

**EN2 Resources, Inc.  
doing business as  
Sierra Ecosystem Associates**

**Revegetation Mitigation Services for the Green Valley Road at Weber Creek –  
Bridge Replacement Project**

**AGREEMENT FOR SERVICES #082-S1811**

**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 EN2 Resources, Inc., a corporation duly qualified to conduct business in the State of California, doing business as Sierra Ecosystem Associates, whose principal place of business is 1024 Simon Drive, Suite H, Placerville, California 95667, and whose mailing address is Post Office Box 2260, Placerville, California 95667 (hereinafter referred to as "CONTRACTOR");

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

**WHEREAS**, COUNTY has determined that it is necessary to obtain a contractor to provide revegetation mitigation services for the Green Valley Road at Weber Creek – Bridge Replacement Project.

**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 federal, 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 Section 31000;

**NOW, THEREFORE**, COUNTY and CONTRACTOR mutually agree as follows:

**ARTICLE I**

**Scope of Services:**

- A. CONTRACTOR's services are to be provided specifically in support of the Green Valley Road at Weber Creek – Bridge Replacement Project (hereinafter referred to as "Project").
- B. CONTRACTOR shall perform all professional and technical services, work, and tasks required to accomplish the objectives set forth herein and shall provide and

make available CONTRACTOR's own personnel, subcontractors, materials, equipment, vehicles, and services necessary to perform revegetation mitigation and monitoring services for the Project. 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.

Unless otherwise indicated below, and notwithstanding any other provision of this Agreement to the contrary, deliverables for the specific tasks to be provided under the Scope of Work hereto, as specified in Exhibit A, shall be prepared using the software described in this Article and shall be submitted in accordance with the timeframes and formats specified in Exhibit A. Adjustments to the completion times specified in Exhibit A may only be made in accordance with the prior written approval (may consist of an email) of COUNTY's Contract Administrator or designee.

- C. COUNTY shall review CONTRACTOR's progress at key points as specified in Exhibit A. Milestone reviews shall be performed for the specific products and deliverables listed in Exhibit A. Milestones may only be changed by written agreement (may consist of an email) between COUNTY's Contract Administrator, or designee, and CONTRACTOR's Project Manager.
- D. If a submittal or unsigned deliverable is required to be an electronic file, CONTRACTOR shall produce the file using Microsoft (MS) Office 2010 applications (specifically, MS Word, MS Project, and MS Excel). Signed reports and deliverables shall be submitted in Adobe portable document format (pdf). All plans, specifications, and similar documents shall be produced and submitted in AutoCAD 2010 format. Electronic copies shall be provided on CD or via email. Photographs shall be provided in jpg format. All deliverables shall be submitted in a language, format, and design that are compatible with and completely transferable to COUNTY's computer and engineering applications and that are acceptable to COUNTY's Contract Administrator. Newer versions of software may be used and other engineering software used for analytical purposes may be authorized if approved by COUNTY's Contract Administrator in accordance with the completion time schedules identified in Exhibit A.

CONTRACTOR shall submit all deliverables to COUNTY's Contract Administrator in accordance with completion time schedules identified in Exhibit A, unless prior written approval is provided by COUNTY's Contract Administrator, or designee. Failure to submit the required deliverables in the format required may be grounds for termination of the Agreement, as provided in ARTICLE VI, Termination, herein.

- E. CONTRACTOR's responsibilities for compliance with Disadvantaged Business Enterprise (DBE) requirements are described in ARTICLE XLI, Disadvantaged Business Enterprise (DBE) Considerations, and in ARTICLE XLII, Disadvantaged Business Enterprise (DBE) Participation, herein.

All of the services included in this Article and Exhibit A are the responsibility of CONTRACTOR, unless specifically described as a task or item of work to be provided

by COUNTY. CONTRACTOR shall be responsible for the supervision, administration, and work performed by any subcontractor for services rendered under this Agreement.

## **ARTICLE II**

**Compensation for Services:** For services provided herein, including all of the deliverables and including all of the forms and reports required under the DBE provisions of this Agreement and including the progress reports required by ARTICLE III, Progress Reports, below, COUNTY agrees to pay CONTRACTOR in arrears. Payment shall be made within forty-five (45) days following COUNTY's receipt and approval of itemized invoices detailing services rendered.

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

Other direct costs including special reproductions, delivery charges, and other outside services authorized herein, shall be invoiced at CONTRACTOR's cost, for the services rendered. Any invoices that include other direct 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.

In accordance with ARTICLE XII, State Prevailing Wage Rates, CONTRACTOR shall provide COUNTY's Contract Administrator with certified payroll for applicable personnel for the period for which payment is requested and such certified payroll shall accompany each invoice submitted. The certified payroll shall contain information related only to the applicable project. No invoice shall be paid until the certified payroll is submitted. CONTRACTOR also remains responsible for directly filing its certified payroll with the Department of Industrial Relations.

## **ARTICLE III**

**Progress Reports:** 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 seeks to 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. 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 IV**

##### **Performance Period:**

- A. This Agreement shall go into effect upon execution, contingent upon approval by COUNTY, and CONTRACTOR shall commence work after notification to proceed by COUNTY's Contract Administrator. The Agreement shall end six (6) years after execution, unless extended by written contract amendment.
- B. CONTRACTOR is advised that any recommendation for contract award is not binding on COUNTY until the Agreement is fully executed and approved by COUNTY.

#### **ARTICLE V**

##### **Allowable Costs and Payments:**

- A. The method of payment for the following items shall be at a rate specified for each item, as described in this Article and in Exhibit C, marked "Cost Estimate," incorporated herein and made by reference a part hereof. The specified rate shall include full compensation to CONTRACTOR for the item described, including but not limited to, any repairs, maintenance, or insurance, and no further compensation will be allowed therefore.
- B. The specified rates to be paid for vehicle expense for CONTRACTOR's field personnel shall not exceed the not-to-exceed amount as specified in Exhibit B for Other Direct Costs.

The specified rates to be paid for planting supplies, including but not limited to, plants, materials, equipment and other necessary items, shall not exceed the rates as listed in Exhibit B under Direct Expenses and/or Other Direct Costs.

- C. The method of payment for this Agreement, except for those items to be paid for on a specified rate basis, will be based on cost per unit of work. COUNTY will reimburse CONTRACTOR for actual costs (including labor costs, travel, equipment rental costs, and Other Direct Costs) incurred by CONTRACTOR in performance of the work. CONTRACTOR will not be reimbursed for actual costs that exceed the estimated wage rates, travel, equipment rental, and other estimated costs set forth in Exhibit B, unless additional reimbursement is provided for, by an amendment to this Agreement. In the event COUNTY determines that changed work from that specified in Exhibit A and an amendment to this Agreement is required, the actual costs reimbursable by COUNTY may be adjusted by an amendment to this Agreement to accommodate the changed work. The maximum total cost as specified in Paragraph "I," shall not be exceeded unless authorized by an amendment to this Agreement.

- D. Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in Exhibit B.
- E. When milestone cost estimates are included in Exhibit C, CONTRACTOR shall obtain prior written approval for a revised milestone cost estimate from COUNTY's Contract Administrator before exceeding such estimate.
- F. Progress payments will be made in arrears based on the services provided and allowable incurred costs. If CONTRACTOR fails to submit the required deliverable items according to the schedule set forth in the Scope of Work, COUNTY shall have the right to accept deliverable items, delay payment, or terminate the Agreement in accordance with the provisions of ARTICLE VI, Termination.
- G. No payment will be made prior to approval of any work, nor for any work performed prior to the approval of this Agreement.
- H. CONTRACTOR will be reimbursed as promptly as fiscal procedures will permit upon receipt by COUNTY's Contract Administrator of itemized invoices. Invoices shall be submitted no later than forty-five (45) calendar days after the performance of work for which CONTRACTOR is billing. Invoices shall detail the work performed on each milestone. Invoices shall follow the format stipulated for Exhibit C and shall reference this Agreement number and Project title and shall include the beginning and ending dates of the overall period of service. The final invoice shall contain the final cost and all credits due COUNTY, including any equipment purchased under the provisions of ARTICLE XI, Equipment Purchase, of this Agreement. The final invoice shall be submitted within sixty (60) calendar days after completion of CONTRACTOR's work. Invoices shall be mailed to COUNTY at the following address:

County of El Dorado  
Department of Transportation  
2850 Fairlane Court  
Placerville, California 95667  
Attn.: Shanann Findley  
Administrative Technician

or to such other location as COUNTY directs.

- I. The total amount payable by COUNTY for this Agreement shall not exceed \$86,257.
- J. For personnel subject to prevailing wage rates as described in the California Labor Code, all salary increases that are the direct result of changes in the prevailing wage rates are reimbursable without prior written approval or an Amendment to this Agreement.

#### **ARTICLE VI**

##### **Termination:**

- A. COUNTY reserves the right to terminate this Agreement upon thirty (30) calendar days written notice to CONTRACTOR with the reasons for termination stated in the

Notice of Termination. If such prior termination is effected, COUNTY will pay for satisfactory services rendered prior to the effective dates, as set forth in the Notice of Termination provided to 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 total amount of this Agreement. 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.

- B. COUNTY may terminate this Agreement with CONTRACTOR should CONTRACTOR fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, COUNTY may proceed with the work in any manner deemed proper by COUNTY. If COUNTY terminates this Agreement with CONTRACTOR, COUNTY shall pay CONTRACTOR the sum due to CONTRACTOR under this Agreement prior to termination, unless the cost of completion to COUNTY exceeds the funds remaining in the Agreement. In which case the overage shall be deducted from any sum due CONTRACTOR under this Agreement and the balance, if any, shall be paid to CONTRACTOR upon demand.
- C. The maximum amount for which COUNTY shall be liable if this Agreement is terminated is the total amount of this Agreement.
- D. Default: Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (Time to Cure), then such party shall be in default. The Time to Cure may be extended at the discretion of the party giving notice. Any extension of Time to Cure must be in writing, prepared by the party in default for signature by the party giving notice, and must specify the reason(s) for the extension and the date in which the extension of Time to Cure expires.

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

- E. Bankruptcy: This Agreement, at the sole option of COUNTY, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of CONTRACTOR.
- F. 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.
- G. Termination or Cancellation without Cause: CONTRACTOR shall comply with the requirements of this Article, regarding administrative, contractual, or legal remedies in instances of default, termination, or cancellation and with other terms and



conditions of COUNTY's grant funding agreements that provide for such sanctions and penalties as may be appropriate in instances where contract terms are violated or breached.

- H. Completion of Work: In the event of termination of the Agreement, for default or without cause, COUNTY reserves the right to take over and complete any work, service, or task by contract or by other means.

## **ARTICLE VII**

### **Cost Principles and Administrative Requirements:**

- A. CONTRACTOR agrees that the Contract Cost Principles and Procedures, 48 C.F.R. Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items.
- B. CONTRACTOR also agrees to comply with federal procedures in accordance with 2 C.F.R. § 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards.
- C. Any costs for which payment has been made to CONTRACTOR that are determined by subsequent audit to be unallowable under 2 C.F.R. § 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards and 48 C.F.R. Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by CONTRACTOR to COUNTY.
- 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 Human Resources rates. 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. 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 VIII**

**Retention of Records/Audit:** For the purpose of determining compliance with Public Contract Code Section 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable, and other matters connected with the performance of the Agreement pursuant to Government Code Section 8546.7; CONTRACTOR, subcontractors, and COUNTY shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the Agreement, including but not limited to, the costs of administering the Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three (3) years from the date of final payment under the Agreement. The state, State Auditor, COUNTY, FHWA, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of CONTRACTOR and its certified public accountants (CPA) work papers that are pertinent to the Agreement and indirect cost rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

## **ARTICLE IX**

### **Audit Review Procedures:**

- A. Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not disposed of by agreement shall be reviewed by COUNTY's Chief Fiscal Officer.
- B. Not later than thirty (30) days after issuance of the final audit report, CONTRACTOR may request a review by COUNTY's Chief Fiscal Officer of unresolved audit issues. The request for review shall be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by COUNTY shall excuse CONTRACTOR from full and timely performance in accordance with the terms of this Agreement.

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

## **ARTICLE X**

### **Subcontracting:**

- A. Nothing contained in this Agreement or otherwise shall create any contractual relation between COUNTY and any subcontractor(s), and no subcontract shall relieve CONTRACTOR of its responsibilities and obligations hereunder. CONTRACTOR agrees to be as fully responsible to COUNTY for the acts and omissions of its subcontractor(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by CONTRACTOR. CONTRACTOR's obligation to pay its subcontractor(s) is an independent obligation from COUNTY'S obligation to make payments to the CONTRACTOR.



- B. CONTRACTOR shall pay its subcontractors within ten (10) calendar days from receipt of each payment made to CONTRACTOR by COUNTY.
- C. All subcontracts entered into as a result of this Agreement shall contain all the provisions stipulated in this Agreement to be applicable to subcontractors.
- D. Any substitution of subcontractor(s) must be approved in writing by COUNTY's Contract Administrator prior to the start of work by the subcontractor(s).
- E. 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 except that which is expressly identified in Exhibit C. COUNTY may, at its sole discretion, through its Contract Administrator, authorize CONTRACTOR to utilize subcontractors for services performed in Exhibit A, for the particular tasks, work, and deliverables identified therein. Said authorization and approval shall be sought and obtained by CONTRACTOR prior to subcontractors' commencement of any work under 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.

## **ARTICLE XI**

### **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 Estimate 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 COUNTY and CONTRACTOR, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by COUNTY." 49 C.F.R. § 18 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the Project.

## **ARTICLE XII**

### **State Prevailing Wage Rates:**

- A. CONTRACTOR shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
- B. Any subcontract entered into as a result of this Agreement, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article.
- C. When prevailing wages apply to the services described in the scope of work, transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

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

## **ARTICLE XIII**

### **Conflict Of Interest:**

- 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. CONTRACTOR shall also list current clients who may have a financial interest in the outcome of this Agreement or any ensuing COUNTY construction project that will follow. CONTRACTOR has acknowledged this interest of contractor and CONTRACTOR has duly executed Exhibit D, marked "Interest of Contractor Disclosure Statement," incorporated herein and made by reference a part hereof.
- B. CONTRACTOR hereby certifies that it does not now have, nor shall it acquire, any financial or business interest that would conflict with the performance of services under this Agreement.

## **ARTICLE XIV**

### **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 sole discretion, to terminate the Agreement without liability; to pay only for the value of the work actually performed; to deduct from the Agreement price; or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.

## **ARTICLE XV**

### **Statement of Compliance:**

- A. CONTRACTOR's signature affixed herein, and dated, shall constitute a certification under penalty of perjury under the laws of the State of California that CONTRACTOR has, unless exempt, complied with the nondiscrimination program requirements of Government Code Section 12990 and Title 2, California Administrative Code, Section 8103.
- B. During the performance of this Agreement, CONTRACTOR and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability, mental disability, medical condition, age, marital status, genetic information, gender, gender identity, gender expression, sexual orientation, military and veteran status, or denial of family care leave. CONTRACTOR and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. CONTRACTOR and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code § 12900 et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12900, 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 and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- C. CONTRACTOR shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the state of California shall, on the basis of race, color, national origin, religion, sex, age, or disability, be excluded from participation in, denied the benefits of, or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- D. CONTRACTOR, with regard to the work performed by it during the Agreement, shall act in accordance with Title VI. Specifically, the CONTRACTOR shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of subcontractors, including procurement of



materials and leases of equipment. The CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

## **ARTICLE XVI**

### **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 C.F.R. § 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)," which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to COUNTY.
- B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining CONTRACTOR responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.
- C. Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal highway Administration.

## **ARTICLE XVII**

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

## **ARTICLE XVIII**

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

## **ARTICLE XIX**

**Ownership of Data:** Upon completion or earlier termination of all services under this Agreement, ownership and title to all reports, documents, plans, maps, specifications,

estimates, compilations, photographs, videos, and any and all other materials or data produced or obtained as part of this Agreement will automatically be vested in COUNTY without restriction or limitation on their use, and no further agreement will be necessary to transfer ownership to COUNTY. Copies may be made for CONTRACTOR's records, but shall not be furnished to others without prior written authorization from COUNTY's Contract Administrator. Such deliverables shall be deemed works made for hire and all rights in copyright therein shall be retained by COUNTY. 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 XX**

**CONTRACTOR's Project Manager:** CONTRACTOR designates Jeremy Waites, Terrestrial Biologist/GIS Specialist, 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 required by this Agreement; (2) reviewing, monitoring, training, and directing CONTRACTOR's personnel and any subcontractors authorized herein; and (3) providing appropriate traffic signage.

#### **ARTICLE XXI**

**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 without prior written approval by COUNTY's Contract Administrator.

#### **ARTICLE XXII**

**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 XXIII**

### **Confidentiality:**

- A. CONTRACTOR and any subcontractors authorized under this Agreement shall maintain the confidentiality and privileged nature of all records, including billing records, all financial, statistical, personnel, technical, or other data and information relative to COUNTY's operations together with any knowledge therein acquired, in accordance with all applicable state and federal laws and regulations, as they may now exist or may hereafter be amended or changed. 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 Department of Transportation or to such person with COUNTY's consent for the purpose of, and in the performance of, this Agreement.
- B. Permission granted by COUNTY to disclose information on one occasion shall not authorize 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 prior 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 XXIV**

**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 in accordance with good engineering practices and shall be liable for its own negligence and negligent acts of its



employees and subcontractors. 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, agents, associates, representatives, or subcontractors.

## **ARTICLE XXV**

**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 XXVI**

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

To COUNTY:

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

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

With a copy to:

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

Attn.: Michele Weimer  
Administrative Services Officer  
Contracts and Procurement

or to such other location as COUNTY directs.

Notices to CONTRACTOR shall be addressed as follows:

EN2 Resources, Inc.  
dba Sierra Ecosystem Associates  
P.O. Box 2260  
Placerville, California 95667

Attn.: Rick A. Lind,  
President

or to such other location as CONTRACTOR directs.

#### **ARTICLE XXVII**

**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 XXVI, 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 XXVIII**

**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, officers, or agents, 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 XXIX**

**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 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 or professional contractor 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. In the event said insurance coverage expires at any time or times during the term of this Agreement, CONTRACTOR agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of COUNTY's Risk Management Division, and CONTRACTOR agrees that no work or services shall be performed prior to the giving of such approval. 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 Agreement upon the occurrence of such event.
- H. The certificate of insurance must include the following provisions stating that:
  - 1. The insurer will not cancel the insured's coverage without prior written notice to COUNTY; and
  - 2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- I. 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.
- P. In addition, CONTRACTOR shall ensure that all subcontractors authorized pursuant to this Agreement shall maintain workers' compensation, general liability, automobile liability, and professional liability insurance as specified above and shall provide COUNTY with proof of same if requested.

### **ARTICLE 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**

**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 XXXII**

**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 XXXIII**

**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 XXXIV**

**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 XXXV**

**Compliance with Federal, State, and COUNTY Requirements:** COUNTY is relying on federal assistance or grants, state funds, and 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 the Federal Highway Administration (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 C.F.R. § 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:

<https://www.whitehouse.gov/omb/information-for-agencies>

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 XXXVI**

**Working Office:** CONTRACTOR shall establish a working office at a place acceptable to COUNTY. The parties hereto acknowledge and agree that CONTRACTOR's office is located at 1024 Simon Drive, Suite H, Placerville, California 95667.

#### **ARTICLE XXXVII**

**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.

#### **ARTICLE XXXVIII**

**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 XXXIX**

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

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

#### **ARTICLE XL**

**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 XLI**

**Disadvantaged Business Enterprise (DBE) Considerations:** CONTRACTOR must give consideration to DBE firms as specified in 23 C.F.R. § 172.5(b) and in Appendix A to 49 C.F.R. § 26. 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.

## **ARTICLE XLII**

### **Disadvantaged Business Enterprise (DBE) Participation:**

- A. This Agreement is subject to 49 C.F.R. § 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." Contractors who obtain DBE participation on this Agreement shall assist Caltrans in meeting its federally mandated statewide overall DBE goal.
- B. The goal for DBE participation for this Agreement is 1%. Participation by DBE CONTRACTOR or subcontractors shall be in accordance with information contained in the Contractor Proposal DBE Commitment (Exhibit 10-O1), or in the Contractor Contract DBE Commitment (Exhibit 10-O2). If a DBE subcontractor is unable to perform, CONTRACTOR must make a good faith effort to replace him/her with another DBE subcontractor, if the goal is not otherwise met.
- C. DBEs and other small businesses, as defined in 49 C.F.R. § 26, are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. CONTRACTOR or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. CONTRACTOR shall carry out applicable requirements of 49 C.F.R. § 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.
- D. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.
- E. A DBE firm may be terminated only with prior written approval from COUNTY and only for the reasons specified in 49 C.F.R. § 26.53(f). Prior to requesting COUNTY's consent for the termination, CONTRACTOR must meet the procedural requirements specified in 49 C.F.R. § 26.53(f).
- F. CONTRACTOR shall utilize the specific DBEs listed to perform the work and supply the materials, if any, for which each is listed unless CONTRACTOR obtains prior written consent from COUNTY's Contract Administrator. CONTRACTOR shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE without written approval from COUNTY's Contract Administrator.
- G. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To

determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing, and other relevant factors.

- H. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- I. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- J. CONTRACTOR shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime contractors shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- K. Upon completion of the Agreement, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subcontractors" CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by CONTRACTOR or CONTRACTOR's authorized representative and shall be furnished to COUNTY's Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice shall result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to CONTRACTOR when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" is submitted to COUNTY's Contract Administrator.
- L. If a DBE subcontractor is decertified during the life of the Agreement, the decertified subcontractor shall notify CONTRACTOR in writing with the date of decertification. If a subcontractor becomes a certified DBE during the life of the Agreement, the subcontractor shall notify CONTRACTOR in writing with the date of certification. Any changes should be reported to COUNTY's Contract Administrator within thirty (30) days.

#### **ARTICLE XLIII**

**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 XLIV**

##### **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 Department of Transportation 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 this Agreement, CONTRACTOR may request review by COUNTY's Board of Supervisors of unresolved claims or disputes, other than audit. The request for review shall be submitted in writing.
- C. Neither the pendency of a dispute, nor its consideration by the committee, will excuse 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 any and all claims arising out of or related to the dispute and a bar to any further proceedings or legal or equitable remedy.

#### **ARTICLE XLV**

**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 XLVI**

##### **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 XLVII**

### **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, unless the construction contractor's claims are covered in whole or part by ARTICLE XXXVIII, Indemnity, in which case no compensation will be paid.
- 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.

## **ARTICLE XLVIII**

**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 XLIX**

**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 L**

**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 and women's business enterprises. 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 LI**

**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 C.F.R. § 15); and mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

## **ARTICLE LII**

**Contract Administrator:** The COUNTY Officer or employee with responsibility for administering this Agreement is Matthew D. Smeltzer, P.E., Deputy Director, Engineering, Fairlane Engineering Unit, Department of Transportation, or successor.

#### **ARTICLE LIII**

**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 LIV**

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

#### **ARTICLE LV**

**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 LVI**

**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 LVII**

**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.



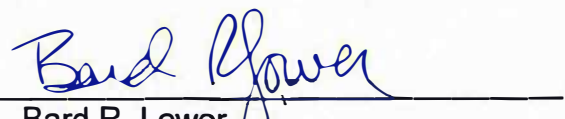
**Requesting Contract Administrator Concurrence:**

By: 

Matthew D. Smeltzer, P.E.  
Deputy Director, Engineering  
Fairlane Engineering Unit  
Department of Transportation

Dated: 6/20/17

**Requesting Department Concurrence:**

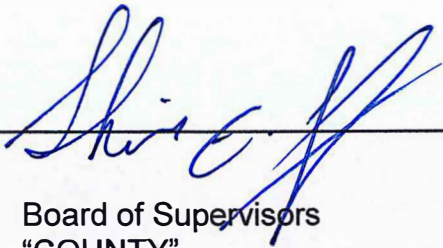
By: 

Bard R. Lower  
Interim Director  
Department of Transportation

Dated: 6/21/17

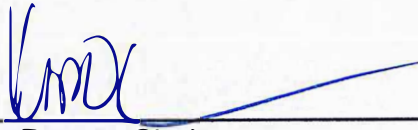
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below.

--COUNTY OF EL DORADO--

By:   
Board of Supervisors  
"COUNTY"


Dated: 6/27/2017

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

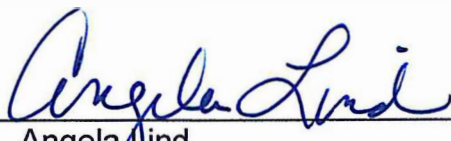
By:   
Deputy Clerk

Dated: 6/27/2017

--EN2 RESOURCES, INC.  
dba SIERRA ECOSYSTEM ASSOCIATES--

By:   
Rick A. Lind  
President and Chief Financial Officer  
"CONTRACTOR"

Dated: 6/16/17

By:   
Angela Lind  
Vice President

Dated: 6/16/17

**EN2 Resources, Inc.**  
**dba**  
**Sierra Ecosystem Associates**

**Exhibit A**

**Scope of Work**

**SCOPE OF WORK**

Unless otherwise indicated below, and notwithstanding any other provisions of this Agreement to the contrary, CONTRACTOR shall submit all deliverables in accordance with ARTICLE I, Scope of Services. Any changes to deliverables, schedules, or materials used for the Tasks below shall be communicated in writing for written approval by COUNTY's Contract Administrator.

**Task 1 – Maintaining & Monitoring**

CONTRACTOR shall maintain the following:

- Eighty-six (86) native riparian trees to be planted within the riparian area of Weber Creek.
- Ten (10) canyon live oaks to be planted in upland area adjacent to Green Valley Road.
- Sixty-five (65) willow pole cuttings already planted in the Rock Slope Protection.

Specific information regarding the riparian and oak tree plantings is provided in the following table:

Species	Quantity
Northern CA black walnut ( <i>Juglans californica</i> var. <i>hindsii</i> )	2
Oregon Ash ( <i>Fraxinus latifolia</i> )	38
Interior live oak ( <i>Quercus wislizenii</i> var. <i>wislizenii</i> )	24
California buckeye ( <i>Aesculus californica</i> )	2
White alder ( <i>Alnus rhombifolia</i> )	18
Willow ( <i>Salix</i> sp.)	2
Canyon live oak ( <i>Quercus chrysolepis</i> )	10
Total	96

The riparian tree plantings will consist of Treepot 4 (approximate one [1] gallon) stock and the oak tree plantings will consist of Treepot 8 (approximate five [5] gallon) stock. The riparian and oak trees were scheduled to be planted in March or April 2017. The willow cuttings were installed in the fall of 2016.



CONTRACTOR shall supply plantings with irrigation water during the plant establishment period. Irrigation shall be supplied to keep the trees vigorous and encourage healthy growth. The irrigation schedule shall be adjusted throughout the year to accommodate changing water needs in response to weather conditions. The irrigation schedule shall be suspended as long as possible during the rainy winter season, unless continued drought results in the need to provide irrigation.

CONTRACTOR shall monitor the site twice each year with the first monitoring occurring immediately after planting for a period of five (5) years. CONTRACTOR shall observe a general assessment of the site and record the following data with each monitoring visit:

- Survival rate and condition of remaining plants.
- Occurrence of invasive species.

CONTRACTOR shall ensure there is a sixty percent (60%) survival rate for all plantings (six [6] surviving upland live oaks for the ten [10] planted; fifty-two [52] surviving riparian trees for the eighty-six [86] planted; and thirty-nine [39] surviving willow cuttings for the seventy-five [75] planted).

CONTRACTOR shall perform maintenance during the five (5) year monitoring period. Maintenance activities shall include repair or replacement of erosion control materials, additional plantings, control of invasive species, and addition of protective devices for plantings. Maintenance activities shall be performed twice each year after the bi-annual site monitoring. CONTRACTOR shall water all plantings as necessary to ensure healthy growth.

CONTRACTOR shall collect photograph points that accurately represent the condition of the site during the first monitoring occurrence as well as record GPS position and bearing data for each photograph point. CONTRACTOR shall take new pictures at the same photograph point position and bearing during each monitoring session.

CONTRACTOR shall:

- Monitor the site twice each year.
- Prepare a monitoring report from each monitoring session.
- Perform maintenance twice each year at Project site.
- Collect photograph points at each monitoring session.
- Water all plantings as necessary to ensure healthy growth.

Deliverables:

- CONTRACTOR shall provide photograph points and GPS data to COUNTY.
- CONTRACTOR shall submit annual monitoring reports as stated in Task 2 – Reports.

Schedule:

- CONTRACTOR shall perform bi-annual monitoring and maintenance beginning with the first monitoring occurring within one (1) week after completion of all planting activities.

- CONTRACTOR shall perform all required maintenance activities within thirty (30) days of each monitoring session.
- CONTRACTOR shall provide photograph points and GPS data with the annual monitoring report as stated in Task 2 – Reports.

## **TASK 2 – Reports**

CONTRACTOR shall prepare one (1) as-built report after the first monitoring session. The as-built report shall include a map of all plantings, description of the methods and materials used, and establishment of photo-documentation points.

CONTRACTOR shall prepare one (1) annual monitoring report each year during the monitoring period. Annual monitoring reports shall include the results of each bi-annual monitoring session, a comparison of the results to the success criteria, photograph points, and GPS data.

### **CONTRACTOR shall:**

- Prepare the as-built report.
- Prepare annual monitoring reports.

### **Deliverables:**

- CONTRACTOR shall submit one (1) hard copy and one (1) electronic copy of the as-built report to COUNTY.
- CONTRACTOR shall submit one (1) hard copy and one (1) electronic copy of each annual monitoring report to COUNTY.

### **Schedule:**

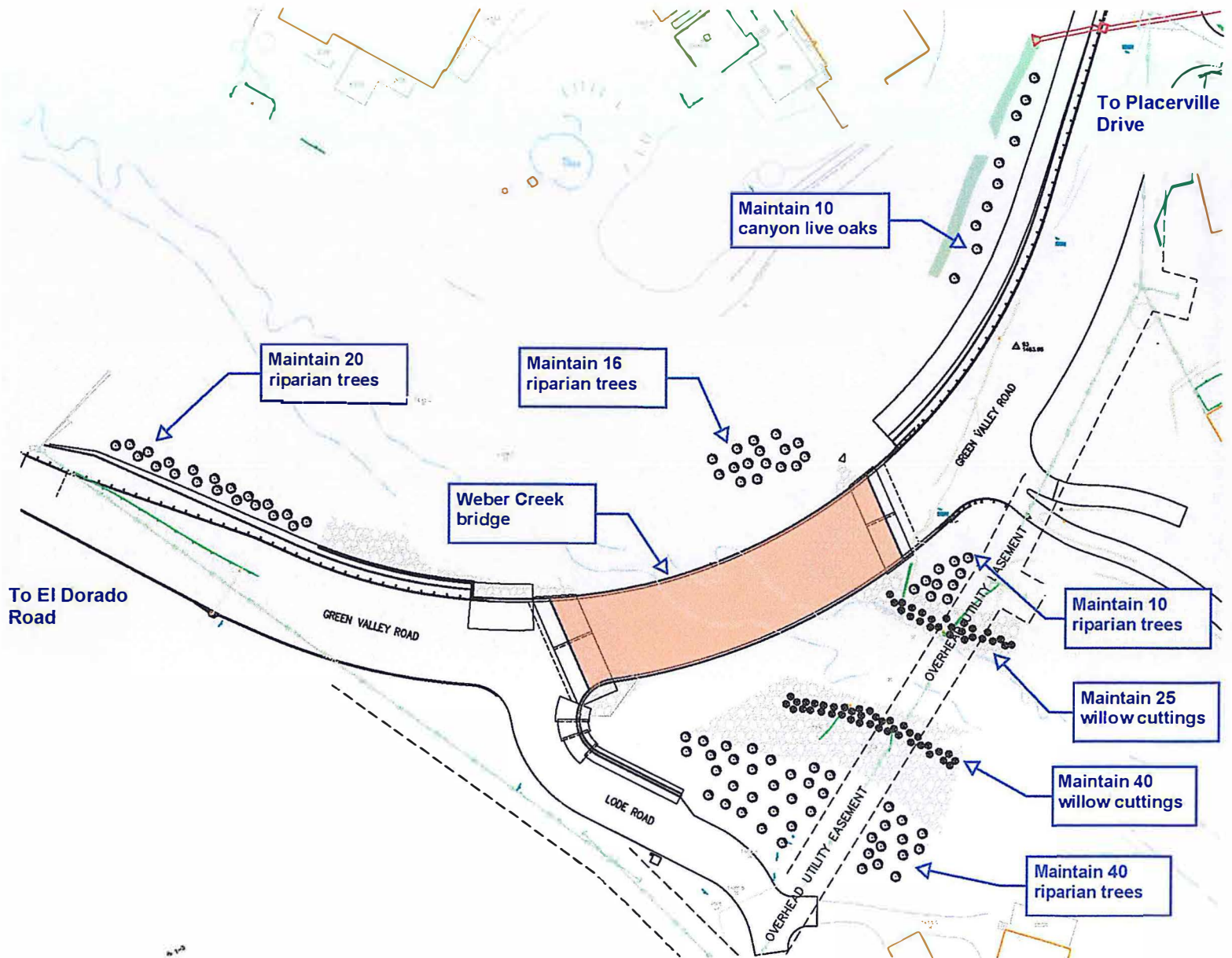
- CONTRACTOR shall submit the as-built report to COUNTY by end of the planting year.
- CONTRACTOR shall submit each annual monitoring report by of the plant establishment period.

## **WORK AREA LOCATION MAP**





## WORK AREA PLANTING PLAN



**EN2 Resources, Inc.**  
dba  
**Sierra Ecosystem Associates**

**Exhibit B**

**Rate Schedule**

**Labor Rates:**

<b>Position</b>	<b>Rate</b>
President/Senior Project Manager	\$186.00
Senior Botanist and Biological Resources Analyst	\$160.00
Senior Natural Resources Analyst	\$141.00
Senior Biologist and Senior Technical Editor	\$141.00
Senior Biologist	\$116.00
Natural Resources Analyst	\$102.00
Assistant Natural Resources Analyst	\$69.00
Administrative Services Manager	\$92.00
Administrative Assistant	\$69.00
Administrative Assistant	\$64.00
GIS Technician	\$116.00
Technical Editor	\$97.00
Field Assistant	\$60.00

**Direct Costs:**

<b>Item</b>	<b>Rate/Use</b>
Leica Geosystems GS20	\$50.00
Trimble Nomad 900GLC Handheld	\$50.00
YSI 556 MPS	\$50.00
LaMotte 2020 Turbidimeter	\$25.00
FP101 Global Flow Probe	\$15.00
2003 Dodge Ram Crew Cab 4x4 (rental only, not including mileage)	\$75.00
Copies (per b/w page)	\$0.10
Copies (per color page)	\$1.00
CNDDDB Quadrangle Queries (per quad)	\$50.00

**Contractor's Other Direct Costs/Rates\***

<b>Item</b>	<b>Rate/Use</b>
Erosion Control	\$450.00
Watering Equipment/Supplies	\$250.00
Tree Protection Cages	\$16.00
Miscellaneous Expenses (water purchase, etc.)	At Cost

**Subcontractor's Other Direct Cost/Rates\*\***

<b>Item</b>	<b>Rate/Use</b>
Vehicle	\$262.50
Weeding Equipment	\$320.00
Traffic Control and Water Usage Fee	\$750.00
Auger/Tools	\$700.00

\* CONTRACTOR's Other Direct Costs shall include, but not be limited to, erosion control, watering equipment/supplies, tree protection cages, and miscellaneous expenses including mileage, water purchases, and other expenses as necessary which are be subject to COUNTY's Contract Administrator's prior written approval.

\*\* Subcontractor's Other Direct Costs shall include, but not be limited to vehicle, weeding equipment, traffic control, water usage, and auger/tools.

**Mileage Reimbursement**

Reimbursement for mileage expenses for CONTRACTOR and subcontractors shall be compensated in accordance with all of the provisions of ARTICLE VII, Cost Principles and Administrative Requirements, of this Agreement.

**Other Direct Costs Markup**

Other direct costs including, but not limited to, special reproductions and other outside services authorized herein, shall be invoiced at CONTRACTOR's cost, without markup, for the services rendered. Any invoices that include other direct costs shall be accompanied by backup documentation to substantiate CONTRACTOR's costs for the services being billed on those invoices.

**Rate Increases**

Any increases in CONTRACTOR's hourly rates shall be in accordance with ARTICLE V, Allowable Costs and Payments, of this Agreement and are subject to prior written approval by COUNTY's Contract Administrator or by an Amendment to the Agreement, as applicable.



**EN2 Resources, Inc.  
dba  
Sierra Ecosystem Associates**

**Exhibit C**

**Cost Estimate**

<b>Task</b>	<b>Description</b>	<b>Cost</b>
1	Maintaining and Monitoring	\$43,534.00
2	Reports	\$23,534.50
Contractor Subtotal		\$67,068.50
Contractor Direct Costs		\$4,344.50
<b>Contractor Total</b>		<b>\$71,413.00</b>
Subcontractor: David Engineering Construction, Inc.		\$10,784.00
Subcontractor Other Direct Costs		\$4,060.00
<b>Subcontractor Total</b>		<b>\$14,844.00</b>
<b>Total Project Cost Estimate</b>		<b>\$86,257.00</b>

All expenses and their distribution among Tasks are estimates only. This Exhibit represents the composition of the total not-to-exceed budget for this Agreement. In the performance of the Scope of Work to be provided in accordance with this cost estimate, CONTRACTOR may request to reallocate the expenses listed herein among the various Scope of Work tasks and Other Direct Costs identified herein, including reallocating such expenses between subcontractor identified herein, subject to COUNTY's Contract Administrator's prior written approval. In no event shall the total not-to-exceed amount of the Agreement be exceeded.

**EN2 Resources, Inc.**  
**dba Sierra Ecosystem Associates**

**Exhibit D**

**INTEREST OF CONTRACTOR DISCLOSURE STATEMENT**

Disclosure of Conflicts

In accordance with ARTICLE XIII, Conflict of Interest, 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.

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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

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Date