

**Kittelson & Associates, Inc.****FIRST AMENDMENT TO AGREEMENT FOR SERVICES # AGMT 11-53166**

**THIS FIRST AMENDMENT** to that Agreement for Services # AGMT 11-53166, 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 Dowling Associates, Inc., a corporation, now owned and operating as Kittelson & Associates, Inc., an Oregon corporation, duly qualified to conduct business in the State of California, whose principal place of business is 610 S.W. Alder Street, Suite 700, Portland, Oregon 97205 and whose local office address is 428 J Street, Suite 500, Sacramento, California 95814 (hereinafter referred to as "Consultant");

**RECITALS**

**WHEREAS**, Dowling Associates, Inc. has been engaged by County to assist its Department of Transportation with traffic engineering and transportation planning services in accordance with Agreement for Services # AGMT 11-53166, dated November 1, 2011, incorporated herein and made by reference a part hereof;

**WHEREAS**, Dowling Associates, Inc., has been acquired by Consultant effective January 16, 2012;

**WHEREAS**, Dowling Associates, Inc. has requested that the County accept work under Agreement for Services # AGMT 11-53166, with Consultant;

**WHEREAS**, Dowling Associates, Inc. will remain liable for all obligations, covenants, and conditions, and/or liabilities for services performed prior to January 16, 2012 under the terms and conditions of Agreement for Services # AGMT 11-53166, as approved by County of El Dorado Board of Supervisors and executed on November 1, 2011;

**WHEREAS**, Consultant acknowledges and agrees that all existing indemnity and insurance obligations of Dowling Associates, Inc. will remain in full force and effect for services performed prior to January 16, 2012 and for the duration of Agreement for Services # AGMT 11-53166 and as thereafter required by the Agreement;

**WHEREAS**, After January 16, 2012, Consultant will assume all of Dowling Associates, Inc.'s duties, responsibilities and obligations under the terms and conditions of Agreement for Services # AGMT 11-53166;

**NOW, THEREFORE**, the parties agree as follows:

1. As of the effective date of January 16, 2012, the parties agree to the assignment of Agreement for Services # AGMT 11-53166 from Dowling Associates, Inc. to Consultant.
2. As of the effective date of January 16, 2012, Consultant shall assume all duties, covenants and obligations of Dowling Associates, Inc. under this Agreement and is responsible for performing all services required under the Agreement for Services # AGMT 11-53166, as amended, in accordance with all terms and conditions as defined in the Agreement.
3. Dowling Associates, Inc. shall remain liable, jointly and severally, for all work performed prior to January 16, 2012, and further agrees that all indemnity and insurance obligations shall remain in full force and effect for services performed as of November 1, 2011 as stated herein above.
4. County will accept this First Amendment on condition that Dowling Associates, Inc. and Consultant fulfill the terms and conditions of this original Agreement for Services # AGMT 11-53166.

Additionally, the parties do hereby agree that Agreement for Services # AGMT 11-53166 shall be amended to read as follows:

**ARTICLE VIII, Consultant's Project Manager, of the original Agreement is deleted in its entirety and the following Article is added in its place to read as follows:**

**ARTICLE VIII**

**Consultant's Project Manager:** Consultant designates Jim E. Damkowitch, Principal Engineer, as its Project Manager for this Agreement. Consultant's Project Manager, or County-approved designee, shall be accessible to County's Contract Administrator, or designee, during normal County working hours and shall respond within twenty-four (24) hours to County inquiries or requests. Consultant's Project Manager shall be responsible for all matters related to Consultant's personnel, operations and any subconsultants authorized under individual Task Orders issued including, but not limited to (1) assigning qualified personnel to perform the work and to prepare the deliverables required by the Task Orders; and (2) reviewing, monitoring, training and directing Consultant's personnel and any subconsultants authorized herein.

**ARTICLE XVII, Notice to Parties, of the original Agreement is deleted in its entirety and the following Article is added in its place to read as follows:**

**ARTICLE XVII**

**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.: Steve P. Kooyman, P.E.  
Acting Deputy Director, Engineering  
Transportation Planning & Land  
Development Division

With a Copy to:

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

Attn.: Janel Gifford, P.E.  
Office Engineer/Contract Services Unit

or to such other location as County directs.

Notices to Consultant shall be addressed as follows:

Kittelson & Associates, Inc.  
428 J Street, Suite 500  
Sacramento, California 95814

Attn.: Jim E. Damkowitz  
Principal Engineer

or to such other location as Consultant directs.

**ARTICLE XIX, Insurance, Sections B. and H.2. and the last paragraph of the original Agreement are hereby amended as follows:**

**ARTICLE XIX**

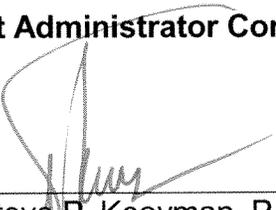
**Insurance:** Consultant shall provide proof of a policy of insurance satisfactory to County's Risk Management Division and documentation evidencing that Consultant maintains insurance that meets the following requirements:

- B. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000 aggregate limit.
- H. The certificate of insurance must include the following provisions stating that:
  - 2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to all general and excess liability insurance policies.

In addition, Consultant shall ensure that all subconsultants maintain workers' compensation, general liability, automobile liability and professional liability insurance as specified above and shall provide County with proof of same if requested.

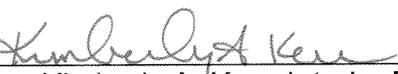
Except as herein amended, all other parts and sections of this Agreement for Services # AGMT 11-53166 shall remain unchanged and in full force and effect.

**Contract Administrator Concurrence:**

By:   
\_\_\_\_\_  
Steve P. Kooyman, P.E.  
Acting Deputy Director, Engineering  
Transportation Planning & Land  
Development Division  
Department of Transportation

Dated: 10/29/12

**Requesting Department Concurrence:**

By:   
\_\_\_\_\_  
Kimberly A. Kerr, Interim Director  
Department of Transportation

Dated: 10/26/12

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to Agreement for Services # AGMT 11-53166 on the dates indicated below.

-- C O U N T Y O F E L D O R A D O --

By: \_\_\_\_\_  
Chair  
Board of Supervisors  
"County"

Dated: \_\_\_\_\_

Attest:  
Terri Daly, Acting Clerk  
of the Board of Supervisors

By: \_\_\_\_\_  
Deputy Clerk

Dated: \_\_\_\_\_

-- K I T T E L S O N & A S S O C I A T E S , I N C . --

By:   
Richard G. Dowling  
Senior Principal Engineer  
"Consultant"

Dated: 11/11/12

By:   
Jim E. Damkowitch  
Principal Engineer  
"Consultant"

Dated: 10/31/12

# ORIGINAL

## Dowling Associates, Inc.

### Traffic Engineering and Transportation Planning Services

#### AGREEMENT FOR SERVICES # AGMT 11-53166

**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 Dowling Associates, Inc., a corporation duly qualified to conduct business in the State of California, whose principal place of business is 180 Grand Avenue, Suite #250, Oakland, California 94612 and whose local office address is 428 J Street, Suite 500, Sacramento, California 95814 (hereinafter referred to as "Consultant");

#### RECITALS

**WHEREAS**, County has determined that it is necessary to obtain a consultant to assist its Department of Transportation in traffic engineering and transportation planning services;

**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;

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

**WHEREAS**, County has determined that the provision of such services provided by Consultant are in the public's best interest, and authorized by El Dorado County Charter, Section 210(b)(6) and/or Government Code Section 31000;

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

#### ARTICLE I

**Scope of Services:** Consultant agrees to furnish personnel, subconsultants, materials, equipment and services necessary to provide traffic engineering and transportation planning services including, but not limited to, those tasks as identified in Exhibit A, marked "Scope of Work," incorporated herein and made by reference a part hereof.

Before proceeding with any work under this Agreement, the parties will identify the specific services to be provided for each assignment in individual Task Orders to be issued in accordance with this Agreement.

The specific services for each assignment shall be determined at a meeting or telephone conference between Consultant and County's Contract Administrator, or designee, to discuss the needs, applicable design standards, required deliverables, specific Consultant staff, subconsultants (if required), and any task-related mileage budget, if applicable, 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, a target completion date for the overall scope of work, and a not-to-exceed cost itemization to complete the work (resulting in a Task Order), which shall require written approval, authorization, and written notification to proceed from County's Contract Administrator, prior to commencement of the work. No payment will be made for any work performed prior to approval and full execution of the Task Order, and no payment will be made for amounts in excess of the not-to-exceed amount of the Task Order.

Funding from various local, state and federal sources may be utilized to fund certain assignments to be performed under this Agreement and as a consequence, the requirements of the funding agencies related to those grants will be incorporated into the provisions of the specific Task Orders, if any, issued for those assignments.

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 XVII, Notice to Parties of this Agreement.

The period of performance for any Task Orders that may be issued 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 exceeds the cumulative total of the not-to-exceed Contract amount.

County shall review Consultant's progress at key points as specified in each Task Order. Milestone reviews shall be performed for the specific products and deliverables listed in each Task Order. Milestones may only be changed by written agreement between County's Contract Administrator and Consultant's Project Manager.

If a submittal or Task Order deliverable is required to be an electronic file, Consultant shall produce the file using Microsoft Office 2003 applications (specifically, MS Word, MS Project and MS Excel). Signed reports shall be submitted in Adobe portable document format (PDF). Electronic AutoCAD 2010 or AutoCAD Civil 3D 2010 format shall be used for submittal of plans or other similar documents as specified by the Contract Administrator. All deliverables shall be submitted in language, format and design that are compatible with and completely transferable to County's computer and engineering applications and that are acceptable to County's Contract Administrator. Newer versions of software may be used and other types of software used for analytical purposes may be authorized if approved in advance of the submittal by County's Contract Administrator. Consultant shall submit all deliverables to County's Contract Administrator in accordance with completion time schedules identified in the individual Task Orders issued pursuant to this Agreement. Failure to submit the required deliverables in the format required shall be grounds for termination of the Agreement, as provided in Article XVI, Default, Termination, and Cancellation herein.

All of the services 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 both parties hereto and shall expire three (3) years thereafter or upon the completion of all issued Task Orders, whichever is later.

## **ARTICLE III**

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

For the purposes hereof, the billing rates shall be in accordance with Exhibit B, marked "Billing Schedule," incorporated herein and made by reference a part hereof. Consultant may submit a new proposed Billing Schedule to the Contract Administrator, which shall require written approval and acceptance by County's Director of Transportation prior to the new rates becoming effective.

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. There shall be no markups allowed on mileage rates for Consultant or for any subconsultant. Any reimbursements for mileage will only be made if such expenses are included in the budget of an approved and fully executed Task Order issued pursuant to this Agreement.

Travel costs (i.e., overnight lodging, meals, parking, airfare, bridge tolls, and other per diem expenses other than mileage) will not be reimbursed for any services performed under this Agreement.

The total amount of this Agreement, inclusive of all costs and Task Orders, and inclusive of all work of subconsultants and expenses shall not exceed \$300,000.00.

Itemized invoices shall follow the format specified by County and shall reference this Agreement number and the County-supplied Task Order number, both on their faces and on any enclosures or backup documentation. Consultant shall bill County for only one (1) Task Order per invoice. Consultant shall attach copies of any progress reports required under the provisions of Article V, Progress Reports that relate to the services being billed to every invoice 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 and progress reports 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 or progress reports are received, or proceed as set forth below in Article XVI, Default, Termination, and Cancellation herein.

#### **ARTICLE IV**

**Standards for Work:** Services rendered under this Agreement shall be performed in accordance with and full compliance with the 2004 El Dorado County General Plan, Highway Capacity Manual (Transportation Research Board, 2000), the Trip Generation Manual 8<sup>th</sup> Edition (Institute of Traffic Engineers), and all other applicable Caltrans, Federal Highway Administration (FHWA), federal, state and local laws, County guidelines and accepted industry standards, and shall be performed in a safe, professional, skillful and workmanlike manner.

#### **ARTICLE V**

**Progress Reports:** Upon issuance of a Task Order, Consultant shall submit written progress reports to the Contract Administrator at intervals that are commensurate with the requirements of the items of work and tasks being performed and based upon a mutually agreeable schedule. At a minimum, Consultant shall submit progress reports once per month. The reports shall be sufficiently detailed for the Contract Administrator 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**

**Licenses:** Consultant represents that it and any and all subconsultants employed under this Agreement are duly certified or licensed in good standing by the State of California to perform the services under this Agreement, and that Consultant and all subconsultants shall maintain said certificates and licenses in good standing throughout the term of this Agreement.

## **ARTICLE VII**

**Ownership of Data:** Upon completion or earlier termination of all services under this Agreement, or upon the completion or earlier termination of services provided in accordance with individual Task Orders issued pursuant to this Agreement, ownership and title to all reports, documents, plans, maps, specifications, estimates, compilations, photographs, videos 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 VIII**

**Consultant's Project Manager:** Consultant designates Richard Dowling, President, as its Project Manager for this Agreement. Consultant's Project Manager, or County-approved designee, shall be accessible to County's Contract Administrator, or designee, during normal County working hours and shall respond within twenty-four (24) hours to County inquiries or requests. Consultant's Project Manager shall be responsible for all matters related to Consultant's personnel, operations and any subconsultants authorized under individual Task Orders issued including, but not limited to (1) assigning qualified personnel to perform the work and to prepare the deliverables required by the Task Orders; and (2) reviewing, monitoring, training and directing Consultant's personnel and any subconsultants authorized herein.

## **ARTICLE IX**

**Changes to Agreement:** This Agreement may be amended by mutual consent of the parties hereto. Amendments may be made to permit mutually acceptable changes in the scope, character or complexity of the work if such changes become desirable or necessary as the work progresses. Appropriate extensions of time in case of unavoidable delays and for consideration of warranted adjustments in payment may also be accomplished by amendments to the Agreement. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto. There shall be no change in Consultant's Project Manager or subconsultants, which shall be established at the issuance of individual Task Orders, without prior written approval by County's Contract Administrator.

## **ARTICLE X**

**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 the term hereof.

## **ARTICLE XI**

**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, representatives, including any subconsultants authorized herein, shall not use or disclose, directly or indirectly at any time, any said confidential information, other than to County's Department of Transportation for the purpose of, and in the performance of, this Agreement. This confidentiality provision shall survive after the expiration or earlier termination of this Agreement.

## **ARTICLE XII**

**Assignment and Delegation:** Consultant is engaged by County for its unique qualifications and skills as well as those of its personnel. Consultant shall not subcontract, delegate, or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County. Notwithstanding this Article, County may, through its Contract Administrator, authorize Consultant to utilize subconsultants for services performed in Article I, Scope of Services, for the particular tasks, work and deliverables identified therein. Said authorization and approval shall be sought and obtained by Consultant prior to subconsultants' commencement of any work under this Agreement. Specific subconsultants shall be authorized in individual Task Orders issued pursuant to this Agreement. 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 of the obligations and responsibilities that Consultant, by this Agreement, assumes toward County.

Notwithstanding any provision to the contrary, at no time shall County be obligated to pay separately for subconsultant services.

Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this Article.

## **ARTICLE XIII**

**Independent Contractor/Liability:** Consultant is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by the terms of this Agreement. Consultant exclusively assumes responsibility for acts of its employees, associates, and 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 and subconsultants. County shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to Consultant or its employees or subconsultants.

#### **ARTICLE 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 and any subconsultants authorized in the individual Task Orders issued pursuant to this Agreement 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 and its subconsultants 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 office of County Department 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.

Consultant and any authorized subconsultants shall comply with all applicable wage requirements, as set forth in Labor Code Sections 1770 et seq., 1773.2, 1775, 1776, 1810, and 1813. In accordance with the provisions of Labor Code Section 1810, eight (8) hours of labor shall constitute a legal day's work upon all work done hereunder, and Consultant and any subconsultant authorized under this Contract shall also conform to and be bound by the provisions of Labor Code Sections 1810 through 1815.

As required under the provisions of Labor Code Section 1776, Consultant and all subconsultants authorized under this Agreement shall keep accurate payroll records. Certified copies of all payroll records shall be made available for inspection at all reasonable hours at Consultant's principal office.

#### **ARTICLE XV**

**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 XVI**

### **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 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 or any Task Order issued pursuant to 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 not-to-exceed amount of the Task Order or the total amount of the

contract, as applicable. 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 XVII**

**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, P.E.  
Director of Transportation

With a Copy to:

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

Attn.: Janel Gifford, P.E.  
Office Engineer/Contract Services Unit

or to such other location as County directs.

Notices to Consultant shall be addressed as follows:

Dowling Associates, Inc.  
428 J Street, Suite 500  
Sacramento, California 95814

Attn.: Richard G. Dowling, President

or to such other location as Consultant directs.

**ARTICLE XVIII**

**Indemnity:** To the fullest extent allowed by law, Consultant shall defend, indemnify, and hold harmless the County and its officers, agents, employees and representatives from and against any and all claims, actions, losses, injuries, damages or expenses of every name, kind, and description, including litigation costs and reasonable attorney's fees incurred, brought for or on account of, injury to or death of any person, including but not limited to workers, County employees and the public, or damage to property, which arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant, its officers, agents, employees, volunteers, representatives, contractors and subcontractors. This duty of Consultant includes the duty of defense, inclusive of that set forth in California Civil Code Section 2778. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement.

## **ARTICLE XIX**

**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 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 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, automobile liability and professional liability insurance as specified above and shall provide County with proof of same.

## **ARTICLE XX**

**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 the 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 XXI**

**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 XXII**

**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 XXIII**

**County Payee Data Record Form:** All independent contractors or corporations providing services to County who do not have a Department of the Treasury Internal Revenue Service Form W-9 (Form W-9) on file with County must file a County Data Record Form with County.

#### **ARTICLE XXIV**

**Business License:** County's Business License Ordinance provides that it is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of El Dorado County without possessing a County business license unless exempt under County Ordinance Code Section 5.08.070. Consultant warrants and represents that it shall comply with all of the requirements of County's Business License Ordinance prior to beginning work under this Agreement and at all times during the term of this Agreement.

#### **ARTICLE XXV**

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

#### **ARTICLE XXVI**

**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 XXVII**

**Contract Administrator:** The County Officer or employee with responsibility for administering this Agreement is Steve Kooyman, P.E., Acting Deputy Director, Engineering, Transportation Planning & Land Development Division, Department of Transportation, or successor.

**ARTICLE XXVIII**

**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 the obligations set forth herein.

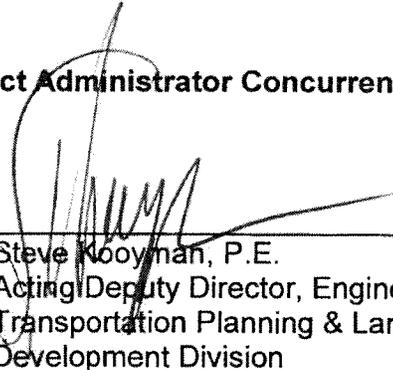
**ARTICLE XXIX**

**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 XXX**

**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.

**Contract Administrator Concurrence:**

By:   
Steve Kooyman, P.E.  
Acting Deputy Director, Engineering  
Transportation Planning & Land  
Development Division

Dated: 9/7/11

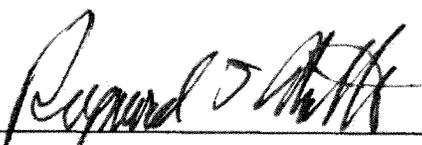
**Requesting Department Concurrence:**

By:   
James W. Ware, P.E.  
Director of Transportation

Dated: 9/7/11

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:   
Raymond J. Nutting, Chair  
Board of Supervisors  
"County"

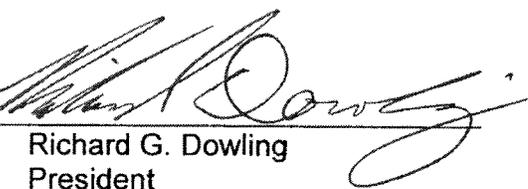
Dated: 11-1-11

Attest:  
Suzanne Allen de Sanchez  
Clerk of the Board of Supervisors

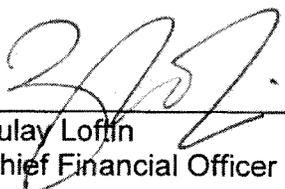
By:   
Deputy Clerk

Dated: 11-1-11

-- DOWLING ASSOCIATES, INC. --

By:   
Richard G. Dowling  
President  
"Consultant"

Dated: Sept 9, 2011

By:   
Zulay Loffin  
Chief Financial Officer

Dated: 9/12/11

**Dowling Associates, Inc.**

**Exhibit A**

**Scope of Work**

Consultant's services may include, but shall not be limited to:

- Traffic planning services associated with the implementation of the General Plan
- Assistance with development and implementation of traffic impact fee programs supporting the General Plan implementation efforts
- Preparing Level of Service studies
- Preparing or reviewing traffic impact studies
- Preparing or reviewing traffic reports for discretionary applications
- Reviewing traffic engineering improvements, such as traffic signals, freeway interchanges, and intersection configurations
- Development of and review of traffic modeling and forecasts
- Reviewing traffic signal designs
- Preparing or reviewing transportation system management plans
- Preparing or reviewing congestion management plans

Consultant's review of traffic impact studies shall produce, at a minimum, a transmittal letter to County summarizing the review findings. The transmittal letter shall be provided in hard copy and in electronic format compatible with County's software (Microsoft Word). Turnaround time for traffic impact study reviews shall not be more than two weeks. Should Consultant be unable to meet the required turnaround time relative to a specific review, Consultant agrees to notify the Contract Administrator within five (5) days of receipt of the plans, of any additional time necessary to complete the review.

Deliverables and schedules for other studies shall be included in the individual Task Order for the specific study.

**Dowling Associates, Inc.**

**Exhibit B**

**Billing Schedule**

**Labor Rates**

| <b>Classifications</b>     | <b>Hourly Rate</b> |
|----------------------------|--------------------|
| President                  | \$312              |
| Principal                  | \$190-\$220        |
| Principal Associate        | \$170-\$180        |
| Research Engineer/Planner  | \$160-\$220        |
| Senior Engineer/Planner    | \$140-\$170        |
| Associate Engineer/Planner | \$120-\$125        |
| Accounting                 | \$150-\$187        |
| Graphic Artist             | \$90-\$100         |
| Executive Assistant        | \$70-\$90          |

Expert witness charges available upon request.

The above rates include standard overhead items.

Consultant may submit a new proposed Billing Schedule to the Contract Administrator, which shall require written approval and acceptance by County's Director of Transportation prior to the new rates becoming effective.

**Direct Expenses**

The rates in the table below apply to non-standard items. All outside services and expenses are billed at cost, plus administrative cost of fifteen percent (15%)<sup>1</sup>.

| Item                                 | Rate        |
|--------------------------------------|-------------|
| Personal Auto Use                    | See Below*  |
| Delivery                             | Actual Cost |
| Teleconferences, Long Distance Phone | Actual Cost |
| Outside Printing and Binding         | Actual Cost |
| PDA's (Personal Digital Assistants)  | \$2 per day |

- \* 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. There shall be no markups allowed on mileage rates for Consultant or for any subconsultant. Any reimbursement for mileage will only be made if such expenses are included in the budget of an approved and fully executed Task Order issued pursuant to this Agreement.

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<sup>1</sup> At cost plus 15% markup for Task Orders issued, in which no federal grant funding will be utilized to support the authorized task work.

At cost with no 15% markup for Task Orders issued which state in the Task Order description that federal grant funding will be utilized to support the authorized task work.