

**Dykstra Enterprises, Inc.
dba
Foothill Tree Service**

Certified Arborist, Tree/Shrub Planting, Trimming and Removal Services

AGREEMENT FOR SERVICES #191-S1411

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 Dykstra Enterprises, Inc., a corporation duly qualified to conduct business in the State of California, doing business as Foothill Tree Service, whose principal place of business is 3130 Springer Road, Placerville, California 95667 (hereinafter referred to as "Contractor");

RECITALS

WHEREAS, County has determined that it is necessary to obtain a Contractor to assist its Community Development Agency, Transportation Division (Transportation Division), to provide on-call certified arborist services, tree and shrub cutting, removal, and associated services;

WHEREAS, Contractor 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 and ordinances applicable to the work, including compliance with prevailing wage rates and their payment in accordance with California Labor Code, Section 1775;

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

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

ARTICLE I

Scope of Services: Contractor agrees to furnish personnel, subcontractors, equipment, supplies, materials, vehicles and services necessary to provide certified arborist services and reports, tree and shrub planting services, trimming and removal services and related tree and brush services on an on-call basis for County's, Transportation Division. Services shall include, but not be limited to, those tasks as identified in Exhibit A, marked "Scope of Work," incorporated herein and made by reference a part hereof.

Contractor's services are to be provided specifically in support of projects included in County's Capital Improvement Program, and generally in support of other County activities as required.

The actual number of issues addressed, levels of service provided and associated levels of effort will vary depending on project conditions, means and methods employed, and the levels of support required by County as described in the individual Task Orders or Work Orders to be issued pursuant to this Agreement.

County's Contract Administrator will issue a written Task Order for work assignments where the not-to-exceed cost itemization is greater than \$10,000. County's Contract Administrator will issue a written Work Order for work assignments where the not-to-exceed cost itemization is \$10,000 or less.

Before proceeding with any work under this Agreement, the parties will identify the specific services to be provided for each work assignment in individual Task Orders or Work Orders to be issued in accordance with this Agreement. The specific services for each assignment shall be determined at a meeting or telephone conference between Contractor and County's Contract Administrator, or designee, to discuss the needs, applicable standards, required deliverables, specific Contractor staff and any necessary permits, 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, Contractor shall provide County's Contract Administrator with a written scope of work, 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 or Work Order), which shall require written approval, authorization, and written notification to proceed from County's Contract Administrator, prior to commencement of the work. No payment will be made for any work performed prior to approval and full execution of the Task Order or Work Order, and no payment will be made for amounts in excess of the not-to-exceed amount of the Task Order or Work Order.

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 or Work Orders issued for those assignments.

Contractor's responsibilities for compliance with DBE requirements are described in ARTICLE XLV, Disadvantaged Business Enterprise (DBE) Considerations, and in ARTICLE XLVI, DBE Participation, herein. No Task Order or Work Order shall be issued under this Agreement until the required DBE forms have been received and approved by County's Contract Administrator.

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

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

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

County shall review Contractor's progress at key points as specified in each Task Order or Work Order. Milestone reviews shall be performed for the specific products and deliverables listed in each Task Order or Work Order, as applicable. Milestones may only be changed by written agreement between County's Contract Administrator and Contractor's Project Manager.

Contractor shall submit all deliverables to County's Contract Administrator in accordance with completion time schedules identified in each Task Order or Work Order. County's review of deliverables will ensure that Contractor's work meets a level of acceptability as determined by the Contract Administrator, and Contractor shall be required to modify its work as necessary to meet that level of acceptability as defined by the Contract Administrator. Failure to submit the required deliverables in the formats required shall be grounds for termination of the Agreement, as provided in ARTICLE XVIII, Default, Termination, and Cancellation, herein.

If a submittal or Task Order or Work Order deliverable is required to be an electronic file, Contractor shall produce the file using Microsoft Office (MS) 2010 applications (specifically, MS Word, MS Project and MS Excel). Signed reports shall be submitted in Adobe portable document format (PDF). All digital photographs shall be submitted on CD-ROMs in jpeg format with a minimum resolution of 2816 X 2112. All deliverables shall be submitted in language, format and design that are compatible with and completely transferable to County's computer and that are acceptable to County's Contract Administrator. Newer versions of software may be used and other types of software used for analytical purposes may be authorized if approved in advance of the submittal by County's Contract Administrator.

ARTICLE II

Term: This Agreement shall become effective when fully executed by both parties hereto and shall expire three (3) years thereafter or upon completion of all issued Task Orders or Work Orders, whichever is later.

ARTICLE III

Compensation for Services: For services provided herein, including all of the deliverables described in individual Task Orders or Work Orders issued pursuant to this Agreement, and including all of the forms and reports required under the Disadvantaged Business Enterprise (DBE) provisions of this Agreement, and including progress reports required by ARTICLE IV, Progress Reports, below, County agrees to pay Contractor monthly in arrears. Payment shall be made within thirty (30) days following County receipt and approval of itemized invoices detailing services rendered.

For the purposes hereof, the billing rates shall be in accordance with Exhibit B, marked "Billing Rates," incorporated herein and made by reference a part hereof. The billing rates specified in the Task Order or Work Order shall include direct salary cost, employee benefits, overhead and fee, as applicable. The hourly rates shall not be adjusted for the performance period set forth in this Agreement.

Reimbursement for mileage expenses for Contractor and subcontractors, 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 of California Department of Personnel Administration (DPA) rules. References to the DPA rates and Contractor's responsibilities for cost differences and any overpayments are more fully described in ARTICLE XXXVIII, Cost Principles, herein. Mileage reimbursement rates apply to Contractor and to any subcontractors authorized under this Agreement. There shall be no markups allowed on mileage rates for Contractor or for any subcontractor. Any reimbursements for mileage expenses will only be made if such expenses are included in the budget of an approved and fully executed Task Order or Work Order issued pursuant to this Agreement.

Other direct costs including subcontractor services authorized herein shall be invoiced at Contractor's cost, without markup, for the services rendered. Any invoices that include other direct costs or subcontractor costs shall be accompanied by backup documentation to substantiate Contractor'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 not be reimbursed as a direct cost for any services performed under this Agreement by Contractor or by any authorized subcontractors.

The total amount payable by County for an individual Task Order or Work Order shall not exceed the amount agreed to in the Task Order or Work Order, unless County's Contract Administrator and Contractor amend the Task Order or Work Order.

The total amount of this Agreement, inclusive of all costs, Task Orders or Work Orders, and inclusive of all work of subcontractors and expenses shall not exceed \$150,000.00. It is understood and agreed that there is no guarantee that this amount will be authorized under this Agreement through Task Orders or Work Orders.

Itemized invoices shall follow the format specified by County and shall reference this Agreement number, the County-supplied Task Order or Work Order number, and Work Breakdown Structure (WBS) Activity Identification codes (Activity IDs) on their faces. Contractor shall bill County for only one (1) Task Order or Work Order per invoice. A sample invoice is attached hereto as Exhibit C, marked "Sample Invoice," incorporated herein and made by reference a part hereof. Contractor shall follow the invoice format of Exhibit C, unless otherwise directed by County's Contract Administrator. When US DOT federal grant funding is utilized to support the authorized task work, Contractor shall prepare and submit a fully executed "Final Report – Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" form with its final invoice for each such Task Order or Work Order issued under this Agreement. Twenty-five percent (25%) of the value of the final invoice shall be withheld until County's receipt and approval of the required DBE form. Contractor's responsibilities for compliance with DBE requirements are described in ARTICLE XLV, Disadvantaged Business Enterprise (DBE) Considerations, and in ARTICLE XLVI, DBE Participation, herein.

Contractor shall attach copies of any progress reports required under the provisions of ARTICLE IV, Progress Reports, that relate to the services being billed to every invoice submitted for payment under the terms of this Agreement. Contractor shall attach a copy of a Task Order or Work Order invoice tracking spreadsheet that relates to the services being billed to every invoice submitted for payment under the terms of this Agreement. A sample invoice tracking spreadsheet is attached hereto as Exhibit D, marked "Sample Tracking Report," incorporated herein and made by reference a part hereof. An electronic version of the Sample Tracking Report will be provided by County's Contract Administrator's designee via email. Copies of documentation attached to invoices shall reflect Contractor's charges for the specific services billed on those invoices. Invoices shall be mailed to County at the following address:

County of El Dorado
Community Development Agency
Transportation Division
2850 Fairlane Court
Placerville, California 95667
Attn.: Matthew D. Smeltzer, P.E.
Deputy Director, Engineering
Engineering Unit

or to such other location as County directs.

In the event that Contractor fails to deliver, in the format specified, the deliverables 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 or progress reports are received, or proceed as set forth below in ARTICLE XVIII, Default, Termination, and Cancellation, herein.

ARTICLE IV

Progress Reports: Upon issuance of a Task Order or Work Order, Contractor 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, Contractor shall submit progress reports once per month. The reports shall be sufficiently detailed for County's Contract Administrator to determine if Contractor 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 Contractor's work meets a level of acceptability as determined by County's Contract Administrator, and Contractor 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 Task Order or Work Order. Progress reports shall include the total number of hours worked by Contractor and any authorized subcontractors 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. Any invoices submitted by Contractor 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

Prevailing Wage: County requires Contractor's services on public works project(s) involving local, state and/or federal funds to which prevailing wage requirements may apply. As a consequence, Contractor shall comply with all applicable state and federal prevailing wage rates, statutes, rules and regulations then in effect. In the event of conflict between applicable federal and state provisions, the higher prevailing wage rate shall apply. Contractor shall use the general prevailing wage rates determined by the Director of Industrial Relations for the county in which the work is to be done, which are available at the principal office of County's Transportation Division. Changes, if any, to the general prevailing wage rates will be available at the same location.

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

Contractor shall comply with all applicable wage requirements, as set forth in Labor Code Sections 1770 et seq., 1773.2, 1775, 1776, 1810 and 1813. In accordance with the provisions of Labor Code Section 1810, eight (8) hours of labor shall constitute a legal day's work upon all work done hereunder, and Contractor and any subcontractor authorized under this Contract shall also conform to and be bound by the provisions of Labor Code Sections 1810 through 1815.

ARTICLE VI

Apprentices: Attention is directed to Sections 1777.5, 1777.6 and 1777.7 of the California Labor Code and Title 8, California Code of Regulations Section 200 et seq. To ensure compliance and complete understanding of the law regarding apprentices, and specifically the required ratio thereunder, each Contractor or subcontractor should, where some question exists, contact the Division of Apprenticeship Standards, 455

Golden Gate Avenue, San Francisco, CA 94102, or one of its branch offices prior to commencement of work on this contract. Responsibility for compliance with this Article lies with Contractor.

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

ARTICLE VII

Certified Payroll: As required under the provisions of Labor Code Section 1776, Contractor and any subcontractors shall keep accurate payroll records as follows:

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

ARTICLE VIII

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

ARTICLE IX

Compliance with all Applicable Laws: Contractor shall conform to and abide by all federal, state and local building, labor, environmental and safety laws, ordinances, rules and regulations. All work and materials shall be in full accordance with the latest rules and regulations of the State Fire Marshal, safety orders of the Division of Industrial Safety, California Electrical Code, California Building Code, California Plumbing Code, American National Standards Institute (ANSI) A300, the International Society of Arboriculture Best management Practices and any and all other applicable laws and regulations. Nothing in this Agreement, including but not limited to, any directions, plans or specifications provided to Contractor, is to be construed to permit work not conforming to these codes.

ARTICLE X

Reporting Accidents: Contractor shall prepare and submit to County (within 24 hours of such incidents) reports of accidents at the site and anywhere else work under this Agreement is in progress in which bodily injury is sustained or property loss in excess of Five Hundred Dollars (\$500.00) occurs.

ARTICLE XI

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

CERTIFICATE OF KNOWLEDGE - LABOR CODE SECTION 3700

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

Signed:  James D. Dutton, President

Dated: 10-14-15

ARTICLE XII

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 Contractor's Project Manager or subcontractors, which shall be established at the issuance of individual Task Orders and Work Orders, without prior written approval by County's Contract Administrator.

ARTICLE XIII

Contractor 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, Contractor shall act as Contractor only to County and shall not act as Contractor 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 Contractor's responsibilities to County during the term hereof.

ARTICLE XIV

Confidentiality:

- A. Contractor and any subcontractors authorized under this Agreement shall maintain the confidentiality and privileged nature of all records, including billing records, together with any knowledge therein acquired, in accordance with all applicable state and federal laws and regulations, as they may now exist or may hereafter be amended or changed. Contractor, and all Contractor's staff, employees, and representatives, including any subcontractors 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. This confidentiality provision shall survive after the expiration or earlier termination of this Agreement.
- B. Permission granted by County to disclose information on one occasion or at public hearings held by County relating to this Agreement shall not authorize Contractor or any subcontractors authorized under this Agreement to further disclose such information, or disseminate the same on any other occasion.
- C. Contractor and any subcontractors 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, Contractor's own personnel or authorized subcontractors involved in the performance of this Agreement, at public hearings or in response to questions from County's Board of Supervisors.
- D. Contractor and any subcontractors authorized under this Agreement shall not issue any news release or public relations item of any nature, whatsoever, regarding services performed or to be performed under this Agreement without prior review of the contents thereof by County, and receipt of County's Contract Administrator's written permission.
- E. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this Article.
- F. This confidentiality provision shall survive after the expiration or earlier termination of this Agreement.

ARTICLE XV

Subcontracting, Assignment and Delegation: Contractor is engaged by County for its unique qualifications and skills as well as those of its personnel. Contractor 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 Contractor to utilize subcontractors for services performed in Exhibit A, Scope of Work, for the particular tasks, work and deliverables identified therein or as identified in the individual Task Orders or Work Orders issued pursuant to this Agreement. Said authorization and approval shall be sought and obtained by Contractor prior to subcontractors' commencement of any work under this Agreement. Specific subcontractors shall be authorized in individual Task Orders and Work Orders issued pursuant to this Agreement. Contractor shall require each subcontractor, to the extent of the work to be performed by the subcontractor, to be bound to Contractor by the terms of this Agreement and to assume toward Contractor all of the obligations and responsibilities that Contractor, by this Agreement, assumes toward County.

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

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

ARTICLE XVI

Independent Contractor/Liability: Contractor 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. Contractor 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.

Contractor 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 Contractor or its employees.

ARTICLE XVII

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 XVIII

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 Contractor.
- C. **Ceasing Performance:** County may terminate this Agreement in the event Contractor 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 Task Order or Work 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 Contractor, 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 Task Order or Work Order or the total amount of this Agreement as applicable. Upon receipt of a Notice of Termination, Contractor 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 XIX

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
2850 Fairlane Court
Placerville, California 95667

With a Copy To:

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

Attn.: Matthew D. Smeltzer, P.E.
Deputy Director, Engineering
Engineering Unit

Attn.: Sherrie Busby
Administrative Services Officer
Contract Services Unit

or to such other location as County directs.

Notices to Contractor shall be addressed as follows:

Dykstra Enterprises, Inc. dba
Foothill Tree Service
3130 Spring Road
Placerville, California 95667

Attn.: James Dykstra, President

or to such other location as Contractor directs.

ARTICLE XX

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

ARTICLE XXI

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

ARTICLE XXII

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

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Contractor 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, including but not limited to endorsements for the following coverage: premises, personal injury, operations, products and completed operations, blanket contractual, and independent contractors' liability 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 Contractor in performance of the Agreement.
- D. In the event Contractor 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. Contractor 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. Contractor agrees that the insurance required herein shall be in effect at all times during the term of this Agreement, inclusive of the guarantee/warranty period specified hereinbelow. In the event said insurance coverage expires at any time or

times during the term of this contract, Contractor shall immediately provide a new certificate of insurance as evidence of the required insurance coverage. In the event Contractor 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 Contractor 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 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. Contractor'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 Contractor'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 Contractor 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. Contractor's obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.
- N. In the event Contractor cannot provide an occurrence policy, Contractor 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, Contractor shall ensure that all subcontractors maintain workers' compensation, general liability, automobile liability and professional liability insurance as specified above and shall provide County with proof of same if requested.

ARTICLE XXIII

Licenses: For work consisting of other than Certified Arborist services performed under this Agreement, Contractor warrants and represents that any and all subcontractors authorized under this Agreement hold valid California licenses pursuant to the Contractors' State License Law (Business and Professions Code Sections 7000, et seq.), that their licenses are in good standing and that Contractor and each subcontractor possesses either a C27 Landscaping Contractor or a D49 Tree Service Contractor License as required by the categories and types of work to be performed under this Agreement. Copies of Contractor's State Contractors' license(s) must be provided with this Agreement.

ARTICLE XXIV

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 or 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 Contractor'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. Contractor 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 XXV

Contractor's Project Manager: Contractor designates Chad Dykstra, Vice President, as its Project Manager for this Agreement. Contractor'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. Contractor's Project Manager shall be responsible for all matters related to Contractor's personnel, operations and any subcontractors authorized under this Agreement including, but not limited to (1) assigning qualified personnel to perform the required work and to prepare the deliverables; (2) reviewing, monitoring, training and directing Contractor's personnel and any subcontractors authorized herein; and (3) providing qualified and appropriate traffic control services for field work.

ARTICLE XXVI

Certification: Contractor represents that it is duly certified in good standing by the International Society of Arboriculture to perform the arborist services under this Agreement and Contractor shall maintain its certification in good standing throughout the term of this Agreement. Contractor agrees to notify County immediately if Contractor's certification lapses or is not extended by the International Society of Arboriculture.

ARTICLE XXVII

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. Contractor 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.

ARTICLE XXVIII

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

ARTICLE XXIX

Guarantees:

- A. Contractor shall guarantee all materials, parts and equipment furnished and work performed for a period of one (1) year. Contractor warrants and guarantees for a period of one (1) year from the date of invoice that the work is free from all defects due to faulty materials or workmanship and Contractor shall promptly make such corrections as may be necessary, including repairs of any damage to other parts of the work resulting from such defects. County will give notice of observed defects with reasonable promptness. In the event that Contractor should fail to make such repairs, adjustments or other work that may be made necessary by such defects, County may do so and charge Contractor the cost thereby incurred.
- B. If a guaranty exceeding one (1) year is provided by the supplier or manufacturer of any parts or equipment used in the performance of services under this Agreement, then the guarantee for such materials shall be extended for such term. Contractor expressly agrees to act as co-guarantor of such parts, equipment and materials, and Contractor shall supply County with all warranty and guaranty documents relative to parts, equipment and materials incorporated in the services provided and guaranteed by its suppliers or manufacturers.
- C. Contractor warrants to County that materials, parts and equipment furnished under this Agreement will be of good quality and new, unless otherwise required or permitted by the Agreement, that the work performed will be free from defects

or flaws and is of the highest quality of workmanship and that the services provided will conform with the requirements of the Agreement. Work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective.

ARTICLE XXX

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 Contractor 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 XXXI

Interest of Contractor: Contractor covenants that Contractor 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. Contractor further covenants that in the performance of this Agreement no person having any such interest shall be employed by Contractor.

Contractor 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. Contractor shall also list current clients who may have a financial interest in the outcome of this Agreement or any ensuing County construction project. Contractor has acknowledged this interest of contractor and Contractor has duly executed Exhibit J, marked "Interest of Contractor Disclosure Statement," incorporated herein and made by reference a part hereof.

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

ARTICLE XXXII

California Residency (Form 590): All independent contractors 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. Contractor 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 Contractor during the term of this Agreement. This requirement applies to any agreement/contract exceeding \$1,500.

ARTICLE XXXIII

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.

ARTICLE XXXIV

Resolution of Claims: Contractor's attention is invited to Public Contract Code Sections 20104, et seq., for resolution of construction claims, and specifically Section 20104.2. Claims pertaining to this Contract shall be governed by the provisions of those sections.

ARTICLE XXXV

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 XXXVI

Compliance with Federal, State and Local Agency 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. Contractor shall comply with all applicable provisions of federal, state and local agency regulations, including those required by 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 (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-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 Contractor to comply with any federal, state or local agency provision may be the basis for withholding payments for charges made by Contractor and for such other remedies as may be appropriate including termination of this Agreement. Contractor 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 Contractor's subcontracts, if any, associated with this Agreement.

ARTICLE XXXVII

Working Office: Contractor shall establish a working office at a place acceptable to County. The parties hereto acknowledge and agree that Contractor's office located at 3130 Springer Road, Placerville, California is acceptable to County.

ARTICLE XXXVIII

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. Contractor 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 Contractor. This provision shall apply to every sub-recipient receiving funds as a Contractor or subcontractor under this Agreement.
- B. Any expenditures for costs for which Contractor 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 Contractor to County.
- C. Travel and subsistence (per diem) reimbursements, if applicable, and third-party contract reimbursements to subcontractors will be allowable as Project costs only after those costs are incurred and paid for by Contractor. For the purposes of this Agreement, travel and per diem costs will not be reimbursed for any services performed by Contractor or any authorized subcontractor.
- D. Notwithstanding any other provision of this Agreement to the contrary, payments to Contractor for travel and subsistence (per diem) and mileage expenses, if applicable, for Contractor's staff or for subcontractors 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 Contractor 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 Contractor and for subcontractors, if applicable, shall be eligible for reimbursement in accordance with ARTICLE III, Compensation for Services, above. No reimbursements for travel and subsistence (per diem) expenses for Contractor or subcontractors shall be allowed.
- E. Contractor and its subcontractors, 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 Contractor and all subcontractors 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 XXXIX

Audit and Inspection of Records: Contractor shall maintain and make available to the FHWA, the State of California, the California State Auditor, and County or to any duly authorized representative of the United States Department of Transportation, Comptroller General of the United States, or County all books, documents, papers, job cost records, detailed cost estimates, claims, and accounts, including payment, property, payroll, personnel, subcontractor records, and financial records related to or which arise out of the work or under terms of this Agreement. Contractor shall maintain such books, records, data and documents in accordance with generally accepted accounting principles and in accordance with the provisions of ARTICLE XXXVI, Compliance with Federal, State and Local Agency Requirements, and ARTICLE XXXVIII, Cost Principles, above. These books, papers, records, claims and accounts shall be made available for examination during normal business hours and shall be readily available and accessible at Contractor's principal place of business in California, for audit during normal business hours at such place of business. Contractor shall provide office space, photocopies and other assistance to enable audit or inspection representatives to conduct such audits or inspections. This right to audit books and records directly related to this Agreement shall also extend to all subcontractors authorized under this Agreement. Contractor shall incorporate this provision in any subcontract entered into as a result of this Agreement and shall require its subcontractors to agree to cooperate with the listed agencies by making all appropriate and relevant Project records available to those agencies for audit and copying.

ARTICLE XL

Record Retention: All of Contractor's books, papers, job cost records, detailed cost estimates, claims, and accounts, including payment, property, payroll, personnel, subcontractor records, and financial records related to or which arise out of the work or under terms of this Agreement shall be retained for access, inspection and/or audit by the United States Department of Transportation, the FHWA, Comptroller General of the United States, the State of California, the California State Auditor and County or their duly authorized representatives for at least four (4) years after County's final payment to Contractor under this Agreement.

Contractor shall incorporate this provision in any subcontract entered into as a result of this Agreement.

ARTICLE XLI

Covenant Against Contingent Fees: By executing this Agreement, Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working for Contractor, 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.

The parties hereto have acknowledged this covenant against contingent fees and Contractor has duly executed Exhibit E, marked "Certification of Contractor," and County has duly executed Exhibit F, marked "Certification of Local Agency," both of which exhibits are incorporated herein and made by reference a part hereof.

ARTICLE XLII

Documentation: Contractor 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.

ARTICLE XLIII

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

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

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 Contractor purchases ownership with grant support.

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

ARTICLE XLV

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

As applicable, DBE requirements will be discussed at the meeting or telephone conference held to determine the specific services required in a Task Order or Work Order. County's Contract Administrator will provide Contractor with the necessary DBE forms and information for use and/or submittal with Contractor's Task Order or Work Order proposal, fully-executed Task Order or Work Order, or Contractor's final invoice.

ARTICLE XLVI

DBE Participation:

- A. This Agreement is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." It is the policy of County that certified DBE firms shall have the maximum opportunity to participate in the performance of agreements financed in whole or in part with federal funds. Contractor shall ensure that certified DBE firms, as defined in the Code of Federal Regulations, have the maximum opportunity to participate in the performance of this Agreement and shall take all necessary and reasonable steps, as set forth in said Part 26, for such assurance. Contractor, if it obtains DBE participation on this Agreement, will assist Caltrans in meeting its federally mandated statewide overall DBE goal. Contractor shall prepare and submit a fully-executed "Final Report – Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" form with its final invoice for each Task Order or Work Order issued under this Agreement.
- B. DBEs and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of agreements financed in whole or in part with federal funds. Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. Contractor shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of US DOT-assisted agreements. Failure by Contractor 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.
- C. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this Article.

ARTICLE XLVII

Nondiscrimination:

- A. In connection with its performance under this Agreement, Contractor and its subcontractors, if any, shall comply with all applicable nondiscrimination statutes and regulations during the performance of this Agreement including, but not limited to the following: Contractor, its employees, subcontractors and representatives shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, medical condition, mental disability, marital status, age, sex, or denial of family care leave. Contractor and subcontractors, if any are authorized herein, shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors if any are authorized herein, shall, unless exempt, comply with the applicable provisions of the Fair Employment and Housing Act (Government Code, Sections 12990 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 are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor, its employees, subcontractors and representatives shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

- B. Where applicable, Contractor shall include the nondiscrimination and compliance provisions in any of its agreements that affect or are related to the services performed herein.
- C. The Congress of the United States, the Legislature of the State of California and the Governor of the State of California, each within their respective jurisdictions, have prescribed certain nondiscrimination requirements with respect to contract and other work financed with USDOT FHWA public funds. Contractor agrees to comply with the requirements of Exhibit G, marked "Fair Employment Practices Addendum" and the requirements of Exhibit H, marked "Nondiscrimination Assurances," including Appendices A through D to Exhibit H, both of which exhibits and the four Appendices to Exhibit H are incorporated herein and made by reference a part hereof. Contractor further agrees that any agreement entered into by Contractor with a third party for the performance of Project-related work shall incorporate Exhibits G and H and Appendices A through D to Exhibit H as essential parts of such agreement to be enforced by that third party as verified by County.
- D. Contractor's signature executing this Agreement shall provide any certifications necessary under the federal laws and 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.

ARTICLE XLVIII

Compliance with Disability Acts: Contractor 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.

ARTICLE XLIX

Debarment and Suspension Certification:

- A. Contractor's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that Contractor has complied with Title 2, Code of Federal Regulations, Part 1200, Debarment and Suspension Certificate, which certifies that it or any person associated therewith in the capacity of the 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 manner 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 Contractor responsibility. Disclosures must indicate to whom exceptions apply, initiating agency and dates of action.
- C. Contractor agrees to include this Article without modification in all subcontracts, if any.

ARTICLE L

Prohibition of Expending County, State or Federal Funds for Lobbying:

- A. Contractor, by its signature herein, certifies to the best of its knowledge and belief that:
 - 1. No state, federal or County appropriated funds have been paid, or will be paid by-or-on behalf of Contractor 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; the Contractor 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. Contractor also agrees by signing this document that it shall require that the language of this certification be included in all lower-tier subcontracts, which

exceed \$100,000, and that all such subrecipients shall certify and disclose accordingly.

ARTICLE LI

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 Acting Community Development Agency Director, or designee, which may consider written or verbal information submitted by Contractor.
- B. Not later than thirty (30) days after completion of all work under any individual Task Order or Work Order issued pursuant to this Agreement, Contractor may request review by the Board of Supervisors of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute, nor its consideration by the committee will excuse Contractor from full and timely performance in accordance with the terms of this Agreement.
- D. Contractor's failure to follow this dispute resolution procedure shall constitute a waiver of such claims and a bar to further proceedings.

ARTICLE LII

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, Contractor may request a review by County's Chief Fiscal Officer of unresolved audit issues. The request for review shall be submitted by Contractor in writing.
- C. Neither the pendency of a dispute nor its consideration by County shall excuse the Contractor from full and timely performance, in accordance with the terms of this Agreement.

ARTICLE LIII

Inspection of Work: Contractor and any subcontractors 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.

ARTICLE LIV

Safety:

- A. Contractor shall comply with OSHA regulations applicable to Contractor regarding necessary safety equipment or procedures. Contractor shall comply

with safety instructions issued by County's Safety Officer and other County representatives. Contractor's personnel and any subcontractors 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. Contractor shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14 and 15 of the Vehicle Code. Contractor 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. Contractor 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.

ARTICLE LV

Claims Filed by County's Construction Contractors:

- A. If claims are filed by County's construction contractors relating to work performed by Contractor's personnel or subcontractors, and additional information or assistance from Contractor's personnel or subcontractors is required in order to evaluate or defend against such claims, Contractor agrees to make its personnel and/or subcontractors 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. Contractor's personnel and subcontractors 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 Contractor's personnel services under Exhibit B, hereto.
- C. Services of Contractor's personnel or subcontractors 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.

ARTICLE LVI

National Labor Relations Board Certification: In accordance with Public Contract Code Section 10296, Contractor 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 Contractor within the immediately preceding two-year period, because of

Contractor's failure to comply with an order of a federal court that orders Contractor to comply with an order of the National Labor Relations Board.

ARTICLE LVII

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

ARTICLE LVIII

Rebates, Kickbacks or Other Unlawful Consideration: Contractor 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.

ARTICLE LIX

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 Contractors to take affirmative steps to ensure such fairness.

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

ARTICLE LX

Environmental Compliance: Contractor 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 CFR Part 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).

ARTICLE LXI

Equipment Purchase

- A. Prior authorization in writing, by County's Contract Administrator shall be required before Contractor enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or Contractor services. Contractor 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 Contractor'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: "The Contractor 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, Contractor 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 Contractor elects to keep the equipment, fair market value shall be determined at Contractor'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 Contractor, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by the County." 49 CFR, Part 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

ARTICLE LXII

Contract Administrator: The County Officer or employee with responsibility for administering this Agreement is Matthew D. Smeltzer, P.E., Deputy Director, Engineering, Engineering Unit, Transportation Division, Community Development Agency, or successor.

ARTICLE LXIII

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 LXIV

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 LXV

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

ARTICLE LXVI

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

ARTICLE LXVII

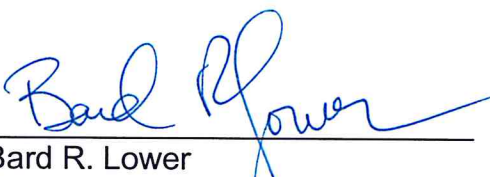
Entire Agreement: This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties, and they incorporate or supersede all prior written or oral agreements or understandings.

Requesting Contract Administrator Concurrence:

By: 
Matthew D. Smeltzer, P.E.
Deputy Director, Engineering
Engineering Unit
Transportation Division
Community Development Agency

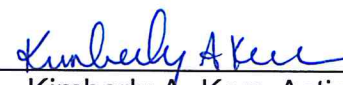
Dated: 10/8/13

Requesting Division Concurrence:

By: 
Bard R. Lower
Transportation Division Director
Community Development Agency

Dated: 10/8/13

Requesting Department Concurrence:

By: 
Kimberly A. Kerr, Acting Director
Community Development Agency

Dated: 10/8/13

**Dykstra Enterprises, Inc.
dba Foothill Tree Service**

Exhibit A

Scope of Work

Contractor's services shall include, but not be limited to, some or all of the following services as requested by County:

- Certified arborist services
- Generating arborist reports
- Attendance at project meetings, as requested by County
- Communication with property owners that may be affected by County projects
- Root growth analysis
- Pest control and insecticide treatment
- Root cutting
- Pruning
- Balanced branch trimming
- Aeration to improve root growth
- Fertilizing and feeding, including irrigation
- Tree and shrub planting services
- Shrub trimming and removal
- Trimming, topping and felling trees
- Rigging and climbing trees near private residences, utility lines and other structures
- Stump grinding/stump removal
- Final cleanup and hauling away of wood, limbs, brush, leaves, wood chips, debris, and other materials associated with the work.

Contractor shall be responsible for any traffic control measures that may be necessary in connection with services performed under this Agreement.

Contractor shall begin each work assignment under this Agreement as specified in the individual Task Order or Work Order issued pursuant to this Agreement. Unless a different timeframe is specified in the individual Task Orders or Work Orders, Contractor shall provide County with any requested arborist reports within ten (10) calendar days of the effective date of any Task Order or Work Order issued for arborist reports.

Contractor shall protect existing vegetation inside and outside of the areas to receive tree or shrub services from injury or damage resulting from Contractor's operations. Services performed by Contractor, except cleanup or other work as specified in the Task Orders or Work Orders issued pursuant to this Agreement, shall be confined within the specified tree/shrub service locations. Nothing herein shall be construed as relieving Contractor of Contractor's responsibility for final cleanup.

Contractor shall implement best management practices (BMPs) within and surrounding the work area in an effort to control discharges of sediment to local waterways. The use of BMPs shall be in accordance with the Caltrans *Construction Site Best Management Practices Manual*.

Before County's final inspection of the work, Contractor shall clean the material sites and all other areas occupied by Contractor in connection with the work of all rubbish, excess materials, branches, leaves, wood chips, dirt, other debris and equipment. All parts of the work shall be left in a neat and presentable condition.

All tree care and pruning performed by Contractor shall comply with the American National Standards Institute (ANSI) A300 (Part 1) – 2001 Pruning Standards and the International Society of Arboriculture Best Management Practices Tree Pruning Guide.

**Dykstra Enterprises, Inc. dba
Foothill Tree Service**

Exhibit B

Billing Rates

Certified arborist services	\$155.00 per hr
Generating arborist reports	\$155.00 per hr
Attendance at project meetings, as requested by County	\$155.00 per hr
Communication with property owners that may be affected by County projects	\$155.00 per hr
Root growth analysis	\$155.00 per hr
Pest control and insecticide treatment	\$155.00 per hr plus materials cost
Root cutting	\$245.00/hr 4 person crew with truck, chipper and tools
Pruning	\$245.00/hr 4 person crew with truck, chipper and tools
Balanced branch trimming	\$245.00/hr 4 person crew with truck, chipper and tools
Aeration to improve root growth	\$245.00/hr 4 person crew with truck, chipper and tools
Fertilizing and feeding, including irrigation	\$155.00 per hr plus materials cost
Tree and shrub planting services	\$245.00/hr 4 person crew with truck, trailer and tools
Trimming, topping and felling trees	\$245.00/hr 4 person crew with truck, chipper and tools
Rigging and climbing trees near private residences, utility lines and other structureschipper and tools	\$245.00/hr 4 person crew with truck,
Stump grinding/stump removal	\$6 per inch of diameter measured
Final cleanup and hauling away of wood, limbs, brush, leaves, wood chips, debris, and other materials associated with the work.	\$245.00/hr 4 person crew with truck, chipper and tools

Contractor's invoices shall itemize the parts and materials to be paid for by County and shall list the amounts being charged to County for same.

Materials and direct costs shall be billed at Contractor's cost. Reimbursement for mileage expenses for Contractor, and for any subcontractors, if applicable, shall be compensated in accordance with all of the provisions of ARTICLE III, Compensation for Services, of this Agreement.

Exhibit C

Sample Invoice

**Dykstra Enterprises, Inc. dba
Foothill Tree Service
3130 Springer Road
Placerville, CA 95667
Phone, Fax, Email Address**

County of El Dorado
Community Development Agency
Transportation Division
2850 Fairlane Court
Placerville, CA 95667
Attn.: Matthew D. Smeltzer
Deputy Director, Engineering

Invoice Number XXXXXX
Invoice Date Month Day, Year
Project Number XXXXXX
Agreement Number XXXXXX

Work Beginning MM/DD/YYYY through MM/DD/YYYY
Project Name
Agreement for Services #191-S1411
Work Order 191-S1411-XX

Name of your Project Manager

Professional Fees:		Week Ending	Units	Rate	Amount
Activity Code and Task Name (refer to Items of Work)					
1. Employee Name	Employee Title	MM/DD/YY	# Hours	XXX.XX	\$X,XXX.XX
2. Employee Name	Employee Title	MM/DD/YY	# Hours	XXX.XX	\$X,XXX.XX
3. Employee Name	Employee Title	MM/DD/YY	# Hours	XXX.XX	\$X,XXX.XX
4. Employee Name	Employee Title	MM/DD/YY	# Hours	XXX.XX	\$X,XXX.XX
Sub-Total			# Hours		\$X,XXX.XX
Activity Code and Task Name (refer to Items of Work)					
5. Employee Name	Employee Title	MM/DD/YY	# Hours	XXX.XX	\$X,XXX.XX
6. Employee Name	Employee Title	MM/DD/YY	# Hours	XXX.XX	\$X,XXX.XX
Sub-Total			# Hours		\$X,XXX.XX
Professional Fees Sub-Total			# Hours	XXX.XX	\$X,XXX.XX

Direct Expenses (refer to Agmt/Task Order for allowable charges & rates):				
Note: Attach copies of mileage log, copy log, etc. to support charges				
Mileage	XX	Miles	.XX/mile	\$XXX.XX
Reproduction/Copies	# copies	# copies	.XX/copy	\$XXX.XX
Etc.				
Direct Expenses Sub-Total				\$X,XXX.XX

Subconsultant Fees (if applicable):	Name of Subconsultant			
Activity Code and Task Name per Work Order				\$X,XXX.XX
Sub-consultant Sub-Total				\$X,XXX.XX

Total Amount Due This Invoice				\$X,XXX.XX
--------------------------------------	--	--	--	-------------------

Company Name _____
Work Order # _____

Exhibit D

Invoice Date:

SAMPLE TRACKING REPORT

Title of Work Order (found on front page of document)

Consultant

Sub-consultant (if applicable)

Items of Work Letter and name of item as shown in Task Order or Work Order	Activity Code	Budget	Invoiced To Date	Available	Current Invoice	Available Balance**	Actual Progress % *										
								Sub #1 Budget	Sub #2 Budget	Sub #3 Budget	Invoiced To Date	Available	Sub Current Invoice	Available Balance**	Actual Progress % *	Task Order % of Budget	
				\$0.00		\$0.00											#DIV/0!
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Staff Budget (hours)

[illegible]

* This is the % of the work actually completed on this item of work; it is NOT the % of the budget expended to date

**** Do NOT submit an invoice if the "Available" column is 0 or if the "Available Balance" column becomes negative with the current invoice.**

Prepared By: _____ (Signature of Project Manager)

Printed Name of Project Manager: _____

**Dykstra Enterprises, Inc. dba
Foothill Tree Service**

Exhibit E

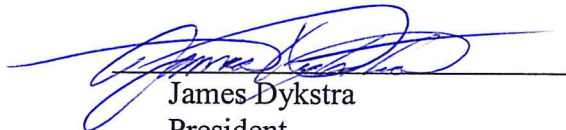
CERTIFICATION OF CONTRACTOR

I HEREBY CERTIFY that I am the President and duly authorized representative of the firm of Dykstra Enterprises, Inc. dba Foothill Tree Service whose address is 3130 Springer Road, Placerville, California 95667, and that, except as hereby expressly stated, neither I nor the above firm that I represent have:

- (a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above Contractor) to solicit or secure this Agreement; nor
- (b) agreed, as an express or implied condition for obtaining this Contract, to employ or retain the services of any firm or person in connection with carrying out the Agreement; nor
- (c) paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above Contractor) any fee, contribution, donation, or consideration of any kind, for or in connection with, procuring or carrying out this Agreement.

I acknowledge that this Certificate is to be made available to the California Department of Transportation (Caltrans) in connection with this Agreement involving participation of Federal-aid Highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

10-14-13
(Date)


James Dykstra
President

**Dykstra Enterprises, Inc. dba
Foothill Tree Service**

Exhibit F

CERTIFICATION OF LOCAL AGENCY

I HEREBY CERTIFY that I am the Acting Director of the Community Development Agency of the County of El Dorado, and that the consulting firm of Contractor or its representative has not been required (except as herein expressly stated), directly or indirectly, as an express or implied condition in connection with obtaining or carrying out this Agreement to:

- (a) employ, retain, agree to employ or retain, any firm or person; or
- (b) pay or agree to pay, to any firm, person or organization, any fee, contribution, donation, or consideration of any kind.

I acknowledge that this Certificate is to be made available to the California Department of Transportation (Caltrans) in connection with this Agreement involving participation of Federal-aid Highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

10/8/13
(Date)

Kimberly A. Kerr
Kimberly A. Kerr, Acting Director
Community Development Agency

**Dykstra Enterprises, Inc. dba
Foothill Tree Service**

Exhibit G

FAIR EMPLOYMENT PRACTICES ADDENDUM

1. In the performance of this Agreement, Contractor will not discriminate against any employee for employment because of race, color, sex, sexual orientation, religion, ancestry or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave or disability leave. Contractor will take affirmative action to ensure that employees are treated during employment, without regard to their race, color, sex, sexual orientation, religion, ancestry or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave or disability leave. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor shall post in conspicuous places, available to employees for employment, notices to be provided by State setting forth the provisions of this Fair Employment section.

2. Contractor, its contractor(s) and all subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.), and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12900(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. Each of Contractor's contractors and all subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements, as appropriate.

3. Contractor shall include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts to perform work under this Agreement.

4. Contractor will permit access to the records of employment, employment advertisements, application forms and other pertinent data and records by County, State, the State Fair Employment and Housing Commission or any other agency of the State of California designated by State, for the purposes of investigation to ascertain compliance with the Fair Employment section of this Agreement.

5. Remedies for Willful Violation:

(a) County may determine a willful violation of the Fair Employment provision to have occurred upon receipt of a final judgment to that effect from a court in an action to which Contractor was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that Contractor has violated the Fair Employment Practices Act and had issued an order under Labor Code

**Dykstra Enterprises, Inc. dba
Foothill Tree Service**

Exhibit G

Section 1426 which has become final or has obtained an injunction under Labor Code Section 1429.

(b) For willful violation of this Fair Employment Provision, County shall have the right to terminate this Agreement either in whole or in part, and any loss or damage sustained by County in securing the goods or services thereunder shall be borne and paid for by Contractor and by the surety under the performance bond, if any, and County may deduct from any moneys due or thereafter may become due to Contractor the difference between the price named in the Agreement and the actual cost thereof to County to cure Contractor breach of this Agreement.

**Dykstra Enterprises, Inc. dba
Foothill Tree Service**

Exhibit H

NONDISCRIMINATION ASSURANCES

Contractor hereby agrees that, as a condition to receiving any federal financial assistance from County or the State, acting for the U.S. Department of Transportation, it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-42 U.S.C. 2000d-4 (hereinafter referred to as the Act), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964" (hereinafter referred to as the Regulations), the Federal-aid Highway Act of 1973, and other pertinent directives, to the end that in accordance with the Act, Regulations, and other pertinent directives, no person in the United States shall, on the grounds of race, color, sex, national origin, religion, age or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which County receives federal financial assistance from the Federal Department of Transportation. Contractor hereby gives assurance that Contractor will promptly take any measures necessary to effectuate this agreement. This assurance is required by subsection 21.7(a) (1) of the Regulations.

More specifically, and without limiting the above general assurance, Contractor hereby gives the following specific assurances with respect to its Federal-aid Program:

1. That Contractor agrees that each "program" and each "facility" as defined in subsections 21.23 (e) and 21.23 (b) of the Regulations, will be (with regard to a "program") conducted, or will be (with regard to a "facility") operated in compliance with all requirements imposed by, or pursuant to, the Regulations.

2. That Contractor shall insert the following notification in all solicitations for proposals for work or material subject to the Regulations made in connection with the Federal-aid Program and, in adapted form, in all proposals for negotiated agreements:

Contractor hereby notifies all proposers that it will affirmatively ensure that in any agreement entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, national origin, religion, age, or disability in consideration for an award.

3. That Contractor shall insert the clauses of Appendix A of this assurance in every agreement subject to the Act and the Regulations.

4. That the clauses of Appendix B of this Assurance shall be included as a covenant running with the land, in any deed effecting a transfer of real property, structures, or improvements thereon, or interest therein.

5. That where Contractor receives federal financial assistance to construct a facility, or part of a facility, the Assurance shall extend to the entire facility and facilities operated in connection therewith.

**Dykstra Enterprises, Inc. dba
Foothill Tree Service**

Exhibit H

6. That where Contractor receives federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, the Assurance shall extend to rights to space on, over, or under such property.

7. That Contractor shall include the appropriate clauses set forth in Appendix C and D of this Assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by Contractor with other parties:

Appendix C;

(a) For the subsequent transfer of real property acquired or improved under the Federal-aid Program; and

Appendix D;

(b) For the construction or use of or access to space on, over, or under real property acquired, or improved under the Federal-aid Program.

8. That this assurance obligates Contractor for the period during which federal financial assistance is extended to the program, except where the federal financial assistance is to provide, or is in the form of, personal property or real property of interest therein, or structures, or improvements thereon, in which case the assurance obligates Contractor or any transferee for the longer of the following periods:

(a) The period during which the property is used for a purpose for which the federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or

(b) The period during which Contractor retains ownership or possession of the property.

9. That Contractor shall provide for such methods of administration for the program as are found by the U.S. Secretary of Transportation, or the official to whom he delegates specific authority, to give reasonable guarantee that Contractor, other recipients, sub-grantees, applicants, sub-applicants, transferees, successors in interest, and other participants of federal financial assistance under such program will comply with all requirements imposed by, or pursuant to, the Act, the Regulations, this Assurance and the Agreement.

10. That Contractor agrees that County, the United States and the State of California have a right to seek judicial enforcement with regard to any matter arising under the Act, the Regulations, and this Assurance.

11. Contractor shall not discriminate on the basis of race, religion, age, disability, color, national origin or sex in the award and performance of any State assisted agreement or in the administration of County's DBE Program or the requirements of 49 CFR Part 26. Contractor shall take all necessary and reasonable steps under 49 CFR Part 26 to

**Dykstra Enterprises, Inc. dba
Foothill Tree Service**

Exhibit H

ensure nondiscrimination in the award and administration of State assisted agreements. County's DBE Program Implementation Agreement is incorporated by reference in this Agreement. Implementation of this Program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to County of its failure to carry out its approved DBE Program Implementation Agreement, State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 USC 3801 et seq.).

These Assurances are given in consideration of and for the purpose of obtaining any and all federal grants, loans, agreements, property, discounts or other federal financial assistance extended after the date hereof to County by State, acting for the U.S. Department of Transportation, and is binding on Contractor, other recipients, subgrantees, applicants, sub-applicants, transferees, successors in interest and other participants in the Federal-aid Highway Program.

**Dykstra Enterprises, Inc. dba
Foothill Tree Service**

Appendix A to Exhibit H

During the performance of this Agreement, Contractor, for itself, its assignees and successors in interest (hereinafter collectively referred to as "Contractor") agrees as follows:

(1) **Compliance with Regulations:** Contractor shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.

(2) **Nondiscrimination:** Contractor, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix b of the ns.

(3) **Solicitations for Sub-agreements, including procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by Contractor for work performed under a Sub-agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by Contractor of Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color or national origin.

(4) **Information and Reports:** Contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to Contractor's books, records, accounts, other sources of information, and its facilities as may be determined by County, State or FHWA to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of Contractor is in the exclusive possession of another who fails or refuses to furnish this information, Contractor shall so certify to County, State or the FHWA as appropriate, and shall set forth what efforts Contractor was made to obtain the information.

(5) **Sanctions for Noncompliance:** In the event of Contractor's noncompliance with the nondiscrimination provisions of this Agreement, County shall impose such agreement sanctions as it, the State or the FHWA may determine to be appropriate, including, but not limited to:

- (a) withholding of payments to Contractor under the Agreement within a reasonable period of time, not to exceed 90 days; and/or
- (b) cancellation, termination or suspension of the Agreement, in whole or in part.

(6) **Incorporation of Provisions:** Contractor shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

Contractor shall take such action with respect to any sub-agreement or procurement as County, State or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event Contractor becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, Contractor may request County or State enter into such litigation to protect the interests of County or State, and, in addition, Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**Dykstra Enterprises, Inc. dba
Foothill Tree Service**

Appendix B to Exhibit H

(Not Applicable)

**Dykstra Enterprises, Inc. dba
Foothill Tree Service**

Appendix C to Exhibit H

(Not Applicable)

**Dykstra Enterprises, Inc. dba
Foothill Tree Service**

Appendix D to Exhibit H

(Not Applicable)

Dykstra Enterprises, Inc. dba
Foothill Tree Service

Exhibit I

DISCLOSURE OF LOBBYING ACTIVITIES

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

1. Type of Federal Action: ☐ a. contract ☐ b. grant ☐ c. cooperative agreement ☐ d. loan ☐ e. loan guarantee ☐ f. loan insurance	2. Status of Federal Action: ☐ a. bid/offer/application ☐ b. initial award ☐ c. post-award	3. Report Type: ☐ a. initial ☐ b. material change For Material Change Only: year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity ☐ Prime ☐ Subawardee Tier _____, if known Congressional District, if known	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable _____	
8. Federal Action Number, if known:	9. Award Amount, if known:	
10. a. Name and Address of Lobby Entity (If individual, last name, first name, MI)	b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI)	
(attach Continuation Sheet(s) if necessary)		
11. Amount of Payment (check all that apply) \$ _____ ☐ actual ☐ planned	13. Type of Payment (check all that apply) ☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other, specify _____	
12. Form of Payment (check all that apply): ☐ a. cash ☐ b. in-kind; specify: nature _____ Value _____		
14. Brief Description of Services Performed or to be performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 11: (attach Continuation Sheet(s) if necessary)		
15. Continuation Sheet(s) attached: Yes ☐ No ☐		
16. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying reliance was placed by the tier above when his transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.		
Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____ Authorized for Local Reproduction Standard Form - LLL		

Federal Use Only:

Standard Form LLL Rev. 04-28-06

Distribution: Orig- Local Agency Project Files

**Dykstra Enterprises, Inc. dba
Foothill Tree Service**

Exhibit I

**INSTRUCTIONS FOR COMPLETION OF SF-LLL,
DISCLOSURE OF LOBBYING ACTIVITIES**

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipient at the initiation or receipt of covered federal action or a material change to previous filing pursuant to title 31 U.S.C. Section 1352. The filing of a form is required for such payment or agreement to make payment to lobbying entity 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 a covered federal action. Attach a continuation sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered federal action for which lobbying activity is and/or has been secured to influence, the outcome of a covered federal action.
2. Identify the status of the covered federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last, previously submitted report by this reporting entity for this covered federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District if known. Check the appropriate classification of the reporting entity that designates if it is or expects to be a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the first tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in Item 4. checks "Subawardee" then enter the full name, address, city, State and zip code of the prime federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organization level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the federal program name or description for the covered federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans and loan commitments.
8. Enter the most appropriate federal identifying number available for the federal action identification in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract grant. or loan award number, the application/proposal control number assigned by the federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered federal action where there has been an award or loan commitment by the Federal agency, enter the federal amount of the award/loan commitments for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in Item 4. to influenced the covered federal action.
(b) Enter the full names of the individual(s) performing services and include full address if different from 10 (a). Enter Last Name, First Name and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed or will be expected to perform and the date(s) of any services rendered. Include all preparatory and related activity not just time spent in actual contact with federal officials. Identify the federal officer(s) or employee(s) contacted or the officer(s) employee(s) or Member(s) of Congress that were contacted.
15. Check whether or not a continuation sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name title and telephone number.

Public reporting burden for this collection of information is estimated to average 30-minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

Dykstra Enterprises, Inc.
dba Foothill Tree Service

Exhibit J

INTEREST OF CONTRACTOR DISCLOSURE STATEMENT

Disclosure of Conflicts

In accordance with ARTICLE XXXI, Interest of Contractor, in the space provided below, and on supplemental sheets as necessary, (a) Contractor 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) Contractor 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 Contractor Disclosure Statement, other than as disclosed above.



Signature

JAMES DYKSTRA

Name

PRESIDENT

Title

DYKSTRA ENTERPRISES INC. D.B.A. FOOTHILL TREE SER.

Company Name

10-14-13

Date

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

--COUNTY OF EL DORADO--

By:  _____
Ron Briggs

Board of Supervisors
"County"

Dated: 12-17-13

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

By:  _____
Deputy Clerk

Dated: 12-17-13

--DYKSTRA ENTERPRISES, INC.
d b a
FOOTHILL TREE SERVICE--

By:  _____
James Dykstra
President
"Contractor"

Dated: 10-14-13

By:  V.P. _____
Chad Dykstra
Vice President

Dated: 10-14-2013