

Vali Cooper & Associates, Inc.

FIRST AMENDMENT TO AGREEMENT FOR SERVICES # AGMT 09-52748

THIS FIRST AMENDMENT to that Agreement for Services # AGMT 09-52748 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 Vali Cooper & Associates, Inc., a corporation duly qualified to conduct business in the State of California, whose principal place of business is 41 Washington Avenue, Point Richmond, California 94801, (hereinafter referred to as "Consultant");

RECITALS

WHEREAS, Consultant has been engaged by County to provide construction engineering and construction support services for the U.S. 50/Missouri Flat Road Interchange Improvements – Phase 1B Project pursuant to Agreement for Services # AGMT 09-52748, incorporated herein and made by reference a part hereof;

WHEREAS, the parties hereto desire to amend Agreement for Services # AGMT 09-52748 to increase the not-to-exceed compensation amount of the Agreement by \$570,000, to add certified payroll requirements, and to transfer funds from subconsultant LSA Associates, Inc. to Consultant, amending **ARTICLE III, Compensation for Services** and adding **Amended Exhibit C**;

WHEREAS, the parties hereto desire to amend Agreement for Services # AGMT 09-52748 to update the requirements of the quality control/quality assurance plan, amending **ARTICLE V, Quality Control**;

WHEREAS, the parties hereto desire to amend Agreement for Services # AGMT 09-52748 to add provisions required by County's Cooperative Agreement with the State of California (State), amending **ARTICLE XII, Confidentiality**;

WHEREAS, the parties hereto desire to amend Agreement for Services # AGMT 09-52748 to add certified payroll requirements, amending **ARTICLE XV, Prevailing Wage**;

WHEREAS, the parties hereto desire to amend Agreement for Services # AGMT 09-52748 to change one (1) of County's notices recipients and to change the title of one (1) of County's notices recipients, amending **ARTICLE XVIII, Notice to Parties**;

WHEREAS, the parties hereto desire to amend Agreement for Services # AGMT 09-52748 to add the State as an indemnified party required by County's Cooperative Agreement with the State, amending **ARTICLE XIX, Indemnity**;

WHEREAS, the parties hereto desire to amend Agreement for Services # AGMT 09-52748 to add the Office of Management and Budget (OMB) Circulars, as applicable, and as

implemented by various parts of the Code of Federal Regulations (CFR), amending **ARTICLE XXVIII, Compliance with Federal, State and Local Agency Requirements;**

WHEREAS, the parties hereto desire to amend Agreement for Services # AGMT 09-52748 to delete the references to the following forms, “Local Agency Proposer-UDBE Commitment (On Call Consultant Contracts)” form, “UDBE Information-Good Faith Efforts” form, and “Local Agency Proposer DBE Information (On Call Consultant Contracts)”, amending **ARTICLE XXXIX, Disadvantaged Business Enterprise (DBE) Considerations;**

WHEREAS, the parties hereto desire to amend Agreement for Services # AGMT 09-52748 to update the reference to Title 49, Code of Federal Regulations, Part 29, Debarment and Suspension Certificate, amending **ARTICLE XLIII, Debarment and Suspension Certification;**

WHEREAS, the parties hereto desire to amend Agreement for Services # AGMT 09-52748 to change County’s Contract Administrator’s title, amending **ARTICLE LII, Contract Administrator;**

WHEREAS, the parties hereto desire to amend Agreement for Services # AGMT 09-52748 to include certain federal, state, and local agency contract provisions as required by County’s grant funding agencies, adding **ARTICLES LVI through LVIII;**

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 09-52748, as follows:

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:

For services provided herein, including all deliverables described in Exhibit A hereto and in the individual Task Orders for Optional Tasks, if any, 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 VI, Progress Reports, below, 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.

For the purposes hereof, the billing rates shall be in accordance with Exhibit B, marked “Fee Schedule,” incorporated herein and made by reference a part hereof.

Neither mileage nor travel costs (i.e., overnight lodging, meals, parking, airfare, bridge tolls, and other per diem expenses) will be reimbursed as a direct cost for any services performed under this Agreement by Consultant or by any authorized subconsultants.

Other direct costs including subconsultants' services authorized herein shall be invoiced at Consultant's cost, without markup, for the services rendered. Any invoices that include other direct costs or subconsultants' costs shall be accompanied by backup documentation to substantiate Consultant's costs for the services being billed on those invoices.

For the purposes of budgeting the items of work identified in Exhibit A, Base Scope of Work, herein and for budgeting Optional Tasks that may be assigned under this Agreement, the maximum allowable billing amounts for each item of work are described in Amended Exhibit C, marked "Amended Cost Proposal," incorporated herein and made by reference a part hereof. The amounts indicated in Amended Exhibit C represent the composition of the total not-to-exceed budget for the various items of work. In the performance of the scope of services to be provided under this Agreement, Consultant may request to reallocate the expenses listed in Amended Exhibit C among Consultant's own personnel (not including subconsultants) and among the various items of work identified therein, subject to the Contract Administrator's written approval. Consultant may request to reallocate the amounts listed above for its subconsultants among each individual subconsultant's items of work and not between the various subconsultants, subject to County's Contract Administrator's written approval. In no event shall the Base Scope of Work, Prime Costs be exceeded, nor shall the total not-to-exceed amount of the Base Scope, nor shall the amounts identified for subconsultants or Optional Tasks be exceeded, nor shall the total not-to-exceed dollar amount of the Agreement be exceeded.

The total amount for services to be provided under the Base Scope of Work identified in Exhibit A hereto shall not exceed \$2,940,000 inclusive of all work of subconsultants and all costs and expenses.

The total amount for all Optional Tasks, if any, which may be assigned in accordance with this Agreement shall not exceed \$95,000 inclusive of all Task Orders, all work of subconsultants and all costs and expenses. The not-to-exceed amount of each individual Task Order so assigned shall not exceed the amount specified in each Task Order, unless County's Contract Administrator and Consultant amend the Task Order in writing.

The total amount of this Agreement, including all of the services detailed in Exhibit A and including any Optional Tasks which may be assigned, and inclusive of all work of subconsultants, costs, expenses, and Task Orders shall not exceed \$3,035,000.

Itemized invoices shall follow the format specified by County and shall reference this Agreement number and, if applicable, the County-supplied Task Order number, both on their faces and on any enclosures or backup documentation. If Task Orders for Optional Tasks are issued pursuant to the provisions of this Agreement, Consultant shall bill County for only one Task Order per invoice. Consultant shall prepare and submit a fully executed "Final Report – Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subconsultants" form with its final invoice. Twenty-five percent (25%) of the value of the final invoice shall be withheld until County's receipt and approval of the required DBE form. Consultant's responsibilities for compliance with DBE requirements are more fully described in Article XXXIX, Disadvantaged Business Enterprise (DBE) Considerations and in Article XL, DBE Participation herein.

In accordance with ARTICLE XV, Prevailing Wage, Consultant and all subconsultants authorized under this Agreement shall provide County's Contract Administrator with certified payroll for applicable personnel for the period for which payment is requested and such certified payroll shall accompany each invoice submitted. The certified payroll shall contain information related only to the Project. No invoice shall be paid until the certified payroll is submitted.

Consultant shall attach copies of any progress reports required under the provisions of Article VI, Progress Reports herein 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.

In the event that Consultant fails to deliver, in the format specified, the deliverables, DBE forms 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, forms or progress reports are received, or proceed as set forth below in Article XVII, Default, Termination, and Cancellation herein.

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

ARTICLE V

Quality Control: Consultant shall have a quality control/quality assurance (QC/QA) plan in effect during the entire time work is being performed under this Agreement. Prior to the start of any work, Consultant shall provide County with its QC/QA plan and an outline of the project-specific quality control/quality procedures. Consultant shall identify quality control reviews to ensure compliance with the major deliverables within the Scope of Work for this Agreement.

ARTICLE XII, Confidentiality, is amended to add the following paragraph H.:

H. All administrative reports, studies, materials and documentation, including but not limited to, all administrative drafts and administrative finals 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). County and Consultant agree that said material will not be distributed, released or shared with any other organization, person or group other than County's and Consultant's employees, agents, and consultants whose work requires that access.

ARTICLE XV, Prevailing Wage, the last paragraph of the original Agreement is deleted in its entirety and the following paragraph is added in its place to read as follows:

As required under the provisions of Labor Code Section 1776, Consultant and all subconsultants authorized under this Agreement shall keep accurate payroll records. Consultant and all subconsultants authorized under this Agreement shall submit certified payroll to County in accordance with ARTICLE III, Compensation for Services.

ARTICLE XVIII, 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 XVIII

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
2441 Headington Road
Placerville, California 95677

Attn.: John H. Kahling, P.E.
Deputy Director, Engineering
Construction 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:

Vali Cooper & Associates, Inc.
41 Washington Avenue
Point Richmond, California 94801

Attn.: Agnes Weber, P.E., President

or to such other location as Consultant directs.

ARTICLE XIX, 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.

Except as otherwise prohibited by law, neither State nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by Consultant under or in connection with any work, authority, or jurisdiction conferred upon Consultant and arising under this Agreement. Consultant shall fully defend, indemnify and save harmless State and all of its officers and employees from all claims, suits, or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by Consultant under this Agreement.

ARTICLE XXVIII, Compliance with Federal, State and Local Agency Requirements, of the original Agreement is deleted in its entirety and the following Article is added in its place to read as follows:

ARTICLE XXVIII

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 XXXIX, Disadvantaged Business Enterprise (DBE) Considerations, second paragraph of the original Agreement is deleted in its entirety.

ARTICLE XLIII, Debarment and Suspension Certification, of the original Agreement is deleted in its entirety and the following Article is added in its place to read as follows:

- 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, if any.

ARTICLE LII, 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 LII

Contract Administrator: The County Officer or employee with responsibility for administering this Agreement is John H. Kahling, P.E., Deputy Director, Engineering, Construction Division, Department of Transportation, or successor.

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

ARTICLE LVI

Audit Review Procedures:

- A. Any dispute concerning a question of fact arising under an interim or post audit of this Agreement 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 Agreement.

ARTICLE LVII

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 LVIII

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).

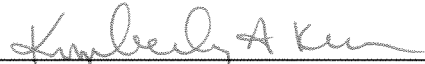
Except as herein amended, all other parts and sections of Agreement for Services # AGMT 09-52748 shall remain unchanged and in full force and effect.

Contract Administrator Concurrence:

By: 
John H. Kahling, P.E.
Deputy Director, Engineering
Construction Division
Department of Transportation

Dated: 04/26/12

Requesting Department Concurrence:

By: 
Kimberly A. Kerr, Interim Director
Department of Transportation

Dated: 4/27/12

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to Agreement for Services # AGMT 09-52748 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:
Teri Daly
Acting Clerk of the Board of Supervisors

By: _____ Dated: _____
Deputy Clerk

--VALI COOPER & ASSOCIATES, INC.--

By:  _____ Dated: 4-30-12
Agnes Weber, P.E. *JANE COLLINS, P.E.*
President *CHIEF OPERATIONS OFFICER*
"Consultant"

By:  _____ Dated: 4/30/12
Marion Ross
Chief Financial Officer