

REPORT TO SHASTA COUNTY RTPA

SUBJECT	MEETING DATE	ITEM NUMBER
Personal Services Agreement (PSA) for Ongoing Maintenance for the Traffic Model	10/23/07	4-5

RECOMMENDATION

It is recommended that the Board authorize the Executive Director to enter into a Personal Services Agreement (PSA) with Dowling Associates, Inc. for \$10,000 for additional services.

SUMMARY

The PSA with Dowling Associates needs to be signed in order to provide on call support for the Shasta County Travel Demand Forecasting Model.

DISCUSSION

On December 27, 2004, the Board entered into an agreement with Dowling Associates, Inc. to update the Travel Demand Forecasting Model. The work has been completed and version one of the model has been distributed to the Agency partners and various consultant firms. The original agreement with Dowling expired September 30, 2007.

A one year on-call agreement is needed to assist staff and agency partners with creating presentation materials and script files, trouble-shooting modeling problems, review of modeling assumptions, model refinements, and provide training.

ALTERNATIVES

The Board could choose not to sign the PSA. This is not recommended since funding is available and the work is needed to support future local agency requests.

OTHER AGENCY INVOLVEMENT

This item was discussed at the October 3, 2007, Technical Advisory Committee (TAC) meeting. TAC supports the staff recommendation.

FINANCING

The 2007/2008 OWP has sufficient funding in the element budget to fund this amendment.



Daniel S. Little, AICP, Executive Director

TLH/jac

Attachments: Personal Services Agreement
 Scope of Work

**PERSONAL SERVICES AGREEMENT BETWEEN
SHASTA REGIONAL TRANSPORTATION PLANNING AGENCY
AND DOWLING ASSOCIATES, INC.**

This Agreement is entered into between Shasta County Regional Transportation Planning Agency (SCRTPA), a political subdivision of the State of California, and Dowling Associates, Inc. ("Consultant") for the purpose of "On Call" support of the Shasta County Travel Demand Model.

1. RESPONSIBILITIES OF CONSULTANT.

- A. See Exhibit A, Scope of Work, attached hereto, which provides a detailed description of each of the following tasks:
 - 1. Create Presentation Materials and Script Files
 - 2. Trouble Shooting of Modeling Problems
 - 3. Review of Modeling Data and Assumptions
 - 4. Support Model Refinements
 - 5. Provide Training
 - 6. Support RTPA Staff in Model Coordination
- B. As required by Government Code section 7550, each document or report prepared by Consultant for or under the direction of SCRTPA pursuant to this Agreement shall contain the numbers and dollar amount of the Agreement and all subcontracts under the Agreement relating to the preparation of the document or written report. The Agreement and subcontract dollar amounts shall be contained in a separate section of the document or written report. If multiple documents or written reports are the subject of the Agreement or subcontracts, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or written reports.

2. RESPONSIBILITIES OF SCRTPA.

SCRTPA shall compensate Consultant as set forth in Section 3 of this Agreement and shall monitor Consultant's performance.

3. COMPENSATION.

Consultant shall be paid up to \$10,000.00 on a time and expense basis for the services described in this Agreement. Rate of pay for Mike Aronson is \$190 per hour.

4. **BILLING AND PAYMENT.**

Consultant shall submit a monthly invoice detailing single hourly rates and an itemized statement of services rendered by task. SCRTPA shall make payment within 30 days of receipt of Consultant's correct and approved statement.

5. **TERM OF AGREEMENT.**

This Agreement shall commence on the date of signing and shall terminate upon written documentation from SCRTPA or within one (1) year of the signing of this Agreement, whichever is earlier.

6. **TERMINATION OF AGREEMENT.**

- A. If Consultant materially fails to perform its duties to the satisfaction of SCRTPA, or if Consultant fails to fulfill in a timely and professional manner obligations under this Agreement, or if Consultant violates any of the terms or provisions of this Agreement, then SCRTPA shall have the right to terminate this Agreement for cause effective immediately upon SCRTPA giving written notice thereof to Consultant. If termination for cause is given by SCRTPA to Consultant and it is later determined that Consultant was not in default or the default was excusable, then the notice of termination shall be deemed to have been given without cause pursuant to paragraph B of this section.
- B. SCRTPA or Consultant may terminate this Agreement without cause on 30 days' written notice to the other party. SCRTPA shall pay consultant for all work satisfactorily completed as of the date of notice.
- C. SCRTPA may terminate this Agreement immediately upon oral notice should funding cease or be materially decreased during the term of this Agreement.
- D. SCRTPA's right to terminate this Agreement may be exercised by its Executive Director.
- E. Should this Agreement be terminated, Consultant shall promptly provide to SCRTPA any and all finished and unfinished reports, data, studies, photographs, charts and other documents prepared by Consultant pursuant to this Agreement.
- F. If this Agreement is terminated under paragraph A above, Consultant shall only be paid for services completed and provided prior to notice of termination. In the event of termination under paragraph B or C above, Consultant shall be paid an amount which bears the same ratio to the total compensation authorized by the Agreement as the services actually performed bear to the total services of Consultant covered by this Agreement, less payments of compensation previously made. In no event, however, shall SCRTPA pay Consultant an amount that exceeds a pro rata portion of the Agreement total based on the portion of the Agreement term that has elapsed on the effective date of the termination.

7. ENTIRE AGREEMENT; AMENDMENTS.

- A. This Agreement supersedes all previous agreements relating to the subject of this Agreement and constitutes the entire understanding of the parties hereto. Consultant shall be entitled to no other benefits other than those specified herein. Consultant specifically acknowledges that in entering into and executing this Agreement, Consultant relies solely upon the provisions contained in this Agreement and no others.
- B. No changes, amendments or alterations shall be effective unless in writing and signed by both parties. However, minor amendments that do not result in a substantial or functional change to the original intent of the Agreement and do not cause an increase to the maximum amount payable under this Agreement may be agreed to in writing between Consultant and the Executive Director of SCRTPA.

8. NONASSIGNMENT OF AGREEMENT; NON-WAIVER.

Inasmuch as this Agreement is intended to secure the specialized services of Consultant, Consultant may not assign, transfer, delegate or sublet any interest herein without the prior written consent of SCRTPA. The waiver by SCRTPA of any breach of any requirement of this Agreement shall not be deemed to be a waiver of any other breach.

9. EMPLOYMENT STATUS OF CONSULTANT.

Consultant shall, during the entire term of this Agreement, be construed to be an independent contractor and nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, or to allow SCRTPA to exercise discretion or control over the professional manner in which Consultant performs the services which are the subject matter of this Agreement; provided, however, that the services to be provided by Consultant shall be provided in a manner consistent with the professional standards applicable to such services. The sole interest of SCRTPA is to insure that services shall be rendered and performed in a competent, efficient and satisfactory manner. Consultant shall be fully responsible for payment of all taxes due to the State of California or the federal government that would be withheld from compensation if Consultant were a SCRTPA employee. SCRTPA shall not be liable for deductions for any amount for any purpose from Consultant's compensation. Consultant shall not be eligible for coverage under SCRTPA's workers' compensation insurance plan nor shall Consultant be eligible for any other SCRTPA benefit. Consultant must issue W-2 and 941 Forms for income and employment tax purposes, for all of Consultant's assigned personnel under the terms and conditions of this Agreement.

10. INDEMNIFICATION.

Consultant shall defend, hold harmless and indemnify SCRTPA, its elected officials, officers, employees, agents and volunteers against all claims, suits, actions, costs, expenses (including but not limited to reasonable attorney's fees of SCRTPA Counsel and counsel retained by SCRTPA, expert fees, litigation costs, and investigation costs as provided for by California Civil Code Section 2778), damages, judgments or decrees by reason of any person's or persons' injury, including death, or property (including property of SCRTPA) to the extent damaged by the negligent acts, willful acts, or errors or omissions of the Consultant or any of

Consultant's subcontractors, any person employed under Consultant, or under any subcontractor, or in any capacity during the progress of the work. Consultant shall also defend and indemnify SCRTPA for any adverse determination made by the Internal Revenue Service or the State Franchise Tax Board and/or any other taxing or regulatory agency and shall defend, indemnify and hold harmless SCRTPA with respect to Consultant's "independent contractor" status that would establish a liability on SCRTPA for failure to make social security deductions or contributions or income tax withholding payments, or any other legally mandated payment to the extent Consultant is responsible.

For professional services provided under the Agreement, Consultant shall indemnify, defend, and hold harmless SCRTPA, its elected officials, officers, employees, agents, and volunteers from and against any and all claims, demands, actions, losses, liabilities, damage, and costs, including reasonable attorneys' fees, to the extent the claims, demands, actions, losses, liabilities, damage, and costs, including reasonable attorneys' fees arise out of or result from the negligent performance of the professional services provided under this Agreement.

11. INSURANCE COVERAGE.

- A. Consultant and any subcontractor shall obtain, from an insurance carrier authorized to transact business in the State of California, and maintain continuously during the term of this Agreement Commercial General Liability Insurance, including coverage for owned, if any, and non-owned automobiles, and other insurance necessary to protect the SCRTPA and the public with limits of liability of not less than \$1 million combined single limit bodily injury and property damage and \$2 million aggregate; such insurance shall be primary as to any other insurance maintained by the SCRTPA.
- B. Consultant and any subcontractor shall obtain and maintain continuously required Workers' Compensation and Employer's Liability Insurance to cover Consultant, subcontractor, Consultant's partner(s), subcontractor's partner(s), Consultant's employees, and subcontractor(s) employees with an insurance carrier authorized to transact business in the State of California covering the full liability for compensation for injury to those employed by Consultant or subcontractor. Consultant hereby certifies that Consultant is aware of the provisions of section 3700 of the Labor Code, which requires every employer to insure against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and Consultant will comply with such provisions before commencing the performance of the work of this Agreement.
- C. Consultant shall obtain and maintain continuously a policy of Errors and Omissions coverage with limits of liability of not less than \$1 million.
- D. Consultant shall require subcontractors to furnish satisfactory proof to SCRTPA that liability and workers' compensation and other required types of insurance have been obtained and are maintained similar to that required of Consultant pursuant to this Agreement.
- E. With regard to all insurance coverage required by this Agreement:

1. Any deductible or self-insured retention exceeding \$25,000 for Consultant or subcontractor shall be disclosed to and be subject to approval by the SCRTPA Risk Manager prior to the effective date of this Agreement.
2. If any insurance coverage required hereunder is provided on a "claims made" rather than "occurrence" form, Consultant or subcontractor shall maintain such insurance coverage with an effective date earlier or equal to the effective date of the Agreement and continue coverage for a period of three years after the expiration of the Agreement and any extensions thereof. In lieu of maintaining post-agreement expiration coverage as specified above, Consultant or subcontractor may satisfy this provision by purchasing tail coverage for the claims-made policy. Such tail coverage shall, at a minimum, provide coverage for claims received and reported three years after the expiration date of the Agreement.
3. All insurance (except workers' compensation and professional liability) shall include an endorsement or an amendment or certificate to the policy of insurance which names SCRTPA, its elected officials, officers, employees, agents and volunteers as an additional insured and provides that coverage shall not be reduced or canceled without 30 days written prior notice certain to SCRTPA. The Additional Insured coverage shall be equal to Insurance Service Office endorsement CG 20 09.
4. Each insurance policy (except for workers' compensation and professional liability policies), or endorsement thereto, shall contain a "separation of insureds" clause, which shall read:

"Separation of Insureds.

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured;
and
 - b. Separately to each suit insured against whom a claim is made or suit is brought."
5. Consultant shall provide SCRTPA with an endorsement or amendment to Consultant's policy of insurance as evidence of insurance protection before the effective date of this Agreement.
 6. The insurance required herein shall be in effect at all times during the term of the Agreement. In the event any insurance coverage expires at any time during the term of the Agreement, Consultant shall provide, at least 20 days prior to said expiration date, a new endorsement or policy amendment evidencing insurance coverage as provided for herein for not less than the remainder of the

term of the Agreement or for a period of not less than one year. In the event Consultant fails to keep in effect at all times insurance coverage as herein provided and a renewal endorsement or policy amendment is not provided within 10 days of the expiration of the endorsement or policy amendment in effect at inception of the Agreement, SCRTPA may, in addition to any other remedies it may have, terminate the Agreement upon the occurrence of such event and pay in full all contractual invoices for work completed prior to expiration of insurance.

7. If the endorsement or amendment does not reflect the limits of liability provided by the policy of insurance, Consultant shall provide SCRTPA a certificate of insurance reflecting those limits.

12. NOTICE OF CLAIM/APPLICABLE LAW/VENUE.

- A. If any claim for damages is filed with Consultant or if any lawsuit is instituted concerning Consultant's performance under this Agreement and that in any way, directly or indirectly, contingently or otherwise, affects or might reasonably affect SCRTPA, Consultant shall give prompt and timely notice thereof to SCRTPA. Notice shall be prompt and timely if given within 30 days following the date of receipt of a claim or ten days following the date of service of process of a lawsuit.
- B. Any dispute between the parties, and the interpretation of this Agreement, shall be governed by the laws of the State of California. Any litigation shall be venued in Shasta County.

13. COMPLIANCE WITH LAWS; NON-DISCRIMINATION.

- A. Consultant will use due professional care to observe and comply with all applicable federal, state and local laws, ordinances and codes that relate to the services to be provided pursuant to this Agreement.
- B. Consultant will not discriminate in employment practices or in the delivery of services on the basis of race, color, creed, national origin, sex, age, marital status, sexual orientation, medical condition (including cancer, HIV and AIDS) physical or mental disability or use of family care leave.
- C. Consultant represents that Consultant is in compliance with and agrees that it will continue to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. section 12101, *et seq.*), the Fair Employment and Housing Act (Government Code sections 12900, *et seq.*), and regulations and guidelines issued pursuant thereto.

14. ACCESS TO RECORDS/RETENTION.

SCRTPA, federal, and state officials shall have access to any books, documents, papers and records of Consultant which are directly pertinent to the subject matter of this Agreement for the purpose of auditing or examining the activities of Consultant or SCRTPA. Except where

longer retention is required by federal or state law, Consultant shall maintain all records for five years after SCRTPA makes final payment hereunder.

15. COMPLIANCE WITH CHILD, FAMILY AND SPOUSAL SUPPORT REPORTING OBLIGATIONS.

Consultant's failure to comply with state and federal child, family and spousal support reporting requirements regarding Consultant's employees or failure to implement lawfully served wage and earnings assignment orders or notices of assignment relating to child, family and spousal support obligations shall constitute a default under this Agreement. Consultant's failure to cure such default within 90 days of notice by SCRTPA shall be grounds for termination of this Agreement.

16. LICENSES AND PERMITS.

Consultant shall possess and maintain all necessary licenses, permits, certificates and credentials required by the laws of the United States, the State of California, Regional Transportation Planning Agency and all other appropriate governmental agencies, including any certification and credentials required by SCRTPA. Failure to maintain the licenses, permits, certificates, and credentials shall be deemed a breach of this Agreement and constitutes grounds for the termination of this Agreement by SCRTPA.

17. PERFORMANCE STANDARDS.

Consultant shall perform the services required by this Agreement in accordance with the industry and/or professional standards applicable to Consultant's services.

18. CONFLICTS OF INTEREST.

Consultant and Consultant's officers and employees shall not have a financial interest, or acquire any financial interest, direct or indirect, in any business, property or source of income which could be financially affected by or otherwise conflict in any manner or degree with the performance of services required under this Agreement.

19. NOTICES.

- A. Any notice required to be given pursuant to the terms and provisions of this Agreement shall be in writing and shall be sent first-class mail to the following addresses:

If to SCRTPA: Shasta County Regional Transportation Planning Agency
1855 Placer Street
Redding, CA 96001

If to Consultant: Dowling Associates, Inc.
180 Grand Avenue, Suite 250
Oakland, CA 94612

- B. Notice shall be deemed to be effective two days after mailing.

20. **CONFIDENTIALITY.** During the term of this Agreement, both parties may have access to information that is confidential or proprietary in nature. Both parties agree to preserve the confidentiality of and to not disclose any such information to any third party without the express written consent of the other party or as required by law. This provision shall survive the termination, expiration, or cancellation of the Agreement.
21. **SCOPE AND OWNERSHIP OF WORK.** All research data, reports, and every other work product of any kind or character arising from or relating to this Agreement shall become the property of the SCRTPA and be delivered to SCRTPA upon completion of its authorized use pursuant to the Agreement. SCRTPA may use such work products for any purpose whatsoever. All works produced under this Agreement shall be deemed works produced by a contractor for hire, and all copyright with respect thereto shall vest in SCRTPA without payment of royalty or any other additional compensation. Notwithstanding anything to the contrary contained in this Agreement, Consultant shall retain all of its rights in its own proprietary information, including, without limitation, its methodologies and methods of analysis, ideas, concepts, expressions, know how, methods, techniques, skills, knowledge and experience possessed by the Consultant prior to, or acquired by the Consultant during the performance of this Agreement and the Consultant shall not be restricted in any way with respect thereto.
22. **SEVERABILITY.**

If any portion of this Agreement or application thereof to any person or circumstance is declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal or state statute or regulation or SCRTPA ordinance, the remaining provisions of this Agreement, or the application thereof, shall not be invalidated thereby and shall remain in full force and effect to the extent that the provisions of this Agreement are severable.

IN WITNESS WHEREOF, SCRTPA and Consultant have executed this Agreement on the day and year set forth below.

**SHASTA COUNTY REGIONAL
TRANSPORTATION PLANNING AGENCY**

Date: _____

Daniel S. Little
Executive Director

DOWLING ASSOCIATES, INC.

Date: _____

By: _____
Title

By: _____
Title

Tax I.D.#: _____

Approved as to form:

Liz Johnson
SCRTPA Counsel

By: _____
Counsel

EXHIBIT A
SCOPE OF WORK – DOWLING ASSOCIATES INC.

When requested by SCRTPA, consultant shall complete the following tasks. Upon receipt of each such request, consultant shall provide SCRTPA with an estimate of the cost and timeframe necessary to complete each task.

Tasks – Create presentation materials and script files

1. Assist RTPA staff with the development of new or refined model scripts
2. Research and develop scripts that will help RTPA use the model more effectively
3. Provide staff with automated procedures to generate reports and graphics for presentation

Tasks – Trouble-shooting modeling problems

1. Assist RTPA staff with the development of new or refined methods of extracting data from the model
2. Trouble-shoot major and minor problems related to the model or model related data

Tasks – Review of modeling data and assumptions

1. Assist RTPA staff with the development and updating of land use data
2. Provide recommendations for improvement in data development and calculation methods

Tasks – Model refinements

1. Assist RTPA staff with network identification and accuracy
2. Assist staff with the recognition of network links as associated with speed characteristics, geometrics, and special circumstances
3. Assist RTPA staff with development of network project Access or Excel database to maintain master network
4. Assist RTPA staff with GIS operations in model refinement (such as TAZ updates) and other modeling related tasks

Tasks – Provide training for RTPA staff

1. Prepare a training outline and associated material to assist in the professional development of RTPA staff
2. Inform RTPA staff of the updated software and/or new programs that relate to transportation modeling
3. Recommend software and software updates

Tasks – Support RTPA staff in model coordination

1. As requested, consultant shall prepare written documentation, attend meetings, and/or make presentations to explain important aspects of the model and input assumptions
2. Advise RTPA staff and SMUG on procedures to review, maintain, and update the model
3. Advise RTPA on procedures for use of the model by other agencies and consultants