



**AGREEMENT FOR SERVICES
008E-A-10/11-BOS**

**Between
COUNTY OF EL DORADO ENVIRONMENTAL MANAGEMENT DEPARTMENT
and
THE LAW OFFICES OF THOMAS M. BRUEN**

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"), acting by and through County Service Area No. 10, a lawfully established county service area as defined by Government Code Section 25210 et seq., and The Law Offices of Thomas M. Bruen (hereinafter referred to as the "Firm" or "Consultant"), a California Professional Corporation, duly qualified to conduct business in the State of California, whose principal place of business is 1990 North California Boulevard, Suite 940, Walnut Creek, California 94596, effective on the date services were first performed for the County in the matters described below, for the performance of specified legal services for County;

RECITALS

WHEREAS, County has determined that it is necessary to obtain a Consultant to provide legal services; and

WHEREAS, Firm is a licensed attorney and has represented to County that he 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 Firm is in the public's best interest, and that these services are more economically and feasibly performed by outside independent Firms as well as authorized by El Dorado County Charter, Section 210 (b) (6) and/or Government Code 31000;

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

ARTICLE I: Scope of Services

The County shall have the right in its sole discretion to determine the particular services to be provided by the Firm from time to time under this Agreement. These services may include the following:

- A. Review and drafting of waste flow control legislation; research and examination of applicable law, and preparing memoranda and rendering opinions in connection therewith;
- B. Preparation, drafting and review of memoranda, contracts, resolutions, municipal service agreements, construction and operation contracts, grant agreements, trust indentures, rate setting policies, and procedures and other documents necessary in connection with structuring the program and financing the facilities;
- C. Review, analysis and application of environmental law as it applies to environmental and waste management;
- D. Review and drafting of solid and hazardous waste ordinances; research and examination of applicable law, and preparing memoranda and rendering opinions in connection therewith;
- E. Participation in meetings, personal conferences, telephone conferences, discussions, and other communications and proceedings held in furtherance of County requirements; and

F. Assist as counsel in litigation matters as directed by County Counsel.

ARTICLE II: Term

This Agreement shall become effective upon final execution by both parties hereto and shall not expire. The Agreement will renew on an annual basis unless notice of termination is given by the County at any time for any reason upon a 10-day notice to Firm.

ARTICLE III: Compensation for Services

- A. For services provided herein, County agrees to pay Firm monthly in arrears and within forty-five (45) days following the County's receipt and approval of itemized invoice(s) which reflect detail regarding dates of service, services performed, hours billed, compensation due for each service, and total compensation due for all services. For the purposes of this Agreement, the billing rate shall be \$250.00 per attorney hour for partners, and \$235.00 per associate hour.
- B. Total amount of this Agreement shall not exceed Three Hundred Thousand Dollars and 00/100 (**\$300,000.00**).
- C. The Firm will use the minimum number of attorneys for this engagement consistent with good professional practice after consulting with the County. The Firm will keep the County currently advised as to the level of attorney hours and client services performed. Firm travel time not devoted to the performance of client services under this retainer agreement shall not be charged to the County. The Firm shall keep proper records to enable County to verify the services rendered, and such records shall be made reasonably available to County or its agents for inspection and audit.
- D. County shall reimburse Firm for the actual, reasonable and necessary expense of travel in accordance with the El Dorado County Board of Supervisors policy

No. D-1 as set forth in Exhibit A attached hereto and incorporated herein. County shall reimburse Firm for the reasonable costs of long distance telephone calls, mailing, legal research on electronic database, and, upon prior approval, for extraordinary photocopying and extraordinary facsimile transmissions. Other reasonable, customary and necessary expenses, including but not limited to statutory fees, witness fees, reporters per diem and transcription fees, jury fees, and expenses of serving process, may be advanced by Firm and reimbursed by County. Expert consultants and witnesses may be retained by Firm on terms acceptable to County. Such expert consultants and witnesses may invoice Firm. Prior to incurring expenses in excess of Five Hundred Dollars and No/100 (\$500.00) Firm shall consult with County and obtain approval.

- E. The Firm shall submit to County Counsel for review and approval an itemized statement of services rendered at periodic intervals of not less than one and not more than three months. Such statement shall identify the nature of the services rendered, and specify the time expended in rendering such services, calculated in one-tenth (.10) hour segments. Simultaneously, Firm shall submit a summary statement to County for payment processing.

ARTICLE IV

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 duly authorized officers of the parties hereto.

ARTICLE V

Consultant 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, Firm 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 Firm's responsibilities to County during term hereof. The following

additional provisions shall also apply:

- A. The Firm and all persons who perform services for or through Firm pursuant to this Agreement shall be an independent contractor and shall not be deemed to be an employee of the County for any purpose. The Firm's services shall be under the general direction of County Counsel's Office or the Environmental Management Department, which shall also be responsible for administering this Agreement.

- B. The Firm and every employee thereof shall provide their services, advice and any reports in full compliance with all applicable law and professional standards. The Firm represents that it is specially trained, experienced, expert and competent to perform the services required under this Agreement, and that each individual providing legal services is a member in good standing of the State Bar and is licensed to practice in California. Further, the Firm certifies that it will not accept representation in any matters, including litigation, under this Agreement if it or any employee thereof has any personal or financial interest therein.

- C. The Firm shall keep proper records to enable County to verify the services rendered, and such records shall be made reasonably available to County or its agents for inspection and audit.

- D. The Firm certifies that it accepts this retention because it has the time, energy, skills, and ability necessary to perform the duties required in an efficient, trustworthy, professional, and businesslike manner. It is understood that the services under this Agreement must be provided immediately, and that they are time-critical. The Firm is engaged by County for its unique qualifications and skills. The Firm shall not subcontract, delegate, or assign the services to be provided under this Agreement, in whole or in part, to any other person or entity not employed in Firm without consent of County. It is specifically agreed that a partner attorney of the Firm will be primarily involved in the conduct of the work,

and that a partner will be available to attend meetings of the County Board of Supervisors as directed.

E. Firm agrees that it will comply with all ethical duties, will maintain the integrity of the attorney-client relationship, and will take all steps available to preserve all applicable legal privileges, confidences, and records from disclosure. All documents and information obtained by or generated by Firm pursuant to this Agreement, all opinions and conclusions of Firm any reports, information, data, statistics, forms, procedures, systems, studies and all communications with County, are confidential. Firm agrees to take all steps reasonably necessary to maintain this confidentiality. Firm is responsible for insuring that it and all of its employees faithfully adhere to the confidentiality requirements of law and this Agreement.

ARTICLE VI

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

Independent Consultant/Liability: Firm 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. Firm 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.

Firm 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 Firm or its employees.

ARTICLE VIII

Fiscal Considerations: The parties to this Agreement recognize and acknowledge that the County is a political subdivision of the State of California. As such, the County of El Dorado 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 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 canceled in its entirety subject to payment for services performed prior to cancellation.

ARTICLE IX: 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. 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.

- B. **Bankruptcy:** This Agreement, at the option of the County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Firm.
- C. **Ceasing Performance:** County may terminate this Agreement in the event Firm 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 Firm, 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, Firm 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.

ARTICLE X

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
Environmental Management Department
2850 Fairlane Ct. Bldg. C
Placerville, CA 95667
ATTN: Gerri Silva, M.S., REHS, Director, Environmental Management Department

Or to such other location as the County directs.

Notices to Firm shall be addressed as follows:

THE LAW OFFICES OF THOMAS M. BRUEN
1990 North California Boulevard, Suite 940
Walnut Creek, CA 94596
ATTN: Thomas Bruen

Or to such other location as the Firm directs.

ARTICLE XI

Indemnity: The Firm shall defend, indemnify, and hold the 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 the Firm's services, operations, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of the County, the Firm, subConsultant(s) and employee(s) of any of these, except for the sole, or active negligence of the County, its officers and employees, or as expressly prescribed by statute. This duty of Firm to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

ARTICLE XII

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

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Firm 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 Firm in the performance of the Agreement.
- D. In the event Consultant 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. Firm 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. Firm 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, Firm 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 Firm agrees that no work or services shall be performed prior to the giving of such approval. In the event the Firm 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 Firm'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 Firm'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 Firm 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. Firm's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
- N. In the event Firm cannot provide an occurrence policy, Firm 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.
- P. Firm specifically represents that it maintains errors and omissions insurance

applicable to the services to be rendered under this Agreement.

ARTICLE XIII

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 Firm 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 XIV

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

ARTICLE XV

Conflict of Interest: The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and Section 87100 relating to conflict of interest of public officers and employees. Firm attests that it has no current business or financial relationship with any County employee(s) that would constitute a conflict of interest with provision of services under this contract and will not enter into any such business or financial relationship with any such employee(s) during the term of this Agreement. County represents that it is unaware of any financial or economic interest of any public officer or employee of Firm relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement either party may immediately terminate this Agreement by giving written

notice as detailed in the Article in the Agreement titled, "Default, Termination and Cancellation".

ARTICLE XVI

California Residency (Form 590): All independent Consultants 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 Firm 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 Firm during term of the Agreement. This requirement applies to any agreement/contract exceeding \$1,500.00.

ARTICLE XVII

Taxpayer Identification Number (Form W-9): All independent Consultants 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 XVIII

County Business License: 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 Code Section 5.08.070.

ARTICLE XIX

Administrator: The County Officer or employee with responsibility for administering this Agreement is Gerri Silva, Director, Environmental Management Department, or successor.

ARTICLE XX

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 XXI

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 XXII

Venue: 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 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.

Requesting Contract Administrator Concurrence:

By: _____ Dated: _____
Gerri Silva, M.S., REHS,
Director, Environmental Management Department

Requesting Department Head Concurrence:

By: _____ Dated: _____
Gerri Silva, M.S., REHS,
Director, Environmental Management Department

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below.

-- COUNTY OF EL DORADO --

Dated: _____

By: _____
Chairman, Raymond J. Nutting
Board of Supervisors
"County"

ATTEST:
Suzanne Allen de Sanchez, Clerk
of the Board of Supervisors

By: _____ Dated: _____
Deputy Clerk

--CONSULTANT--

Law Offices of Thomas M. Bruen,
(A California Professional Corporation)

By: Thomas M. Bruen
Thomas M. Bruen, President
State Bar Number 63324
"Firm"

Dated: March 9, 2011

ATTEST:

By: Thomas M. Bruen
Corporate Secretary
Law Offices of Thomas M. Bruen

Dated: March 9, 2011

(mlw)