt use policies and programs for its employees when operating company-owned, rented, or personally owned vehicles. These measures include, but are not limited to, conducting education, awareness, and

other appropriate programs for its employees about the importance of wearing seat belts and the consequences of not wearing them.

### **ARTICLE XXX**

**Certifications:** The following certifications are required in accordance with the above provisions and are attached hereto and made a part of this Agreement (the attached certification pages must be filled out and signed as appropriate):

- A. U.S. Department of the Interior - ***Certifications Regarding Debarment, Suspension and Other Responsibility Matters, Drug-Free Workplace Requirements and Lobbying***, Form DI-2010;
- B. U.S. Department of Agriculture - ***Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions***, Form AD-1048;
- C. U.S. Department of Agriculture - ***Certification Regarding Drug-Free Workplace Requirements (Grants) – Alternative I – For Grantees Other Than Individuals***, Form AD-1049;
- D. ***Disclosure of Lobbying Activities***, Standard Form LLL;
- E. U.S. Department of Agriculture - ***Certification Regarding Lobbying – Contracts, Grants, Loans and Cooperative Agreements***, (No Form Number);
- F. ***Drug-Free Workplace Certification***, (No Form Number).

### **ARTICLE XXXI**

**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 XXXII**

**Partial Invalidity:** If any provision of this 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 XXXIII**

**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. Consultant acknowledges and represents that no representations, inducements, promises or agreements have been made by County, its officials, employees, or authorized representatives which are not contained in this Agreement, and that no other statement, promise, or agreement not contained herein will be valid and binding.

**Requesting Department Concurrence:**

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

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

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

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the dates indicated below, the latest of which shall be deemed to be the effective date of this Agreement.

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

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

Board of Supervisors  
"County"

Attest:  
Cindy Keck  
Clerk of the Board of Supervisors

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

**-- UNIVERSAL FIELD SERVICES, INC. --**

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
James H. Finnegan  
Senior Vice President  
"Consultant"

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
Diana W. Stucky  
Corporate Secretary