

ORIGINAL

Bender Rosenthal, Inc. Appraisal Services Agreement

AGREEMENT FOR SERVICES # *AGMT 09-52859*

THIS AGREEMENT, made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County"), and Bender Rosenthal, Inc., a corporation duly qualified to conduct business in the State of California, whose principal place of business is 4400 Auburn Boulevard, Suite 102, Sacramento, California 95841, (hereinafter referred to as "Consultant");

RECITALS

WHEREAS, County has determined that it is necessary to obtain an Appraisal Consultant to assist its Department of Transportation with respect to right of way appraisals and property acquisition and relocation services;

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

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

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

NOW, THEREFORE, for and in consideration of the covenants and conditions set forth herein, County and Consultant mutually agree as follows:

ARTICLE I

Scope of Services:

- A. Consultant shall perform all professional and technical services, work, and tasks required to accomplish the objectives set forth herein, for County's Department of Transportation, and shall provide and make available Consultant's own personnel, subconsultants, materials, and equipment necessary to perform the services, work, and tasks designated herein (hereinafter referred to as "Services"). Services shall include, but not be limited to:
 1. Planning: Reviewing environmental impacts and public involvement, providing right of way cost analyses, ownership and title data, certification requirements, identification requirements, and identification of acquisition status of necessary rights of way for the purpose of advancing projects to construction;

2. Appraisals: Providing opinions of value supported by presentations of sufficient relevant market information, including valuation data, and the appraiser's analysis of that information;
3. Property Acquisition: Providing assistance to County with public contact, coordination with title companies and other agencies in the preparation of documentation needed to fulfill contractual obligations between County and property owners, and assistance with eminent domain proceedings;
4. Relocation Assistance: Performing tasks related to relocation assistance in connection with pre-condemnation proceedings as assigned;
5. Proceedings: Providing testimony regarding the services performed, and expert testimony, for any subsequent eminent domain or inverse condemnation proceedings that pertain to or relate to the services performed herein.
6. Additional Requirements:
 - a. All deliverables shall be in duplicate.
 - b. Consultant shall provide a Caltrans Title VI Brochure to each property owner upon initiation of the appraisal process.
 - c. If a "Full Take" acquisition is involved, Consultant shall provide a copy of the Caltrans Relocation Guide to each property owner upon initiation of the appraisal process.
 - d. All appraisals require an "Administrative Draft" to be submitted to the Right of Way Manager for review, prior to the production of the final report.
 - e. All appraisals must be individually bound appraisal reports (no "Master Appraisals").

B. County shall provide Consultant the following, where applicable, in connection with the services to be performed under this Agreement:

1. Copies of any maps, drawings, exhibits, legal descriptions, title reports or other documents pertaining to the project that County may have in its possession.
2. Interface between Consultant and other County departments, including the County Assessor, Recorder and Surveyor Offices.
3. Permits or rights of entry licenses necessary for Consultant to perform its work on the affected parcels.
4. Right of way stake-outs of the affected properties when requested.

- C. **Task Orders Required:** Before proceeding with any work under this Agreement, the parties will identify the specific services to be provided for each assignment in individual Task Orders to be issued in accordance with this Agreement. The specific services for each assignment shall be determined at a meeting or telephone conference between Consultant and County's Contract Administrator, or designee, to discuss the needs, applicable standards, required deliverables, specific Consultant staff, subconsultants (if required), any task-related mileage budget, if applicable, and any necessary permits required on a task-by-task basis. Following the meeting, Consultant shall provide the Contract Administrator with a written scope of work, a schedule including a list of tasks with completion dates and a target completion date for the overall scope of work, and a not-to-exceed cost to complete the work (resulting in a Task Order), which shall require written approval, authorization, and written notification to proceed from County's Contract Administrator, prior to commencement of the work. No payment will be made for any work performed prior to the approval and full execution of each Task Order, and no payment will be made for amounts in excess of the not-to-exceed amount of any Task Order.

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

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

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

- D. **Deliverables:** Deliverables will be specified by County for each individual assignment, and specific task assignments and work requirements will be individually identified on a project by project basis. Failure to submit the required deliverables in the format specified shall be grounds for termination of the Agreement, as provided in Article XVI, Default, Termination, and Cancellation herein or for delay or cessation of payments by County as provided in Section F of Article III, Compensation for Services hereunder.
- E. **Consultant Reporting:** Reports on services rendered by Consultant shall be submitted to County's Contract Administrator in the format, and under the conditions specified below in Article IV, Progress Reports or as otherwise directed in writing by the Contract Administrator.

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

ARTICLE II

Term: This Agreement shall become effective when fully executed by the parties hereto and shall expire three (3) years thereafter, or upon completion of all issued Task Orders, whichever is later.

ARTICLE III

Compensation for Services:

- A. For services provided herein, including all deliverables described in the individual Task Orders issued pursuant to this Agreement, and including the progress reports required by Article IV, Progress Reports, below, County agrees to pay Consultant within thirty (30) days following County's receipt and approval of itemized invoices detailing the services rendered.
- B. For the purposes hereof, billing rates shall be in accordance with Exhibit A, marked "Fee Schedule," incorporated herein and made by reference a part hereof. Subconsultant services, if any are authorized herein, shall be invoiced at Consultant's cost, without markup, for the services rendered. Any invoices that include subconsultant costs shall be accompanied by backup documentation to substantiate Consultant's cost for the subconsultant services being billed.
- C. Reimbursement for mileage expenses for Consultant and for any subconsultants authorized under this Agreement, if applicable, shall not exceed the rates to be paid to County employees under the current Board of Supervisors Travel Policy at the time the mileage expenses are incurred. Any reimbursements for mileage expenses will only be made if such expenses are included in the budget of an approved and fully executed Task Order issued pursuant to this Agreement.

Travel costs (i.e., overnight lodging, meals, parking, airfare, bridge tolls and other per diem expenses) will not be reimbursed for any services performed under this Agreement by Consultant or by any authorized subconsultants.
- D. The total amount of this Agreement, inclusive of all costs and Task Orders, and inclusive of all work of subconsultants and expenses shall not exceed \$100,000.
- E. Itemized invoices shall follow the format specified by County and shall reference this Agreement number and the County-supplied Task Order number both on their faces and on any enclosures or backup documentation. Consultant shall bill County for only one Task Order per invoice. Consultant shall attach copies of any progress reports required under the provisions of Article IV, Progress Reports, that relate to the services being billed, as backup documentation to any invoices submitted for payment under the terms of this Agreement. Copies of documentation attached to

invoices shall reflect Consultant's charges for the specific services billed on those invoices. Invoices shall be mailed to County at the following address:

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

or to such other location as County directs.

- F. In the event that Consultant fails to deliver, in the format specified, the deliverables required under this Agreement, County at its sole discretion may delay payment for the period of time of the delay in receiving the deliverables in proper form, may cease all payments until such time as the required deliverables are received, or may terminate the Agreement as set forth in Article XVI, Default, Termination, and Cancellation below.

ARTICLE IV

Progress Reports: Upon issuance of a Task Order, Consultant shall submit progress reports to the Contract Administrator at intervals that are commensurate with the requirements of the tasks and the items of work being performed and based upon a mutually agreeable schedule. At a minimum, Consultant shall submit progress reports once per month. The reports shall be sufficiently detailed for the Contract Administrator to determine if Consultant is performing to expectations and is on schedule, to provide communication of interim findings, and to afford occasions for airing difficulties or special circumstances encountered so that remedies can be developed. County's review of these reports will ensure that Consultant's work meets a level of acceptability as determined by the Contract Administrator and Consultant shall be required to modify its work as necessary to meet that level of acceptability as defined by the Contract Administrator. Separate detail shall be provided for each ongoing Task Order. Progress reports shall include the total number of hours worked by Consultant and any authorized subconsultants and shall include descriptions of the tasks and work performed, including a description of any deliverables submitted during the reporting period and the anticipated tasks, work and deliverables proposed for the subsequent reporting period. Any invoices submitted by Consultant for payment under the terms of this Agreement shall include copies of the progress reports that relate to the services being billed on those invoices.

ARTICLE V

Prevailing Wage: In the event County requires Consultant's services on projects involving local, state and/or federal funds to which prevailing wage requirements may apply, Consultant and any subconsultants authorized pursuant to this Agreement shall comply with all applicable state and federal prevailing wage rates, statutes, rules and regulations then in effect. In the event of conflict between applicable federal and state provisions, the higher prevailing wage rate will apply. Consultant and its subconsultants shall use the general prevailing wage rates determined by the Director of Industrial Relations for the county in which the work is to be done, which are available at the offices of the District Director of Transportation for the district in which the work is situated. Changes, if any, to the general prevailing wage rates will be available at the same location.

Federal minimum wage rates are determined by the United States Secretary of Labor and may be examined at the office described above. Future effective general prevailing wage rates which have been predetermined and are on file with the California Department of Industrial Relations are referenced but not printed in the general prevailing wage rates.

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

As required under the provisions of Labor Code Section 1776, Consultant and all subconsultants authorized under this Agreement shall keep accurate payroll records. Certified copies of all payroll records shall be made available for inspection at all reasonable hours at Consultant's principal office.

ARTICLE VI

Standards For Work: All services rendered shall be performed in accordance with the guidelines set forth in the Caltrans Right of Way Manual; the Federal Highway Administration (FHWA) Right of Way Project Development Guide; all other applicable Caltrans, FHWA, state and local public agency guidelines; federal, state and local laws, including but not limited to, applicable provisions of the California Business and Professions Code, and accepted industry standards.

Consultant has full responsibility for the accuracy and completeness of the deliverables, reports and such other documents that may be required for the tasks or items of work assigned. Assistance, cooperation and oversight by County, Caltrans, FHWA or other regulatory agencies will not relieve Consultant of this professional responsibility.

All work must be performed and work products prepared in a format and manner customarily anticipated by the appropriate approving agencies.

ARTICLE VII

Inspection of Work: Consultant shall permit appropriate County representatives to review and inspect Consultant's work on each applicable project or task at all reasonable times during the performance of this Agreement.

ARTICLE VIII

Safety: Consultant and any subconsultants authorized under this Agreement shall comply at all times with Federal and State Occupational Safety and Health Administration regulations regarding safety equipment or procedures necessary for the performance of all services under this Agreement.

ARTICLE IX

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

ARTICLE X

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

ARTICLE XI

Changes to Agreement:

- A. This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto. There shall be no change in Consultant's Project Manager or subconsultants, which shall be established at the issuance of individual Task Orders, without prior written approval by County's Contract Administrator.
- B. Should changes in the Scope of Services occur such that additional services and compensation beyond those contemplated by the parties under this Agreement are required, Consultant shall immediately notify the Contract Administrator in writing of those conditions. The additional work shall not be performed until County authorization is received, and an appropriate amendment is fully executed by the parties. No reimbursement for any additional services will be paid to Consultant without County's prior written authorization/amendment.

ARTICLE XII

Consultant to County:

- A. Consultant is engaged by County for its unique qualifications and skills as well as those of its personnel. Consultant shall perform the services contemplated herein with resources available within its own organization, and no portion of the work pertinent to this Agreement shall be subcontracted, delegated or assigned, in whole or in part, without written authorization by the Contract Administrator. Notwithstanding this Article, Consultant is authorized to utilize the specific subconsultants that may be authorized in individual Task Orders issued pursuant to this Agreement, for the particular tasks, work and deliverables identified therein.

Said authorization and approval shall be sought and obtained by Consultant prior to subconsultants' commencement of any work under this Agreement. Notwithstanding any provision to the contrary, at no time shall County be obligated to pay separately for subconsultant services. Consultant shall require each subconsultant, to the extent of the work to be performed by the subconsultant, to be bound to Consultant by the terms of this Agreement and to assume toward Consultant all of the obligations and responsibilities that Consultant, by this Agreement, assumes toward County.

- B. Consultant shall furnish, at Consultant's own expense, all materials and equipment necessary to carry out the terms of this Agreement. Consultant shall be liable for any personal injury or property damage resulting from the use, misuse or failure of such equipment, and shall indemnify and hold County harmless, and defend County in accordance with the indemnity provisions provided in Article XVIII, Indemnity of this Agreement.
- C. No sums due pursuant to this Agreement shall be assigned, mortgaged or hypothecated in any respect without the express written consent of the Contract Administrator. Notice of any such requested assignment or hypothecation shall be furnished promptly to the Contract Administrator.
- D. In all matters pertaining to this Agreement, Consultant shall act as Consultant only to County and shall not act as Consultant to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with Consultant's responsibilities to County during the term hereof.

ARTICLE XIII

Confidentiality and Ownership of Data:

- A. Consultant and any subconsultants authorized under this Agreement shall maintain the confidentiality and privileged nature of all records, including billing records, together with any knowledge therein acquired, in accordance with all applicable state and federal laws and regulations, as they may now exist or may hereafter be amended or changed. Consultant, and all Consultant's staff, employees, subconsultants and representatives, shall not use or disclose, directly or indirectly, at any time, any said confidential information, other than to County's Department of Transportation for the purpose of, and in the performance of, this Agreement. This confidentiality provision shall survive after the expiration or earlier termination of this Agreement.
- B. Upon completion or earlier termination of services under this Agreement, or upon the completion or earlier termination of services provided in accordance with individual Task Orders issued pursuant to this Agreement, ownership and title to all appraisals, reports, documents, maps, specifications, estimates, and similar documents produced as part of this Agreement will automatically be vested in County, and no further agreement will be necessary to transfer ownership to County. Consultant shall furnish County all data, including data stored in electronic format, needed to complete the transfer of ownership and possession to County.

- C. All financial, statistical, personnel, technical or other data and information relative to County operations, which is designated confidential by County and made available to Consultant in order to carry out the services contemplated under this Agreement shall be protected by Consultant and any subconsultants authorized under this Agreement from unauthorized use or disclosure.
- D. Permission granted by County to disclose information on one occasion or at public hearings held by County relating to this Agreement shall not authorize Consultant or any subconsultants authorized under this Agreement to further disclose such information or disseminate the same on any other occasion.
- E. Consultant and any subconsultants authorized under this Agreement shall not comment publicly to the press or any media regarding this Agreement or County's actions on the same, except to County staff, Consultant's own personnel involved in the performance of this Agreement, at public hearings or in response to questions from County's Board of Supervisors.
- F. Consultant and any subconsultants authorized under this Agreement shall not issue any news release or public relations item of any nature whatsoever regarding services performed or to be performed under this Agreement without prior review of the contents thereof by County and receipt of the Contract Administrator's written permission.

ARTICLE XIV

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

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

ARTICLE XV

Fiscal Considerations: The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, County is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment or services not budgeted in a given year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

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

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

ARTICLE XVI

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 in which the extension of Time to Cure expires.

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

- B. **Bankruptcy:** This Agreement, at the option of County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Consultant.
- C. **Ceasing Performance:** County may terminate this Agreement in the event Consultant ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. County may terminate this Agreement or any Task Order issued pursuant to this Agreement, in whole or in part upon seven (7) calendar days' written notice by County for any reason. If such prior termination is effected, County will pay for satisfactory services rendered prior to the effective dates, as set forth in the Notice of Termination provided to Consultant, and for such other services which County may agree to in writing as necessary for contract resolution. In no event, however, shall County be obligated to pay more than the not-to-exceed amount of the Task Order or the total amount of the contract, as applicable. Upon receipt of a Notice of Termination, Consultant shall promptly discontinue all services affected, as of the

effective date of termination set forth in such Notice of Termination, unless the Notice directs otherwise. In the event of termination for default, County reserves the right to take over and complete the work by contract or by any other means.

- E. Cancellation: Notwithstanding any other provision to the contrary, County may cancel this Agreement and have no further obligation hereunder as set forth in Article XV, Fiscal Considerations above.
- F. Completion of Work: In the event of termination of the Agreement, County reserves the right to take over and complete any work, service, or task by contract or by other means.

ARTICLE XVII

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

To County:

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

With a Copy To:

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

Attn.: Peter M. Feild,
Right of Way Program Manager

Attn: Tim C. Prudhel,
Contract Services Officer

or to such other location as County directs.

Notices to Consultant shall be addressed as follows:

Bender Rosenthal, Inc.
4400 Auburn Boulevard, Suite 102
Sacramento, California 95841

Attn.: Cydney Bender Reents,
President

or to such other location as Consultant directs.

ARTICLE XVIII

Indemnity: To the fullest extent allowed by law, Consultant shall defend, indemnify, and hold County harmless against and from any and all claims, suits, losses, damages, and liability for damages of every name, kind, and description, including attorneys' fees and costs incurred, brought for, or on account of, injuries to, or death of, any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to, or in any way arise out of, or are connected with Consultant's services, operations or performance hereunder,

regardless of the existence or degree of fault or negligence on the part of County, Consultant, subcontractor(s) and employee(s) of any of these, except for the sole, or active negligence of County, its officers and employees, or as expressly provided by statute. This duty of Consultant to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

ARTICLE XIX

Cooperation:

- A. Each party shall cooperate with the other in the defense of any claim or legal proceeding brought by a third party involving this Agreement and each party agrees to make its personnel available for consultation with the other for testimony, if necessary, at depositions and at trial or arbitration proceedings.
- B. Any consultation for expert testimony that may be required by County not part of the indemnity provisions, now or in the future, will be reimbursed in accordance with the rates specified in Exhibit A hereto.

ARTICLE XX

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

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Consultant as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
- C. Automobile Liability Insurance of not less than \$1,000,000 is required in the event motor vehicles are used by Consultant in performance of the Agreement.
- D. Professional Liability Insurance is required with a limit of liability of not less than \$1,000,000.
- E. Consultant shall furnish a certificate of insurance satisfactory to County's Risk Management Division as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to County's Risk Management Division, or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.
- G. Consultant agrees that the insurance required herein shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Contract, Consultant shall immediately provide a new certificate of insurance as evidence of the required insurance coverage. In the event Consultant fails to keep in effect at all times insurance coverage as

herein provided, County may, in addition to any other remedies it may have, terminate this Contract upon the occurrence of such event. New certificates of insurance are subject to the approval of County's Risk Management Division.

- H. The certificate of insurance must include the following provisions stating that:
 - 1. The insurer will not cancel the insured's coverage without 30-day prior written notice to County; and
 - 2. The County of El Dorado, its officers, officials, employees and volunteers are included as additional insured, but only insofar as the operations under this Agreement are concerned. This provision shall apply to all general and excess liability insurance policies.
- I. Consultant's insurance coverage shall be primary insurance as respects County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, employees, or volunteers shall be in excess of Consultant's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to, and approved, by County. At the option of County, either: The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects County, its officers, officials, employees, and volunteers; or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to County, its officers, officials, employees or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Consultant's obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.
- N. In the event Consultant cannot provide an occurrence policy, Consultant shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- O. The certificate of insurance shall meet such additional standards as may be determined by the contracting County department, either independently or in consultation with County's Risk Management Division as essential for protection of County.

In addition, Consultant shall ensure that all subconsultants authorized pursuant to this Agreement shall maintain workers' compensation, general liability, automobile liability and

professional liability insurance as specified above and shall provide County with proof of same.

ARTICLE XXI

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

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

ARTICLE XXIII

Prohibition on Proprietary Interests:

- A. Consultant acknowledges that the services called for may involve appraisal activity performed in accordance with the standards set forth in this Agreement, including for the purpose of establishing fair and just compensation to property owner(s) in accordance with California eminent domain law, and that in order to fulfill the intent and purpose of this Agreement, Consultant and any subconsultant authorized under this Agreement must remain disinterested in property pertaining to or related to the services that Consultant or any subconsultant performs under this Agreement. Consultant warrants and represents that by signature of this Agreement, it: 1) currently does not have, nor will it acquire, any interest in the property related to the services performed; 2) does not have, nor will it acquire, any interest in or share in any sales commission generated by the transaction for which appraisal services are performed; and, 3) does not have, nor will it pursue or acquire, any agreement or understanding with any person or selling agency for a commission, percentage, brokerage, or contingency fee on behalf of itself, or said person or selling agency.

- B. In the event that Consultant or any subconsultant violates this Article, in addition to all other remedies that County has pursuant to the provisions of this Agreement, and/or applicable law, County shall have the right, at its option and in its sole discretion, to rescind and annul this Agreement without liability, and to pay for only non-appraisal related services performed under this Agreement, if any, or to terminate the Agreement and offset payment for the value of the services performed by the recovery of the full amount of any commission, percentage, brokerage, or contingency fee, as well as damages suffered by County.

Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this Article.

ARTICLE XXIV

Nondiscrimination:

- A. County may require Consultant's services on projects involving funding from various state and/or federal agencies, and as a consequence, Consultant and any subconsultant authorized under this Agreement shall comply with all applicable nondiscrimination statutes and regulations during the performance of this Agreement including but not limited to the following: Consultant and its employees, subconsultants and representatives shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age, or sex; Consultant and its subconsultants shall, unless exempt, comply with the applicable provisions of the Fair Employment and Housing Act (Government Code, Sections 12900 et seq.) and applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Sections 7285.0 et seq.); the applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations incorporated into this Agreement by reference and made a part hereof as if set forth in full; and Title VI of the Civil Rights Act of 1964, as amended. Consultant and its employees and representatives shall give written notice of their obligations under this clause as required by law.
- B. Where applicable, Consultant shall include the nondiscrimination and compliance provisions in any of its agreements that affect or are related to the services performed herein.
- C. Consultant's signature herein shall provide any certifications necessary under the federal laws, the laws of the State of California, including but not limited to Government Code Section 12990 and Title 2, California Code of Regulations, Section 8103.

ARTICLE XXV

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

ARTICLE XXVI

Taxpayer Identification Number (Form W-9): Any independent contractor or corporation providing services to County must file a Department of the Treasury Internal Revenue Service Form W-9, certifying its Taxpayer Identification Number.

ARTICLE XXVII

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

ARTICLE XXVIII

California Forum and Law: Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.

ARTICLE XXIX

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

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

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

ARTICLE XXX

Contract Administrator: The County Officer or employee with responsibility for administering this Agreement is Peter M. Feild, Right of Way Program Manager, Department of Transportation, or successor.

ARTICLE XXXI

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

ARTICLE XXXII

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 XXXIII

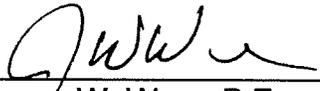
Entire Agreement: This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties, and they incorporate or supersede all prior written or oral agreements or understandings. Consultant acknowledges and

represents that no representations, inducements, promises or agreements have been made by County, its officials, employees, or authorized representatives which are not contained in this Agreement, and that no other statement, promise, or agreement not contained herein will be valid and binding.

CONTRACT ADMINISTRATOR CONCURRENCE:

By:  Dated: 1/25/10
Peter M. Feild
Right of Way Program Manager
Department of Transportation

REQUESTING DEPARTMENT CONCURRENCE:

By:  Dated: 1/26/10
James W. Ware, P.E.
Director of Transportation

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

-- COUNTY OF EL DORADO --

By: _____

Dated: _____

Board of Supervisors
"County"

Attest:

Suzanne Allen de Sanchez
Clerk of the Board of Supervisors

By: _____

Dated: _____

Deputy Clerk

-- BENDER ROSENTHAL, INC. --

By: _____

Dated: _____

Cydney Bender Reents
President
"Consultant"

By: _____

Dated: _____

Stephen A. Rosenthal
Corporate Secretary

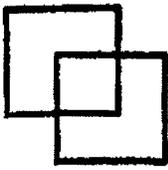


Exhibit A Fee Schedule

Standard Rates for Services:

Stephen A. Rosenthal, MAI	\$180.00/hr.*
Cydney G. Bender, MAI	\$180.00/hr.*
David Wraa, MAI	\$180.00/hr.*
Bob Morrison	\$180.00/hr
Project Manager	\$150.00/hr.
Senior Appraiser	\$125.00/hr.
Senior Acquisition Agent	\$125.00/hr.
Relocation Specialist	\$125.00/hr.
Acquisition Agent	\$115.00/hr.
Appraiser	\$115.00/hr.
Other Associated Professional Staff	\$ 90.00/hr.
Researchers	\$ 75.00/hr.
Administrative/Production	\$ 65.00/hr

*\$320.00 per hour for court or briefing preparation, depositions, any pre-trial conferences, or court appearances, should these ever become necessary.

Indirect/In-house expenses are included in the above hourly rates.

Direct expenses are to be billed at Consultant's cost. Direct expenses will reflect costs/charges for outside services and products only and shall be supported by actual invoices. Any reimbursements for direct expenses will only be made if such expenses are included in the budget of an approved and fully executed Task Order issued pursuant to this Agreement.

Reimbursement for mileage expenses for Consultant and for any subconsultants authorized under this Agreement, if applicable, shall not exceed the rates to be paid to County employees under the current Board of Supervisors Travel Policy at the time the mileage expenses are incurred. Any reimbursements for mileage expenses will only be made if such expenses are included in the budget of an approved and fully executed Task Order issued pursuant to this Agreement.