

Environmental Stewardship & Planning, Inc.

As-Needed Environmental Review Services

AGREEMENT FOR SERVICES # AGMT 05-853

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 Environmental Stewardship & Planning, Inc., a California corporation duly qualified to conduct business in the State of California, whose principal place of business is located at 2830 I Street, Suite 304, Sacramento, California 95816, (hereinafter referred to as "Consultant");

W I T N E S S E T H

WHEREAS, County has determined that it is necessary to obtain a consultant to assist its Department of Transportation with as-needed environmental review services; and

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

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

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

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

ARTICLE I

Scope of Services:

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

B. Consultant's services are to be provided specifically in support of projects included in County's five-year Capital Improvement Program, and generally in support of other County activities as required. The specific services for each assignment shall be determined at a meeting or telephone conference between Consultant and County's Contract Administrator, or designee, to discuss the needs, applicable standards, required deliverables, specific Consultant staff, subconsultants (if required), any task-

related mileage budget, if applicable, and any necessary permits on a task-by-task basis. Following the meeting, Consultant shall provide the Contract Administrator with a scope of work, a schedule and a not-to-exceed cost to complete the work (Task Order), which shall require approval, authorization and notification to proceed from 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.

The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No payment will be made for any work performed after the period of performance in the Task Order, unless County's Contract Administrator and Consultant's Project Manager amend the Task Order. No Task Order will be written which extends beyond the expiration date of this Agreement.

C. If a submittal is required to be an electronic file, Consultant shall produce the file in Microsoft Word 2000, Microsoft Excel 2000 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. Failure to submit the requested deliverables in the format required shall be grounds for termination of the Agreement, as provided in Article XIV. County releases Consultant from any liability arising from modifications to electronic files made by County or its agents and for reuse of the files for any purpose other than the purpose for which the files were originally intended.

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 shall expire May 31, 2007.

ARTICLE III

Compensation for Services: For services provided herein, including all deliverables described in the individual Task Orders, County agrees to pay Consultant within thirty (30) days following County receipt and approval of itemized invoice(s) detailing services rendered. For the purposes hereof, the billing rate shall be in accordance with Exhibit B, marked "May 2005-May 2007 Standard Rates," incorporated herein and made by reference a part hereof. The total amount payable by County for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless County's Contract Administrator and Consultant's Project Manager amend the Task Order.

The total amount of this Agreement shall not exceed \$200,000, inclusive of all work of subconsultants and expenses.

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.

Itemized invoices shall follow the format specified by County and shall reference this Agreement number and project title, and shall include County's work order number and task code, both on their faces and on any enclosures or back-up documentation. Invoices shall be mailed to the Contract Administrator at the following address:

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

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 review services billed on those invoices.

ARTICLE IV

Progress Reports: Consultant shall submit progress reports at intervals that are commensurate with the requirements of the Tasks herein and based upon mutually agreeable schedules. At a minimum, Consultant shall submit progress reports once per month. The reports shall be sufficiently detailed for the County's 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. Separate detail shall be provided for each ongoing Task or Task Order. Progress reports shall include the total number of hours worked by Consultant and any authorized subconsultants.

ARTICLE V

Licenses: Consultant represents that it and any and all subconsultants employed under this Agreement are duly 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 licenses in good standing throughout the term of this Agreement.

ARTICLE VI

Ownership of Data: Upon completion or earlier termination of all Services under this Agreement, ownership and title to all reports, documents, plans, maps, specifications, estimates, addenda, compilations and any and all other materials or data produced as part of this Agreement will automatically be vested in County and no further agreement will be necessary to transfer ownership to County. Consultant shall furnish County all necessary copies of data needed to complete the review and approval process of the project.

ARTICLE VII

Changes to Agreement: This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto. There shall be no change in Consultant's Project Manager or subconsultants without prior written approval by County's Contract Administrator.

ARTICLE VIII

Consultant to County: It is understood that the services provided under this Agreement shall be prepared in and with cooperation from County and its staff. It is further agreed that in all matters pertaining to this Agreement, Consultant shall act as Consultant only to County and shall not act as Consultant to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with Consultant's responsibilities to County during term hereof.

ARTICLE IX

Confidentiality: Consultant shall maintain the confidentiality and privileged nature of all records, including billing records, together with any knowledge therein acquired, in accordance with all applicable State and Federal laws and regulations, as they may now exist or may hereafter be amended or changed. Consultant, and all Consultant's staff, employees, and representatives, shall not use or disclose, directly or indirectly at any time, any said confidential information, other than to 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 termination of this Agreement.

ARTICLE X

Assignment and Delegation: Consultant is engaged by County for its unique qualifications and skills as well as those of its personnel. Consultant shall not subcontract, delegate, or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County. 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 approval and authorization shall be sought and received by Consultant prior to subconsultants' commencement of work. Notwithstanding any provision to the contrary, at no time shall County be obligated to pay separately for subconsultant services.

ARTICLE XI

Independent Consultant/Liability: Consultant is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by terms of this Agreement. Consultant exclusively assumes responsibility for acts of its employees, associates, and subconsultants, 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 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 XII

Prevailing Wage: County requires Consultant's Services on public works project(s) involving local, State and/or Federal funds to which prevailing wage requirements may

apply. As a consequence, Consultant shall comply with all applicable State and Federal prevailing wage rates, statutes, rules and regulations then in effect. In the event of conflict between applicable Federal and State provisions, the higher prevailing wage rate will apply. Consultant shall use the general prevailing wage rates determined by the Director of Industrial Relations for the county in which the work is to be done, which are available at the offices of the District Director of Transportation for the district in which the work is situated. Changes, if any, to the general prevailing wage rates will be available at the same location. The Federal minimum wage rates are determined by the United States Secretary of Labor and may be examined at the office described above. Future effective general prevailing wage rates which have been predetermined and are on file with the California Department of Industrial Relations are referenced but not printed in the general prevailing wage rates.

ARTICLE XIII

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 XIV

Default, Termination, and Cancellation:

- A. **Default:** Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (Time to Cure), then such party shall be in default. The Time to Cure may be extended in the discretion of the party giving notice. Any extension of Time to Cure must be in writing, prepared by the party in default for signature by the party giving notice, and must specify the reason(s) for the extension and the date in which the extension of Time to Cure expires.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the

provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the Time to Cure has expired.

- B. Bankruptcy: This Agreement, at the option of County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Consultant.
- C. Ceasing Performance: County may terminate this Agreement in the event Consultant ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. Termination or Cancellation without Cause: County may terminate this Agreement in whole or in part upon seven (7) calendar days written notice by County for any reason. If such prior termination is effected, County will pay for satisfactory services rendered prior to the effective dates, as set forth in the Notice of Termination provided to Consultant, and for such other services which County may agree to in writing as necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the contract. Upon receipt of a Notice of Termination, Consultant shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the Notice directs otherwise. In the event of termination for default, County reserves the right to take over and complete the work by contract or by any other means.

ARTICLE 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.: Susan Lee,
Senior Planner

With a Copy to:

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

Attn: Tim C. Prudhel,
Contract Services Officer

or to such other location as County directs.

Notices to Consultant shall be addressed as follows:

Environmental Stewardship & Planning, Inc.
2830 I Street, Suite 304
Sacramento, California 95816

Attn.: Steve Peterson, President

or to such other location as Consultant directs.

ARTICLE XVI

Indemnity: To the fullest extent allowed by law, Consultant shall defend, indemnify, and hold harmless the County, its officers, employees, agents and representatives from and against any and all claims, actions, losses, injuries, damages and liability for damages, demands, actions, costs, penalties and expenses of every name, kind and description, including litigation costs and attorneys' fees incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, which are claimed to or in any way arise out of or are connected with Consultant's negligent services, operation, or performance. This duty of Consultant to indemnify and save the County harmless includes the duties to defend set forth in California Civil Code Section 2778.

ARTICLE XVII

Insurance: Consultant shall provide proof of a policy of insurance satisfactory to the El Dorado County Risk Manager and documentation evidencing that Consultant maintains insurance that meets the following requirements:

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Consultant as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
- C. Automobile Liability Insurance of not less than \$500,000 is required in the event motor vehicles are used by Consultant in performance of the Agreement.
- D. In the event Consultant is a licensed professional and is performing professional services under this Agreement, Professional Liability Insurance is required with a limit of liability of not less than \$1,000,000.
- E. Consultant shall furnish a certificate of insurance satisfactory to the El Dorado County Risk Manager as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to the Risk Management Division, or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.
- G. Consultant agrees that the insurance required herein shall be in effect at all times during the term of this agreement. In the event said insurance coverage expires at any time or times during the term of this contract, Consultant shall immediately provide a new certificate of insurance as evidence of the required insurance coverage. In the event Consultant fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this contract upon the occurrence of such event. New certificates of insurance are subject to the approval of the Risk Manager, and Consultant agrees that no work or services shall be performed prior to the giving of such approval.

- H. The certificate of insurance must include the following provisions stating that:
1. The insurer will not cancel the insured's coverage without 30-day prior written notice to County; and
 2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, but only insofar as the operations under this Agreement are concerned. This provision shall apply to all liability policies except Workers' Compensation and professional liability insurance policies.
- I. Consultant's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, employees, or volunteers shall be 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 the Risk Management Division as essential for protection of County.

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

ARTICLE XVIII

Interest of Public Official: No official or employee of County who exercises any functions or responsibilities in review or approval of services to be provided by Consultant under this

Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any such official or employee of County have any interest, direct or indirect, in this Agreement or the proceeds thereof.

ARTICLE XIX

Interest of Consultant: Consultant covenants that Consultant presently has no personal interest or financial interest, and shall not acquire same in any manner or degree, in either: 1) any other contract connected with or directly affected by the services to be performed by this Agreement; or, 2) any other entities connected with or directly affected by the services to be performed by this Agreement. Consultant further covenants that in the performance of this Agreement no person having any such interest shall be employed by Consultant.

ARTICLE XX

California Residency (Form 590): All independent Consultants providing services to County must file a State of California Form 590, certifying their California residency or, in the case of a corporation, certifying that they have a permanent place of business in California. Consultant will be required to submit a Form 590 prior to execution of this Agreement, or County shall withhold seven (7) percent of each payment made to Consultant during the term of this Agreement. This requirement applies to any agreement/contract exceeding \$1,500.

ARTICLE XXI

Taxpayer Identification Number (Form W-9): All independent contractors or corporations providing services to County must file a Department of the Treasury Internal Revenue Service Form W-9, certifying their Taxpayer Identification Number.

ARTICLE XXII

California Forum and Law: Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California. Consultant waives any removal rights it might have under Code of Civil Procedure Section 394.

ARTICLE XXIII

Year 2000 Compliance: Consultant agrees that all hardware and software developed, distributed, installed, programmed, or employed as a result of this order will comply with ISO 9000 date format to correctly manipulate and present date-sensitive data.

Upon delivery of product and thereafter, the date and date logic component shall effectively and efficiently operate using a four-digit year.

Upon written notification by County of any hardware or software failure to comply with ISO 9000 date format, Consultant will replace or correct the failing component with compliant hardware or software immediately, at no cost to County.

ARTICLE XXIV

Contract Administrator: The County Officer or employee with responsibility for administering this Agreement is Susan Lee, Senior Planner, Department of Transportation, or successor.

ARTICLE XXV

Authorized Signatures: The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties the obligations set forth herein.

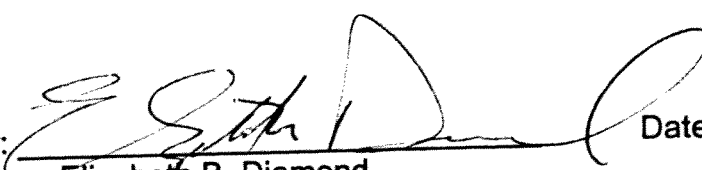
ARTICLE XXVI

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

ARTICLE XXVII

Entire Agreement: This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties, and they incorporate or supersede all prior written or oral agreements or understandings.

Requesting Department Concurrence:

By:  Dated: 6/15/05
Elizabeth B. Diamond
Interim Director
Department of Transportation

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated below, the latest of which shall be deemed to be the effective date of this Agreement.

-- COUNTY OF EL DORADO --

By: Charlie Paine
CHAIRMAN

Dated: 7/12/05

Board of Supervisors
"County"

Attest:
Cindy Keck
Clerk of the Board of Supervisors

By: [Signature]
Deputy Clerk

Dated: 7/12/05

-- ENVIRONMENTAL STEWARDSHIP & PLANNING, INC. --

By: [Signature]
Steven L. Peterson
President
"Consultant"

Dated: 6/20/05

By: [Signature]
Corporate Secretary

Dated: 6/21/05

Environmental Stewardship & Planning, Inc.

Exhibit A

Scope of Work

Consultant services shall include, but not be limited to:

- Oversight of project-level environmental review.
- Attendance at County meetings and workshops as necessary.
- Preparation of initial studies, focused technical studies/surveys (if necessary), and final environmental documents in compliance with the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA) as required for individual projects.
- Coordination with state and federal resource agencies in support of CEQA and NEPA documentation.
- Identification of project impacts and proposals for feasible mitigation measures. Recording of appropriate notices and other documents as necessary.
- Preparation of applications on behalf of DOT, and acquisition of authorization if required, in support of the Federal Clean Water Act (Sections 401 and 404), State Fish and Game Code (e.g., Streambed Alteration Agreements), Section 106 of the National Historic Preservation Act, State and Federal Endangered Species Acts, and Section 4(f) of the Federal Department of Transportation Act. Applications may require completion of technical, protocol-specific surveys.
- Development of mitigation and monitoring programs consistent with legal requirements (e.g., CEQA, Streambed Alteration Agreement, Clean Water Act permit).

The actual number of issues addressed, level of service provided, and associated level of effort will vary depending on the level of support requested or required by County's Contract Administrator.

Consultant's review services shall produce, at a minimum, a transmittal letter to County staff summarizing the review findings. Said transmittal letter shall be provided both in hard copy and in an electronic format compatible with County's software in accordance with Article I, Section C.

Environmental Stewardship & Planning, Inc.

Exhibit B

May 2005 - May 2007 Standard Rates

Professional Services

| Classification | Rate |
|-------------------------|----------------|
| Principal | \$130-145/Hour |
| Associate | \$100-125/Hour |
| Senior Biologist | \$100-110/Hour |
| Editor/Graphic Artist | \$75-95/Hour |
| Staff Planner/Biologist | \$75-80/Hour |
| Clerical | \$45/Hour |
| Administrative | \$45/Hour |

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

Direct Charges

| Activity | Rate |
|--------------------------------------|--------------------------------|
| Mileage | * |
| Postage and Electronic Communication | Included in Hourly Rates Above |
| Supplies and Subcontractors | Cost + 15% |

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