

HDR Engineering, Inc.

**Coordination of Improvements to U.S. Highway 50 Mainline & Interchange
Projects**

AGREEMENT FOR SERVICES # AGMT 06-1331

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 HDR Engineering, Inc., a Nebraska corporation duly qualified to conduct business in the State of California, whose principal place of business is 8404 Indian Hills Drive, Omaha, Nebraska 68114 and whose local office address is 2365 Iron Point Road, Suite 300, Folsom, California 95630, (hereinafter referred to as "Consultant");

R E C I T A L S

WHEREAS, County has determined that it is necessary to obtain a consultant to assist its Department of Transportation with engineering services associated with coordination of improvements to its U.S. Highway 50 Mainline and Interchange Projects; 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 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 authorized by El Dorado County Charter, Section 210(b)(6) and/or Government Code Section 31000;

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

ARTICLE I

Scope of Services: Consultant agrees to furnish personnel, subconsultants and services necessary to provide engineering services and coordination services associated with County's U.S. Highway 50 mainline and interchange projects. Consultant shall provide program/project management services for the development and delivery of projects on U.S. Highway 50 from the County of Sacramento county line to approximately the City of Placerville city limits. Services shall include project coordination and project control activities as necessary to facilitate the delivery of programmed widening, High Occupancy Vehicle (HOV) lanes and interchange projects within the corridor. Tasks shall include, but not be limited to the following:

1. Analyzing the financial status and fund projections for each project.
2. Identifying project scope, sequence and delivery mechanisms so as to maximize the effective delivery of each corridor component.

3. Providing on-going assessments of project issues and recommending courses of action or resolution, and providing oversight and technical reviews of project submittals.
4. Serving as County's liaison and coordinating with project stakeholders to facilitate the delivery of projects within the corridor.
5. Identifying potential issues and concerns by stakeholders and recommending a course of action to resolve issues in favor of the projects and project delivery schedules.
6. Assisting in building and maintaining relationships and communication that support the projects and keep them moving forward. This includes conflict resolution of project issues, if necessary.
7. Managing consultant contract issues including preparing and recommending the approval of Task Orders; managing and reporting on the deliverables required under Task Orders; reviewing, providing comments and making recommendations regarding the work of other consultants; and other contract management activities as assigned in the specific Task Orders issued pursuant to this Agreement.

The actual number of issues addressed, levels of service provided and associated levels of effort will vary depending on project conditions, means and methods employed, and the levels of support requested or required by County as described in the individual Task Orders issued pursuant to this Agreement.

Before proceeding with any work under this Agreement, the parties will identify the specific services to be provided for each assignment in individual Task Orders to be issued in accordance with this Agreement. 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 design standards, required deliverables, specific Consultant staff, subconsultants (if required), and any task-related mileage budget, if applicable, on a task-by-task basis. Following the meeting, Consultant shall provide the Contract Administrator with a written scope of work, a schedule including a list of tasks with completion dates and a target completion date for the overall scope of work, and a not-to-exceed cost to complete the work (Task Order), which shall require written approval, authorization, and written notification to proceed from County's Contract Administrator, prior to commencement of the work. No payment will be made for any work performed prior to approval of the Task Order, and no payment will be made for amounts in excess of the not-to-exceed amount of the Task Order.

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, Notice to Parties of this Agreement.

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 before or 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.

If a submittal is required to be an electronic file, Consultant shall produce the file in Microsoft Word 2003, Microsoft Excel 2003 and other engineering software used for analytical purposes. Newer versions of software may be used if approved by the County Contract Administrator or designee. Failure to submit the requested deliverables in the format required shall be grounds for termination of the Agreement, as provided in Article XV.

All of the tasks included in this Article 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 subconsultant for services rendered.

ARTICLE II

Term: This Agreement shall become effective when fully executed by both parties hereto and shall expire when all of the PS&E packages for the U.S. Highway 50 HOV lane projects associated with this Agreement have been completed.

ARTICLE III

Compensation for Services: For services provided herein including all deliverables described in the Task Orders issued pursuant to this Agreement, County agrees to pay Consultant monthly in arrears. Payment shall be made within thirty (30) days following County receipt and approval of itemized invoices and progress reports detailing services rendered.

For the purposes hereof, the billing rate shall be in accordance with Exhibit A, marked "Fee Schedule 2007," incorporated herein and made by reference a part hereof. Exhibit A lists rates that are valid through December 31, 2007, and will be adjusted January 1 each year thereafter. Consultant shall submit a new Fee Schedule annually, which shall require approval and acceptance by County's Contract Administrator and which shall be attached as an addendum to this Agreement, as soon as new rates are available, but not later than January 15th of each calendar year beginning on January 15, 2008.

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 \$2,000,000.

Itemized invoices shall follow the format specified by County and shall reference this Agreement number and the County-provided Task Order number both on their faces and on any enclosures or back-up documentation. Consultant shall bill County for only one

Task Order per invoice. Consultant shall attach a copy of each notification to proceed required under the provisions of Article I, Scope of Services, and copies of any progress reports required under the provisions of Article IV, Progress Reports, that relate to the services being billed, as backup documentation to any invoices 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 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 are received, or proceed as set forth in Article XV.

ARTICLE IV

Progress Reports: Upon issuance of a Task Order, Consultant shall submit progress reports to the Contract Administrator at intervals that are commensurate with the requirements of the tasks and the items of work being performed and based upon a mutually agreeable schedule. At a minimum, Consultant shall submit progress reports once a month. The reports shall be sufficiently detailed for the Contract Administrator, or designee, to determine if Consultant is performing to expectations and is on schedule, to provide communication of interim findings, and to afford occasions for airing difficulties or special circumstances encountered so that remedies can be developed. County's review of these reports will ensure that Consultant's work meets a level of acceptability as determined by the Contract Administrator and Consultant shall be required to modify its work as necessary to meet that level of acceptability as defined by the Contract Administrator. Separate detail shall be provided for each ongoing Task Order. Progress reports shall include the total number of hours worked by Consultant and any authorized subconsultants and shall include descriptions of the tasks and work performed, including a description of any deliverables submitted during the reporting period and the anticipated tasks, work and deliverables proposed for the subsequent reporting period. Any invoices submitted by Consultant for payment under the terms of this Agreement shall include copies of the progress reports that relate to the services being billed on those invoices.

ARTICLE V

Licenses: 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 that Consultant and all subconsultants shall maintain said licenses in good standing throughout the term of this Agreement.

ARTICLE VI

Ownership of Data: Upon completion or earlier termination of all Services under this Agreement, ownership and title to all reports, documents, plans, maps, specifications, estimates, compilations and any and all other materials or data 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 necessary copies of data, including data stored in electronic format, needed to complete the review and approval process of the project.

ARTICLE VII

Consultant's Project Manager: Consultant designates Carl Haack, PE, PMP 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 VIII

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

ARTICLE IX

Consultant to County: It is understood that the services provided under this Agreement shall be prepared in and with cooperation from County and its staff. It is further agreed that in all matters pertaining to this Agreement, 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 term hereof.

ARTICLE X

Confidentiality: 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 County's 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.

ARTICLE XI

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. 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.

ARTICLE XII

Independent Consultant/Liability: Consultant is, and shall be at all times, deemed independent 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.

Consultant shall be responsible for performing the work under this Agreement in a safe, professional, skillful and workmanlike manner, in accordance with good engineering practices, 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 XIII

Prevailing Wage: County requires Consultant's Services on public works project(s) involving local, State and/or Federal funds to which prevailing wage requirements may apply. As a consequence, 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 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.

ARTICLE XVI

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
4950 Hillside Circle, Suite 400
El Dorado Hills, California 95762

Attn.: Russell A. Nygaard,
Deputy Director, Engineering

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:

HDR Engineering, Inc.
2365 Iron Point Road, Suite 300
Folsom, California 95630

Attn.: Timothy Fleming, P.E., Vice 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 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 XVIII

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. In the event Consultant is a licensed professional and is performing professional services under this Agreement, 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, and Consultant agrees that no work or services shall be performed prior to the giving of such approval.
- 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 the 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 the County, its officers, officials, employees, or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. 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 authorized pursuant to the individual Task Orders issued under this Agreement shall maintain workers' compensation, general liability, auto liability and professional liability insurance as specified above and shall provide County with proof of same.

ARTICLE XIX

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 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 XX

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

ARTICLE XXI

California Residency (Form 590): All independent Consultants providing services to County must file a State of California Form 590, certifying their California residency or, in the case of a corporation, certifying that they have a permanent place of business in California. 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 XXII

Taxpayer Identification Number (Form W-9): All independent contractors or corporations providing services to County must file a Department of the Treasury Internal Revenue Service Form W-9, certifying their Taxpayer Identification Number.

ARTICLE XXIII

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 XXIV

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 XXV

Contract Administrator: The County Officer or employee with responsibility for administering this Agreement is Russell A. Nygaard, Deputy Director, Engineering, Department of Transportation, or successor.

ARTICLE XXVI

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

ARTICLE XXVII

Partial Invalidity: If any provision of the 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 XXVIII

Entire Agreement: This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties, and they incorporate or supersede all prior written or oral agreements or understandings.

Requesting 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

-- HDR ENGINEERING, INC. --

By: _____ Dated: _____
Timothy Fleming, P.E.,
Vice President
"Consultant"

By: _____ Dated: _____
Corporate Secretary