

**Y & C Transportation Consultants, Inc.
As-needed Traffic Engineering and Signal Design Services**

AGREEMENT FOR SERVICES # AGMT 04-644

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 Y & C Transportation Consultants, Inc., a corporation duly qualified to conduct business in the State of California, whose mailing address is 1851 Heritage Lane, Suite 265, Sacramento, California 95815; and whose local office address is 3250 Ramos Circle, Sacramento, CA 95827, (hereinafter referred to as "Consultant");

WITNESSETH

WHEREAS, County has determined that it is necessary to obtain a consultant to assist its Department of Transportation with as-needed traffic engineering and signal design 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 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 31000;

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

ARTICLE I

Scope of Services: Consultant agrees to furnish personnel and services necessary to assist the Department of Transportation by providing as-needed traffic engineering and signal design services for various operational and safety improvement projects on the West Slope, including, but not limited to, the Cambridge Road/Merrychase Drive & West Bound US 50 On/Off-Ramps Signalization Project (#73345) and the Green Valley Road/Silva Valley Parkway Intersection Signalization Project (#73312). The specific services for each assignment shall be determined at a meeting or telephone conference between Consultant and the Contract Administrator, or designee, to discuss the needs, applicable design standards, required deliverables, specific Consultant staff, project-related mileage budget, and any necessary permits on a task-by-task basis. Following the meeting, Consultant shall provide the Contract Administrator with a scope of work, a schedule and a not-to-exceed cost to complete the work (Task Order), which shall require approval, authorization and 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.

The period of performance for Task Orders shall be in accordance with dates specified in the Task Orders. 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.

ARTICLE II

Term: This Agreement shall become effective when fully executed by both parties hereto and shall expire December 31, 2006.

ARTICLE III

Compensation for Services: For services provided herein, including all deliverables described in Article I, Scope of Services, County agrees to pay Consultant monthly in arrears. Payment shall be made within thirty (30) days following County receipt and approval of itemized invoice(s) and progress reports detailing services rendered. For the purposes hereof, the billing rate shall be in accordance with Exhibit A, marked "Fee Schedule," incorporated herein and made by reference a part hereof.

Mileage expenses shall be paid in accordance with the County's Travel Policy (No. D-1), Section 5.b., attached hereto as Exhibit B, marked "Board of Supervisors Policy," incorporated herein and made by reference a part hereof.

The total amount of the Agreement shall not exceed \$40,000.00, inclusive of all expenses.

ARTICLE IV

Progress Reports: Consultant shall submit progress reports at least once a month. The progress reports shall include a description of the task, work, and deliverables performed during the reporting period and the anticipated task, work, and deliverables proposed for the subsequent reporting period.

ARTICLE V

License: Consultant hereby warrants and represents that Services performed under this Agreement will be performed by Engineers licensed to practice Civil Engineering in the State of California and that such license(s) shall be 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, and estimates, etc., 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 needed to complete the review and approval process of the project.

ARTICLE VII

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.

ARTICLE VIII

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 IX

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, 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 termination of this Agreement.

ARTICLE X

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.

ARTICLE XI

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 terms of this Agreement. Consultant exclusively assumes responsibility for acts of its employees, associates, and subcontractors, 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. 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.

ARTICLE XII

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 XIII

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 XIV

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 XV

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

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

Attn.: J. Steven Borroum,
Acting Deputy Director of
Transportation Planning

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:

Y & C Transportation Consultants, Inc.
3250 Ramos Circle
Sacramento, California 95827

Attn: Daniel Yau, President

or to such other location as Consultant directs.

ARTICLE XVI

Indemnity: To the fullest extent allowed by law, Consultant shall defend, indemnify, and hold harmless the County, its officers, employees, agents and representatives from and against any and all claims, actions, losses, injuries, damages and liability for damages, demands, actions, costs, penalties and expenses of every name, kind and description, including litigation costs and reasonable attorneys fees 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, which are claimed to or in any way arise out of or are connected with Consultant's negligent services, operation, or performance. This duty of Consultant to indemnify and save the County harmless includes the duties to defend set forth in California Civil Code Section 2778.

ARTICLE XVII

Insurance: Consultant shall provide proof of a policy of insurance satisfactory to the El Dorado County Risk Manager 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 \$500,000 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 (for example, malpractice insurance) is required with a limit of liability not less than \$1,000,000 per occurrence.
- E. Consultant shall furnish a certificate of insurance satisfactory to the El Dorado County Risk Manager as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to the 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 the Risk Manager, 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 liability policies except Workers' Compensation and professional 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 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 the Risk Management Division as essential for protection of County.

ARTICLE XVIII

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 XIX

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 XX

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 XXI

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 XXII

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. Consultant waives any removal rights it might have under Code of Civil Procedure Section 394.

ARTICLE XXIII

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 XXIV

Contract Administrator: The County Officer or employee with responsibility for administering this Agreement is J. Steven Borroum, Acting Deputy Director of

Transportation Planning, Department of Transportation, or successor.

ARTICLE XXV

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 XXVI

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 XXVII

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:  Dated: 4-27-05
Elizabeth B. Diamond
Interim Director
Department of Transportation

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: Charlie Paine
CHARLIE PAINE, CHAIRMAN
Board of Supervisors
"County"

Dated: 5/17/05

Attest:
Cindy Keck
Clerk of the Board of Supervisors

By: [Signature]
Deputy Clerk

Dated: 5/17/05

-- Y & C TRANSPORTATION CONSULTANTS, INC. --

By: [Signature]
Daniel Yau
President
"Consultant"

Dated: 5/2/05

[Signature]
Corporate Secretary
Daniel Yau

Dated: 5/2/05

Y & C Transportation Consultants, Inc.

Exhibit A
Fee Schedule

Engineer XII	\$200/hr
Engineer XI	\$190/hr
Engineer X	\$175/hr
Engineer IX	\$160/hr
Engineer VIII	\$140/hr
Engineer VII	\$130/hr
Engineer VI	\$120/hr
Engineer V	\$110/hr
Engineer IV	\$95/hr
Engineer III	\$80/hr
Engineer II	\$70/hr
Engineer I	\$65/hr
Technician IV	\$65/hr
Technician III	\$55/hr
Technician II	\$45/hr
Technician I	\$40/hr
Clerk III	\$55/hr
Clerk II	\$45/hr
Clerk I	\$40/hr

The billing rates for the on-call project are applicable until the end of year
2006.

MISCELLANEOUS COSTS

Reimbursables (Printing and Materials, Express Mail and Delivery Expenses, Film Expenses, Filing Fees, Parking and Field Expenses) will be billed at cost.

Mileage expenses shall be paid in accordance with County's Travel Policy (No. D-1), Section 5b, attached hereto as Exhibit B, marked "Board of Supervisors Policy," incorporated herein and made by reference a part hereof.

Exhibit B

Board of Supervisors Policy

The following excerpt of the Board of Supervisors' Travel Policy, written for County employees, shall apply to Consultant under the terms of this Agreement:

Subject: Travel

Policy Number: D-1

Date Adopted: 12/22/87

Revised: 5/25/99

§5. Reimbursement Rates:

b. Private Auto

Travel by private auto in the performance of "official County business" shall be reimbursed at the Federal rate as determined by the Internal Revenue Service.

Mileage for travel shall be computed from the employee's designated work place. If travel begins from the employee's residence, mileage shall be calculated from the residence or work place, whichever is less. (For example, an employee who lives in Cameron Park and drives to a meeting in Sacramento, leaving from the residence will be paid for mileage from the residence to Sacramento and back to the residence.)

The mileage reimbursement rate represents full reimbursement, excluding snow chain installation and removal fee, for expenses incurred by a County officer or employee (e.g., fuel, normal wear and tear, insurance, etc.) during the use of a personal vehicle in the course of service to El Dorado County.