

Nichols Consulting Engineers, Chtd.  
Planning, Design and Project Support Services

**AGREEMENT FOR SERVICES # AGMT 06-1018**

**THIS AGREEMENT**, made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County"), and Nichols Consulting Engineers, Chtd., a Nevada corporation duly qualified to conduct business in the State of California, whose principal place of business is 1885 S. Arlington Avenue, Suite 111, Reno, Nevada 89509, and whose local office address is 1201 K Street, Suite 1100, Sacramento, California 95814 (hereinafter referred to as "Consultant");

**RECITALS**

**WHEREAS**, County has determined that it is necessary to obtain a consultant to assist its Department of Transportation (DOT) with planning, design, project support, and project delivery services for erosion control/water quality projects in the Tahoe Basin in conjunction with the Environmental Improvement Program (EIP); and

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

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

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

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

**ARTICLE I**

**Scope of Services/Project Schedule:**

- A. Consultant shall perform all professional and technical services, work, and tasks required to accomplish the objectives set forth herein, on an as-requested basis for County's DOT, and shall provide and make available Consultant's own personnel, materials, subconsultants, vehicles, and equipment necessary to perform various engineering tasks to assist Tahoe Engineering Division (TED) staff in delivering EIP projects and to assist with programmatic needs when requested. Tasks may include, but are not limited to, engineering design, project support, project delivery, mapping, construction support, construction inspection, surveying, materials testing, hydrology and hydraulic calculations, developing and overseeing monitoring plans for design criteria and/or Best Management Practices (BMP) effectiveness, slope/soil stabilization and revegetation and storm water management related activities.

Consultant's services may also include such other tasks as may be assigned by County's Contract Administrator such as reviewing submittals, deliverables and other documents on behalf of County, attending project-related meetings, creating project delivery schedules and estimates and meeting with partner agencies to support project delivery.

- B. The specific services for each assignment shall be determined at a meeting or telephone conference between Consultant and a County DOT representative to discuss the needs, applicable design standards, required deliverables, specific Consultant staff, subconsultants (if required), project-related travel hours and mileage budget (if applicable), and any necessary permits on a task-by-task basis. Following the meeting, Consultant shall provide DOT with a written scope of work, a schedule, and a not-to-exceed cost to complete the work (Task Order), which shall require written approval, authorization, and 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 of the written Task Order.

The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No payment will be made for any work performed after the period of performance in the Task Order, unless County's Contract Administrator and Consultant amend the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement.

- C. If a submittal is required to be an electronic file, Consultant shall produce the file in Microsoft Word 2003, Microsoft Excel 2003, Primavera P3e/c, and other engineering software used for analytical purposes. Where Consultant produces drawings as a part of a Task Order, they shall be produced in AutoCAD Land Development Desktop 2004 or latest release. Failure to submit the requested deliverables in the format required shall be grounds for termination of the Agreement, as provided in Article XV.
- D. County is working with the Tahoe Regional Planning Agency to develop a project management system that utilizes Primavera P3e/c software. If the work to be performed under a Task Order is scheduled to take six months or longer to complete, Consultant shall prepare, manage and maintain a critical path schedule (including Work Breakdown Structure) for that Task Order, based on a standard template to be provided by County, which is compatible with the Primavera P3e/c project management system. This critical path schedule shall include a deliverables schedule, as well as other relevant data needed for Consultant's work control and County's review of work status. The relevant data shall include a list of activities with budgeted costs and a target completion date for each task. The total budgeted costs shall not exceed the amount agreed to in the Task Order. If the work to be performed under a Task Order is scheduled to take less than six months to complete, unless County requests the aforementioned critical path schedule and Work Breakdown Structure, Consultant shall prepare a work plan, including a listing of tasks with milestone completion dates, a not-to-exceed cost, and a target completion date for the overall Task Order.

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

E. County shall cooperate with Consultant by providing the following information requested, where possible, in connection with this Agreement:

1. Transparencies and AutoCAD files regarding the projects produced by or in possession of County, documentation, mapping, calculations or other materials in its files that would be of assistance to Consultant in performing the services.
2. Interface between Consultant and other County departments.
3. A work order number and task code for each assignment.

F. Consultant's Project Manager shall also be accessible to County's Contract Administrator, or designee, during normal County working hours and shall respond within twenty-four (24) hours to County inquiries or requests. Consultant's Project Manager shall be responsible for all matters related to Consultant's personnel, subconsultants, and operations, including, but not limited to:

1. Assigning qualified personnel to perform the required Task Order work.
2. Reviewing, monitoring, training and directing Consultant's personnel and subconsultants.

All of the tasks included in this Article are the responsibility of Consultant, unless specifically described as a task or item of work to be provided by County. Consultant shall be responsible for the supervision, administration, and work performed by any subconsultant for services rendered under this Agreement.

## **ARTICLE II**

**Term:** This Agreement shall become effective when fully executed by both parties hereto and shall expire January 31, 2009.

## **ARTICLE III**

### **Compensation for Services:**

- A. For services provided herein, including all deliverables described in the individual Task Orders, County agrees to pay Consultant monthly in arrears. Payment shall be made within thirty (30) days following County receipt and approval of itemized invoice(s) detailing services rendered. For the purposes hereof, the billing rates shall be in accordance with Exhibit A, marked "Fee Schedule," incorporated herein and made by reference a part hereof.

Exhibit A reflects billing rates for Professional Services and Technical Services that may be increased up to four percent (4%) per year to allow for cost of living adjustments, beginning January 1<sup>st</sup> of each year. On or before December 15<sup>th</sup> of each year, Consultant may submit a revised Fee Schedule for the Professional Services and Technical Services rates listed in Exhibit A to become effective January 1<sup>st</sup> of the next year. Each revised Fee Schedule shall require written approval by County's Contract Administrator prior to using the new rates on January 1<sup>st</sup> and shall be attached as an addendum to this Agreement.

The total amount payable by County for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless County's Contract Administrator and Consultant's Project Manager amend the Task Order. The total amount of this Agreement shall not exceed \$500,000, inclusive of all work of subconsultants and expenses.

- B. Reimbursement for mileage expenses, if applicable, shall not exceed the rates to be paid to County employees under the current Board of Supervisors Travel Policy at the time the mileage expenses are incurred. Mileage reimbursement rates apply to Consultant and to any subconsultants authorized under this Agreement.
- C. For project-related Task Orders related to services other than construction support and construction inspection services, County agrees to pay for travel hours and mileage expenses, based on an approved budget in accordance with Article I, Section B. For Task Orders calling for construction support and construction inspection services, Consultant and any authorized subconsultants are expected to report to DOT's TED office in South Lake Tahoe, California, or directly to the construction project site, as applicable, based on a mutually agreeable schedule and Consultant and any authorized subconsultants will not be compensated for travel hours or mileage expenses. Travel costs (i.e., overnight lodging, meals, parking, airfare, bridge tolls, etc.) will not be reimbursed for any services performed under this Agreement.
- D. Itemized invoices shall follow the format specified by County and shall reference this Agreement number and project title, and shall include County's work order number and task code, both on their faces and on any enclosures or back-up documentation. Invoices shall be mailed to the Contract Administrator at the following address:

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

#### ARTICLE IV

**Quality Control:** Consultant shall have a quality control plan in effect during the entire time work is being performed under this Agreement. Consultant shall provide County with a general overview of Consultant's quality control plan in the form of a written outline.

Consultant shall also identify critical quality control reviews for the major deliverables within each Task Order schedule. The plan shall take into account the following:

1. The plan shall establish a process whereby calculations and plans are independently checked, corrected and back-checked, all draft and final reports are reviewed for accuracy, completeness, and readability before submittal, and all job-related correspondence and memoranda are routed and received by affected persons and then filed in the appropriate Task Order file.
2. Consultant is responsible for the accuracy and completeness of all data, plans, specifications and estimates prepared by Consultant under this Agreement and shall check all such material accordingly.
3. Consultant is responsible for a detailed review of design components and related details, and the accuracy with which such designs are depicted on the plans and the details.
4. Plans, designs, estimates, calculations, reports and other documents furnished under each Task Order shall be of a quality acceptable to County's Contract Administrator, or designee.
5. A design, estimate, calculation, report or other document furnished under each Task Order is of acceptable quality when it is neat in appearance, well-organized, technically and grammatically correct, and checked.
6. The minimum standard of appearance, organization, and content of the drawings and reports shall be that of similar types utilized by County. County will provide examples to Consultant upon request.
7. The page identifying the preparer of engineering reports, the title sheet for specifications, and each sheet of plans shall bear the professional seal, certificate number, registration classification, expiration date of the certificate, and the signature of the professional engineer(s) responsible for its preparation.
8. Consultant shall maintain a complete project file for each Task Order performed under this Agreement. This file shall be made available to County's Contract Administrator, or designee, during normal County working hours and shall be transferred to County upon completion of work under the Task Order.

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

#### **ARTICLE V**

**Progress Reports:** Upon issuance of a Task Order, Consultant shall submit written progress reports at an interval that is commensurate with the needs of the task(s) and based upon a mutually agreeable schedule. At a minimum, Consultant shall submit written progress reports once a month. The reports shall be sufficiently detailed for County's

Contract Administrator, or designee, to determine if Consultant is performing to expectations and is on schedule, to provide communication of interim findings, and to afford occasions for airing difficulties or special problems encountered so that remedies can be developed. Separate detail shall be provided for each ongoing Task Order. Progress reports shall include the total number of hours worked by Consultant, and any authorized subconsultants, commensurate with the standard template Work Breakdown Structure provided by County (if applicable), and as modified by the requirements of the specific Task Order(s).

#### **ARTICLE VI**

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

#### **ARTICLE VII**

**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 and any and all other materials or data produced as part of this Agreement will automatically be vested in County and no further agreement will be necessary to transfer ownership to County. Consultant shall furnish County all necessary copies of data, including data stored in electronic format, needed to complete the review and approval process of the individual Task Orders or project(s).

#### **ARTICLE VIII**

**Consultant's Project Manager:** Consultant designates Jason Drew as its Project Manager for this Agreement. Consultant's Project Manager, or County-approved designee, shall be accessible to County's Contract Administrator, or designee, during normal County working hours and shall respond within twenty-four (24) hours to County inquiries or requests. Consultant's Project Manager shall be responsible for all matters related to Consultant's personnel, operations and any subconsultants authorized under individual Task Orders issued including, but not limited to (1) assigning qualified personnel to perform the work and to prepare the deliverables required by the Task Orders; and (2) reviewing, monitoring, training and directing Consultant's personnel and any subconsultants authorized herein.

#### **ARTICLE IX**

**Changes to Agreement:** This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto. There shall be no change in Consultant's Project Manager, design team or subconsultants, which shall be established at the issuance of each Task Order, without prior written approval by County's Contract Administrator.

## **ARTICLE X**

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

## **ARTICLE XI**

**Confidentiality:** Consultant shall maintain the confidentiality and privileged nature of all records, including billing records, together with any knowledge therein acquired, in accordance with all applicable State and Federal laws and regulations, as they may now exist or may hereafter be amended or changed. Consultant, and all Consultant's staff, employees, and representatives, including any subconsultants authorized herein, shall not use or disclose, directly or indirectly at any time, any said confidential information, other than to County's Department of Transportation for the purpose of, and in the performance of, this Agreement. This confidentiality provision shall survive after the expiration or termination of this Agreement.

## **ARTICLE XII**

**Assignment and Delegation:** Consultant is engaged by County for its unique qualifications and skills as well as those of its personnel. Consultant shall not subcontract, delegate, or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County. Notwithstanding this Article, Consultant is authorized to utilize the specific subconsultants authorized in individual Task Orders issued pursuant to this Agreement for the particular tasks, work, and deliverables identified therein. At no time shall County be obligated to pay separately for subconsultant services. Consultant shall require each subconsultant, to the extent of the work to be performed by the subconsultant, to be bound to Consultant by the terms of this Agreement and to assume toward Consultant all of the obligations and responsibilities that Consultant, by this Agreement, assumes toward County.

## **ARTICLE XIII**

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

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

#### **ARTICLE XIV**

**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 XV**

##### **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 in the discretion of the party giving notice. Any extension of Time to Cure must be in writing, prepared by the party in default for signature by the party giving notice, and must specify the reason(s) for the extension and the date in which the extension of Time to Cure expires.

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

B. **Bankruptcy:** This Agreement, at the option of County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Consultant.

C. **Ceasing Performance:** County may terminate this Agreement in the event Consultant ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.

D. Termination or Cancellation without Cause: County may terminate this Agreement in whole or in part upon seven (7) calendar days written notice by County for any reason. If such prior termination is effected, County will pay for satisfactory services rendered prior to the effective dates, as set forth in the Notice of Termination provided to Consultant, and for such other services which County may agree to in writing as necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the contract. Upon receipt of a Notice of Termination, Consultant shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the Notice directs otherwise. In the event of termination for default, County reserves the right to take over and complete the work by contract or by any other means.

#### ARTICLE XVI

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

To County:

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

Attn.: Robert S. Slater  
Deputy Director, Engineering

With a Copy to:

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

Attn.: Tim C. Prudhel  
Contract Services Officer

or to such other location as County directs.

Notices to Consultant shall be addressed as follows:

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

Attn.: Jason Drew, Senior Scientist

or to such other location as Consultant directs.

#### ARTICLE XVII

**Prevailing Wage:** County requires Consultant's services on public works project(s) involving local, State and/or Federal funds to which prevailing wage requirements may apply. As a consequence, Consultant shall comply with all applicable State and Federal prevailing wage rates, statutes, rules and regulations then in effect. In the event of conflict between applicable Federal and State provisions, the higher prevailing wage rate will apply. Consultant shall use the general prevailing wage rates determined by the Director of Industrial Relations for the county in which the work is to be done, which are available at the offices of the District Director of Transportation for the district in which the work is

situated. Changes, if any, to the general prevailing wage rates will be available at the same location. The 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.

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

#### **ARTICLE XVIII**

**Indemnity:** To the fullest extent allowed by law, Consultant shall defend, indemnify, and hold County and the California Tahoe Conservancy (CTC) 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 and CTC employees, and the public, or damage to property, or any economic losses, which are claimed to or in any way arise out of, directly or indirectly, or are connected with: (1) any negligent (whether passive or active) act, error or omission; or willful misconduct of Consultant, its subconsultant(s) agents or employee(s) or any of these; or (2) any breach of any statutory, regulatory, contractual or legal duty of any kind related, directly or indirectly, to the services, responsibilities or duties required of Consultant by this Agreement. This duty of Consultant to indemnify and save County and CTC harmless includes the duties to defend set forth in California Civil Code Section 2778.

#### **ARTICLE XIX**

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

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Consultant as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
- C. Automobile Liability Insurance of not less than \$1,000,000 is required in the event motor vehicles are used by Consultant in performance of the Agreement.
- D. In the event Consultant is a licensed professional and is performing professional services under this Agreement, Professional Liability Insurance is required with a limit of liability of not less than \$1,000,000.
- E. Consultant shall furnish a certificate of insurance satisfactory to County's Risk

Management Division as evidence that the insurance required above is being maintained.

- F. The insurance will be issued by an insurance company acceptable to County's Risk Management Division, or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.
- G. Consultant agrees that the insurance required herein shall be in effect at all times during the term of this agreement. In the event said insurance coverage expires at any time or times during the term of this contract, Consultant shall immediately provide a new certificate of insurance as evidence of the required insurance coverage. In the event Consultant fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this contract upon the occurrence of such event. New certificates of insurance are subject to the approval of County's Risk Management Division, and Consultant agrees that no work or services shall be performed prior to the giving of such approval.
- H. The certificate of insurance must include the following provisions stating that:
  - 1. The insurer will not cancel the insured's coverage without 30-day prior written notice to County; and
  - 2. The County of El Dorado, its officers, officials, employees, and volunteers, and the California Tahoe Conservancy, its officers, officials, employees, and volunteers are included as additional insured, but only insofar as the operations under this Agreement are concerned. This provision shall apply to all liability policies except Workers' Compensation and Professional Liability insurance policies.
- I. Consultant's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, employees, or volunteers shall be in excess of Consultant's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to, and approved, by County. At the option of County, either: The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects County, its officers, officials, employees, and volunteers; or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees, or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.

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

In addition, Consultant shall ensure that all subconsultants maintain workers' compensation, general liability, automobile liability, and professional liability insurance as specified above and shall provide County with proof of same.

#### **ARTICLE XX**

**Interest of Public Official:** No official or employee of County who exercises any functions or responsibilities in review or approval of services to be provided by Consultant under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or 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 XXI**

**Interest of Consultant:** Consultant covenants that Consultant presently has no personal interest or financial interest, and shall not acquire same in any manner or degree, in either: 1) any other contract connected with or directly affected by the services to be performed by this Agreement; or, 2) any other entities connected with or directly affected by the services to be performed by this Agreement. Consultant further covenants that in the performance of this Agreement no person having any such interest shall be employed by Consultant.

#### **ARTICLE XXII**

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

#### **ARTICLE XXIII**

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

#### **ARTICLE XXIV**

**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 XXV**

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

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

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

#### **ARTICLE XXVI**

**Compliance with Federal and State Requirements:** County is relying on federal and state assistance or grants for all or a portion of the funding for the services to be provided under this Agreement. As a requirement of County's use of these funds, County is required to comply with certain federal and state requirements and to extend these requirements to its third party contracts. Consultant shall comply with all applicable provisions of federal and state regulations, including those required by the United States Department of Agriculture/ United States Forest Service (USFS), the United States Department of the Interior Bureau of Reclamation (BOR) and the California Tahoe Conservancy (CTC) including grant funding requirements and any related executive orders regarding the use, expenditure, control, reporting, allowable costs and management of such funds. The following Office of Management and Budget (OMB) Circulars, as applicable, and as implemented by various parts of the Code of Federal Regulations (CFR), are incorporated by reference and made a part of this Agreement:

*Circular A-87, revised May 10, 2004, "Cost Principles for State, Local, and Indian Tribal Governments"*

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

*Circular A-110, as amended September 30, 1999, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations"*

*Circular A-133, revised June 27, 2003, "Audits of States, Local Governments, and Non-Profit Organizations"*

Copies of OMB Circulars are available on the Internet at:

<http://www.whitehouse.gov/omb/grants/html>.

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

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

## **ARTICLE XXVII**

**Grant Funding Agreement Requirements:** Consultant shall comply with all applicable provisions of County's grant funding agreements and related documents with USFS, BOR and CTC including the applicable requirements of 7 CFR 3015, 7 CFR 3016, 7 CFR 3017, 7 CFR 3018, 7 CFR 3052, 43 CFR 12, 43 CFR 18, 43 CFR 42 and the cost principles of 2 CFR 225 and 48 CFR 31.2 as applicable. Consultant shall include those provisions, if applicable, in any of its agreements for goods or services that affect or are related to the services performed herein and shall ensure that any clauses required by federal or state statutes and executive orders and their implementing regulations are also incorporated as applicable, including, but not limited to, the following:

- A. Remedies/Termination:** Consultant shall comply with the requirements of Article XV of this Agreement regarding administrative, contractual, or legal remedies in instances of default, termination or cancellation and with other terms and conditions of this Agreement and County's grant funding agreements that provide for such sanctions and penalties as may be appropriate in instances where contract terms are violated or breached.
- B. Contract Work Hours and Safety Standards:** Consultant shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5).
- C. Reporting:** Consultant shall comply with the reporting requirements specified in Article I, Scope of Services of this Agreement and with such other County reporting requirements and regulations as may be required by the Contract Administrator. Consultant shall fully cooperate with County to support the reporting requirements imposed by County's grant funding agreements insofar as they may apply to this Agreement, including but not limited to, assisting County in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), Executive Order (EO) 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
- D. Copyrights and Rights in Data:** Consultant shall comply with Article VII, Ownership of Data and with Section J, Copyrights of this Article XXVII, Grant Funding Agreement Requirements regarding requirements and regulations pertaining to copyrights and rights in data. County and its granting agencies have the right to obtain, reproduce, publish or otherwise use any data produced under this Agreement and to authorize

others to receive, reproduce, publish or otherwise use such data for government purposes.

- E. Access to Records:** County, federal agencies, the Comptroller General of the United States, the CTC, the California Auditor General or any of their duly authorized representatives shall have the right of access to any books, documents, papers, or other records of Consultant which are directly pertinent to this Agreement or to County's grant funding agreements and related documents for the purpose of making audit, examination, excerpts, and transcriptions. Consultant shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of this Agreement, including but not limited to, the costs of administering the contract. The rights of access in this section shall not be limited to any required retention period but shall last as long as the records are kept.
- F. Record Retention:** All records associated with this Agreement shall be retained by Consultant for three (3) years after County makes final payment and all other pending matters are closed. If any audit, litigation, or other action involving the records is started before the end of the three (3) year period, the records must be retained until all issues arising out of the action are resolved or until the end of the three (3) year period, whichever is later. Where applicable, Consultant shall include this record retention provision in any of its own agreements that affect or are related to the services performed herein and shall require that access to the records shall be provided to County as well as to Consultant and to agencies of the federal and state governments.
- G. Environmental Compliance:** Consultant shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), EO 11738, and Environmental Protection Agency regulations (40 CFR part 15). Consultant shall further comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and EO 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205). Consultant shall also comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
- H. Energy Efficiency:** Consultant shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan

issued in compliance with the Energy Policy and Conservation Act (P. L. 94-163, 89 Stat. 871).

- I. **Inventions and Patents:** The allocation of rights including patents in inventions shall be determined in accordance with the "Government Patent Policy" (President's Memorandum for Heads of Executive Departments and Agencies, February 18, 1983) and OMB Circular A-124.
- J. **Copyrights:** This section applies to the copyright in any original work of authorship prepared with grant support. Additionally, if ownership of a copyright or of any of the exclusive rights comprising a copyright is purchased with grant support, this section applies to the purchased copyright or rights. County and the granting agencies reserve a royalty-free, nonexclusive, and irrevocable license to exercise, and to authorize others to exercise, the rights for government purposes and to authorize others to do so. Subject to this license, the owner is free to exercise, preserve, or transfer all its rights. Consultant shall ensure that no agreement is entered into for transferring the rights which would conflict with the nonexclusive license of County or the granting agencies.
- K. **Debarment and Suspension:** As a condition of participation in this Agreement, Consultant must comply with the requirements of subpart C of 7 CFR 3017 and with subpart C of 43 CFR 42, Governmentwide Debarment and Suspension, regarding Responsibilities of Participants Regarding Transactions. Consultant shall not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs under EO 12549, "Debarment and Suspension."
- L. **Lobbying Restrictions:** Consultant shall comply with the requirements of 7CFR 3018 and 43 CFR 18 regarding restrictions on lobbying. Section 1352, Title 31, United States Code prohibits federal funds from being expended by County or any lower tier subrecipient of a federal-aid contract to pay for any person for influencing or attempting to influence a federal agency or Congress in connection with the awarding of any federal-aid contract, the making of any federal grant or loan, or the entering into of any cooperative agreement. Certification and disclosure shall be required of all subrecipients at all tiers. Consultant shall ensure that the certification language required by 7 CFR 3018 and 43 CFR 18 is included in any of its agreements that affect or are related to the services performed under this Agreement and that all subrecipients certify and disclose accordingly.
- M. **Equal Employment Opportunity:** Consultant shall comply with the requirements of EO 11246, "Equal Employment Opportunity," as amended by EO 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
- N. **Nondiscrimination:**
  - 1. Federal Requirements: Consultant shall comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the

Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statutes under which County's applications for Federal assistance were made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the federal funds used to fund this Agreement.

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

O. Drug-Free Workplace: Consultant agrees to maintain a drug-free workplace in accordance with Government Code Section 8355, et seq. by doing all of the following:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the workplace, and specifying actions that will be taken against employees for violations of this prohibition;
2. Establishing a Drug-Free Awareness Program to inform employees about (1) the dangers of drug abuse in the workplace; (2) Consultant's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) penalties that may be imposed upon employees for drug abuse violations;
3. Submitting a drug-free workplace certification form to County;
4. Providing that every employee who performs work under this Agreement:
  - a. Will receive a copy of Consultant's drug-free policy statement, and
  - b. Will agree to abide by the terms of Consultant's statement as a condition of employment under this Agreement.

**P. Inspection:** County's granting agencies and their representatives shall have the right to inspect and evaluate the work performed or being performed under this Agreement, and the premises where the work is being performed at all reasonable times and in a manner that will not unduly delay the work. If such inspection or evaluation is performed on the premises of Consultant, Consultant shall furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

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

1. Consultant shall take all necessary affirmative steps to assure that minority firms, and women's business enterprises are used when possible.
2. Affirmative steps shall include:
  - (a) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
  - (b) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
  - (c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(d) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(e) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce as appropriate, and

(f) Requiring the prime contractor/consultant, if subcontracts are to be let, to take the affirmative steps listed in 2 (a) through (e) above.

**R. Notice Regarding Buy American Act:** In accordance with federal statutes and regulations, Consultant is advised that it is and has been the sense of Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available through federal agencies should be American-made. This provision shall remain in effect unless revoked by a future specific act of Congress.

**S. Seat Belt Use Policies:** In accordance with 43 CFR 12 and EO 13043, Consultant is encouraged to adopt and enforce on-the-job seat belt use policies and programs for its employees when operating company-owned, rented, or personally owned vehicles. These measures include, but are not limited to, conducting education, awareness, and other appropriate programs for its employees about the importance of wearing seat belts and the consequences of not wearing them.

#### **ARTICLE XXVIII**

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

- A. U.S. Department of the Interior - *Certifications Regarding Debarment, Suspension and Other Responsibility Matters, Drug-Free Workplace Requirements and Lobbying*, Form DI-2010;
- B. U.S. Department of Agriculture - *Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions*, Form AD-1048;
- C. U.S. Department of Agriculture - *Certification Regarding Drug-Free Workplace Requirements (Grants) – Alternative I – For Grantees Other Than Individuals*, Form AD-1049;
- D. *Disclosure of Lobbying Activities*, Standard Form LLL;
- E. U.S. Department of Agriculture - *Certification Regarding Lobbying – Contracts, Grants, Loans and Cooperative Agreements*, (No Form Number);
- F. *Drug-Free Workplace Certification*, (No Form Number).

**ARTICLE XXIX**

**Contract Administrator:** The County Officer or employee with responsibility for administering this Agreement is Robert S. Slater, Deputy Director, Engineering, Department of Transportation, or successor.

**ARTICLE XXX**

**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 XXXI**

**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 XXXII**

**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 Department Concurrence:**

By:   
Richard W. Shepard, P.E.  
Director of Transportation

Dated: 8/7/04

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

-- COUNTY OF EL DORADO --

By: James R. Sweeney  
JAMES R. SWEENEY, Chairman  
Board of Supervisors  
"County"

Dated: 8/22/06

Attest:  
Cindy Keck  
Clerk of the Board of Supervisors

By: [Signature]  
Deputy Clerk

Dated: 8/22/06

-- NICHOLS CONSULTING ENGINEERS, CHTD. --

By: [Signature]  
Claude Corvino  
President  
"Consultant"

Dated: 8/22/06

By: [Signature]  
Debra Smith  
Chief Financial Officer

Dated: 8/22/06