

ORIGINAL COPY

AGREEMENT FOR SERVICES #389-S0810

THIS AGREEMENT made and entered 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 California corporation, duly qualified to conduct business in the State of California, whose principal place of business is 1621 13th Street, Sacramento, CA 95814, (hereinafter referred to as "Consultant");

WITNESSETH

WHEREAS, County has determined that it is necessary to obtain a Consultant to prepare surveys, monitoring, and reporting as requested by the United States Army Corps of Engineers for the El Dorado Trails Project for the General Services Department, Airports, Parks and Grounds Division; and

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

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

WHEREAS, County has determined that the provision of these services provided by Consultant is in the public's best interest, and that these services are more economically and feasibly performed by outside independent Consultants as well as 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 the personnel, equipment, and services necessary to prepare surveys, monitoring, and reporting as requested by the United States Army Corps of Engineers for the El Dorado Trails Project for the General Services Department, Airports, Parks and Grounds Division. Services shall be in accordance with Exhibit "A", marked "El Dorado Trail Project – Proposal to Conduct Surveys, Monitoring, and Reporting (Parkway Segment)", incorporated herein and made part by reference hereof.

ARTICLE II

Term: This Agreement shall become effective upon final execution by both parties hereto and shall expire sixty (60) days from the date thereof.

ARTICLE III

Compensation for Services: For services provided herein, County agrees to pay Consultant upon completion of each task and within thirty (30) days following the County's receipt and approval of itemized invoice(s) identifying services rendered. For the purposes of this Agreement, the billing rate shall be in accordance with Exhibit "A". The total amount of this Agreement shall not exceed \$19,100.00.

ARTICLE IV

Confidentiality of Data: All data and information relative to the County operations, which is designated confidential by the County and made available to the Consultant in order to carry out this Agreement shall be protected by the Consultant from unauthorized use and disclosure.

Permission, granted by the County, to disclose information on one occasion or at public hearing held by the County relating to the Agreement shall not authorize the Consultant to further disclose such information or disseminate the same on any other occasions.

The Consultant shall not comment publicly to the press or any media regarding this Agreement or the County's actions on the same, except to the County's staff, Consultant's own personnel involved in the performance of this Agreement, at public hearings or in response to questions from the Board of Supervisors.

The Consultant shall not issue any news release or public relations item of any nature whatsoever regarding services performed or to be performed under this Agreement without prior review of the contents thereof by the County and receipt of the County's written permission.

ARTILCE V

License: Contractor warrants and represents that it is duly licensed in good standing by the State of California to perform the services under this Agreement, and that Contractor shall maintain said license in good standing throughout the term of this Agreement.

ARTICLE VI

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 VII

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 VIII

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 IX

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 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 X

Fiscal Considerations: The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, El Dorado 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 fiscal 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 the County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

ARTICLE XI

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 at 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 on 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. 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.

- B. **Bankruptcy:** This Agreement, at the option of the 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 without cause. 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.

ARTICLE XII

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 addressed as follows:

COUNTY OF EL DORADO
GENERAL SERVICES DEPARTMENT
AIRPORTS, PARKS, AND GROUNDS DIVISION
360 FAIR LANE
PLACERVILLE, CA 95667
ATTN: JORDAN POSTLEWAIT, MANAGER OF AIRPORTS, PARKS, AND GROUNDS

or to such other location as the County directs.

Notices to Consultant shall be addressed as follows:

ENVIRONMENTAL STEWARDSHIP & PLANNING, INC.
1621 13TH STREET
SACRAMENTO, CA 95814
ATTN: STEVE PETERSON, PRESIDENT

or to such other location as the Consultant directs.

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ARTICLE XIII

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

ARTICLE XIV

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 \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage.
- C. Automobile Liability Insurance of not less than \$1,000,000.00 is required in the event motor vehicles are used by the Consultant in the performance of the Agreement.
- D. In the event Consultant is a licensed professional, and is performing professional services under this Agreement, professional liability (for example, malpractice insurance) is required with a limit of liability of not less than \$1,000,000.00 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 Risk Management, or be provided through partial or total self-insurance likewise acceptable to Risk Management.

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- G. Consultant agrees that the insurance required above 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 Agreement, Consultant agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and Consultant agrees that no work or services shall be performed prior to the giving of such approval. In the event the 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 Agreement upon the occurrence of such event.
- H. The certificate of insurance must include the following provisions stating that:
1. The insurer will not cancel the insured's coverage without thirty (30) days 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 the general liability policy.
- I. The 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 the County, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees, and volunteers; or the 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 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.

ARTICLE XX

Administrator: The County Officer or employee with responsibility for administering this Agreement is Jordan Postlewait, Manager of Airports, Parks, and Grounds, General Services Department, or successor.

ARTICLE XXI

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 XXII

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

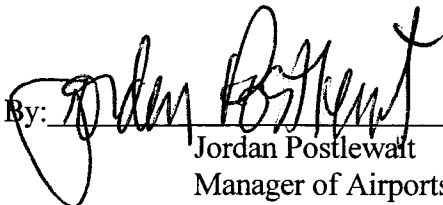
ARTICLE XXIII

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

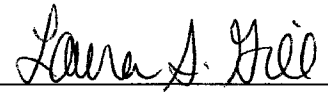
ARTICLE XXIV

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 CONTRACT ADMINISTRATOR CONCURRENCE:

By:  Dated: 9/28/07
Jordan Postlewait
Manager of Airports, Parks, and Grounds

REQUESTING DEPARTMENT HEAD CONCURRENCE:

By:  Dated: 9/27/07
Laura S. Gill
Chief Administrative Officer

IN WITNESS WHEREOF, the parties hereto 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 --

Dated: 12/18/07

By: Laura A. Gill for
Bonnie H. Rich, Purchasing Agent
Chief Administrative Office
"County"

-- CONSULTANT --

Dated: 10/8/07

ENVIRONMENTAL STEWARDSHIP & PLANNING, INC.,
A CALIFORNIA CORPORATION

By: [Signature]
~~Steve Peterson~~
President
"Consultant"

By: Amanda Rose
Corporate Secretary

Dated: 10/9/07

Exhibit "A"



ENVIRONMENTAL STEWARDSHIP & PLANNING
INCORPORATED

September 25, 2007

Mr. George Sanders
Deputy Director
El Dorado County
Department of General Services
345 Fair Lane
Placerville, CA 95667

Re: El Dorado Trail Project – Proposal to Conduct Surveys, Monitoring and Reporting
(Parkway Segment)

Dear Mr. Sanders

Environmental Stewardship & Planning, Inc. (ESP), in association with Padre Associates, Inc., hereby submits this cost proposal and scope of work to prepare the Permit Violation Status Report requested by the U.S. Army Corps of Engineers (Corps) for the El Dorado Trails Project (project). This proposal supersedes our proposal to you dated September 9, 2007 regarding this project.

This project was initiated and much of the in-channel work and culvert replacement was conducted prior to issuance of the Section 404 permit and without meeting several conditions of the U.S. Fish and Wildlife Service Section 7 concurrence letter. Per the request of the Corps, the project was halted and a report of the status of the project must be prepared and submitted to the Corps prior to re-initiation and completion of the project. Following is based our understanding of the current requirements needed to satisfy the Corps of Engineers' requirements to restart construction on this project. All tasks will be completed as soon as possible to support the County's efforts to complete project construction in this calendar year.

Task 1: Pre-Construction Monitoring California Red-Legged Frog Surveys and Report.

We will conduct this work, using qualified biologists to identify potential CRLF habitats and will prepare a report that meets US Fish and Wildlife Service standards for pre-construction monitoring.

Cost: \$3,600

Task 2: Construction Monitoring.

We will conduct construction monitoring for activities that will be conducted in the remaining wetted areas of the trail, not to exceed ten days.

Cost: \$7,000

Task 3: Meetings and Agency Coordination.

We have coordinated with continue to coordinate with the US Army Corps of Engineers and US Fish and Wildlife Service to gain approval to restart and complete project construction.

Cost: \$1,900

Task 4: Post-Construction Report

We will prepare a post-construction monitoring report in response to the permit conditions and standard Corps of Engineers permitting protocols.

Cost: \$3,500

Task 5: Project Management and Consultation with County Staff Members

Cost: \$2,200

Expenses:

\$900

Total Budget: \$19,100

If this proposed work plan and budget is acceptable, please provide ESP with a written contractual agreement as soon as possible. Should you have any questions, please feel free to contact me at (916) 455-1115 (x100) or (916) 531-5513 (mobile). Thank you for your interest in our services.

Sincerely,

Environmental Stewardship & Planning, Inc.



Steve Peterson, AICP

President