

**Nichols Consulting Engineers, Chtd.  
Environmental Services**

**AGREEMENT FOR SERVICES # AGMT 10-53071**

**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 Nichols Consulting Engineers, Chtd., a corporation duly qualified to conduct business in the State of California, whose principal place of business is 1885 South Arlington Avenue, Suite 111, Reno, Nevada 89509 (hereinafter referred to as "Consultant");

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

**WHEREAS**, County has determined that it is necessary to obtain a consultant to assist its Department of Transportation with environmental services in the Tahoe Basin in conjunction with the Environmental Improvement Program (EIP);

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

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

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

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

**ARTICLE I**

**Scope of Services:**

- A. Consultant's services are to be provided specifically in support of the Montgomery Estates Area 2 Erosion Control Project (JN 95170), Tahoe Hills Erosion Control Project (JN 95171), Montgomery Estates Area 3 Erosion Control Project (JN 95172), and Meyers Erosion Control Project (JN 95179). Consultant shall perform all work and tasks required to accomplish the objectives set forth herein, and shall provide and make available Consultant's personnel, materials, equipment and services necessary to perform environmental services, and other project delivery support services generally including, but not limited to, those tasks identified in Exhibit A, marked "Base Scope of Work," incorporated herein and made by reference a part hereof. Exhibit A provides for a Base Scope of Work (identified as Items of Work 1 through 6) to be performed for each of the four (4) projects. Deliverables for the specific items of work to be provided under the Base Scope of Work shall be as

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

County's Contract Administrator will issue written Work Orders to Consultant for the four (4) Projects specifying the items of work to be assigned to Consultant under the Base Scope of Work (Items of Work 1 through 6). Each written Work Order shall include the Project name and number; a description of the work to be performed; the required deliverables, including reports or other documents to be supplied in connection with the work assignment; the timeframes for performing the work and for submitting the deliverables, mileage, if applicable, and a not-to-exceed cost to complete the work. Work Orders may be issued for some or all of the items of work identified in Exhibit A hereto and may include entire items of work or only portions of some items of work. Each Work Order issued for Base Scope items of work will also describe any exceptions to the personnel or other modifications to the items of work or deliverables identified in Exhibit A hereto. Consultant shall not commence work until receiving the written Work Order for each item of work assigned. No payment will be made for any work performed prior to the date specified in the written Work Order.

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

- B. In addition to the specific services identified in Exhibit A, "Base Scope of Work" hereto, this Agreement may also include Optional Tasks, as subsequently identified during the course of work under this Agreement by the Contract Administrator. Such Optional Tasks may supplement, expand or modify the Base Scope of Work or may include, but not be limited to, tasks that are deemed critical by the Contract Administrator to the furtherance of completing the Projects.

Before proceeding with any work concerning Optional Tasks under this Agreement, the parties will identify the specific services to be provided for each such assignment in individual Task Orders to be issued in accordance with this Agreement.

The specific services for each assignment for Optional Tasks shall be determined at a meeting or telephone conference between Consultant and County's Contract Administrator, or designee, to discuss the needs, applicable standards, required deliverables, specific Consultant staff, subconsultants, if applicable, task-related mileage budget, if applicable, and other pertinent requirements on a task-by-task basis. Following the meeting, Consultant shall provide County's Contract Administrator with a written scope of work for the Optional Task, a schedule including a list of tasks with completion dates, a target completion date for the

overall scope of work, and a not-to-exceed cost itemization to complete the work (resulting in a Task Order), which shall require written approval, authorization, and written notification to proceed from County's Contract Administrator, prior to commencement of the work.

Funding from various local, state and federal sources may be utilized to fund certain assignments to be performed under this Agreement and, as a consequence, the requirements (other than those incorporated herein below) of the funding agencies related to those grants will be incorporated into the provisions of the specific Task Orders issued for those assignments.

No payment will be made for any Optional Task work performed prior to approval and full execution of the Task Order, and no payment will be made for amounts in excess of the not-to-exceed amount of the Task Order.

Consultant shall provide the Contract Administrator with the names and titles of Consultant's representatives that are authorized to bind Consultant by signing Task Orders and Task Order Amendments on Consultant's behalf. Consultant's notification of individuals authorized to execute Task Orders and Task Order Amendments on Consultant's behalf shall be communicated to County in accordance with the provisions of Article XV, Notice to Parties, of this Agreement.

The period of performance for Task Orders issued for Optional Tasks, if any, shall be in accordance with the dates specified in each Task Order. No payment will be made for any work performed before or after the period of performance in the Task Order, unless County's Contract Administrator and Consultant amend the Task Order. No Task Order will be issued which extends beyond the expiration date of this Agreement, or which exceeds the cumulative total of the not-to-exceed dollar amount allocated for Optional Tasks under this Agreement.

- C. If a submittal or Task Order deliverable is required to be an electronic file, Consultant shall produce the file using Microsoft Office 2003 applications (specifically, MS Word, MS Project and MS Excel). Signed reports shall be submitted in Adobe portable document format (PDF). 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. All other deliverables shall be submitted in accordance with the formats outlined in Exhibit A, Base Scope of Work, herein.

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

## ARTICLE II

**Term:** This Agreement shall become effective when fully executed by both parties hereto and shall expire two (2) years thereafter.

### **ARTICLE III**

**Compensation for Services:** For services provided herein, including all of the deliverables required by the individual Work Orders issued pursuant to this Agreement and in the individual Task Orders for Optional Tasks, if any are issued pursuant to this Agreement, and including the progress reports required by Article IV, Progress Reports, below, County agrees to pay Consultant monthly in arrears. Payment shall be made within thirty (30) days following County receipt and approval of itemized invoices detailing the services rendered.

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

Reimbursement for mileage expenses for Consultant and subconsultants, if applicable, shall not exceed the lesser of (1) the rates to be paid to County employees under the current Board of Supervisors Travel Policy at the time the mileage expenses are incurred; or (2) the rates authorized to be paid to rank and file state employees under the then current State Department of Personnel Administration (DPA) rules. References to the DPA rates and Consultant's responsibilities for cost differences and any overpayments are more fully described in Article XXVI, Cost Principles herein. Mileage reimbursement rates apply to Consultant and to any subconsultants authorized under this Agreement. There shall be no subconsultant markup on any mileage expenses. Any reimbursements for mileage expenses will only be made if such expenses are included in the budget of an approved and fully executed Work Order or Task Order issued pursuant to this Agreement.

For the purposes of budgeting the items of work identified in Exhibit A, Base Scope of Work, herein, and for establishing the total amount for Optional Tasks that may be assigned under this Agreement, the maximum allowable billing amounts (not-to-exceed amounts) for each item of work and Optional Tasks are described in Exhibit C, marked "Cost Proposal," incorporated herein and made by reference a part hereof. The amounts indicated in Exhibit C represent the composition of the total not-to-exceed budget for the various items of work identified therein. In the performance of the scope of services to be provided under this Agreement, Consultant may request to reallocate the amounts listed in Exhibit C (not including Zeier & Associates, LLC), among the various Base Scope items of work identified therein, and within the various four (4) projects subject to the Contract Administrator's written approval. Consultant may request to reallocate the amounts listed in Exhibit C, identified as Items of Work 4 and 6, for its subconsultant, Zeier & Associates, LLC, among Items of Work 4 and 6 and within the various four (4) projects, subject to the Contract Administrator's written approval. In no event shall the not-to-exceed amount of the Base Scope of Work be exceeded, nor shall the amounts identified as Optional Tasks be exceeded, nor shall the total not-to-exceed dollar amount of the Contract be exceeded.

The total amount for services to be provided under the Base Scope of Work identified in

Exhibit A hereto, shall not exceed \$140,000 inclusive of all Work Orders, costs and expenses.

The total amount for all Optional Tasks, if any, which may be assigned in accordance with this Agreement, shall not exceed \$10,000 inclusive of all Task Orders and all costs and expenses. The not-to-exceed amount of each individual Task Order so assigned shall not exceed the amount specified in each Task Order, unless County's Contract Administrator and Consultant amend the Task Order in writing.

The total amount of this Agreement, including all of the services assigned under the Base Scope of Work, and including all Optional Tasks, if any, which may be assigned; and inclusive of all Work Orders, Work Order Amendments, costs, expenses and Task Orders shall not exceed \$150,000.

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

Consultant shall attach copies of any progress reports required under the provisions of Article IV, Progress Reports herein that relate to the services being billed to every invoice submitted for payment under the terms of this Agreement. Copies of documentation attached to invoices shall reflect Consultant's charges for the specific services billed on those invoices.

Invoices shall be mailed to County at the following address:

County of El Dorado  
Department of Transportation  
2850 Fairlane Court  
Placerville, California 95667  
Attn.: Administration Division – Accounts Payable

or to such other location as County directs.

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

#### **ARTICLE IV**

**Progress Reports:** Consultant shall submit written progress reports to the Contract Administrator at intervals that are commensurate with the requirements of the items of work and tasks being performed and based upon a mutually agreeable schedule. At a minimum, Consultant shall submit progress reports once per month. The reports shall be sufficiently

detailed for the Contract Administrator to determine if Consultant is performing to expectations and is on schedule, to provide communication of interim findings, and to afford occasions for airing difficulties or special circumstances encountered so that remedies can be developed. County's review of these reports will ensure that Consultant's work meets a level of acceptability as determined by the Contract Administrator, and Consultant shall be required to modify its work as necessary to meet that level of acceptability as defined by the Contract Administrator. Separate detail shall be provided for each ongoing Item of Work. Progress reports shall include the total number of hours worked by Consultant and 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. Each progress report shall also include the specific narratives as required by the various items of work and more fully described in Exhibit A hereto. Any invoices submitted by Consultant for payment under the terms of this Agreement shall include copies of the progress reports that relate to the services being billed on those invoices.

#### **ARTICLE V**

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

#### **ARTICLE VI**

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

#### **ARTICLE VII**

**Consultant's Project Manager:** Consultant designates Jason Drew, Associate, 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 individual Work Orders and

Task Orders issued pursuant to this 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.

#### **ARTICLE VIII**

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

#### **ARTICLE IX**

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

#### **ARTICLE X**

**Confidentiality:** Consultant shall maintain the confidentiality and privileged nature of all records, including billing records, all financial, statistical, personal, technical, or other data and information relative to County's operations together with any knowledge therein acquired, in accordance with all applicable state and federal laws and regulations, as they may now exist or may hereafter be amended or changed. Consultant, and all Consultant's staff, employees, and representatives, shall not use or disclose, directly or indirectly at any time, any said confidential information, other than to County's Department of Transportation for the purpose of, and in the performance of, this Agreement. This confidentiality provision shall survive after the expiration or earlier termination of this Agreement. In accordance with the provisions of the Freedom of Information Act (FOIA) and County's grant funding requirements, nothing in this Article shall be construed to limit public access to grant or agreement records, except when such records would have been exempted from disclosure pursuant to "Freedom of Information" regulations (5 U.S.C. 552).

#### **ARTICLE XI**

**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. Notwithstanding this Article, Consultant is authorized to utilize only the specific subconsultant identified in Exhibit A hereto for the specific tasks or items of work identified therein. In addition, County may, through its Contract Administrator, authorize Consultant to utilize specifically named subconsultants for

services performed as Optional Tasks, if any are assigned, for the particular tasks, work and deliverables identified in the Task Orders issued for Optional Tasks pursuant to this Agreement. For any Optional Tasks that may be assigned, said authorization and approval shall be sought and obtained by Consultant prior to subconsultants' commencement of any work under the Task Orders that may be issued for such Optional Task work.

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.

Notwithstanding any provision to the contrary, at no time shall County be obligated to pay separately for subconsultant services.

Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this Article.

## **ARTICLE XII**

**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 and shall be liable for its own negligence and negligent acts of its employees. County shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to Consultant or its employees.

## **ARTICLE XIII**

**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 XIV**

##### **Default, Termination, and Cancellation:**

- A. Default: Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (Time to Cure), then such party shall be in default. The Time to Cure may be extended at the discretion of the party giving notice. Any extension of Time to Cure must be in writing, prepared by the party in default for signature by the party giving notice, and must specify the reason(s) for the extension and the date in which the extension of Time to Cure expires.

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

- B. Bankruptcy: This Agreement, at the option of County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Consultant.
- C. Ceasing Performance: County may terminate this Agreement in the event Consultant ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. Termination or Cancellation without Cause: County may terminate this Agreement or any Work Order or Task Order issued pursuant to this Agreement, in whole or in part upon seven (7) calendar days' written notice by County for any reason. If such prior termination is effected, County will pay for satisfactory services rendered prior to the effective dates, as set forth in the Notice of Termination provided to Consultant, and for such other services which County may agree to in writing as necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total not-to-exceed amount of the Work Order or Task Order. Upon receipt of a Notice of Termination, Consultant shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the Notice directs otherwise. In the event of termination for default, County reserves the right to take over and complete the work by contract or by any other means.

#### **ARTICLE XV**

**Notice to Parties:** All notices to be given by the parties hereto shall be in writing and

served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be in duplicate and addressed as follows:

To County:

County of El Dorado  
Department of Transportation  
924-B Emerald Bay Road  
South Lake Tahoe, California 96150

Attn.: Craig McKibbin, C.E., T.E.  
Deputy Director, Engineering  
Transportation Planning & Land  
Development Division

With a Copy to:

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

Attn.: Janel Gifford, P.E.  
Office Engineer/Contract Services Unit

or to such other location as County directs.

Notices to Consultant shall be addressed as follows:

Nichols Consulting Engineers, Chtd.  
1885 South Arlington Avenue  
Suite 111  
Reno, Nevada 89509

Attn.: Claude Corvino, President

or to such other location as Consultant directs.

#### **ARTICLE XVI**

**Indemnity:** To the fullest extent allowed by law, Consultant shall defend, indemnify, and hold harmless the County, the United States Department of Agriculture/United States Forest Service (USFS) and the Tahoe Regional Planning Agency (TRPA) and their officers, agents, employees and representatives from and against any and all claims, actions, losses, injuries, damages or expenses of every name, kind, and description, including litigation costs and reasonable attorney's fees incurred, brought for or on account of, injury to or death of any person, including but not limited to workers, County, USFS, or TRPA employees and the public, or damage to property, which arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, its officers, agents, employees, volunteers, representatives, contractors and subcontractors. This duty of Consultant includes the duty of defense, inclusive of that set forth in California Civil Code Section 2778. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement.

#### **ARTICLE XVII**

**Insurance:** Consultant shall provide proof of a policy of insurance satisfactory to County's

Risk Management Division and documentation evidencing that Consultant maintains insurance that meets the following requirements:

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Consultant as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
- C. Automobile Liability Insurance of not less than \$1,000,000 is required in the event motor vehicles are used by Consultant in performance of the Agreement.
- D. In the event Consultant is a licensed professional and is performing professional services under this Agreement, Professional Liability Insurance is required with a limit of liability of not less than \$1,000,000.
- E. Consultant shall furnish a certificate of insurance satisfactory to County's Risk Management Division as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to County's Risk Management Division, or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.
- G. Consultant agrees that the insurance required herein shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this contract, Consultant shall immediately provide a new certificate of insurance as evidence of the required insurance coverage. In the event Consultant fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this contract upon the occurrence of such event. New certificates of insurance are subject to the approval of County's Risk Management Division, and Consultant agrees that no work or services shall be performed prior to the giving of such approval.
- H. The certificate of insurance must include the following provisions stating that:
  - 1. The insurer will not cancel the insured's coverage without 30-day prior written notice to County; and
  - 2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, but only insofar as the operations under this Agreement are concerned. This provision shall apply to all general and excess liability insurance policies.
- I. Consultant's insurance coverage shall be primary insurance as respects 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.

#### **ARTICLE XVIII**

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

#### **ARTICLE XIX**

**Interest of Consultant:** Consultant covenants that Consultant presently has no personal interest or financial interest, and shall not acquire same in any manner or degree, in either:

1) any other contract connected with or directly affected by the services to be performed by this Agreement; or, 2) any other entities connected with or directly affected by the services to be performed by this Agreement. Consultant further covenants that in the performance of this Agreement no person having any such interest shall be employed by Consultant.

Consultant hereby certifies that neither Consultant, any subconsultants authorized herein nor any firm affiliated with Consultant will bid on any construction contract or construction subcontracts for any construction project resulting from work assigned under this Agreement. An affiliated firm is one which is subject to the control of the same persons through joint-ownership, or otherwise. Additionally, Consultant certifies that no person working under this Agreement is also employed by the construction contractor for any Project included within this Agreement.

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, for any construction Project resulting from this Agreement.

Consultant further certifies that neither Consultant, nor any firm affiliated with Consultant, will bid on any construction subcontracts included within any construction contract associated with this Agreement.

Any subcontract in excess of \$25,000 entered into as a result of this Agreement shall contain all of the provisions of this Article.

#### **ARTICLE XX**

**California Residency (Form 590):** All independent Consultants providing services to County must file a State of California Form 590, certifying their California residency or, in the case of a corporation, certifying that they have a permanent place of business in California. Consultant will be required to submit a Form 590 prior to execution of this Agreement, or County shall withhold seven (7) percent of each payment made to Consultant during the term of this Agreement. This requirement applies to any agreement/contract exceeding \$1,500.

#### **ARTICLE XXI**

**Taxpayer Identification Number (Form W-9):** All independent contractors or corporations providing services to County must file a Department of the Treasury Internal Revenue Service Form W-9, certifying their Taxpayer Identification Number.

#### **ARTICLE XXII**

**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 prior to beginning work under this Agreement and at all times during the term of this Agreement.

#### **ARTICLE XXIII**

**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 XXIV**

**Year 2000 Compliance:** Consultant agrees that all hardware and software developed, distributed, installed, programmed, or employed as a result of this order will comply with ISO 9000 date format to correctly manipulate and present date-sensitive data.

Upon delivery of product and thereafter, the date and date logic component shall effectively and efficiently operate using a four-digit year.

Upon written notification by County of any hardware or software failure to comply with ISO 9000 date format, Consultant will replace or correct the failing component with compliant hardware or software immediately, at no cost to County.

#### **ARTICLE XXV**

**Compliance with Federal and State Requirements:** County may rely on federal and state assistance or grants 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 agency requirements to all third party contracts. Consultant shall comply with all applicable provisions of federal and state regulations, including those required by the USFS, including grant funding requirements and any related executive orders regarding the use, expenditure, control, reporting, allowable costs and management of such funds. The following Office of Management and Budget (OMB) Circulars, as applicable, and as implemented by various parts of the Code of Federal Regulations (CFR), are incorporated by reference and made a part of this Agreement:

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

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

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

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

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

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

#### **ARTICLE XXVI**

**Cost Principles:** The Federal Acquisition Regulations in Title 48, CFR, Part 31 et seq. are the governing factors regarding allowable elements of cost for all services to be performed under this Agreement.

- A. Consultant shall comply with 2 CFR Part 225, Cost Principles for State and Local Governments, and with federal administrative procedures pursuant to 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, and 49 CFR, Chapter 1, Parts 31 et seq., Federal Acquisition Regulations System, insofar as those regulations may apply to Consultant. This provision shall apply to every sub-recipient receiving funds as a Consultant or subconsultant under this Agreement.
- B. Consultant shall comply with all applicable provisions of County's grant funding agreements and related documents with USFS, including the applicable requirements of 7 CFR 3015, 7 CFR 3016, 7 CFR 3018, 7 CFR 3052, and the cost principles of 2 CFR 225 and 48 CFR 31.2 as applicable. Consultant shall include those provisions, if applicable, in any of its agreements for goods or services that affect or are related to the services performed herein and shall ensure that any clauses required by federal or state statutes and executive orders and their implementing regulations are also incorporated.
- C. Any expenditures for costs for which Consultant has received payment or credit that are determined by subsequent audit to be unallowable under 2 CFR Part 225, 48 CFR, Parts 31 et seq. or 49 CFR, Part 18 are subject to repayment by Consultant to County.
- D. Travel and subsistence (per diem) reimbursements, if applicable, and third-party contract reimbursements to subconsultants will be allowable as Project costs only after those costs are incurred and paid for by Consultant.
- 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 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 shall be eligible for reimbursement in accordance with Article III, Compensation for

Services above. No reimbursements for travel and subsistence (per diem) expenses for Consultant or subconsultants shall be allowed.

- F. Consultant and its subconsultants 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.

#### **ARTICLE XXVII**

**Remedies/Termination:** Consultant shall comply with the requirements of Article XIV, Default, Termination, and Cancellation of this Agreement regarding administrative, contractual, or legal remedies in instances of default, termination or cancellation and with other terms and conditions of this Agreement and County's grant funding agreements that provide for such sanctions and penalties as may be appropriate in instances where contract terms are violated or breached.

#### **ARTICLE XXVIII**

**Reporting:** Consultant shall comply with the reporting requirements specified in Article I, Scope of Services of this Agreement and with such other County reporting requirements and regulations as may be required by the Contract Administrator. Consultant shall fully cooperate with County to support the reporting requirements imposed by County's grant funding agreements insofar as they may apply to this Agreement.

#### **ARTICLE XXIX**

**Copyrights and Rights in Data:** Consultant shall comply with Article VI, Ownership of Data and with Article XXXV, Copyrights regarding requirements and regulations pertaining to copyrights and rights in data. County and its granting agencies have the right to obtain, reproduce, distribute, publish or otherwise use any data produced under this Agreement and to authorize others to receive, reproduce, distribute, publish or otherwise use such data in any manner when and where they may determine without any claim on the part of Consultant, its vendors or subconsultants to additional compensation.

#### **ARTICLE XXX**

**Access to Records:** County, federal agencies, the Comptroller General of the United States, or any of their duly authorized representatives shall have the right of access to any books, documents, papers, or other records of Consultant which are directly pertinent to this Agreement or to County's grant funding agreements and related documents for the purpose of making audit, examination, excerpts, and transcriptions. Consultant shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of this Agreement, including but not limited to, the costs of administering the contract. The rights of access in this section shall not be limited to any required retention period but shall last as long as the records are kept. Consultant shall include this access to records provision in any of its own agreements that affect or are related to the services performed herein, and shall require that access to the records be provided to County as well as to Consultant and to the parties identified above.



#### **ARTICLE XXXI**

**Record Retention:** All records associated with this Agreement shall be retained by Consultant for three (3) years after County makes final payment and all other pending matters are closed. If any audit, litigation, or other action involving the records is started before the end of the three (3) year period, the records must be retained until all issues arising out of the action are resolved or until the end of the three (3) year period, whichever is later. Where applicable, Consultant shall include this record retention provision in any of its own agreements that affect or are related to the services performed herein and shall require that access to the records shall be provided to County as well as to Consultant and to agencies of the federal and state governments.

#### **ARTICLE XXXII**

**Environmental Compliance:** Consultant shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), EO 11738, and Environmental Protection Agency regulations (40 CFR part 15). Consultant shall further comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and EO 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205). Consultant shall also comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

#### **ARTICLE XXXIII**

**Energy Efficiency:** Consultant shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (P. L. 94-163, 89 Stat. 871).

#### **ARTICLE XXXIV**

**Inventions and Patents:** The allocation of rights including patents in inventions shall be determined in accordance with the "Government Patent Policy" (President's Memorandum for Heads of Executive Departments and Agencies, February 18, 1983) and OMB Circular A-124.

#### **ARTICLE XXXV**

**Copyrights:** This section applies to the copyright in any original work of authorship prepared with grant support. Additionally, if ownership of a copyright or of any of the

exclusive rights comprising a copyright is purchased with grant support, this section applies to the purchased copyright or rights. County and the granting agencies reserve a royalty-free, nonexclusive, and irrevocable license to exercise, and to authorize others to exercise, the rights for government purposes and to authorize others to do so. Subject to this license, the owner is free to exercise, preserve, or transfer all its rights. Consultant shall ensure that no agreement is entered into for transferring the rights which would conflict with the nonexclusive license of County or the granting agencies.

#### **ARTICLE XXXVI**

**Debarment and Suspension:** As a condition of participation in this Agreement, Consultant must comply with the requirements of 7 CFR 3016. Consultant shall not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs under EO 12549, "Debarment and Suspension."

#### **ARTICLE XXXVII**

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

#### **ARTICLE XXXVIII**

##### **Nondiscrimination:**

1. Federal Requirements: Consultant shall comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, 2000e-16) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of disabilities; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §3601 et seq.),

as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statutes under which County's applications for Federal assistance were made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the federal funds used to fund this Agreement.

2. State Requirements: Consultant shall comply with all applicable nondiscrimination statutes and regulations during the performance of this Agreement including but not limited to, the following: Consultant and its employees and representatives shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age, or sex. Consultant shall ensure that the evaluation and treatment of its employees and applicants for employment are free of such discrimination. Consultant shall, unless exempt, comply with the applicable provisions of the Fair Employment and Housing Act (Government Code, Sections 12900 et seq.) and applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Sections 7285.0 et seq.); the applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations incorporated into this Agreement by reference and made a part hereof as if set forth in full; and Title VI of the Civil Rights Act of 1964, as amended. Consultant and its employees and representatives shall give written notice of their obligations under this clause to labor organizations with which it has a collective bargaining or other agreement. Where applicable, Consultant shall include the nondiscrimination and compliance provisions in any of its agreements that affect or are related to the services performed herein. Consultant's signature herein shall provide any certifications necessary under the federal laws, the laws of the State of California, including but not limited to, Government Code Section 12990 and Title 2, California Code of Regulations, Section 8103. Failure of Consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination or such other remedy as County deems appropriate.

## **ARTICLE XXXIX**

### **Drug-Free Workplace:**

1. Consultant agrees that it will publish a drug-free workplace statement and provide a copy to each employee who will be engaged in the performance of any project/program that receives federal funding. The statement must
  - a. Tell the employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in its workplace;
  - b. Specify the actions Consultant will take against employees for violating that prohibition; and

- c. Let each employee know that, as a condition of employment under any instrument, he or she
  - (1) Must abide by the terms of the statement, and
  - (2) Must notify Consultant in writing if he or she is convicted for a violation of a criminal drug statute occurring in the workplace, and must do so no more than five (5) calendar days after the conviction.
- 2. Consultant agrees that it will establish an ongoing drug-free awareness program to inform employees about
  - a. The dangers of drug abuse in the workplace;
  - b. Consultant's policy of maintaining a drug-free workplace;
  - c. Any available drug counseling, rehabilitation, and employee assistance programs; and
  - d. The penalties that Consultant may impose upon employees for drug abuse violations occurring in the workplace.
- 3. Without the U.S. Forest Service's expressed written approval, the policy statement and program must be in place as soon as possible, no later than thirty (30) days after the effective date of this Agreement.
- 4. Consultant agrees to immediately notify the U.S. Forest Service if an employee is convicted of a drug violation in the workplace. The notification must be in writing, identify the employee's position title, the agreement number of each instrument on which the employee worked. The notification must be sent to the U.S. Forest Service within ten (10) calendar days after Consultant learns of the conviction.
- 5. Within thirty (30) calendar days of learning about an employee's conviction, Consultant must either:
  - a. Take appropriate personnel action against the employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973 (29 USC 794), as amended, or
  - b. Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for these purposes by a Federal, State or local health, law enforcement, or other appropriate agency.

#### **ARTICLE XL**

**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.

#### **ARTICLE XLI**

**Trafficking in Persons:** The following provisions, applicable to County as the recipient of FAA grants shall also apply, as applicable, to Consultant:

- A. Provisions applicable to a recipient that is a private entity.
  1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—
    - i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
    - ii. Procure a commercial sex act during the period of time that the award is in effect; or
    - iii. Use forced labor in the performance of the award or subawards under the award.
  2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity –

- i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or
- ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either —
  - a. Associated with performance under this award; or
  - b. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 49 CFR Part 29.

B. Provision applicable to a recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity--

- 1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
- 2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either —
  - i. Associated with performance under this award; or
  - ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 49 CFR Part 29.

C. Provisions applicable to any recipient.

- 1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
- 2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
  - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
  - ii. Is in addition to all other remedies for noncompliance that are available to us under this award.
- 3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

D. Definitions. For purposes of this award term:

1. "Employee" means either:
  - i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
  - ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
2. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
3. "Private entity":
  - i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
  - ii. Includes:
    - A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
    - B. A for-profit organization.
4. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

**ARTICLE XLII**

**Eligible Workers:** Contractor shall ensure that all employees complete an I-9 form to certify that they are eligible for lawful employment under the Immigration and Nationality Act (8 USC 1324a). Contractor shall comply with regulations regarding certification and retention of completed forms. Subcontractors shall also comply with these requirements.

**ARTICLE XLIII**

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

- A. U.S. Department of Agriculture - ***Debarment and Suspension Certification;***
- B. U.S. Department of Agriculture - ***Certification Regarding Drug-Free Workplace Requirements (Grants) For Grantees Other Than Individuals;***

C. ***Disclosure of Lobbying Activities***, Standard Form LLL;

D. U.S. Department of Agriculture - ***Certification Regarding Lobbying – Contracts, Grants, Loans and Cooperative Agreements***;

**ARTICLE XLIV**

**Contract Administrator:** The County Officer or employee with responsibility for administering this Agreement is Craig McKibbin, C.E., T.E., Deputy Director, Engineering, Transportation Planning & Land Development Division, Department of Transportation, or successor.

**ARTICLE XLV**

**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 XLVI**

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

**ARTICLE XLVII**

**Entire Agreement:** This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties, and they incorporate or supersede all prior written or oral agreements or understandings.

**Contract Administrator Concurrence:**



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

Craig McKibbin, C.E., T.E.  
Deputy Director, Engineering  
Transportation Planning & Land  
Development Division  
Department of Transportation

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

**Requesting Department Concurrence:**

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

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

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

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

--COUNTY OF EL DORADO--

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

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

Board of Supervisors  
"County"

Attest:

Suzanne Allen de Sanchez  
Clerk of the Board of Supervisors

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

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

Deputy Clerk

--NICHOLS CONSULTING ENGINEERS, CHTD.--

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

Dated: 8/4/11

Claude Corvino  
President  
"Consultant"

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

Dated: 8/4/11

Debra Smith  
Chief Financial Officer

**Nichols Consulting Engineers, Chtd.**

# **CERTIFICATION ATTACHMENTS**

# UNITED STATES DEPARTMENT OF AGRICULTURE

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## NOTICE TO APPLICANTS - CERTIFICATION/DISCLOSURE REQUIREMENTS RELATED TO LOBBYING

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Section 319 of Public Law 101-121 (31 U.S.C.), signed into law on October 23, 1989, imposes new prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. Certain provisions of the law also apply to Federal commitments for loan guarantees and insurance; however, it provides exemptions for Indian tribes and tribal organizations.

Effective December 23, 1989, current and prospective recipients (and their subtier contractors and/or subgrantees) will be prohibited from using Federal funds, other than profits from a Federal contract, for lobbying Congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement or loan. In addition, for each award action in excess of \$100,000 (or \$150,000 for loans) on or after December 23, 1989, the law requires recipients and their subtier contractors and/or subgrantees to: (1) certify that they have neither used nor will use any appropriated funds for payment to lobbyists; (2) disclose the name, address, payment details, and purpose of any agreements with lobbyists whom recipients or their subtier contractors or subgrantees will pay with profits or **nonappropriated** funds on or after December 23, 1989; and (3) file quarterly updates about the use of lobbyists if materials changes occur in their use. The law establishes civil penalties for noncompliance.

If you are a current recipient of funding or have an application, proposal, or bid pending as of December 23, 1989, the law will have the following immediate consequences for you:

- You are prohibited from using appropriated funds (other than profits from Federal contracts) on or after December 23, 1989, for lobbying Congress or any Federal agency in connection with a particular contract, grant, cooperative agreement, or loan;
- you are required to execute the attached certification at the time of submission of an application or before any action in excess of \$100,000 is awarded; and
- you will be required to complete the lobbying disclosure form if the disclosure requirements apply to you.

Regulations implementing Section 319 of Public Law 101-121 have been published as an Interim Final Rule by the Office of Management and Budget as Part III of the February 26, 1990, **Federal Register** (pages 6736-6746).

# UNITED STATES DEPARTMENT OF AGRICULTURE

## CERTIFICATION REGARDING LOBBYING - CONTRACTS, GRANTS, LOANS AND COOPERATIVE AGREEMENTS

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any 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 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, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

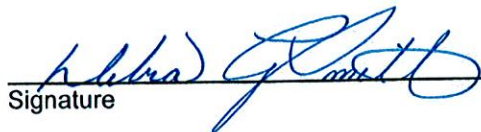
(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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.

Nichols Consulting Engineers, CHTD  
Organization Name

AGMT 10-53071  
Award Number or Project Name

Debra G Smith, Secretary  
Name and Title of Authorized Representative

  
Signature

07/28/2011  
Date

# **U.S. DEPARTMENT OF AGRICULTURE**

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## **CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS (GRANTS) FOR GRANTEES OTHER THAN INDIVIDUALS**

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This certification is required by the regulations implementing Sections 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq).

1. Consultant agrees that it will publish a drug-free workplace statement and provide a copy to each employee who will be engaged in the performance of any project/program that receives federal funding. The statement must
  - a. Tell the employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in its workplace;
  - b. Specify the actions Consultant will take against employees for violating that prohibition; and
  - c. Let each employee know that, as a condition of employment under any instrument, he or she
    - (1) Must abide by the terms of the statement, and
    - (2) Must notify Consultant in writing if he or she is convicted for a violation of a criminal drug statute occurring in the workplace, and must do so no more than five (5) calendar days after the conviction.
2. Consultant agrees that it will establish an ongoing drug-free awareness program to inform employees about
  - a. The dangers of drug abuse in the workplace;
  - b. Consultant's policy of maintaining a drug-free workplace;
  - c. Any available drug counseling, rehabilitation, and employee assistance programs; and
  - d. The penalties that Consultant may impose upon employees for drug abuse violations occurring in the workplace.
3. Without the U.S. Forest Service's expressed written approval, the policy statement and program must be in place as soon as possible, no later than thirty (30) days after the effective date of this Agreement.
4. Consultant agrees to immediately notify the U.S. Forest Service if an employee is convicted of a drug violation in the workplace. The notification must be in writing, identify the employee's position title, the agreement number of each instrument on which the employee worked. The notification must be sent to the U.S. Forest Service within ten (10) calendar days after Consultant learns of the conviction.
5. Within thirty (30) calendar days of learning about an employee's conviction, Consultant must either:



- a. Take appropriate personnel action against the employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973 (29 USC 794), as amended, or
- b. Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for these purposes by a Federal, State or local health, law enforcement, or other appropriate agency.

The grantee shall insert in the space provided below the site(s) for the performance of work done in connection with the specific grant.

Place of Performance (Street address, city, county, State, zip code)

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Nichols Consulting Engineers, CHTD

Organization Name

AGMT 10-53071

PR/Award Number or Project Name

Debra G Smith, Secretary

Name and Title of Authorized Representative



Signature

07/28/2011

Date

### INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this form, the grantee is providing the certification set out on pages 1 and 2.
2. The certification set out on pages 1 and 2 is a material representation of fact upon which reliance was placed when the agency determined to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

**DEBARMENT AND SUSPENSION CERTIFICATION, UNITED STATES DEPARTMENT OF AGRICULTURE (USDA) UNIFORM FEDERAL ASSISTANCE REGULATIONS, 7 CFR 3016, UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS, AND EXECUTIVE ORDER 12549**

Consultant, under penalty of perjury under the laws of the State of California, certifies that, except as noted below, he or any person associated therewith in the capacity of owner, partner, director, officer, 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 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 3 years.

If there are any exceptions to this certification, insert the exceptions in the following space:

For any exception noted above, indicate below to whom it applied, initiating agency, and dates of action.

**NOTE:** Providing false information may result in criminal prosecution or administrative sanctions.

Nichols Consulting Engineers, CHTD

Organization Name

AGMT 10-53071

PR/Award Number of Project Name

Debra G Smith, Secretary

Name(s) and Title(s) of Authorized Representative(s)



Signature

07/28/2011

Date



