

**Bender Rosenthal, Inc.**

**FIRST AMENDMENT TO AGREEMENT FOR SERVICES # AGMT 09-52859**

**THIS FIRST AMENDMENT** to that Agreement for Services # AGMT 09-52859 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**, Consultant has been engaged by County to provide right of way appraisals and property acquisition and relocation services for the Department of Transportation pursuant to Agreement for Services # AGMT 09-52859, incorporated herein and made by reference a part hereof;

**WHEREAS**, the parties hereto desire to amend Agreement for Services # AGMT 09-52859 to change the reference from Right of Way Manager to Contract Administrator, amending **ARTICLE I, Scope of Services**;

**WHEREAS**, the parties hereto desire to amend Agreement for Services # AGMT 09-52859 to increase the not-to-exceed compensation amount of the Agreement by \$50,000 and to update the reimbursement for mileage expenses provision, amending **ARTICLE III, Compensation for Services** and **Exhibit A, Fee Schedule**;

**WHEREAS**, the parties hereto desire to amend Agreement for Services # AGMT 09-52859 to clarify where to obtain the prevailing wage rates, amending **ARTICLE V, Prevailing Wage**;

**WHEREAS**, the parties hereto desire to amend Agreement for Services # AGMT 09-52859 to update the safety contract provision required by the use of federal and state grant funds, amending **ARTICLE VIII, Safety**;

**WHEREAS**, the parties hereto desire to amend Agreement for Services # AGMT 09-52859 to update the confidentiality and ownership of data contract provisions required by the use of federal and state grant funds, amending **ARTICLE XIII, Confidentiality and Ownership of Data**;

**WHEREAS**, the parties hereto desire to amend Agreement for Services # AGMT 09-52859 to change County's notices recipients, amending **ARTICLE XVII, Notice to Parties**;

**WHEREAS**, the parties hereto desire to amend Agreement for Services # AGMT 09-52859 to update the County's indemnified parties, amending **ARTICLE XVIII, Indemnity**;

**WHEREAS**, the parties hereto desire to amend Agreement for Services # AGMT 09-52859 to update the interest of Consultant contract provision required by the use of federal and state grant funds, amending **ARTICLE XXII, Interest of Consultant**;

**WHEREAS**, the parties hereto desire to amend Agreement for Services # AGMT 09-52859 to update the nondiscrimination contract provision required by the use of federal and state grant funds, amending **ARTICLE XXIV, Nondiscrimination**;

**WHEREAS**, the parties hereto desire to amend Agreement for Services # AGMT 09-52859 to change County's Contract Administrator, amending **ARTICLE XXX, Contract Administrator**;

**WHEREAS**, the parties hereto desire to amend Agreement for Services # AGMT 09-52859 to include certain federal, state, and local agency contract provisions as required by County's grant funding agencies, adding **ARTICLES XXXIV through LVIII, and Exhibits B through H**;

**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 # AGMT 09-52859, as follows:

**ARTICLE I, Scope of Services, of the original Agreement is hereby amended as follows:**

6. Additional Requirements:

d. All appraisals require an "Administrative Draft" to be submitted to the Contract Administrator with a copy to the Task Order Manager for review, prior to the production of the final report.

**ARTICLE III, Compensation for Services, of the original Agreement is deleted in its entirety and the following Article is added in its place to read as follows:**

### **ARTICLE III**

#### **Compensation for Services:**

A. For services provided herein, including all deliverables described in individual Task Orders issued pursuant to this Agreement, and including all of the forms and reports required under the Disadvantaged Business Enterprise (DBE) provisions of this Agreement; and including the progress reports required by Article IV, Progress Reports, County agrees to pay Consultant monthly in arrears. Payment shall be made within thirty (30) days following County receipt and approval of itemized invoices detailing services rendered.

B. For the purposes hereof, the billing rates shall be in accordance with Amended Exhibit A, marked "Amended 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 subconsultants, if applicable, shall not exceed the lesser of (1) the rates to be paid to County employees under the current Board of Supervisors Travel Policy at the time the mileage expenses are incurred; or (2) the rates authorized to be paid to rank and file state employees under the then current State Department of Personnel Administration (DPA) rules. References to the DPA rates and Consultant's responsibilities for cost differences and any overpayments are more fully described in Article XXXVI, Cost Principles herein. Mileage reimbursement rates apply to Consultant and to any subconsultants authorized under this Agreement. There shall be no subconsultant markup on any mileage expenses. 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.

The total amount payable by County for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless County's Contract Administrator and Consultant amend the Task Order.

- 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 \$150,000.00.
- 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 (1) Task Order per invoice. For Task Orders which state in the Task Order Form that federal grant funding is included in the funding to support the authorized task work, Consultant shall prepare and submit a fully executed "Final Report – Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" form with its final invoice for each such Task Order issued under this Agreement. Twenty-five percent (25%) of the value of the final invoice shall be withheld until County's receipt and approval of each required DBE form. Consultant's responsibilities for compliance with DBE requirements are more fully described in Article XLV, Disadvantaged Business Enterprise (DBE) Considerations and in Article XLVI, DBE Participation herein.

Consultant shall attach copies of any progress reports required under the provisions of Article IV, Progress Reports that relate to the services being billed to every invoice 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 and progress reports required by this Agreement, County at its sole option may delay the monthly payment for the period of time of the delay, cease all payments until such time as the required deliverables or progress reports are received, or proceed as set forth below in Article XVI, Default, Termination, and Cancellation herein.

**ARTICLE V, Prevailing Wage, first paragraph of the original Agreement is hereby amended as follows:**

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 in the individual Task Orders issued 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 principal office of County Department of Transportation. Changes, if any, to the general prevailing wage rates will be available at the same location. The 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.

**ARTICLE VIII, Safety, of the original Agreement is deleted in its entirety and the following Article is added in its place to read as follows:**

**ARTICLE VIII**

**Safety:**

- A. Consultant shall comply with OSHA regulations applicable to Consultant regarding necessary safety equipment or procedures. Consultant shall comply with safety instructions issued by County's Safety Officer and other County representatives. Consultant's personnel and any subconsultants authorized herein shall wear hard hats and safety vests at all times while working on construction Project sites.

- B. Pursuant to the authority contained in Section 591 of the Vehicle Code, County has determined that there are areas that may be within the limits of certain Projects that are open to public traffic. Consultant shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14 and 15 of the Vehicle Code. Consultant shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.
- C. Any subcontract entered into as a result of this Agreement, shall contain all of the provisions of this Article.

**ARTICLE XIII, Confidentiality and Ownership of Data, of the original Agreement is hereby amended by adding the following item:**

- G. Any non-final or draft administrative reports, studies, materials and documentation, including but not limited to, all environmental documents and any Project Report (PR), relied upon, produced, created or utilized for any items of work performed under this Agreement shall be held in confidence pursuant to Government Code §6254.5(e) until release in accordance with the California Environmental Quality Act (CEQA). County and Consultant agree that such material will not be distributed, released or shared with any other organization, person or group other than County's and Consultant's employees and agents whose work requires that access.

**ARTICLE XVII, Notice to Parties, of the original Agreement is deleted in its entirety and the following Article is added in its place to read as follows:**

**ARTICLE XVII**

**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 in duplicate and addressed as follows:

To County:

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

Attn.: Matthew D. Smeltzer  
 Deputy Director, Engineering  
 Engineering Division

With a Copy To:

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

Attn: Janel Gifford, P.E.  
 Office Engineer/Contract Services Unit

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, of the original Agreement is deleted in its entirety and the following Article is added in its place to read as follows:**

To the fullest extent allowed by law, Consultant shall defend, indemnify, and hold harmless the County and its officers, agents, employees and representatives from and against any and all claims, actions, losses, injuries, damages or expenses of every name, kind, and description, including litigation costs and reasonable attorney's fees incurred, brought for or on account of, injury to or death of any person, including but not limited to workers, County employees and the public, or damage to property, which arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, its officers, agents, employees, volunteers, representatives, contractors and subcontractors. This duty of Consultant includes the duty of defense, inclusive of that set forth in California Civil Code Section 2778. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement.

**ARTICLE XXII, Interest of Consultant, of the original Agreement is hereby amended by adding the following paragraph to the end of the Article as follows:**

Any subcontract in excess of \$25,000 entered into as a result of this Agreement shall contain all of the provisions of this Article.

**ARTICLE XXIV, Nondiscrimination, of the original Agreement is deleted in its entirety and the following Article is added in its place to read as follows:**

**Nondiscrimination:**

- A. In connection with its performance under this Agreement, Consultant shall comply with all applicable nondiscrimination statutes and regulations during the performance of this Agreement including, but not limited to the following: Consultant, 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 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, its employees, subconsultants 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. The Congress of the United States, the Legislature of the State of California and the Governor of the State of California, each within their respective jurisdictions, have prescribed certain nondiscrimination requirements with respect to contract and other work financed with public funds. Consultant agrees to comply with the requirements of Exhibit F, marked "Fair Employment Practices Addendum" and the requirements of Exhibit G, marked "Nondiscrimination Assurances," including Appendices A through D to Exhibit G, both of which exhibits and the four Appendices to Exhibit G are incorporated herein and made by reference a part hereof. Consultant further agrees that any agreement entered into by Consultant with a third party for the performance of Project-related work shall incorporate Exhibits F and G and Appendices A through D to Exhibit G as essential parts of such agreement to be enforced by that third party as verified by County.
- D. Consultant's signature executing this Agreement shall provide any certifications necessary under the federal laws and 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 XXX, Contract Administrator, of the original Agreement is deleted in its entirety and the following Article is added in its place to read as follows:**

**ARTICLE XXX**

**Contract Administrator:** The County Officer or employee with responsibility for administering this Agreement is Matthew D. Smeltzer, Deputy Director, Engineering, Engineering Division, Department of Transportation, or successor.

**The original Agreement is further amended to add the following articles:**

**ARTICLE XXXIV**

**Compliance with Federal, State and Local Agency Requirements:** County is relying on federal assistance or grants, state funds and on 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 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 (CFR), are incorporated by reference and made a part of this Agreement:

*2 CFR Part 225, "Cost Principles for State, Local, and Indian Tribal Governments (formerly OMB Circular A-87)"*

*Circular A-133, revised June 26, 2007, "Audits of States, Local Governments, and Non-Profit Organizations"*

Copies of the OMB Circulars are available on the Internet at:  
<http://www.whitehouse.gov/omb/circulars/index.html>.

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 XXXV**

**Working Office:** Consultant shall establish a working office at a place acceptable to County. The parties hereto acknowledge and agree that Consultant's office located at 4400 Auburn Boulevard, Suite 102, Sacramento, California 95841 is acceptable to County.

#### **ARTICLE XXXVI**

**Cost Principles:** The Federal Acquisition Regulations in Title 48, CFR, Part 31 et seq. are the governing factors regarding allowable elements of cost for all services to be performed under this Agreement.

- A. Consultant shall comply with 2 CFR Part 225, Cost Principles for State and Local Governments, and with federal administrative procedures pursuant to 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, and 49 CFR, Chapter 1, Parts 31 et seq., Federal Acquisition Regulations System, insofar as those regulations may apply to Consultant. This provision shall apply to every sub-recipient receiving funds as a Consultant or subconsultant under this Agreement.
- B. Any expenditures for costs for which Consultant has received payment or credit that are determined by subsequent audit to be unallowable under 2 CFR Part 225, 48 CFR, Parts 31 et seq. or 49 CFR, Part 18 are subject to repayment by Consultant to County.



- C. Travel and subsistence (per diem) reimbursements, if applicable, and third-party contract reimbursements to subconsultants will be allowable as Project costs only after those costs are incurred and paid for by Consultant.
- D. Notwithstanding any other provision of this Agreement to the contrary, payments to Consultant for travel and subsistence (per diem) and mileage expenses, if applicable, for Consultant's staff or for subconsultants claimed for reimbursement shall not exceed the lesser of (1) the rates to be paid to County employees under the current Board of Supervisors Travel Policy in effect at the time the expenses are incurred; or (2) the rates authorized to be paid to rank and file state employees under the then current State Department of Personnel Administration (DPA) rules. If the rates invoiced are in excess of these authorized rates, then Consultant is responsible for the cost difference and any overpayments shall be reimbursed to County upon demand. For the purposes of this Agreement, only mileage expenses shall be eligible for reimbursement in accordance with Article III, Compensation for Services above. No reimbursements for travel and subsistence (per diem) expenses for Consultant or subconsultants shall be allowed.
- E. Consultant and its subconsultants shall establish and maintain accounting systems and records that properly accumulate and segregate funds received under this Agreement by line item. The accounting systems of Consultant and all subconsultants shall conform to Generally Accepted Accounting Principles (GAAP), shall enable the determination of incurred costs at interim points of completion, and shall provide support for reimbursement of payment vouchers or invoices.

## **ARTICLE XXXVII**

**Audit and Inspection of Records:** Consultant shall maintain and make available to the FHWA, the State, the California State Auditor, and County or to any duly authorized representative of the United States Department of Transportation, Comptroller General of the United States, or County all books, documents, papers, job cost records, detailed cost estimates, claims, and accounts, including payment, property, payroll, personnel, subconsultant records, and financial records related to or which arise out of the work or under terms of this Agreement. Consultant shall maintain such books, records, data and documents in accordance with generally accepted accounting principles and in accordance with the provisions of Article XXXIV, Compliance with Federal, State and Local Agency Requirements and Article XXXVI, Cost Principles above. These books, papers, records, claims and accounts shall be made available for examination during normal business hours and shall be readily available and accessible at Consultant's principal place of business in California, for audit during normal business hours at such place of business. Consultant shall provide office space, photocopies and other assistance to enable audit or inspection representatives to conduct such audits or inspections. This right to audit books and records directly related to this Agreement shall also extend to all subconsultants authorized under this Agreement. Consultant shall incorporate this provision in any subcontract entered into as a result of this Agreement and shall require its subconsultants to agree to cooperate with the listed agencies by making all appropriate and relevant Project records available to those agencies for audit and copying.

**ARTICLE XXXVIII**

**Record Retention:** All of Consultant's books, papers, job cost records, detailed cost estimates, claims, and accounts, including payment, property, payroll, personnel, subconsultant records, and financial records related to or which arise out of the work or under terms of this Agreement shall be retained for access, inspection and/or audit by the United States Department of Transportation, the FHWA, Comptroller General of the United States, the State, the California State Auditor and County or their duly authorized representatives for at least three (3) years after County's final payment to Consultant under this Agreement. Consultant shall incorporate this provision in any subcontract entered into as a result of this Agreement.

**ARTICLE XXXIX**

**Covenant Against Contingent Fees:** By executing this Agreement, Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working for Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this Agreement. For breach or violation of this warranty, County shall have the right to annul this Agreement without liability or at its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee. The parties hereto have acknowledged this covenant against contingent fees and Consultant has duly executed Exhibit B, marked "Certification of Consultant," and County has duly executed Exhibit C, marked "Certification of Local Agency," both of which exhibits are incorporated herein and made by reference a part hereof.

**ARTICLE XL**

**Design Standards:** Consultant shall perform all services under this Agreement in conformance with applicable federal, state and local design standards or other standards for work performance stipulated in Article VI, Standards for Work above or in the individual Task Orders issued pursuant to this Agreement.

**ARTICLE XLI**

**Documentation:** Consultant shall document the results of its work to the satisfaction of County and if applicable, the State and the FHWA. This may include preparation of progress and final reports, plans, specifications and estimates, or similar evidence of attainment of the Agreement objectives.

**ARTICLE XLII**

**Patent Rights:** Applicable patent rights provisions described in 41 CFR 1-9.1 regarding rights to inventions are hereby included in this Agreement as applicable. Consultant shall incorporate this provision in its subcontracts, if any, in excess of \$25,000.

### ARTICLE XLIII

**Copyrights:** County may permit copyrighting reports or other Agreement products. If copyrights are permitted, the FHWA and State shall have the royalty-free non-exclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for government purposes. Consultant shall incorporate this provision in its subcontracts, if any, in excess of \$25,000.

### ARTICLE XLIV

**Disadvantaged Business Enterprise (DBE) Considerations:** Consultant must give consideration to DBE firms as specified in 23 CFR 172.5(b) and in Appendix A to Part 26 of 49 CFR, and in Exhibit D marked, "Notice to Proposers Disadvantaged Business Enterprise (DBE) Information," incorporated herein and made by reference a part hereof. Consultant shall ensure that certified DBE firms have the opportunity to participate in the performance of this Agreement and Consultant shall take all necessary and reasonable steps for such assurance. If this Agreement has an Underutilized DBE (UDBE) goal, Consultant must meet the UDBE goal by using certified UDBEs as subconsultants or document a good faith effort to meet the goal. **For the purposes of this Agreement, the UDBE goal shall be 1.68%.**

If federal funding will be utilized for a specific assignment under this Agreement, Consultant shall prepare and submit with its Task Order proposal a "Local Agency Proposer-UDBE Commitment (On Call Consultant Contracts)" form, a "UDBE Information-Good Faith Efforts" form, and a "Local Agency Proposer DBE Information (On Call Consultant Contracts)" form, all of which are included in Exhibit D hereto, for each such Task Order issued under this Agreement, unless County's race conscious goals have been met for the Federal Fiscal Year in which the Task Order is executed.

If no subcontracting opportunities are available and federal funding will be utilized for a specific Task Order issued under this Agreement, Consultant shall prepare and submit with its Task Order proposal a "Local Agency Proposer – UDBE Commitment (On-Call Consultant Contracts)" form, and a "Local Agency Proposer DBE Information (On-Call Consultant Contracts)" form, showing a zero goal on each form.

### ARTICLE XLV

#### **DBE Participation:**

- A. This Agreement is subject to 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." It is the policy of County that certified DBE firms shall have the maximum opportunity to participate in the performance of agreements financed in whole or in part with federal funds. Consultant shall ensure that certified DBE firms, as defined in the Code of Federal Regulations, have the maximum opportunity to participate in the performance of this Agreement and shall take all necessary and reasonable steps, as set forth in said Part 26, for such assurance. Consultant, if it obtains DBE participation on this Agreement, will assist Caltrans in meeting its federally mandated statewide overall DBE goal. A "Local Agency

Proposer-DBE Information (On Call Consultant Contracts)” form, a “UDBE Information-Good Faith Efforts” form, and a “Local Agency Proposer-UDBE Commitment (On Call Consultant Contracts)” form, all of which forms are attached hereto as Exhibit D and are incorporated herein and made by reference a part hereof shall be completed by Consultant upon submittal of any Task Order proposal that is funded by federal funds.

- B. DBE and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of agreements financed in whole or in part with federal funds. Consultant, subrecipient or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. Consultant shall carry out applicable requirements of 49 CFR, 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.
- C. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this Article.
- D. A sample agreement is attached hereto as Exhibit E, marked “Standard Agreement for Subcontractor/DBE Participation,” and is incorporated herein and made by reference a part hereof.

#### **ARTICLE XLVI**

**Compliance with Disability Acts:** Consultant shall comply with: (a) Section 504 of the Rehabilitation Act of 1973 which prohibits discrimination on the basis of disability in federally assisted programs; (b) the Americans with Disabilities Act (ADA) of 1990 which prohibits discrimination on the basis of disability irrespective of funding; and (c) all applicable regulations and guidelines issued pursuant to both the Rehabilitation Act and the ADA.

#### **ARTICLE XLVII**

##### **Debarment and Suspension Certification:**

- A. Consultant’s signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that Consultant has complied with Title 2, Code of Federal Regulations, Part 1200, Debarment and Suspension Certificate, which certifies that it or any person associated therewith in the capacity of the owner, partner, director, officer or manager, is not currently under suspension, debarment, voluntary exclusion or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted or had a civil judgment rendered against it by a court of competent jurisdiction in any manner involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed to County.

- B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Consultant responsibility. Disclosures must indicate to whom exceptions apply, initiating agency and dates of action.
- C. Consultant agrees to include this Article without modification in all subcontracts.

## **ARTICLE XLVIII**

### **Prohibition of Expending County, State or Federal Funds for Lobbying:**

- A. Consultant, by its signature herein, certifies to the best of its knowledge and belief that:
  - 1. No state, federal or County appropriated funds have been paid, or will be paid by-or-on behalf of Consultant to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.
  - 2. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; the Consultant shall complete and submit "Standard Form-LLL, Disclosure of Lobbying Activities," in accordance with its instructions which form and instructions are attached hereto as Exhibit H and are incorporated herein and made by reference a part hereof.
- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- C. Consultant also agrees by signing this document that it shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000, and that all such subrecipients shall certify and disclose accordingly.

## **ARTICLE XLIX**

### **Disputes:**

- A. Any dispute, other than audit, concerning a question of fact arising under this Contract that is not disposed of by agreement shall be decided by a committee consisting of County's Contract Administrator and the Director of Transportation, or designee, which may consider written or verbal information submitted by Consultant.
- B. Not later than thirty (30) days after completion of all work under any individual Task Order issued pursuant to this Agreement, Consultant may request review by the Director of Transportation of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute, nor its consideration by the committee will excuse Consultant from full and timely performance in accordance with the terms of this Contract.
- D. Consultant's failure to follow this dispute resolution procedure shall constitute a waiver of such claims and a bar to further proceedings.

## **ARTICLE L**

### **Audit Review Procedures:**

- A. Any dispute concerning a question of fact arising under an interim or post audit of this contract that is not disposed of by agreement, shall be reviewed by County's Chief Fiscal Officer.
- B. Not later than thirty (30) days after issuance of the final audit report, Consultant may request a review by County's Chief Fiscal Officer of unresolved audit issues. The request for review shall be submitted by Consultant in writing.
- C. Neither the pendency of a dispute nor its consideration by County shall excuse the Consultant from full and timely performance, in accordance with the terms of this contract.

## **ARTICLE LI**

**Inspection of Work:** Consultant and any subconsultants authorized herein shall permit County, the State and the FHWA if federal participating funds are used in this Contract to review and inspect the Project activities and files at all reasonable times during the performance period of this Contract, including review and inspection on a daily basis.

## **ARTICLE LII**

### **Claims Filed by County's Construction Contractors:**

- A. If claims are filed by County's construction contractors relating to work performed by Consultant's personnel or subconsultants, and additional information or assistance from Consultant's personnel or subconsultants is required in order to evaluate or

defend against such claims, Consultant agrees to make its personnel and/or subconsultants available for consultation with County's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.

- B. Consultant's personnel and subconsultants that County considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from County. Consultation or testimony will be reimbursed at the rate indicated for court or briefing preparation, depositions, any pre-trial conferences, or court appearances in Amended Exhibit A hereto.
- C. Services of Consultant's personnel or subconsultants in connection with County's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this Agreement in order to finally resolve the claims.
- D. Any subcontract in excess of \$25,000 entered into as a result of this Agreement shall contain all of the provisions of this Article.

#### **ARTICLE LIII**

**National Labor Relations Board Certification:** In accordance with Public Contract Code Section 10296, Consultant hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Consultant within the immediately preceding two-year period, because of Consultant's failure to comply with an order of a federal court that orders Consultant to comply with an order of the National Labor Relations Board.

#### **ARTICLE LIV**

**Evaluation of Consultant:** Consultant's performance will be evaluated by County. A copy of the evaluation will be sent to Consultant for comments. The evaluation together with the comments shall be retained as part of the contract record.

#### **ARTICLE LV**

**Rebates, Kickbacks or Other Unlawful Consideration:** Consultant warrants that this Contract was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any County employee. For breach or violation of this warranty, County shall have the right in its discretion; to terminate the Contract without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

#### **ARTICLE LVI**

**Contracting with Small and Minority Firms and Women's Business Enterprises:** It is a national policy to award a fair share of contracts to small and minority business firms. County is strongly committed to the objectives of this policy and encourages all Consultants to take affirmative steps to ensure such fairness.

1. Consultant shall take all necessary affirmative steps to assure that minority firms, and women's business enterprises are used when possible.
2. Affirmative steps shall include:
  - (a) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
  - (b) Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
  - (c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business and women's business enterprises;
  - (d) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business and women's business enterprises;
  - (e) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce as appropriate, and
  - (f) Requiring the prime consultant, if subcontracts are to be let, to take the affirmative steps listed in 2 (a) through (e) above.

#### **ARTICLE LVII**

**Environmental Compliance:** Consultant shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)); Section 508 of the Clean Water Act (33 U.S.C. 1368); Executive Order 11738; Environmental Protection Agency regulations (40 CFR Part 15); and mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

#### **ARTICLE LVIII**

**Assignment and Delegation:** Consultant is engaged by County for its unique qualifications and skills as well as those of its personnel. Consultant 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. Notwithstanding this Article, County may, through its Contract Administrator, authorize Consultant to utilize subconsultants for services performed in Article I, Scope of Services, for the particular tasks, work and deliverables identified therein or as identified in the individual Task Orders issued pursuant to this Agreement. Said authorization and approval shall be sought and obtained by Consultant prior to subconsultants' commencement of any work under this Agreement. Specific subconsultants shall be authorized in individual Task Orders issued pursuant to




this Agreement. 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.

Notwithstanding any provision to the contrary, at no time shall County be obligated to pay separately for subconsultant services.

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


Except as herein amended, all other parts and sections of Agreement for Services # AGMT 09-52859 shall remain unchanged and in full force and effect.

**Contract Administrator Concurrence:**

By:   
Matthew D. Smeltzer  
Deputy Director, Engineering  
Engineering Division  
Department of Transportation

Dated: 10/31/11

**Requesting Department Concurrence:**

By:   
James W. Ware, P.E.  
Director of Transportation

Dated: 10/26/11

**IN WITNESS WHEREOF**, the parties hereto have executed this First Amendment to Agreement for Services # AGMT 09-52859 on the dates indicated below, the latest of which shall be deemed to be the effective date of this Amendment.

**-- COUNTY OF EL DORADO --**

By: \_\_\_\_\_

Dated: \_\_\_\_\_

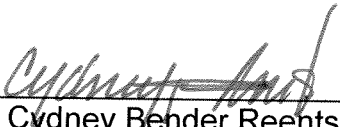
Board of Supervisors  
"County"

Attest:  
Suzanne Allen de Sanchez  
Clerk of the Board of Supervisors


By: \_\_\_\_\_  
Deputy Clerk

Dated: \_\_\_\_\_

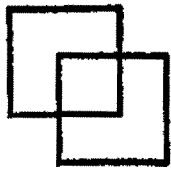
**-- BENDER ROSENTHAL, INC. --**

By:   
Cydney Bender Reents  
President  
"Consultant"

Dated: 11/4/2011

By:   
Stephen A. Rosenthal  
Corporate Secretary

Dated: 11/7/2011



**Amended Exhibit A  
Amended Fee Schedule**

**Standard Rates for Services:**

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

\*\$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 subconsultants, if applicable, shall not exceed the lesser of (1) the rates to be paid to County employees under the current Board of Supervisors Travel Policy at the time the mileage expenses are incurred; or (2) the rates authorized to be paid to rank and file state employees under the then current State Department of Personnel Administration (DPA) rules. Mileage reimbursement rates apply to Consultant and to any subconsultants authorized under this Agreement. There shall be no subconsultant markup on any mileage expenses. 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.

**Bender Rosenthal, Inc.**

**Exhibit B**

**CERTIFICATION OF CONSULTANT**

I HEREBY CERTIFY that I am the President and duly authorized representative of the firm of Bender Rosenthal, Inc., whose address is 4400 Auburn Boulevard, Suite 102, Sacramento, California 95841, and that, except as hereby expressly stated, neither I nor the above firm that I represent have:

(a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above Consultant) to solicit or secure this Agreement; nor

(b) agreed, as an express or implied condition for obtaining this Contract, to employ or retain the services of any firm or person in connection with carrying out the Agreement; nor

(c) paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above Consultant) any fee, contribution, donation, or consideration of any kind, for or in connection with, procuring or carrying out this Agreement.

I acknowledge that this Certificate is to be made available to the California Department of Transportation (Caltrans) in connection with this Agreement involving participation of Federal-aid Highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

11/4/2011  
(Date)

  
\_\_\_\_\_  
Cydney Bender Reents  
President

**Bender Rosenthal, Inc.**

**Exhibit C**

**CERTIFICATION OF LOCAL AGENCY**

I HEREBY CERTIFY that I am the Director of Transportation of the County of El Dorado, and that the consulting firm of Bender Rosenthal, Inc. or its representative has not been required (except as herein expressly stated), directly or indirectly, as an express or implied condition in connection with obtaining or carrying out this Agreement to:

- (a) employ, retain, agree to employ or retain, any firm or person; or
- (b) pay or agree to pay, to any firm, person or organization, any fee, contribution, donation, or consideration of any kind.

I acknowledge that this Certificate is to be made available to the California Department of Transportation (Caltrans) in connection with this Agreement involving participation of Federal-aid Highway funds, and is subject to applicable State and Federal laws, both criminal and civil.

10/26/11  
(Date)


  
James W. Ware, P.E.  
Director of Transportation

Exhibit D

**COUNTY OF EL DORADO**

**DEPARTMENT OF TRANSPORTATION**

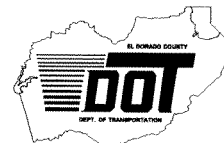


**MAINTENANCE DIVISION**  
2441 Headington Road  
Placerville CA 95667  
Phone: (530) 642-4909  
Fax: (530) 642-9238

**JAMES W. WARE, P.E.**  
Director of Transportation

Internet Web Site:  
<http://edcgov.us/dot>

**MAIN OFFICE**  
2850 Fairlane Court  
Placerville CA 95667  
Phone: (530) 621-5900  
Fax: (530) 626-0387



**NOTICE TO PROPOSERS  
DISADVANTAGED BUSINESS ENTERPRISE (DBE) INFORMATION**

The Underutilized DBE (UDBE) goal established for this Agreement is **1.68%**.

**1. TERMS AS USED IN THIS DOCUMENT**

- The term "Disadvantaged Business Enterprise" or "DBE" means a for-profit small business concern owned and controlled by a socially and economically disadvantaged person(s) as defined in Title 49, Part 26.5, Code of Federal Regulations (CFR).
- The term "Underutilized Disadvantaged Business Enterprise" or "UDBE." DBE classes that have been determined in the 2007 Caltrans Disparity Study to have a statistically significant disparity in their utilization in previously awarded transportation contracts. UDBEs include: African Americans, Native Americans, Asian-Pacific Americans, and Women.
- The term "Agreement" also means "Contract."
- Agency also means the local entity entering into this Agreement with the Consultant.
- The term "Small Business" or "SB" is as defined in 49 CFR 26.65.
- The term "proposer" shall mean "Consultant."

**2. AUTHORITY AND RESPONSIBILITY**

A. DBEs and other small businesses are strongly encouraged to participate in the performance of agreements financed in whole or in part with federal funds (See 49 CFR 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs"). The Consultant should ensure that DBEs and other small businesses have the opportunity to participate in the performance of the work that is the subject of this solicitation and should take all necessary and reasonable steps for this assurance. The proposer shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.

B. Proposers are encouraged to use services offered by financial institutions owned and controlled by DBEs.

### **3. SUBMISSION OF UDBE AND DBE INFORMATION**

For each federally funded Task Order issued under this Agreement, unless the County's race conscious goals have been met for the federal fiscal year in which the Task Order is executed, Consultant shall prepare and submit with its Task Order proposal a "Local Agency Proposer-UDBE Commitment (On Call Consultant Contracts)" form, "UDBE Information-Good Faith Efforts" form, and a "Local Agency Proposer DBE Information (On Call Consultant Contracts)" form, all of which are included in Exhibit D hereto. In order for a proposer to be considered responsible and responsive, the proposer must make good faith efforts to meet the goal established for the contract. If the goal is not met, the proposer must document adequate good faith efforts. Only UDBE participation will be counted towards the agreement goal; however, all DBE participation shall be collected and reported.

The purpose of the "Local Agency Proposer DBE Information (On Call Contracts)" form is to collect all UDBE and DBE commitment data required under 49 CFR 26. This form collects information on all DBEs, including UDBEs. For contracts with UDBE goals, this form collects DBE participation by DBEs owned by Hispanic American and Subcontinent Asian Americans males (persons whose origin are from India, Pakistan, Bangladesh, Bhutan, Maldives Islands, Nepal or Sri Lanka). For contracts with no goals, this form collects information on all DBEs, including UDBEs. Even if no DBE participation will be reported, the successful proposer must execute and return the form with its Task Order proposal.

### **4. DBE PARTICIPATION GENERAL INFORMATION**

It is the proposer's responsibility to be fully informed regarding the requirements of 49 CFR, Part 26, and the Department's DBE program developed pursuant to the regulations. Particular attention is directed to the following:

- A. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).
- B. A certified DBE may participate as a prime consultant, subconsultant, joint venture partner, as a vendor of material or supplies, or as a trucking company.
- C. A UDBE proposer, not proposing as a joint venture with a non-DBE, will be required to document one or a combination of the following:
  - 1. The proposer is a UDBE and will meet the goal by performing work with its own forces.
  - 2. The proposer will meet the goal through work performed by UDBE subconsultants, suppliers or trucking companies.
  - 3. The proposer prior to proposing, made adequate good faith efforts to meet the goal.
- D. A DBE joint venture partner must be responsible for specific Task Order items of work or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.
- E. A DBE must perform a commercially useful function pursuant to 49 CFR 26.55; that is, a DBE firm must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.

F. The proposer (prime consultant) shall list only one subconsultant for each portion of work as defined in its proposal and all DBE subconsultants should be listed in the cost proposal list of subconsultants.

G. A prime consultant who is a certified DBE is eligible to claim all of the work in the Task Order toward the DBE participation except that portion of the work to be performed by non-DBE subconsultants.

## 5. RESOURCES

A. The CUCP database includes the certified DBEs from all certifying agencies participating in the CUCP.

B. Access the CUCP database from the Department of Transportation, Civil Rights, Business Enterprise Program website at: <http://www.dot.ca.gov/hq/bep/>.

- Click on the link in the left menu titled “DBE Search Click Here”
- Click on [Click here to Access the DBE Query Form](#) link
- Searches can be performed by one or more criteria
- Follow instructions on the screen

C. How to Obtain a List of Certified DBEs without Internet Access.

D. DBE Directory: If you do not have Internet access, Caltrans also publishes a directory of certified DBE firms extracted from the online database. A copy of the directory of certified DBEs may be ordered at: <http://caltrans-opac.ca.gov/publicat.htm>.

## 6. MATERIALS OR SUPPLIES PURCHASED FROM DBEs COUNT TOWARDS DBE CREDIT, AND IF A DBE IS ALSO A UDBE, PURCHASES WILL COUNT TOWARDS THE UDBE GOAL UNDER THE FOLLOWING CONDITIONS:

A. If the materials or supplies are obtained from a DBE manufacturer, one hundred percent of the cost of the materials or supplies will count toward the DBE participation. A DBE manufacturer is a firm that operates or maintains a factory, or establishment that produces on the premises, the materials, supplies, articles, or equipment required under the agreement and of the general character described by the specifications.

B. If the materials or supplies are purchased from a DBE regular dealer, count sixty percent of the cost of the materials or supplies toward DBE participation. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Task Order are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.



C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not an ad hoc or agreement-by-agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not UDBE regular dealers within the meaning of this section.

D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

**7. FOR DBE TRUCKING COMPANIES: CREDIT FOR DBEs WILL COUNT TOWARDS DBE CREDIT, AND IF A DBE IS A UDBE, CREDIT WILL COUNT TOWARDS THE UDBE GOAL, UNDER THE FOLLOWING CONDITIONS:**

A. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular Task Order, and there cannot be a contrived arrangement for the purpose of meeting the UDBE goal.

B. The DBE must itself own and operate at least one fully licensed, insured and operational truck used on the Task Order.

C. The DBE receives credit for the total value of the transportation services it provides on the Task Order using trucks it owns, insures, and operates using drivers it employs.

D. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Task Order.

E. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by the DBE.

F. For the purposes of this Section D, a lease must indicate that the DBE has exclusive use and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, as long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

Exhibit D

Local Agency Proposer-UDBE Commitment (On Call Consultant Contracts)

**THIS INFORMATION SHALL BE PROVIDED BY THE PROPOSER WITH ITS TASK ORDER PROPOSAL**

LOCAL AGENCY: El Dorado County Department of Transportation LOCATION: \_\_\_\_\_

PROJECT DESCRIPTION: \_\_\_\_\_

PROPOSAL DATE: (Date Received Task Order Proposal from Consultant): \_\_\_\_\_

PROPOSER'S NAME: Bender Rosenthal, Inc.

CONTRACT UDBE GOAL (%): \_\_\_\_\_

WORK ITEM NO.	DESCRIPTION OR SERVICES TO BE SUBCONTRACTED (or contracted if proposer is a UDBE)	UDBE CERT. NO. AND EXPIRATION DATE	NAME OF EACH UDBE (Must be certified at the time the proposals are due - include UDBE address and phone number)	PERCENT PARTICIPATION OF EACH UDBE

<p><b>For Local Agency to Complete:</b></p> <p>Local Agency Contract Number: <u>(Consultant AGMT# / TO#): 09-52859-</u> _____</p> <p>Federal Aid Project Number: _____</p> <p>Federal Share: _____</p> <p>Proposal Date: <u>(Date Received Task Order Proposal from Consultant):</u> _____</p> <p>Local Agency certifies that the UDBE certification(s) has been verified and all information is complete and accurate.</p> <p>_____ Janel Gifford Local Agency Representative</p> <p style="text-align: center;">Signature</p> <p>_____ Date</p> <p>(Area Code) Telephone Number: <u>530-621-5974</u></p>	<table style="width: 100%;"> <tr> <td style="width: 70%;">Total Claimed UDBE Commitment</td> <td style="width: 30%; text-align: center;">%</td> </tr> <tr> <td> </td> <td style="text-align: center;">OF TOTAL TASK ORDER PROPOSAL AMOUNT</td> </tr> </table> <p>_____ Signature of Proposer</p> <p>_____ Date (Area Code) Tel. No.</p> <p>_____ Person to Contact (Please Type or Print)</p> <p style="text-align: center;">Local Agency Proposer - UDBE Commitment (Consultant Contracts)(Rev 6/27/09)</p>	Total Claimed UDBE Commitment	%		OF TOTAL TASK ORDER PROPOSAL AMOUNT
Total Claimed UDBE Commitment	%				
	OF TOTAL TASK ORDER PROPOSAL AMOUNT				

Distribution: Original – Local agency files

Exhibit D

**INSTRUCTIONS - LOCAL AGENCY PROPOSER-UDBE COMMITMENT  
(ON CALL CONSULTANT CONTRACTS) FORM (Revised 6/27/09)**

**TO PROPOSER: EXCEPT AS NOTED BELOW FILL IN THE INFORMATION ON THE  
UDBE COMMITMENT FORM AND SUBMIT FORM TO COUNTY WITH  
WITH YOUR TASK ORDER PROPOSAL.**

It is the proposer's responsibility to verify that the UDBE(s) falls into one of the following groups in order to count towards the UDBE contract goal: 1) African Americans; 2) Asian-Pacific Americans; 3) Native Americans; and, 4) Women. This information shall be submitted with your Task Order proposal. Failure to submit the required UDBE commitment will be grounds for finding the proposal nonresponsive.

UDBE is a firm meeting the definition of a DBE as specified in 49 CFR and is one of the following groups: African Americans, Asian-Pacific Americans, Native Americans or Women.

The form requires specific information regarding the consultant agreement: Local Agency, Location, Project Description, Proposal Date, Proposer's Name, and Contract UDBE Goal.

The form has a column for the Work Item Number and Description or Services to be Subcontracted to UDBEs (or performed by the proposer if the proposer is a UDBE). The UDBE prime consultants shall indicate all work to be performed by UDBEs including, if the prime consultant is a UDBE, work performed by its own forces. The UDBE shall provide a certification number to the prime consultant and notify the prime consultant in writing with the date of the decertification if their status should change during the course of the agreement. Enter the UDBE prime consultant, as applicable, and subconsultant certification numbers. The form has a column for the Name of certified UDBEs to perform the work (must be certified on the date proposals are due and include UDBE address and phone number).

There is a column for percent participation of each UDBE. Enter the Total Claimed UDBE Commitment as a percentage of the total Task Order proposal amount pursuant to the Scope of Work. (If 100% of item is not to be performed or furnished by the UDBE, describe the exact portion of time to be performed or furnished by the UDBE.) See Notice to Proposers Disadvantaged Business Enterprise (DBE) Information to determine how to count the participation of UDBE firms. Note: If the proposer has not met the contract goal, the local agency must evaluate the proposer's good faith efforts to meet the goal in order to be considered for award of the task order.

Local Agency Proposer-UDBE Commitment (On Call Consultant Contracts) form must be signed and dated by the consultant submitting the Task Order proposal. Also list a phone number in the space provided and print the name of the person to contact.

**Local agencies should complete** the Proposal Number, federal-aid Project Number, Federal Share, and Proposal Date fields and verify that all information is complete and accurate before signing and filing.

Exhibit D

UDBE Information - Good Faith Efforts

Federal-aid Project No. \_\_\_\_\_ Proposal Opening Date \_\_\_\_\_

County established an Underutilized Disadvantaged Business Enterprise (UDBE) goal of 1.68% for this project. The information provided herein shows that a good faith effort was made.

If there is a UDBE goal for this project, the proposer shall submit the following information with its proposal to document adequate good faith efforts. Proposers should submit the following information even if the "Local Agency Proposer-UDBE Commitment (Consultant Contracts)" form indicates that the proposer has met the UDBE goal. This will protect the proposer's eligibility for award of the agreement if the administering agency determines that the proposer failed to meet the goal for various reasons, e.g., a UDBE firm was not certified at proposal opening, or the proposer made a mathematical error.

Submittal of only the "Local Agency Proposer-UDBE Commitment (Consultant Contracts)" form may not provide sufficient documentation to demonstrate that adequate good faith efforts were made.

The proposer shall list the following information:

- A. The names and dates of each publication in which a request for UDBE participation for this project was placed by the proposer (please attach copies of advertisements or proofs of publication):

Table with 2 columns: Publications, Dates of Advertisement. Includes three blank rows for data entry.

- B. The names and dates of written notices sent to certified UDBEs soliciting proposals for this project and the dates and methods used for following up initial solicitations to determine with certainty whether the UDBEs were interested (please attach copies of solicitations, telephone records, fax confirmations, etc.):

Table with 3 columns: Names of UDBEs Solicited, Date of Initial Solicitation, Follow Up Methods and Dates. Includes six blank rows for data entry.

Exhibit D

C. The items of work which the proposer made available to UDBE firms, including, where appropriate, any breaking down of the items of work (including those items normally performed by the proposer with its own forces) into economically feasible units to facilitate UDBE participation. It is the proposer's responsibility to demonstrate that sufficient work to facilitate UDBE participation was made available to UDBE firms.

Items of Work	Proposer Normally Performs Item (Y/N)	Breakdown of Items	Amount (\$)	Percentage Of Agreement

D. The names, addresses and phone numbers of rejected UDBE firms, the reasons for the proposer's rejection of the UDBEs, the firms selected for that work (please attach copies of quotes from the firms involved), and the price difference for each UDBE if the selected firm is not a UDBE:

Names, addresses and phone numbers of rejected UDBEs and the reasons for the proposer's rejection of the UDBEs:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Names, addresses and phone numbers of firms selected for the work above:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

E. Efforts made to assist interested UDBEs in obtaining lines of credit or insurance and any technical assistance or information related to the Scope of Work in the proposal which was provided to UDBEs:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Exhibit D

F. Efforts made to assist interested UDBEs in obtaining necessary equipment, supplies, materials, or related assistance or services, excluding supplies and equipment the UDBE subconsultant purchases or leases from the prime consultant or its affiliate:

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G. The names of agencies, organizations or groups contacted to provide assistance in contacting, recruiting and using UDBE firms (please attach copies of requests to agencies and any responses received, i.e., lists, Internet page download, etc.):

Name of Agency/Organization	Method/Date of Contact	Results

H. Any additional data to support a demonstration of good faith efforts (use additional sheets if necessary):

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**NOTE:** USE ADDITIONAL SHEETS OF PAPER IF NECESSARY.

Bender Rosenthal, Inc.

Exhibit D

Local Agency Proposer DBE Information (On Call Consultant Contracts)

THIS INFORMATION SHALL BE PROVIDED BY THE PROPOSER WITH ITS TASK ORDER PROPOSAL

LOCAL AGENCY: El Dorado County Department of Transportation LOCATION:

PROJECT DESCRIPTION:

TOTAL CONTRACT AMOUNT: \$ (Task Order Amount): \$

PROPOSER'S NAME: Bender Rosenthal, Inc.

Table with 5 columns: WORK ITEM NO., DESCRIPTION OR SERVICES TO BE SUBCONTRACTED, DBE CERT. NO. AND EXPIRATION DATE, NAME OF EACH DBE, DOLLAR AMOUNT OF EACH DBE.

For Local Agency to Complete:

Local Agency Contract Number: (Consultant AGMT#/TO# ): 09-52859-

Federal Aid Project Number:

Federal Share:

Contract Award Date (Date that Task Order is Executed):

Local Agency certifies that the DBE certification(s) has been verified and all information is complete and accurate.

Janel Gifford Signature Date Local Agency Representative

(Area Code) Telephone Number: 530-621-5974

For Caltrans Review:

Print Name Signature Date Caltrans District Local Assistance Engineer

Total Claimed DBE Participation

\$

Total % of DBE

% OF TOTAL TASK ORDER AMOUNT

Signature of Proposer

Date (Area Code) Tel. No.

Person to Contact (Please Type or Print)

Local Agency Proposer - DBE Information (Consultant Contracts) (Rev 6/27/09)

Distribution: (1) Copy - Fax or scan a copy to the Caltrans District Local Assistance Engineer (DLAE) within 15 days after Contract execution. Failure to send a copy to the DLAE within 15 days after Contract execution may result in de-obligation of funds for this project. (2) Original - Local agency files

**Bender Rosenthal, Inc.**

**Exhibit D**

**INSTRUCTIONS - LOCAL AGENCY PROPOSER DBE INFORMATION  
(ON CALL CONSULTANT CONTRACTS) FORM (Revised 6/27/09)**

TO SUCCESSFUL PROPOSER: EXCEPT AS NOTED BELOW FILL IN THE  
INFORMATION ON THE DBE INFORMATION FORM AND SUBMIT FORM TO  
COUNTY AS NOTED BELOW

The form requires specific information regarding the consultant agreement: Local Agency, Location, Project Description, Total Contract Amount, and Successful Proposer's Name.

The form has a column for the Work Item Number and Description or Services to be Subcontracted to DBEs. The prime consultant shall indicate all work to be performed by DBEs including, if the prime consultant is a DBE, work performed by its own forces. The DBE shall provide a certification number to the prime consultant. Enter the DBE prime consultant, as applicable, and subconsultant certification numbers. The form has a column for the Name of Certified DBEs to perform the work (must be certified on the date the proposal is due and include DBE address and phone number).

Enter the Total Claimed DBE Participation dollar amount as the total of all items in the Dollar Amount of Each DBE column. (If 100% of item is not to be performed by the DBE, describe the exact portion of time to be performed by the DBE.) See Notice to Proposers Disadvantaged Business Enterprise (DBE) Information to determine how to count the participation of DBE firms. Enter the Total % of DBE as a percentage of the total task order amount.

Local Agency Proposer DBE Information (On Call Consultant Contracts) form must be signed and dated by the successful proposer at Task Order execution. Also list a phone number in the space provided and print the name of the person to contact.

**For the successful proposer, local agencies should** complete the Contract Number, Federal-aid Project Number, Federal Share, and Contract Award Date fields and verify that all information is complete and accurate before signing and sending a copy of the form to the District Local Assistance Engineer within 15 days of Task Order execution. Failure to submit a completed and accurate form within the 15-day time period may result in the de-obligation of funds on this project.

District DBE Coordinator should verify that all information is complete and accurate. Once the information has been verified, the District Local Assistance Engineer signs and dates the form.



STATE OF CALIFORNIA • DEPARTMENT OF TRANSPORTATION  
**FINAL REPORT - UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES  
 (DBE), FIRST-TIER SUBCONTRACTORS**  
 CEM-2402F (REV 02/2008)

**ADA Notice**

For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

CONTRACT NUMBER		COUNTY	ROUTE	POST MILES	FEDERAL AID PROJECT NUMBER	ADMINISTERING AGENCY	CONTRACT COMPLETION DATE						
PRIME CONTRACTOR		BUSINESS ADDRESS			ESTIMATED CONTRACT AMOUNT			\$					
ITEM NO.	DESCRIPTION OF WORK PERFORMED AND MATERIALS PROVIDED	COMPANY NAME AND BUSINESS ADDRESS	DBE CERT. NUMBER	CONTRACT PAYMENTS						DATE WORK COMPLETE	DATE OF FINAL PAYMENT		
				NON-DBE	DBE	BA UDBE	APA UDBE	NA UDBE	W UDBE				
			\$	\$	\$	\$	\$	\$	\$	\$	\$		
			\$	\$	\$	\$	\$	\$	\$	\$	\$		
			\$	\$	\$	\$	\$	\$	\$	\$	\$		
			\$	\$	\$	\$	\$	\$	\$	\$	\$		
			\$	\$	\$	\$	\$	\$	\$	\$	\$		
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			\$	\$	\$	\$	\$	\$	\$	\$	\$		
			\$	\$	\$	\$	\$	\$	\$	\$	\$		
			\$	\$	\$	\$	\$	\$	\$	\$	\$		
			\$	\$	\$	\$	\$	\$	\$	\$	\$		
			TOTAL	\$	\$	\$	\$	\$	\$	\$	\$		BA - Black American APA - Asian-Pacific Islander NA - Native American W - Woman

**ORIGINAL COMMITMENT**  
 \$ UDBE  
 List all First Tier Subcontractors, Disadvantaged Business Enterprises (DBEs) and underutilized DBEs (UDBEs) regardless of tier, whether or not the firms were originally listed for goal credit. If actual UDBE utilization (or item of work) was different than that approved at time of award, provide comments on back of form. List actual amount paid to each entity.

CONTRACTOR REPRESENTATIVE'S SIGNATURE \_\_\_\_\_ BUSINESS PHONE NUMBER \_\_\_\_\_ DATE \_\_\_\_\_  
 RESIDENT ENGINEER'S SIGNATURE \_\_\_\_\_ BUSINESS PHONE NUMBER \_\_\_\_\_ DATE \_\_\_\_\_

TO THE BEST OF MY INFORMATION AND BELIEF, THE ABOVE INFORMATION IS COMPLETE AND CORRECT

COPY DISTRIBUTION - Caltrans contracts: Original - District Construction Copy - Business Enterprise Program Copy - Contractor Copy - Resident Engineer  
 COPY DISTRIBUTION - Local Agency contracts: Original - District Local Assistance Engineer Copy - District Local Assistance Engineer Copy - Local Agency file  
 Bender Rosenthal, Inc.

**FINAL REPORT - UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES (DBE), FIRST-TIER SUBCONTRACTORS**

CEM-2402F (REV 02/2008)

The form requires specific information regarding the construction project: Contract Number, County, Route, Post Miles, Federal Aid Project number, the Administering Agency, the Contract Completion Date and the Estimated Contract Amount. It requires the prime contractor's name and business address. The focus of the form is to describe who did what by contract item numbers and descriptions, asking for specific dollar values of item work completed broken down by subcontractors who performed the work, both DBE and non-DBE work forces. DBE prime contractors are required to show the date of work performed by their own forces along with the corresponding dollar value of work.

The form has a column to enter the Contract Item No. (or Item No's) and description of work performed or materials provided, as well as a column for the subcontractor name and business address. For those firms who are DBE, there is a column to enter their DBE Certification Number. The DBE should provide their Certification Number to the contractor and notify the contractor in writing with the date of the decertification if their status should change during the course of the project.

The form has six columns for the dollar value to be entered for the item work performed by the subcontractor.

The Non-DBE column is used to enter the dollar value of work performed for firms who are not certified DBE.

The decision of which column to be used for entering the DBE dollar value is based on what program(s) status the firm is certified. This program status is determined by the California Unified Certification Program by ethnicity, gender, ownership and control issues at time of certification. To confirm the certification status and program status, access the Department of Transportation Civil Rights website at <http://www.dot.ca.gov/hq/bep> or by calling (916) 324-1700 or the toll free number at (866) 810-6346.

Based on this DBE Program status, the following table depicts which column to use:

<b>DBE Program Status</b>	<b>Column to be used</b>
If program status shows DBE only with no other programs listed	DBE
If program status shows DBE, Black American	BA UDBE
If program status shows DBE, Asian-Pacific Islander	APA UDBE
If program status shows DBE, Native American	NA UDBE
If program status shows DBE, Woman	W UDBE

If a contractor performing work as a DBE on the project becomes decertified and still performs work after their decertification date, enter the total value performed by this contractor under the appropriate DBE identification column.

If a contractor performing work as a non-DBE on the project becomes certified as a DBE, enter the dollar value of all work performed after certification as a DBE under the appropriate identification column.

Enter the total of each of the six columns on Form CEM-2402(F).

Any changes to DBE certification must also be submitted on Form CEM-2403(F).

Enter the Date Work Completed as well as the Date of Final Payment (the date when the prime contractor made the "final payment" to the subcontractor for the portion of work listed as being completed).

The contractor and the resident engineer sign and date the form indicating that the information provided is complete and correct.

**Bender Rosenthal, Inc.**

**Exhibit E**

**STANDARD AGREEMENT FOR SUBCONTRACTOR/DBE PARTICIPATION**

**1. Subcontractors (hereinafter “subconsultants”)**

A. Nothing contained in this Agreement or otherwise, shall create any contractual relation between the County of El Dorado (hereinafter “County”) and any subconsultants, and no subcontract shall relieve Bender Rosenthal, Inc. (hereinafter “Consultant”) of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to County for the acts and omissions of its subconsultants and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. Consultant's obligation to pay its subconsultants is an independent obligation from County’s obligation to make payments to Consultant.

B. Any subcontract in excess of \$25,000, entered into as a result of this Agreement, shall contain all the provisions stipulated in this Agreement to be applicable to subconsultants.

C. Consultant shall pay its subconsultants within ten (10) calendar days from receipt of each payment made to Consultant by County.

D. Any substitution of subconsultants must be approved in writing by County’s Contract Administrator in advance of assigning work to a substitute subconsultant.

**2. Disadvantaged Business Enterprise (DBE) Participation**

A. This Agreement is subject to 49 CFR, Part 26 entitled “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.” Proposers who obtain DBE participation on this Agreement will assist Caltrans in meeting its federally mandated statewide overall DBE goal.

B. If this Agreement has an Underutilized DBE (UDBE) goal, Consultant must meet the UDBE goal by using UDBEs as subconsultants or document a good faith effort to meet the goal. If a UDBE subconsultant is unable to perform, Consultant must make a good faith effort to replace the subconsultant with another UDBE subconsultant if the goal is not otherwise met. A UDBE is a firm meeting the definition of a DBE as specified in 49 CFR, Part 26 and is one of the following groups:

1. Black American
2. Asian-Pacific American
3. Native American
4. Women

C. DBE and other small businesses, as defined in 49 CFR, Part 26 are encouraged to participate in the performance of agreements financed in whole or in part with federal funds. Consultant, subrecipient or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. Consultant shall

carry out applicable requirements of 49 CFR, 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. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section.

### **3. Performance of DBE Consultants and other DBE Subconsultants/Suppliers**

A. A DBE performs a commercially useful function when it is responsible for execution of the work of the agreement and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible with respect to materials and supplies used on the agreement, 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 commercially useful function, evaluate the amount of work subcontracted, industry practices; whether the amount the firm is to be paid under the agreement is commensurate with the work it is actually performing; and other relevant factors.

B. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, agreement, 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.

C. If a DBE does not perform or exercise responsibility for at least thirty percent of the total cost of its agreement with its own work force, or the DBE subcontracts a greater portion of the work of the agreement 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 commercially useful function.

### **4. Prompt Payment of Funds Withheld to Subconsultants**

A. No retainage will be held by County from progress payments due the prime consultant. Any retainage held by the prime consultants or subconsultants from progress payments due subconsultants shall be promptly paid in full to subconsultants within thirty (30) days after the subconsultant's work is satisfactorily completed. Federal law (49CFR26.29) requires that any delay or postponement of payment over the thirty (30) days may take place only for good cause and with County's prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the California Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE prime consultants and subconsultants.

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

## 5. DBE Records

A. Consultant shall maintain records of materials purchased and/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.

B. 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 Enterprises (DBE), First-Tier Subcontractors," CEM-2402F, attached hereto as pages 12 and 13 of Exhibit D hereto, (Exhibit 17-F in Chapter 17 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 will 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 Subcontractors" is submitted to County's Contract Administrator.

1) Prior to the fifteenth of each month, Consultant shall submit documentation to County's Contract Administrator showing the amount paid to DBE trucking companies. Consultant shall also obtain and submit documentation to County's Contract Administrator showing the amount paid by DBE trucking companies to all firms, including owner-operators, for the leasing of trucks. If the DBE leases trucks from a non-DBE, Consultant may count only the fee or commission the DBE receives as a result of the lease arrangement.

2) Consultant shall also submit to County's Contract Administrator documentation showing the truck number, name of owner, California Highway Patrol CA number, and if applicable, the DBE certification number of the truck owner for all trucks used during that month. This documentation shall be submitted on the Caltrans "Monthly DBE Trucking Verification," CEM-2404(F) form provided to Consultant by County's Contract Administrator.

## 6. DBE Certification and De-certification Status

If a DBE subconsultant is decertified during the life of the Agreement, the decertified subconsultant shall notify Consultant in writing with the date of de-certification. 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.

**Materials or supplies purchased from DBEs will count towards DBE credit, and if a DBE is also a UDBE, purchases will count towards the UDBE goal under the following conditions:**

A. If the materials or supplies are obtained from a DBE manufacturer, one hundred percent (100%) of the cost of the materials or supplies will count toward the DBE participation. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises, the materials, supplies, articles, or equipment required under the agreement and of the general character described by the specifications.

B. If the materials or supplies are purchased from a DBE regular dealer, count sixty percent (60%) of the cost of the materials or supplies toward DBE goals. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the agreement, are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.

C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment, shall be by a long-term lease agreement and not an ad hoc or agreement-by-agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this section.

D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

**Bender Rosenthal, Inc.**

**Exhibit F**

**FAIR EMPLOYMENT PRACTICES ADDENDUM**

1. In the performance of this Agreement, Bender Rosenthal, Inc. will not discriminate against any employee for employment because of race, color, sex, sexual orientation, religion, ancestry or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave or disability leave. Bender Rosenthal, Inc. will take affirmative action to ensure that employees are treated during employment, without regard to their race, color, sex, sexual orientation, religion, ancestry or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave or disability leave. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Bender Rosenthal, Inc. shall post in conspicuous places, available to employees for employment, notices to be provided by State setting forth the provisions of this Fair Employment section.

2. Bender Rosenthal, Inc., its consultant(s) and all subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 1290-0 et seq.), and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12900(a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Each of Bender Rosenthal, Inc.'s consultants and all subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements, as appropriate.

3. Bender Rosenthal, Inc. shall include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts to perform work under this Agreement.

4. Bender Rosenthal, Inc. will permit access to the records of employment, employment advertisements, application forms and other pertinent data and records by County, State, the State Fair Employment and Housing Commission or any other agency of the State of California designated by State, for the purposes of investigation to ascertain compliance with the Fair Employment section of this Agreement.

5. Remedies for Willful Violation:

(a) County may determine a willful violation of the Fair Employment provision to have occurred upon receipt of a final judgment to that effect from a court in an action to which Bender Rosenthal, Inc. was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that Bender Rosenthal, Inc. has violated the Fair Employment Practices Act and had issued an order under Labor Code Section 1426 which has become final or has obtained an injunction under Labor Code Section 1429.

**Bender Rosenthal, Inc.**

**Exhibit F**

(b) For willful violation of this Fair Employment Provision, County shall have the right to terminate this Agreement either in whole or in part, and any loss or damage sustained by County in securing the goods or services thereunder shall be borne and paid for by Bender Rosenthal, Inc. and by the surety under the performance bond, if any, and County may deduct from any moneys due or thereafter may become due to Bender Rosenthal, Inc. the difference between the price named in the Agreement and the actual cost thereof to County to cure Bender Rosenthal, Inc.'s breach of this Agreement.



**Bender Rosenthal, Inc.**

**Exhibit G**

**NONDISCRIMINATION ASSURANCES**

Bender Rosenthal, Inc. hereby agrees that, as a condition to receiving any federal financial assistance from County or the State, acting for the U.S. Department of Transportation, it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-42 U.S.C. 2000d-4 (hereinafter referred to as the Act), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964" (hereinafter referred to as the Regulations), the Federal-aid Highway Act of 1973, and other pertinent directives, to the end that in accordance with the Act, Regulations, and other pertinent directives, no person in the United States shall, on the grounds of race, color, sex, national origin, religion, age or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which County receives federal financial assistance from the Federal Department of Transportation. Bender Rosenthal, Inc. hereby gives assurance that Bender Rosenthal, Inc. will promptly take any measures necessary to effectuate this agreement. This assurance is required by subsection 21.7(a) (1) of the Regulations.

More specifically, and without limiting the above general assurance, Bender Rosenthal, Inc. hereby gives the following specific assurances with respect to its Federal-aid Program:

1. That Bender Rosenthal, Inc. agrees that each "program" and each "facility" as defined in subsections 21.23 (e) and 21.23 (b) of the Regulations, will be (with regard to a "program") conducted, or will be (with regard to a "facility") operated in compliance with all requirements imposed by, or pursuant to, the Regulations.

2. That Bender Rosenthal, Inc. shall insert the following notification in all solicitations for proposals for work or material subject to the Regulations made in connection with the Federal-aid Program and, in adapted form, in all proposals for negotiated agreements:

Bender Rosenthal, Inc. hereby notifies all proposers that it will affirmatively ensure that in any agreement entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, national origin, religion, age, or disability in consideration for an award.

3. That Bender Rosenthal, Inc. shall insert the clauses of Appendix A of this assurance in every agreement subject to the Act and the Regulations.

4. That the clauses of Appendix B of this Assurance shall be included as a covenant running with the land, in any deed effecting a transfer of real property, structures, or improvements thereon, or interest therein.

5. That where Bender Rosenthal, Inc. receives federal financial assistance to construct a facility, or part of a facility, the Assurance shall extend to the entire facility and facilities operated in connection therewith.

**Bender Rosenthal, Inc.**

**Exhibit G**

6. That where Bender Rosenthal, Inc. receives federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, the Assurance shall extend to rights to space on, over, or under such property.

7. That Bender Rosenthal, Inc. shall include the appropriate clauses set forth in Appendix C and D of this Assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by Bender Rosenthal, Inc. with other parties:

Appendix C;

(a) For the subsequent transfer of real property acquired or improved under the Federal-aid Program; and

Appendix D;

(b) For the construction or use of or access to space on, over, or under real property acquired, or improved under the Federal-aid Program.

8. That this assurance obligates Bender Rosenthal, Inc. for the period during which federal financial assistance is extended to the program, except where the federal financial assistance is to provide, or is in the form of, personal property or real property of interest therein, or structures, or improvements thereon, in which case the assurance obligates Bender Rosenthal, Inc. or any transferee for the longer of the following periods:

(a) The period during which the property is used for a purpose for which the federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or

(b) The period during which Bender Rosenthal, Inc. retains ownership or possession of the property.

9. That Bender Rosenthal, Inc. shall provide for such methods of administration for the program as are found by the U.S. Secretary of Transportation, or the official to whom he delegates specific authority, to give reasonable guarantee that Bender Rosenthal, Inc., other recipients, sub-grantees, applicants, sub-applicants, transferees, successors in interest, and other participants of federal financial assistance under such program will comply with all requirements imposed by, or pursuant to, the Act, the Regulations, this Assurance and the Agreement.

10. That Bender Rosenthal, Inc. agrees that County, the United States and the State of California have a right to seek judicial enforcement with regard to any matter arising under the Act, the Regulations, and this Assurance.

11. Bender Rosenthal, Inc. shall not discriminate on the basis of race, religion, age, disability, color, national origin or sex in the award and performance of any State assisted agreement or in the administration of County's DBE Program or the requirements of 49 CFR Part 26. Bender Rosenthal, Inc. shall take all necessary and

**Bender Rosenthal, Inc.**

**Exhibit G**

reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of State assisted agreements. County's DBE Program Implementation Agreement is incorporated by reference in this Agreement. Implementation of this Program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to County of its failure to carry out its approved DBE Program Implementation Agreement, State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 USC 3801 et seq.).

These Assurances are given in consideration of and for the purpose of obtaining any and all federal grants, loans, agreements, property, discounts or other federal financial assistance extended after the date hereof to County by State, acting for the U.S. Department of Transportation, and is binding on Bender Rosenthal, Inc., other recipients, subgrantees, applicants, sub-applicants, transferees, successors in interest and other participants in the Federal-aid Highway Program.

## **Bender Rosenthal, Inc.**

### **Appendix A to Exhibit G**

During the performance of this Agreement, Bender Rosenthal, Inc., for itself, its assignees and successors in interest (hereinafter collectively referred to as "Consultant") agrees as follows:

(1) **Compliance with Regulations:** Consultant shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.

(2) **Nondiscrimination:** Consultant, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix b of the Regulations.

(3) **Solicitations for Sub-agreements, including procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by Consultant for work performed under a Sub-agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by Consultant of Consultant's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color or national origin.

(4) **Information and Reports:** Consultant shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to Consultant's books, records, accounts, other sources of information, and its facilities as may be determined by County, State or FHWA to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of Consultant is in the exclusive possession of another who fails or refuses to furnish this information, Consultant shall so certify to County, State or the FHWA as appropriate, and shall set forth what efforts Consultant was made to obtain the information.

(5) **Sanctions for Noncompliance:** In the event of Consultant's noncompliance with the nondiscrimination provisions of this Agreement, County shall impose such agreement sanctions as it, the State or the FHWA may determine to be appropriate, including, but not limited to:

- (a) withholding of payments to Consultant under the Agreement within a reasonable period of time, not to exceed 90 days; and/or
- (b) cancellation, termination or suspension of the Agreement, in whole or in part.

(6) **Incorporation of Provisions:** Consultant shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

Consultant shall take such action with respect to any sub-agreement or procurement as County, State or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event Consultant becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, Consultant may request County or State enter into such litigation to protect the interests of County or State, and, in addition, Consultant may request the United States to enter into such litigation to protect the interests of the United States.

**Bender Rosenthal, Inc.**  
**Appendix B to Exhibit G**  
**(NOT USED)**

**Bender Rosenthal, Inc.**  
**Appendix C to Exhibit G**  
**(NOT USED)**

**Bender Rosenthal, Inc.**  
**Appendix D to Exhibit G**

**(NOT USED)**



# Bender Rosenthal, Inc.

## Exhibit H

### DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

<b>1. Type of Federal Action:</b> <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	<b>2. Status of Federal Action:</b> <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	<b>3. Report Type:</b> <input type="checkbox"/> a. initial <input type="checkbox"/> b. material change <b>For Material Change Only:</b> year _____ quarter _____ date of last report _____
<b>4. Name and Address of Reporting Entity:</b> <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known  Congressional District, if known:	<b>5. If Reporting Entity in No. 4 is Subawardee. Enter Name and Address of Prime:</b>  Congressional District, if known:	
<b>6. Federal Department/Agency:</b>	<b>7. Federal Program Name/Description:</b>  CFDA Number, if applicable _____	
<b>8. Federal Action Number, if known:</b>	<b>9. Award Amount, if known:</b> \$ _____	
<b>10. a. Name and Address of Lobbying Entity</b> (if individual, last name, first name, MI):	<b>b. Individuals Performing Services</b> (including address if different from No. 10a) (last name, first name, MI):	
(attach Continuation Sheet(s) if necessary)		
<b>11. Amount of Payment (check all that apply):</b> \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned	<b>13. Type of Payment (check all that apply)</b> <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other, specify: _____	
<b>12. Form of Payment (check all that apply):</b> <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ value _____		
<b>14. Brief Description of Services Performed or to be performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 11:</b>  (attach Continuation Sheet(s) if necessary)		
<b>15. Continuation Sheet(s) attached:</b> Yes <input type="checkbox"/> No <input type="checkbox"/>		
<b>16. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</b>	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
	<b>Federal Use Only:</b> Authorized for Local Reproduction Standard Form - 111	

Standard Form LLL Rev. 09-12-97

# Bender Rosenthal, Inc.

## Exhibit H

### INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of covered Federal action or a material change to previous filing pursuant to title 31 U.S.C. Section 1352. The filing of a form is required for such payment or agreement to make payment to lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress an officer or employee of Congress or an employee of a Member of Congress in connection with a covered Federal action. Attach a continuation sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence, the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last, previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District if known. Check the appropriate classification of the reporting entity that designates if it is or expects to be a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the first tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in Item 4 checks "Subawardee" then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organization level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identification in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract, grant, or loan award number, the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitments for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influenced the covered Federal action.  
(b) Enter the full names of the individual(s) performing services and include full address if different from 10 (a). Enter Last Name, First Name and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed or will be expected to perform and the date(s) of any services rendered. Include all preparatory and related activity not just time spent in actual contact with Federal officials. Identify the Federal officer(s) or employee(s) contacted or the officer(s) employee(s) or Member(s) of Congress that were contacted.
15. Check whether or not a continuation sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name title and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.