

Bender Rosenthal, Inc.

FIRST AMENDMENT TO AGREEMENT FOR SERVICES #6423

THIS FIRST AMENDMENT to that Agreement for Services #6423 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 2825 Watt Avenue, Suite 200, Sacramento, California 95821, (hereinafter referred to as "CONSULTANT").

R E C I T A L S

WHEREAS, CONSULTANT has been engaged by County to assist its Department of Transportation in providing as-needed appraisal and acquisition services pursuant to Agreement for Services #6423, dated May 10, 2022, incorporated herein and made by reference a part hereof (hereinafter referred to as "Agreement");

WHEREAS, the parties hereto desire to amend the Agreement to extend the expiration date of May 9, 2025, for one (1) additional year, amending **ARTICLE IV, Performance Period**;

WHEREAS, the parties hereto desire to amend the Agreement to fully replace specific Articles and add new Articles to include updated contract provisions required by the use of federal grant funds;

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants hereinafter contained, County and CONSULTANT mutually agree to amend the terms of the Agreement in this First Amendment to Agreement for Services #6423 on the following terms and conditions:

I. ARTICLE IV, Performance Period, paragraph A, of the Agreement is amended to read as follows:

A. This Agreement shall go into effect upon execution, contingent upon approval by COUNTY, and CONSULTANT shall commence work after notification to proceed by COUNTY's Contract Administrator, or designee, through a Task Order or Work Order. The Agreement shall end May 9, 2026, unless extended by Agreement amendment.

II. The following articles are fully replaced in their entirety:

ARTICLE V

Allowable Costs and Payments:

A. CONSULTANT will be reimbursed for hours worked at the hourly rates specified in CONSULTANT's Cost Proposal of an approved and fully executed Task Order or Work Order. The specified hourly rates shall include direct salary

costs, employee benefits, overhead, and fee. These rates are not adjustable for the performance period set forth in this Agreement. COUNTY shall reimburse CONSULTANT within forty-five (45) days of receiving itemized invoices in duplicate.

- B. In addition, CONSULTANT will be reimbursed for incurred (actual) direct costs other than salary costs that are in the approved Cost Proposal and identified in the Cost Proposal and in a fully executed Task Order or Work Order.
- C. Specific projects will be assigned to CONSULTANT through issuance of Task Orders or Work Orders.
- D. After a project to be performed under this Agreement is identified by COUNTY, COUNTY will prepare a draft Task Order or Work Order, less the cost estimate. A draft Task Order or Work Order will identify the scope of services, expected results, project deliverables, period of performance, and project schedule and will designate a COUNTY Project Coordinator. The draft Task Order or Work Order will be delivered to CONSULTANT for review. CONSULTANT shall return the draft Task Order or Work Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost, the finalized Task Order or Work Order shall be signed by both COUNTY and CONSULTANT.
- E. Task Orders or Work Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in CONSULTANT's approved Cost Proposal and in a fully executed Task Order or Work Order.

CONSULTANT shall be responsible for any future adjustments to prevailing wage rates, including, at a minimum, base hourly rates and employer payments as determined by the Department of Industrial Relations. CONSULTANT is responsible for paying the appropriate rate, including escalations that take place during the term of the AGREEMENT.

- F. Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal and in a fully executed Task Order or Work Order.
- G. When milestone cost estimates are included in the approved Cost Proposal, CONSULTANT shall obtain prior written approval in the form of an Agreement amendment for a revised milestone cost estimate from COUNTY's Contract Administrator before exceeding such estimate.
- H. Progress payments for each Task Order or Work Order will be made in arrears based on services provided and actual costs incurred.

- I. CONSULTANT shall not commence performance of work or services until this Agreement has been approved by COUNTY and notification to proceed has been issued by COUNTY's Contract Administrator. No payment will be made prior to approval or for any work performed prior to approval of this Agreement.
- J. A Task Order or Work Order is of no force or effect until returned to COUNTY and signed by an authorized representative of COUNTY. No expenditures are authorized on a project and work shall not commence until a Task Order or Work Order for that project has been executed by COUNTY.
- K. CONSULTANT will be reimbursed as promptly as fiscal procedures will permit upon receipt by COUNTY's Contract Administrator of itemized invoices. CONSULTANT shall provide separate invoices itemizing all costs are required for all work performed under each Task Order or Work Order. CONSULTANT shall submit invoices no later than forty-five (45) calendar days after the performance of work for which CONSULTANT is billing, or upon completion of the Task Order or Work Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Agreement number, project title, Task Order or Work Order number, Activity Identification Codes (Activity IDs) applicable for each item of work and shall include the beginning and ending dates of the overall period of service. Credits due COUNTY that includes any equipment purchased under the provisions of ARTICLE XI, Equipment Purchase, of this Agreement, must be reimbursed by CONSULTANT prior to the expiration or termination of this Agreement. Invoices shall be mailed or emailed to COUNTY at the following address:

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

Attn.: Shanann Findley
Email: dotengineering@edcgov.us

or to such other location as COUNTY directs.

- L. The period of performance for Task Orders or Work Orders shall be in accordance with dates specified in the Task Order or Work Order. No Task Order or Work Order will be written which extends beyond the expiration date of this Agreement.
- M. The total amount payable by COUNTY for an individual Task Order or Work Order shall not exceed the amount agreed to in the Task Order or Work Order, unless authorized by contract amendment.

- N. If CONSULTANT fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order or Work Order, no payment will be made until the deliverable has been satisfactorily completed.
- O. Task Orders or Work Orders may not be used to amend this Agreement and may not exceed the scope of work under this Agreement.
- P. The total amount payable by COUNTY for all Task Orders or Work Orders, costs, taxes, or expenses resulting from this Agreement shall not exceed \$300,000. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this Agreement through Task Orders or Work Orders.

ARTICLE VI

Termination:

- A. 1. Termination by Default: If either party becomes aware of an event of default, that party shall give written notice of said default to the party in default (notice) that shall state the following:
 - a. The alleged default and the applicable Agreement provision, and
 - b. That the party in default has ten (10) days upon receiving the notice to cure the default (Time to Cure).

If the party in default does not cure the default within ten (10) days of the Time to Cure, then such party shall be in default and the party giving notice may terminate the Agreement, or any Task Order or Work Order issued under this Agreement, by issuing a Notice of Termination. The party giving notice may extend the Time to Cure at their discretion. 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.

- 2. If COUNTY terminates this Agreement, in whole or in part, for default:
 - a. COUNTY reserves the right to procure the goods or services, or both, similar to those terminated, from other sources and CONSULTANT shall be liable to COUNTY for any excess costs for those goods or services. COUNTY may deduct from any payment due, or that may thereafter become due to CONSULTANT, the excess costs to procure from an alternate source.
 - b. COUNTY shall pay CONSULTANT the sum due to CONSULTANT under this Agreement prior to termination, unless the cost of completion to COUNTY exceeds the funds remaining in the Agreement. In which case the overage shall be deducted from any sum due CONSULTANT under this Agreement and the balance, if any, shall be paid to CONSULTANT upon demand.

- c. COUNTY may require CONSULTANT to transfer title and deliver to COUNTY any completed work under the Agreement.
- 3. The following shall be events of default under this Agreement:
 - a. Failure by either party to perform in a timely and satisfactory manner any or all of its obligations under this Agreement.
 - b. A representation or warranty made by CONSULTANT in this Agreement proves to have been false or misleading in any respect.
 - c. CONSULTANT fails to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement, unless COUNTY agrees, in writing, to an extension of the time to perform before that time period expires.
 - d. A violation of ARTICLE XIII, Conflict of Interest.
- B. The maximum amount for which COUNTY shall be liable if this Agreement is terminated is the not-to-exceed amount of the Task Order or Work Order or the total amount of this Agreement, as applicable.
- C. Bankruptcy: COUNTY may terminate this Agreement immediately in the case of bankruptcy, voluntary or involuntary, or insolvency of CONSULTANT.
- D. Ceasing Performance: COUNTY may terminate this Agreement immediately in the event CONSULTANT ceases to operate as a business or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- E. Termination or Cancellation without Cause: COUNTY may terminate this Agreement, or any Work Order issued pursuant to this Agreement, in whole or in part, for convenience upon thirty (30) calendar days' written Notice of Termination. If such termination is effected, COUNTY will pay for satisfactory services rendered before the effective date of termination, as set forth in the Notice of Termination provided to CONSULTANT, and for any other services that COUNTY agrees, in writing, to be necessary for contract resolution. In no event, however, shall COUNTY be obligated to pay more than the total amount of the Work Order or the total amount of the Agreement, 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, COUNTY reserves the right to take over and complete the work by contract or by any other means.
- F. Completion of Work: In the event of termination of the Agreement, for default or without cause, COUNTY reserves the right to take over and complete any work, service, or task by contract or by other means.

ARTICLE XXXIX

Compliance with Federal, State, and COUNTY Requirements: COUNTY is relying on federal assistance or grants, state funds, and local agency or other grant funds for all or a portion of the funding for the services to be provided herein. As a requirement of COUNTY's use of federal, state, and local agency grant funds, COUNTY is required to comply with certain contracting requirements and to extend those requirements to all third-party contracts. CONSULTANT shall comply with all applicable provisions of federal, state, and local agency regulations, including those required by the Federal Highway Administration (FHWA) grant funding requirements, regulations, and related executive orders regarding the use, expenditure, control, reporting, allowable costs, and management of such funds. The following Office of Management and Budget (OMB) Circulars, as applicable, and as implemented by various parts of the Code of Federal Regulations (C.F.R.), are incorporated by reference and made a part of this Agreement:

2 CFR Part 200, Subpart E, "Cost Principles. Special Considerations for States, Local Governments and Indian Tribes (formerly OMB Circular A-87)"

2 CFR Part Part 200, Subpart F "Audit Requirements" and the most recent compliance supplement

Copies of the OMB Circulars are available on the Internet at:

<https://www.whitehouse.gov/omb/information-for-agencies/circulars>

Failure of CONSULTANT to comply with any federal, state, or local agency provision may be the basis for withholding payments for charges made by CONSULTANT and for such other remedies as may be appropriate including termination of this Agreement. CONSULTANT shall further comply with any flow-down or third-party contracting provisions which may be required under the federal, state, or local agency regulations and which may apply to CONSULTANT's subcontracts, if any, associated with this Agreement.

ARTICLE XLVI

Disadvantaged Business Enterprise (DBE) Participation:

A. CONSULTANT, COUNTY, or subconsultant shall take necessary and reasonable steps to ensure that DBEs have opportunities to participate in the contract (49 CFR 26). To ensure equal participation of DBEs provided in 49 CFR 26.5, COUNTY shows a contract goal for DBEs. CONSULTANT shall make work available to DBEs and select work parts consistent with available DBE subconsultants and suppliers.

CONSULTANT shall meet the DBE goal shown elsewhere in these special provisions or demonstrate that they made adequate good faith efforts to meet this goal. It is CONSULTANT's responsibility to verify that the DBE firm is certified as DBE at date of proposal opening and document the record by printing out the California Unified Certification Program (CUCP) data for each

DBE firm. A list of DBEs certified by the CUCP can be found at <https://dot.ca.gov/programs/civil-rights/dbe-search>.

All DBE participation will count toward the California Department of Transportation's federally mandated statewide overall DBE goal. Credit for materials or supplies CONSULTANT purchases from DBEs counts towards the goal in the following manner:

- 100 percent counts if the materials or supplies are obtained from a DBE manufacturer.
- 60 percent counts if the materials or supplies are purchased from a DBE regular dealer.
- Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies count if obtained from a DBE that is neither a manufacturer nor regular dealer. 49CFR26.55 defines "manufacturer" and "regular dealer."

This Agreement is subject to 49 C.F.R. § 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." Consultants who obtain DBE participation on this Agreement shall assist Caltrans in meeting its federally mandated statewide overall DBE goal.

- B. The goal for DBE participation for this Agreement is 0.0%. Participation by DBE CONSULTANT or subconsultants shall be in accordance with information contained in the Consultant Proposal DBE Commitment (Exhibit 10-O1) or in the Consultant Contract DBE Commitment (Exhibit 10-O2). If a DBE subconsultant is unable to perform, CONSULTANT must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- C. DBEs and other small businesses, as defined in 49 C.F.R. § 26.5, are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. CONSULTANT or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. CONSULTANT shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of US DOT-assisted agreements. Failure by CONSULTANT to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as COUNTY deems appropriate.

D. Contract Assurance

Under 49 CFR 26.13(b):

CONSULTANT, subrecipient or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. CONSULTANT shall carry out applicable requirements of 49 CFR 26 in the award and administration of federal-aid contracts.

Failure by CONSULTANT to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, at a minimum:

- 1) Withholding monthly progress payments;
- 2) Assessing sanctions;
- 3) Liquidating damages; and/or
- 4) Disqualifying CONSULTANT from future proposing as non-responsible

E. Termination and Substitution of DBE Subconsultants

CONSULTANT shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless CONSULTANT or DBE subconsultant obtains COUNTY's written consent. CONSULTANT shall not terminate or substitute a listed DBE for convenience and perform the work with their own forces or obtain materials from other sources without the authorization from COUNTY. Unless COUNTY's consent is provided, CONSULTANT shall not be entitled to any payment for work or material used unless it is performed or supplied by listed DBE on the Exhibit 10-02 Consultant Contract DBE Commitment form, included in the bid.

COUNTY authorizes a request to use other forces or sources of materials if CONSULTANT shows any of the following justifications:

- 1) Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.
- 2) COUNTY stipulated that a bond is a condition of executing the subcontract and the listed DBE fails to meet the COUNTY's bond requirements.
- 3) Work requires a consultant's license and listed DBE does not have a valid license under Contractors License Law.
- 4) Listed DBE fails or refuses to perform the work or furnish the listed materials (failing or refusing to perform is not an allowable reason to

remove a DBE if the failure or refusal is a result of bad faith or discrimination).

- 5) Listed DBE's work is unsatisfactory and not in compliance with the contract.
- 6) Listed DBE is ineligible to work on the project because of suspension or debarment.
- 7) Listed DBE becomes bankrupt or insolvent.
- 8) Listed DBE voluntarily withdraws with written notice from the contract.
- 9) Listed DBE is ineligible to receive credit for the type of work required.
- 10) Listed DBE owner dies or becomes disabled resulting in the inability to perform the work on the contract.
- 11) COUNTY determines other documented good cause.

CONSULTANT shall notify the original DBE of the intent to use other forces or material sources and provided the reasons and provide the DBE with five (5) days to respond to the notice and advise CONSULTANT and COUNTY of the reasons why the use of other forces or sources of materials should not occur.

CONSULTANT's request to use other forces or material sources must include:

- 1) One of more of the reasons listed in the preceding paragraph.
- 2) Notices from CONSULTANT to the DBE regarding the request.
- 3) Notices from the DBEs to CONSULTANT regarding the request.

If a listed DBE is terminated or substituted, CONSULTANT must make good faith efforts to find another DBE to substitute for the original DBE. The substitute DBE must perform at least the same amount of work as the original DBE under the contract to the extent needed to meet or exceed the DBE goal.

F. Commitment and Utilization

COUNTY's DBE program must include a monitoring and enforcement mechanism to ensure that DBE commitments reconcile to DBE utilization.

COUNTY shall request CONSULTANT to:

- 1) Notify COUNTY's contract administrator or designated representative of any changes to its anticipated DBE participation
- 2) Provide this notification before starting the affected work

3) Maintain records including:

- Name and business address of each 1st-tier subconsultant
- Name and business address of each DBE subconsultant, DBE vendor, and DBE trucking company, regardless of tier
- Date of payment and total amount paid to each business (see Exhibit 9-F *Monthly Disadvantaged Business Enterprise Payment*)

If CONSULTANT is a DBE CONSULTANT, they shall include the date of work performed by their own forces and the corresponding value of their work.

If a DBE is decertified before completing its work, the DBE must notify CONSULTANT in writing of the decertification date. If a business becomes a certified DBE before completing its work, the business must notify CONSULTANT in writing of the certification date. CONSULTANT shall submit the notifications to COUNTY. On work completion, CONSULTANT shall complete a Disadvantaged Business Enterprises (DBE) Certification Statute Change, Exhibit 17-O, form and submit the form to COUNTY within thirty (30) days of contract acceptance.

Upon work completion, CONSULTANT shall complete Exhibit 17-F Final Report – Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors and submit it to the COUNTY within ninety (90) days of contract acceptance. The COUNTY will withhold \$10,000 until the form is submitted. The COUNTY will release the withhold upon submission of the completed form.

If COUNTY reports of DBE participation to Caltrans, the COUNTY must display both commitments and attainments.

- G. DBE is only eligible to be counted toward the Agreement goal if it performs a commercially useful function (CUF) on the Agreement. CUF must be evaluated on an agreement-by-agreement basis. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing, and other relevant factors.

- H. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- I. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of the contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- J. CONSULTANT shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment, and the total dollar figure paid to all firms. DBE prime consultants shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- K. Upon completion of the Agreement, a summary of these records shall be prepared and submitted on the form entitled, "Final Report-Utilization of Disadvantaged Business Enterprise (DBE), First-Tier Subconsultants" CEM-2402F [Exhibit 17-F, of the LAPM], certified correct by CONSULTANT or CONSULTANT's authorized representative and shall be furnished to COUNTY's Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice shall result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to CONSULTANT when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" is submitted to COUNTY's Contract Administrator.
- L. If a DBE subconsultant is decertified during the life of the Agreement, the decertified subconsultant shall notify CONSULTANT in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Agreement, the subconsultant shall notify CONSULTANT in writing with the date of certification. Any changes should be reported to COUNTY's Contract Administrator within thirty (30) days.
- M. After submitting an invoice for reimbursement that includes a payment to a DBE, but no later than the 10th of the following month, the prime CONSULTANT shall complete and email the Exhibit 9- F: Disadvantaged Business Enterprise Running Tally of Payments to business.support.unit@dot.ca.gov with a copy to the Agency.

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

Except as herein amended, all other parts and sections of Agreement for Services #6423 shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to Agreement for Services #6423 on the dates indicated below.

-- COUNTY OF EL DORADO --

By: _____
Board of Supervisors
"County"

Dated: _____

Attest:
Kim Dawson
Clerk of the Board of Supervisors

By: _____
Deputy Clerk

Dated: _____

-- BENDER ROSENTHAL, INC. --

By: R. Baur
Renee Baur
President
"CONSULTANT"

Dated: 3/24/2025

By: Sheila Bozin
Sheila Bozin
Corporate Secretary

Dated: 3/24/25