



County of Lassen
Department of Planning and Building Services

• Planning • Building Permits • Code Enforcement • Surveyor • Surface Mining

H-2

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October 18, 2018

TO: Board of Supervisors
Agenda Date: October 23, 2018

Zoning & Building
Inspection Requests
Phone: 530 257-5263

FROM: Maurice L. Anderson, Director

MAJ
fol:

SUBJECT: The Board shall consider entering into a Funding Agreement between Lassen County and TLT Enterprises/Hat Creek Construction, to enable execution of a Contract between Lassen County and SHN Consultants for the Third Party Review of an Environmental Impact Report.

ACTION REQUESTED:

1. Consider authorizing Chairman to enter into a Funding Agreement between Lassen County and TLT Enterprises/Hat Creek Construction; and
2. Consider authorizing Chairman to sign a Contract between Lassen County and SHN Consultants for third party review of an Environmental Impact Report

SUMMARY

The applicant has submitted a Subsequent Environmental Impact Report (EIR) for modifications to Ward Lake Quarry operations to the Department of Planning and Building Services for a proposed amendment of the associated Use Permit. The EIR was prepared for the applicant by VESTRA Resources Inc. The Lassen County Environmental Review Guidelines (Board Resolution Number 01-043) require that said EIR undergo independent third party review.

The attached funding agreement would provide funding to Lassen County to execute the required third party review. The third party review paid for by the funding agreement is proposed to be provided by SHN under contract with Lassen County.

In accordance with the County purchasing policy, the Department circulated a Request for Proposals seeking a qualified firm to perform the third party review and SHN's proposal was selected based on the established criteria. SHN's proposal was especially thorough and provided a complete breakdown of workplan tasks, schedule, and costs. SHN proposes to perform said review for \$51,490.00. In addition to SHN's proposal, the following proposals were submitted for the dollar amounts indicated:

SWCA - \$52,150
ICF - \$81,356
Benchmark - \$98,910

Because the third party review will be paid by the applicant, there is no fiscal impact to Lassen County.

WARD LAKE PIT AMENDMENT DRAFT SUBSEQUENT ENVIRONMENTAL IMPACT REPORT PEER REVIEW FUNDING AGREEMENT

THIS AGREEMENT IS MADE AND ENTERED INTO this ____ day of _____, 2018, at Susanville, County of Lassen, California, by and between the County of Lassen, a political subdivision of the State of California, (County), and TLT Enterprises LLC (Perry Thompson) (Applicant).

RECITALS

A. This Agreement is authorized and made under the provisions of the California Environmental Quality Act (Public Resources Code Section 21000 through 21189.57); California Environmental Quality Act Guidelines (California Code of Regulations Title 14, Chapter 3, Section 15000 through 15387); the provisions of the Political Reform Act of 1974 (Government Code, Section 81000, et seq.) and related California Code of Regulations, Title 2 (commencing at Section 18100, et seq.); and the provisions of Government Code Section 31000.

B. The applicant has submitted a Use Permit Application (#2018-003) and a Reclamation Plan Application (#2018-001) to amend mining operations at the Ward Lake Pit (CA mine ID #91-18-0008), to allow for 24-hour mining operations Monday through Saturday (currently 6:00 a.m. to 7:00 p.m. Monday through Saturday), extend the life of the mine from 2020 to 2030, allow annual site production in excess of the permitted 100,000 tons during declared emergencies, and increase the estimated number of truck trips from 10 per day and 55 per week to an average of 26 per day and maximum of 150 per day during peak operations (not including employee vehicles). The project site is located in Litchfield, CA at 476-250 Ward Lake Road, off Center Road (A-27) in Lassen County, approximately 13 miles east of Susanville, CA, Assessor Parcel Number 109-100-59 and the applicant has submitted a Draft Supplemental Environmental Impact Report (DSEIR), pursuant to the California Environmental Quality Act.

C. Lassen County, Acting as Lead Agency pursuant to the California Environmental Quality Act, requires that said DSEIR undergo peer review by a consultant of Lassen County's choice prior to finalization of the DSEIR required by the California Environmental Quality Act.

D. County requires, and the Applicant has agreed to the preparation of an analysis evaluating the Applicant's DSEIR. Lassen County Code Section 3.18.020 provides authority for County to hire an independent Contractor to assist County, at the expense of Applicant.

E. County desires to retain the special services of the firm SHN (Contractor) to assist County in the preparation of analysis of the noise study and preparation the Noise Impact section of the Initial Study.

F. Applicant has no objection to the County retaining said Contractor to assist County in its evaluation of the DSEIR and preparation of the final DSEIR.

G. Execution of this Agreement by Applicant and County is a condition precedent to County and Contractor entering into a separate Contract for Professional Services by Independent Contractor (Contract) for assisting the County in the evaluation of the DSEIR and preparation of the final DSEIR. However, Applicant is not and shall not be a party to the Contract.

NOW, THEREFORE, IT IS AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

Section 1. GENERAL

a. Applicant shall pay the entire cost for the services of Contractor under the Contract in advance of work performed under the Contract in accordance with the terms of payment herein. Applicant shall also pay the entire cost for services of special counsel or other experts hired by County to review work of Contractor or assist in preparing findings, reports, or other documents related to 24-hour mining operations, increased truck traffic, annual production in excess of 100,000 tons during declared emergencies, and extension of the life of the mine through 2020, if necessary. County shall advise Applicant of the need for such services in advance and shall provide Applicant with the estimated cost of such services before entering into an agreement with service provider. Except for funds paid by Applicant under this Agreement, no other County General Fund money shall be paid for any service or act by Contractor related to assisting County in preparing the DEIR required to analyze impacts from the project pursuant to the California Environmental Quality Act. Applicant acknowledges that County is not responsible or liable for any cost or damages, which may arise from the project pursuant to the California Environmental Quality Act, including any cost or damages arising under the Contract.

b. County shall pay Contractor for the cost of assisting County in preparing the analysis and final version of the Applicant's DSEIR to the extent that County has received funds from Applicant for payment of services relating to the peer review of the Applicant's DSEIR.

Section 2. DURATION OF AGREEMENT

This Agreement shall commence on the effective date and shall continue in effect until the DSEIR analysis is complete, and preparation of the final DSEIR is accepted by County for the Project, or until terminated otherwise pursuant to this Agreement, whichever is earlier.

Section 3. TERMS OF PAYMENT

a. Applicant shall pay the entire cost of peer review of the DSEIR, in preparation of the final DSEIR, including paying the entire cost for the services of Contractor under the Contract Scope of Services.

1. Upon execution of this Agreement, Applicant shall pay to County the full contract amount of \$51,490.00, which will allow Contractor to begin work under the terms and conditions of the Contract. The funds shall be held by County in a non-interest bearing County account and shall be paid to Contractor in accordance with the Contract.

2. Contractor shall bill County monthly for work performed under the Contract. County shall provide copies of invoices to Applicant. County shall pay Contractor in accordance with the Contract.

3. Any unencumbered funds remaining in the non-interest bearing account after the cost of the Contract is paid in full, or at such time as this Agreement is otherwise terminated pursuant to the terms herein, shall be returned to Applicant.

b. County shall have sole discretion to:

1. Determine which person(s) the County will hire, which employees are assigned, and which Contractor(s) or Contractor firm(s) are retained to assist in the preparation of the analysis for the DSEIR analysis and preparation of the final DSEIR; and
2. Direct the work and evaluate the performance of the employees and Contractor(s) of the County who assist in the preparation of the of the review of the Applicant's DSEIR and preparation of the final DSEIR pursuant to the California Environmental Quality Act; and
3. Establish the amount of compensation paid to the employees and the amount of fees paid to the Contractor(s) or the Contractor(s) firms that are hired by the County to assist in the review of the DSEIR for preparation of the final DSEIR.
4. Compensate its employees and pay the Contractor(s) and the Contractor(s)'s firm(s) that are hired by the County to assist in the review of the DSEIR for preparation of the final DSEIR for the Project only from a County account under the exclusive control of the County; and
5. Be the only source of compensation for the employees and the only source of payment to the Contractor(s) and the Contractor(s)'s firm(s) with respect to the work performed in assisting County in the review of the DSEIR for preparation of the final DSEIR.

c. The Contract entered into between the County and any Contractor to assist County in the peer review of the Applicant's DSEIR for preparation of the final DSEIR shall be reduced to writing and shall:

1. Be separate from this Agreement; and
2. Include the terms of compensation paid to the Contractor or the Contractor's firm, which terms shall not be dependent upon the County's approval or disapproval of the use permit; and
3. The payment of the fees or additional fees shall not be contingent on the hiring of any specific employee or Contractor; and
4. The payment of the fees or additional fees shall not be dependent upon the County's approval or disapproval of the application for the Project or upon the result of any action; and
5. The Contract and this Funding Agreement shall be a public record of the County.

Section 4. WORK PRODUCT CONFIDENTIAL/PROPERTY OF COUNTY

All reports, information, data, work products, findings, and conclusions collected, prepared, assembled, and/or made by Contractor and Contractor's agents under the separate Contract (Work Product) shall be the property of County, shall be confidential until County makes the Work Product available for public inspection, and shall not be made available by the Contractor to Applicant or any

other person or entity or published by the Contractor without the prior written authorization of the County.

Section 5. INDEMNIFICATION.

Applicant shall indemnify and hold harmless County and County's officers, officials, employees, independent contractors, volunteers, and agents from and against:

(a) Any and all claims, actions, and proceedings relating to:

(1) Any breach or default in the performance of, or the omission to perform, any obligation on Applicant's part under any term or condition of this Agreement; and/or

(2) any negligent act or omission to act by Applicant or Applicant agents, representatives, employees, contractors or subcontractors relating to the performance of, or omission to perform, any term or condition of this Agreement; and/or

(3) Any litigation challenging the legal sufficiency or adequacy of the analysis and review of the Applicant's DSEIR and the final DSEIR that the County may certify or approve; and

(b) All costs, attorneys' fees, expenses, and liabilities incurred in the defense of any such claim, action, or proceeding brought thereon.

If any such claim, action, or proceeding is brought against County or County's officers, officials, employees, independent contractors, volunteers or agents, Applicant, upon notice from County, shall defend the same at Applicant expense by counsel satisfactory to County.

County shall promptly notify Applicant of any claim, action, or proceeding against County or County's officers, officials, employees, independent contractors, volunteers, or agents relating to the performance, or omission to perform, any term of condition of this Agreement. County shall cooperate fully in the defense of such claim, action, or proceeding.

Applicant assumes all risk of damage to property or injury to persons resulting from the performance or omission to perform under this Agreement by Applicant or Applicant agents, representatives, employees, contractors and subcontractors. Applicant hereby waives all claims in respect thereof against County and County's officers, officials, employees, independent contractors, volunteers and agents.

Section 6. ASSIGNMENT.

Applicant shall not voluntarily by operation of law or through change in the controlling interest of Applicant assign, transfer, subcontract, or otherwise encumber all or any part of Applicant duties, obligations or interest under this Agreement without County's prior written consent. Any attempted assignment, transfer, encumbrance or subcontracting without such consent shall be void, and shall at the option of the County constitute a breach of this Agreement or automatic termination of the Agreement.

Section 7. SUCCESSORS AND ASSIGNS.

Subject to any provision concerning assignment hereinabove set forth, all terms and conditions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto and their respective legal representatives, successors and assigns.

Section 8. BANKRUPTCY.

This Agreement shall be terminable by either party in the case of bankruptcy, voluntary or involuntary, or insolvency of the other party.

Section 9. RIGHT TO REQUIRE PERFORMANCE.

The failure of County at any time to require performance by Applicant of any of the provisions under this Agreement, shall in no way affect the right of County thereafter to enforce same, nor shall waiver by the County of any breach of any of the provisions under this Agreement be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself.

Section 10. NOTICES.

Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and any and all such notices or any payments shall be deemed to have been duly delivered upon personal delivery or as of the fifth calendar day after mailing by United States mail, certified, return receipt requested, postage prepaid, addressed as follows:

If to the party County: Maurice L. Anderson, Director
Lassen County Department of Planning and Building Services
707 Nevada Street, Suite 5
Susanville, CA 96130

If to the party Applicant: Perry Thompson
TLT Enterprises LLC
24339 Highway 89
Burney, CA 96013

or to such other address or to such other person as any party shall designate in writing to the other parties for such purpose in the manner hereinabove set forth.

Section 11. NON-DISCRIMINATION.

Throughout the duration of this Agreement, Applicant and Applicant agents, representatives, employees, contractors and subcontractors ("Applicant" for this section) shall not unlawfully discriminate against any employee or applicant for employment or for treatment or any member of the public because of race, religion, color, national origin, ancestry, physical or mental disability, medical condition, marital status, age (over 40), sex, genetic information, gender (gender, gender identity, or gender expression), or sexual orientation. Applicant shall not unlawfully discriminate in services provided under this Agreement. Applicant shall insure that the evaluation and treatment of its employees and applicants for employment are free of such unlawful discrimination. Applicant

shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment 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. Applicant and its subcontractors shall also abide by the Federal Civil Rights Act of 1964 and all amendments to said Act. Applicant shall give written notice of its obligations under this clause to labor organizations with which it has a collective bargaining or other agreement. Applicant shall include the non-discrimination and compliance provisions of this paragraph in all subcontracts to perform work under this Agreement.

Section 12. NON-DISCRIMINATION - HANDICAPPED PERSONS.

In addition to application of the non-discrimination provision of this Agreement, above, Applicant agrees to also comply with all provisions of Section 504 et seq. of the Rehabilitation Act of 1973, pertaining to the prohibition of discrimination against qualified handicapped persons, in all programs or activities, as an employee or recipient of services, as detailed in regulation signed by the Secretary of Health, Education and Welfare effective June 3, 1977, and found in the Federal Register, volume 42, no. 86, dated May 4, 1977, as it exists or may be hereafter amended, together with all succeeding legislation or under the provisions of 29 U.S. Code Section 794 et seq. and all succeeding legislation.

Section 13. CONFLICT OF INTEREST.

Neither a County employee whose position in County enables such employee to influence the award of this Agreement or any competing Agreement, nor a spouse or economic dependent of such an employee, shall be employed in any capacity by Applicant herein, or have any other direct or indirect financial interest in this Agreement.

Section 14. WAIVER OF DEFAULT.

No waiver of any default by any party to this Agreement shall be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless stated to be such, in writing, by all concerned parties and attached to the original Agreement. County's consent to or approval of any act shall not be deemed to render unnecessary the obtaining of County's consent to or approval of any subsequent act by Applicant.

Section 15. SEVERABILITY.

If any portion of this Agreement or application thereof to any party or circumstances is declared invalid by a court of competent jurisdiction, or is in contravention of any federal, state or local statute, ordinance, or regulation, the remaining provisions of this Agreement or the application thereof shall not be invalidated thereby and shall remain in full force and effect, and to that extent the provisions of this Agreement are declared severable.

Section 16. EXHIBITS.

All exhibits referred to herein and attached hereto are a part hereof.

Section 17. ENTIRE AGREEMENT.

This Agreement contains the entire agreement between the parties relating to the transactions contemplated hereby and all prior or contemporaneous agreements, understanding, representations and statements, oral or written, are merged herein.

Section 18. MODIFICATION.

No modification, waiver, amendment, discharge or change of this Agreement shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, amendment, discharge or change is or may be sought. This section shall not apply to discharge of this Agreement by termination, cancellation, or rescission relating to a default in performing or cancellation, or rescission relating to a default in performing or omitting to perform any term or condition of this Agreement.

Section 19. ATTORNEY'S FEES.

If any party hereto employs an attorney for the purpose of enforcing or construing this Agreement, or any judgement based on this Agreement, in any legal proceeding whatsoever, including insolvency, bankruptcy, arbitration, declaratory relief or other litigation, including appeals or rehearing, the prevailing party shall be entitled to receive from the other party or parties thereto reimbursement for all attorneys' fees and all costs, including but not limited to all service of process, filing fees, court and court reporter costs, investigative costs, expert witness fees, and the cost of any bonds, whether taxable or not. If any judgement or final order be issued in that proceeding, said reimbursement shall be specified therein.

Section 20. JOINT AND SEVERAL LIABILITY.

If any party consists of more than one person or entity, the liability of each person or entity signing this Agreement shall be joint and several.

Section 21. CAPTIONS.

Captions in this Agreement are inserted for convenience of reference only and do not define, describe or limit the scope of the intent of this Agreement or any of the terms hereof.

Section 22. LAW AND VENUE.

Any action at law or in equity brought by one or more of the parties hereto for the purpose of enforcing a term, condition, right or obligation provided for by this Agreement shall be governed by the laws of the State of California and shall be tried in a Court of competent jurisdiction in the County of Lassen, State of California; and the parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county or state.

Section 23. GENDER AND NUMBER.

As used in this Agreement and whenever required by the context thereof, each number, both singular and plural, shall include all numbers, and each gender shall include all genders.

Section 24. DELEGATION OF AUTHORITY.

County hereby appoints the Director of the Lassen County Department of Planning and Building Services (Director), or the Director's designee, as its authorized representative to administer the terms and conditions of this Agreement. The terms and conditions of this Agreement shall constitute the standards by which the Director, and Director's designee, shall administer this Agreement.

Section 25. CALIFORNIA TORT CLAIMS ACT.

Notwithstanding any term or condition of the Agreement, the provisions, and related provisions, of the California Tort Claims Act, Division 3.6 (commencing at section 810) of Title 1 of the Government Code, are not waived by County and shall apply to any claim against County arising out of any acts or conduct by any party under the terms and conditions of this Agreement.

Section 26. PARTY.

The word "party" or "parties" means Applicant, County or any other party to this Agreement, as the context may require.

Section 27. AUTHORITY.

a. If Applicant is a corporation or partnership, each individual executing this Agreement on behalf of Applicant represents and warrants (1) that such individual is duly authorized to execute and deliver this Agreement on behalf of Applicant's in accordance with a duly adopted resolution of the Board of Directors of Applicant, if Applicant is a corporation, or a duly adopted resolution of the partners of Applicant, if Applicant is a partnership, or in accordance with the rules and regulations of Applicant, including bylaws, if Applicant is a corporation or partnership agreement, if Applicant is a partnership, and (2) that this Agreement is binding upon Applicant.

b. If Applicant is a corporation or partnership, Applicant shall within thirty (30) days after execution of this Agreement deliver to the person designated by this Agreement to receive notices for the County a certified copy of a resolution of the Board of Directors of Applicant, if Applicant is a corporation, or a certified copy of a resolution of the partners of Applicant, if Applicant is a partnership, authorizing or ratifying the execution of this Agreement.

Section 28. ACKNOWLEDGMENTS.

County's legal representative is the Lassen County Counsel. Applicant acknowledges that Applicant is represented by independent legal counsel in the negotiation and drafting of this Agreement, that the Agreement was freely and voluntarily entered into by the Applicant, that legal counsel for Applicant has reviewed and approved the Agreement, and that there are no warranties or promises other than those contained in this Agreement upon which the Applicant relies in entering the Agreement.

Section 29. AMBIGUITIES NOT HELD AGAINST DRAFTER.

This Agreement, having been freely and voluntarily negotiated by all parties, the rule of contract construction that ambiguities (if any), in any term or condition of an agreement, are held against the drafter of the agreement, is not applicable to this Agreement.

Section 30. TERMINATION.

a. 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 date in which the extension of time to cure expires.

b. 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, cancellation or rescission 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.

c. Notwithstanding subdivisions a and b,

(1) County may terminate or cancel 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.

(2) This Agreement, at the option of County, shall be terminable in case of bankruptcy, voluntary or involuntary, or insolvency of Contractor.

IN WITNESS THEREOF, the parties hereto have executed this Agreement the day and year first written above by their duly authorized representatives, having full authority to so act for and on behalf of the parties thereto, and in a manner fully binding upon them, and each of them.

APPLICANT

By: _____	_____	_____
	Title	Date
By: _____	_____	_____
	Title	Date

COUNTY OF LASSEN

By: _____	_____	_____
	Title	Date

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

County Counsel

AGREEMENT BETWEEN LASSEN COUNTY

AND

SHN

THIS AGREEMENT is made between the COUNTY OF LASSEN, a political subdivision of the State of California (hereinafter "COUNTY"), and SHN with a principal place of business at 350 Hartnell Avenue, Suite B, Redding, CA 96002, (hereinafter "CONTRACTOR").

This Agreement is made with reference to the following facts and circumstances:

WHEREAS COUNTY has need for technical services for an independent third party review of the Draft Subsequent Environmental Impact Report prepared for proposed amendments to the Ward Lake Pit Use Permit and Reclamation Plan and,

WHEREAS CONTRACTOR desires to provide those services.

In consideration of the services to be rendered, the sums to be paid, and each and every covenant and condition contained herein, the parties hereto agree as follows:

1. SERVICES.

The CONTRACTOR shall provide those services described in Attachment "A". CONTRACTOR shall provide said services at the time, place and in the manner specified in Attachment "A".

2. TERM.

The term of the agreement shall be for the period of review as outlined in Attachment "A".

3. PAYMENT.

COUNTY shall pay CONTRACTOR for services rendered pursuant to this Agreement at the time and in the amount set forth in Attachment "B". The payment specified in Attachment "B" shall be the only payment made to CONTRACTOR for services rendered pursuant to this Agreement. CONTRACTOR shall submit all billing for said services to COUNTY in the manner specified in Attachment "B".

4. FACILITIES, EQUIPMENT AND OTHER MATERIALS AND OBLIGATIONS OF COUNTY.

CONTRACTOR shall, at its sole cost and expense, furnish all facilities, equipment, and other materials which may be required for furnishing services pursuant to this Agreement.

____ County Initials Page 1 of 23 Contractor Initials _____

COUNTY shall:

4.1 Pay the CONTRACTOR on the terms agreed upon herein in writing, provided that: (1) the CONTRACTOR timely submits appropriate invoices to the COUNTY, (2) the CONTRACTOR is not in breach of the terms and conditions of this Agreement, its attachments, or the standards or/specifications referenced or applicable thereto; (3) the CONTRACTOR is not in violation of laws or regulations substantially impairing the value of the CONTRACTOR'S performance or the CONTRACTOR'S entitlement to payment; (4) funds to be paid to the CONTRACTOR are not the subject of any active levy, execution, claim, offset, or stop notice by any third party or the COUNTY; and (5) appropriate public funds are available to the COUNTY for such payment.

4.2 Retain ownership and have prompt access to any report, evaluations, intellectual property, findings, or data assembled/developed by CONTRACTOR under this Agreement.

5. ADDITIONAL PROVISIONS.

Those additional provisions unique to this Agreement are set forth in Attachment "C".

6. GENERAL PROVISIONS.

The general provisions set forth in Attachment "D" are part of this Agreement. Any inconsistency between said general provisions and any other terms or conditions of this Agreement shall be controlled by the other terms or conditions insofar as the latter are inconsistent with the general provisions.

7. DESIGNATED REPRESENTATIVES.

Maurice Anderson, Director of the Lassen County Department of Planning and Building Services, is the designated representative of the COUNTY and will administer this Agreement for the COUNTY. Mark Chaney, Principal/Regional Manager, is the authorized representative for CONTRACTOR. Changes in the designated representatives shall occur only by advance written notice to the other party.

8. ATTACHMENTS.

All attachments referred to herein are attached hereto and by this reference incorporated herein. Attachments include:

Attachment A-Services
Attachment B-Payment
Attachment C-Additional Provisions
Attachment D-General Provisions
Attachment E-No Third Party Beneficiaries

____ County Initials

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Contractor Initials _____

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates shown opposite their respective signatures.

CONTRACTOR
SHN

Dated: _____

By: _____
Mark Chaney, Principal / Regional Manager

COUNTY
County of Lassen

Dated: _____

By: _____
Chris Gallagher, Chairman
Lassen County Board of Supervisors

Approved as to form:

By: _____
Robert M. Burns
Lassen County Counsel

____ County Initials

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Contractor Initials _____

**ATTACHMENT A
AGREEMENT BETWEEN
LASSEN COUNTY AND CONTRACTOR (SHN)**

SCOPE OF SERVICES

A.1 SCOPE OF SERVICES AND DUTIES.

The services to be provided by CONTRACTOR and the scope of CONTRACTOR's duties include the following:

Task 1.0 - Initial Project Review

Task 1.1- Research and Investigation

CONTRACTOR will obtain and review available data for the project area as well as policy documentation from County Departments, including, but not limited to, the Department of Planning and Building Services (i.e., Lassen County General Plan 2000, General Plan EIR} and the County Public Works Department.

Available data from regional agencies will also be reviewed, and agency staff will be consulted as necessary during the review. Agencies include the Lassen County Air Pollution Control District (APCD) and applicable State and federal agencies including the California Department of Transportation (Caltrans), the California Regional Water Quality Control Board (RWQCB), the Department of Conservation - Division of Oil, Gas, and Geothermal Resources (DOGGR) and the Office of Mines and Reclamation, the California Department of Fish and Wildlife (CDFW), the United States Fish and Wildlife Service (USFWS), and the United States Army Corps of Engineers (USACE).

CONTRACTOR will also review Use Permit 79-80-44 and corresponding Final EIR (dated 1981), Use Permit 11-02-85, Use Permit 94032, and Use Permit 96056/Reclamation Plan 96056 and corresponding Final EIR (dated 1997) to ensure that these documents are accurately reflected and appropriately incorporated by referenced in the context of the SEIR.

Task 1.2 - Field Reconnaissance

CONTRACTOR will conduct a field reconnaissance of the project site, review existing land uses and environmental conditions. It is the CONTRACTOR's preference to conduct this field reconnaissance jointly with County staff and, as appropriate, with the applicant to take advantage (to the extent feasible) of the County's and/or applicant's knowledge of specific site conditions, concerns, or issues.

Task 1.3 - Peer Review of Applicant Studies

The CONTRACTOR Team will take a proactive role in the project evaluation. CONTRACTOR's initial task will include a peer review of the applicant's technical studies to determine adequacy and any additional modifications that may be necessary. The CONTRACTOR Team has collaborated on several projects throughout the State that involved the review of applicant prepared technical studies. The environmental constraints and issues must be carefully considered, with mitigation and threshold criteria established to reduce impacts. The level of significance should be determined and project and cumulative impacts must be documented in each of the supporting technical documents.

____ County Initials

Page 4 of 23

Contractor Initials _____

In response to the RFP requirements, the CONTRACTOR Team will review the applicant provided technical studies for adequacy pursuant to the requirements of CEQA. For each of the technical studies the CONTRACTOR will provide a memorandum of comments. CONTRACTOR's Scope of Work assumes that the applicant's consultant team will complete the necessary and requested revisions and forward a revised technical document for final review.

The following applicant provided technical studies will be reviewed under this task:

Simulation Analysis. CONTRACTOR will review the applicant's simulation analysis that addresses nighttime lighting and vehicular light and glare impacts. CONTRACTOR's review will focus on light and glare impacts to neighboring sensitive uses from proposed lighting features (including vehicle headlights along Ward Lake Road). The analysis will be checked against existing County policies and guidelines regarding light and glare. Mitigation measures will be reviewed for adequacy and feasibility. CONTRACTOR will provide review comments in the form of a technical review memorandum.

Biological Assessment. ENPLAN, under contract to the CONTRACTOR, will review pertinent documentation, including California Natural Diversity Data Base records; the US Fish and Wildlife Service species list for the project area; eBird records; the Lassen County General Plan (Natural Resources Element and Wildlife Element; Standish-Litchfield Area Plan and EIR; the current Ward Lake Pit Reclamation Plan, Use Permit, and environmental documentation; the applicant's Draft EIR and supporting biological studies; aerial photographs; and other applicable documentation.

In addition, EN PLAN will assess the adequacy of the biological resources evaluation provided in the applicant's Draft EIR and supporting biological studies, including the study scope, methodologies, data interpretations, and findings. Particular emphasis will be given to evaluating the clarity, feasibility, and effectiveness of the recommended mitigation measures. Based on this review, ENPLAN will prepare a letter report identifying data gaps and other inadequacies in the applicant's biological resources documentation, and recommending changes to address the inadequacies. Following public/agency review of the Draft EIR, EN PLAN will review the applicant's responses to comments regarding biological resources, evaluate these responses for adequacy, and recommend revisions or alternative approaches as warranted.

Acoustical Assessment. Illingworth & Rodkin, Inc. (I&R), under contract with the CONTRACTOR, will provide a peer review of the applicant prepared noise study to ensure that these are adequate for preparation of the environmental documentation necessary for the project to meet the requirements of CEQA. Key issues of the review may include, but are not limited to, the use of the correct significance criteria, the establishment of proper source levels for project operations and the proper evaluation of off-site noise impacts and mitigation measures resulting from project operation. The following tasks will be completed:

- Review the project plans and appropriate policies, regulations or planning guidelines that are applicable to noise issues regarding this project.
- Review the DEIR Noise study for the accuracy of provided information, appropriateness of methods used, effectiveness of proposed mitigations, completeness of study. Only limited quantitative analyses will be completed to confirm the noise study analysis' and predicted noise levels/impacts.

- Based on the findings of the reviews a peer review report which documents review findings, notes any failings are found in the noise study, and provides preliminary recommendations to correct any deficiencies found will be produced.
- Prior to the circulation of the DEIR, respond to County comments on the peer review of the DEIR noise study to address the identified noise study inadequacies and aid the incorporation any County comments into suggested changes to the Draft EIR. This review will culminate with a confirmation letter confirming that the final report has addressed all concerns identified in the peer review.

Traffic Impact Analysis Report. GHD, under contract to the CONTRACTOR, will review the project information, descriptions and analysis. The review will include an independent determination of the assumptions, methods and accuracy. A technical review memorandum will be provided with comments provided on the following:

- The existing conditions described in the study will be reviewed for accuracy.
- The future conditions will be reviewed for accurate analysis and assumptions related to background growth and approved/pending projects.
- The technical analysis parameters will be checked against State and County guidelines.
- Computer model inputs and outputs will be spot checked.
- The conclusions will be reviewed for adequacy.

Task 2.0 - Administrative and Draft SEIR Review

CONTRACTOR will evaluate the information presented in the SEIR with respect to the existing conditions, the potential adverse effects of project implementation (both individual and cumulative), and measures to mitigate such effects. Environmental issues raised during the Notice of Preparation (NOP) period have been received and will be further reviewed to ensure environmental issues with "a potential to have a significant physical impact on the environment" have been appropriately addressed, and if required, mitigated in accordance with CEQA. The analyses will be based upon readily available online reference data, available documentation on file with the County, and an assessment of technical data provided by the applicant.

Task 2.1- Project Description Review

State CEQA Guidelines §15378 states that a project means, "the whole of an action, which as the potential for resulting in either a direct physical change in the environmental, or a reasonably foreseeable indirect physical change in the environment." CONTRACTOR will provide review the project description in light of §15378 and, if necessary, provide suggested modifications to ensure the project in its entirety is accurately reflected and evaluated in the SEIR.

Task 2.2 - Environmental Analysis Review

The environmental analysis section of the SEIR should discuss the existing conditions for each environmental issue area, and identify short-term and long-term environmental impacts associated with the project and their levels of significance. CONTRACTOR will confirm if appropriate and feasible mitigation measures have been recommended to reduce the significance of impacts and also verify areas of unavoidable significant adverse impacts (if any) even after mitigation.

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Based on review of the County's circulated NOP, the following environmental topical chapters are anticipated to be prepared by the applicant's environmental consultant as part of the SEIR: Land Use and Planning, Transportation / Traffic, Biological Resources, Noise, and Aesthetics. In addition to these topical chapters, CONTRACTOR will also provide a detailed review of the following requisite SEIR chapters: Introduction, Executive Summary, Project Description, Cumulative Impacts, Growth Inducing Impacts, Alternatives, Effects Found Not to be Significant, and Other CEQA Considerations.

Task 2.3 - Adequacy Review Memorandums

For the Administrative Draft SEIR review, CONTRACTOR will prepare a detailed technical memorandum documenting CONTRACTOR's adequacy review comments, including suggested revisions necessary to complete the Draft SEIR. The pre-public release adequacy reviews will culminate with the completion of the following review cycles:

- One (1) consolidated set of Administrative Draft SEIR comments in the form of a technical review memorandum will be provided to the County. CONTRACTOR will coordinate with County staff and applicant, as necessary related to CONTRACTOR's recommended revisions to the Administrative Draft EIR.
- CONTRACTOR will prepare a "Screencheck" Draft SEIR technical review memorandum that will include one (1) consolidated set of comments or confirmation that all prior comments have been satisfactorily addressed and no further action is required.
- Upon satisfactory completion of requested revisions to the pre-public release documents, CONTRACTOR will produce and submit to the County one (1) "Adequacy- No Further Action" memorandum. This submittal would trigger preparation of the requisite Draft SEIR noticing, hearing notification, and document availability preparations by both the County and applicant's environmental consultant.

Task 3.0- Final SEIR Review

Task 3.1- Response to Comments

CONTRACTOR will review applicant prepared responses to comments received on the Draft EIR during the 45-day public review period, and any additional comments raised during public hearings. CONTRACTOR will review the comments to ensure each comment is provided a thoroughly defensible, well-reasoned, and sensitive response to those comments that raise a significant environmental concern.

This task assumes that CONTRACTOR will review applicant prepared responses to both written and oral comments received on the Draft SEIR (includes review of hearing transcripts, if determined necessary by staff). Following review of the Draft Responses to Comments, CONTRACTOR will submit a technical memorandum documenting suggested modifications to the responses. The budget provided to review responses to comments on the Draft SEIR is based 46 hours that CONTRACTOR anticipates in reviewing and preparing suggested revisions to the responses, and is not based on a fixed number of comments or responses.

Task 3.2 - Mitigation Monitoring and Reporting Program

The Mitigation Monitoring and Reporting Checklist serves as the foundation of the Mitigation Monitoring and Reporting Program for the proposed project. To comply with the Public Resources Code §21081.6 (Assembly Bill 32180), CONTRACTOR will review the applicant's Mitigation Monitoring and Reporting Program and verify that appropriate monitoring steps/procedures are provided to monitor such measures during and upon project implementation.

CONTRACTOR recommends utilizing a checklist that indicates the mitigation measure number as outlined in the SEIR, the SEIR reference page (where the measure is documented), a list of Mitigation Measures/Conditions of Approval (in chronological order under the appropriate topic), the Monitoring Milestone (at what agency/department responsible for verifying implementation of the measure), Method of Verification (such as documentation or field checks), and a verification section for the initials of the verifying individual date of verification, and pertinent remarks.

CONTRACTOR will prepare a technical review memo and/or a red-lined version of the Mitigation Monitoring and Reporting Program for County consideration.

Task 3.3 - Final SEIR Review

The Final SEIR prepared by the applicant's consultant should consist of the revised Draft SEIR text (i.e., ERRATA), as necessary, a "Comments and Responses" section, and the Mitigation Monitoring and Reporting Program (see recommendations under Task 3.4, above).

CONTRACTOR will provide the County with a technical review memorandum describing recommended revisions to the Draft Final SEIR and once determined complete an "Adequacy - No Further Action" memorandum.

Task 3.4 - Findings and Statement of Overriding Considerations

CONTRACTOR will review the Findings in accordance with the provisions of §15091 and §15093 of the State CEQA Guidelines. CONTRACTOR will submit a technical review memorandum to the County on the Draft Findings prepared by the applicant. A final "Adequacy - No Further Action" memorandum will be provided at such time the Findings are found to be adequate.

Task 4.0 - Project Coordination and Meetings

Task 4.1- Project Management and Coordination

Bruce Grove will serve as the Project Manager responsible for supervision of the CONTRACTOR Team. Mr. Grove will coordinate with County staff and CONTRACTOR's technical subconsultants toward the timely completion of each phase of the SEIR review process. It is the goal of CONTRACTOR to serve as an extension of County staff throughout the duration of the SEIR process.

In addition, CONTRACTOR will provide detailed progress reports on the first Monday of every month that will include an assessment of schedule. Progress reports will include the status of CONTRACTOR's reviews, delivery dates, and upcoming meetings with County staff. Each progress report will include a summary of tasks performed and the percentage of work completed to date according to individual task. This task also assumes bi-weekly calls with County staff, as well as the reporting of action items and status.

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Task 4.2 - Meeting Attendance

Mr. Grove will attend staff and applicant meetings to discuss the findings of the various technical reviews and provide strategic guidance on rectifying potentially significant issues that surface. CONTRACTOR anticipates several meetings with County staff, including a "kick-off meeting" and several progress/comment resolution meetings. The following meetings are anticipated during the adequacy review of the SEIR:

- Up to four (4) meetings in Susanville with County staff and applicant to provide written and oral progress reports, resolve issues, review comments on administrative/draft/final documents and to receive any necessary direction from County staff.

Should the County determine that additional meetings beyond the anticipated four (4) meetings is necessary, such services can be provided under separate authorization on a time and materials basis.

Task 5.0 - Deliverables

The following is a breakdown of products/deliverables anticipated for the SEIR:

- One (1) Technical Review Memorandum of each applicant prepared study (assumes 4 studies)
- One (1) Adequacy- No Further Action Memorandum for each technical study
- One (1) Technical Review Memorandum related to the Administrative Draft SEIR
- One (1) Technical Review Memorandum related to the Screencheck Draft SEIR
- One (1) Adequacy- No Further Action Memorandum related to the Draft SEIR
- One (1) Technical Review Memorandum related to the Response to Comments
- One (1) Adequacy- No Further Action Memorandum related to the Response to Comments
- One (1) Technical Review Memorandum related to the Final SEIR
- One (1) Adequacy- No Further Action Memorandum related to the Final SEIR
- One (1) Technical Review Memorandum related to the Draft Findings
- One (1) Adequacy- No Further Action Memorandum related to the final Findings

END OF ATTACHMENT "A"

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**ATTACHMENT B
AGREEMENT BETWEEN
LASSEN COUNTY AND CONTRACTOR (SHN)**

PAYMENT

COUNTY shall pay CONTRACTOR as follows:

B.1 Total CONTRACTOR Price

CONTRACTOR shall be paid up to \$51,490.00 as full compensation for all services completed in accordance with Attachment "A".

B.2 PAYMENT

B.2.1 CONTRACTOR shall be paid up to \$51,490.00 for the tasks specified in Attachment "A". Charges for tasks shall not exceed the amounts specified in the billing rate and cost schedule in paragraph B.4, below.

B.2.2 CONTRACTOR shall be paid on a time-and-expense basis for tasks specified in Attachment "A". Charges for tasks shall be in accordance with CONTRACTOR's billing rate and cost schedule as specified in paragraph B.4, below.

B.2.3 CONTRACTOR shall submit invoices to COUNTY for work done pursuant to this Contract not more frequently than monthly.

B.2.4 COUNTY agrees to pay CONTRACTOR for services completed within 30 days of a complete invoice.

B.3 INVOICE REQUIREMENT

For Tasks listed in Attachment "A", invoices submitted by CONTRACTOR shall indicate the percent complete for each Task; the date of the invoice; and the time period covered by the invoice. Invoices shall include costs incurred for the additional work performed in implementing the Contract during the period identified in the particular invoice; any appropriate receipts and reports for costs incurred; and indicate the CONTRACTOR personnel who have performed work during the invoice period. The cost paid for CONTRACTOR personnel shall be consistent with the rates identified in the billing rate and cost schedule in paragraph B.4, below.

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B.4 BILLING RATE AND COST SCHEDULE

Task		Principal -In- Charge	Project Manager	Senior Environmental Planner	Admin / Production Support	Total Hours	Sub / Direct	Fee Total
Billing Rate		155	150	110	60			
Task 1.0	INITIAL PROJECT REVIEW							
1.1	Research and Investigation	1	2	4		7		\$895
1.2	Field Reconnaissance		6			6		\$900
1.3	Peer Review of Applicant Prepared Studies							
	Simulation Analysis- Lighting	1	4	16	1	22		\$2,575
	Biological Resources Assessment		1			1	\$5,610	\$5,760
	Acoustical Assessment		1			1	\$8,140	\$8,290
	Traffic Impact Assessment		1			1	\$5,500	\$5,650
	Subtotal - Task 1	2	15	20	1	38	\$19,250	\$24,070
Task 2.0	ADMINISTRATIVE AND DRAFT SEIR REVIEWS							
2.1	Project Description Review	2	4	6		12		\$1,570
2.2	Environmental Analysis Review	6	16	30		52		\$6,630
2.3	Administrative, Screencheck and Draft SEIR Technical Review Memos		4	10	4	18		\$1,940
	Subtotal - Task 2	8	24	46	4	82	\$0	\$10,140
Task 3.0	FINAL SEIR REVIEW							
3.1	Response to Comments	6	16	24		46		\$5,970
3.2	Mitigation Monitoring and Reporting Program		1	4	1	6		\$650
3.3	Final SEIR	1	4	6	1	12		\$1,475
3.4	Findings and Statement of Overriding Considerations	1	1	6	1	9		\$1,025
	Subtotal - Task 3	8	22	40	3	73	\$0	\$9,120

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Task 4.0	PROJECT COORDINATION AND MEETINGS							
4.1	Project Management and Coordination	2	16	2		20		\$2,930
4.2	Meeting Attendance (4 Meetings in Susanville)	6	24			30		\$4,530
	Subtotal - Task 4	8	40	2	0	50	\$0	\$7,460
Task 5.0	DELIVERABLES (Reproduction, Mileage)						\$700	
	TOTAL HOURS	26	101	108	8	243		
	*Percent of Total Labor (Hours)	11%	42%	44%	3%	100%		
TOTAL LABOR COSTS		\$4,030	\$15,150	\$11,880	\$480		\$19,950	\$51,490

All work will be performed for a "Not to Exceed" contract price, which will become the firm fixed price upon completion of contract with the County of Lassen. The total budget includes all miscellaneous costs for travel/mileage, reproduction, reimbursables, telephone, postal, delivery, reference materials and incidental expenses. CONTRACTOR 's Fee Matrix is provided above.

CONTRACTOR will receive payment by monthly billing. The CONTRACTOR's Project Manager reserves the right to make adjustments to staff allocations as necessary within the overall budget.

END OF ATTACHMENT "B"

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**ATTACHMENT C
AGREEMENT BETWEEN
LASSEN COUNTY AND CONTRACTOR (SHN)**

ADDITIONAL PROVISIONS

NONE

END OF ATTACHMENT "C"

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ATTACHMENT D

GENERAL PROVISIONS

D.1. INDEPENDENT CONTRACTOR. For all purposes arising out of this Agreement, CONTRACTOR shall be: an independent contractor and CONTRACTOR and each and every employee, agent, servant, partner, and shareholder of CONTRACTOR (collectively referred to as "The Contractor") shall not be, for any purpose of this Agreement, an employee of COUNTY. Furthermore, this Agreement shall not under any circumstance be construed or considered to be a joint powers agreement as described in California Government Code sections 6000, et seq., or otherwise. As an independent contractor, the following shall apply:

D.1.1 CONTRACTOR shall determine the method, details and means of performing the services to be provided by CONTRACTOR as described in this Agreement.

D.1.2 CONTRACTOR shall be responsible to COUNTY only for the requirements and results specified by this Agreement and, except as specifically provided in this Agreement, shall not be subject to COUNTY's control with respect to the physical actions or activities of CONTRACTOR in fulfillment of the requirements of this Agreement.

D.1.3 CONTRACTOR shall be responsible for its own operating costs and expenses, property and income taxes, workers' compensation insurance and any other costs and expenses in connection with performance of services under this Agreement.

D.1.4 CONTRACTOR is not, and shall not be, entitled to receive from or through COUNTY, and COUNTY shall not provide or be obligated to provide the CONTRACTOR with workers' compensation coverage, unemployment insurance coverage or any other type of employee or worker insurance or benefit coverage required or provided by any federal, state or local law or regulation for, or normally afforded to, any employee of COUNTY.

D.1.5 The CONTRACTOR shall not be entitled to have COUNTY withhold or pay, and COUNTY shall not withhold or pay, on behalf of the CONTRACTOR any tax or money relating to the Social Security Old Age Pension Program, Social Security Disability Program or any other type of pension, annuity or disability program required or provided by any federal, state or local law or regulation for, or normally afforded to, an employee of COUNTY.

D.1.6 The CONTRACTOR shall not be entitled to participate in, or receive any benefit from, or make any claim against any COUNTY fringe benefit program including, but not limited to, COUNTY's pension plan, medical and health care plan, dental plan, life insurance plan, or other type of benefit program, plan or coverage designated for, provided to, or offered to COUNTY's employees.

D.1.7 COUNTY shall not withhold or pay on behalf of CONTRACTOR any federal, state or local tax including, but not limited to, any personal income tax owed by CONTRACTOR.

D.1.8. The CONTRACTOR is, and at all times during the term of this Agreement shall represent and conduct itself as, an independent contractor and not as an employee of COUNTY.

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D.1.9 CONTRACTOR shall not have the authority, express or implied, to act on behalf of, bind or obligate the COUNTY any way without the written consent of the COUNTY.

D.2 LICENSES, PERMITS, ETC. CONTRACTOR represents and warrants to COUNTY that it has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for CONTRACTOR to practice its profession. CONTRACTOR represents and warrants to COUNTY that CONTRACTOR shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals which are legally required for CONTRACTOR to practice its profession at the time the services are performed.

D.3 CHANGE IN STATUTES OR REGULATIONS. If there is a change of statutes or regulations applicable to the subject matter of this Agreement, both parties agree to be governed by the new provisions, unless either party gives notice to terminate pursuant to the terms of this Agreement.

D.4 TIME. CONTRACTOR shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary for the satisfactory performance of CONTRACTOR's obligations pursuant to this Agreement. Neither party shall be considered in default of this Agreement to the extent performance is prevented or delayed by any cause, present or future, which is beyond the reasonable control of the party.

D.5 INSURANCE.

D.5.1 Prior to rendering services provided by the terms and conditions of this Agreement, CONTRACTOR shall acquire and maintain during the term of this Agreement insurance coverage (hereinafter referred to as "the insurance") through and with an insurer acceptable to COUNTY. The insurance shall contain the following coverages:

D.5.1.1 Comprehensive general liability insurance including comprehensive public liability insurance with minimum coverage of One Million Dollars (\$1,000,000) per occurrence and with not less than One Million Dollars (\$1,000,000) aggregate; CONTRACTOR shall insure both COUNTY and CONTRACTOR against any liability arising under or related to this Agreement.

D.5.1.2 During the term of this Agreement, CONTRACTOR shall maintain in full force and effect a policy of professional errors and omissions insurance with policy limits of not less than One Million Dollars (\$1,000,000) per incident and One Million Dollars (\$1,000,000) annual aggregate, with deductible or self-insured portion not to exceed Two Thousand Five Hundred Dollars (\$2,500).

D.5.1.3 Comprehensive automobile liability insurance with minimum coverage of Five Hundred Thousand Dollars (\$500,000) per occurrence and with not less than Five Hundred Thousand Dollars (\$500,000) on reserve in the aggregate, with combined single limit including owned, non-owned and hired vehicles.

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D.5.1.4 Workers' Compensation Insurance coverage for all of CONTRACTOR=s employees and other persons for whom CONTRACTOR is responsible to provide such insurance coverage, as provided by Division 4 and 4.5 of the California Labor Code.

D.5.2 The limits of insurance herein shall not limit the liability of the CONTRACTOR hereunder.

D.5.3 In respect to any insurance herein, if the aggregate limit available becomes less than that required above, other excess insurance shall be acquired and maintained immediately. For the purpose of any insurance term of this Agreement, "aggregate limit available" is defined as the total policy limits available for all claims made during the policy period.

D.5.4 Except for automobile liability insurance, the insurance shall name the COUNTY and COUNTY's officers, employees, agents and independent contractors as additional insureds and shall include an endorsement that no cancellation or material change adversely affecting any coverage provided by the insurance may be made until twenty (20) days after written notice is delivered to COUNTY.

D.5.5 The insurance policy forms, endorsements and insurer(s) issuing the insurance shall be satisfactory to COUNTY at its sole and absolute discretion. The amount of any deductible payable by the insured shall be subject to the prior approval of the COUNTY and the COUNTY, as a condition of its approval, may require such proof of the adequacy of CONTRACTOR's financial resources as it may see fit.

D.5.6 Prior to CONTRACTOR rendering services provided by this Agreement, and immediately upon acquiring additional insurance, CONTRACTOR shall deliver a certificate of insurance describing the insurance coverages and endorsements to:

Maurice L. Anderson, Director
Lassen County Department of Planning and Building Services
707 Nevada Street, Suite 5
Susanville, CA 96130

Upon COUNTY's request, CONTRACTOR shall deliver certified copies of any insurance policies to COUNTY.

D.5.7 CONTRACTOR shall not render services under the terms and conditions of this Agreement unless each type of insurance coverage and endorsement is in effect and CONTRACTOR has delivered the certificate(s) of insurance to COUNTY as previously described. If CONTRACTOR shall fail to procure and maintain said insurance, COUNTY may, but shall not be required to, procure and maintain the same, and the premiums of such insurance shall be paid by CONTRACTOR to COUNTY upon demand. The policies of insurance provided herein which are to be provided by CONTRACTOR shall be for a period of not less than one year, it being understood and agreed that twenty (20) days prior to the expiration of any policy of insurance, CONTRACTOR will deliver to COUNTY a renewal or new policy to take the place of the policy expiring.

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D.5.8 COUNTY shall have the right to request such further coverages and/or endorsements on the insurance as COUNTY deems necessary, at CONTRACTOR's expense. The amounts, insurance policy forms, endorsements and insurer(s) issuing the insurance shall be satisfactory to COUNTY in its sole and absolute discretion.

D.5.9 Any subcontractor(s), independent contractor(s) or any type of agent(s) performing or hired to perform any term or condition of this Agreement on behalf of CONTRACTOR, as may be allowed by this Agreement (hereinafter referred to as the "SECONDARY PARTIES"), shall comply with each term and condition of this Section D.5 entitled "INSURANCE". Furthermore, CONTRACTOR shall be responsible for the SECONDARY PARTIES' acts and satisfactory performance of the terms and conditions of this Agreement.

D.6 INDEMNITY.

COUNTY shall not be liable for, and CONTRACTOR shall defend and indemnify COUNTY and its officers, agents, employees, and volunteers (collectively "County Parties"), against any and all claims, deductibles, self-insured retentions, demands, liability, judgments, awards, fines, mechanics; liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorney's fees and court costs (hereinafter collectively referred to as "Claims"), which arise out of or are in any way connected to the work covered by this Agreement arising either directly or indirectly from any act, error, omission or negligence of CONTRACTOR or its officers, employees, agents, contractors, licensees or servants, including, without limitation, Claims caused by the concurrent negligent act, error or omission, whether active or passive of County Parties. CONTRACTOR shall have no obligation, however, to defend or indemnify County Parties from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused by the sole negligence or willful misconduct of County Parties.

D.7 CONTRACTOR NOT AGENT. Except as COUNTY may specify in writing, CONTRACTOR shall have no authority, express or implied, to act on behalf of COUNTY in any capacity whatsoever as an agent. CONTRACTOR shall have no authority, express or implied, pursuant to this Agreement to bind COUNTY to any obligation whatsoever.

D.8 ASSIGNMENT PROHIBITED. CONTRACTOR may not assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no legal effect.

D.9 PERSONNEL. CONTRACTOR shall assign only competent personnel to perform services pursuant to this Agreement. In the event that COUNTY, in its sole discretion at any time during the term of this Agreement, desires the removal of any person or persons assigned by CONTRACTOR to perform services pursuant to this Agreement, CONTRACTOR shall remove any such person immediately upon receiving written notice from COUNTY of its desire for removal of such person or persons.

D.10 STANDARD OF PERFORMANCE. CONTRACTOR shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which CONTRACTOR is engaged. All products of whatsoever nature which CONTRACTOR delivers to COUNTY pursuant to this Agreement shall

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be prepared in a first class and workmanlike manner and shall conform to the standards of quality normally observed by a person practicing in CONTRACTOR's profession.

D.11 POSSESSORY INTEREST. The parties to this Agreement recognize that certain rights to property may create a "possessory interest", as those words are used in the California Revenue and Taxation Code section 107. For all purposes of compliance by COUNTY with Section 107.6 of the California Revenue and Taxation Code, this recital shall be deemed full compliance by the COUNTY. All questions of initial determination of possessory interest and valuation of such interest, if any, shall be the responsibility of the County Assessor and the contracting parties hereto. A taxable possessory interest may be created by this, if created, and the party in whom such an interest is vested will be subject to the payment of property taxes levied on such an interest.

D.12 TAXES. CONTRACTOR hereby grants to the COUNTY the authority to deduct from any payments to CONTRACTOR any COUNTY imposed taxes, fines, penalties and related charges which are delinquent at the time such payments under this Agreement are due to CONTRACTOR.

D.13 TERMINATION.

D.13.1 COUNTY shall have the right to terminate this Agreement at any time by giving notice in writing of such termination to CONTRACTOR. In the event COUNTY gives notice of termination, CONTRACTOR shall immediately cease rendering service upon receipt of such written notice and the following shall apply:

D.13.1.1 CONTRACTOR shall deliver to COUNTY copies of all writings prepared by it pursuant this agreement. The term "writings" shall be construed to mean and include: handwriting, typewriting, printing, photocopying, photographing computer storage medium (tapes, disks, diskettes, etc.) and every other means of recording upon any tangible thing, and form of communication or representation, including letters, pictures, sounds, or symbols, or combinations thereof.

D.13.1.2 COUNTY shall pay CONTRACTOR the reasonable value of services rendered by CONTRACTOR to the date of termination pursuant to this Agreement not to exceed the amount documented by CONTRACTOR and approved by COUNTY as work accomplished to date; provided, however, that in no event shall any payment hereunder exceed Fifty-one Thousand, Four Hundred Ninety Dollars and 00/100 Cents (\$51,490.00). Further provided, however, COUNTY shall not in any manner be liable for lost profits which might have been made by CONTRACTOR had CONTRACTOR completed the services required by this Agreement. In this regard, CONTRACTOR shall furnish to COUNTY such financial information as in the judgment of the COUNTY is necessary to determine the reasonable value of the services rendered by CONTRACTOR. In the event of a dispute as to the reasonable value of the services rendered by CONTRACTOR, the decision of the COUNTY shall be final. The foregoing is cumulative and does not affect any right or remedy which COUNTY may have in law or equity.

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D.13.2 CONTRACTOR may terminate its services under this Agreement upon thirty (30) working days written notice to the COUNTY, without liability for damages, if CONTRACTOR is not compensated according to the provisions of the Agreement or upon any other material breach of the Agreement by COUNTY, provided that CONTRACTOR has first provided COUNTY with a written notice of any alleged breach, specifying the nature of the alleged breach and providing not less than ten (10) working days within which the COUNTY may cure the alleged breach.

D.14 OWNERSHIP OF INFORMATION. All professional and technical information developed under this Agreement and all work sheets, reports, and related data shall become and/or remain the property of COUNTY, and CONTRACTOR agrees to deliver reproducible copies of such documents to COUNTY on completion of the services hereunder. The COUNTY agrees to indemnify and hold CONTRACTOR harmless from any claim arising out of reuse of the information for other than this project.

D.15 WAIVER. A waiver by any party of any breach of any term, covenant or condition herein contained or a waiver of any right or remedy of such party available hereunder at law or in equity shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained or of any continued or subsequent right to the same right or remedy. No party shall be deemed to have made any such waiver unless it is in writing and signed by the party so waiving.

D.16 COMPLETENESS OF INSTRUMENT. This Agreement, together with its specific references and attachments, constitutes all of the agreements, understandings, representations, conditions, warranties and covenants made by and between the parties hereto. Unless set forth herein, neither party shall be liable for any representations made, express or implied.

D.17 SUPERSEDES PRIOR AGREEMENTS. It is the intention of the parties hereto that this Agreement shall supersede any prior agreements, discussions, commitments, representations, or agreements, written or oral, between the parties hereto.

D.18 ATTORNEY'S FEES. If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret provisions of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, which may be set by the Court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such party may be entitled.

D.19 MINOR AUDITOR REVISION. In the event the Lassen County Auditor's office finds a mathematical discrepancy between the terms of the Agreement and actual invoices or payments, provided that such discrepancy does not exceed one percent (1%) of the Agreement amount, the Auditor's office may make the adjustment in any payment or payments without requiring an amendment to the Agreement to provide for such adjustment. Should the COUNTY or the CONTRACTOR disagree with such adjustment, they reserve the right to contest such adjustment and/or to request corrective amendment.

D.20 CAPTIONS. The captions of this Agreement are for convenience in reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

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D.21 DEFINITIONS. Unless otherwise provided in this Agreement, or unless the context otherwise requires, the following definitions and rules of construction shall apply herein.

D.21.1 Number and Gender. In this Agreement, the neuter gender includes the feminine and masculine, the singular includes the plural, and the word "person" includes corporations, partnerships, firms or associations, wherever the context so requires.

D.21.2 Mandatory and Permissive. "Shall" and "will" and "agrees" are mandatory. "May" is permissive.

D.22 TERM INCLUDES EXTENSIONS. All references to the term of this Agreement or the Agreement Term shall include any extensions of such term.

D.23 SUCCESSORS AND ASSIGNS. All representations, covenants and warranties specifically set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

D.24 MODIFICATION. No modification or waiver of any provisions of this Agreement or its attachments shall be effective unless such waiver or modification shall be in writing, signed by all parties, and then shall be effective only for the period and on the condition, and for the specific instance for which given.

D.25 COUNTERPARTS. This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

D.26 OTHER DOCUMENTS. The parties agree that they shall cooperate in good faith to accomplish the object of this Agreement and, to that end, agree to execute and deliver such other and further instruments and documents as may be necessary and convenient to the fulfillment of these purposes.

D.27 PARTIAL INVALIDITY. If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provision and/or provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

D.28 VENUE. It is agreed by the parties hereto that unless otherwise expressly waived by them, any action brought to enforce any of the provisions hereof or for declaratory relief hereunder shall be filed and remain in a court of competent jurisdiction in the County of Lassen, State of California.

D.29 CONTROLLING LAW. The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California.

D.30 CALIFORNIA TORT CLAIMS ACT. Notwithstanding any term or condition of the Agreement, the provisions, and related provisions, of the California Tort Claims Act, Division 3.6 of the Government Code, are not waived by COUNTY and shall apply to any claim against COUNTY

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arising out of any acts or conduct under the terms and conditions of this Agreement.

D.31 TIME IS OF THE ESSENCE. Time is of the essence of this Agreement and each covenant and term herein.

D.32 AUTHORITY. All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, estates or firms represented or purported to be represented by such entity(s), person(s), estate(s) or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement are in full compliance. Further, by entering into this Agreement, neither party hereto shall have breached the terms or conditions of any other contract or agreement to which such party is obligated, which such breach would have a material effect hereon.

D.33 CORPORATE AUTHORITY. If CONTRACTOR is a corporation or public agency, each individual executing this Agreement on behalf of said corporation or public agency represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of said corporation or in accordance with the bylaws of said corporation or Board or Commission of said public agency, and that this Agreement is binding upon said corporation or public entity in accordance with its terms. If CONTRACTOR is a corporation, CONTRACTOR shall, within thirty (30) days after execution of this Agreement, deliver to COUNTY a certified copy of a resolution of the Board of Directors of said corporation authorizing or ratifying the execution of this Agreement.

D.34 CONFLICT OF INTEREST.

D.34.1 Legal Compliance. CONTRACTOR agrees at all times in performance of this Agreement to comply with the law of the State of California regarding conflicts of interest, including, but not limited to, Article 4 of Chapter 1, Division 4, Title 1 of the California Government Code, commencing with Section 1090 and Chapter 7 of Title 9 of said Code, commencing with Section 87100, including regulations promulgated by the California Fair Political Practices Commission.

D.34.2 Advisement. CONTRACTOR agrees that if any facts come to its attention which raise any questions as to the applicability of this law, it will immediately inform the COUNTY designated representative and provide all information needed for resolution of the question.

D.34.3 Admonition. Without limitation of the covenants in subparagraphs D.34.1 and D.34.2, CONTRACTOR is admonished hereby as follows:

The statutes, regulations and laws referenced in this provision D.34 include, but are not limited to, a prohibition against any public officer, including CONTRACTOR for this purpose, from making any decision on behalf of COUNTY in which such officer has a direct or indirect financial interest. A violation occurs if the public officer influences or participates in any COUNTY decision which has the potential to confer any pecuniary benefit on CONTRACTOR or any business

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firm in which CONTRACTOR has an interest of any type, with certain narrow exceptions.

D.35 NONDISCRIMINATION. During the performance of this Agreement, CONTRACTOR shall not unlawfully discriminate against any employee of the CONTRACTOR or of the COUNTY or applicant for employment or for services or any member of the public because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age or sex. CONTRACTOR shall ensure that in the provision of services under this Agreement, its employees and applicants for employment and any member of the public are free from such discrimination. CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.). The applicable regulations of the Fair Employment Housing Commission implementing Government Code Section 12900, set forth in Chapter 5, 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 shall also abide by the Federal Civil Rights Act of 1964 and all amendments thereto, and all administrative rules and regulation issued pursuant to said Act CONTRACTOR shall give written notice of its obligations under this clause to any labor agreement. CONTRACTOR shall include the non-discrimination and compliance provision of this paragraph in all subcontracts to perform work under this Agreement.

D.36 JOINT AND SEVERAL LIABILITY. If any party consists of more than one person or entity, the liability of each person or entity signing this Agreement shall be joint and several.

D.37 TAXPAYER I.D. NUMBER. The COUNTY shall not disburse any payments to CONTRACTOR pursuant to this Agreement until CONTRACTOR supplies the latter's Taxpayer Identification Number or Social Security Number by providing COUNTY with a completed IRS Form W-9.

D.38 NOTICES. All notices and demands of any kind which either party may require or desire to serve on the other in connection with this Agreement must be served in writing either by personal service or by registered or certified mail, return receipt requested, and shall be deposited in the United States Mail, with postage thereon fully prepaid, and addressed to the party so to be served as follows:

If to "COUNTY":

Maurice L. Anderson, Director
Lassen County Department of Planning and Building Services
707 Nevada Street, Suite 5
Susanville, CA 96130

If to "CONTRACTOR":

Bruce Grove, Senior Planner
SHN
350 Hartnell Avenue, Suite B
Redding, CA 96002

END OF ATTACHMENT "D".

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ATTACHMENT E

NO THIRD-PARTY BENEFICIARIES

This Agreement is made solely and specifically among and for the benefit of the parties to it, the COUNTY and the CONTRACTOR, and their respective successors and assigns, subject to the express provision of the agreement relating to successors and assigns, and no other person, has or will have any rights, interest, or claims under this Agreement as a third-party beneficiary or otherwise. This Agreement shall not establish any actionable duty of the County or County personnel inuring to any third party or to anyone claiming under or on behalf of such a third party.

END OF ATTACHMENT "E"

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