

ORIGINAL

El Dorado County Fire Safe Council

Funding Agreement #4758

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 El Dorado County Fire Safe Council, a non-profit organization duly qualified to conduct business in the State of California whose mailing address is 5221 Deer Valley Road, Rescue, California 95672 and whose mailing address is Post Office Box 1011, Diamond Springs, California 95619 (hereinafter referred to as "EDCFSC").

RECITALS

WHEREAS, The mission of the EDCFSC is to protect the people of El Dorado County and their property from the effects of catastrophic wildfire through education, cooperation, innovation, and action;

WHEREAS, EDCFSC activities promote awareness about the risks of living within a Wildland Urban Interface (WUI) and provide education on what people in homes, businesses, and subdivisions can do to protect their property from wildfire through the creation of defensible space and other strategies;

WHEREAS, EDCFSC includes representation from communities throughout the western slope of the county, and access to forestry and fire prevention experts;

WHEREAS, County has determined that it is in the best interest of the public and the residents of El Dorado County to assist EDCFSC activities by contributing a portion of its fiscal year 2019-20 allocation authorized through Title III of the Secure Rural Schools and Community Self Determination Act (Public Law 106-393, as amended through Public Law 116-94) to assist the EDCFSC in fulfilling its mission;

WHEREAS, County published a public notice in the Mountain Democrat and the 45-day public comment period required by Title III Section 302(b) commenced on May 15, 2020 and ended on June 29, 2020, and produced no public comments;

NOW THEREFORE, County and the EDCFSC mutually agree as follows:

ARTICLE I

Payment of Funds: Within forty-five (45) days following the execution of this Agreement, County will disburse the sum of \$156,469 for Fiscal Year 2020-21 to the EDCFSC solely for the purpose of funding fire prevention and planning projects as described in Title III of Public Law 106-393, as amended through Public Law 116-94. Contribution amounts, if any, and disbursement dates for Fiscal Years 2021-22 and 2022-23 shall be determined by County, in its sole discretion, at the beginning of each fiscal year and included as an addendum to this Agreement, as needed.

ARTICLE II

Use of Funds: EDCFSC will use the funds solely for the purpose of funding fire prevention and planning projects as described in Title III of Public Law 106-393, as amended through Public Law 116-94.

Authorized use of funds received through this Agreement are:

- 1) to carry out activities under the Firewise Communities program to provide to homeowners in fire-sensitive ecosystems education on, and assistance with implementing, techniques in home siting, home construction, and home landscaping that can increase the protection of people and property from wildfires;
- 2) to develop and carry out community wildfire protection plans in coordination with the appropriate agencies and personnel concerned.

Before awarding any portion of County's Title III funds to any subrecipient or engaging in a transaction for any amount involving these funds, EDCFSC shall check for suspension and debarment of subrecipients through the System for Award Management available online at: <https://www.sam.gov/SAM/pages/public/index.jsf>. EDCFSC may not award or engage in any transaction involving Title III funds with suspended or debarred parties.

Commencing on the 10th day of the first full month immediately following the day funds are paid by County to the EDCFSC and each 10th day of the month thereafter until all funds are utilized, EDCFSC shall submit to County its statement noting the funds used to date and detailing how and what fire prevention and planning projects were funded. Such statement shall be substantially in form of Attachment A to this Agreement and signed under penalty of perjury by an authorized officer of the EDCFSC.

ARTICLE III

Term: This Agreement shall become effective when fully executed by both parties, and shall expire three (3) years thereafter.

ARTICLE IV

Audit by California State Auditor: EDCFSC 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, EDCFSC shall maintain, for a period of at least three (3) years, or for any longer period required by law, after final payment under the contract, all books, records and documentation necessary to demonstrate performance under the Agreement.

ARTICLE V

Audit by County: For a period of three (3) years after the termination of this Agreement, the EDCFSC will keep and maintain an accurate financial account, in accordance with generally accepted accounting principles, of all funds expended by EDCFSC for fire prevention and

planning projects. Such accounting records shall be available for inspection by County's designee, during normal business hours at the offices of the EDCFSC, or offices of its financial consultant.

ARTICLE VI

Compliance with Applicable Law: EDCFSC will comply with all Federal, State, and local laws and ordinances which are applicable to its programs and projects, including but not limited to non-discrimination provisions.

ARTICLE VII

El Dorado County Fire Safe Council Liability: EDCFSC is, and shall be at all times, deemed independent and shall be wholly responsible for the acts of EDCFSC employees, associates, and contractors in connection with its projects.

ARTICLE VIII

No Third Party Beneficiary: 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.

ARTICLE IX

Termination:

- A. County may terminate this Agreement in the event EDCFSC ceases to operate or otherwise becomes unable to substantially perform any terms or conditions of the Agreement. In the event of early termination of the Agreement, unexpended funds previously received from County shall be returned to County within thirty (30) days of termination.
- B. County may terminate this Agreement in whole or in part upon seven (7) calendar days' written notice by County without cause. 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 EDCFSC, 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 Agreement. Upon receipt of a Notice of Termination, EDCFSC 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.

ARTICLE X fxx

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
Emergency Medical Services Agency
2900 Fairlane Court
Placerville, California 95667

Attn.: Michelle Patterson
Manager

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 EDCFSC shall be addressed as follows:

El Dorado County Fire Safe Council
P.O. Box 1011
Diamond Springs, California 95619

Attn.: Steve Willis, Chairperson

or to such other location as EDCFSC directs.

ARTICLE XI

Indemnity: To the fullest extent permitted by law, EDCFSC 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 EDCFSC 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 EDCFSC to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

ARTICLE XII

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

- A. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000 aggregate limit.
- B. Automobile Liability Insurance of not less than \$1,000,000 is required in the event motor vehicles are used by the EDCFSC in the performance of the Agreement.

- C. EDCFSC shall furnish a certificate of insurance satisfactory to the County of El Dorado Risk Manager as evidence that the insurance required above is being maintained.
- D. 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.
- E. EDCFSC agrees that the insurance required above 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 Agreement, EDCFSC agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and EDCFSC agrees that no work or services shall be performed prior to the giving of such approval. In the event EDCFSC 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.
- F. The certificate of insurance must include the following provisions stating that:
 - 1. The insurer will not cancel the insured's coverage without prior written notice to County, and;
 - 2. The County of El Dorado, its officers, officials, employees and volunteers are included as additional insured on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- G. The EDCFSC's insurance coverage shall be primary insurance in respect to County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be in excess of the EDCFSC's insurance and shall not contribute with it.
- H. Any deductibles or self-insured retentions must be declared to and approved by the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees and volunteers; or the EDCFSC shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- I. 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.

- J. 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.
- K. EDCFSC's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
- L. In the event EDCFSC cannot provide an occurrence policy, EDCFSC 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.
- M. The certificate of insurance shall meet such additional standards as may be determined by the contracting County department either, independently or in consultation with County's Risk Management Division, as essential for protection of County.

ARTICLE XIII

Change 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 XIV

County Payee Data Record Form: All independent contractors or corporations providing services to County who do not have a Department of the Treasury Internal Revenue Service Form W-9 (Form W-9) on file with County must file a County Payee Data Record Form with County.

ARTICLE XV

Administrator: The County Officer or employee with responsibility for administering this Agreement is Michelle Patterson, Manager, Emergency Medical Services Agency, or successor.

ARTICLE XVI

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 XVII

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.

ARTICLE XVIII

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.

ARTICLE XIX

California Residency (Form 590): If Consultant is a California resident, Consultant must file a State of California Form 590, certifying its California residency or, in the case of a limited liability company or corporation, certifying that it has 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 XX

County Payee Data Record Form: All independent contractors or corporations providing services to County who do not have a Department of the Treasury Internal Revenue Service Form W-9 (Form W-9) on file with County must file a County Payee Data Record Form with County.

ARTICLE XXI

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: _____

Attest:
Kim Dawson
Clerk of the Board of Supervisors

By: _____
Deputy Clerk

Dated: _____

-- EL DORADO COUNTY FIRE SAFETY COUNCIL --

By:  _____
Steve Willis
Chairperson
"EDCFSC"

Dated: 7/27/20

ATTACHMENT A

Date

Name

Chief Administrative Office
County of El Dorado
330 Fair Lane
Placerville, California 95667

Re: EL DORADO COUNTY FIRE SAFE COUNCIL

Dear _____:

This letter will certify that as of the above date the El Dorado County Fire Safe Council has used \$_____ of the Title III funds granted by the County. The funds were utilized to support the following programs, and to pay for the following costs:

Cost Incurred	Name of Program/Project	Details
\$ _____	_____	_____

I declare under the penalty of perjury under the laws of the State of California that the foregoing certification is true and correct. Executed the date written above in El Dorado County, State of California.

By: _____

(Print Name & Title)