

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

AGREEMENT FOR SERVICES # AGMT 06-1018
Amendment I

THIS AMENDMENT I to that Agreement for Services # AGMT 06-1018 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 South Arlington Avenue, Suite 111, Reno, Nevada 89509, and whose local office is located at 8795 Folsom Boulevard, Suite 103, Sacramento, California 95826 (hereinafter referred to as "Consultant");

RECITALS

WHEREAS, Consultant has been engaged by County to provide 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) for the Department of Transportation (DOT) pursuant to Agreement for Services # 06-1018, incorporated herein and made by reference a part hereof; and

WHEREAS, the parties hereto desire to amend Agreement for Services # AGMT 06-1018 to add environmental services to the Scope of Services, to add an unanticipated grant funding provision, and to update the Task Order requirements, amending **ARTICLE I Scope of Services/Project Schedule**; and

WHEREAS, the parties hereto desire to amend Agreement for Services # AGMT 06-1018 to include County's most current invoicing requirements, amending **ARTICLE III Compensation for Services**; and

WHEREAS, the parties hereto desire to amend Agreement for Services # AGMT 06-1018 to modify the indemnity provision for services rendered after December 31, 2006, amending **ARTICLE XIII Indemnity**; and

WHEREAS, the parties hereto desire to amend Agreement for Services # AGMT 06-1018 to add County's business license requirements, adding **ARTICLE XXXIII Business License**;

NOW, THEREFORE, County and Consultant mutually agree to amend the terms of the Agreement in this Amendment I to Agreement for Services # AGMT 06-1018, to read 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, storm water management related activities and environmental services necessary to implement EIP projects in the Tahoe Basin.

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 County's Contract Administrator, or designee, to discuss the needs, applicable design standards, required deliverables, specific Consultant staff, subconsultants (if required), any 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 the Contract Administrator with a written scope of work, a schedule including a list of tasks with completion dates and a target completion date for the overall scope of work, and a not-to-exceed cost itemization to complete the work (resulting in a Task Order), which shall require written approval, authorization, and written notification to proceed from County's Contract Administrator, prior to commencement of the work. No payment will be made for any work performed prior to approval of the written Task Order, and no payment will be made for amounts in excess of the not-to-exceed amount of the Task Order.

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

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

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

- 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, Default, Termination, and Cancellation, below.
- 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 III

Compensation for Services:

- A. For services provided herein, including all deliverables described in the individual Task Orders and including the progress reports required by Article V, Progress Reports, below, County agrees to pay Consultant monthly in arrears. Payment shall be made within thirty (30) days following County receipt and approval of itemized 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 1st of each year. On or before December 15th 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 1st 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 1st 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 costs, Task Orders, 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 tasks 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 tasks 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, the County-supplied work order number and Task Order number both on their faces and on any enclosures or back-up documentation. Consultant shall bill County for only one Task Order per invoice. Consultant shall attach a copy of each notification to proceed required under the provisions of Article I, Scope of Services, and copies of any progress reports required under the provisions of Article V, Progress Reports, that relate to the services being billed, as backup documentation to any invoices submitted for payment under the terms of this Agreement. Copies of documentation attached to invoices shall reflect Consultant's charges for the specific services billed on those invoices. Invoices shall be mailed to County at the following address:

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

or to such other location as County directs.

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

ARTICLE XVIII

Indemnity: For services rendered pursuant to this Agreement for the period commencing with the effective date of the Agreement and continuing through December 31, 2006, the following provision shall apply:

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.

For services rendered pursuant to this Agreement on or after January 1, 2007, the following provision shall apply:

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

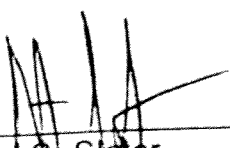
The Agreement is further amended to add the following Article:

ARTICLE XXXIII

Business License: The County Business License Ordinance provides that it is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of El Dorado County without possessing a County business license unless exempt under County Ordinance Code Section 5.08.070. Consultant warrants and represents that it shall comply with all of the requirements of the County Business License Ordinance prior to beginning work under this Agreement and at all times during the term of this Agreement.

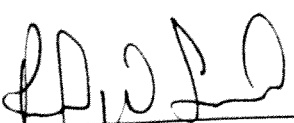
Except as herein amended, all other parts and sections of Agreement for Services # 06-1018 shall remain unchanged and in full force and effect.

Contract Administrator Concurrence:

By: 
Robert S. Slater
Deputy Director, Engineering

Dated: 2/5/08

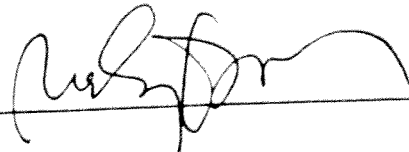
Requesting Department Concurrence:

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

Dated: 2/6/08

IN WITNESS WHEREOF, the parties hereto have executed this Amendment I to Agreement for Services # AGMT 06-1018 on the dates indicated below, the latest of which shall be deemed to be the effective date of this Amendment.

-- COUNTY OF EL DORADO --

By: 

Dated: 3/11/08


Board of Supervisors
"County"

Attest:
Cindy Keck
Clerk of the Board of Supervisors

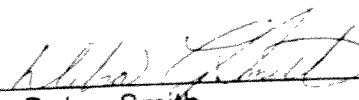
By: 
Deputy Clerk

Dated: 3/11/08

-- NICHOLS CONSULTING ENGINEERS, CHTD. --

By: 
Claude Corvino
President
"Consultant"

Dated: 2/10/08

By: 
Debra Smith
Chief Financial Officer

Dated: 2/10/08