

**DOC # 0212646**

10/20/2008

2:32 PM

**Official Record**

Recording requested By  
EUREKA COUNTY NV

**Eureka County - NV**

**Mike Rebaleati - Recorder**

Fee: Page 1 of 26

RPTT: Recorded By: LLH

Book- 0480 Page- 0349



0212646

APN# \_\_\_\_\_

Recording Requested by:

Name: EUREKA COUNTY

Address: \_\_\_\_\_

City/State/Zip EUREKA, NV

---

**SECOND AMENDED CONTRACT FOR SERVICES**  
(Title of Document)

**This page added to provide additional information required by NRS 111.312  
Sections 1-2.  
(Additional recording fee applies)**

**This cover page must be typed or printed.**

**SECOND AMENDED CONTRACT FOR SERVICES OF  
INDEPENDENT CONTRACTOR**

A Contract Between Eureka County (County)  
Acting By and Through Its

Board of Eureka County Commissioners (Board)  
P.O. Box 677, Eureka, NV 89316  
(775) 237-5262

and

ECO:LOGIC, Inc.  
10381 Double R Boulevard  
Reno, Nevada 89521  
775-827-2311

WHEREAS, NRS 244.320 authorizes the Board of Eureka County Commissioners ("Board") to engage the services of persons as independent contractors; and

WHEREAS, it is deemed that the service of ECO:LOGIC, Inc. ("Contractor") is both necessary and in the best interests of the County of Eureka;

NOW, THEREFORE, in consideration of the aforesaid premises, the parties mutually agree as follows:

1. REQUIRED APPROVAL. This Contract shall not become effective until and unless approved by the Board.
2. DEFINITIONS. "County" means the County of Eureka and its officers, employees and immune contractors as defined in NRS §41.0307. "Independent Contractor" means a person or entity that performs services and/or provides goods for the County under the terms and conditions set forth in this Contract.
3. CONTRACT TERM. This Contract shall be effective from January 28, 2008 to December 31, 2008, unless sooner terminated by either party as specified in paragraph (10).
4. NOTICE. Unless otherwise specified, termination shall not be effective until 60 calendar days after a party has served written notice of default, or without cause upon the other party. All notices or other communications required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address specified above.

5. INCORPORATED DOCUMENTS. The parties agree that the scope of work shall be specifically described; this Contract incorporates the following attachments in descending order of constructive precedence; a Contractor's Attachment shall not contradict or supersede any County specifications, terms or conditions without written evidence of mutual assent to such change appearing in this Contract:

ATTACHMENT A: SCOPE OF SERVICES  
ATTACHMENT B: FEE SCHEDULE  
ATTACHMENT C: CONTRACT AMENDMENT REQUEST

6. CONSIDERATION. Under the Amended Contract, the parties agree that Contractor will provide the services specified in paragraph (5) at a cost not to exceed \$67,000.00 with installments payable by invoice each month. This second Amended Contract supplements the Amended Contract with \$42,000.00 for a total of \$109,000.00. The County does not agree to reimburse Contractor for expenses unless otherwise specified in the incorporated attachments.

7. ASSENT. The parties agree that the terms and conditions listed on incorporated attachments of this Contract are also specifically a part of this Contract and are limited only by their respective order of precedence and any limitations specified.

8. TIMELINESS OF BILLING SUBMISSION. The parties agree that timeliness of billing is of the essence to the contract.

9. INSPECTION & AUDIT.

a. Books and Records. Contractor agrees to keep and maintain under general accepted accounting principles (GAAP) full, true and complete records, contracts, books, and documents as are necessary to fully disclose to the County, State of Nevada or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with all state and federal regulations and statutes.

b. Inspection & Audit. Contractor agrees that the relevant books, records (written, electronic, computer related or otherwise), including, without limitation, relevant accounting procedures and practices of Contractor or its subcontractors, financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, and copying at any office or location of Contractor where such records may be found, with or without notice by the County, the State Auditor, the relevant state agency or its contracted examiners, the Department of Administration, Budget Division, the Nevada State Attorney General's Office or its Fraud Control Units, the State Legislative Auditor, and with regard to any federal funding, the relevant federal agency, the Comptroller General, the General Accounting Office, the Office of the Inspector General, or any of their authorized representatives. All subcontracts shall reflect requirements of this paragraph.

c. Period of Retention. All books, records, reports, and statements relevant to this Contract must be retained a minimum three years and for five years if any federal funds are used in the Contract. The retention period runs from the date of payment for the relevant goods or services by the County, or from the date of termination of the Contract, whichever is later. Retention time

shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

#### 10. CONTRACT TERMINATION.

a. Termination Without Cause. Any discretionary or vested right of renewal notwithstanding, this Contract may be terminated upon written notice by mutual consent of both parties or unilaterally by either party without cause.

b. Termination for Nonappropriation. The continuation of this Contract beyond the current County fiscal year is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available. The County may terminate this Contract, and Contractor waives any and all claim(s) for damages, effective immediately upon receipt of written notice (on any date specified therein) if for any reason the Contracting Agency's funding is not appropriated or is withdrawn, limited, or impaired.

c. Cause Termination for Default or Breach. A default or breach may be declared with or without termination. This Contract may be terminated by either party upon written notice of default or breach to the other party as follows:

- i. If Contractor fails to provide or satisfactorily perform any of the conditions, work, deliverables, goods, or services called for by this Contract within the time requirements specified in this Contract or within any granted extension of those time requirements; or
- ii. If any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract is for any reason denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or
- iii. If Contractor becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; or
- iv. If the County materially breaches any material duty under this Contract and any such breach impairs Contractor's ability to perform; or
- v. If it is found by the County that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of the County with a view toward securing a contract or securing favorable treatment with respect to awarding, extending, amending, or making any determination with respect to the performing of such contract; or
- vi. If it is found by the County that Contractor has failed to disclose any material conflict of interest relative to the performance of this Contract.

d. Time to Correct. Termination upon a declared default or breach may be exercised only after service of formal written notice as specified in paragraph (4), and the subsequent failure of the defaulting party within 15 calendar days of receipt of that notice to provide evidence, satisfactory to the aggrieved party, showing that the declared default or breach has been corrected.

e. Winding Up Affairs Upon Termination. In the event of termination of this Contract for any reason, the parties agree that the provisions of this paragraph survive termination:

- i. The parties shall account for and properly present to each other all claims for fees and expenses and pay those which are undisputed and otherwise not subject to set off under this



Contract. Neither party may withhold performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination;

ii. Contractor shall satisfactorily complete work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by the County;

iii. Contractor shall execute any documents and take any actions necessary to effectuate an assignment of this Contract if so requested by the County;

iv. Contractor shall preserve, protect and promptly deliver into County possession all proprietary information in accordance with paragraph (21).

11. REMEDIES. Except as otherwise provided for by law or this Contract, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages, and to a prevailing party reasonable attorneys' fees and costs. It is specifically agreed that reasonable attorneys' fees shall include without limitation \$125 per hour for County-employed attorneys.

12. LIMITED LIABILITY. The County will not waive and intends to assert available NRS chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Liquidated damages shall not apply unless otherwise specified in the incorporated attachments. Damages for any County breach shall never exceed the amount of funds appropriated for payment under this Contract, but not yet paid to Contractor. Damages for any Contractor breach shall not exceed 150% of the contract maximum "not to exceed" value. Contractor's tort liability shall not be limited.

13. FORCE MAJEURE. Neither party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Contract after the intervening cause ceases.

14. INDEMNIFICATION. To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend, not excluding the State's right to participate, the County from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any alleged negligent or willful acts or omissions of Contractor, its officers, employees and agents.

15. INDEPENDENT CONTRACTOR. Contractor is associated with the County only for the purposes and to the extent specified in this Contract, and in respect to performance of the contracted services pursuant to this Contract, Contractor is and shall be an independent contractor and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for the County whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other party. Contractor shall be solely responsible for, and the County shall

have no obligation with respect to: (1) withholding of income taxes, FICA or any other taxes or fees; (2) industrial insurance coverage; (3) participation in any group insurance plans available to employees of the County; (4) participation or contributions by either Contractor or the County to the Public Employees Retirement System; (5) accumulation of vacation leave or sick leave; or (6) unemployment compensation coverage provided by the County. Contractor shall indemnify and hold County harmless from, and defend County against, any and all losses, damages, claims, costs, penalties, liabilities, and expenses arising or incurred because of, incident to, or otherwise with respect to any such taxes or fees. Neither Contractor nor its employees, agents, or representatives shall be considered employees, agents, or representatives of the County. The County and Contractor shall evaluate the nature of services and term negotiated in order to determine "independent contractor" status and shall monitor the work relationship throughout the term of the Contract to ensure that the independent contractor relationship remains as such. To assist in determining the appropriate status (employee or independent contractor), Contractor represents as follows:

*This space blank intentionally*

Contractor's Initials

YES NO

- 1. Does the County have the right to require control of when, where and how the independent contractor is to work?  YES  NO
- 2. Will the County be providing training to the independent contractor?  YES  NO
- 3. Will the County be furnishing the independent contractor with worker's space, equipment, tools, supplies or travel expenses?  YES  NO
- 4. Are any of the workers who assist the independent contractor in performance of his/her duties employees of the County?  YES  NO
- 5. Does the arrangement with the independent contractor contemplate continuing or recurring work (even if the services are seasonal, part-time, or of short duration)?  YES  NO
- 6. Will the County incur an employment liability if the independent contractor is terminated for failure to perform?  YES  NO
- 7. Is the independent contractor restricted from offering his/her services to the general public while engaged in this work relationship with the County?  YES  NO

16. INSURANCE SCHEDULE. Unless expressly waived in writing by the County, Contractor, as an independent contractor and not an employee of the County, must carry policies of insurance in amounts specified in this Insurance Schedule and pay all taxes and fees incident hereunto. The County shall have no liability except as specifically provided in the Contract. The Contractor shall not commence work before:

- 1) Contractor has provided the required evidence of insurance to the Contracting Agency of the County, and
- 2) The County has approved the insurance policies provided by the Contractor.

Prior approval of the insurance policies by the County shall be a condition precedent to any payment of consideration under this Contract and the County's approval of any changes to insurance coverage during the course of performance shall constitute an ongoing condition



subsequent to this Contract. Any failure of the County to timely approve shall not constitute a waiver of the condition.

**PROOF OF INSURANCE IS HEREBY WAIVED BY COUNTY**

**Insurance Coverage:** The Contractor shall, at the Contractor's sole expense, procure, maintain and keep in force for the duration of the Contract the following insurance conforming to the minimum requirements specified below. Unless specifically specified herein or otherwise agreed to by the County, the required insurance shall be in effect prior to the commencement of work by the Contractor and shall continue in force as appropriate until the latter of:

1. Final acceptance by the County of the completion of this Contract; or
2. Such time as the insurance is no longer required by the County under the terms of this Contract.

Any insurance or self-insurance available to the County shall be excess of and non-contributing with any insurance required from Contractor. Contractor's insurance policies shall apply on a primary basis. Until such time as the insurance is no longer required by the County, Contractor shall provide the County with renewal or replacement evidence of insurance no less than thirty (30) days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by the Contract, an insurer or surety shall fail to comply with the requirements of this Contract, as soon as Contractor has knowledge of any such failure, Contractor shall immediately notify the County and immediately replace such insurance or bond with an insurer meeting the requirements.

**Workers' Compensation and Employer's Liability Insurance**

- 1) Contractor shall provide proof of worker's compensation insurance as required of Nevada Revised Statutes Chapters 616A through 616D inclusive.
- 2) Employer's Liability insurance with a minimum limit of \$500,000 each employee per accident for bodily injury by accident or disease.

If this contract is for temporary or leased employees, an *Alternate Employer* endorsement must be attached to the Contractor's workers' compensation insurance policy.

- 3) If the Contractor qualifies as a sole proprietor as defined in NRS Chapter 616A.310, and has elected to not purchase industrial insurance for himself/herself, the sole proprietor must submit to the County a fully executed "Affidavit of Rejection of Coverage Under NRS 616B.627 and NRS 617.210" form.

**Commercial General Liability Insurance**

- 1) Minimum Limits required:

\$4,000,000 General Aggregate  
\$ \_\_\_\_\_ Products & Completed Operations Aggregate  
\$ \_\_\_\_\_ Personal and Advertising Injury  
\$2,000,000 Each Occurrence



- 2) Coverage shall be on an occurrence basis and shall be at least as broad as ISO 1996 form CG 00 01 (or a substitute form providing equivalent coverage); and shall cover liability arising from premises, operations, independent contractors, completed operations, personal injury, products, civil lawsuits, Title VII actions and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

#### **Business Automobile Liability Insurance**

- 1) Minimum Limit required: \$1,000,000 Each Occurrence for bodily injury and property damage.
- 2) Coverage shall be for “any auto” (including owned, non-owned and hired vehicles). The policy shall be written on ISO form CA 00 01 or a substitute providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

#### **Professional Liability Insurance**

- 1) Minimum Limit required: \$3,000,000 Each Claim
- 2) Retroactive date: Prior to commencement of the performance of the contract.
- 3) Discovery period: Three (3) years after termination date of contract.
- 4) A certified copy of this policy may be required.

#### **Umbrella or Excess Liability Insurance**

- 1) May be used to achieve the above minimum liability limits.
- 2) Shall be endorsed to state it is “As Broad as Primary Policy”

#### **Commercial Crime Insurance**

Minimum Limit required: Included in GL Per Loss for Employee Dishonesty  
This insurance shall be underwritten on a blanket form amending the definition of “employee” to include all employees of the Vendor regardless of position or category.

#### **Performance Security**

Amount required: \$ NOT APPLICABLE

- 1) Security may be in the form of surety bond, Certificate of Deposit or Treasury Note payable to the County, only.
- 2) The security shall be deposited with the County no later than ten (10) working days following award of the Contract to Contractor.
- 3) Upon successful Contract completion, the security and all interest earned, if any, shall be returned to the Contractor.

#### **General Requirements:**

- a. Additional Insured: By endorsement to the general liability insurance policy evidenced by Contractor, *The County, its officers, employees and immune contractors* as defined in NRS 41.0307 shall be named as additional insureds for all liability arising from the Contract.

- b. Waiver of Subrogation: Each liability insurance policy shall provide for a waiver of subrogation as to additional insureds.
- c. Cross-Liability: All required liability policies shall provide cross-liability coverage as would be achieved under the standard ISO separation of insureds clause.
- d. Deductibles and Self-Insured Retentions: Insurance maintained by Contractor shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by the County. Such approval shall not relieve Contractor from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed \$5,000 per occurrence, unless otherwise approved by the Risk Management Division.
- e. Policy Cancellation: Except for ten days notice for non-payment of premium, each insurance policy shall be endorsed to state that without thirty (30) days prior written notice to the County, the policy shall not be canceled, non-renewed or coverage and /or limits reduced or materially altered, and shall provide that notices required by this paragraph shall be sent by certified mailed to the address shown below.
- f. Approved Insurer: Each insurance policy shall be:
  - 1) Issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers acceptable to the County and the State and having agents in Nevada upon whom service of process may be made, and
  - 2) Currently rated by A.M. Best as "A- VII" or better.

**Evidence of Insurance:**

Prior to the start of any Work, Contractor must provide the following documents to the County:

- 1) Certificate of Insurance: The Acord 25 Certificate of Insurance form or a form substantially similar must be submitted to the County to evidence the insurance policies and coverages required of Contractor.
- 2) Additional Insured Endorsement: An Additional Insured Endorsement (CG20 10 or C20 26) , signed by an authorized insurance company representative, **must** be submitted to the County to evidence the endorsement of the County as an additional insured per General Requirements, Subsection a above.
- 3) Schedule of Underlying Insurance Policies: If Umbrella or Excess policy is evidenced to comply with minimum limits, a copy of the Underlyer Schedule from the Umbrella or Excess insurance policy may be required.

Review and Approval: Documents specified above must be submitted for review and approval by the County prior to the commencement of work by Contractor. Neither approval by the County nor failure to disapprove the insurance furnished by Contractor shall relieve Contractor of Contractor's full responsibility to provide the insurance required by this Contract. Compliance with the insurance requirements of this Contract shall not limit the liability of Contractor or its sub-contractors, employees or agents to the County or others, and shall be in addition to and not in lieu of any other remedy available to the County under this Contract or

otherwise. The County reserves the right to request and review a copy of any required insurance policy or endorsement to assure compliance with these requirements.

**Mail all required insurance documents to the Contracting Agency identified on page one of the contract.**

**PROOF OF INSURANCE IS HEREBY WAIVED BY COUNTY**

17. COMPLIANCE WITH LEGAL OBLIGATIONS. Contractor shall procure and maintain for the duration of this Contract any state, county, city or federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by Contractor to provide the goods or services required by this Contract. Contractor will be responsible to pay all taxes, assessments, fees, premiums, permits, and licenses required by law. Real property and personal property taxes are the responsibility of Contractor in accordance with NRS 361.157 and 361.159. Contractor agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Contract.

18. WAIVER OF BREACH. Failure to declare a breach or the actual waiver of any particular breach of the Contract or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

19. SEVERABILITY. If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the nonenforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

20. ASSIGNMENT/DELEGATION. To the extent that any assignment of any right under this Contract changes the duty of either party, increases the burden or risk involved, impairs the chances of obtaining the performance of this Contract, attempts to operate as a novation, or includes a waiver or abrogation of any defense to payment by County, such offending portion of the assignment shall be void, and shall be a breach of this Contract. Contractor shall neither assign, transfer nor delegate any rights, obligations or duties under this Contract without the prior written consent of the County.

21. COUNTY OWNERSHIP OF PROPRIETARY INFORMATION. Any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code (which is intended to be consideration under the Contract), or any other documents or drawings, prepared or in the course of preparation by Contractor (or its subcontractors) in performance of its obligations under this Contract shall be the exclusive property of the County and all such materials shall be delivered into County possession by Contractor upon completion, termination, or cancellation of this Contract. Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of Contractor's obligations under this Contract without the prior written consent of the County. Notwithstanding the foregoing, the County shall have no proprietary interest in any materials licensed for use by the County that are subject to patent, trademark or copyright protection.

22. PUBLIC RECORDS. Pursuant to NRS 239.010, information or documents received from Contractor may be open to public inspection and copying. The County will have the duty to

disclose unless a particular record is made confidential by law or a common law balancing of interests. Contractor may label specific parts of an individual document as a "trade secret" or "confidential" in accordance with NRS 333.333, provided that Contractor thereby agrees to indemnify and defend the County for honoring such a designation. The failure to so label any document that is released by the County shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

23. CONFIDENTIALITY. Contractor shall keep confidential all information, in whatever form, produced, prepared, observed or received by Contractor to the extent that such information is confidential by law or otherwise required by this Contract.

24. FEDERAL FUNDING. In the event federal funds are used for payment of all or part of this Contract:

a. Contractor certifies, by signing this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. pt. 67, § 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.

b. Contractor and its subcontractors shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted thereunder contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program-specific regulations.

c. Contractor and its subcontractors shall comply with the requirements of the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, P.L. 93-112, as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or offeror for employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions.)

25. LOBBYING The parties agree, whether expressly prohibited by federal, State or local law, or otherwise, that no funding associated with this contract will be used for any purpose associated with or related to lobbying or influencing or attempting to lobby or influence for any purpose the following:

- a. Any federal, state, county or local agency, legislature, commission, counsel or board;
- b. Any federal, state, county or local legislator, commission member, counsel member, board member, or other elected official; or
- c. Any officer or employee of any federal, state, county or local agency; legislature, commission, counsel or board.

26. WARRANTIES.

a. General Warranty. Contractor warrants that all services, deliverables, and/or work product under this Contract shall be completed in a workmanlike manner consistent with standards in the trade, profession, or industry; shall conform to or exceed the specifications set forth in the



incorporated attachments; and shall be fit for ordinary use, of good quality, with no material defects.

b. System Compliance. Contractor warrants that any information system application(s) shall not experience abnormally ending and/or invalid and/or incorrect results from the application(s) in the operating and testing of the business of the County. The County is immune from liability due to any failure of any incorrect data being produced, calculated or generated by a computer or other information system.

27. PROPER AUTHORITY. The parties hereto represent and warrant that the person executing this Contract on behalf of each party has full power and authority to enter into this Contract. Contractor acknowledges that as required by statute or regulation this Contract is effective only after approval by the Board and only for the period of time specified in the Contract. Any services performed by Contractor before this Contract is effective or after it ceases to be effective are performed at the sole risk of Contractor.

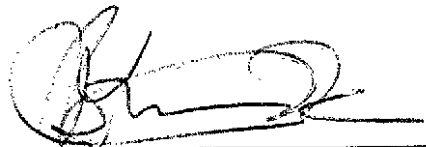
28. GOVERNING LAW; JURISDICTION. This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada, without giving effect to any principle of conflict-of-law that would require the application of the law of any other jurisdiction. Contractor consents to the jurisdiction of the Nevada district courts for enforcement of this Contract.

29. ENTIRE CONTRACT AND MODIFICATION. This Contract and its integrated attachment(s) constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Contract specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language between any such attachment and this Contract shall be construed consistent with the terms of this Contract. Unless otherwise expressly authorized by the terms of this Contract, no modification or amendment to this Contract shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed and intend to be legally bound thereby.

  
\_\_\_\_\_  
Independent Contractor's Signature    Date

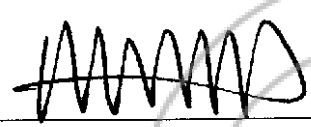
Principal \_\_\_\_\_  
Independent's Contractor's Title

  
\_\_\_\_\_  
Signature – Chairman of the Board


APPROVED BY BOARD OCTOBER 6, 2008

Approved as to form by:

On 20 October 2008  
\_\_\_\_\_  
(Date)

  
\_\_\_\_\_  
Eureka County District Attorney  
Attorney for the Board

On 20 October 2008  
\_\_\_\_\_  
(Date)

ATTEST:   
\_\_\_\_\_  
Clerk of the Board

On Oct. 20, 2008  
\_\_\_\_\_  
(Date)



## ATTACHMENT A SCOPE OF SERVICES

The following is a summary of responsibilities and duties related to:

- Review & Assessment of the Hydrogeology and Numerical Flow Modeling for the Mt. Hope Project, Eureka County, Nevada.

[See attached Scope of Services dated January 28, 2008 from ECO:LOGIC, Inc. amended to include task 2.1 and increase in compensation]



**Attachment A**  
**SCOPE OF SERVICES**  
**(Amended to include task 2.1)**

**SCOPE**

The Scope of Work for the project is defined in Eureka County's *Request for Qualifications for Review & Assessment of the Hydrogeology and Numerical Flow Modeling for the Mt. Hope Project, Eureka County, Nevada*. Following the County Commission meeting on Tuesday, January 22, 2008, the County requested that we assist them with NEPA issues, on an "as needed" basis. Our Scope of Work incorporates a specific task for this extra work. Please note that the Scope of Work provides for meetings with the Commission as a separate work task. Because of the distance between Reno and Eureka, meetings over and above those which we have anticipated can have a significant impact on costs. In addition, we suggest that we concentrate on the next iteration of the model and report, which is expected to be available around the middle of February.

The project team will include ECO:LOGIC, Inc. and Lahontan GeoScience, Inc., as sub-consultant to ECO:LOGIC.

Task 1. Data acquisition

ECO:LOGIC (ECO) and Lahontan GeoScience, Inc. (LGS) will acquire the supporting information and data from the Mt. Hope consultant team used to develop the conceptual model of the aquifer that formed the basis of the numerical model. The conceptual model includes the basic data, interpretations, and simplifications of the hydrogeologic system. The conceptual model incorporates the geology, land use, geologic framework, groundwater occurrences, aquifer parameters, boundary conditions, and water balance (inflows, outflows and changes in storage). Of particular interest are the results of the recent aquifer stress tests and prior testing in the pit area. We are also interested in the unpublished ET data available from the USGS. Included in Task 1 is a tour of the Mt. Hope Project site, scheduled for February 13, 2008.

Task 2. Review of data and reports

ECO & LGS will review the data and information provided by the Mt. Hope consultant team and undertake an independent assessment of the conceptual model that formed the basis of the groundwater flow model. While we fully intend to review the draft "*Hydrogeology and Numeric Flow Modeling for the General Moly, Inc., Mt. Hope Project, Eureka County, Nevada*" we suggest that we make more effective use of our time and concentrate on the next iteration of the report and model (expected release date of February 14, 2008). We anticipate that it will address a number of significant issues relating to the draft report identified by Dan Stone of HCltasca in his memorandum dated January 11, 2007.

Task 2.1. Review and analyze water chemistry data provided by the Mt. Hope Project

ECO:LOGIC will perform an analysis of the water chemistry data provided in "*Mount Hope Project Regional Spring and Seep Inventory Fall 2008*" prepared by SRK Consulting for General Moly, dated January 2008. The electronic database includes major cations and anions, trace metals, and stable isotopes of oxygen and hydrogen for water sampled from selected springs and seeps located in the



Pine Valley, Kobeh Valley, and Diamond Valley hydrographic areas. The objective of the proposed analysis is to determine whether there are obvious patterns to the data suggestive of distinctly different or similar waters in the study area that may help with the delineation of the groundwater flow system and the relationship between water derived from the proposed well field and the regional system. At such time as water chemistry data from the mine's test wells become available, these data will be incorporated into the analysis.

A brief technical memorandum summarizing our findings will be prepared. The summary will include a narrative supported by customary descriptive data plots or graphs (Piper diagrams, Stiff diagrams, isotope cross plots, etc.) that were used to help us arrive at our conclusions. Recommendations for additional analyses will be included, if warranted.

### Task 3. Evaluate the groundwater-flow models

There are two models to be reviewed. These include the regional groundwater flow model and a detailed model of the pit area during the dewatering phase and the recovery phase following cessation of dewatering. A working copy of the next-generation models shall be provided to ECO & LGS. We will review the input files to confirm whether the assigned aquifer properties, boundary conditions, sources and sinks correspond to values develop for the conceptual model and whether or not the report accurately portrays these components. A sensitivity analysis will be performed to determine which components of the model have the greatest potential to cause errors in estimating water levels and groundwater flow directions. Depending on the results of the sensitivity analyses, we may alter model boundary conditions or components that influence inter-basin flow.

### Task 4. Reporting

ECO & LGS will compile our findings in a technical report. As a minimum, the report will include:

- A critique of the conceptual model, including our assessment of how well the conceptual model was translated to the numerical models.
- A discussion of model calibration procedures and results.
- A discussion of the results of the sensitivity analyses.
- An assessment as to the ability of the model to predict changes in the groundwater flow regime and changes in water level.

### Task 5. Meetings

ECO & LGS anticipate that three meetings with the Commissioners will be held in Eureka. These include a project kick-off meeting, one meeting mid-way through the project, and one at the conclusion of the project to present our findings. In addition, we anticipate several progress meetings that can be accomplished either via telephone or video conferencing.

### Task 6. Assistance with the NEPA process

ECO & LGS are prepared to assist the County with the NEPA process, as needed. The level of our participation in the process has not been determined at this time. However, we anticipate initiating this task with a meeting with Eureka County's NEPA committee soon after we are authorized to start work.

## Task 7. Expert Witness Services

ECO & LGS will provide expert witness services related to administrative hearings before the Nevada State Engineer. The services include preparation for the hearings and post-hearing document submissions. Work on this task can only be initiated at the request of the Eureka County Board of Commissioners. The level of our participation in the process has not been determined at this time.

### **SCHEDULE**

The proposed schedule provided in the RFQ called for starting work by February 1, 2008 and completing the project within 45 days. Following the recent County Commission meeting, we have had the opportunity to read the *Review of Draft Hydrogeology and Modeling Report for Mt. Hope Project* prepared by Dan Stone of HCltasca (HCltasca, January 11, 2008). Based on his review, we anticipate significant changes to the model and report. As a consequence, we propose that the 45-day review period commence once we receive the revised model and report (probable release date of February 14, 2008). However, prior to obtaining the revised model a copy of the draft model should be provided at the start of work so we can become familiar with the overall model scheme utilizing the various MODFLOW variations that were employed. Furthermore, in order for ECO & LGS to complete our review in the allotted time frame, the supporting materials must be provided by the Mt. Hope consultant team in a timely manner. A list of the references we anticipate they should be able to provide is attached.

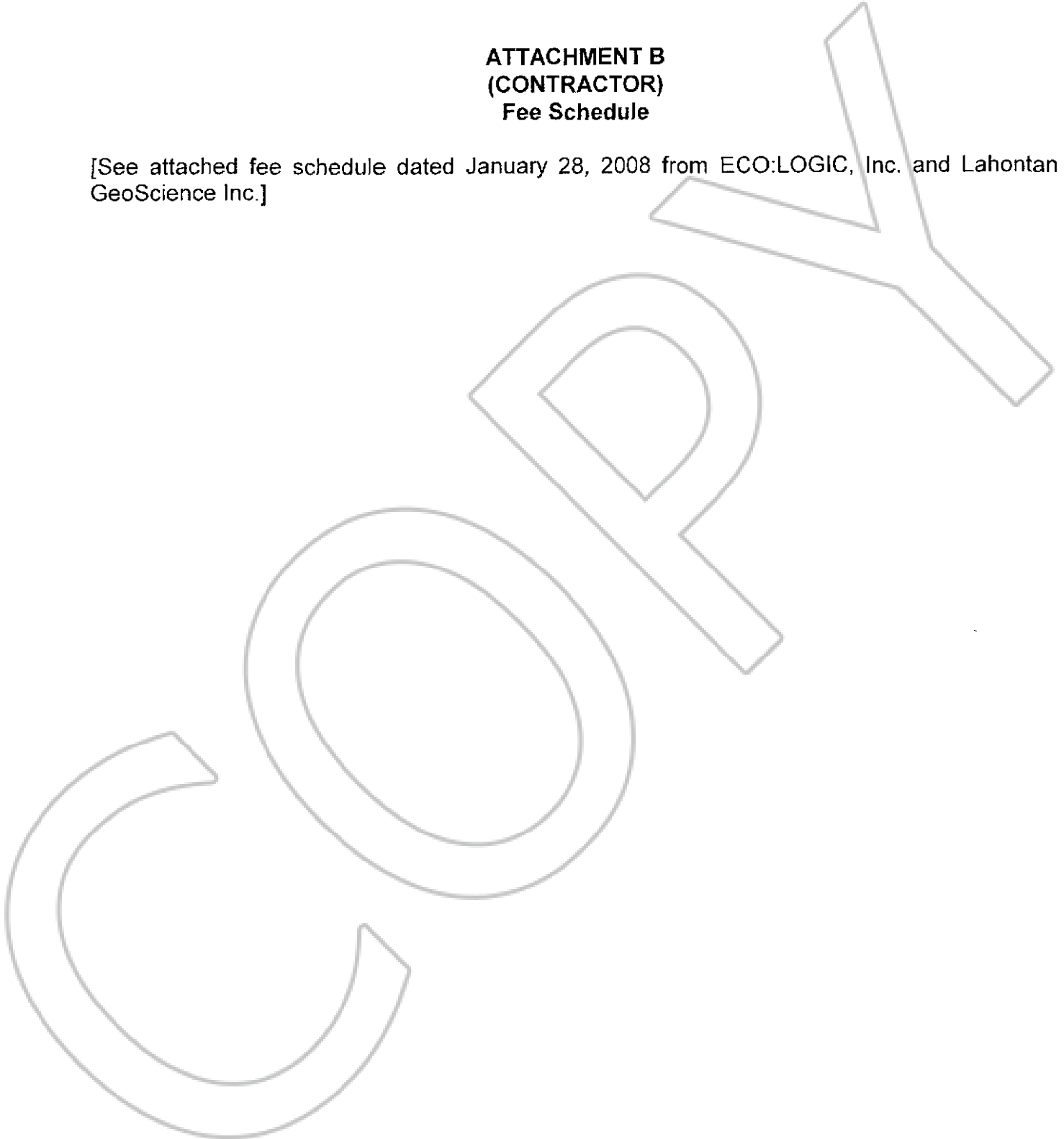
### **FEE**

ECO:LOGIC's and LGS's opinion of the probable cost for the project was developed from our experience reviewing large-scale, complex regional groundwater models and tempered by a cursory review of the draft model report which indicates two models that will be reviewed. The fee will be based on the amount of time and out-of-pocket expenses required to complete the work, and will not exceed \$67,000. Included in this budget is \$5,000 for assistance with the NEPA process (Task 6) and \$20,000 for expert witness services (Task 7). The budget amount will not be exceeded without written authorization from the Commission. In the event that additional work over and above that which is specifically addressed in the Scope of Work is requested, we will provide the Commission with a summary of the anticipated costs associated with the extra work.

The work will be charged at the unit rates in the attached Rate Schedules, with one exception. Round-trip travel from Reno to Eureka will be billed at a maximum of four (4) hours, vehicle mileage and actual expenses (meals, lodging, *etc.*, as necessary).

**ATTACHMENT B  
(CONTRACTOR)  
Fee Schedule**

[See attached fee schedule dated January 28, 2008 from ECO:LOGIC, Inc. and Lahontan GeoScience Inc.]



**Attachment B  
ECO:LOGIC, INC.  
2008 FEE SCHEDULE**

| LABOR CHARGES                   | HOURLY RATE         |
|---------------------------------|---------------------|
| <b>Professional</b>             |                     |
| Principal Engineer              | \$165.00            |
| Managing Engineer               | \$150.00            |
| Supervising Engineer            | \$140.00            |
| Envir. Compliance Manager       | \$140.00            |
| Senior Engineer                 | \$130.00            |
| Senior Electrical Engineer      | \$130.00            |
| Senior SCADA/PLC Programmer     | \$130.00            |
| Chief Hydrogeologist*           | \$130.00 / \$100.00 |
| Senior Hydrogeologist*          | \$120.00 / \$95.00  |
| Assoc. Engineer II              | \$124.00            |
| Assoc. Engineer I               | \$116.00            |
| Engineer                        | \$110.00            |
| Asst. SCADA/PLC Programmer      | \$110.00            |
| Asst. Engineer                  | \$99.00             |
| Junior Engineer                 | \$93.00             |
| Junior Electrical Engineer      | \$93.00             |
| Hydrogeologist I                | \$84.00             |
| <b>Technical</b>                |                     |
| GIS Specialist                  | \$98.00             |
| Senior Designer                 | \$98.00             |
| Designer I                      | \$88.00             |
| Engineering Technician III      | \$82.00             |
| Engineering Technician II       | \$62.00             |
| Engineering Technician I        | \$52.00             |
| Supv. Inspector / Inspector III | \$92.00             |
| Inspector II                    | \$85.00             |
| Inspector I                     | \$80.00             |

Note: Hourly billing rates will be updated annually by ECO:LOGIC, and the revised fees will be in effect as of January 1<sup>st</sup> of each year. The revised rates will be provided at the clients request.

\*Office/Field

\*\*Or current IRS mileage rate



0212646

Book: 480 10/20/2008  
Page: 368 Page: 20 of 26

**Attachment B  
ECO:LOGIC, INC.  
2008 FEE SCHEDULE**

**Administrative**

|              |          |
|--------------|----------|
| Principal    | \$135.00 |
| Secretary II | \$62.00  |
| Secretary I  | \$58.00  |

| <b>OTHER EXPENSES</b>                 | <b>RATE/AMOUNT</b> |
|---------------------------------------|--------------------|
| Vehicle Mileage**                     | \$0.505/mile       |
| CADD / Modeling Equipment             | \$15.00/hour       |
| Outside Services (Subconsultants)     | Cost plus 10%      |
| Reproductions                         | Cost plus 10%      |
| Mini Troll                            | \$115/day          |
| Laptop Computer                       | \$20.00/day        |
| Field pH, E.C., and Temperature Meter | \$12.00/day        |
| Water-level Sounder                   | \$12.00/day        |

Note: Hourly billing rates will be updated annually by ECO:LOGIC, and the revised fees will be in effect as of January 1<sup>st</sup> of each year. The revised rates will be provided at the clients request.

\*Office/Field

\*\*Or current IRS mileage rate



0212646

Book . 480  
Page . 369

10/20/2008  
Page . 21 of 26

| <b>Category</b>                  | <b>Rate/Hr</b> |
|----------------------------------|----------------|
| <b><i>Professional Staff</i></b> |                |
| Expert Witness                   | \$200/hr       |
| Principal                        | \$125-\$175    |
| Project Manager                  | \$95-\$125     |
| Senior Scientist                 | \$95-\$125     |
| Project Scientist                | \$85-\$100     |
| Staff Scientist                  | \$75-\$95      |
| Field Technician                 | \$45-\$65      |
| Administration/Clerical          | \$45           |
| Drafting/GIS                     | \$45           |
|                                  |                |
|                                  |                |
| <b><i>Field Equipment</i></b>    |                |
| Water level meter                | \$20/day       |
| Water properties meter           | \$15/day       |
| Submersible pump                 | \$25/day       |
| PID                              | \$100/day      |
| Level C                          | \$45/day       |
| 4X4 Truck                        | \$85/day       |
| Mileage                          | 51cts/mile     |





September 16, 2008

J.P. Ithurralde, Chairman  
Eureka County Board of Commissioners  
P.O. Box 667  
Eureka, Nevada 89316

RE: Review & Assessment of the Hydrogeology and Numerical Flow Modeling for the Mt. Hope Project, Eureka County, Nevada

Contract Amendment 2

EUCC07-001

Dear Chairman Ithurralde:

As of the end of August 2008, ECO:LOGIC has exhausted the budget of \$67,000 for the review and assessment of the hydrogeology and numerical flow modeling for the Mt. Hope project. The primary reason is that we quite simply underestimated the amount of time and effort it would take to review the models and the associated reports. In addition, we ran into some problems with the software we purchased to provide more useable model graphical output. As it turns out, GMI's consultants had similar problems with the software and ultimately abandoned their attempts to use it as well.

Furthermore, we were asked to provide additional services that were not a part of our original scope of work. These out-of-scope items total \$4,400.92 and included:

- o Providing support to Steve Walker in his review of evapotranspiration. Specifically, we printed large-format copies of aerial photographs, prepared the figure for his technical memorandum (Tech Memo 1) and prepared the draft and final versions of Tech Memo 1 for him. The cost for these services amounted to \$2,726.13.
- o Providing multiple copies of more than 1,000 pages from the references that were submitted during the first data exchange. The cost of the copies was \$1,049.46.
- o Analysis of water samples for stable isotopes from Eureka County wells and evaluation of the analytical data. The associated cost was \$625.33.

The charges accumulated through the end of August 2008 will total \$80,463.26 or \$13,463.26 in excess of our contract amount, of which \$4,400.92 was for out-of-scope services. However, our bill for August 2008 is capped at the contract amount, \$67,000.00, until such time as we receive authorization to exceed the contract amount.

At the onset of the project, our scope of work indicated the level of our participation in the hearing process was not known with any level of certainty. As a result of our in-depth review of GMI's consultants' work we have a better understanding of the level of effort needed to prepare for the hearing. Furthermore, Karen Peterson suggested that we be prepared to attend the hearing in its entirety. Given that the hearing is scheduled to run five days, this amounts to a



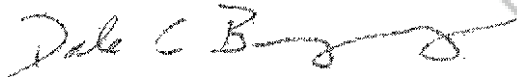
J. P. Ithurrealde  
Eureka County Board of Commissioners  
September 16, 2008  
Page 2

considerable cost item. With this in mind, we request an additional increase in the amount of \$24,620 for work related to preparation for and participation in the hearing process.

In summary, we are requesting a second contract amendment in the amount of \$42,000. A breakdown of our anticipated costs is attached.

Thank you for the opportunity to discuss our revised project costs. If you have any questions or need further information, please do not hesitate to contact me.

Sincerely,



Dale C. Bugenig  
Chief Hydrogeologist

attachment



**Review of Hydrogeology and Numerical Modeling for the Mt. Hope Project  
Contract Amendment 2**

|  |                     |
|--|---------------------|
| Original Contract Amount                     | \$ 60,000.00        |
| Contract Amendment 1                         | \$ 7,000.00         |
| Amended Contract Amount                      | \$ 67,000.00        |
| Charges accumulated through August 31, 2008  | \$ 80,463.26        |
| <b>Amount billed through August 31, 2008</b> | <b>\$ 67,000.00</b> |

Amount over the authorized budget amount through August 31, 2008 ~~\$ 13,463.26~~  
Includes \$4,400.92 of out-of scope work requested

Charges accumulated since September 1, 2008

|                     |           |          |          |                        |
|---------------------|-----------|----------|----------|------------------------|
| Dale Bugenig        |           |          |          |                        |
| 16 hours            | \$ 130.00 | per hour |          | \$ 2,080.00            |
| Lahontan GeoScience |           |          |          |                        |
| 10 hours            | \$ 165.00 | per hour |          | \$ 1,650.00            |
|                     |           |          | Subtotal | <del>\$ 3,730.00</del> |

Anticipated future charges

*Hearing preparation*

|                     |           |          |  |             |
|---------------------|-----------|----------|--|-------------|
| Dale Bugenig        |           |          |  |             |
| 16 hours            | \$ 130.00 | per hour |  | \$ 2,080.00 |
| Lahontan GeoScience |           |          |  |             |
| 36 hours            | \$ 165.00 | per hour |  | \$ 5,940.00 |

*Hearing*

|                     |           |          |  |             |
|---------------------|-----------|----------|--|-------------|
| Dale Bugenig        |           |          |  |             |
| 40 hours            | \$ 130.00 | per hour |  | \$ 5,200.00 |
| Tom Butler          |           |          |  |             |
| 40 hours            | \$ 120.00 | per hour |  | \$ 4,800.00 |
| Lahontan GeoScience |           |          |  |             |
| 40 hours            | \$ 165.00 | per hour |  | \$ 6,600.00 |

J. P. Ithurrealde  
Eureka County Board of Commissioners  
September 16, 2008  
Page 4

Subtotal \$ 24,620.00

Total \$ 41,813.26

Total requested for Contract Amendment 2 \$42,000.00

COPY