

**ORIGINAL**

**Dowling Associates, Inc.**

**Transportation Planning and Traffic Engineering Services**

**AGREEMENT FOR SERVICES # AGMT 05-967  
Amendment I**

**THIS AMENDMENT I** to that Agreement for Services # AGMT 05-967 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**, Consultant has been engaged by County to assist its Department of Transportation by providing transportation planning and traffic engineering services pursuant to Agreement for Services # AGMT 05-967, incorporated herein and made by reference a part hereof; and

**WHEREAS**, the parties hereto desire to amend Agreement for Services # AGMT 05-967 to clarify the Task Order requirements, amending **ARTICLE I Scope of Services**; and

**WHEREAS**, the parties hereto desire to amend Agreement for Services # AGMT 05-967 to revise the expiration date of the Agreement to allow for the completion of issued Task Orders, amending **ARTICLE II Term**; and

**WHEREAS**, the parties hereto desire to amend Agreement for Services # AGMT 05-967 to increase the not-to-exceed compensation amount of the Agreement by \$200,000, and to add a new fee schedule for the extended term of the Agreement, amending **ARTICLE III Compensation for Services** and adding **Exhibit C, Billing Schedule 2007**; and

**WHEREAS**, the parties hereto desire to amend Agreement for Services # AGMT 05-967 to modify the requirements for progress reporting, amending **ARTICLE IV Progress Reports**; and

**WHEREAS**, the parties hereto desire to amend Agreement for Services # AGMT 05-967 to change one of County's notices recipients, amending **ARTICLE XV Notice to Parties**; and

**WHEREAS**, the parties hereto desire to amend Agreement for Services # AGMT 05-967 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 05-967 to update the insurance requirements, amending **ARTICLE XVII Insurance**; and

**WHEREAS**, the parties hereto desire to amend Agreement for Services # AGMT 05-967 to include County's business license requirements, adding **ARTICLE XXVIII Business License**;

**NOW, THEREFORE**, County and Consultant mutually agree to amend the terms of the Agreement in this Amendment I to Agreement for Services # AGMT 05-967, to read as follows:

#### **ARTICLE I**

**Scope of Services:** Consultant agrees to furnish personnel, subconsultants, materials, equipment and services necessary to assist the Department of Transportation in providing traffic planning services associated with the General Plan, in assisting with the development and implementation of traffic impact mitigation fee programs in support of the General Plan implementation efforts, in reviewing traffic reports for discretionary applications and in reviewing traffic signal designs and other traffic engineering improvements for on-going projects administered by the Department of Transportation. Services may include, but not be limited to those tasks and deliverables identified in Exhibit A, marked "Scope of Work," incorporated herein and made by reference a part hereof.

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 design 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 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.

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 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 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 exceeds the cumulative total of the not-to-exceed Contract amount.

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, Default, Termination, and Cancellation.

Consultant shall attach a copy of each notification to proceed, as backup documentation, to any invoices submitted for payment under the terms of this Agreement. Copies of notices attached to invoices shall reflect Consultant's charges for the specific support or review services billed on those invoices.

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.

## **ARTICLE II**

**Term:** This Agreement shall become effective when fully executed by both parties hereto and shall expire two years thereafter, or upon 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, and including the progress reports required by Article IV, 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 invoice(s) detailing services rendered.

For the purposes hereof, for the period beginning April 4, 2006 and continuing through December 15, 2006, the billing rates shall be in accordance with Exhibit B, marked "Billing Schedule 2006," incorporated herein and made by reference a part hereof.

For the remaining term of the Agreement, the billing rates shall be in accordance with Exhibit C, marked "Billing Schedule 2007," incorporated herein and made by reference a part hereof. The hourly labor rates indicated in Exhibit C are subject to revision effective December 15, 2007. In no instance shall the rates be increased by more than four percent (4%) per year.

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 \$700,000.

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, Default, Termination, and Cancellation.

#### **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 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 &  
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:

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 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 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 losses, which are claimed to or in any way arise out of, directly or indirectly, or are connected with: (1) any negligent (whether passive or active) act, error or omission; or willful misconduct of Consultant, its subconsultant(s) agents or employee(s) or any of these; or (2) any breach of any statutory, regulatory, contractual or legal duty of any kind related, directly or indirectly, to the services, responsibilities or duties required of Consultant by this Agreement. This duty of Consultant to indemnify and save 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.


The Agreement is further amended to add the following Article:

**ARTICLE XXVIII**

**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 the County Business License Ordinance prior to beginning work under this Agreement and at all times during the term of this Agreement.

Except as herein amended, all other parts and sections of Agreement for Services # AGMT 05-967 shall remain unchanged and in full force and effect.

**Requesting Department Concurrence:**

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

Dated: 7/5/07



**IN WITNESS WHEREOF**, the parties hereto have executed this Amendment I to Agreement for Services # AGMT 05-967 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: \_\_\_\_\_

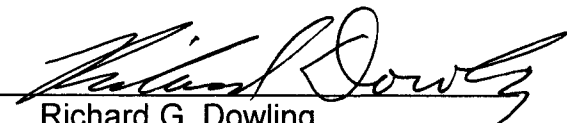
Board of Supervisors  
"County"

Attest:  
Cindy Keck  
Clerk of the Board of Supervisors

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

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

**-- DOWLING ASSOCIATES, INC. --**

By:   
Richard G. Dowling  
President  
"Consultant"

Dated: July 10, 2007

By:   
Zulay Kapci  
Chief Financial Officer

Dated: July 10, 2007

***Billing Schedule 2007***

Dowling Associates has established the following billing rates for our professional consulting services for El Dorado County, **Effective December 16, 2006.**

<b>Classification</b>	<b>Hourly Rate</b>
President	\$300
Principal	\$185-\$215
Principal Associate	\$160-\$170
Research Engineer	\$210
Senior Engineer/Planner	\$115-\$160
Associate Engineer/Planner	\$105-\$115
Administration	\$135-\$170
Graphic/Exec Assist	\$65-\$90
Executive Assist	\$75-\$85

Expert witness charges available upon request.

**Direct Expenses**

The above rates include standard overhead items. 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%).

<b>Item</b>	<b>Rate</b>
Personal Auto Use	*
Delivery	Actual Cost
Teleconferences, Long Distance Phone	Actual Cost
Outside Printing and Binding	Actual Cost
Paramics, Vissim, Emme2, TP+/Viper, Transcad Software Keys	\$11 per hour
PDA's (Personal Digital Assistants)	\$2 per day
Plotter maps and charts	\$6 per square foot

Hourly labor rates are subject to revision December 15, 2007. On or before December 15, 2007, Consultant shall submit a new proposed Billing Schedule, which shall require written approval and acceptance by County's Contract Administrator, prior to the new rates becoming effective. In no instance shall the rates be increased by more than four percent (4%) per year.

\*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.