

Environmental Stewardship & Planning, Inc.**AGREEMENT FOR SERVICES # AGMT 05-853
Amendment II**

THIS AMENDMENT II to that Agreement for Services # AGMT 05-853 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 Environmental Stewardship & Planning, Inc., a corporation duly qualified to conduct business in the State of California, whose principal place of business is 1621 13th Street, Sacramento, California 95814 (hereinafter referred to as "Consultant");

RECITALS

WHEREAS, Consultant has been engaged by County to assist its Department of Transportation with environmental review services pursuant to Agreement for Services # AGMT 05-853 and Amendment I to AGMT 05-853, incorporated herein and made by reference a part hereof; and

WHEREAS, the parties hereto desire to amend Agreement for Services # AGMT 05-853 to clarify the Task Order Requirements, amending **ARTICLE I Scope of Services**; and

WHEREAS, the parties hereto desire to amend Agreement for Services # AGMT 05-853 to extend the expiration date of May 31, 2007 for two (2) additional years, amending **ARTICLE II Term**; and

WHEREAS, the parties hereto desire to amend Agreement for Services # AGMT 05-853 to increase the not-to-exceed compensation amount of the Agreement by \$400,000, and to add a new fee schedule for the extended term of the Agreement, amending **ARTICLE III Compensation for Services and adding Exhibit C**; and

WHEREAS, the parties hereto desire to amend Agreement for Services # AGMT 05-853 to modify the requirements for progress reporting, amending **ARTICLE IV Progress Reports**; and

WHEREAS, the parties hereto desire to amend Agreement for Services # AGMT 05-853 to modify the ownership of data requirements, amending **ARTICLE VI Ownership of Data**; and

WHEREAS, the parties hereto desire to amend Agreement for Services # AGMT 05-853 to revise the assignment and delegation requirements of the Agreement, amending **ARTICLE X Assignment and Delegation**; and

WHEREAS, the parties hereto desire to amend Agreement for Services # AGMT 05-853 to change one of County's notices recipients and to update Consultant's mailing address, amending **ARTICLE XV Notice to Parties**; and

WHEREAS, the parties hereto desire to amend Agreement for Services # AGMT 05-853 to modify the indemnity provision for services rendered after December 31, 2006, amending **ARTICLE XVI Indemnity**; and

WHEREAS, the parties hereto desire to amend Agreement for Services # AGMT 05-853 to update the insurance requirements, amending **ARTICLE XVII Insurance**; and

WHEREAS, the parties hereto desire to amend Agreement for Services # AGMT 05-853 to change County's Contract Administrator, amending **ARTICLE XXIV Contract Administrator**; and

WHEREAS, the parties hereto desire to amend Agreement for Services # AGMT 05-853 to identify Consultant's Project Manager, adding **ARTICLE XXVIII Consultant's Project Manager**;

NOW, THEREFORE, County and Consultant mutually agree to amend the terms of the Agreement in this Amendment II to Agreement for Services # AGMT 05-853, to read as follows:

ARTICLE I

Scope of Services:

A. Consultant shall perform all professional and technical services, work, and tasks required to accomplish the objectives set forth herein, for County's Department of Transportation (DOT), and shall provide and make available Consultant's own personnel, materials, subconsultants, vehicles, and equipment necessary to perform various environmental review services including but not limited to, those tasks and deliverables as identified in Exhibit A, marked "Scope of Work," incorporated herein and made by reference a part hereof.

B. Consultant's services are to be provided specifically in support of projects included in County's five-year Capital Improvement Program, and generally in support of other County activities as required. 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 standards, required deliverables, specific Consultant staff, subconsultants (if required), any task-related mileage budget, if applicable, and any necessary permits 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 the 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 XV, 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.

C. 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. Where Consultant produces drawings as a part of a Task Order, they shall be produced in AutoCAD Land Development Desktop 2i or latest release. Newer versions of software may be used if approved by the County's Contract Administrator. Failure to submit the requested deliverables in the format required shall be grounds for termination of the Agreement, as provided in Article XIV.

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 under this Agreement.

ARTICLE II

Term: This Agreement shall become effective when fully executed by the parties hereto and shall expire May 31, 2009.

ARTICLE III

Compensation for Services: For services provided herein, including all deliverables described in individual Task Orders, County agrees to pay Consultant within thirty (30) days following County receipt and approval of itemized invoices and progress reports detailing services rendered.

For the purposes hereof, for the period beginning July 12, 2005 and continuing through May 31, 2007 the billing rates shall be in accordance with Exhibit B, marked "May 2005-May 2007 Standard Rates," incorporated herein and made by reference a part hereof.

For the period beginning June 1, 2007 and continuing until May 31, 2009, the billing rates shall be in accordance with Exhibit C, marked "ESP 2007-2009 Standard Rates", incorporated herein and made by reference a part hereof.

The total amount payable by County for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless County's Contract Administrator and Consultant amend the Task Order.

The total amount of this Agreement, as amended, inclusive of all costs, Task Orders and all work of subconsultants and expenses shall not exceed \$1,000,000.

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.

Itemized invoices shall follow the format specified by County and shall reference this Agreement number, the County-supplied work order number and 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 XIV.

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 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 or obtained as part of this Agreement will automatically be vested in County without restriction or limitation on their use, and no further agreement will be necessary to transfer ownership to County. Copies may be made for Consultant's records, but shall not be furnished to others without written authorization from County's Contract Administrator. Such deliverables shall be deemed works made for hire and all rights in copyright therein shall be retained by 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 services provided under 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. Notwithstanding this Article, Consultant is authorized to utilize any subconsultants authorized in individual Task Orders issued pursuant to this Agreement for the particular tasks, work and deliverables identified therein. At no time shall County be obligated to pay separately for subconsultant services. Consultant shall require each subconsultant, to the extent of the work to be performed by the subconsultant, to be bound to Consultant by the terms of this Agreement and to assume toward Consultant all the obligations and responsibilities that Consultant, by this Agreement, assumes toward County.

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.: James W. Ware,
Deputy Director
Transportation Planning and
Land Development

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:

Environmental Stewardship & Planning, Inc.
1621 13th Street
Sacramento, California 95814

Attn.: Steve Peterson,
President

or to such other location as Consultant directs.

ARTICLE XVI

Indemnity: For services rendered pursuant to this Agreement for the period commencing with the effective date of the Agreement and continuing through December 31, 2006, the following provision shall apply:

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 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.

For services rendered pursuant to this Agreement on or after January 1, 2007, the following provision shall apply:

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 XVII

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 maintain Workers' Compensation, general liability, auto liability and professional liability insurance as specified above and shall provide County with proof of same.

ARTICLE XXIV

Contract Administrator: The County Officer or employee with responsibility for administering this Agreement is James W. Ware, Deputy Director, Transportation Planning and Land Development, Department of Transportation, or successor.


The Agreement is further amended to add the following Article:

ARTICLE XXVIII

Consultant's Project Manager: Consultant designates Steven L. Peterson 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.

Except as herein amended, all other parts and sections of Agreement for Services # AGMT 05-853 and Amendment I to AGMT 05-853 shall remain unchanged and in full force and effect.

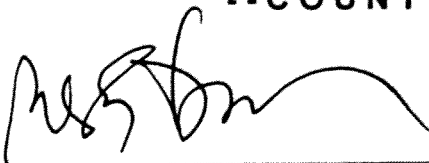
Requesting Department Concurrence:

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

Dated: 2/15/07

IN WITNESS WHEREOF, the parties hereto have executed this Amendment II to Agreement for Services # AGMT 05-853 on the dates indicated below, the latest of which shall be deemed to be the effective date of this Amendment.

-- COUNTY OF EL DORADO --

By: 

Dated: 5/1/07


RUSTY DUPRAY
Board of Supervisors
"County"
FIRST VICE-CHAIRMAN

Attest:
Cindy Keck
Clerk of the Board of Supervisors

By: 
Deputy Clerk

Dated: 5/1/07

-- ENVIRONMENTAL STEWARDSHIP & PLANNING, INC. --

By: 
Steven L. Peterson
President
"Consultant"

Dated: 3/30/2007

By: 
Corporate Secretary

Dated: 3/30/2007



ENVIRONMENTAL STEWARDSHIP & PLANNING
INCORPORATED

Exhibit C

ESP 2007-2009 Standard Rates

Professional Services

Principal	\$165/Hour
Senior Associate	\$150/Hour
Associate	\$135/Hour
Editor/Graphic Artist	\$115/Hour
Staff Planner/Biologist	\$98/Hour
Clerical	\$62/Hour
Administrative	\$62/Hour

Note: Expert testimony services are provided at 200% of Standard Rates

Direct Charges

Mileage	*
Postage and Electronic Communication	Included in Overhead
Supplies and Subcontractors	Cost + 15%

*Mileage expenses, if applicable, shall be paid in accordance with Article III, Compensation for Services, of this Agreement.

ESP Timekeepers
El Dorado County Department of Transportation
On-Call Services Agreement

Timekeeper:

Steve Peterson, AICP (SLP)

Principal

Bob Delp (BHD)

Senior Associate

Amanda Rose (AKR)

Associate

Jill Walker (JRW)

Graphic Artist

Shelley King (SLK)

Clerical

Brenda McCauley (BRM)

Administrative

Audra Orth (ALO)

Administrative

Rates are indicated for positions. Where individual names are also indicated, the named individual is the person anticipated to perform various items of work. With the exception of Consultant's Project Manager, which cannot be changed without the written consent of County's Contract Administrator, should those named individuals change positions or otherwise not perform in the positions indicated, other staff members in those positions may perform the work