

AGREEMENT FOR SERVICES # 100-S0911

THIS AGREEMENT made and entered by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County") and R. R. Donnelley, a Delaware corporation duly qualified to conduct business in the State of California, whose principal place of business is 1200 Lakeside Drive, Bannockburn, IL 60015-1243, and whose local place of business is 1765 Challenge Way, Suite 220, Sacramento, CA 95815-5005 (hereinafter referred to as "Contractor");

WITNESSETH

WHEREAS, County has determined that it is necessary to obtain a Contractor to provide printing, programming, and artwork to produce and mail annual secured and unsecured property tax bills for the Treasurer/Tax Collector: and

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

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

WHEREAS, County has determined that the provision of these services provided by Contractor is in the public's best interest, and that these services are more economically and feasibly performed by outside independent Contractors as well as authorized by El Dorado County Charter, Section 210 (b) (6) and/or Government Code 31000;

NOW, THEREFORE, County and Contractor mutually agree as follows:

ARTICLE I

Scope of Services: Contractor agrees to furnish personnel and equipment necessary to provide printing, programming, and artwork to produce and mail annual secured and unsecured property tax bills for the Treasurer/Tax Collector. Services shall include, but not be limited to, those set forth in Exhibit "A", marked "Scope of Services", incorporated herein and made by reference a part hereof.

ARTICLE II

Confidentiality: Contractor acknowledges that by virtue of the work performed under this Agreement, Contractor will come into possession of confidential information, including the names and addresses of various individuals. The Contractor shall protect from unauthorized disclosure names and other identifying information of such persons. The Contractor shall not use such information for any purpose other than carrying out the Contractor's obligations under this Agreement. The Contractor shall promptly transmit to the County all requests for disclosure of such information. The Contractor shall not disclose, except as otherwise specifically permitted by this Agreement or authorized by the County, any such information to anyone other than the County, except when subpoenaed by a court.

ARTICLE III

Term: This Agreement shall become effective when fully executed by both parties hereto and shall cover the period of July 1, 2008 through June 30, 2009.

ARTICLE IV

Compensation for Services: For services provided herein, County agrees to pay Contractor within thirty (30) days following completion of work and the County's receipt and approval of itemized invoice(s) identifying services rendered. For the purposes hereof, the billing rates shall be as follows:

Secured Regular Bill.....	\$.330 per piece
Secured Cortac Statement.....	\$.253 per piece
Unsecured Bill.....	\$.616 per piece

The total amount of this Agreement, including sales of 7.5%, shall not exceed \$55,000.00.

ARTICLE V

Changes to Agreement: This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by July authorized officers of the parties hereto.

ARTICLE VI

Contractor to County: It is understood that the services provided under this Agreement shall be prepared in and with cooperation from County and its staff. It is further agreed that in all matters pertaining to this Agreement, Contractor shall act as Contractor only to County and shall not act as Contractor to any other individual or entity affected by this Agreement nor provide information in

any manner to any party outside of this Agreement that would conflict with Contractor's responsibilities to County during term hereof.

ARTICLE VII

Assignment and Delegation: Contractor is engaged by County for its unique qualifications and skills as well as those of its personnel.

Contractor shall not subcontract, delegate or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County.

ARTICLE VIII

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

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

ARTICLE IX

Fiscal Considerations: The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, El Dorado County is subject to the provisions of Article XVI, Section J 8 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment or services not budgeted in a given fiscal year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products or equipment subject herein. Such notice shall become effective upon the adoption of a final budget, which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce, or order a reduction, in the budget for any County department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of the County, this Agreement may be deemed to be cancelled in its entirety subject to payment for services performed prior to cancellation.

ARTICLE X

Default, Termination, and Cancellation:

- A. **Default:** Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (time to cure), then such party shall be in default. The time to cure may be extended at the discretion of the party giving notice.

Any extension of time to cure must be in writing, prepared by the party in default for signature by the party giving notice and must specify the reason(s) for the extension and the date on which the extension of time to cure expires.

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

- B. **Bankruptcy:** This Agreement, at the option of the County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Contractor.
- C. **Ceasing Performance:** County may terminate this Agreement in the event Contractor ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. **Termination or Cancellation without Cause:** County may terminate this Agreement in whole or in part upon seven (7) calendar days written notice by County without cause. If such prior termination is effected. County will pay for satisfactory services rendered prior to the effective dates as set forth in the Notice of Termination provided to Contractor. and for such other services. which County may agree to in writing as necessary for contract resolution. In no event. However, shall County be obligated to pay more than the total amount of the contract. Upon receipt of a Notice of Termination. Contractor shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination. unless the notice directs otherwise. In the event of termination for default. County reserves the right to take over and complete the work by contract or by any other means.

ARTICLE XI

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

COUNTY OF EL DORADO
TREASURER/TAX COLLECTOR
360 FAIR LANE
PLACERVILLE, CA 95667
ATTN: LOUISE GRESHAM, ASSISTANT TREASURER/TAX COLLECTOR
or to such other location as the County directs.

with a carbon copy to

COUNTY OF EL DORADO
CHIEF ADMINISTRATIVE OFFICE
PROCUREMENT AND CONTRACTS DIVISION
330 FAIR LANE
PLACERVILLE, CA 95667
ATTN: BONNIE H. RICH, PURCHASING AGENT

Notices to Contractor shall be addressed as follows:

R. R. DONNELLEY
2295 CHALLENGE WAY. #100
SACRAMENTO, CA 95833
ATTN: MARC SACKMANN
or to such other location as the Contractor directs.

with a carbon copy to

COUNTY OF EL DORADO
CHIEF ADMINISTRATIVE OFFICE
PROCUREMENT AND CONTRACTS DIVISION
330 FAIR LANE
PLACERVILLE, CA 95667
ATTN: BONNIE H. RICH, PURCHASING AGENT

ARTICLE XII

Indemnity: Each Party, (each, an "Indemnifying Party") will indemnify, defend and hold harmless the other Party and its respective successors and assigns and officers, directors, employees and agents (each, and Indemnitee) from and against any and all third party claims, losses, damages, liabilities, obligations, penalties and interest, demands actions and expenses (including, without limitation, settlement costs and any reasonable legal or accounting expenses) incurred by any Indemnitee to the extent caused by: (i) the willful misconduct of the Indemnifying Party or its employees, subcontractors or representatives in the performance of its obligations hereunder; (ii) bodily injury, including death or damage to tangible personal or real property which is directly caused by the Indemnifying Party or its employees, subcontractors or representatives, or (iii) consequential or economic damage which is directly caused by the Indemnifying Party or its employees, subcontractors or representatives.

County hereby represents and warrants to Contractor that County is entitled to use any trademark, logo or copyright embodied in or requested by it to be included in any products (collectively, the "**Marks**") and that the use of such Marks by Contractor will not infringe the proprietary rights of a third party. County shall defend, indemnify and hold Contractor harmless against any and all claims alleging that the manufacture, sale or use of such products violates any state or federal law or infringes any proprietary right of a third party.

ARTICLE XIII

Warranty:

- (a) Contractor warrants that the products are free from defect in material and workmanship and conform substantially to the specifications that are a part of this Agreement. Contractor does not warrant that its products are fit, legally or otherwise, for their intended purpose or use. Contractor, at its option, shall replace or rework any defective products or return the portion of the purchase price applicable to the defective products.
- (b) Contractor shall use due care in processing all data submitted to it and in performing and providing services. Data will be processed in accordance with generally accepted data processing procedures. If computer services are interrupted or delayed for any reason, Contractor will resume the computer services as soon as reasonably practical. In the event that errors or omissions in computer services are the direct fault of Contractor, Contractor will correct any errors of which Contractor receives timely notice at no additional cost to County. Where correction is impossible or impractical, County shall be entitled to a refund for that portion of the computer services or products which contain the errors.
- (c) EXCEPT FOR ANY EXPRESS WARRANTY SET FORTH HEREIN, CONTRACTOR MAKES NO, AND DISCLAIMS ALL, WARRANTIES, REPRESENTATIONS OR GUARANTEES OF ANY KIND OR NATURE, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE OR USE, AND WARRANTIES OF UNINTERRUPTED OR ERROR-FREE PERFORMANCE OF PRODUCTS OR SERVICES. ALL THIRD PARTY MATERIALS AND HARDWARE PROVIDED BY RR DONNELLEY ARE PROVIDED "AS-IS" WITH NO REPRESENTATIONS OR WARRANTIES WHATSOEVER."

ARTICLE XIV

Limitation of Liability:

Contractor's maximum liability for any and all claims arising directly or indirectly from the performance of its obligations under the Agreement, whether resulting from Contractor's negligence or otherwise, shall not in the aggregate exceed Fifty Thousand dollars (\$50,000). IN NO EVENT SHALL CONTRACTOR BE LIABLE TO COUNTY OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, LOSS OF PROFITS, LOSS OF USE OR DATA OR INTERRUPTION OF BUSINESS COSTS OF SUBSTITUTE PRODUCTS OR

SERVICES, WHETHER SUCH DAMAGES OR LOSSES ARE ALLEGED IN TORT (INCLUDING NEGLIGENCE), CONTRACT OR INDEMNITY, EVEN IF CONTRACTOR OR ITS AGENTS WERE ADVISED OR AWARE OF THE LIKELIHOOD OF SUCH DAMAGES OR LOSSES OCCURRING.

ARTICLE XV

Insurance: Contractor shall provide proof of a policy of insurance satisfactory to the El Dorado County Risk Manager and documentation evidencing that Contractor maintains insurance that meets the following requirements:

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Contractor as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage.
- C. Automobile Liability Insurance of not less than \$1,000,000.00 is required in the event motor vehicles are used by the Contractor in the performance of the Agreement.
- D. In the event Contractor is a licensed professional, and is performing professional services under this Agreement, professional liability (for example, malpractice insurance) is required with a limit of liability of not less than \$1,000,000.00 per occurrence.
- E. Contractor shall furnish a certificate of insurance satisfactory to the El Dorado County Risk Manager as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to Risk Management, or be provided through partial or total self-insurance likewise acceptable to Risk Management.
- G. Contractor agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Contractor agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and Contractor agrees that no work or services shall be performed prior to the giving of such approval. In the event the Contractor fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.
- H. The certificate of insurance must include the following provisions stating that:
 - 1. The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to County, and;
 - 2. The County of El Dorado, its officers, officials, employees, and volunteers are

included as additional insured, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.

- I. The Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees, and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Contractor's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
- N. In the event Contractor cannot provide an occurrence policy, Contractor shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- O. Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with Risk Management, as essential for the protection of the County.

ARTICLE XVI

Interest of Public Official: No official or employee of County who exercises any functions or responsibilities in review or approval of services to be provided by Contractor under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any such official or employee of County have any interest, direct or indirect, in this Agreement or the proceeds thereof.

ARTICLE XVII

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

Contractor further covenants that in the performance of this Agreement no person having any such interest shall be employed by Contractor.

ARTICLE XVIII

California Residency (Form 590): All independent Contractors providing services to the County must file a State of California Form 590, certifying their California residency or, in the case of a corporation, certifying that they have a permanent place of business in California. The Contractor will be required to submit a Form 590 prior to execution of an Agreement or County shall withhold seven (7) percent of each payment made to the Contractor during term of the Agreement. This requirement applies to any agreement/contract exceeding \$1,500.00.

ARTICLE XIX

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

ARTICLE XX

Administrator: The County Officer or employee with responsibility for administering this Agreement is Louise Gresham, Assistant Treasurer/Tax Collector, or successor.

ARTICLE XXI

Authorized Signatures: The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

ARTICLE XXII

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

ARTICLE XXIII

Venue: Any dispute resolution action rising out of this Agreement, including, but not limited to, litigation, mediation or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California. Contractor waives any removal rights it might have under Code of Civil Procedure Section 394.

ARTICLE XXIII

Entire Agreement: This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral Agreements or understandings.

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REQUESTING CONTRACT ADMINISTRATOR CONCURRENCE:

By: *Louise Gresham* Dated: 7/10/08
Louise Gresham
Assistant Treasurer-Tax Collector
Treasurer/Tax Collector

REQUESTING DEPARTMENT HEAD CONCURRENCE:

By: *C. L. Rafferty* Dated: 7-11-08
C. L. Rafferty
Treasurer/Tax Collector

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

-- COUNTY OF EL DORADO --

Dated: _____

By: _____

Chairman
Board of Supervisors
"County"


ATTEST:
Cindy Keck, Clerk
of the Board of Supervisors

By: _____ Date: _____
Deputy Clerk

--CONTRACTOR--

Dated: 7.9.08

MOORE WALLACE NORTH AMERICA INC
R R DONNELLEY

By: 
Robert J. Bott
VP and General Manager
"Contractor"

By: 
Asst - Corporate Secretary

Dated: 7/7/08