

Kimley-Horn and Associates, Inc.

Diamond Springs Community Park Planning and Engineering Services

AGREEMENT FOR SERVICES #9120

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 Kimley-Horn and Associates, Inc., a North Carolina corporation duly qualified to conduct business in the State of California, whose principal place of business is 421 Fayetteville Street, Suite 600, Raleigh, North Carolina 27601, and whose local address is 555 Capitol Mall, Suite 300, Sacramento, California 95814 (hereinafter referred to as "Consultant").

RECITALS

WHEREAS, County has determined that it is necessary to obtain a consultant to assist its Chief Administrative Office, Parks and Trails Division in performing services necessary to provide planning and engineering services for the Diamond Springs Community Park project;

WHEREAS, Consultant has represented to County that it is specially trained, experienced, is an expert, and competent to perform the special services described in ARTICLE I Scope of Work; that it is an independent and bona fide business operation, advertises and holds itself as such, is in possession of a valid business license, and is customarily engaged in an independently established business that provides similar services to others; and County relies upon those representations;

WHEREAS, it is the intent of the parties hereto that such services be in conformity with all applicable state and local laws and ordinances applicable to the work, including compliance with prevailing wage rates and their payment in accordance with 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 that due to the limited timeframes, temporary or occasional nature, or schedule for the project or scope of work, the ongoing aggregate of work to be performed is not sufficient to warrant the addition of permanent staff in accordance with El Dorado County Ordinance Code, Chapter 3.13.030(c), El Dorado County Charter, section 210(b)(6), and/or Government Code section 31000;

WHEREAS, on May 3, 2021, Consultant was formally approved to qualified lists for consulting services, including Category 1A, for land development projects and Category 2H, environmental services, as the result of competitive Request for Qualifications (RFQ) #20-918-043;

NOW, THEREFORE, County and Consultant mutually agree as follows:

ARTICLE I

Scope of Work: Consultant is engaged in the business of doing the services and tasks required under this Agreement, including those services and tasks that are identified in

Exhibit A, marked "Scope of Work," incorporated herein and made by reference a part hereof, and those services and tasks that are reasonably necessary for the completion of the work identified in the Scope of Work.

Consultant agrees to furnish, at Consultant's own cost and expense, all personnel, subconsultants, tools, vehicles, equipment, materials, and services necessary to perform the services and tasks required under this Agreement, including those services and tasks that are identified in Exhibit A, and those services and tasks that are reasonably necessary for the completion of the work identified in the Scope of Work. Consultant shall complete those services and tasks in accordance with Exhibit B, marked "Cost Proposal," incorporated herein and made by reference a part hereof.

Consultant acknowledges that the work performed must meet the approval of County, and therefore County reserves the right to monitor the work to ensure its satisfactory completion.

Deliverables shall be submitted via electronic file and Consultant shall produce the file using Microsoft (MS) Office 365 applications (specifically, MS Word and MS Excel). Signed reports shall be submitted in Adobe portable document format (PDF). Electronic auto computer aided design (AutoCAD) 2020 or AutoCAD Civil 3D 2020 format shall be used for submittal of plans or other similar documents as specified by County's Contract Administrator. All deliverables shall be submitted in the language, format and design that are compatible with and completely transferable to County's computer, 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 unless otherwise directed by County's Contract Administrator. Failure to submit the required deliverables in the format required may be grounds for termination of the Agreement, as provided in ARTICLE XXII, Default, Termination, and Cancellation, herein.

Consultant shall perform the services and tasks required under this Agreement in a safe, professional, skillful, and workmanlike manner. Consultant is responsible for ensuring that its employees, as well as any subconsultant if applicable, perform the services and tasks required under this Agreement accordingly. All of the services included in the Scope of Work, are the responsibility of Consultant unless specifically described as a task or item of work to be provided by County. Consultant shall be responsible for the supervision, administration, and work performed by any subconsultant for services rendered under this Agreement. 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, agents, associates, representatives, or subconsultants.

ARTICLE II

Term: This Agreement shall become effective from the date specified in the official Notice to Proceed with the Work, which shall be attached to this Agreement as an addendum and shall become part of this Agreement, and shall expire three (3) years thereafter.

ARTICLE III

Compensation for Services: For services provided herein, including any deliverables that may be identified herein, County agrees to pay Consultant upon the satisfactory

completion and County's acceptance of work, in arrears. Payment shall be made within forty-five (45) days following County's receipt and approval of itemized invoices detailing the services rendered.

For the purposes of budgeting the Tasks in Exhibit A, the billing amounts for each Task are identified in Exhibit B. In the performance of the services to be provided under this Agreement, Consultant may request to reallocate the expenses listed in Exhibit B among the various Scope of Work Tasks, items of work, and subconsultant's tasks, identified herein, subject to County Contract Administrator's, or designee's, prior written approval. In no event shall the total not-to-exceed amount of the Agreement be exceeded.

The billing rates for Task 4 – Project Administration, Management, and Coordination, are listed below and will be used for the full term of the Agreement:

Title	Hourly Rate
Project Support	\$140.00
Analyst II	\$180.00
Professional	\$200.00
Senior Professional	\$360.00

Notwithstanding any other provision of this Agreement to the contrary, payments to Consultant and subconsultants for travel, lodging, per diem, and mileage expenses, if applicable, for Consultant's or subconsultant's claims for reimbursement shall not exceed the rates to be paid to County employees under the current Board of Supervisor's Travel Policy in effect at the time the expenses are incurred, without markup. Any individual travel expense exceeding one hundred dollars (\$100) and any work requiring overnight stay must be approved in advance by County's Contract Administrator or designee. Consultant and subconsultant are responsible for canceling hotel rooms before the cancellation period ends and should record the cancellation number in case of disputes. Consultant and subconsultant shall not be reimbursed for "no-show" hotel charges unless there are unavoidable reasons for not cancelling the room and County's Contract Administrator or designee has determined that the reasons are valid.

Subconsultant's services and other outside services authorized herein shall be invoiced at Consultant's cost, with a five percent (5%) markup, for the services rendered. Rates and fees, included in such costs, will require prior authorization from County's Contract Administrator or successor. Any invoices that include subconsultant services shall be accompanied by backup documentation to substantiate Consultants costs for the services being billed on those invoices.

Other direct costs, including at a minimum, permits and delivery charges, authorized herein shall be invoiced at Consultant's cost, with a fifteen percent (15%) markup, for the services rendered. Any invoices that include other direct costs shall be accompanied by backup documentation to substantiate Consultants costs for the costs being billed on those invoices.

The total amount of this Agreement shall not exceed \$558,700, inclusive of all work of subconsultants, and all costs, taxes, and expenses.

Itemized invoices shall follow the format specified by County and shall reference this Agreement number on their faces. 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
Chief Administrative Office
Parks and Trails Division
200 Armory Drive
Placerville, California 95667

Attn.: Zachary Perras
Parks and Trails Division Manager

or to such other location as County directs.

In the event that Consultant fails to deliver, in the format specified, the deliverables required by this Agreement, County at its sole option may delay the payment for the period of time of the delay, cease all payments until such time as the required deliverables are received, or proceed as set forth below in ARTICLE XXII, Default, Termination, and Cancellation, herein.

ARTICLE IV

Taxes: Consultant certifies that as of today's date, it is not in default on any unsecured property taxes or other taxes or fees owed by Consultant to County. Consultant agrees that it shall not default on any obligations to County during the term of this Agreement.

ARTICLE V

Ownership of Data: Upon completion or earlier termination of all services under 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 prior 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 VI

Progress Reports: Consultant shall submit written progress reports to County's 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 progress reports once per month. Consultant shall prepare the reports in a sufficiently detailed manner for County's Contract Administrator to determine if Consultant is performing to expectations and is on schedule to provide the services and deliverables described in the Scope of Work, to provide communication of

interim findings, and to afford occasions for airing difficulties or special circumstances encountered so that remedies can be developed. County shall review the report to ensure that Consultant's services and deliverables adhere to current County requirements applicable to the project as determined by County's Contract Administrator, and Consultant shall modify its work if the County's Contract Administrator determined it is necessary to meet current County requirements applicable to the project. Consultant shall include in a progress report the total number of hours worked by Consultant and any authorized subconsultants; a descriptions of the tasks and work performed, including a description of any deliverables submitted during the reporting period; and the anticipated tasks, work, and deliverables proposed for the subsequent reporting period. Any invoices submitted by Consultant for payment under the terms of this Agreement shall include copies of the progress reports that relate to the services being billed on those invoices.

ARTICLE VII

Standards for Work: Consultant and any subconsultants authorized herein, shall perform all services in a manner consistent with the level of care and skill ordinarily exercised by other members of Consultant's profession currently practicing in the same locality and under similar conditions.

All of Consultant's and subconsultant's services and deliverables must adhere to and be in full compliance with ARTICLE I, Scope of Work, and shall be made available to County for review and approval at the appropriate stages specified in the Agreement or upon request by County's Contract Administrator.

Consultant and any subconsultant authorized herein, have/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 or other regulatory agencies will not relieve Consultant or subconsultant of this professional responsibility.

All work must be performed and work products prepared in a format and manner customarily anticipated by County and/or other appropriate agencies.

ARTICLE VIII

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 and federal 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 principal office of County's Chief Administrative Office, Parks and Trails Division. 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 and any subconsultant authorized under this Agreement shall also conform to and be bound by the provisions of Labor Code sections 1810 through 1815.

ARTICLE IX

Apprentices: Attention is directed to Labor Code sections 1777.5, 1777.6, and 1777.7 and 8, California Code of Regulations section 200, et seq. To ensure compliance and complete understanding of the law regarding apprentices, and specifically the required ratio thereunder, each Consultant or subconsultant should, where some question exists, contact the Division of Apprenticeship Standards, 455 Golden Gate Avenue, San Francisco, CA 94102, or one of its branch offices prior to commencement of work on this Agreement. Responsibility for compliance with this Article lies with Consultant.

It is County policy to encourage the employment and training of apprentices on public works contracts as may be permitted under local apprenticeship standards.

ARTICLE X

Certified Payroll: As required under the provisions of Labor Code section 1776, Consultant and any subconsultants, if any are authorized herein, shall keep accurate payroll records as follows:

- A. The payroll records shall show the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Consultant or subconsultants in connection with the services provided under this Agreement.
- B. A certified copy of all payroll records enumerated above shall be available for inspection at all reasonable hours at the principal office of Consultant as follows:
 1. Make available or furnish to the employee or his or her authorized representative on request.
 2. Make available for inspection or furnished upon request to a representative of County, the State Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the State Department of Industrial Relations.
 3. Make available upon request by the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either County, the State Division of Labor Standards Enforcement, or the State Division of Apprenticeship Standards. The requesting party shall, prior to being provided the records, reimburse the costs of preparation by Consultant, subconsultant, and the entity through which the request was made. The public shall not be given access to the records at the principal office of Consultant.
 4. All consultants and subconsultants must furnish electronic certified payroll records directly to the Department of Industrial Relations.

ARTICLE XI

Registration of Consultants: No consultant or subconsultant may bid on any public work project, be listed in a bid proposal for any public works project, or engage in the performance of any contract for public work unless registered with the Department of Industrial Relations pursuant to Labor Code sections 1725.5 and 1771.1. Public work projects are subject to compliance, monitoring, and enforcement by the Department of Industrial Relations.

Consultant shall post job site notices as prescribed by 8 California Code of Regulations section 16451.

ARTICLE XII

Records Examination and Audit Requirements: Consultant and its subconsultants, if any are authorized hereunder, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the Agreement, including but not limited to, the costs of administering the various aspects of the Agreement. In accordance with Government Code section 8546.7, all of the above-referenced parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three (3) years from the date that final payment by County and all other pending matters are closed. Representatives of County, the California State Auditor, and any duly authorized representative of other government agencies shall have access to any books, documents, papers, and records that are pertinent to the Agreement for audit, examination, excerpts, and transactions and copies thereof shall be furnished upon request.

ARTICLE XIII

Payment of all Federal, State, or Local Taxes: Any federal, state, or local tax payable on the articles furnished by Consultant under this Agreement shall be included in rates quoted herein and shall be paid by Consultant.

ARTICLE XIV

Compliance with all Applicable Laws: Consultant shall conform to and abide by all applicable federal, state, and local building, labor, environmental and safety laws, ordinances, rules, and regulations. All work and materials shall be in full accordance with the latest rules and regulations of the State Fire Marshal, safety orders of the Division of Industrial Safety, California Electrical Code, California Building Code, California Plumbing Code, and any and all other applicable laws and regulations. Nothing in this Agreement, including but not limited to, any directions, plans or specifications provided to Consultant, is to be construed to permit work not conforming to these codes.

ARTICLE XV

Workers' Compensation: Consultant shall comply with Labor Code section 3700, et seq., requiring it to obtain Workers' Compensation Insurance, and sign a certificate of knowledge thereof.

CERTIFICATE OF KNOWLEDGE - LABOR CODE SECTION 3700

I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this Agreement.

Signed: Matthew D. Weir
Matthew D. Weir (Nov 29, 2024 07:59 PST)

Dated: 11/29/2024

ARTICLE XVI

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

ARTICLE XVII

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 understood that this Agreement does not create an exclusive relationship between County and Consultant, and Consultant may perform similar work or services for others. However, Consultant shall not enter into any agreement with any other party, or provide any information in any manner to any other party, that would conflict with Consultant's responsibilities or hinder Consultant's performance of services hereunder, unless County's Contract Administrator, in writing, authorizes that agreement or sharing of information.

ARTICLE XVIII

Confidentiality: Consultant and any subconsultants authorized under this Agreement 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 County's Chief Administrative Office, Parks and Trails Division or to such other person with

County's consent for the purpose of, and in the performance of, this Agreement. This confidentiality provision shall survive after the expiration or earlier termination of this Agreement.

ARTICLE XIX

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. County may, at its sole discretion, through its Contract Administrator, authorize Consultant to utilize subconsultants for services performed in ARTICLE I, Scope of Work, for the particular tasks, work and deliverables pursuant to this Agreement. Said authorization and approval shall be sought and obtained by Consultant prior to subconsultants' commencement of any work under this

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

ARTICLE XX

Independent Consultant: The parties intend that an independent consultant relationship will be created by this contract. 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, agents, affiliates, and subconsultants, if any are authorized herein, as they relate to the services or work to be performed under this Agreement during the course and scope of their employment by Consultant. Those persons will be entirely and exclusively under the direction, supervision, and control of Consultant.

County may designate the tasks to be performed and the results to be accomplished under this Agreement, provide information concerning the work or services, approve or disapprove the final work product and/or services provided, and set deadlines for the completion of the work or services, but County will not control or direct the manner, means, methods, or sequence in which Consultant performs the work or services for accomplishing the results. Consultant understands and agrees that Consultant lacks the authority to bind County or incur any obligations on behalf of County.

Consultant, including any subconsultant or employees of Consultant, shall not receive, nor be eligible for, any benefits County provides for its employees, including, but not limited to, vacation pay, paid holidays, life insurance, health insurance, social security, disability insurance, pension, or 457 plans. Consultant shall not receive, nor be eligible for, workers' compensation, including medical and indemnity payments. County is not responsible for withholding, and shall not withhold, Federal Income Contribution Act amounts or taxes of any kind from any payments which it owes Consultant. Consultant shall not be subject to the work schedules or vacation periods that apply to County employees.

Consultant shall be solely responsible for paying its employees, and for withholding Federal Income Contribution Act amounts and other taxes, workers' compensation, unemployment compensation, medical insurance, life insurance, or any other benefit that Consultant provides for its employees.

Consultant acknowledges that it has no authority to bind the County or incur any obligations on behalf of the County with regard to any matter, and shall not make any agreements or representations on the County's behalf.

ARTICLE XXI

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 XXII

Default, Termination, and Cancellation:

- A. 1. Termination by Default: If either party becomes aware of an event of default, that party shall give written notice of said default to the party in default (notice) that shall state the following:
 - a. The alleged default and the applicable Agreement provision, and
 - b. That the party in default has ten (10) days upon receiving the notice to cure the default (Time to Cure).

If the party in default does not cure the default within ten (10) days of the Time to Cure, then such party shall be in default and the party giving notice may terminate the Agreement by issuing a Notice of Termination. The party giving notice may extend the Time to Cure at their discretion. 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.

2. If County terminates this Agreement, in whole or in part, for default:
 - a. County reserves the right to procure the goods or services, or both, similar to those terminated, from other sources and Consultant shall be liable to County for any excess costs for those goods or services. County may deduct from any payment due, or that may thereafter become due to Consultant, the excess costs to procure from an alternate source.
 - b. County shall pay Consultant the sum due to Consultant under this Agreement prior to termination, unless the cost of completion to County exceeds the funds remaining in the Agreement. In which case the overage shall be deducted from any sum due Consultant under this Agreement and the balance, if any, shall be paid to Consultant upon demand.

- c. County may require Consultant to transfer title and deliver to County any completed work under the Agreement.
3. The following shall be events of default under this Agreement:
 - a. Failure by either party to perform in a timely and satisfactory manner any or all of its obligations under this Agreement.
 - b. A representation or warranty made by Consultant in this Agreement proves to have been false or misleading in any respect;
 - c. Consultant fails to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement, unless County agrees, in writing, to an extension of the time to perform before that time period expires.
 - d. A violation of ARTICLE XXXIII, Conflict of Interest.
- B. Bankruptcy: County may terminate this Agreement immediately in the case of bankruptcy, voluntary or involuntary, or insolvency of Consultant.
- C. Ceasing Performance: County may terminate this Agreement immediately 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, for convenience upon thirty (30) calendar days' written Notice of Termination. If such termination is effected, County will pay for satisfactory services rendered before the effective date of termination, as set forth in the Notice of Termination provided to Consultant, and for any other services that County agrees, in writing, to be necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of Agreement. 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, County reserves the right to take over and complete the work by contract or by any other means.

ARTICLE XXIII

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
Chief Administrative Office
330 Fair Lane
Placerville, California 95667

Attn.: Jennifer Franich
Deputy Chief Administrative Officer

With a copy to:

County of El Dorado
Chief Administrative Office
Procurement and Contracts Division
330 Fair Lane
Placerville, California 95667

Attn.: Michele Weimer, MPA, CPPO
Procurement and Contracts Manager

or to such other location as County directs.

Notices to Consultant shall be addressed as follows:

Kimley-Horn and Associates, Inc.
550 Capitol Avenue, Suite 300
Sacramento, California 95814

Attn.: Matthew D. Weir, P.E. #70216
Vice President

or to such other location as Consultant directs.

ARTICLE XXIV

Change of Address: In the event of a change in address for Consultant's principal place of business, Consultant's Agent for Service of Process, or Notices to Consultant, Consultant shall notify County in writing as provided in ARTICLE XXIII, Notice to Parties. Said notice shall become part of this Agreement upon acknowledgment in writing by County's Contract Administrator, and no further amendment of the Agreement shall be necessary provided that such change of address does not conflict with any other provisions of this Agreement.

ARTICLE XXV

Indemnity: To the fullest extent allowed by law, Consultant shall defend, indemnify, and hold harmless the County and its officers, agents, employees, and representatives from and against any and all claims, actions, losses, injuries, damages, or expenses of every name, kind, and description, including litigation costs and reasonable attorney's fees incurred, brought for or on account of, injury to or death of any person, including but not limited to workers, County employees, officers, or agents, 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, consultants, and subconsultants. This duty of Consultant includes the duty of defense, inclusive of that set forth in Civil Code section 2778 and is subject to any limit provided for in Civil Code section 2782.8(a) of the cost to defend charged to Consultant. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement, provided that the County's failure to immediately or timely notify Consultant does not limit or waive Consultant's defense and indemnity obligations in this Article. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement.

The indemnity obligation owed is independent of the obligation to obtain insurance coverage sufficient to protect the County, as described in ARTICLE XXIX.

These obligations owed the County under this provision shall survive the termination of this Agreement.

ARTICLE XXVI

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 (providing scope of coverage equivalent to ISO policy form CG 00 01) of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage, including but not limited to endorsements for the following coverage: premises, personal injury, operations, products and completed operations, blanket contractual, and independent consultants' liability and a \$2,000,000 aggregate limit. County, including, without limitation, its officers, officials, employees, and volunteers shall be named as an additional insured on ISO form CG 2010 1185, or its equivalent.
- 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, inclusive of the guarantee/warranty period specified hereinbelow. In the event said insurance coverage expires at any time or times during the term of this Agreement, 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 Agreement 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 thirty (30) days prior written notice to County; and
 2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- I. Consultant's insurance coverage shall be primary insurance in respect to 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 in respect to 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.
- P. Consultant shall ensure that all subconsultants authorized pursuant to this Agreement shall maintain workers' compensation, general liability, automobile liability, and professional liability insurance as specified above and shall provide County with proof of same if requested.

ARTICLE XXVII

Consultant's Project Manager: Consultant designates Steve Peterson, American Institute of Certified Planners (AICP) #83600, United States Green Building Council

Leadership in Energy and Environmental Design (LEED) Accredited Practitioner (AP) #50041, Senior Environmental Practice Leader, 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 this Agreement including, but not limited to, (1) assigning qualified personnel to perform the required work and to prepare the deliverables issued pursuant to this Agreement; (2) reviewing, monitoring, training, and directing Consultant's personnel and any subconsultants authorized herein. All engineering tasks will be led by Barsin BetGovargez, P.E., a California-registered professional engineer (P.E. #81751).

ARTICLE XXVIII

Licenses: Consultant hereby represents and warrants that Consultant and any of its subconsultants employed under this Agreement has all the applicable licenses, permits, and certifications that are legally required for Consultant and its subconsultants to practice its profession or provide the services or work contemplated under this Agreement in the State of California. Consultant and its subconsultants shall obtain or maintain said applicable licenses, permits, or certificates in good standing throughout the term of this Agreement.

ARTICLE XXIX

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 and any of its subconsultants employed under this agreement shall comply with all of the requirements of County's Business License Ordinance, where applicable, prior to beginning work under this Agreement and at all times during the term of this Agreement.

ARTICLE XXX

Environmental and Toxic Warranty: Consultant warrants that its operations concerning the services and materials provided under this Agreement are not and will not be in violation of any applicable environmental federal, state, or local statute, law, or regulation dealing with hazardous materials substances or toxic substances.

ARTICLE XXXI

Force Majeure: Neither party will be liable for any delay, failure to perform, or omission under this Agreement that is due to any cause that it is beyond its control, not due to its own negligence, and cannot be overcome by the exercise of due diligence. In that event, the affected party will:

1. Promptly give written notice to the other of the fact that it is unable to so perform and the cause(s) that is beyond its control.
2. Once the cause(s) has ceased, provide written notice to the other party and immediately resume its performance under this Agreement.

For purposes of this Article, "cause that is beyond its control" includes labor disturbances, riots, fires, earthquakes, floods, storms, lightning, epidemics, war, disorders, hostilities, expropriation or confiscation of properties, failure of and delays by carriers, interference by civil or military authorities, whether legal or de facto, and whether purporting to act under some constitution, decree, or law, or otherwise, or acts of God.

ARTICLE XXXII

Waiver: No failure on the part of the parties to exercise any rights under this Agreement, and no course of dealing with respect to any right hereunder, shall operate as a waiver of that right, nor shall any single or partial exercise of any right preclude the exercise of any other right. The remedies herein provided are cumulative and are not exclusive of any other remedies provided by law.

ARTICLE XXXIII

Conflict of Interest: The parties to this Agreement have read and are aware of the provisions of Government Code section 1090, et seq. and the Political Reform Act of 1974 (section 87100, et seq.), relating to conflict of interest of public officers and employees. Individuals who are working for Consultant and performing work for County and who are considered to be consultant within the meaning of Title 2 California Code of Regulations section 18700.3, as it now reads or may thereafter be amended, are required to file a statement of economic interest in accordance with County's Conflict of Interest Code. County's Contract Administrator shall at the time this Agreement is executed make an initial determination whether or not the individuals who will provide services or perform work pursuant to this Agreement are consultants within the meaning of the Political Reform Act and County's Conflict of Interest Code. Statements of economic interests are public records subject to disclosure under the California Public Records Act.

Consultant covenants that during the term of this Agreement neither it, or any officer or employee of Consultant, has or shall acquire any interest, directly or indirectly, in any of the following:

1. Any other contract connected with, or directly affected by, the services to be performed by this Agreement.
2. Any other entities connected with, or directly affected by, the services to be performed by this Agreement.
3. Any officer or employee of County that are involved in this Agreement.

If Consultant becomes aware of a conflict of interest related to this Agreement, Consultant shall promptly notify County of the existence of that conflict, and County may, in its sole discretion, immediately terminate this Agreement by giving written notice of termination specified in ARTICLE XXII, Default, Termination, or Cancellation.

Pursuant to Government Code section 84308 (SB 1439, the Levine Act), Consultant shall complete and sign the attached Exhibit C, marked "California Levine Act Statement," incorporated herein and made by reference a part hereof, regarding campaign contributions by Consultant, if any, to any officer of County.

ARTICLE XXXIV

Nondiscrimination:

- A. County may require Consultant's services on projects involving funding from various state and/or federal agencies, and as a consequence, Consultant and its subconsultants, if any, 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, subconsultants, and representatives shall not unlawfully discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, military and veteran status of any person, marital status, age, sex, gender, gender identity, gender expression, or sexual orientation. Consultant and its subconsultants shall, unless exempt, comply with the applicable provisions of the Fair Employment and Housing Act (Government Code, section 12900, et seq.) and applicable regulations promulgated thereunder (2 California Code of Regulations, section 11000, et seq.); the applicable regulations of the Fair Employment and Housing Commission implementing Government Code, section 12990, set forth in Subchapter 5 of 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.
- B. 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.
- C. Consultant's signature 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 2 California Code of Regulations, section 8103.

ARTICLE XXXV

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 limited liability company or 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 XXXVI

County Payee Data Record Form: All independent consultants or corporations providing services to County who do not have a Department of the Treasury Internal Revenue Service Form W-9 (Form W-9) on file with County must file a County Payee Data Record Form with County.

ARTICLE XXXVII

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 XXXVIII

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

ARTICLE XXXIX

Contract Administrator: The County Officer or employee with responsibility for administering this Agreement is Jennifer Franich, Deputy Chief Administrative Officer, Chief Administrative Office, or successor.

ARTICLE XL

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 XLI

Electronic Signatures: Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement, are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic Signature means any electronic visual symbol or signature attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or email electronic signatures, pursuant to the California Uniform Electronic Transactions Act (Civil Code sections 1633.1 to 1633.17) as amended from time to time.

ARTICLE XLII

Partial Invalidity: If any provision, sentence, or word of the Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions, sentences, or words will continue in full force and effect without being impaired or invalidated in any way.

ARTICLE XLIII

No Third-Party Beneficiaries: Nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this Agreement.

ARTICLE XLIV

Counterparts: This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

ARTICLE XLV

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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below.

-- COUNTY OF EL DORADO --

By: _____

Dated: _____

Board of Supervisors
"County"

Attest:
Kim Dawson
Clerk of the Board of Supervisors

By: _____

Dated: _____

Deputy Clerk

-- KIMLEY-HORN AND ASSOCIATES, INC. --

By: Matthew D. Weir
Matthew D. Weir (Nov 29, 2024 07:59 PST)

Dated: 11/29/2024

Matthew D. Weir, P.E. #70216
Vice President
"Consultant"

Kimley-Horn and Associates, Inc.

Exhibit A

Scope of Work

County desires to develop the Diamond Springs Community Park project, as approved by the El Dorado County Board of Supervisors at their December 12, 2023 meeting.

The work produced shall provide site plan refinement and preparation of construction documents, hydrology and hydraulic analysis, retaining wall calculations and thirty percent (30%), sixty-five percent (65%) and one hundred percent (100%) construction documents, plan review and permitting and construction administration milestones. These engineering deliverables, coupled with landscape architecture phasing and development plans, shall provide the detailed design and opinion of probable construction estimates required to recruit project funding. This work program would also include the preparation of technical information and permit applications required for environmental permitting administered by the U.S. Army Corps of Engineers (Section 404 of the Clean Water Act), the California Water Quality Board (Section 401 of the Clean Water Act), and the California Department of Fish and Wildlife (Section 1602 of the California Fish and Game Code).

The deliverables schedule for each Task listed below shall be discussed and agreed upon between Consultant and County's Contract Administrator, or designee.

Task 1 – Civil Engineering

Task 1.1 – Site Plan Refinement

County will provide the computer-aided design (CAD) file of the previously designed Diamond Springs Community Park, topographic survey, and record drawings along with preliminary drainage memo and geotechnical investigation report as basis of design. Consultant shall work closely with landscape architect and County refining the current design and lay-out of the proposed site on file. The Refined Site Plan shall include clearances from existing Deadman Creek, setbacks, parking and circulation.

Task 1.1 Deliverables:

- Refined Site Plan (AutoCAD File and .PDF format).

Task 1.2 – Design Phase (30% Plans, Specifications, and Estimate (PS&E) and Technical Studies)

Consultant shall prepare the thirty percent (30%) Plans, Specifications, and Estimate. The following plan sheets are anticipated to be included in the project plans:

Demolition Plan (Two [2] Sheets): Consultant shall provide updates to the demolition plan that was prepared during the design competition phase. Demolition plan shall depict site demolition of existing features included in the topographic survey provided by the others and reasonably necessary for the installation and completion of the proposed work. The demolition plan shall include limits of work, demolition notes and legend, and symbols coordinated with Authority Having Jurisdiction (AHJ) standards and requirements.

- Horizontal Control & Construction Plans (up to four [4] Sheets): Consultant shall depict new site construction related items necessary for the installation and completion of the project limited to the proposed project work area. These plans shall include pavement dimensions and section, types and finishes with reference to site details for asphalt, concrete, curbs, ramps, walls, fencing and gates, track surfacing and natural grass field. Coordinate stake out points are not included as part of this plan and shall be the responsibility of the construction contractor to prepare.
- Grading and Drainage Plan (up to four [4] Sheets): Consultant shall depict existing and new design grades, flow lines, catch basins, trench drains, with reference legend and symbols generally per AHJ Standards and requirements. Grading plan shall depict proposed and existing contours and elevations, critical finish surface spot elevations and slopes, cut and fill slopes and conceptual retaining wall heights. Plans shall also provide size and location of the storm water management system to be implemented on the project.
- Site Utilities Plan (up to four [4] Sheet): Consultant shall depict the size and routing for new and relocated utility piping, location of manholes, catch basins, trench drains, drinking fountains, hose bibbs, and post indicator valves (PIV)s within the project work area. This task provides for limited utility research for the locations of existing underground utility lines per available record drawings. This task does not include potholing or subsurface investigation (Video inspection etc.) of any kind for utility related infrastructure. Unforeseen utilities or subsurface structures of any kind or size that require relocation, special demolition/abandonment details or design considerations will require an amendment and additional fee.
- Post Construction Storm Water Management Plan (up to two [2] Sheets): Consultant shall prepare a Post Construction Storm Water Management Plan that depicts preliminary mitigation design concept(s) with a list and location of relevant Best Management Practices (BMPs) along with a BMP table. Plans shall also depict proper vehicular access for the on-going maintenance of applicable underground BMPs.
- Site Details (Assume up to four [4] sheets): Consultant shall prepare up to four (4) sheets that depict the details for various civil on-site items.
- Erosion Control Plan and details (up to four [4] Sheets).
- Retaining wall calculations and details (up to four [4] Sheets).

- Preliminary Storm Water Hydrology Calculations: Consultant shall prepare a Preliminary On-Site Hydrology Study that estimates peak flow rates from the developed site area. Since the downstream water bodies are susceptible to hydromodification, it is assumed that detention of multiple storm events will be required. Peak flow rates and hydrograph lag times will be based on assumed times of concentration for the development areas and a preliminary detention analysis for both the hydromodification and flood control storm events will be performed to determine conceptual detention basin sizes. It is understood that the project will construct a piped drainage system that will convey the drainage to Deadman Creek from the new improvements. The drainage will enter Deadman Creek in similar locations to existing conditions. The outlet pipe will have rock rip rap at the outlets to dissipate the flows entering the creek. Detention will be provided on-site to ensure proposed ten (10) year flows do not exceed existing ten (10) year flows. Water quality features and/or devices will be provided to treat storm water runoff from hard scape surfaces. The overland release path for approximately five (5) acres of shed area east of the proposed soccer fields, at the northeast portion of the project, will be impeded. To mitigate this impediment, an oversized storm drain will be provided from the base of the slope at the east end of the soccer field to Deadmen Creek.

Consultant shall prepare and/or modify County Standard Specifications as reasonably needed to correlate with the proposed civil improvements as they are shown and detailed in Consultant's drawings.

Consultant shall provide an Opinion of Probable Costs (OPPC) providing quantities and unit prices for this phase and future phases associated with civil scope only. County will provide the source(s) to be utilized for unit prices. All OPPCs shall be submitted to the County via an Excel format spreadsheet with bid item descriptions, quantities and units and shall be developed utilizing production-based cost model. County will confidentially review this bid tab. Consultant shall attend OPPC review meetings as necessary to discuss assumptions and allocations associated with unit prices and schedule logic not in agreement. The differences identified will be discussed at the OPPC meetings. Consultant shall update the bid item basis log and submit a revised OPPC to reflect the agreed upon changes to OPPC.

Because the Consultant does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to opinions as to the costs of construction and materials, shall be made on the basis of its experience and represent its judgment as an experienced and qualified professional, familiar with the industry. The Consultant cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the County wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Consultant's services required to bring costs within any limitation established by the County will be paid for as Additional Services.

Task 1.2 Meetings:

- One (1) Site Visit / Survey Review to observe existing conditions based on the topographic survey and record drawings provided by the others.
- Up to two (2) OPPC review meeting as necessary.

Task 1.2 Deliverables:

- Thirty percent (30%) Plans, Specifications, and Opinion of Probable Construction Costs (PS&E) (.PDF format).

Task 1.3 – Design Phase (65% PS&E and Technical Studies)

Taking the civil plans and specifications that were prepared during the thirty percent (30%) Construction Document (CD) phase Consultant shall expand on the design already completed and prepare further detailed sixty-five percent (65%) CD plans per general County and AHJ requirements and comment resolutions. Site plan changes, including but not limited to, building or site feature relocations, are not anticipated or included in this scope. Additional sheets beyond what was prepared in the thirty percent (30%) CD phase are also not anticipated or included in this scope.

Task 1.3 Meetings:

- Two (2) virtual meetings with the County to discuss progress.

Task 1.3 Deliverables:

- Project meeting agenda, attached to electronic meeting invitation no less than two (2) days prior to the meeting (.PDF format).
- Meeting notes, submitted to County no more than one (1) week after meeting (Word format).
- Monthly progress reports (.PDF format).
- Sixty-five percent (65%) Plans, Specifications, and Estimate of Probable Construction Costs (PS&E) (.PDF format).

Task 1.4 – Design Phase (Final, 100% PS&E, and Technical Studies)

Consultant shall conduct the following tasks:

Taking the civil plans and specifications that were prepared during the sixty-five percent (65%) CD phase, Consultant shall expand on the design already completed and prepare further detailed Final CD plans per general County and AHJ requirements and comment resolutions. Site plan changes, including but not limited to, building or site feature relocations are not anticipated or included in this scope. Additional sheets beyond what was prepared in the prior sixty-five percent (65%) CD phase are also not anticipated or included in this scope.

Task 1.4 Meetings:

- Two (2) virtual meetings with the County to discuss progress, with final minor plan revisions.

Task 1.4 Deliverables:

- Project meeting agenda, attached to electronic meeting invitation no less than two (2) days prior to the meeting (.PDF format).
- Meeting notes, submitted to County no more than one (1) week after meeting (Word format).
- Monthly progress reports (.PDF format).
- One hundred percent (100%) Plans, Specifications, and Estimate of Probable Construction Costs (PS&E) (.PDF format).

Task 1.5 – Stormwater Pollution Prevention Plan (SWPPP)

Consultant shall produce SWPPP document(s) and file them through Stormwater Multiple Application and Report Tracking System (SMARTS) to the State Water Quality Board. Notice of Intent (NOI) fee is excluded from this scope, and it is assumed it will be paid by County.

Task 1.5 Deliverables:

- SWPPP (.PDF format).

Task 2 – Environmental Planning

Subconsultant, under the direction and supervision of Consultant, shall complete and submit applications for a Section 404 of the Clean Water Act Nationwide Permit (NWP) pre-construction notification to United States Army Corps of Engineers (USACE), a Section 401 Water Quality Certification Application to the Regional Water Quality Control Board (RWQCB), and a California Fish and Game Code Section 1602 Streambed Alteration Agreement application to the California Department of Fish and Wildlife (CDFW). Each of these permits and their unique requirements are discussed in detail below.

Task 2.1 – Aquatic Resources Delineation Report

Consultant's subconsultant shall utilize past aquatic resources delineation fieldwork as a basis for drafting a formal aquatic resources delineation report (ARDR) including the potential jurisdictional limits of both state and federal jurisdictional waters. The ARDR shall be drafted in accordance with the following regulations: USACE, pursuant to Section 404 of the federal Clean Water Act; the RWQCB, pursuant to Section 401 of the federal Clean Water Act and the Porter-Cologne Water Quality Control Act; and the CDFW, pursuant to the California Fish and Game Code.

Jurisdictional waters of the United States, including wetlands, shall be delineated in accordance with the 1987 U.S. Army Corps of Engineers Wetlands Delineation Manual (TR Y-81-1) and current published USACE guidance at the time of the delineation report. Non-wetland waters shall be mapped at the ordinary high water mark based on the procedures defined in USACE's 2008 "A Field Guide to Ordinary High Water Mark (OHWM) in the Arid West Region of the Western United States." Waters of the state shall be mapped in accordance with the "State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State" (Procedures) adopted on April 2, 2019, and revised on April 6, 2021. As described in these procedures, wetland waters of the State shall be mapped based on the procedures in USACE's 1987 Corps of Engineers Wetlands Delineation Manual and its 2008 Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Version 2.0).

Areas under the jurisdiction of the RWQCB generally coincide with waters of the United States; however, isolated waters may be under the jurisdiction of the RWQCB as waters of the State as provided by the Porter-Cologne Water Quality Control Act. Additionally, riparian habitat associated with stream channels may be subject to the jurisdiction of CDFW.

One (1) site visit is included in this task to verify that conditions on-site have not changed, and that wetlands mapped during the previous assessment (Dudek, 2021) are consistent with current standards. Vegetation, hydrology, and soils shall be examined at each aquatic feature potentially under federal/state jurisdiction. If needed, data stations shall be conducted to determine the extent of the jurisdictional areas. Where the extent of these jurisdictional areas is questionable or unclear, additional data stations shall be completed. The 2020 USACE National Wetland Plant List shall be used, as recently directed by the USACE, to determine the indicator status of plant species. Drift lines and drainage patterns shall be noted, where present. Munsell soil color charts shall be used to determine soil chroma and value. Soil pits shall be dug to depths ranging from ten (10) to sixteen (16) inches. Excavated soils shall be examined for evidence of hydric conditions, including low chroma values and mottling, vertical streaking, and high organic matter content in the upper horizon.

Once the data collection at various data stations has been completed, the boundaries of the jurisdictional features shall be delineated in the field using a web mapping application (Collector for ArcGIS) with sub-meter accuracy. All delineated features shall be depicted on project maps of the jurisdictional delineation (JD) study area.

County will review the Aquatic Resources Delineation Report once and provide one (1) round of comments. Any changes will be incorporated into a final version.

Task 2.1 Deliverables:

- Draft Aquatic Resources Delineation Report (MS Word format).
- Final Compiled PDF. version of the Aquatic Resources Delineation Report with PDF. Figures.
- Geographic Information System (GIS) data shapefile.

Task 2.2 – United States Army Corps of Engineers: Clean Water Act Section 404 Permit Pre-Construction Notification

The USACE has two (2) permit programs to allow for commercial development that would result in fill of jurisdictional waters pursuant to Section 404 of the Clean Water Act: a Nationwide Permit (NWP) and an Individual Permit (IP). The primary difference between these programs is the project type and acreage of impacts, and the speed at which USACE processes the permit application. Assuming the final acreage of project impacts to waters of the U.S. is less than one half (0.5) acre, the project may be authorized under NWP 42 – Recreational Facilities. A review of environmental impacts associated with authorizations under the NWPs has been completed in accordance with the National Environmental Policy Act (NEPA) and a determination has been made that, based on criteria included in the NWPs that impacts resulting from authorization of its use across the nation will not result in more than minimal adverse effect on aquatic resources.

Under this task, the subconsultant shall prepare a new pre-construction notification for verification under NWP 42, which shall include the following items:

- A completed Nationwide Permit Pre-Construction Notification form.
- A completed Attachment 1: Additional Pre-Construction Requirements for the Sacramento District.
- A detailed project description.
- A description of project impacts to waters of the United States.
- A wetland delineation.
- Results of special-status plant and wildlife species surveys.
- Project maps and drawings of the impact areas prepared in accordance with the updated map and drawing standards issued by the USACE for the South Pacific Division Regulatory Program in 2016.
- Cross-section and plan view sections of the proposed waters of the U.S. impacts.
- Copies of the grading plans.
- A discussion of the approvals and certifications being obtained from other federal, state, and local agencies.
- A mitigation proposal.
- A copy of the cultural resources study prepared for the project area.

All supporting documentation, including construction plans and cultural reports, will be provided by County. County is responsible for all application fees, as well as any mitigation costs or fees. County will review the application once and provide one (1) round of comments. It is assumed that the application will receive a notice of incompleteness and additional information will be required. Subconsultant shall provide that additional information to USACE. County will review the response to the request for additional information once and provide one (1) round of comments.

This task includes one (1) site visit, if requested by the agencies. Following agency review of the site and/or report, additional edits to the report may be required. This task does not include additional meetings or substantial revisions to the report.

Task 2.2 Deliverables:

- Draft NWP Application (MS Word format).
- Compiled Final NWP Application with Figures (.PDF format).
- Draft Response to Notice of Incompletion (MS Word format).
- Compiled Response to Notice of Incompletion with Figures (.PDF format).

Task 2.3 – Regional Water Quality Control Board: Clean Water Act Section 401 Water Quality Certification

In the State of California, the State Water Resources Control Board and local RWQCBs are responsible for implementing Section 401 of the federal Clean Water Act. Discharges into waters of the state are regulated under Section 401 of the federal Clean Water Act. Further, the “State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State” (Procedures) issued by the State Water Resources Control Board went into effect on May 28, 2020 and clarify the State’s definition of a wetland. In accordance with the Procedures, the subconsultant shall prepare, file, and process an application for an Individual Section 401 Water Quality Certification (WQC) with the Central Valley RWQCB (Region 5). Applicants are required to file a pre-application filing meeting request with the RWQCB at least thirty (30) days prior to application submittal. During this thirty (30) day period, the RWQCB may request an office or field meeting to review the project in more detail or they may reach out with preliminary questions or concerns they have that should be resolved to the greatest extent feasible prior to the application submittal. This is due to the fact that under the “Clean Water Act Section 401 Certification Rule” (Rule), administered by the Environmental Protection Agency on September 11, 2020, the RWQCB is now required to take action within sixty (60) days from receipt of a formal application. The overall intent of the Rule is to streamline agency review of applications and improve efficiencies in the application review and processing. However, while time extensions are permitted under the Rule, they rarely are approved by staff. Therefore, based on recent direction provided by the RWQCB, it’s strongly recommended to submit all of the required contents of a complete application with the first submittal.

Under this task, the subconsultant shall prepare, file, and process an application for Section 401 WQC with the Central Valley RWQCB office. Steve Peterson, Project Manager, shall provide quality assurance/quality control of the application materials and participate in meetings and negotiation sessions with regulatory agency personnel.

The application for Section 401 WQC generally includes the following information:

- A completed application form.
- A detailed project description.
- A description of project impacts to waters of the U.S. and state.
- A wetland delineation.
- Results of special-status plant and wildlife species surveys.
- Project maps and drawings of the impact area(s).

- Cross-section and plan view sections of the proposed waters of the United States and state impacts.
- A copy of the construction plans.
- A discussion of the approvals currently being obtained from other federal, state, and local agencies.
- Copies of prior resource agency authorizations issued for the project.
- A mitigation proposal.
- An alternatives analysis (see below for more details).
- The final California Environmental Quality Act document (with the Notice of Determination and CDFW filing fee receipt).

It is assumed that the application will receive a notice of incompleteness and additional information will be required. The subconsultant shall provide that additional information to RWQCB in the event that this occurs.

Alternatives Analysis

As indicated in the Procedures, an alternatives analysis must be submitted to the RWQCB consistent with the requirements of Section 230.10 of the State Supplemental Dredge or Fill Guidelines, unless the project qualifies for an exemption as outlined on page 6 of the Procedures. The alternatives analysis serves two (2) primary purposes. The first purpose is to document that an appropriate sequence of actions has been taken first to avoid, and second to minimize, adverse impacts to waters of the state. The second purpose is to identify the least environmentally damaging practicable alternative. The analysis must establish that the proposed project alternative is the Least Environmentally Damaging Practicable Alternative in light of all potential direct, secondary (indirect), and cumulative impacts on the physical, chemical, and biological elements of the aquatic ecosystem.

As discussed in the state's Procedures, alternatives analyses shall be completed in accordance with the following tiers. The level of effort required for an alternatives analysis within each of the three (3) tiers shall be commensurate with the significance of the impacts resulting from the impact.

Tier 1 projects include any discharge of dredged or fill material that directly impacts less than or equal to a tenth (0.1) of an acre or less than or equal to one hundred (100) linear feet of waters of the state, unless it meets the criteria for a Tier 3 project. Tier 1 projects shall provide a description of any steps that have been or will be taken to avoid and minimize loss of, or significant adverse impacts to, beneficial uses of waters of the state.

Tier 2 projects include any discharge of dredged or fill material that directly impacts more than a tenth (0.1) of an acre and less than or equal to one fifth (0.2) of an acre or more than one hundred (100) linear feet and less than or equal to three hundred (300) linear feet of waters of the state unless it meets the criteria for a Tier 3 project, or any project that inherently cannot be located at an alternate location (unless it meets the size requirements set forth in Tier 1). Tier 2 projects shall provide an analysis of only on-site alternatives.

Tier 3 projects include any discharge of dredged or fill material that directly impacts more than one fifth (0.2) of an acre or three hundred (300) linear feet of waters of the state; rare, threatened, or endangered species habitat in waters of the State; wetlands or eelgrass beds; or Outstanding National Resource Waters or Areas of Special Biological Significance and is not a project that inherently cannot be located at an alternate location. Tier 3 projects shall provide an analysis of off-site and on-site alternatives.

Based on the subconsultant's review of the impact footprint and site resources, the project is most likely to fall under Tier 3. Therefore, the project meets the requirements of a Tier 3 evaluation, as defined in the state's Procedures. Under this task the subconsultant shall prepare a Tier 3 alternatives analysis with coordination and technical support provided by project engineer, and other members of the design team, as necessary. The subconsultant shall work closely with the project team to identify a reasonable range of alternatives to evaluate. Consultant assumes no more than four (4) alternatives will be evaluated including the current preferred project, the "No Project" alternative, and up to two (2) additional on-site configurations.

County is responsible for all application fees and any mitigation costs or fees. County will review the application once and provide one (1) round of comments. As part of the permit process, Consultant expects RWQCB staff to have several rounds of comment and review on the application prior to determining completeness. County will review the response to the notice of incompleteness once and provide one (1) round of comments.

For budget purposes, this cost estimate assumes a need to respond to up to one (1) round of comments only. Should the RWQCB have additional rounds of comments a contract amendment will be required.

Task 2.3 Deliverables:

- Draft 401 Water Quality Certification (MS Word format).
- Compiled Final 401 Water Quality Application with Figures (.PDF format).
- Draft Response to Notice of Incompletion (MS Word format).
- Compiled Response to Notice of Incompletion with Figures (.PDF format).

Task 2.4 – California Department of Fish and Wildlife: Fish and Game Code Section 1602 Streambed Alteration Agreement

The subconsultant shall submit to CDFW a notification for a Section 1602 Streambed Alteration Agreement through CDFW's Environmental Permit Information Management System (EPIMS) online permitting portal. The following items are required in a Lake and Streambed Alteration Agreement (LSAA):

- Applicant information.
- Contact information.
- Property owners.
- Project name and agreement terms.
- Agreement type.

- Fees (to be provided by County).
- Prior notifications and orders.
- Project location.
- Project category.
- Project description.
- Project impacts.
- Measures to protect fish, wildlife, and plant resources.
- Permits.
- Environmental review.

The following studies shall be included in the attachments to the LSAA application, but are not part of this scope of work:

- Geotechnical study.
- Hydrology study.
- Biological resources study.

The current Streambed Alteration Agreement notification process is completed online through CDFW's EPIMS. The subconsultant shall work closely with County to establish a shared user account to support the most current application submittal and processing procedures. Additionally, because the submittal is done electronically by the subconsultant, the subconsultant shall prepare a document that includes all of the information required in a Streambed Alteration. County will review the application once and provide one (1) round of comments.

County is responsible for all application fees and any mitigation costs or fees. For a standard five (5) year permit term, the 1602 LSAA application is subject to a thirty (30) day review for a complete application. Following CDFW's determination that the application is complete, there is a nine thousand sixty (9060) day period to prepare the draft 1602 agreement. The California Permit Streamlining Act establishes these timeframes; however, the agency often requests a longer review time for more complicated projects, or it issues a notice of incomplete application with a request for additional information. It is assumed that the application will receive a notice of incompleteness and additional information will be required. The subconsultant shall provide additional information to CDFW. County will review the response to the notice of incompleteness once and provide one (1) round of comments.

Task 2.4 Deliverables:

- Draft Section 1602 Streambed Alteration Agreement Application (MS Word format).
- Compiled Online (EPIMS) Section 1602 Streambed Alteration Agreement Application (.PDF format).
- Draft Response to Notice of Incompletion (MS Word format).
- Compiled Response to Notice of Incompletion with Figures (.PDF format).

Task 2.5 – Compensatory Mitigation Planning

Consultant shall aggregate the compensatory mitigation requirements identified in negotiations of the permit requirements of Federal Clean Water Act Section 401 and 404, as well as Section 1602 of the California Fish and Game Code, as described in in Subtask 2.4. Consultant shall use these metrics to determine the most economical and efficient method of developing compensatory habitat mitigation or obtaining mitigation credits at mitigation banks that serve the project site. Consultant shall present the County with options and costs for securing this compensatory mitigation. County will provide direction to Consultant. Consultant shall coordinate with the USACE, the Central Valley Regional Water Quality Control Board, and the CDFW to request preliminary approval of the County-proposed mitigation strategy. The results of this work shall be incorporated into the subject permit packages for process by the regulatory agencies.

Task 2.5 Deliverables:

- Draft Options and Costs for Compensatory Mitigation (MS Word or .PDF format).
- Final Mitigation Strategy (MS Word or .PDF format).

Task 3 – Landscape Architecture

Task 3.1 - Advanced Planning and Construction Documents

This phase of the project will allow Roach & Campbell (subconsultant) to advance the previously prepared thirty percent (30%) design development documents to allow for advanced planning of the project and attainable phasing for construction of the project. This will guide how the project is broken into phases to ensure the coordination and installation of work will accommodate the current phase and allow for future expansion without the need to redo work that was previously completed.

The prescribed boundaries of the environmental permits shall be coordinated with the site and verified all programmed spaces do not impede within the boundaries outlined.

The site layout and elements shall be reviewed with County to ensure the program and elements as designed are desired in quantity and function. Activities including athletic fields, sports courts and passive spaces shall be reviewed to ensure they meet the needs of users and planned programs. The distances/requirements of the soccer fields, and softball fields shall be reviewed to ensure they meet the programming and function as intended. Each phase as previously proposed shall be reviewed with County to discuss the pros/cons of development and requirements needed for each phase.

An Opinion of Costs, including the information developed in Task 2, shall be developed/refined for each phase to provide County with an outline of funding needed for each phase of development.

Consultant shall produce colored renderings as required for fund raising purposes of the site and phasing. (includes up to three [3] revisions)

County will provide the following information or services as required for performance of the Scope of Services.

- Topography and survey indicating existing conditions and utilities including base information for the project as well as boundary limits.
- Legal descriptions of property.
- Geotechnical soils report.
- Discovery or removal procedures for hazardous waste, wells, underground tanks or archaeological artifacts.
- Public meetings and/or presentations.
- Colored plan graphics/exhibits used in prior public meetings.
- Utility company/entity application processing and/or coordination.
- Tree survey, mitigation plan and/or Arborist's Report.
- SWPPP documentation and/or erosion control plans.
- Printing or reprographics charges (we assume deliverables will be delivered electronically).

Task 3.1 Deliverables:

- Opinion of Costs, to include Opinion of Probable Construction Costs (PS&E) from Task 2 (.PDF format).
- Site and Phasing Plan (.PDF format).
- Colored Development Renderings (includes up to three (3) revisions) (.PDF format).

Task 4 – Project Administration, Management, and Coordination

Task 4.1 – Project Administration and Management

Consultant shall provide project initiation, general project administration, quality control, and project accounting. Steve Peterson, AICP, LEED, AP, Senior Environmental Practice Leader, will serve as Project Manager and primary point of contact for the development and delivery of the activities and materials described below. Brad Stoneman will serve as Deputy Project Manager for this assignment.

Task 4.2 – Project Coordination with El Dorado County (EDC)

The project Team is composed of Consultant, subconsultants, and County. Steve Peterson and Brad Stoneman will lead project coordination with County (Chief Administration Office, Department of Transportation, and Planning and Building Services Department). Andrea Strahlo, Senior Landscape Architect with Roach and Campbell Landscape Architects (subconsultant) shall participate in these sessions to ensure continuity between this initial development planning phase and the subsequent landscape architecture plans, specifications, and estimates development phase.

Consultant shall provide services as noted in the Scope of Work as expeditiously as practicable to meet the mutually agreed upon schedule. With the exception of the environmental permitting subtask, this Scope of Work is anticipated to be completed over a six (6) month period, with the exception of Task 1 (eight [8] months) and Task 3 (eight [8] to twelve [12] months).

Task 4.2 Meetings:

- Six (6) biweekly project initiation, kickoff, and development meetings, to be conducted via cloud-based video conferencing platforms (MS Teams or Zoom) or in person during the first three (3) months.
- Three (3) monthly project initiation, kickoff, and development meetings, to be conducted via cloud-based video conferencing platforms (MS Teams or Zoom) or in person during months three-six (3-6) of the project.
- Up to three (3) coordination and/or progress review calls to occur during the thirty percent (30%) Design Phase (Task 1.2).

Task 4.2 Deliverables:

- Project Schedule (.PDF format), to be updated monthly or after the completion of each Task.
- Project meeting agenda, attached to electronic meeting invitation no less than two (2) days prior to the meeting or call (.PDF format).
- Meeting notes, submitted to County, with a copy to all Project Team members no more than one (1) week after meeting (Word format).
- Monthly progress reports (.PDF format).

Task 4.3 – Environmental Permitting Pre-Application/Notification Filing Meeting and Agency Coordination

Processing wetland permits takes coordination with the agencies. This task assumes that the permitting process will take nine (9) to twelve (12) months (i.e., thirty-nine [39] – fifty-two [52] weeks). It is assumed that the subconsultant's wetland permitting specialist Laura Burris will spend two (2) hours/week coordinating with the agencies. Steve Peterson, Project Manager, shall provide quality assurance/quality control of the application materials and participate in meetings and negotiation sessions with regulatory agency personnel, and County. Coordinating with the agencies could include, for example, corresponding with the agencies or providing them information they requested.

Task 4.3 Meetings:

- Up to three (3) meetings focused on environmental permitting, which may occur in the six (6) months following the Design Phase (Task 1.2), to be conducted in response to agency responses to wetland, water quality, and streambed alternation permitting.

Task 4.3 Deliverables:

- Project Schedule (.PDF format), to be updated monthly or after the completion of each Task.
- Project meeting agenda, attached to electronic meeting invitation no less than two (2) days prior to the meeting or call (.PDF format).
- Meeting notes, submitted to County, with a copy to all Project Team members no more than one (1) week after meeting (Word format).
- Monthly progress reports (.PDF format).

Kimley-Horn and Associates, Inc.

Exhibit B

Cost Proposal

<u>TASK 1: Civil Engineering</u>	Cost	Fee Type
Task 1.1 – Site Plan Refinement	\$ 12,000	Fixed Fee
Task 1.2 – Design Phase (30% PS&E and Technical Studies)	\$ 85,800	Fixed Fee
Task 1.3 – Design Phase (65% PS&E and Technical Studies)	\$ 100,900	Fixed Fee
Task 1.4 - Design Phase (Final, 100% PS&E and Technical Studies)	\$ 102,300	Fixed Fee
Task 1.5 - SWPPP	\$ 14,000	Fixed Fee
<i>SUBTOTAL</i>	\$ 315,000	
<u>TASK 2: Environmental Planning</u>		
Task 2.1 – Aquatic Resources Delineation Report	\$ 16,800	Fixed Fee
Task 2.2 – USACE: Clean Water Act Section 404 Permit Pre-Construction Notification	\$ 17,900	Fixed Fee
Task 2.3 – RWQCB: Clean Water Act Section 401 Water Quality Certification	\$ 18,300	Fixed Fee
Task 2.4 – CDFW: Fish and Game Code Section 1602 Streambed Alteration Agreement	\$ 15,100	Fixed Fee
Task 2.5 – Compensatory Mitigation Planning	\$ 14,300	Fixed Fee
<i>SUBTOTAL</i>	\$ 82,400	
<u>TASK 3: Landscape Architecture</u>		
Task 3.1 – Advanced Planning and Construction Documents	\$ 85,000	Fixed Fee
<i>SUBTOTAL</i>	\$ 85,000	
<u>TASK 4: Project Administration, Management, and Coordination</u>		
Task 4.1 – Project Administration and Management	\$ 18,000	Hourly NTE
Task 4.2 – Project Coordination with EDC and BGC	\$ 18,000	Hourly NTE
Task 4.3 – Environmental Permitting Pre-Application/Notification Filing Meeting and Agency Coordination	\$ 25,300	Hourly NTE
<i>SUBTOTAL</i>	\$ 61,300	
<u>Direct Costs</u>	\$ 15,000	NTE
TOTAL NOT TO EXCEED AMOUNT	\$ 558,700	

All direct costs and hourly NTE expenses and their distribution among tasks are estimates only. This Exhibit represents the composition of the total not-to-exceed budget for this Agreement. In the performance of the scope of services to be provided in accordance with this budget, Consultant may request to reallocate the expenses listed herein among the various Scope of

Work tasks, items of work, and subconsultant's tasks, identified herein, subject to County Contract Administrator's prior written approval. In no event shall the total not-to-exceed amount of the Agreement, be exceeded.

SubConsultant Services, Other Outside Services, and Other Direct Costs:

Subconsultant's services, other outside services, and other direct costs will be reimbursed in accordance with Article III, Compensation for Services.

Mileage/Travel Reimbursement:

Mileage and travel will be reimbursed in accordance with ARTICLE III, Compensation for Services.

Labor shall include travel portal to portal.

Kimley-Horn and Associates, Inc.

Exhibit C

California Levine Act Statement

California Levine Act Statement

California Government Code section 84308, commonly referred to as the "Levine Act," prohibits any officer of El Dorado County from participating in any action related to a contract if he or she accepts, solicits, or directs any political contributions totaling more than two hundred and fifty dollars (\$250) within the previous twelve (12) months, and for twelve (12) months following the date a final decision concerning the contract has been made, from the person or company awarded the contract. The Levine Act also requires disclosure of such contribution by a party to be awarded a specific contract. An officer of El Dorado County includes the Board of Supervisors, any elected official, and the chief administrative officer (collectively "Officer"). It is the Consultant's responsibility to confirm the appropriate "Officer" and name the individual(s) in their disclosure.

Have you or your company, or any agent on behalf of you or your company, made any political contribution(s), or been solicited to make a contribution by an Officer or had an Officer direct you to make a contribution of more than \$250 to an Officer of the County of El Dorado in the twelve months preceding the date of the submission of your proposals or the anticipated date of any Officer action related to this contract?

_____ YES NO

If yes, please identify the person(s) by name:

Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any political contribution(s) of more than \$250 to an Officer of the County of El Dorado in the twelve months following any Officer action related to this contract?

_____ YES NO

If yes, please identify the person(s) by name:

Answering YES to either of the two questions above does not preclude the County of El Dorado from awarding a contract to your firm or any taking any subsequent action related to the contract. It does, however, preclude the identified Officer(s) from participating in any actions related to this contract.

11/29/2024

Date

Kimley-Horn and Associates, Inc.
Type or write name of company

Matthew D. Weir
Matthew D. Weir (Nov 29, 2024 07:59 PST)

Signature of authorized individual

Matthew D. Weir
Type or write name of authorized individual