

**Sierra County
Board of Supervisors'
Agenda Transmittal &
Record of Proceedings**

MEETING DATE: June 18, 2019	TYPE OF AGENDA ITEM: <input type="checkbox"/> Regular <input type="checkbox"/> Timed <input checked="" type="checkbox"/> Consent
DEPARTMENT: Public Works and Transportation	
APPROVING PARTY: Tim H. Beals, Director	
PHONE NUMBER: 530-289-3201	

AGENDA ITEM: Professional Services Agreement with Bender Rosenthal Incorporated for Right of Way Acquisition Services related to the Salmon Lake Road Bridge Project.

SUPPORTIVE DOCUMENTS ATTACHED: Memo Resolution Agreement Other

BACKGROUND INFORMATION: Right of Way Acquisition is one phase of the bridge replacement project. Anticipated services will include management of the acquisition process, valuation, acquisition services which includes development of contracts and conveyance documents necessary to make an offer through completion of acquisition.

FUNDING SOURCE: FHWA (TRANSPORTATION PROJECT)
GENERAL FUND IMPACT: No General Fund Impact
OTHER FUND:
AMOUNT: \$8775.00 N/A

ARE ADDITIONAL PERSONNEL REQUIRED? <input type="checkbox"/> Yes, -- -- <input checked="" type="checkbox"/> No	IS THIS ITEM ALLOCATED IN THE BUDGET? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No IS A BUDGET TRANSFER REQUIRED? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
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SPACE BELOW FOR CLERK'S USE

BOARD ACTION: <input type="checkbox"/> Approved <input type="checkbox"/> Approved as amended <input type="checkbox"/> Adopted <input type="checkbox"/> Adopted as amended <input type="checkbox"/> Denied <input type="checkbox"/> Other <input type="checkbox"/> No Action Taken	<input type="checkbox"/> Set public hearing For: _____ <input type="checkbox"/> Direction to: _____ <input type="checkbox"/> Referred to: _____ <input type="checkbox"/> Continued to: _____ <input type="checkbox"/> Authorization given to: _____	Resolution 2019- _____ Agreement 2019- _____ Ordinance _____ Vote: Ayes: Noes: Abstain: Absent: <input type="checkbox"/> By Consensus
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COMMENTS:

CLERK TO THE BOARD

DATE

**AGREEMENT FOR
PROFESSIONAL SERVICES
- Right of Way Acquisition Service
- Salmon Lake Road Bridge**

THIS AGREEMENT for Professional Services ("Agreement") is made as of the Agreement Date set forth below by and between the County of Sierra, a political subdivision of the State of California ("the COUNTY"), and

**Bender Rosenthal Incorporated
"CONTRACTOR"**

In consideration of the services to be rendered, the sums to be paid, and each and every covenant and condition contained herein, the parties hereto agree as follows:

OPERATIVE PROVISIONS

1. SERVICES.

The CONTRACTOR shall provide those services described in Attachment "A", Provision A-1. CONTRACTOR shall provide said services at the time, place and in the manner specified in Attachment "A", Provisions A-2 through A-3.

2. TERM.

Commencement Date: June 18, 2019

Termination Date: December 31, 2019

3. PAYMENT.

COUNTY shall pay CONTRACTOR for services rendered pursuant to this Agreement at the time and in the amount set forth in Attachment "B". The payment specified in Attachment "B" shall be the only payment made to CONTRACTOR for services rendered pursuant to this Agreement. CONTRACTOR shall submit all billings for said services to COUNTY in the manner specified in Attachment "B".

4. FACILITIES, EQUIPMENT AND OTHER MATERIALS AND OBLIGATIONS OF COUNTY.

CONTRACTOR shall, at its sole cost and expense, furnish all facilities, equipment, and other materials which may be required for furnishing services pursuant to this Agreement, except as provided in this paragraph. COUNTY shall furnish CONTRACTOR only those facilities, equipment, and other materials and shall perform those obligations listed in Attachment "A.4".

5. ADDITIONAL PROVISIONS.

Those additional provisions unique to this Agreement are set forth in Attachment "C".

6. GENERAL PROVISIONS.

The general provisions set forth in Attachment "D" are part of this Agreement. Any inconsistency between said general provisions and any other terms or conditions of this Agreement shall be controlled by the other terms or conditions insofar as the latter are inconsistent with the general provisions.

7. DESIGNATED REPRESENTATIVES.

Tim H. Beals is the designated representative of the COUNTY and will administer this Agreement for the COUNTY. Brenda Schimpf is the authorized representative for CONTRACTOR. Changes in designated representatives shall occur only by advance written notice to the other party.

8. ATTACHMENTS.

All attachments referred to herein are attached hereto and by this reference incorporated herein. Attachments include:

- Attachment A - Services
- Attachment B - Payment
- Attachment C - Additional Provisions
- Attachment D - General Provisions
- Attachment E - Form of Invoice

9. AGREEMENT DATE. The Agreement Date is June 18, 2019.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day here first above written.

"COUNTY"

"CONTRACTOR"

COUNTY OF SIERRA

By _____
PAUL ROEN
Chairman, Board of Supervisors

BRENDA SCHIMPF
Bender Rosenthal Incorporated.

ATTEST:

APPROVED AS TO FORM:

HEATHER FOSTER
Clerk of the Board

DAVID PRENTICE
County Counsel

AGMT-SER.PRO 67191605
(rev. 12/93)

ATTACHMENT A

A.1 SCOPE OF SERVICES AND DUTIES.

The services to be provided by CONTRACTOR and the scope of CONTRACTOR's duties include the following: All labor and materials necessary to provide right of way acquisition services for the Salmon Lake Road Bridge Replacement Project including but not limited to Project Management; Valuation Services; Acquisition Services in accordance with proposal for services dated March 26, 2019 at attached hereto as Exhibit 1 to this agreement.

A.2. TIME SERVICES RENDERED

June 18, 2019 to December 31, 2019

A.3. MANNER SERVICES ARE TO BE PERFORMED.

As an independent contractor, CONTRACTOR shall be responsible for providing services and fulfilling obligations hereunder in a professional manner. COUNTY shall not control the manner of performance.

A.4. FACILITIES FURNISHED BY COUNTY.

None

ATTACHMENT B

PAYMENT

COUNTY shall pay CONTRACTOR as follows:

B.1 BASE CONTRACT FEE. COUNTY shall pay CONTRACTOR on a time and materials basis a contract fee not to exceed eight thousand seven hundred seventy-five dollars and no/100 (\$8,775.00), based on the rates provided in Exhibit 1. CONTRACTOR shall submit requests for payment after completion of services or no later than the tenth (10th) day of the month following provision of services. Request for payment shall be substantially in the form of the invoice attached hereto as Attachment E. Payment shall be made within thirty (30) days after the Invoice is approved by the County Contract Administrator. In no event shall total compensation paid to CONTRACTOR under this Provision B.1 exceed \$8,775.00 without an amendment to this Agreement approved by the Sierra County Board of Supervisors;

B.2 MILEAGE. Included in base proposal. Notwithstanding anything to the contrary in this agreement mileage for vehicle use shall be paid only at the IRS approved rate.

B.3 TRAVEL COSTS. Included in base proposal.

B.4 AUTHORIZATION REQUIRED. Services performed by CONTRACTOR and not authorized in this Agreement shall not be paid for by COUNTY. Payment for additional services shall be made to CONTRACTOR by COUNTY if, and only if, this Agreement is amended in writing by both parties in advance of performing additional services.

B.5 SPECIAL CIRCUMSTANCES. Additional costs may be incurred up to a maximum of \$0 with written approval of the designated COUNTY Representative (Operative Provision 7) for this Agreement.

B.6 MAXIMUM CONTRACT AMOUNT. The maximum amount payable to CONTRACTOR under this Agreement shall not exceed the following:

B.1	Base Contract Fee	\$8,775.00
B.2	Mileage	Included
B.3	Travel Costs	Included
B.4	Authorization Required	0
B.5	Special Circumstances	0
	MAXIMUM CONTRACT AMOUNT	\$8,775.00

ATTACHMENT C
ADDITIONAL PROVISIONS

[NONE]

ATTACHMENT D

GENERAL PROVISIONS

D.1 INDEPENDENT CONTRACTOR. For all purposes arising out of this Agreement, CONTRACTOR shall be an independent contractor and CONTRACTOR and each and every employee, agent, servant, partner, and shareholder of CONTRACTOR (collectively referred to as "The Contractor") shall not be, for any purpose of this Agreement, an employee of COUNTY. Furthermore, this Agreement shall not under any circumstance be construed or considered to be a joint powers agreement as described in *Government Code* Section 6000, et seq., or otherwise. As an independent contractor, the following shall apply:

D.1.1 CONTRACTOR shall determine the method, details and means of performing the services to be provided by CONTRACTOR as described in this Agreement.

D.1.2 CONTRACTOR shall be responsible to COUNTY only for the requirements and results specified by this Agreement and, except as specifically provided in this Agreement, shall not be subject to COUNTY's control with respect to the physical actions or activities of CONTRACTOR in fulfillment of the requirements of this Agreement.

D.1.3 CONTRACTOR shall be responsible for its own operating costs and expenses, property and income taxes, workers' compensation insurance and any other costs and expenses in connection with performance of services under this Agreement.

D.1.4 CONTRACTOR is not, and shall not be, entitled to receive from or through COUNTY, and COUNTY shall not provide or be obligated to provide the CONTRACTOR with workers' compensation coverage, unemployment insurance coverage or any other type of employee or worker insurance or benefit coverage required or provided by any federal, state or local law or regulation for, or normally afforded to, any employee of COUNTY.

D.1.5 The CONTRACTOR shall not be entitled to have COUNTY withhold or pay, and COUNTY shall not withhold or pay, on behalf of the CONTRACTOR any tax or money relating to the Social Security Old Age Pension Program, Social Security Disability Program or any other type of pension, annuity or disability program required or provided by any federal, state or local law or regulation for, or normally afforded to, an employee of COUNTY.

D.1.6 The CONTRACTOR shall not be entitled to participate in, or receive any benefit from, or make any claim against any COUNTY fringe benefit program including, but not limited to, COUNTY's pension plan, medical and health care plan, dental plan, life insurance plan, or other type of benefit program, plan or coverage designated for, provided to, or offered to COUNTY's employees.

D.1.7 COUNTY shall not withhold or pay on behalf of CONTRACTOR any federal, state or local tax including, but not limited to, any personal income tax owed by CONTRACTOR.

D.1.8 The CONTRACTOR is, and at all times during the term of this Agreement shall represent and conduct itself as, an independent contractor and not as an employee of COUNTY.

D.1.9 CONTRACTOR shall not have the authority, express or implied, to act on behalf of, bind or obligate the COUNTY in any way without the written consent of the COUNTY.

D.2 LICENSES, PERMITS, ETC. CONTRACTOR represents and warrants to COUNTY that it has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for CONTRACTOR to practice its profession. CONTRACTOR represents and warrants to COUNTY that CONTRACTOR shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals which are legally required for CONTRACTOR to practice its profession at the time the services are performed.

D.3 CHANGE IN STATUTES OR REGULATIONS. If there is a change of statutes or regulations applicable to the subject matter of this Agreement, both parties agree to be governed by the new provisions, unless either party gives notice to terminate pursuant to the terms of this Agreement.

D.4 TIME. CONTRACTOR shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary for the satisfactory performance of CONTRACTOR's obligations pursuant to this Agreement. Neither party shall be considered in default of this Agreement to the extent performance is prevented or delayed by any cause, present or future, which is beyond the reasonable control of the party.

D.5 INSURANCE.

D.5.1 Prior to rendering services provided by the terms and conditions of this Agreement, CONTRACTOR shall acquire and maintain during the term of this Agreement insurance coverage through and with an insurer acceptable to COUNTY, naming the COUNTY and COUNTY's officers, employees, agents and independent contractors as additional insured (hereinafter referred to as "the insurance"). The insurance shall contain the coverage indicated by the checked items below.

D.5.1.1 Comprehensive general liability insurance including comprehensive public liability insurance with minimum coverage of Two Million Dollars (\$2,000,000) per occurrence and with not less than Three Million Dollars (\$3,000,000) aggregate; CONTRACTOR shall insure both COUNTY and CONTRACTOR against any liability arising under or related to this Agreement.

D.5.1.2 During the term of this Agreement, CONTRACTOR shall maintain in full force and effect a policy of professional errors and omissions insurance with policy limits of not less than One Million Dollars (\$1,000,000) per incident and Three Million Dollars (\$3,000,000) annual aggregate, with deductible or self-insured portion not to exceed Two Thousand Five Hundred Dollars (\$2,500).

D.5.1.3 Comprehensive automobile liability insurance with minimum coverage of Five Hundred Thousand Dollars (\$500,000) per occurrence and with not less than Five Hundred Thousand Dollars (\$500,000) on reserve in the aggregate, with combined single limit including owned, non-owned and hired vehicles.

D.5.1.4 Workers' Compensation Insurance coverage for all CONTRACTOR employees and other persons for whom CONTRACTOR is responsible to provide such insurance coverage, as provided by Division 4 and 4.5 of the *Labor Code*.

D.5.2 The limits of insurance herein shall not limit the liability of the CONTRACTOR hereunder.

D.5.3 In respect to any insurance herein, if the aggregate limit available becomes less than that required above, other excess insurance shall be acquired and maintained immediately. For the purpose of any insurance term of this Agreement, "aggregate limit available" is defined as the total policy limits available for

all claims made during the policy period.

D.5.4 The insurance shall include an endorsement that no cancellation or material change adversely affecting any coverage provided by the insurance may be made until twenty (20) days after written notice is delivered to COUNTY.

D.5.5 The insurance policy forms, endorsements and insurer(s) issuing the insurance shall be satisfactory to COUNTY at its sole and absolute discretion. The amount of any deductible payable by the insured shall be subject to the prior approval of the COUNTY and the COUNTY, as a condition of its approval, may require such proof of the adequacy of CONTRACTOR's financial resources as it may see fit.

D.5.6 Prior to CONTRACTOR rendering services provided by this Agreement, and immediately upon acquiring additional insurance, CONTRACTOR shall deliver a certificate of insurance describing the insurance coverages and endorsements to:

County of Sierra
Auditor/Risk-Manager
P.O. Drawer 425
Downieville, CA 95936

D.5.7 CONTRACTOR shall not render services under the terms and conditions of this Agreement unless each type of insurance coverage and endorsement is in effect and CONTRACTOR has delivered the certificate(s) of insurance to COUNTY as previously described. If CONTRACTOR shall fail to procure and maintain said insurance, COUNTY may, but shall not be required to, procure and maintain the same, and the premiums of such insurance shall be paid by CONTRACTOR to COUNTY upon demand. The policies of insurance provided herein which are to be provided by CONTRACTOR shall be for a period of not less than one year, it being understood and agreed that twenty (20) days prior to the expiration of any policy of insurance, CONTRACTOR will deliver to COUNTY a renewal or new policy to take the place of the policy expiring.

D.5.8 COUNTY shall have the right to request such further coverages and/or endorsements on the insurance as COUNTY deems necessary, at CONTRACTOR's expense. The amounts, insurance policy forms, endorsements and insurer(s) issuing the insurance shall be satisfactory to COUNTY in its sole and absolute discretion.

D.5.9 Any subcontractor(s), independent contractor(s) or any type of agent(s) performing or hired to perform any term or condition of this Agreement on behalf of CONTRACTOR, as may be allowed by this Agreement (hereinafter referred to as the "SECONDARY PARTIES"), shall comply with each term and condition of this Section D.5 entitled "INSURANCE". Furthermore, CONTRACTOR shall be responsible for the SECONDARY PARTIES' acts and satisfactory performance of the terms and conditions of this Agreement.

D.6 INDEMNITY. CONTRACTOR shall defend, indemnify, and hold harmless COUNTY, its elected and appointed councils, boards, commissions, officers, agents, and employees from any liability for damage or claims for damage for any economic loss or personal injury, including death, as well as for property damage, which may arise from the intentional or negligent acts or omissions of CONTRACTOR in the performance of services rendered under this Agreement by CONTRACTOR, or any of CONTRACTOR's officers, agents, employees, contractors, or subcontractors.

D.7 CONTRACTOR NOT AGENT. Except as COUNTY may specify in writing, CONTRACTOR shall have no authority, express or implied, to act on behalf of COUNTY in any capacity whatsoever as an

agent. CONTRACTOR shall have no authority, express or implied, pursuant to this Agreement to bind COUNTY to any obligation whatsoever.

D.8 ASSIGNMENT PROHIBITED. CONTRACTOR may not assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no legal effect.

D.9 PERSONNEL. CONTRACTOR shall assign only competent personnel to perform services pursuant to this Agreement. In the event that COUNTY, in its sole discretion at any time during the term of this Agreement, desires the removal of any person or persons assigned by CONTRACTOR to perform services pursuant to this Agreement, CONTRACTOR shall remove any such person immediately upon receiving written notice from COUNTY of its desire for removal of such person or persons.

D.10 STANDARD OF PERFORMANCE. CONTRACTOR shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which CONTRACTOR is engaged. All products of whatsoever nature which CONTRACTOR delivers to COUNTY pursuant to this Agreement shall be prepared in a first class and workmanlike manner and shall conform to the standards of quality normally observed by a person practicing in CONTRACTOR's profession.

D.11 POSSESSORY INTEREST. The parties to this Agreement recognize that certain rights to property may create a "possessory interest", as those words are used in the *California Revenue and Taxation Code* (107). For all purposes of compliance by COUNTY with Section 107.6 of the *California Revenue and Taxation Code*, this recital shall be deemed full compliance by the COUNTY. All questions of initial determination of possessory interest and valuation of such interest, if any, shall be the responsibility of the County Assessor and the contracting parties hereto. A taxable possessory interest may be created by this, if created, and the party in whom such an interest is vested will be subject to the payment of property taxes levied on such an interest.

D.12 TAXES. CONTRACTOR hereby grants to the COUNTY the authority to deduct from any payments to CONTRACTOR any COUNTY imposed taxes, fines, penalties and related charges which are delinquent at the time such payments under this Agreement are due to CONTRACTOR.

D.13 TERMINATION. COUNTY shall have the right to terminate this Agreement at any time by giving notice in writing of such termination to CONTRACTOR. In the event COUNTY gives notice of termination, CONTRACTOR shall immediately cease rendering service upon receipt of such written notice and the following shall apply:

D.13.1.1 CONTRACTOR shall deliver to COUNTY copies of all writings prepared by it pursuant to this Agreement. The term "writings" shall be construed to mean and include: handwriting, typewriting, printing, photostating, photographing, computer storage medium (tapes, disks, diskettes, etc.) and every other means of recording upon any tangible thing, and form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof.

D.13.1.2 COUNTY shall pay CONTRACTOR the reasonable value of services rendered by CONTRACTOR to the date of termination pursuant to this Agreement not to exceed the amount documented by CONTRACTOR and approved by COUNTY as work accomplished to date; provided, however, that in no event shall any payment hereunder exceed One Thousand Dollars (\$1,000). Further provided, however, COUNTY shall not in any manner be liable for lost profits which might have been made by CONTRACTOR had CONTRACTOR completed the services

required by this Agreement. In this regard, CONTRACTOR shall furnish to COUNTY such financial information as in the judgment of the COUNTY is necessary to determine the reasonable value of the services rendered by CONTRACTOR. In the event of a dispute as to the reasonable value of the services rendered by CONTRACTOR, the decision of the COUNTY shall be final. The foregoing is cumulative and does not affect any right or remedy which COUNTY may have in law or equity.

D.13.2 CONTRACTOR may terminate its services under this Agreement upon thirty (30) working days written notice to the COUNTY, without liability for damages, if CONTRACTOR is not compensated according to the provisions of the Agreement or upon any other material breach of the Agreement by COUNTY, provided that CONTRACTOR has first provided COUNTY with a written notice of any alleged breach, specifying the nature of the alleged breach and providing not less than ten (10) working days within which the COUNTY may cure the alleged breach.

D.14 OWNERSHIP OF INFORMATION. All professional and technical information developed under this Agreement and all work sheets, reports, and related data shall become and/or remain the property of COUNTY, and CONTRACTOR agrees to deliver reproducible copies of such documents to COUNTY on completion of the services hereunder. The COUNTY agrees to indemnify and hold CONTRACTOR harmless from any claim arising out of reuse of the information for other than this project.

D.15 WAIVER. A waiver by any party of any breach of any term, covenant or condition herein contained or a waiver of any right or remedy of such party available hereunder at law or in equity shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained or of any continued or subsequent right to the same right or remedy. No party shall be deemed to have made any such waiver unless it is in writing and signed by the party so waiving.

D.16 COMPLETENESS OF INSTRUMENT. This Agreement, together with its specific references and attachments, constitutes all of the agreements, understandings, representations, conditions, warranties and covenants made by and between the parties hereto. Unless set forth herein, neither party shall be liable for any representations made, express or implied.

D.17 SUPERSEDES PRIOR AGREEMENTS. It is the intention of the parties hereto that this Agreement shall supersede any prior agreements, discussions, commitments, representations, or agreements, written or oral, between the parties hereto.

D.18 ATTORNEY'S FEES. If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret provisions of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, which may be set by the Court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such party may be entitled.

D.19 MINOR AUDITOR REVISION. In the event the Sierra County Auditor's office finds a mathematical discrepancy between the terms of the Agreement and actual invoices or payments, provided that such discrepancy does not exceed 1% of the Agreement amount, the Auditor's office may make the adjustment in any payment or payments without requiring an amendment to the Agreement to provide for such adjustment. Should the COUNTY or the CONTRACTOR disagree with such adjustment, they reserve the right to contest such adjustment and/or to request corrective amendment.

D.20 CAPTIONS. The captions of this Agreement are for convenience in reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

D.21 DEFINITIONS. Unless otherwise provided in this Agreement, or unless the context otherwise requires, the following definitions and rules of construction shall apply herein.

D.21.1 NUMBER AND GENDER. In this Agreement, the neuter gender includes the feminine and masculine, the singular includes the plural, and the word "person" includes corporations, partnerships, firms or associations, wherever the context so requires.

D.21.2 MANDATORY AND PERMISSIVE. "Shall" and "will" and "agrees" are mandatory. "May" is permissive.

D.22 TERM INCLUDES EXTENSIONS. All references to the term of this Agreement or the Agreement Term shall include any extensions of such term.

D.23 SUCCESSORS AND ASSIGNS. All representations, covenants and warranties specifically set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

D.24 MODIFICATION. No modification or waiver of any provisions of this Agreement or its attachments shall be effective unless such waiver or modification shall be in writing, signed by all parties, and then shall be effective only for the period and on the condition, and for the specific instance for which given.

D.25 COUNTERPARTS. This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

D.26 OTHER DOCUMENTS. The parties agree that they shall cooperate in good faith to accomplish the object of this Agreement and, to that end, agree to execute and deliver such other and further instruments and documents as may be necessary and convenient to the fulfillment of these purposes.

D.27 PARTIAL INVALIDITY. If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provision and/or provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

D.28 VENUE. It is agreed by the parties hereto that unless otherwise expressly waived by them, any action brought to enforce any of the provisions hereof or for declaratory relief hereunder shall be filed and remain in a court of competent jurisdiction in the County of Sierra, State of California.

D.29 CONTROLLING LAW. The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California.

D.30 CALIFORNIA TORT CLAIMS ACT. Notwithstanding any term or condition of the Agreement, the provisions, and related provisions, of the California Tort Claims Act, Division 3.6 of the *Government Code*, are not waived by COUNTY and shall apply to any claim against COUNTY arising out of any acts or conduct under the terms and conditions of this Agreement.

D.31 TIME IS OF THE ESSENCE. Time is of the essence of this Agreement and each covenant and term herein.

D.32 AUTHORITY. All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, estates or firms represented or purported to be represented by such entity(s), person(s), estate(s) or firm(s) and that all formal requirements necessary or required by any state and/or federal law in

order to enter into this Agreement are in full compliance. Further, by entering into this Agreement, neither party hereto shall have breached the terms or conditions of any other contract or agreement to which such party is obligated, which such breach would have a material effect hereon.

D.33 CORPORATE AUTHORITY. If CONTRACTOR is a corporation or public agency, each individual executing this Agreement on behalf of said corporation or public agency represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of said corporation or in accordance with the bylaws of said corporation or Board or Commission of said public agency, and that this Agreement is binding upon said corporation or public entity in accordance with its terms. If CONTRACTOR is a corporation, CONTRACTOR shall, within thirty (30) days after execution of this Agreement, deliver to COUNTY a certified copy of a resolution of the Board of Directors of said corporation authorizing or ratifying the execution of this Agreement.

D.34 CONFLICT OF INTEREST.

D.34.1 LEGAL COMPLIANCE. CONTRACTOR agrees at all times in performance of this Agreement to comply with the law of the State of California regarding conflicts of interest, including, but not limited to, Article 4 of Chapter 1, Division 4, Title 1 of the *California Government Code*, commencing with Section 1090, and Chapter 7 of Title 9 of said Code, commencing with Section 87100, including regulations promulgated by the California Fair Political Practices Commission.

D.34.2 ADVISEMENT. CONTRACTOR agrees that if any facts come to its attention which raise any questions as to the applicability of this law, it will immediately inform the COUNTY designated representative and provide all information needed for resolution of the question.

D.34.3 ADMONITION. Without limitation of the covenants in subparagraphs D.34.1 and D.34.2, CONTRACTOR is admonished hereby as follows:

The statutes, regulations and laws referenced in this provision D.34 include, but are not limited to, a prohibition against any public officer, including CONTRACTOR for this purpose, from making any decision on behalf of COUNTY in which such officer has a direct or indirect financial interest. A violation occurs if the public officer influences or participates in any COUNTY decision which has the potential to confer any pecuniary benefit on CONTRACTOR or any business firm in which CONTRACTOR has an interest of any type, with certain narrow exceptions.

D.35 NONDISCRIMINATION. During the performance of this Agreement, CONTRACTOR shall not unlawfully discriminate against any employee of the CONTRACTOR or of the COUNTY or applicant for employment or for services or any member of the public because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age or sex. CONTRACTOR shall ensure that in the provision of services under this Agreement, its employees and applicants for employment and any member of the public are free from such discrimination. CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (*Government Code* Section 12900 et seq.). The applicable regulations of the Fair Employment Housing Commission implementing *Government Code* Section 12900, set forth in Chapter 5, Division 4 of Title 2 of the *California Administrative Code* are incorporated into this Agreement by reference and made a part hereof as if set forth in full. CONTRACTOR shall also abide by the Federal Civil Rights Act of 1964 and all amendments thereto, and all administrative rules and regulation issued pursuant to said Act. CONTRACTOR shall give written notice of its obligations under this clause to any labor agreement. CONTRACTOR shall include the non-discrimination and compliance provision of this paragraph in all subcontracts to perform work under this Agreement.

D.36 JOINT AND SEVERAL LIABILITY. If any party consists of more than one person or entity, the liability of each person or entity signing this Agreement shall be joint and several.

D.37 TAXPAYER I.D. NUMBER. The COUNTY shall not disburse any payments to CONTRACTOR pursuant to this Agreement until CONTRACTOR supplies the latter's Taxpayer I.D. Number or Social Security Number (as required on the line under CONTRACTOR's signature on page 2 of this Agreement).

D.38 NOTICES. All notices and demands of any kind which either party may require or desire to serve on the other in connection with this Agreement must be served in writing either by personal service or by registered or certified mail, return receipt requested, and shall be deposited in the United States Mail, with postage thereon fully prepaid, and addressed to the party so to be served as follows:

If to "COUNTY":
Board of Supervisors
County of Sierra
Post Office Drawer D
Downieville, CA 95936

With a copy to:
County Counsel
County of Sierra
Post Office Drawer D
Downieville, CA 95936

If to "CONTRACTOR":

Brenda Schimpf, Vice President
Bender Rosenthal, Inc.
2825 Watt Avenue, Suite 200
Sacramento, CA 95821

AGMT-SER.PRO 67191605

Brenda Schimpf, Vice President
Bender Rosenthal, Inc.
2825 Watt Avenue, Suite 200
Sacramento, CA 95821

County of Sierra
Auditor's Office
Post Office Box 425
Downieville, California 95936

Our File No. _____

Re: _____

STATEMENT OF ACCOUNT FOR

BALANCE FORWARD \$

TOTAL CURRENT CHARGES:

<u>Date</u>	<u>Staff</u>	<u>Description of Service</u>	<u>Hrs</u>	<u>Rate</u>	<u>Total</u>
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Total \$ _____

March 26, 2019

ORIGINAL BY EMAIL:
bdavey@sierracounty.ca.gov

Mr. Bryan Davey
Deputy Director
Sierra County Department of Transportation

Re: Right of Way Acquisition Services for Salmon Lake Road Bridge Replacement Project

Dear Mr. Huckabay:

We appreciate the opportunity to provide you with a scope and budget for Appraisal and Acquisition Services for the property impacted by the Salmon Lake Road Bridge Replacement Project. Bender Rosenthal Inc.'s (BRI) scope includes all services that may be required for this project and is predicated on one (1) single privately owned parcel, immediately North of the Tahoe National Forest and surrounded by moderately dense to open mixed coniferous forest. Should additional parcels or services be determined our fee would be modified accordingly. The following outlines our scope, methodology and timeline for this project.

SCOPE OF WORK

TASK 1. PROJECT MANAGEMENT

Project Management is a collaboration of people, processes and tools. We understand that maintaining organized, accurate records and disseminating vital status information is fundamental for efficient project implementation. During the course of the Project, Brenda Schimpf will serve as the Project Manager. Brenda will oversee performance of the Tasks involved in delivery of the right of way in the proposed Right of Way Services Contract. Typical tasks include providing status updates to the client, attending meetings, and making recommendations to the County on right of way issues.

Once the property rights have been acquired, Brenda will prepare a right of way certification to Caltrans' standards.

Deliverables:

- Bi-weekly updates
- Attend up to 4 teleconferences
- One draft and one final Right of Way Certification that meets Caltrans standards

TASK 2. VALUATION SERVICES

BRI recommends the use of waiver valuations for this project. The Code of Federal Regulations [49 CFRs 24.102 (c) 2] provides that an appraisal is not required for parcels estimated at \$10,000 or less. Use of this method assumes the valuation problem is uncomplicated and the fair market value is estimated at \$10,000 or less based on a review of available data. The \$10,000 amount includes severance damages but excludes any insignificant construction contract work. The "Waiver Valuation" is not an appraisal and is to be used merely for documentation in support of the estimated compensation to be paid to the property owner.

Criteria considered in making the determination as to “uncomplicated” valuations included:

- ✓ An appraisal review is not required if this method is selected;
- ✓ There is no serious question as to the highest and best use;
- ✓ There is adequate market data available;
- ✓ There are no substantial damages and benefits involved;
- ✓ All interests in parcels are estimated to be valued at less than \$10,000; and
- ✓ There is no substantial decrease in market value due to the presence of hazardous material/waste.

Please note, Waiver Valuations cannot be used to condemn. Should court action be determined necessary, an Appraisal Report will be required, resulting in the assessment of additional fees. Additionally, Waiver Valuations do not require an independent appraisal review which provides an additional savings to the project.

Ultimately, the fair market value opinions and conclusions within the appraisal report or Waiver Valuation will be used as the basis for the County to establish the offer of just compensation as required by law. This scope specifically excludes any goodwill appraisals, dual appraisals, furniture/fixture/equipment appraisals, and detailed construction cost estimates for site reconfiguration or building reconstruction.

TCE Maps for each of the properties to be appraised will be provided to BRI by the County. Some of the items that may affect the appraisal process include:

- Complexity of the valuation;
- Damage Analysis (Severance Damage, Cost to Cure, etc.)

Deliverables:

- Once electronic copy of Waiver Valuation; hard copy to be provided if requested - up to 2

Assumptions:

- Waiver Valuations cannot be used as a basis for a Court Eminent Domain Deposit. Updating the Waiver Valuation to an appraisal is an additional expense.
- No residential or business relocation is involved.
- Full documentation to Federal and State standards for all tasks.
- No expert witness testimony.
- No Coordination with State or Federal RW departments, other than listed in scope.
- Notice of Decision to Appraise (NODA) letters will be sent within 5 days of Notice to Proceed.
- No significant severance damages are anticipated.
- Plats and Legal Descriptions, if needed for recording, will be provided by the County.

TASK 3. ACQUISITION SERVICES

Upon completion of the Waiver Valuation and establishment of Approval to Acquire for the parcel, BRI will work with the County to develop the contract and conveyance documents necessary to make offer. BRI will meet with the owners and convey documents up to 6 times in the first 60 days until acceptance or impasse is reached. Steps within the acquisition process are outlined below:

1. Review the project concept and design with staff and other consultants.
2. Review appraisals, title reports, maps and descriptions of the required parcels.
3. Prepare right-of-way contracts and other acquisition documents.

4. May meet with the property owners to discuss the project in general; review of maps and legal descriptions; confirm information about occupants/owners and make the official First Written Offer to owner.
5. The acquisition task assumes a settlement by the sixth contact by telephone or e-mail. A recommendation to the County will be made after impasse has been reached.
6. Deliver signed right-of-way contract and signed and acknowledged documents for a close transaction or deliver a memorandum explaining impasse.
7. If the property owner provides a counter-offer, BRI staff will prepare a recommendation to the County to accept, reject, or modify the counter-offer.
8. If the County accepts the counter-offer, BRI will prepare an Administrative Settlement that complies with State and Federal guidelines.
9. BRI's acquisition agents will maintain a parcel diary to document all interactions with property owners and their tenants.
10. BRI will prepare a final report, including transfer of all pertinent correspondence and files to the County.

Deliverables:

- One (1) purchase agreement for TCE
- Submit files on each negotiation, acquisition, and project settlement

Assumption:

- No personal contact will be made; all acquisition contacts will be by phone, mail or e-mail

The following items are excluded from this proposal but can be add at the client's request:

- ✓ Obtaining tenant consent/releases or quit claim deeds
- ✓ Obtaining partial or full reconveyances, financing statement releases or subordination agreements
- ✓ Providing support for Resolutions of Necessity and/or condemnation activities
- ✓ Continued negotiations with property owners after the RON is obtained

TASK 4. TITLE / ESCROW SERVICES (OPTIONAL TASK)

BRI will deliver documents and checks to escrow company, review all documents for submission to escrow companies, review title and escrow documents, and apply extensive acquisition experience so that the project acquires good title and property rights necessary for the completion of the project. BRI will coordinate escrow closings and file all applicable forms and documents with the County Assessor's office.

Tasks to be considered include:

- ✓ Order one (1) Preliminary Title Report @ \$900 each.
- ✓ Draft Quitclaims, lessee consent to easements and other documents as necessary to obtain good and sufficient title.
- ✓ Work with title company to follow through with appropriate lenders, beneficiaries and trustees. Title Company to draft partial release and partial reconveyances.
- ✓ Prepare and send Request for Invoice and Demand to the Title Company.
- ✓ Copy and forward fully executed purchase agreement from the County.
- ✓ Send all executed acquisition documents through escrow and transmit to the appropriate parties, (property owner and the County).
- ✓ Prepare transmittal and forward closed files to the County.

Deliverables:

- Facilitate Title and Escrow support as outlined above for (1) parcel

TASK 5. CONDEMNATION SUPPORT (OPTIONAL TASK)

BRI's team of appraisers and acquisition agents strive to provide tailored services with the goal to complete the transaction in the best interest of all parties involved while adhering to all applicable regulations and guidelines. However, even with the best intentions and attention to details, some acquisitions will need to be completed through condemnation. BRI staff will support the County by preparing staff reports and presentations to the County Board for the Resolution of Necessity (RON). In addition, we will work with the County legal team to develop the 30-day notice of hearing for the RON and provide assistance in preparing any legal declarations in support of the court hearings. Our appraisers are qualified and available to provide testimony during condemnation trials as an additional service. BRI will provide support services to the condemnation attorney such as appearing as an expert witness, delivery of parcel file including the title report, legal description, appraisal, negotiation records and all correspondence; and assisting the attorney with locating the property owner and other interest holders. BRI will bill Condemnation services based on an hourly rate.

The property would be available for project commencement within *approximately* 196 days (6.5 months) of starting this process. We strongly advise that legal be consulted early in the process to ensure possession. Below is a generic timeline for consideration:

CONDEMNATION STEPS	DAYS
Notice of Hearing on Resolution of Necessity	30
Adopt Resolution of Necessity	1
File Condemnation Action and Motion for Possession	14
Hearing on Motion for Possession	60
Effective Date of Possession	90 / 120
Trial & Judgment	430

ADDITIONAL SERVICES

- Additional services requested by the County and/or resulting from a change in the Scope of Services such as post-appraisal meetings, consultations, presentations/briefings, pre-trial conferences, court or briefing preparation, depositions, court appearances, etc., will be performed on a time and materials basis per the BRI 2018 Hourly Rates & Billing Policy, attached hereto or, at a separately negotiated fee.
- This proposal assumes no property management or excess land disposal will be required.

FEE SCHEDULE

BRI proposes to deliver the waiver valuation within 4 weeks of receipt of appraisal maps. The right of way will be delivered within 3 months from the Notice to Proceed and all pertinent information is delivered to complete acquisitions. Our proposed fee is based on the Scope outlined herein as follows:

Task	Hours	Rate	Total
Project Management	10	\$210	\$2,100
Waiver Valuation	Lump sum	1 at \$3,000/each	\$3,000
Acquisition Services	20	\$160	\$3,200
Admin Support	5	\$85	\$425
Postage	—		\$50
TOTAL			\$8,775

The following are the assumptions behind the budget:

1. Full documentation to Federal and State standards for all tasks;
2. No expert witness testimony;
3. The actual costs may differ from task to task, but the overall budget will not exceed the "Total Budget" shown in the above table;
4. No Coordination with State or Federal right of way departments, other than listed in scope;
5. This proposal assumes no relocation activities will be needed. If relocation becomes necessary, a separate cost and scope document will be prepared and approved before services are provided;
6. Any external audit support will be billed on a time and material basis, as well as the following:
 - A change in engineering once the acquisition process has begun;
 - Addition of a parcel;
 - Addition of easements, or other property rights; and
 - Any additional professional expertise.

Additional services performed by us, if any, such as post-appraisal meetings, consultations, presentations/briefings, pre-trial conferences, court or briefing preparation, depositions, court appearances, etc., will be billed at the rates for 2018, attached hereto.

We look forward working with you on this project.

Respectfully,

BENDER ROSENTHAL INC.

Brenda Schimpf

Brenda Schimpf, PMP, RE Broker
Vice President

2019 BILLING RATES

Cydney Bender Reents, MAI	\$425/hr.*
David Wraa, MAI, ARA, AI-GRS	\$330/hr.*
Principal Project Manager	\$250/hr.
Senior Project Manager	\$220/hr.
Project Manager	\$195/hr.
Senior Quality Control Auditor	\$175/hr.
Senior Project Controller	\$160/hr.
Quality Control Auditor	\$125/hr.
Project Controller	\$110/hr.
Sr. Designated Member (MAI/SRA/AI-GRS/ARA)	\$225/hr.*
Designated Member (MAI/SRA/AI-GRS/ARA)	\$180/hr.*
Appraiser III	\$165/hr.
Appraiser II	\$140/hr.
Appraiser I	\$110/hr.
Senior Right of Way Specialist	\$170/hr.
Senior Acquisition Agent	\$165/hr.
Acquisition Agent	\$125/hr.
Senior Relocation Agent	\$160/hr.
Relocation Agent	\$145/hr.
Senior Project Coordinator	\$135/hr.
Project Coordinator	\$105/hr.
Expert Land Consultant	\$170/hr.
Managing Land Agent	\$160/hr.
Principal Land Agent	\$140/hr.
Senior Land Agent	\$120/hr.
Land Agent II	\$105/hr.
Land Agent I	\$90/hr.
Administrative Support III	\$ 90/hr.
Researchers	\$ 85/hr.
Administrative Support II	\$ 75/hr.
Administrative Support I	\$ 60/hr.

*NOTE: For court or briefing preparation, depositions, any pre-trial conferences, court appearances, and related activities, the hourly rate is \$450.

BRI does not mark up ODC's such as travel and shipping. These will be billed at cost.

*NOTE: For court or briefing preparation, depositions, any pre-trial conferences, court appearances, and related activities, the hourly rate is \$450.