

**FUNDING AGREEMENT NO.001-DMV-08/09-BOS
WITH EL CAMINO CHARTER LINES, INC
DOING BUSINESS AS EL CAMINO TRAILWAYS**

This Agreement No. 001-DMV-08/09-BOS made and entered by and between the **EL DORADO COUNTY AIR QUALITY MANAGEMENT DISTRICT**, a county air pollution control district formed pursuant to California Health and Safety Code section 40100, et seq. (hereinafter referred to as "AQMD"); and El Camino Charter Lines, Inc. doing business as El Camino Trailways (hereinafter referred to as "CONTRACTOR");

W I T N E S S E T H:

WHEREAS, the California Clean Air Act requires local air pollution control districts to reduce emissions from motor vehicles; and

WHEREAS, AB 2766, codified in California Health and Safety Code section 44220, et seq., authorizes districts to impose a fee of up to four dollars upon certain registered motor vehicles within the AQMD, and the Governing Board of the AQMD has imposed said fee; and

WHEREAS, said legislation requires the AQMD to use said funds for activities related to reducing air pollution from motor vehicles and for related planning, monitoring, enforcement, and technical studies necessary for the implementation of the California Clean Air Act of 1988; and

WHEREAS, CONTRACTOR has proposed a Project that meets the eligibility criteria of the AQMD and that has been approved by AQMD for funding; and

WHEREAS, CONTRACTOR represents that it is willing and able to perform the activities set forth herein.

NOW, THEREFORE, AQMD and CONTRACTOR mutually agree as follows:

1. PROJECT

CONTRACTOR shall perform all activities and work necessary to complete the replacement of a South Lake Tahoe motor coach project (hereinafter referred to as "Project") set forth in the fully described "Proposal" attached hereto as Exhibit "A" and incorporated herein by this reference. CONTRACTOR agrees to furnish all labor, materials, equipment, licenses, permits, fees, and other incidentals necessary to perform and complete, per schedule, in a professional manner, the services described herein. CONTRACTOR represents that CONTRACTOR has the expertise necessary to adequately perform the Project specified in said Proposal.

In the event of any conflict between or among the terms and conditions of this Agreement, the Proposal incorporated herein, and the documents referred to and incorporated herein, such conflict shall be resolved by giving precedence in the following order of priority:

1. To the text of this Agreement;
2. Proposal to this Agreement; and
3. To the "Motor Vehicle Emission Reduction Projects Request for Proposals" (RFP) released to Interested Parties by the AQMD and dated 2008-2009.

2. PERIOD OF PERFORMANCE/TIMETABLE

CONTRACTOR shall commence performance of work and produce all work products in accordance with the Work Statement and deadlines for performance identified in the Proposal of this Agreement, unless this Agreement is terminated sooner as provided for elsewhere in this Agreement.

If requested by the AQMD, CONTRACTOR shall submit regular progress reports, at intervals determined by the AQMD, detailing the work performed during the current reporting period; work

planned for the next reporting period; problems identified, solved, and/or unresolved; and the percentage of each task completed. CONTRACTOR shall provide AQMD with a comprehensive final written report prior to the end of Agreement term. Said final report shall be complete and shall document the work performed under this Agreement.

3. TERM

The term of this Agreement shall be for the period of July 1, 2008 through June 30, 2009 unless terminated earlier in accordance with Article 7, Termination.

4. COMPENSATION

AQMD will pay the CONTRACTOR the sum of SIXTY THOUSAND DOLLARS AND NO CENTS (\$60,000.00) as follows:

CONTRACTOR shall obtain through other sources sufficient additional monies to fund the total cost of the Project as outlined in the Proposal. Satisfactory written evidence of such funding commitments shall be provided to AQMD prior to the release by AQMD of any funds under this Agreement. In the event funding from other sources for the total cost of the Project is not received by CONTRACTOR, AQMD reserves the right to terminate or renegotiate this Agreement. In accordance with Section 44233 of the California Health and Safety Code, CONTRACTOR agrees to limit expenditure of funds for the purpose of administration to not more than five percent of the monies distributed to CONTRACTOR. The AQMD is not obligated to pay CONTRACTOR for administrative costs exceeding five percent of the actual total cost of the Project.

The total obligation of the AQMD under this Agreement SHALL NOT EXCEED SIXTY THOUSAND DOLLARS AND 00/100 (\$60,000.00).

A. **PAYMENTS:** Advance payments shall not be permitted. Payments will be permitted only at which time an equivalent service has been completed. The AQMD shall reimburse CONTRACTOR quarterly, in arrears, after receipt and verification submitted to El Dorado COUNTY Air Quality Management District, Attention: Marcella McTaggart. Payment shall be made to CONTRACTOR by the AQMD upon submission and evaluation of the CONTRACTOR'S invoice of claim. Said invoice of claim shall set forth the work completed pursuant to this Agreement.

Upon receipt of proper documentation, and verification that CONTRACTOR has satisfactorily completed the work for which compensation is sought and that the work is in accordance with the Exhibit Summary Sheet attached hereto, AQMD will issue payment to CONTRACTOR within forty five (45) calendar days of verification.

The amount to be paid to CONTRACTOR under this Agreement includes all sales and use taxes incurred pursuant to this Agreement, if any, including any such taxes due on equipment purchased by the CONTRACTOR. The CONTRACTOR shall not receive additional compensation for reimbursement of such taxes and shall not decrease work to compensate therefore.

Concurrently with the submission of any claim for payment, CONTRACTOR shall certify (through copies of invoices issued, checks, receipts, and the like) that complete payment has been made to any and all subcontractors as provided.

It is understood that all expenses incidental to CONTRACTOR'S performance of services under this Agreement shall be borne exclusively by CONTRACTOR.

In no event shall compensation paid by the AQMD to the CONTRACTOR for the performance of all services and activities under this Agreement exceed the amount set forth in paragraph 4 COMPENSATION.

B. Surplus Funds: Any compensation under this agreement, which is not expended by CONTRACTOR pursuant to the terms and conditions of this Agreement by the Project completion date, shall automatically revert to the AQMD. Only expenditures incurred by the CONTRACTOR in the direct performance of this Agreement will be reimbursed by the AQMD. Allowable expenditures under this Agreement are specifically established and included in the Proposal.

C. Closeout Period: All final claims shall be submitted by CONTRACTOR within sixty (60) days following the final month of activities for which payment is claimed. No action will be taken by AQMD on claims submitted beyond the 60-day closeout period.

5. NON-ALLOCATION OF FUNDS

The terms of this Agreement and the services to be provided thereunder are contingent on the approval of funds by the appropriating government agency. Should sufficient funds not be allocated, the services provided may be modified or this Agreement terminated at any time by giving the CONTRACTOR thirty (30) days prior written notice.

6. INDEPENDENT CONTRACTOR LIABILITY

CONTRACTOR is, and shall be at all times, deemed independent and shall be wholly responsible for the acts of CONTRACTOR'S employees, associates, and subcontractors, in connection with the installation, operation, use and maintenance of the Project.

7. TERMINATION

A. **Breach of Agreement:** AQMD may immediately suspend or terminate this Agreement, in whole or in part, where in the determination of the AQMD there is:

1. An illegal or improper use of funds;
2. A failure to comply with any term of this Agreement;
3. A substantially incorrect or incomplete report submitted to the AQMD; or
4. Improperly performed services.

In no event shall any payment by the AQMD constitute a waiver by the AQMD of any breach of this Agreement or any default, which may then exist on the part of the CONTRACTOR. Neither shall such payment impair or prejudice any remedy available to the AQMD with respect to the breach or default. The AQMD shall have the right to demand of the CONTRACTOR the repayment to the AQMD of any funds disbursed to the CONTRACTOR under this Agreement which in the judgment of the AQMD were not expended in accordance with the terms of this Agreement. The CONTRACTOR shall promptly refund any such funds upon demand.

In addition to immediate suspension or termination, AQMD may impose any other remedies available at law, in equity, or otherwise specified in this Agreement.

B. **Without Cause:** Either party may terminate this Agreement at any time upon giving the other party at least thirty (30) days advance, written notice of intention to terminate. In such case, the AQMD shall, subject to paragraph 4, pay its pro rata share of the reasonable value of all services satisfactorily rendered and actual, reasonable costs incurred up to the time of the termination. Upon such termination, all the work product produced by CONTRACTOR shall be promptly delivered to the AQMD.

8. 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.

9. INDEMNIFICATION

CONTRACTOR shall defend, indemnify, and hold the AQMD 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, AQMD employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the CONTRACTOR'S activities and work necessary to complete the Project unless such claim, loss, damage, injury or death is the result of the sole or active negligence of the AQMD. This duty of CONTRACTOR to indemnify and save AQMD harmless includes the duties to defend set forth in California Civil Code, Section 2778.

AQMD shall indemnify CONTRACTOR against and hold it harmless from any loss, damage, and liability for damages, including attorney fees and other costs of defense incurred by CONTRACTOR, whether for damage to or loss of property, or injury to or death of CONTRACTOR'S officer's, agents, or employees which shall in any way arise out of or be connected with AQMD's performance of its obligations hereunder, unless such damage, loss, injury, or death shall be caused by the sole or active by negligence of the CONTRACTOR.

10. AUDITS AND INSPECTIONS

CONTRACTOR shall at any time during regular business hours, and as often as AQMD may deem necessary, make available to AQMD for examination all of CONTRACTOR'S records and data with respect to the matters covered by this Agreement. CONTRACTOR shall, and upon request by AQMD, permit AQMD to audit and inspect all of such records and data necessary to ensure CONTRACTOR'S compliance with the terms of this Agreement. CONTRACTOR shall be subject to an audit by AQMD or its authorized representative to determine if the revenues received by CONTRACTOR were spent for the reduction of pollution as provided in AB 2766 and to determine whether said funds were utilized as provided by law and this Agreement. If, after audit, AQMD makes a determination that funds provided CONTRACTOR pursuant to this Agreement were not spent in conformance with this Agreement, or AB 2766 or any other applicable provisions of law, CONTRACTOR agrees to immediately reimburse AQMD all funds determined to have been expended not in conformance with said provisions.

CONTRACTOR shall retain all records and data for activities performed under this Agreement for at least three (3) years from the date of final payment under this Agreement or until all state and federal audits are completed for that fiscal year, whichever is later.

Because this Agreement exceeds Ten Thousand Dollars (\$10,000), CONTRACTOR shall be subject to the examination and audit of the State Auditor for a period of three (3) years after final payment under Agreement (Government Code Section 10532).

11. NOTICES 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 AQMD shall be in duplicate and addressed as follows:

CONTRACTOR

El Camino Charter Lines, Inc.
 dba El Camino Trailways
 214 Shaw Road, Suite T
 South San Francisco, CA 94080
 Attn: Mike Watson
 Managing Director

AQMD

El Dorado County
 Air Quality Management District
 2850 Fairlane Court
 Placerville, CA 95667
 Attn: Marcella McTaggart,
 Air Pollution Control Officer

12. TIME IS OF THE ESSENCE

It is understood that for CONTRACTOR'S performance under this Agreement, time is of the essence. The parties reasonably anticipate that CONTRACTOR will, to the reasonable satisfaction of the AQMD, complete all activities provided herein within the time schedule outlined in the Proposals to this Agreement.

13. COMPLIANCE WITH APPLICABLE LAWS

CONTRACTOR will comply with all federal, State, and local laws and ordinances which are or may be applicable to the PROJECT to be undertaken by the CONTRACTOR including but not limited to California Health and Safety Code sections 44220 et seq, all Air Resources Board and AQMD criteria there under, prevailing wage and work day definitions where applicable, contracting license requirements and permits.

14. NO THIRD-PARTY BENEFICIARIES

Nothing in this Agreement shall be construed to create any rights of any kind or nature in any other party not a named party to this Agreement.

15. VENUE

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

16. 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.

17. AGREEMENT ADMINISTRATOR

The AQMD Officer or employee with responsibility for administration of this Agreement is Marcella McTaggart, Air Pollution Control Officer or her successor. The CONTRACTOR Officer or employee with responsibility for administration of this Agreement is Mike Watson, Managing Director or his successor.

18. AUTHORIZED SIGNATURES

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

19. PARTIAL INVALIDITY

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

20. BUSINESS LICENSE

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 or City of South Lake Tahoe or City of Placerville business license unless exempt under County Code Section 5.08.070.

AGREEMENT ADMINISTRATOR CONCURRENCE:

By: Marcella McTaggart Dated: 5-29-08

**Marcella McTaggart
Air Pollution Control Officer
El Dorado County Air Quality Management District**

REQUESTING DEPARTMENT CONCURRENCE:

By: Marcella McTaggart Dated: 5-29-08

**Marcella McTaggart
Air Pollution Control Officer
El Dorado County Air Quality Management District**

By: Gerri Silva Dated: May 30, 2008

**Gerri Silva, M.S., R.E.H.S
Director
El Dorado County Environmental Management Department**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first herein above written.

CONTRACTOR
EL CAMINO CHARTER LINES, INC.
dba EL CAMINO TRAILWAYS

AQMD
EL DORADO COUNTY
AIR QUALITY MANAGEMENT DISTRICT

Date: 6/2/2008

Date: _____

By: 

Kumar Shah
President

By: _____
Chair

Attest:

Date: 6/2/2008

By: 

Kumar Shah
Corporate Secretary

Attest:
Cindy Keck,
Clerk of the Board

Date: _____

By: _____

EXHIBIT "A"

PROPOSAL

**El Camino Trailways**

March 17, 2008

Kerri Williams
El Dorado County AQMD
2850 Fairlane Court
Placerville, CA 95667

Re: RFP - FY 08/09 Motor Vehicle Emission Reduction Project

Dear Ms. Williams:

This offering is made in response to your referenced Request for Proposal.

In summary, our proposal is to replace up to four (4) mid-1990's motor coaches with 2-cycle diesel engines with up to four (4) new 2008-model motor coaches that are equipped with the latest 4-cycle engines and particulate-trap emissions control systems. This reduces particulate emissions by 96% (from 0.25 to 0.01 g/bhp-hr) and NOx emissions by 78% (from 5.0 to 1.1 g/bhp-hr).

Because these vehicles are in the Enhanced Transit/Shuttle Service Projects category, we believe our project is in the highest of your "Tie Breaker" categories, and as indicated in our narrative, we believe we earn the full 100 Proposal Evaluation Points.

This cover letter also constitutes the Authorization Letter/Resolution under which the undersigned attests that he is authorized to submit this application on behalf of El Camino Charter Lines, Inc. dba El Camino Trailways. Our main offices are at the address on this letterhead.

The balance of our proposal follows; complete as per Attachment A - Format For Proposals.

Thank you for the opportunity to make this submission. We are available at your convenience to answer any questions or to provide any necessary additional information.

Sincerely,
El Camino Charter Lines, Inc.

P. Michael Watson
Managing Director

encl.

Request for Proposal
El Dorado County Air Quality Management District
FY 08/09 Motor Vehicle Emission Reduction Projects
El Camino Trailways

Exhibit Summary Sheet – Appendix 1 follows.

Request for Proposal Contents Checklist – Appendix 2 follows.

Authorization Letter/Resolution – This is incorporated in our cover letter.

Project Description – Our project consists of taking up to four (4) – mid-1990's Motor Coach Industries MC-12 over-the-road motor coaches equipped with Detroit Diesel 6V92 2-cycle diesel engines out of service, and replacing them with up to four (4) – new 2008 model year Setra S417, MCI D4505, or MCI D4005 motor coaches, equipped with the latest diesel engines including particulate emissions filters.

Project Organization/Background – El Camino Charter Lines, Inc. dba El Camino Trailways is a California corporation that has been in business operating motor coaches and other transportation vehicles since 1962. We purchased Aztec Transportation Services of Reno/Tahoe in January 2008 and are upgrading equipment to improve quality and public service; the up to four (4) new vehicles will replace coaches that operate from South Lake Tahoe in El Dorado County. Please note that if only partial funding is available, we are prepared to go forward with one (1), two (2), three (3), or four (4) new vehicles depending upon the award. We have not previously participated in a grant-funded project like this. No subcontractors will be used for this project; manufacturers will be either Setra or MCI.

Emission Benefits/Cost Effectiveness – The vehicles to be replaced have an estimated remaining life in excess of ten (10) years; we are using ten (10) years as our project life for purposes of estimating emission reductions. The new vehicles have an estimated life in excess of twenty (20) years.

Annual Fuel Consumption for one (1) vehicle = $(60,000 \text{ mi/yr})(1 \text{ gal}/6 \text{ mi}) = 10,000 \text{ gal}$.

Annual Emissions Reductions = $(\text{VMI}) * 18.5 * ((\text{Before Emission factor}) - (\text{After Emission Factor})) / 454 = (10,000)(18.5)((0.25+5.0)-(0.01+1.1)) / 454 = 1,687 \text{ lbs/year per vehicle}$.

Total emissions reduction for ten (10) years is 16,870 lbs per vehicle.

Work Statement – After award, we will finalize the specifications of the new vehicles and place them on order. These vehicles normally take two to six months to be delivered. On delivery, we will dispose of the old vehicles.

Selection of the new model vehicles (Setra S417, MCI D4505, or MCI D4005) will depend upon the timing and number of vehicle grants awarded. Any of the three alternate proposed vehicles are equipped with engines/filters that meet or exceed the 2008 emissions standards, and we are using \$400,000 as the vehicle cost (this is the lowest of the actual cost of all three vehicle types).

Engraved plaques will be mounted inside the entrance of each vehicle acknowledging the grants. Further, the grants will receive prominent notice in our website, PR releases, and other relevant materials or media.

Work Statement – On award, we will ask for confirming firm priced proposals for the motor coaches. These proposals will be received within ten (10) days, and vehicle selections and orders will be placed within twenty (20) days. The vehicles will take two (2) to four (4) months to be delivered, during which time financing and documentation will be completed. If award is made July 1, 2008, we expect that all new vehicles will be delivered by December 1, 2008.

Funding Request/Breakdown of Cost – We are requesting a grant of \$60,000 per vehicle, which is approximately 15% of the vehicle cost (depending on selection, the vehicle(s) will cost between \$400,000 and \$420,000 each). We are also requesting grants for up to four (4) vehicles. Depending on the actual amount of money available and the relative ranking of our request, we would be willing to discuss and proceed with a lower level of grant per vehicle.

Matching Funds – The matching funds are dollars, which we will provide. We are requesting a grant of \$60,000 per vehicle and we will provide matching funds in excess of \$340,000 per vehicle depending on the specific vehicle(s) selected. The matching funds will be provided by conventional financing of the vehicles, provided by one or more of All Points Capital, TCF Equipment Financing, Bank of America, Key Equipment Financing, and/or Wells Fargo Equipment Financing. These loans can typically be committed within seven (7) days of specific request, and our selection of financing vendor will depend upon rate and terms. We have financed similar equipment from each of these vendors over the last 24 months.

Schedule of Deliverables/Monitoring Program – Because this is a relatively simple project to replace used vehicles with one-for-one proven, commercially available vehicles, the project will be simple to monitor. Deliverables include vendor firm priced proposals, equipment selection and purchase, financing proposals and selection, documentation, and equipment delivery. Expected total project duration is six (6) months, well within the twelve (12) months allowable.

PROPOSAL EVALUATION CRITERIA

COST EFFECTIVENESS OF EMISSION BENEFITS

A. Annualized Cost Effectiveness of Emission Benefits for Total Project Costs

Total maximum funding of \$1,680,000 (4 vehicles) divided by Lifetime Emissions Benefits of 67,480 lbs is \$24.90/lb, or 45 points.

B. Annualized Cost Effectiveness of Emission Benefits for AQMD Funded Project Costs

AQMD funding of \$240,000 (4 vehicles) divided by Lifetime Emissions Benefits of 67,480 lbs is \$3.56/lb, or 25 points.

MATCHING FUNDS

El Camino Trailways will be providing 85% of the funds for the project, resulting in 25 points in this category.

PROJECT FEASIBILITY

The project is technically simple and can be completed in half the time allowed. El Camino Trailways has previously selected, purchased, and taken delivery of new vehicles within the indicated time frame. We believe our proposal earns the full 5 points allowed in this area.

In summary, this proposal should be evaluated as earning the full available 100 Proposal Evaluation Points.

Appendix 1

Exhibit Summary Sheet

EXHIBIT SUMMARY SHEET (Cover)

(This is a summary only. You must also supply the detailed information as requested on the RFP)

Applicant: EL CAMINO CHARTER LINES, Inc. dba EL CAMINO TRAILWAYS

Contact Person: MIKE WATSON

Address: 244 SHAW RD. Suite T, So. San Francisco, CA 94080

Telephone #: 650-989-2607 **FAX #(optional):** 650-989-9937

Project Budget	AB 2766 Funds	\$ Matching Funds	In-Kind Match	Total Project Costs
4-VEHICLES				
Materials	\$ 240,000	\$ 1,440,000	\$ -0-	\$ 1,680,000
Personnel	\$	\$	\$	\$
Other	\$	\$	\$	\$
TOTAL	\$ 240,000	\$ 1,440,000	\$ -0-	\$ 1,680,000

1-VEHICLE (2 OR 3 ARE ALSO OPTIONS)

Alternative Project Budget	AB 2766 Funds	\$ Matching Funds	In-Kind Match	Total Project Costs
Materials	\$ 60,000	\$ 360,000	\$	\$ 420,000
Personnel	\$	\$	\$	\$
Other	\$	\$	\$	\$
TOTAL	\$ 60,000	\$ 360,000	\$	\$ 420,000

Estimated Emission Reductions/Cost-Effectiveness	4 VEHICLES	1 VEHICLE
	As Proposed	Alternate Funding Level
Useful Life of Project (years) *	TEN (10)	TEN (10)
Total Lifetime Emissions Reduced (lbs. OF ROG, NOx, PM-10)	67,488	16,870
Annualized Cost-Effectiveness (total project costs)*	\$24.90/lb	\$24.90/lb
Annualized Cost-Effectiveness (AQMD Funded project costs)*	\$3.56/lb	\$3.56/lb

*: See Appendix 3 for instructions

* BASED ON ESTIMATED LIFE OF VEHICLES WE ARE REPLACING.

Brief Project Description:

Appendix 2

Request for Proposal Contents Checklist

REQUEST FOR PROPOSAL CONTENTS CHECKLIST

Applicant: EL CAMINO CHARTER LINE, Inc. dba EL CAMINO TRAILWAYS

Please complete and attach this checklist with your application.

- Exhibit Summary Sheet (Cover) - page 3
- Request for Proposal Contents Checklist (Second Page) - page 6
- Authorization Letter/Resolution page COVER LETTER
- Project Description - page 1
- Project Organization/Background - page 1
- Emission Benefits/Cost Effectiveness - page 1
- Work Statement - page 2
- Funding Request/Cost Breakdown - page 2
- Matching Funds - page 2
- Schedule of Deliveries/Self-Monitoring Program - page 2
- Local TPA Review (When Applicable) - page NA
- 2 Copies of Proposal - page COVER LETTER, Pages 1-6