

Bender Rosenthal, Inc.

Appraisal Services Agreement

AGREEMENT FOR SERVICES # AGMT 06-1303

THIS AGREEMENT, made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County"), and Bender Rosenthal, Inc., a corporation duly qualified to conduct business in the State of California, whose principal place of business is 3650-C Auburn Boulevard, Suite 206, Sacramento, California 95821, (hereinafter referred to as "Consultant");

R E C I T A L S

WHEREAS, County has determined that it is necessary to obtain appraisal consultant services to assist its Department of Transportation with respect to appraisals and real property acquisition and relocation services; and

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

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

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

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

ARTICLE I

Scope of Services:

A. Consultant shall perform all professional and technical services, work, and tasks required to accomplish the objectives set forth herein, for County's Department of Transportation, and shall provide and make available Consultant's own personnel, subconsultants, materials, and equipment necessary to perform the services, work, and tasks designated herein (hereinafter referred to as "Services"). Services shall include, but not be limited to:

1. Planning: Reviewing environmental impacts and public involvement, providing right of way cost analyses, ownership and title data, certification requirements, identification requirements, and identification of acquisition status of necessary rights of way for the purpose of advancing projects to construction;

2. Appraisals: Providing opinions of value supported by presentations of sufficient relevant market information, including valuation data, and the appraiser's analysis of that information;
 3. Property Acquisition: Providing assistance to County with public contact, coordination with title companies and other agencies in the preparation of documentation needed to fulfill contractual obligations between County and property owners, and assistance with eminent domain proceedings;
 4. Relocation Assistance: Performing tasks related to relocation assistance in connection with pre-condemnation proceedings as assigned;
 5. Proceedings: Providing testimony regarding the Services performed, and expert testimony, for any subsequent eminent domain or inverse condemnation proceedings that pertain to or relate to the Services performed herein.
 6. Additional Requirements:
 - a. All deliverables shall be in duplicate.
 - b. Consultant shall provide a Caltrans Title VI Brochure to each property owner upon initiation of the appraisal process.
 - c. If a "Full Take" acquisition is involved, Consultant shall provide a copy of the Caltrans Relocation Guide to each property owner upon initiation of the appraisal process.
 - d. All appraisals require an "Administrative Draft" to be submitted to the Right of Way Manager for review, prior to the production of the final report.
 - e. All appraisals must be individually bound appraisal reports (no "Master Appraisals").
- B. County shall provide Consultant the following, where applicable, in connection with the Services to be performed under this Agreement:
1. Copies of any maps, drawings, exhibits, legal descriptions, title reports or other documents pertaining to the project that County may have in its possession.
 2. Interface between Consultant and other County departments, including the County Assessor, Recorder and Surveyor Offices.
 3. Permits or rights of entry licenses necessary for Consultant to perform its work on the affected parcels.
 4. Right of way stake-outs of the affected properties when requested.

- C. **Task Orders Required:** The specific Services for each assignment shall be determined at a meeting or telephone conference between Consultant and County's Contract Administrator, or designee, to discuss the needs, applicable standards, required deliverables, specific Consultant staff, subconsultants (if required) and any necessary permits on a task-by-task basis. Following each meeting, Consultant shall provide the Contract Administrator with a written scope of work, a schedule and a not-to-exceed cost to complete the work (Task Order), which shall require written approval, authorization and notification to proceed from the Contract Administrator, prior to commencement of the work.

Consultant shall provide the Contract Administrator with the names and titles of Consultant's representatives that are authorized to bind Consultant by signing Task Orders and Task Order Amendments on Consultant's behalf. Consultant's notification of individuals authorized to execute Task Orders and Task Order Amendments on Consultant's behalf shall be communicated to County in accordance with the provisions of Article XVI of this Agreement. No payment will be made for any work performed prior to approval of the written Task Order, and no payment will be made for amounts in excess of the not to exceed amount of any Task Order.

The period of performance for Task Orders shall be in accordance with dates specified in each Task Order. No payment will be made for any work performed after the period of performance in the Task Order, unless County's Contract Administrator and Consultant amend the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement, nor the cumulative total of the not-to-exceed Contract amount.

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

Consultant shall attach a copy of each notification to proceed, as backup documentation, to any invoices submitted for payment under the terms of this Agreement. Copies of notices attached to invoices shall reflect Consultant's charges for the specific support or review services billed on those invoices.

- D. **Deliverables:** Deliverables will be specified by County for each individual assignment, and specific task assignments and work requirements will be specifically identified on a project by project basis. Failure to submit the required deliverables in the format specified shall be grounds for termination of the Agreement, as provided in Article XV, or for delay or cessation of payments by County as provided in Section C of Article III hereunder.
- E. **Consultant Reporting:** Reports on services rendered by Consultant shall be submitted to County in the format, and under the conditions specified by County.

ARTICLE II

Term: This Agreement shall become effective when fully executed by the parties hereto and shall expire two years thereafter.

ARTICLE III

Compensation for Services:

- A. For services provided herein, including all deliverables described in the individual Task Orders issued pursuant to this Agreement, County agrees to pay Consultant within thirty (30) days following County's receipt and approval of itemized invoices detailing the services rendered. For the purposes hereof, billing rates shall be in accordance with Exhibit A, marked "Fee Schedule," incorporated herein and made by reference a part hereof.

Reimbursement for mileage expenses, if applicable, shall not exceed the rates to be paid to County employees under the current Board of Supervisors Travel Policy at the time the mileage expenses are incurred. Mileage reimbursement rates apply to Consultant and to any subconsultants authorized under this Agreement.

The total amount of this Agreement, inclusive of all costs and Task Orders and inclusive of all work of subconsultants and expenses, shall not exceed \$100,000.

- B. Itemized invoices shall follow the format specified by County and shall reference this Agreement number, the Task Order number and project title, both on their faces, and on any enclosures or back-up documentation. Invoices shall be mailed to County's Contract Administrator at the following address:

County of El Dorado
Department Of Transportation
2850 Fairlane Court
Placerville, CA 95667
Attn: Elizabeth B. Diamond

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

ARTICLE IV

Prevailing Wage: In the event County requires Consultant's services on projects involving local, state and/or federal funds to which prevailing wage requirements may apply, Consultant 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 shall use the general prevailing wage rates determined by the Director of Industrial Relations for the county in which the work is to be done, which are available at the offices of the District Director of Transportation for the district in which the work is situated. Changes, if any, to

the general prevailing wage rates will be available at the same location. 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 V

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

ARTICLE VI

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

ARTICLE VII

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

ARTICLE VIII

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

ARTICLE IX

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

ARTICLE X

Changes to Agreement:

- A. This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto. There shall be no change in Consultant's Project Manager or subconsultants without prior written approval by County's Contract Administrator.

- B. Should changes in the Scope of Services occur such that additional services and compensation beyond those contemplated by the parties under this Agreement are required, Consultant shall immediately notify the Contract Administrator in writing of those conditions. The additional work shall not be performed until County authorization is received, and an appropriate amendment is fully executed by the parties. No reimbursement for any additional services will be paid to Consultant without County's prior written authorization/amendment.

ARTICLE XI

Consultant to County:

- A. Consultant is engaged by County for its unique qualifications and skills. Consultant shall perform the services contemplated herein with resources available within its own organization, and no portion of the work pertinent to this Agreement shall be subcontracted, delegated or assigned, in whole or in part, without written authorization by the Contract Administrator. Notwithstanding this Article, Consultant is authorized to utilize any specific subconsultants authorized in individual Task Orders issued pursuant to this Agreement, for the particular tasks, work and deliverables identified therein. At no time shall County be obligated to pay separately for subconsultant services. Consultant shall require each subconsultant, to the extent of the work to be performed by the subconsultant, to be bound to Consultant by the terms of this Agreement and to assume toward Consultant all of the obligations and responsibilities that Consultant, by this Agreement, assumes toward County.
- B. Consultant shall furnish, at Consultant's own expense, all materials and equipment necessary to carry out the terms of this Agreement. Consultant shall be liable for any personal injury or property damage resulting from the use, misuse or failure of such equipment, and shall indemnify and hold County harmless, and defend County in accordance with the indemnity provision provided in Article XVII, of this Agreement.
- C. No sums due pursuant to this Agreement shall be assigned, mortgaged or hypothecated in any respect without the express written consent of the Contract Administrator. Notice of any such requested assignment or hypothecation shall be furnished promptly to the Contract Administrator.
- D. In all matters pertaining to this Agreement, Consultant shall act as Consultant only to County and shall not act as Consultant to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with Consultant's responsibilities to County during the term hereof.

ARTICLE XII

Confidentiality and Ownership of Data:

- A. Consultant shall maintain the confidentiality and privileged nature of all records, including billing records, together with any knowledge therein acquired, in accordance with all applicable state and federal laws and regulations, as they may

now exist or may hereafter be amended or changed. Consultant, and all Consultant's staff, employees, and representatives, including any subconsultants authorized herein, shall not use or disclose, directly or indirectly at any time, any said confidential information, other than to the County Department of Transportation for the purpose of, and in the performance of, this Agreement. This confidentiality provision shall survive after the expiration or earlier termination of this Agreement.

- B. Upon completion or earlier termination of services under this Agreement, ownership and title to all appraisals, reports, documents, maps, specifications, estimates, and similar documents produced as part of this Agreement will automatically be vested in County, and no further agreement will be necessary to transfer ownership to County. Consultant shall furnish County all data, including data stored in electronic format, needed to complete the transfer of ownership and possession to County.
- C. All financial, statistical, personnel, technical or other data and information relative to County operations, which is designated confidential by County and made available to Consultant in order to carry out the services contemplated under this Agreement shall be protected by Consultant from unauthorized use or disclosure.
- D. Permission granted by County to disclose information on one occasion or at public hearings held by County relating to this Agreement shall not authorize Consultant to further disclose such information or disseminate the same on any other occasion.
- E. Consultant shall not comment publicly to the press or any media regarding this Agreement or County's actions on the same, except to County staff, Consultant's own personnel involved in the performance of this Agreement, at public hearings or in response to questions from County's Board of Supervisors.
- F. Consultant shall not issue any news release or public relations item of any nature whatsoever regarding services performed or to be performed under this Agreement without prior review of the contents thereof by County and receipt of the Contract Administrator's written permission.

ARTICLE XIII

Independent Consultant/Liability: Consultant is, and at all times shall be, deemed an independent contractor and shall be wholly responsible for the manner in which it performs services required by the terms of this Agreement. Consultant exclusively assumes responsibility for acts of its employees, associates, and subconsultants, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment, and County shall not be responsible for preventing risk to Consultant or Consultant's employees, agents, associates, or representatives.

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

ARTICLE XIV

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

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

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

ARTICLE XV

Default, Termination, and Cancellation:

- A. **Default:** Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (Time to Cure), then such party shall be in default. The Time to Cure may be extended in the discretion of the party giving notice. Any extension of Time to Cure must be in writing, prepared by the party in default for signature by the party giving notice, and must specify the reason(s) for the extension and the date in which the extension of Time to Cure expires.

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

- B. **Bankruptcy:** This Agreement, at the option of County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Consultant.
- C. **Ceasing Performance:** County may terminate this Agreement in the event Consultant ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.

- D. Termination or Cancellation without Cause: County may terminate this Agreement in whole or in part upon seven (7) calendar days written notice by County for any reason. If such prior termination is effected, County will pay for satisfactory services rendered prior to the effective dates, as set forth in the Notice of Termination provided to Consultant, and for such other services which County may agree to in writing as necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the contract. Upon receipt of a Notice of Termination, Consultant shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the Notice directs otherwise. In the event of termination for default, County reserves the right to take over and complete the work by contract or by any other means.
- E. Cancellation: Notwithstanding any other provision to the contrary, County may cancel this Agreement and have no further obligation hereunder as set forth in Article XIV, entitled "Fiscal Considerations."
- F. Completion of Work: In the event of termination of the Agreement, County reserves the right to take over and complete any work, service, or task by contract or by other means.

ARTICLE XVI

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

To County:

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

Attn.: Elizabeth B. Diamond,
 Deputy Director, West Slope
 Engineering and Project Delivery

With a Copy To:

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

Attn: Tim C. Prudhel,
 Contract Services Officer

or to such other location as County directs.

Notices to Consultant shall be addressed as follows:

Bender Rosenthal, Inc.
 3650-C Auburn Boulevard, Suite 206
 Sacramento, California 95821

Attn.: Cydney G. Bender-Reents,
 President

or to such other location as Consultant directs.

ARTICLE XVII

Indemnity: To the fullest extent allowed by law, Consultant shall defend, indemnify, and hold County harmless against and from any and all claims, suits, losses, damages, and liability for damages of every name, kind, and description, including attorneys' fees and costs incurred, brought for, or on account of, injuries to, or death of, any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to, or in any way arise out of, or are connected with Consultant's services, operations or performance hereunder, regardless of the existence or degree of fault or negligence on the part of County, Consultant, subcontractor(s) and employee(s) of any of these, except for the sole, or active negligence of County, its officers and employees, or as expressly provided by statute. This duty of Consultant to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

ARTICLE XVIII

Cooperation:

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

ARTICLE XIX

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

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Consultant as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
- C. Automobile Liability Insurance of not less than \$1,000,000 is required in the event motor vehicles are used by Consultant in performance of the Agreement.
- D. Professional Liability Insurance is required with a limit of liability of not less than \$1,000,000.
- E. Consultant shall furnish a certificate of insurance satisfactory to County's Risk Management Division as evidence that the insurance required above is being maintained.

- F. The insurance will be issued by an insurance company acceptable to County's Risk Management Division, or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.
- G. Consultant agrees that the insurance required herein shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Contract, Consultant shall immediately provide a new certificate of insurance as evidence of the required insurance coverage. In the event Consultant fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Contract upon the occurrence of such event. New certificates of insurance are subject to the approval of County's Risk Management Division.
- H. The certificate of insurance must include the following provisions stating that:
1. The insurer will not cancel the insured's coverage without 30-day prior written notice to County; and
 2. The County of El Dorado, its officers, officials, employees and volunteers are included as additional insured, but only insofar as the operations under this Agreement are concerned. This provision shall apply to all general and excess liability insurance policies.
- I. Consultant's insurance coverage shall be primary insurance as respects County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, employees, or volunteers shall be in excess of Consultant's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to, and approved, by County. At the option of County, either: The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects County, its officers, officials, employees, and volunteers; or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to County, its officers, officials, employees or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Consultant's obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.
- N. In the event Consultant cannot provide an occurrence policy, Consultant shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.

- O. The certificate of insurance shall meet such additional standards as may be determined by the contracting County department, either independently or in consultation with County's Risk Management Division as essential for protection of County.

In addition, Consultant shall ensure that all subconsultants maintain workers' compensation, general liability, automobile liability and professional liability insurance as specified above and shall provide County with proof of same.

ARTICLE XX

Interest of Public Official: No official or employee of County who exercises any functions or responsibilities in review or approval of services to be provided by Consultant under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or the interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any such official or employee of County have any interest, direct or indirect, in this Agreement or the proceeds thereof.

ARTICLE XXI

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

ARTICLE XXII

Prohibition on Proprietary Interests:

- A. Consultant acknowledges that the services called for may involve appraisal activity performed in accordance with the standards set forth in this Agreement, including for the purpose of establishing fair and just compensation to property owner(s) in accordance with California eminent domain law, and that in order to fulfill the intent and purpose of this Agreement, Consultant must remain disinterested in property pertaining to or related to the services that Consultant performs under this Agreement. Consultant warrants and represents that by signature of this Agreement, it: 1) currently does not have, nor will it acquire, any interest in the property related to the services performed; 2) does not have, nor will it acquire, any interest in or share in any sales commission generated by the transaction for which appraisal services are performed; and, 3) does not have, nor will it pursue or acquire, any agreement or understanding with any person or selling agency for a commission, percentage, brokerage, or contingency fee on behalf of itself, or said person or selling agency.
- B. In the event that Consultant violates this Article, in addition to all other remedies that County has pursuant to the provisions of this Agreement, and/or applicable law, County shall have the right, at its option and in its sole discretion, to rescind and

annul this Agreement without liability, and to pay for only non-appraisal related services performed under this Agreement, if any, or to terminate the Agreement and offset payment for the value of the services performed by the recovery of the full amount of any commission, percentage, brokerage, or contingency fee, as well as damages suffered by County.

ARTICLE XXIII

Nondiscrimination:

- A. County may require Consultant's services on projects involving funding from various state and/or federal agencies, and as a consequence, Consultant shall comply with all applicable nondiscrimination statutes and regulations during the performance of this Agreement including but not limited to the following: Consultant and its employees 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 and its employees and representatives shall give written notice of their obligations under this clause as required by law.
- B. Where applicable, Consultant shall include the nondiscrimination and compliance provisions in any of its agreements that affect or are related to the services performed herein.
- C. Consultant's signature shall provide any certifications necessary under the federal laws, the laws of the State of California, including but not limited to Government Code Section 12990 and Title 2, California Code of Regulations, Section 8103.

ARTICLE XXIV

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

ARTICLE XXV

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

ARTICLE XXVI

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

ARTICLE XXVII

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

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

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

ARTICLE XXVIII

Contract Administrator: The County Officer or employee with responsibility for administering this Agreement is Elizabeth B. Diamond, Deputy Director, West Slope Engineering and Project Delivery, Department of Transportation, or successor.

ARTICLE XXIX

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

ARTICLE XXX

Partial Invalidity: If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

ARTICLE XXXI

Entire Agreement: This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties, and they incorporate or supersede all prior written or oral agreements or understandings. Consultant acknowledges and represents that no representations, inducements, promises or agreements have been made by County, its officials, employees, or authorized representatives which are not contained in this Agreement, and that no other statement, promise, or agreement not contained herein will be valid and binding.

Requesting Department Concurrence:

By: _____
Richard W. Shepard, P.E.
Director of Transportation

Dated: _____

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

-- COUNTY OF EL DORADO --

By: _____ Dated: _____

Board of Supervisors
"County"

Attest:
Cindy Keck
Clerk of the Board of Supervisors

By: _____ Dated: _____
Deputy Clerk

-- BENDER ROSENTHAL, INC. --

By: _____ Dated: _____
Cydney G. Bender-Reents
President
"Consultant"

By: _____ Dated: _____
Stephen A. Rosenthal
Corporate Secretary