

T. Y. Lin International

THIRD AMENDMENT TO AGREEMENT FOR SERVICES #551-S1411

THIS THIRD AMENDMENT to that Agreement for Services #551-S1411 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 T. Y. Lin International, a corporation duly qualified to conduct business in the State of California, whose principal place of business is 345 California Street, San Francisco, California 94104, and whose local office address is 1601 Response Road, Suite 260, Sacramento, California 95815, and whose mailing address is Department CH 16981, Palatine, Illinois 60055-6981 (hereinafter referred to as "CONSULTANT");

R E C I T A L S

WHEREAS, CONSULTANT has been engaged by COUNTY to provide environmental and engineering services for the Bucks Bar Road at the North Fork Cosumnes River – Bridge Replacement Project for its Community Development Agency pursuant to Agreement for Services #551-S1411, dated July 15, 2014, First Amendment to Agreement for Services #551-S1411, dated October 25, 2016, and Second Amendment to Agreement for Services #551-S1411, dated December 13, 2016, incorporated herein and made by reference a part hereof (hereinafter referred to as "Agreement");

WHEREAS, the parties hereto desire to amend the Agreement to revise the scope of services, amending **ARTICLE I, Scope of Services**;

WHEREAS, the parties hereto desire to fully-replace **ARTICLE II** through **ARTICLE LVII** to include contract provisions required by the use of federal grant funds;

WHEREAS, the parties hereto desire to update the article reference in Exhibit D, referenced by **ARTICLE XIII, Conflict of Interest**, replacing Exhibit D with **Amended Exhibit D, Interest of Consultant Disclosure Statement**;

WHEREAS, the parties hereto desire to remove Exhibit E, Certification of Consultant from the Agreement, previously referenced in **ARTICLE XL, Covenant Against Contingent Fees**;

WHEREAS, the parties hereto desire to remove Exhibit G, Fair Employment Practices Addendum, Exhibit H, Nondiscrimination Assurances, and the four (4) Appendices to Exhibit H, previously referenced in **ARTICLE XLIII, Nondiscrimination**;

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants hereinafter contained, COUNTY and CONSULTANT mutually agree to amend the terms of the Agreement in this Third Amendment to Agreement on the following terms and conditions:

I. **ARTICLE I, Scope of Services**, paragraphs C and D of the Agreement are amended in their entirety to read as follows:

C. In addition to the specific services identified in Exhibit A, Exhibit A-1, and Exhibit A-2, this Agreement may also include Optional Tasks. Such Optional Tasks may supplement, expand, or otherwise modify the Scope of Work and may include, but not be limited to, tasks that are deemed critical by COUNTY's Contract Administrator to the furtherance of the Project.

Before proceeding with any work concerning Optional Tasks under this Agreement, the parties will identify the specific services to be provided for each assignment in individual Notices to Proceed or Work Orders, as applicable. For Optional Tasks specifically identified in Exhibit A, Exhibit A-1, and Exhibit A-2, COUNTY's Contract Administrator will issue a separate Notice to Proceed for each assignment. In addition to the specific services identified in Exhibit A, Exhibit A-1, or Exhibit A-2, or as assigned to CONSULTANT as Task 6: Optional Tasks, this Agreement may also include additional optional work. For Optional Tasks not specifically identified in Exhibit A, Exhibit A-1, and Exhibit A-2, COUNTY will issue a written Work Order for each assignment.

The specific services for each Optional Tasks assignment shall be determined at a meeting or telephone conference between CONSULTANT and COUNTY's Contract Administrator, or designee, to discuss the needs, applicable design standards, required deliverables, specific CONSULTANT staff or subconsultants to be used, and any task-related mileage budget, if applicable, on a task-by-task basis. Within an agreed timeframe as determined by COUNTY's Contract Administrator, following the meeting or telephone conference, CONSULTANT shall provide COUNTY's Contract Administrator with a written scope of work for the Optional Tasks, a schedule including a list of tasks with completion dates, a target completion date for the overall scope of work, and a not-to-exceed cost itemization to complete the work (resulting in a Notice to Proceed or a Work Order, as applicable), which shall require written approval, authorization, and written notification to proceed from COUNTY's Contract Administrator, prior to commencement of the work.

CONSULTANT shall provide COUNTY's Contract Administrator with the names and titles of CONSULTANT's representatives that are authorized to bind CONSULTANT by signing Work Orders and Work Order Amendments on CONSULTANT's behalf. CONSULTANT's notification of individuals

authorized to execute Work Orders and Work Order Amendments on CONSULTANT's behalf shall be communicated to COUNTY in accordance with the provisions of ARTICLE XXIX, Notice to Parties, of this Agreement.

COUNTY shall review CONSULTANT's progress at key points as specified in Exhibit A or in each Work Order. Milestone reviews shall be performed for the specific products and deliverables listed in each Work Order. Milestones may only be changed by written agreement (may consist of an email) between COUNTY's Contract Administrator, or designee and CONSULTANT.

- D. If a submittal or Work Order deliverable is required to be an electronic file, CONSULTANT shall produce the file using Microsoft (MS) Office 2010 applications (specifically, MS Word, MS Project, and MS Excel). Signed reports shall be submitted in Adobe portable document format (PDF). Electronic AutoCAD 2010 or AutoCAD Civil 3D 2010 and MicroStation formats shall be used for submittal of plans or other similar documents as specified by COUNTY's Contract Administrator. All deliverables shall be submitted in language, format and design that are compatible with and completely transferable to COUNTY's computer and engineering applications and that are acceptable to COUNTY's Contract Administrator. Newer versions of software may be used and other engineering software used for analytical purposes may be authorized if approved by COUNTY's Contract Administrator. CONSULTANT shall submit all deliverables to COUNTY's Contract Administrator in accordance with the completion time schedules identified in Exhibit A, Exhibit A-1, or Exhibit A-2, or in the individual Work Orders that may be issued for Optional Services. Failure to submit the required deliverables in the format required shall be grounds for termination of the Agreement, as provided in ARTICLE VI, Termination, herein.

The following articles are fully-replaced in their entirety:

II. ARTICLE II

Compensation for Services: For services provided herein, including all of the deliverables described in Exhibit A, Exhibit A-1, and Exhibit A-2, and in the individual Work Orders issued, if applicable, pursuant to this Agreement, and including all of the forms and reports required under the DBE provisions of this Agreement; and including the progress reports required by ARTICLE III, Progress Reports, below, COUNTY agrees to pay CONSULTANT in arrears. Payment shall be made within forty-five (45) days following COUNTY's receipt and approval of itemized invoices detailing services rendered.

For the purposes hereof, the billing rates shall be in accordance with Exhibit B, marked "Fee Schedule," incorporated herein and made by reference a part hereof.

Other direct costs including special reproductions, delivery charges, and other outside services authorized herein, shall be invoiced at CONSULTANT's cost, for

the services rendered. Any invoices that include other direct costs shall be accompanied by backup documentation to substantiate CONSULTANT's costs for the services being billed on those invoices.

Travel costs (i.e., overnight lodging, meals, parking, airfare, bridge tolls and other per diem expenses) will be reimbursed as a direct cost for any services performed under this Agreement only for CONSULTANT's authorized subconsultant, Sycamore Environmental Consultant, Inc.'s subconsultants.

For the purposes of budgeting the items of work identified in Exhibit A, Exhibit A-1, and Exhibit A-2, the maximum allowable billing amounts for each item of work are described in Amended Exhibit C, marked "Amended Cost Proposal," attached hereto and incorporated herein by reference. The amounts indicated in Amended Exhibit C represent the composition of the total not-to-exceed budget for the various tasks. In the performance of the scope of services to be provided under this Agreement, CONSULTANT may request to reallocate the expenses listed in Amended Exhibit C among the various Scope of Work tasks and items of work, Other Direct Costs, and Optional Tasks identified therein, including reallocating such expenses between subconsultants listed in Amended Exhibit C, subject to COUNTY's Contract Administrator's written approval.

In accordance with ARTICLE XII, State Prevailing Wage Rates, CONSULTANT shall provide COUNTY's Contract Administrator with certified payroll for applicable personnel for the period for which payment is requested and such certified payroll shall accompany each invoice submitted. The certified payroll shall contain information related only to the applicable project. No invoice shall be paid until the certified payroll is submitted.

III. **ARTICLE III**

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. The reports shall be sufficiently detailed for COUNTY's Contract Administrator to determine if CONSULTANT is performing to expectations and is on schedule, to provide communication of interim findings, and to afford occasions for airing difficulties or special circumstances encountered so that remedies can be developed. COUNTY's review of these reports will ensure that CONSULTANT's work meets a level of acceptability as determined by COUNTY's Contract Administrator, and CONSULTANT shall be required to modify its work as necessary to meet that level of acceptability as defined by COUNTY's Contract Administrator. Separate detail shall be provided for each ongoing Work Order. Progress reports shall include the total number of hours worked by CONSULTANT and any authorized subconsultants and shall include descriptions of the tasks and work performed, including a description of any deliverables submitted during the reporting period and the anticipated tasks,

work and deliverables proposed for the subsequent reporting period, a discussion of any Project issues, recommendations to address the issues, percent of Agreement completed that month and any necessary updates to the Project. CONSULTANT shall complete Project schedule updates and shall submit them quarterly to COUNTY's Contract Administrator.

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.

IV. ARTICLE IV

Performance Period:

- A. This Agreement shall go into effect upon execution, contingent upon approval by COUNTY, and CONSULTANT shall commence work after notification to proceed by COUNTY's Contract Administrator. The Agreement shall expire on July 14, 2021, unless extended by contract amendment.
- B. CONSULTANT is advised that any recommendation for contract award is not binding on COUNTY until the Agreement is fully executed and approved by COUNTY.

V. ARTICLE V

Allowable Costs and Payments:

- A. CONSULTANT will be reimbursed for hours worked at the hourly rates specified in Amended Exhibit B. The specified hourly rates shall include direct salary costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in this Agreement.
- B. In addition, CONSULTANT will be reimbursed for incurred (actual) direct costs other than salary costs that are in the cost proposal and identified in Amended Exhibit C.
- C. Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal.
- D. When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval for a revised milestone cost estimate from COUNTY's Contract Administrator before exceeding such estimate.
- E. Progress payments will be made monthly in arrears based on services provided and actual costs incurred.

- F. CONSULTANT shall not commence performance of work or services until this Agreement has been approved by COUNTY, and notification to proceed has been issued by COUNTY's Contract Administrator. No payment will be made prior to approval or for any work performed prior to approval of this Agreement.
- G. CONSULTANT will be reimbursed, as promptly as fiscal procedures will permit upon receipt by COUNTY's Contract Administrator of itemized invoices. Invoices shall be submitted no later than forty-five (45) calendar days after the performance of work for which CONSULTANT is billing. Invoices shall detail the work performed on each milestone for the project. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number, Project title, the Work Breakdown Structure (WBS) Activity Identification Codes (Activity IDs) applicable for each item of work, and shall include the beginning and ending dates of the overall period of service. Final invoice must contain the final cost and all credits due COUNTY including any equipment purchased under the provisions of ARTICLE XI, Equipment Purchase, of this Agreement. The final invoice should be submitted within sixty (60) calendar days after completion of CONSULTANT's work. Invoices shall be mailed to COUNTY's Contract Administrator at the following address:

County of El Dorado
Community Development Agency
Transportation Division
2441 Headington Road
Placerville, California 95667
Attn.: Stephanie Lisius
Administrative Technician

or to such other location as COUNTY directs.

- H. The period of performance for Work Orders shall be in accordance with dates specified in the Work Order. No Work Order will be written which extends beyond the expiration date of this Agreement.
- I. The total amount payable by COUNTY for an individual Work Order shall not exceed the amount agreed to in the Work Order, unless authorized by amendment.
- J. If CONSULTANT fails to satisfactorily complete a deliverable according to the schedule set forth in Exhibit A, or in a Work Order, if any, no payment will be made until the deliverable has been satisfactorily completed.
- K. The total amount payable by COUNTY shall not exceed \$1,353,128.47.
- L. All subcontracts in excess of \$25,000 shall contain the above provisions.

VI. ARTICLE VI
Termination:

- A. COUNTY reserves the right to terminate this Agreement or any Work Order issued pursuant to this Agreement, upon thirty (30) calendar days written notice to CONSULTANT with the reasons for termination stated in the Notice of Termination. If such prior termination is effected, COUNTY will pay for satisfactory services rendered prior to the effective dates, as set forth in the Notice of Termination provided to CONSULTANT, and for such other services which COUNTY may agree to in writing as necessary for contract resolution. In no event, however, shall COUNTY be obligated to pay more than the not-to-exceed amount of the Work Order or the total amount of this Agreement, as applicable. Upon receipt of a Notice of Termination, CONSULTANT shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the Notice directs otherwise.
- B. COUNTY may terminate this Agreement with CONSULTANT should CONSULTANT fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, COUNTY may proceed with the work in any manner deemed proper by COUNTY. If COUNTY terminates this Agreement with CONSULTANT, 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. The maximum amount for which COUNTY shall be liable if this Agreement is terminated is the not-to-exceed amount of the Work Order or the total amount of this Agreement, as applicable.
- D. Default: Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (Time to Cure), then such party shall be in default. The Time to Cure may be extended at the discretion of the party giving notice. Any extension of Time to Cure must be in writing, prepared by the party in default for signature by the party giving notice, and must specify the reason(s) for the extension and the date in which the extension of Time to Cure expires.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of

time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the Time to Cure has expired.

- E. Bankruptcy: This Agreement, at the option of COUNTY, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of CONSULTANT.
- F. Ceasing Performance: COUNTY may terminate this Agreement in the event CONSULTANT ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- G. Termination or Cancellation without Cause: CONSULTANT shall comply with the requirements of this Article, regarding administrative, contractual, or legal remedies in instances of default, termination or cancellation and with other terms and conditions of COUNTY's grant funding agreements that provide for such sanctions and penalties as may be appropriate in instances where contract terms are violated or breached.
- H. Completion of Work: In the event of termination of the Agreement, for default or without cause, COUNTY reserves the right to take over and complete any work, service, or task by contract or by other means.

VII. ARTICLE VII

Cost Principles and Administrative Requirements:

- A. CONSULTANT agrees that the Contract Cost Principles and Procedures, 48 C.F.R. Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items.
- B. CONSULTANT also agrees to comply with federal procedures in accordance with 49 C.F.R. § 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and 2 C.F.R. Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, as applicable.
- C. Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under 49 C.F.R. § 18, 48 C.F.R. Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., and 2 C.F.R. Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, are subject to repayment by CONSULTANT to COUNTY.
- D. All subcontracts in excess of \$25,000 shall contain the above provisions.

- E. Notwithstanding any other provision of this Agreement to the contrary, payments to CONSULTANT for travel and subsistence (per diem) and mileage expenses, if applicable, for CONSULTANT's staff or for subconsultants claimed for reimbursement shall not exceed the lesser of (1) the rates to be paid to COUNTY employees under the current Board of Supervisors Travel Policy in effect at the time the expenses are incurred; or (2) the rates authorized to be paid to rank and file state employees under the then current State of California Department of Personnel Administration (DPA) rules. If the rates invoiced are in excess of these authorized rates, then CONSULTANT is responsible for the cost difference and any overpayments shall be reimbursed to COUNTY upon demand. For the purposes of this Agreement, only mileage expenses for CONSULTANT and for subconsultants, if applicable, shall be eligible for reimbursement. Reimbursements for travel and subsistence (per diem) expenses will be reimbursed only for authorized subconsultant, Sycamore Environmental Consultant, Inc.'s subconsultants.
- F. CONSULTANT and its subconsultants, if applicable shall establish and maintain accounting systems and records that properly accumulate and segregate funds received under this Agreement by line item. The accounting systems of CONSULTANT and all subconsultants shall conform to Generally Accepted Accounting Principles (GAAP), shall enable the determination of incurred costs at interim points of completion, and shall provide support for reimbursement of payment vouchers or invoices.

VIII. ARTICLE VIII

Retention of Records/Audit: For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the Agreement pursuant to Government Code 8546.7; CONSULTANT, subconsultants, and COUNTY shall maintain and make available for inspection 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 Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three years from the date of final payment under the Agreement. The state, State Auditor, COUNTY, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of CONSULTANT and its certified public accountants (CPA) work papers that are pertinent to the Agreement and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. Subcontracts in excess of \$25,000 shall contain this provision.

IX. ARTICLE IX

Audit Review Procedures:

- A. Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not disposed of by agreement, shall be reviewed by COUNTY's Chief Fiscal Officer.
- B. Not later than thirty (30) days after issuance of the final audit report, CONSULTANT may request a review by COUNTY's Chief Fiscal Officer of unresolved audit issues. The request for review shall be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by COUNTY shall excuse CONSULTANT from full and timely performance, in accordance with the terms of this Agreement.
- D. CONSULTANT and subconsultant contracts, including cost proposals and ICR, are subject to audits or reviews such as, but not limited to, a contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the Agreement, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 C.F.R. Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is CONSULTANT's responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The Agreement, cost proposal, and ICR shall be adjusted by CONSULTANT and approved by COUNTY's Contract Administrator to conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs identified in the audit report shall be incorporated into the Agreement by this reference if directed by COUNTY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review recommendations, or to ensure that the federal, state or local governments have access to CPA work papers, will be considered a breach of contract terms and cause for termination of the Agreement and disallowance of prior reimbursed costs.

The provisional ICR will apply to this Agreement and all other contracts executed between COUNTY and CONSULTANT, either as a prime or subconsultant, with the same fiscal period ICR.

X. ARTICLE X

Subcontracting:

- A. Nothing contained in this Agreement or otherwise, shall create any contractual relation between COUNTY and any subconsultant(s), and no subcontract shall relieve CONSULTANT of its responsibilities and

obligations hereunder. CONSULTANT agrees to be as fully responsible to COUNTY for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by CONSULTANT. CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from COUNTY'S obligation to make payments to the CONSULTANT.

- B. CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this Agreement shall be subcontracted without written authorization by COUNTY's Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.
- C. CONSULTANT shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to CONSULTANT by COUNTY.
- D. Any subcontract in excess of \$25,000 entered into as a result of this Agreement shall contain all the provisions stipulated in this Agreement to be applicable to subconsultants.
- E. Any substitution of subconsultant(s) must be approved in writing by COUNTY's Contract Administrator prior to the start of work by the subconsultant(s).
- F. 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 Exhibit A, Exhibit A-1, and Exhibit A-2 for the particular tasks, work and deliverables identified therein or as identified in the individual Work Orders issued 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 in individual Work Orders issued 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.

XI. ARTICLE XI

Equipment Purchase:

- A. Prior authorization in writing, by COUNTY's Contract Administrator shall be required before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or CONSULTANT services. CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For purchase of any item, service or consulting work not covered in CONSULTANT's Cost Proposal and exceeding \$5,000, prior authorization by COUNTY's Contract Administrator is required; three (3) competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- C. Any equipment purchased as a result of this Agreement is subject to the following: "CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two (2) years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, COUNTY shall receive a proper refund or credit at the conclusion of the Agreement, or if the Agreement is terminated, CONSULTANT may either keep the equipment and credit COUNTY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established COUNTY procedures; and credit COUNTY in an amount equal to the sales price. If CONSULTANT elects to keep the equipment, fair market value shall be determined at CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by COUNTY and CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by COUNTY." 49 C.F.R. § 18 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000.00 is credited to the project.
- D. All subcontracts in excess of \$25,000 shall contain the above provisions.

XII. ARTICLE XII

State Prevailing Wage Rates:

- A. CONSULTANT shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.

- B. Any subcontract entered into as a result of this Agreement, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article.
- C. When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

Note: The Federal "Payment of Predetermined Minimum Wage" applies only to Federal-aid construction contracts.

**XIII. ARTICLE XIII
Conflict Of Interest:**

- A. CONSULTANT shall disclose any financial, business, or other relationship with COUNTY that may have an impact upon the outcome of this Agreement, or any ensuing COUNTY construction project. CONSULTANT shall also list current clients who may have a financial interest in the outcome of this Agreement, or any ensuing COUNTY construction project, which will follow. CONSULTANT has acknowledged this interest of CONSULTANT and CONSULTANT has duly executed Amended Exhibit D, marked "Interest of Consultant Disclosure Statement," incorporated herein and made by reference a part hereof.
- B. CONSULTANT hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this Agreement.
- C. Any subcontract in excess of \$25,000 entered into as a result of this Agreement, shall contain all of the provisions of this Article.
- D. CONSULTANT hereby certifies that neither CONSULTANT, nor any firm affiliated with CONSULTANT will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.
- E. Except for subconsultants whose services are limited to providing surveying or materials testing information, no subconsultant who has provided design services in connection with this contract shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this contract.

- F. The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and Section 87100 relating to conflict of interest of public officers and employees. CONSULTANT attests that it has no current business or financial relationship with any COUNTY employee(s) that would constitute a conflict of interest with provision of services under this Agreement and will not enter into any such business or financial relationship with any such employee(s) during the term of this Agreement. COUNTY represents that it is unaware of any financial or economic interest of any public officer or employee of CONSULTANT relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement either party may immediately terminate this Agreement by giving written notice as detailed in ARTICLE VI, Termination, herein.

XIV. ARTICLE XIV

Rebates, Kickbacks or Other Unlawful Consideration:

CONSULTANT warrants that this Agreement was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any COUNTY employee. For breach or violation of this warranty, COUNTY shall have the right in its discretion; to terminate the Agreement without liability; to pay only for the value of the work actually performed; or to deduct from the Agreement price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

XV. ARTICLE XV

Prohibition of Expending Local Agency State or Federal Funds For Lobbying:

- A. CONSULTANT certifies to the best of his or her knowledge and belief that:
1. No state, federal or local agency appropriated funds have been paid, or will be paid by-or-on behalf of CONSULTANT to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.
 2. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member

of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities", in accordance with its instructions which form and instructions are attached hereto as Exhibit I and are incorporated herein and made by reference a part hereof.

- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- C. CONSULTANT also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.

XVI. ARTICLE XVI
Statement of Compliance:

- A. CONSULTANT's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that CONSULTANT has, unless exempt, complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.
- B. During the performance of this Agreement, CONSULTANT and its subconsultants shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. CONSULTANT and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. CONSULTANT and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by

reference and made a part hereof as if set forth in full. CONSULTANT and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

- C. CONSULTANT shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- D. CONSULTANT, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the CONSULTANT shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of subconsultants, including procurement of materials and leases of equipment. CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

XVII. ARTICLE XVII

Debarment and Suspension Certification:

- A. CONSULTANT's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that CONSULTANT has complied with Title 2 C.F.R. § 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to COUNTY.
- B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining CONSULTANT responsibility.

Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

- C. Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal Highway Administration.

XVIII. ARTICLE XVIII

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.

XIX. ARTICLE XIX

Standards for Work: Services rendered under this Agreement shall be performed in accordance with current County, Caltrans, and federal design criteria, regulations, policies, procedures, manuals, and standards, including the guidelines set forth in the *AASHTO Green Book - A Policy on Geometric Design of Highways and Streets*, the *Caltrans Highway Design Manual*, the *Caltrans Bridge Design Manuals*, the *2009 Caltrans Foundation Report Preparation for Bridges*, the *Caltrans Project Development Procedures Manual*, the *Caltrans Local Assistance Procedures Manual*, the *El Dorado County Design and Improvements Standards Manual*, the *El Dorado County Drainage Manual*, *Federal Highway Administration (FHWA) Hydraulic Engineering Circular No. 18 and No. 23*, and all other applicable Caltrans, FHWA, federal, state and local laws, County guidelines and accepted industry standards, and shall be performed in a safe, professional, skillful and workmanlike manner in accordance with good engineering practices.

Environmental services provided under this Agreement shall be performed in accordance with, and in full compliance with, County, Caltrans and FHWA guidelines, the National Environmental Policy Act (NEPA), Pub. L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970, as amended by Pub. L. 94-52, July 3, 1975, Pub. L. 94-83, August 9, 1975, and Pub. L. 97-258, § 4(b), Sept. 13, 1982, all NEPA guidelines and related regulations, the California Environmental Quality Act (CEQA), Public Resources Code Sections 21000 et. seq., and in full compliance with CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, Sections 15000 et. seq., such that the work will result in NEPA and CEQA certifiable environmental documents. Services shall further conform to all State of California statutes, regulations and procedures (including those set forth in the *Caltrans Local Assistance Procedures Manual*, the *Local Assistance Program Guidelines*, the *Caltrans Environmental Handbooks*, and the *Caltrans Standard Environmental Reference*) relating to federal-aid programs, all Title 23 federal requirements, and all applicable federal laws, regulations and policy and procedural or instructional memoranda.

All of CONSULTANT's services and deliverables must adhere to current COUNTY, Caltrans and federal requirements for project development and shall be made available to COUNTY and Caltrans for review and approval at the appropriate stages specified in Exhibit A or in the Work Orders issued for Optional Tasks, pursuant to the Agreement or upon request by COUNTY's Contract Administrator.

CONSULTANT has full responsibility for the accuracy and completeness of the plans and related designs, specifications, estimates, deliverables, reports and such other documents that may be required for the tasks or items of work assigned. Assistance, cooperation and oversight by COUNTY, Caltrans, FHWA or other regulatory agencies will not relieve CONSULTANT of this professional responsibility.

All work must be performed and work products prepared in a format and manner customarily anticipated by the appropriate approving agencies.

XX. ARTICLE XX

Quality Control: CONSULTANT shall have a quality control plan in effect during the entire time work is being performed under this Agreement. Upon request, CONSULTANT shall provide COUNTY with a general overview of CONSULTANT's quality control plan in the form of a written outline. CONSULTANT shall also identify critical quality control reviews for the major deliverables within item of work assigned. The plan shall take into account the following:

- A. The plan shall establish a process whereby calculations and plans are independently checked, corrected and back-checked, all draft and final reports are reviewed for accuracy, completeness, and readability before submittal, and all job-related correspondence and memoranda are routed and received by affected persons and then filed in the appropriate item of work Project file.
- B. CONSULTANT is responsible for the accuracy and completeness of all data, plans, specifications and estimates prepared by CONSULTANT under this Agreement and shall check all such material accordingly.
- C. Plans, designs, estimates, calculations, reports and other documents furnished under this Agreement shall be of a quality acceptable to COUNTY's Contract Administrator.
- D. A design, estimate, calculation, report or other document furnished under each item of work assigned is of acceptable quality when it is neat in appearance, well-organized, technically and grammatically correct, and checked.

- E. The minimum standard of appearance, organization and the content of any drawings and reports shall be that of similar types utilized by COUNTY. COUNTY will provide examples to CONSULTANT upon request.
- F. The page identifying the preparer of engineering reports, the title sheet for specifications, and each sheet of plans shall bear the professional seal, certificate number, registration classification, expiration date of the certificate, and the signature of the professional engineers responsible for its preparation.
- G. CONSULTANT shall maintain a complete Project file for each item of work performed under this Agreement. This file shall be made available to COUNTY's Contract Administrator, or designee, during normal COUNTY working hours and shall be transferred to COUNTY upon completion of work under the Agreement.

COUNTY's Contract Administrator shall decide all questions pertaining to the quality or acceptability of deliverables furnished and work performed under this Agreement.

XXI. ARTICLE XXI

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.

XXII. ARTICLE XXII

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

complete the review and approval process of the services and deliverables provided under this Agreement.

XXIII. ARTICLE XXIII

CONSULTANT's Project Manager: CONSULTANT designates Bob Fish, P.E., S.E., Senior Project Manager, 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 required by the Agreement; (2) reviewing, monitoring, training and directing CONSULTANT's personnel and any subconsultants authorized herein; and (3) providing qualified and appropriate traffic control services for field work. Project Manager must be a registered engineer in the State of California.

XXIV. ARTICLE XXIV

Changes to Agreement: This Agreement may be amended by mutual consent of the parties hereto. Amendments may be made to permit mutually acceptable changes in the scope, character or complexity of the work if such changes become desirable or necessary as the work progresses. Appropriate extensions of time in case of unavoidable delays and for consideration of warranted adjustments in payment may also be accomplished by amendments to the Agreement. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto. There shall be no change in CONSULTANT's Project Manager or subconsultants, without prior written approval by COUNTY's Contract Administrator.

XXV. ARTICLE XXV

CONSULTANT to COUNTY: It is understood that the services provided under this Agreement shall be prepared in and with cooperation from COUNTY and its staff. It is further agreed that in all matters pertaining to this Agreement, CONSULTANT shall act as CONSULTANT only to COUNTY and shall not act as CONSULTANT to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with CONSULTANT's responsibilities to COUNTY during the term hereof.

XXVI. ARTICLE XXVI

Confidentiality:

- A. CONSULTANT and any subconsultants authorized under this Agreement shall maintain the confidentiality and privileged nature of all records, including billing records, all financial, statistical, personal, technical, or

other data and information relative to COUNTY's operations together with any knowledge therein acquired, in accordance with all applicable state and federal laws and regulations, as they may now exist or may hereafter be amended or changed. CONSULTANT, and all CONSULTANT's staff, employees, and representatives, 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 Transportation Division for the purpose of, and in the performance of, this Agreement.

- B. Permission granted by COUNTY to disclose information on one occasion shall not authorize CONSULTANT or any subconsultants authorized under this Agreement, to further disclose such information, or disseminate the same on any other occasion.
- C. CONSULTANT and any subconsultants authorized under this Agreement shall not comment publicly to the press or any other media regarding this Agreement or COUNTY's actions on the same, except to COUNTY's staff, CONSULTANT's own personnel or authorized subconsultants involved in the performance of this Agreement, at public hearings or in response to questions from a Legislative committee.
- D. CONSULTANT and any subconsultants authorized under this Agreement shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this Agreement without prior review of the contents thereof by COUNTY, and receipt of COUNTY's Contract Administrator's written permission.
- E. All information related to any construction estimates prepared or otherwise obtained in the performance of this Agreement is confidential, and shall not be disclosed by CONSULTANT to any entity other than to COUNTY.
- F. Any non-final or draft administrative reports, studies, materials and documentation, including but not limited to, all environmental documents and any Project Report (PR), relied upon, produced, created or utilized for any items of work performed under this Agreement shall be held in confidence pursuant to Government Code § 6254.5(e) until release in accordance with CEQA. COUNTY and CONSULTANT agree that such material will not be distributed, released or shared with any other organization, person or group other than COUNTY's and CONSULTANT's employees and agents whose work requires that access.
- G. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this Article.
- H. This confidentiality provision shall survive after the expiration or earlier termination of this Agreement.

XXVII. ARTICLE XXVII

Independent Contractor/Liability: CONSULTANT is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by the terms of this Agreement. CONSULTANT exclusively assumes responsibility for acts of its employees, associates, and subcontractors, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

CONSULTANT shall be responsible for performing the work under this Agreement in a safe, professional, skillful, and workmanlike manner in accordance with good engineering practices and shall be liable for its own negligence and negligent acts of its employees and subconsultants. COUNTY shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to CONSULTANT or its employees, agents, associates, representatives, or subconsultants.

XXVIII. ARTICLE XXVIII

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 and/or any Task Order or Work Order issued pursuant to this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

XXIX. ARTICLE XXIX

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
Community Development Agency
Transportation Division
2441 Headington Road
Placerville, California 95667

Attn.: John Kahling, P.E.
Deputy Director, Engineering
Headington Engineering Unit
Transportation Division

With a copy to:

County of El Dorado
Community Development Agency
Administration and Finance Division
2850 Fairlane Court
Placerville, California 95667

Attn.: Michele Weimer
Administrative Services Officer
Contracts & Procurement Unit

or to such other location as COUNTY directs.

Notices to CONSULTANT shall be addressed as follows:

T. Y. Lin International
1601 Response Road, Suite 260
Sacramento, California 95815

Attn.: W. Mark Ashley, Senior Vice President

or to such other location as CONSULTANT directs.

XXX. ARTICLE XXX

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 XXIX, 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.

XXXI. ARTICLE XXXI

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 and the public, or damage to property, which arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, its officers, agents, employees, volunteers, representatives, contractors and subcontractors. This duty of CONSULTANT includes the duty of defense, inclusive of that set forth in California Civil Code Section 2778. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement.

XXXII. ARTICLE XXXII

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

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of CONSULTANT as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000 aggregate limit.
- 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 or professional consultant and is performing professional services under this Agreement, Professional Liability Insurance is required with a limit of liability of not less than \$1,000,000.
- E. CONSULTANT shall furnish a certificate of insurance satisfactory to COUNTY's Risk Management Division as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to COUNTY's Risk Management Division, or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.
- G. CONSULTANT agrees that the insurance required herein shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, CONSULTANT agrees to provide at least thirty (30) days prior to said

expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and CONSULTANT agrees that no work or services shall be performed prior to the giving of such approval. 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.

- H. The certificate of insurance must include the following provisions stating that:
 - 1. The insurer will not cancel the insured's coverage without 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 as respects COUNTY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by COUNTY, its officers, officials, employees, or volunteers shall be in excess of CONSULTANT's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to, and approved, by COUNTY. At the option of COUNTY, either: The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects COUNTY, its officers, officials, employees, and volunteers; or CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to COUNTY, its officers, officials, employees, or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. CONSULTANT's obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.

- N. In the event CONSULTANT cannot provide an occurrence policy, CONSULTANT shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- O. The certificate of insurance shall meet such additional standards as may be determined by the contracting COUNTY department, either independently or in consultation with COUNTY's Risk Management Division as essential for protection of COUNTY.

In addition, CONSULTANT shall ensure that all subconsultants 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.

XXXIII. ARTICLE XXXIII

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

XXXIV. ARTICLE XXXIV

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.

XXXV. ARTICLE XXXV

COUNTY Payee Data Record Form: All independent contractors 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.

XXXVI. ARTICLE XXXVI

Business License: COUNTY's Business License Ordinance provides that it is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of El Dorado County without possessing a COUNTY business license unless exempt under COUNTY

Ordinance Code Section 5.08.070. CONSULTANT warrants and represents that it shall comply with all of the requirements of COUNTY's Business License Ordinance, where applicable, prior to beginning work under this Agreement and at all times during the term of this Agreement.

XXXVII. 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.

XXXVIII. ARTICLE XXXVIII

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

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

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

Copies of the OMB Circulars are available on the Internet at:

<http://www.whitehouse.gov/omb/circulars/index.html>.

Failure of CONSULTANT to comply with any federal, state or local agency provision may be the basis for withholding payments for charges made by CONSULTANT and for such other remedies as may be appropriate including termination of this Agreement. CONSULTANT shall further comply with any flow-down or third-party contracting provisions which may be required under the federal, state or local agency regulations and which may apply to CONSULTANT's subcontracts, if any, associated with this Agreement.

XXXIX. ARTICLE XXXIX

Working Office: CONSULTANT shall establish a working office at a place acceptable to COUNTY. The parties hereto acknowledge and agree that CONSULTANT's office is located at 1601 Response Road, Suite 260, Sacramento, California 95815.

XL. ARTICLE XL

Covenant Against Contingent Fees: By executing this Agreement, CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working for CONSULTANT, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this Agreement. For breach or violation of this warranty, COUNTY shall have the right to annul this Agreement without liability or at its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

XLI. ARTICLE XLI

Design Standards: CONSULTANT shall perform all services under this Agreement in conformance with applicable federal, state and local design standards or other standards for work performance stipulated in ARTICLE XIX, Standards for Work, or in the individual Task Orders and Work Orders issued pursuant to this Agreement.

XLII. ARTICLE XLII

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

XLIII. ARTICLE XLIII

Patent Rights: Applicable patent rights provisions described in 41 C.F.R. 1-9.1 regarding rights to inventions are hereby included in this Agreement as applicable.

CONSULTANT shall incorporate this provision in its subcontracts, if any, in excess of \$25,000.

XLIV. ARTICLE XLIV

Copyrights: COUNTY may permit copyrighting reports or other Agreement products. If copyrights are permitted, COUNTY, FHWA and State of California shall have the royalty-free non-exclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for Federal Government purposes:

- (a) The copyright in any work developed under this Agreement; and
- (b) Any rights of copyright to which CONSULTANT purchases ownership with grant support.

CONSULTANT shall incorporate this provision in its subcontracts, if any, in excess of \$25,000.

XLV. ARTICLE XLV

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

XLVI. ARTICLE XLVI

Disadvantaged Business Enterprise (DBE) Considerations: CONSULTANT must give consideration to DBE firms as specified in 23 C.F.R. § 172.5(b) and in Appendix A to 49 C.F.R. § 26. CONSULTANT shall ensure that certified DBE firms have the opportunity to participate in the performance of this Agreement and CONSULTANT shall take all necessary and reasonable steps for such assurance.

XLVII. ARTICLE XLVII

Disadvantaged Business Enterprise (DBE) Participation:

- A. This Agreement is subject to 49 C.F.R. § 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." Consultants who obtain DBE participation on this Agreement shall assist Caltrans in meeting its federally mandated statewide overall DBE goal.
- B. The goal for DBE participation for this Agreement is 1%. Participation by DBE CONSULTANT or subconsultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit 10-O1), or in the Consultant Contract DBE Commitment (Exhibit 10-O2). If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- C. DBEs and other small businesses, as defined in 49 C.F.R. § 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. CONSULTANT or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. CONSULTANT shall carry out applicable requirements of 49 C.F.R. § 26 in the award and administration of US DOT-assisted agreements. Failure by CONSULTANT to carry out these

requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as COUNTY deems appropriate.

- D. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.
- E. A DBE firm may be terminated only with prior written approval from COUNTY and only for the reasons specified in 49 C.F.R. § 26.53(f). Prior to requesting COUNTY's consent for the termination, CONSULTANT must meet the procedural requirements specified in 49 C.F.R. § 26.53(f).
- F. CONSULTANT shall utilize the specific DBEs listed to perform the work and supply the materials, if any, for which each is listed unless CONSULTANT obtains prior written consent from COUNTY's Contract Administrator. CONSULTANT shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE without written approval from COUNTY's Contract Administrator.
- G. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing, and other relevant factors.
- H. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- I. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- J. CONSULTANT shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total

dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

- K. Upon completion of the Agreement, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants" CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by CONSULTANT or CONSULTANT's authorized representative and shall be furnished to COUNTY's Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice shall result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to CONSULTANT when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to COUNTY's Contract Administrator.
- L. If a DBE subconsultant is decertified during the life of the Agreement, the decertified subconsultant shall notify CONSULTANT in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Agreement, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to COUNTY's Contract Administrator within thirty (30) days.

XLVIII. ARTICLE XLVIII

Compliance with Disability Acts: CONSULTANT shall comply with: (a) Section 504 of the Rehabilitation Act of 1973 which prohibits discrimination on the basis of disability in federally assisted programs; (b) the Americans with Disabilities Act (ADA) of 1990 which prohibits discrimination on the basis of disability irrespective of funding; and (c) all applicable regulations and guidelines issued pursuant to both the Rehabilitation Act and the ADA.

XLIX. ARTICLE XLIX

Disputes:

- A. Any dispute, other than audit, concerning a question of fact arising under this Agreement that is not disposed of by agreement shall be decided by a committee consisting of COUNTY's Contract Administrator and the Community Development Agency Director, or designee, which may consider written or verbal information submitted by CONSULTANT.
- B. Not later than thirty (30) days after completion of all work under this Agreement, CONSULTANT may request review by COUNTY's Board of Supervisors of unresolved claims or disputes, other than audit. The request for review shall be submitted in writing.

- C. Neither the pendency of a dispute, nor its consideration by the committee will excuse CONSULTANT from full and timely performance in accordance with the terms of this Agreement.
- D. CONSULTANT's failure to follow this dispute resolution procedure shall constitute a waiver of such claims and a bar to further proceedings.

L. ARTICLE L

Inspection of Work: CONSULTANT and any subconsultants authorized herein shall permit COUNTY, the State of California and the FHWA, if federal participating funds are used in this Agreement to review and inspect the Project activities and files at all reasonable times during the performance period of this Agreement, including review and inspection on a daily basis.

LI. ARTICLE LI

Safety:

- A. CONSULTANT shall comply with OSHA regulations applicable to CONSULTANT regarding necessary safety equipment or procedures. CONSULTANT shall comply with safety instructions issued by COUNTY's Safety Officer and other COUNTY representatives. CONSULTANT's personnel and any subconsultants authorized herein shall wear hard hats and safety vests at all times while working on construction project sites.
- B. Pursuant to the authority contained in Section 591 of the Vehicle Code, COUNTY has determined that there are areas that may be within the limits of certain projects that are open to public traffic. CONSULTANT shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14 and 15 of the Vehicle Code. CONSULTANT shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.
- C. CONSULTANT must have a Division of Occupational Safety and Health (CAL-OSHA) permit(s), as outlined in California Labor Code Sections 6500 and 6705, prior to the initiation of any practices, work, method, operation, or process related to the construction or excavation of trenches which are five (5) feet or deeper.
- D. Any subcontract entered into as a result of this Agreement, shall contain all of the provisions of this Article.

LII. ARTICLE LII

Claims Filed by COUNTY'S Construction Contractors:

- A. If claims are filed by COUNTY's construction contractors relating to work performed by CONSULTANT's personnel or subconsultants, and additional information or assistance from CONSULTANT's personnel or

subconsultants is required in order to evaluate or defend against such claims, CONSULTANT agrees to make its personnel and/or subconsultants available for consultation with COUNTY's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

- B. CONSULTANT's personnel and subconsultants that COUNTY considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from COUNTY. Any consultation or testimony that may be required by COUNTY will be reimbursed at the same rates that are being paid for CONSULTANT's personnel services under Exhibit B hereto.
- C. Services of CONSULTANT's personnel or subconsultants in connection with COUNTY's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this Agreement in order to finally resolve the claims.
- D. Any subcontract in excess of \$25,000 entered into as a result of this Agreement shall contain all of the provisions of this Article.

LIII. ARTICLE LIII

National Labor Relations Board Certification: In accordance with Public Contract Code Section 10296, CONSULTANT hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against CONSULTANT within the immediately preceding two-year period, because of CONSULTANT's failure to comply with an order of a federal court that orders CONSULTANT to comply with an order of the National Labor Relations Board.

LIV. ARTICLE LIV

Evaluation of CONSULTANT: CONSULTANT's performance will be evaluated by COUNTY. A copy of the evaluation will be sent to CONSULTANT for comments. The evaluation together with the comments shall be retained as part of the contract record.

LV. ARTICLE LV

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

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

2. Affirmative steps shall include:

- (a) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (b) Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
- (c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business and women's business enterprises;
- (d) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business and women's business enterprises;
- (e) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce as appropriate, and
- (f) Requiring the prime CONSULTANT, if subcontracts are to be let, to take the affirmative steps listed in 2 (a) through (e) above.

LVI. ARTICLE LVI

Environmental Compliance: CONSULTANT shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)); Section 508 of the Clean Water Act (33 U.S.C. 1368); Executive Order 11738; Environmental Protection Agency regulations (40 C.F.R. § 15); and mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

LVII. ARTICLE LVII

Iran Contracting Act Certification: As required by California Public Contract Code Section 2204, for Agreements that are over \$1,000,000, CONSULTANT certifies its status regarding the Iran Contracting Act of 2010 and has duly executed Exhibit J, marked "Iran Contracting Act Certification," incorporated herein and made by reference a part hereof.

Except as herein amended, all other parts and sections of Agreement for Services #551-S1411, as amended, shall remain unchanged and in full force and effect.

Requesting Contract Administrator Concurrence:

By: _____

John Kahling, P.E.
Deputy Director, Engineering
Headington Engineering Unit
Transportation Division
Community Development Agency

Dated: _____

Requesting Division Concurrence:

By: _____

Bard R. Lower
Transportation Division Director
Community Development Agency

Dated: _____

Requesting Department Concurrence:

By: _____

Roger Niello
Interim Director
Community Development Agency

Dated: _____

IN WITNESS WHEREOF, the parties hereto have executed this Third Amendment to Agreement for Services #551-S1411 on the dates indicated below.

-- COUNTY OF EL DORADO --

By: _____

Dated: _____

Board of Supervisors
"COUNTY"

Attest:
James S. Mitrison
Clerk of the Board of Supervisors

By: _____

Dated: _____

Deputy Clerk

-- T. Y. LIN INTERNATIONAL --

By: _____

Dated: _____

William Mark Ashley
Senior Vice President
Director West Region
"CONSULTANT"

By: _____

Dated: _____

Veronica Fennie
Chief Accounting Officer

T. Y. Lin International

Amended Exhibit D

AMENDED INTEREST OF CONSULTANT DISCLOSURE STATEMENT

Disclosure of Conflicts

In accordance with ARTICLE XIII, Conflict of Interest, as amended, in the space provided below, and on supplemental sheets as necessary, (a) Consultant shall disclose any financial, business or other relationship with County that may have an impact upon the outcome of this Agreement or any ensuing County construction project; and (b) Consultant shall disclose current clients who may have a financial interest in the outcome of this Agreement or any ensuing County construction project.

Certification

The undersigned hereby certifies that, to the best of his or her knowledge and belief, no interest exists that is required to be disclosed in this Interest of Consultant Disclosure Statement, other than as disclosed above.

Signature

Name

Title

Company Name

Date

T. Y. Lin International

Exhibit J

IRAN CONTRACTING ACT CERTIFICATION

(Public Contract Code Section 2200 *et seq.*)

As required by California Public Contract Code Section 2204, I certify subject to penalty for perjury that: (i) I am duly authorized to execute this certification on behalf of CONSULTANT; and (ii) the option checked below relating to CONSULTANT's status in regard to the Iran Contracting Act of 2010 (Public Contract Code Section 2200 *et seq.*) is true and correct:

CONSULTANT is not:

(i) identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203; or

(ii) a financial institution that extends, for 45 days or more, credit in the amount of \$20,000,000 or more to any other person or entity identified on the current list of persons and entities engaging in investment activities in Iran prepared by the California Department of General Services in accordance with subdivision (b) of Public Contract Code Section 2203, if that person or entity uses or will use the credit to provide goods or services in the energy sector in Iran.

COUNTY has exempted CONSULTANT from the requirements of the Iran Contracting Act of 2010 after making a public finding that, absent the exemption, COUNTY will be unable to obtain the goods and/or services to be provided pursuant to the Agreement.

Signed _____

Titled _____

Firm _____

Date _____

Note: In accordance with Public Contract Code Section 2205, false certification of this form shall be reported to the California Attorney General and may result in civil penalties equal to the greater of \$250,000 or twice the Agreement amount, termination of the Agreement and/or ineligibility to bid on public contracts for three (3) years.