

# ORIGINAL

## Funding Agreement Between County of El Dorado and The El Dorado County Fair Association

### Funding Agreement #4544

This Agreement made and entered by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County"), and The El Dorado County Fair Association, a non-profit organization, duly qualified to conduct business in the State of California, whose principal place of business is 100 Placerville Drive, Placerville, California 95667 (hereinafter referred to as "EDCFA");

### RECITALS

**WHEREAS**, County has determined that it is necessary to fund the EDCFA to provide facility improvement services on the El Dorado County Fairgrounds that are owned by El Dorado County;

**WHEREAS**, EDCFA has an agreement with the County, for use, possession, and management of the fairgrounds and has the skills and expertise necessary to coordinate improvements on the fairgrounds property;

**WHEREAS**, the parties agree the funding will be in conformity with all applicable federal, state, and local laws;

**WHEREAS**, the Board of Supervisors of the County of El Dorado determine that a public benefit is derived from supporting this effort to improve fairground facilities;

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

#### ARTICLE I

**Payment and Use of Funds:** Within forty-five (45) days of execution of this Agreement, County will provide funds to EDCFA in the amount of \$165,857.00. Funds shall be used solely for the purpose of creating fifteen (15) full RV spots including grading, power, and water for each spot and access to a sewage dump site. A commercial encroachment shall be created for an entrance and exit on Ray Lawyer Drive including an electric gate with a keypad.

EDCFA shall provide a statement, in reasonable detail, regarding the disposition of the funds and shall return any unused funds. Any funds that have not been expended by EDCFA under the terms of this Agreement and after the expiration of this Agreement shall be returned to County within sixty (60) days of County's request for same.

#### ARTICLE II

**Term:** This Agreement shall become effective when fully executed by the parties hereto and shall expire on December 31, 2020.

### **ARTICLE III**

**Audits Required:** EDCFA shall submit to County a year-end audited financial statement covering all fiscal years during which EDCFA expends funds provided pursuant to this Agreement. EDCFA shall maintain client records, books, documents, and other evidence, accounting procedures and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this Agreement, including any matching costs and expenses, all of which will be deemed to constitute records for purposes of this section. Such records shall clearly reflect the cost and scope of the services provided. EDCFA's facility or office or such part thereof as may be engaged in the performance of this Agreement and its records shall be subject at all reasonable times to inspection, audit, and reproduction by County, the state, or any of their duly authorized representatives.

### **ARTICLE IV**

**Audit by California State Auditor:** EDCFA acknowledges that if total compensation under this agreement is greater than \$10,000.00, this Agreement is subject to examination and audit by the California State Auditor for a period of three (3) years, or for any longer period required by law, after final payment under this Agreement, pursuant to California Government Code § 8546.7. In order to facilitate these potential examinations and audits, EDCFA shall maintain, for a period of at least three (3) years, or for any longer period required final payment under the contract, all books, records, and documentation necessary to demonstrate performance under the Agreement.

### **ARTICLE V**

**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.

### **ARTICLE VI**

**Compliance with all Applicable Laws:** EDCFA shall conform to and abide by all applicable federal, state, and local building, labor, environmental and safety laws, ordinances, rules, and regulations. All work and materials shall be in full accordance with the latest rules and regulations of the State Fire Marshal, safety orders of the Division of Industrial Safety, California Electrical Code, California Building Code, California Plumbing Code, and any and all other applicable laws and regulations. Nothing in this Agreement, including but not limited to, any directions, plans, or specifications provided to EDCFA, is to be construed to permit work not conforming to these codes.

### **ARTICLE VII**

**Subcontracting:** The provisions of Sections 4100-4114, inclusive, of the Public Contract Code regarding subcontracting shall apply to this Agreement, and EDCFA shall ensure that EDCFA's contractor will comply with all provisions therein.

### **ARTICLE VIII**



**Registration of Contractors:** No contractor or subcontractor may bid on any public work project, be listed in a bid proposal for any public works project, or engage in the performance of any contract for public work unless registered with the Department of Industrial Relations pursuant to Labor Code sections 1725.5 and 1771.1. Public work projects are subject to compliance, monitoring, and enforcement by the Department of Industrial Relations. Additional information can be found at:

<https://www.dir.ca.gov/Public-Works/Contractor-Registration.html>

EDCFA's contractor shall post job site notices as prescribed by Title 8 of California Code of Regulations Section 16451.

#### **ARTICLE IX**

**Prevailing Wage:** EDCFA shall requires contractor's services on public works project(s) involving local, and/or state funds to which prevailing wage requirements may apply. As a consequence, EDCFA shall ensure its contractor or subcontractor shall comply with all applicable state and federal prevailing wage rates, statutes, rules, and regulations then in effect. EDCFA's contractor 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 principal office of County's Chief Administrative Office. Changes, if any, to the general prevailing wage rates will be available at the same location.

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.

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

#### **ARTICLE X**

**Apprentices:** Attention is directed to Sections 1777.5, 1777.6, and 1777.7 of the California Labor Code and Title 8, California Code of Regulations Section 200 et seq. To ensure compliance and complete understanding of the law regarding apprentices, and specifically the required ratio thereunder, EDCFA's contractor or subcontractor should, where some question exists, contact the Division of Apprenticeship Standards, 455 Golden Gate Avenue, San Francisco, CA 94102, or one of its branch offices prior to commencement of work on this Agreement. Responsibility for compliance with this Article lies with contractor.

It is County policy to encourage the employment and training of apprentices on public works contracts as may be permitted under local apprenticeship standards.

#### **ARTICLE XI**

**Certified Payroll:** As required under the provisions of Labor Code Section 1776, EDCFA's contractor and any subcontractors, if any are authorized herein, shall keep accurate payroll records as follows:

- A. The payroll records shall show the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by contractor or subcontractors in connection with the services provided under this Agreement.
- B. A certified copy of all payroll records enumerated above shall be available for inspection at all reasonable hours at the principal office of contractor as follows:
  - 1. Make available or furnish to the employee or his or her authorized representative on request.
  - 2. Make available for inspection or furnished upon request to a representative of County, the State Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the State Department of Industrial Relations.
  - 3. Make available upon request by the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either County, the State Division of Labor Standards Enforcement, or the State Division of Apprenticeship Standards. The requesting party shall, prior to being provided the records, reimburse the costs of preparation by contractor, subcontractor, and the entity through which the request was made. The public shall not be given access to the records at the principal office of contractor.
  - 4. All contractors and subcontractors must furnish electronic certified payroll records directly to the Department of Industrial Relations.

## **ARTICLE XII**

**Performance Bond:** As a part of the execution of this Agreement, EDCFA shall ensure its contractor furnishes a bond of a surety company authorized to do business in the State of California, conditioned upon the faithful performance of all covenants and stipulations under this Agreement. The amount of this bond shall be one hundred percent (100%) of the contract price under which EDCFA's contractor performs the work and shall be executed upon the form provided by EDCFA.

## **ARTICLE XIII**

**Payment Bond:** As a part of the execution of this Agreement, EDCFA shall ensure contractor furnishes a bond of a surety company authorized to do business in the State of California, conditioned upon the payment in full of all claims for labor and materials in accordance with the provisions of the law of the State of California. The amount of this bond shall be one hundred percent (100%) of the contract price under which EDCFA's contractor performs the work and shall be executed upon the form provided by EDCFA.



## ARTICLE XIV

**Insurance:** EDCFA shall ensure its contractor provides proof of a policy of insurance satisfactory to County's Risk Management Division and documentation evidencing that contractor maintains insurance that meets the following requirements:

1. Full Workers' Compensation and Employers' Liability Insurance covering all employees of contractor as required by law in the State of California.
2. Commercial General Liability Insurance of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage, including but not limited to endorsements for the following coverage: premises, personal injury, operations, products and completed operations, blanket contractual, and independent contractors' liability and a \$2,000,000 aggregate limit.
3. Automobile Liability Insurance of not less than One Million Dollars (\$1,000,000) is required in the event motor vehicles are used by contractor in performance of this Agreement.
4. In the event contractor 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 One Million Dollars (\$1,000,000).
5. Explosion, Collapse and Underground coverage is required when the scope of work includes XCU exposures.

### PROOF OF INSURANCE REQUIREMENTS:

1. Contractor shall furnish proof of coverage satisfactory to County's Risk Management Division as evidence that the insurance required herein is being maintained. 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.
2. The County of El Dorado, its officers, officials, employees, and volunteers shall be 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. Proof that County is named additional insured shall be made by providing the Risk Management Division with a certified copy, or other acceptable evidence, of an endorsement to contractor's insurance policy naming County as additional insured.
3. In the event contractor cannot provide an occurrence policy, contractor 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.

4. 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 contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
5. Contractor shall require each of its subcontractors to procure and maintain Commercial General Liability Insurance, Automobile Liability Insurance and Workers' Compensation Insurance of the types and in the amounts specified above, or shall insure the activities of its subcontractors in its own policy in like amounts. Contractor shall also require each of its subcontractors to name EDCFA and the County of El Dorado as additional insureds on each subcontractor's general and excess liability insurance policies. Upon request by County, EDCFA's contractor shall furnish proof of coverage satisfactory to County as evidence that the subcontractor insurance required herein is being maintained.

#### INSURANCE NOTIFICATION REQUIREMENTS:

1. Contractor agrees that no cancellation or material change in any policy shall become effective except upon thirty (30) days prior written notice to Chief Administrative Office.
2. Contractor agrees that the insurance required herein shall be in effect at all times during the term of this Agreement, inclusive of the guarantee/warranty period specified herein below. In the event said insurance coverage expires at any time or times during the term of this Agreement, contractor shall immediately provide a new certificate of insurance as evidence of the required insurance coverage. In the event contractor 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 Agreement upon the occurrence of such event. New certificates of insurance are subject to the approval of County's Risk Management Division.

**ADDITIONAL STANDARDS:** Certificates shall meet such additional standards as may be determined by the EDCFA, either independently or in consultation with County's Risk Management Division, as essential for protection of County.

**COMMENCEMENT OF PERFORMANCE:** Contractor shall not commence performance of this Agreement unless and until compliance with each and every requirement of the insurance provisions is achieved.

**MATERIAL BREACH:** Failure of EDCFA's contractor to maintain the insurance required herein, or to comply with any of the requirements of the insurance provisions, shall constitute a material breach of the entire Agreement.



**REPORTING PROVISIONS:** Any failure to comply with the reporting provisions of the policies shall not affect the coverage provided to County, its officers, officials, employees, or volunteers.

**PRIMARY COVERAGE:** Contractor's insurance coverage shall be primary insurance as respects County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, employees, or volunteers shall be in excess of contractor's insurance and shall not contribute with it.

**PREMIUM PAYMENTS:** The insurance companies shall have no recourse against County, its officers, officials, employees, and volunteers or any of them for payment of any premiums or assessments under any policy issued by any insurance company.

**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  
Chief Administrative Office  
330 Fair Lane  
Placerville, California 95667

Attn.: Emma Owens  
Management Analyst

With a copy to:

County of El Dorado  
Chief Administrative Office  
2850 Fairlane Court  
Placerville, California 95667

Attn.: Michele Weimer  
Procurement and Contracts Manager

or to such other location as County directs.

Notices to EDCFA shall be addressed as follows:

The El Dorado County Fair Association  
100 Placerville Drive  
Placerville, California 95667

Attn.: Jody Gray  
Chief Executive Officer

or to such other location as EDCFA directs.

**ARTICLE XVI**

**Indemnity:** To the fullest extent permitted by law, EDCFA shall defend at its own expense, indemnify, and hold the County harmless, its officers, employees, agents, and volunteers, against and from any and all liability, claims, suits, losses, damages, or expenses of every name, kind and description, including attorney’s 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 or consequential losses, which are claimed to or in any way arise out of or are connected with the acts or omissions of EDCFA or its officers, agents, or employees in rendering the services, operations, or performance hereunder, except for liability, claims, suits, losses, damages or expenses arising from the sole negligence or willful acts of the County, its officers and employees, or as expressly prescribed by statute. This duty of EDCFA to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

**ARTICLE XVII**

**Administrator:** The County Officer or employee with responsibility for administering this Agreement is Emma Owens, Management Analyst, Chief Administrative Office, or successor or designee.

**ARTICLE XVIII**

**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.

**ARTICLE XIX**

**Counterparts:** This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.


**ARTICLE XX**

**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.



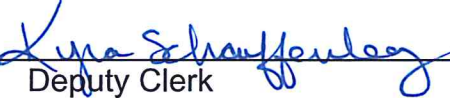
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below.

--COUNTY OF EL DORADO--

By:   
Board of Supervisors  
"County"

Dated: 2-11-20

Attest:  
Kim Dawson  
Clerk of the Board of Supervisors


By:   
Deputy Clerk

Dated: 2-11-20

--THE EL DORADO COUNTY FAIR ASSOCIATION--

By:   
Jody Gray  
Chief Executive Officer  
"EDCFA"

Dated: 2/5/20

By:   
Chris Whitaker  
Board President  
"EDCFA"

Dated: 2/5/20