

**Funding Agreement
Between
County of El Dorado and El Dorado Irrigation District**

Funding Agreement #7475

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 El Dorado Irrigation District (EID), a special district created pursuant to State law, whose mailing address is 2890 Mosquito Road, Placerville, California 95667 (hereinafter referred to as "Applicant");

RECITALS

WHEREAS, Applicant is proposing to rezone sixty seven (67) parcels, comprising a total of one thousand and two (1,002) acres, owned by Applicant from Open Space (OS) to Residential Estate (RE). The parcels are located within the Texas Hill Reservoir Takeline, as shown on Exhibit A - Location Map ("Takeline"), and identified on Exhibit B - Parcel List of EID Owned Parcels in the Texas Hill Reservoir Takeline; and

WHEREAS, County has determined that the proposed parcel rezones also require General Plan Amendments to change the General Plan land use designation from Open Space (OS) to Low Density Residential (LDR) and revisions to the General Plan Land Use Map (LU-1 Land Use Diagram); and

WHEREAS, County is also proposing to rezone fifty one (51) parcels, comprising a total of six hundred fifteen (615) acres, within the Takeline that are privately owned. In total, one hundred eighteen (118) parcels are proposed to be rezoned. The proposed EID and privately held parcel rezones and general plan amendments are hereinafter referred to as the "Project"; and

WHEREAS, County has determined an Environmental Impact Report (hereinafter referred to as "EIR") is required for the processing of the Project pursuant to California Environmental Quality Act (CEQA) Guidelines section 15064; and

WHEREAS, CEQA Guidelines section 21082.1 authorizes County to enter into agreements to prepare environmental documents for a proposed project including the preparation of an EIR and Mitigation Monitoring and Reporting Program; and

WHEREAS, CEQA Guidelines section 21089 authorizes the County to collect fees to recover the costs for the preparation and processing of environmental documents; and

WHEREAS, the "County of El Dorado Environmental Manual for implementation of the California Environmental Quality Act (CEQA)" section 1.9.A (Fees) states that "El Dorado County, in preparing environmental documents for private projects, may charge and collect a reasonable fee from the project applicant in order to recover the estimated cost incurred in preparing the environmental documents;" and

WHEREAS, County has determined that Applicant shall be responsible for fifty (50) percent of the cost to prepare the EIR for the Project. The total acreage of the parcel rezones is one thousand six hundred and seventeen (1,617) acres, with the Applicant's share constituting sixty (62) percent, one thousand two (1,002) acres of the total parcel acreage to be evaluated within the EIR ; and

WHEREAS, Applicant acknowledges and agrees that the EIR will be an integrated document for the Project notwithstanding ownership of individual parcels.

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

The foregoing Recitals are a part of this Agreement and are incorporated herein by reference as if fully stated herein.

ARTICLE I

Employment of Consultant as Independent Contractor: County has engaged ICF Jones & Stokes, Inc. ("Consultant") as an independent contractor to prepare an EIR and to provide planning services for the parcel rezones and General Plan Amendments identified in Agreement for Services #7064 (CEQA Consultant Agreement). The total estimated cost of preparation of the EIR and related planning services under the CEQA Consultant Agreement is \$347,880.00 (Estimated Cost).

The EIR shall be prepared for the County. It shall be prepared to be legally adequate to allow the County to meet its obligations as the CEQA lead agency to consider all discretionary actions necessary for the Project (Public Resources Code, §21082). Consultant shall prepare the EIR to be accurate and objective. Consultant shall act solely as Consultant to County and shall not act in any capacity as consultant to, representative of, or agent of Applicant. Applicant shall not engage in communications or contact with Consultant without prior written authorization of County.

The execution of this Funding Agreement shall not constitute a representation or assurance by County that the EIR shall be certified or that the Project will be approved.

ARTICLE II

Payment and Use of Funds: Applicant acknowledges and agrees that Applicant is responsible for funding 50% of the actual cost of preparation of an EIR and related planning services for the Project. Within ten (10) business days of execution of this Agreement, Applicant shall pay to County 50% of the Estimated Cost which is **One Hundred Seventy Three Thousand Nine Hundred Forty Dollars (\$173,940)** (Applicant Deposit) which will be used by County to provide a mechanism for Applicant to fund fifty (50) percent of the actual costs incurred in the preparation of an EIR and planning services for the Project. Both County and Applicant make this Agreement with full knowledge of the requirements of the California Environmental Quality Act (CEQA) of 1970 (Public Resources Code, §21000 et seq.) and the State CEQA Guidelines (California Code of Regulations, Title 14, Division 6, §15000 et seq.) adopted pursuant thereto. This agreement is subject to all other applicable laws, regulations, ordinances, and the "County of El Dorado Environmental Manual for implementation of the California Environmental Quality Act (CEQA)" including those of the County of El Dorado relating to payment of monies for services rendered.

The total amount of this Agreement is not expected to exceed **One Hundred Seventy-Three Thousand Nine Hundred Forty Dollars (\$173,940)**; however, the parties acknowledge that the actual cost of preparation of the EIR and related planning services is unknown at this time. County agrees to promptly inform Applicant of all anticipated costs as they become known to County which would exceed the Estimated Cost. In the event County determines that the amount needed to complete the tasks under the CEQA Consultant Agreement would exceed the Estimated Cost, Applicant shall have a reasonable opportunity to discuss the need for such task, the need for expanded or additional tasks, and the extent of such costs with County before Applicant shall be responsible for the same.

Prior to incurring additional costs, County shall give Applicant at least thirty (30) calendar days prior written notice that additional costs will be incurred and the estimated amount thereof before any additional payment can be required of Applicant. Should the actual cost of preparation of the EIR and related planning services exceed the Estimated Cost, then Applicant shall reimburse County for fifty (50) percent of the actual costs that exceed the Estimated Cost, subject to the Applicant receiving notice and providing written approval of the additional costs (such approval shall not be unreasonably withheld). County will invoice Applicant for the required reimbursement and Applicant will submit payment to County within thirty (30) calendar days of receipt of the invoice.

Upon processing final invoicing under the CEQA Consultant Agreement, if the actual costs incurred by the County are less than the Estimated Cost, County shall reimburse Applicant for fifty percent (50%) of the difference between County's actual costs to fund its CEQA Consultant Agreement and the Estimated Cost. This reimbursement obligation shall survive termination of this Agreement.

It is understood that the funds deposited by Applicant represents one source of funding for the CEQA Consultant Agreement. By deposit of the above referenced funds and by execution hereof, Applicant agrees that County may utilize said funds to compensate its Consultant to do the necessary work.

County will place all deposits paid by Applicant pursuant to this Agreement into a separate fund. The deposit shall not bear interest.

ARTICLE III

Term: This Agreement shall become effective when fully executed by the parties hereto and shall expire three (3) years from the date thereof, or upon Project completion, or upon termination of the CEQA Consultant Agreement, whichever comes first.

ARTICLE IV

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 V

Audits Required: If requested, Applicant shall submit to County a year-end financial statement covering all fiscal years during which Applicant expends funds provided pursuant to this Agreement. Applicant 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. Applicant'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 VI

Audit by California State Auditor: Applicant 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 Government Code section 8546.7. In order to facilitate these potential examinations and audits, Applicant 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 VII

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 VIII

Political Activity: Pursuant to California Government Code §54964, §54964.5, and §54964.6, County shall not expend or authorize the expenditure of any funds provided to it pursuant to this Agreement, or use any property owned or funded in whole or in part by Applicant, in support of any political activity including but not limited to support or opposition of a candidate for public office or any ballot measure.

ARTICLE IX

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 X

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
Planning and Building
2850 Fairlane Court
Placerville, California 95667

Attn.: Karen L. Garner
Director, Planning and Building

With a copy to:

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

Attn.: Michele Weimer
Procurement and Contracts Manager

or to such other location as County directs.

Notices to Applicant shall be addressed as follows:

El Dorado Irrigation District
2890 Mosquito Road
Placerville, California 95667

Attn.: Brian Mueller, P.E.
Director of Engineering

or to such other location as Applicant directs.

ARTICLE XII

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

The insurance obligations of Contractor are separate, independent obligations under the Agreement, and the provisions of this defense and indemnity are not intended to modify nor should they be construed as modifying or in any way limiting the insurance obligations set forth in the Agreement.

Nothing herein shall be construed to seek indemnity in excess of that permitted by Civil Code section 2782, et seq. In the event any portion of this Article is found invalid, the Parties agree that this Article shall survive and be interpreted consistent with the provisions of Civil Code section 2782, et seq.

ARTICLE XIII

Termination: Either County or Applicant may terminate this Agreement by presentation to the other party hereto of written notice of said termination fifteen (15) business days prior to effective date of said termination.

ARTICLE XIV

Levine Act: Pursuant to Government Code section 84308 (SB 1439, the Levine Act), Applicant shall complete and sign the attached Exhibit C marked "California Levine Act Statement," incorporated herein and made by reference a part hereof, regarding campaign contributions by Applicant, if any, to any officer of County.

ARTICLE XV

Interest of Applicant and Consultant: Applicant covenants that it shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with Consultant's services hereunder. Applicant covenants that it will notify the County if the Applicant engages, or attempts to engage, a Consultant who has performed any work or provided any services under contract or agreement directly with the Project or any part of the Project herein described or who has performed work or provided services for Applicant on any other development project within the preceding five (5) years.

ARTICLE XVI

Agreement Negotiated: It is agreed and understood by the parties hereto that this Agreement has been arrived at through negotiation and that neither party is to be deemed the party which prepared this Agreement within the meaning of Civil Code Section 1654.

ARTICLE XVII

Assignment: This Agreement shall be binding upon the successors-in-interest and assigns of Applicant.

ARTICLE XVIII

Administrator: The County Officer or employee with responsibility for administering this Agreement is Tom Purciel, Senior Planner, Planning and Building Department, or successor.

ARTICLE XIX

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 XX

Electronic Signatures: Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement, are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic Signature means any electronic visual symbol or signature attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including facsimile or email electronic signatures, pursuant to the California Uniform Electronic Transactions Act (Civil Code sections 1633.1 to 1633.17) as amended from time to time.

ARTICLE XXI

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 XXII

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: Wendy Thomas Dated: 8-15-23
Board of Supervisors
"County"

Attest:
Kim Dawson
Clerk of the Board of Supervisors

By: Kyle Hughes Dated: 8-15-23

--EL DORADO IRRIGATION DISTRICT--

By: Jim Abercrombie
Jim Abercrombie
General Manager
"Applicant"

Reviewed & Approved as to Form on: 5/24/23
[Signature]
EID, Office of the General Counsel

El Dorado Irrigation District

Exhibit C

California Levine Act Statement

California Levine Act Statement

California Government Code section 84308, commonly referred to as the "Levine Act," prohibits any officer of El Dorado County from participating in any action related to a contract if he or she receives any political contributions totaling more than two hundred and fifty dollars (\$250) within the previous twelve (12) months, and for twelve (12) months following the date a final decision concerning the contract has been made, from the person or company awarded the contract. The Levine Act also requires disclosure of such contribution by a party to be awarded a specific contract. An officer of El Dorado County includes the Board of Supervisors, and any elected official (collectively "Officer"). It is the Contractor's/Consultant's responsibility to confirm the appropriate "Officer" and name the individual(s) in their disclosure.

Have you or your company, or any agent on behalf of you or your company, made any political contributions of more than \$250 to an Officer of the County of El Dorado in the twelve months preceding the date of the submission of your proposals or the anticipated date of any Officer action related to this contract?

YES ☒ NO
If yes, please identify the Officer(s) by name:

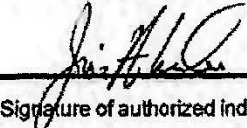
Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any political contribution of more than \$250 to an Officer of the County of El Dorado in the twelve months following any Officer action related to this contract?

YES ☒ NO
If yes, please identify the Officer(s) by name:

Answering YES to either of the two questions above does not preclude the County of El Dorado from awarding a contract to your firm or any taking any subsequent action related to the contract. It does, however, preclude the identified Officer(s) from participating in any actions related to this contract.

6-6-23
Date

El Dorado Irrigation District
Type or write name of company


Signature of authorized individual
Jim Abercrombie - General Manager
Type or write name of authorized individual