

California Department of Parks and Recreation

**PROJECT AGREEMENT**

Off-Highway Motor Vehicle Recreation

Act of 2003

PROJECT NUMBER: OR-814

GRANTEE: El Dorado County Department of Transportation

TITLE: El Dorado County Ellis Creek Planning 07

PROJECT PERFORMANCE PERIOD (Billing Period): FROM: 1/29/2007 TO: 1/28/2010

Under the terms and conditions of this agreement, the Grantee agrees to complete the project as described in the Project Description; the OHV Grant Application and the General Provisions, which is hereby incorporated by reference; the Off-Highway Motor Vehicle Recreation Act of 2003 as amended, and Title 14, California Code of Regulations, Division 3, Chapter 15.5, Sections 4970.49-4970.72 - Off-Highway Motor Vehicle Recreation Grants and Cooperative Agreements Program Regulations.

PROJECT DESCRIPTION:

Engineering and environmental documentation for a vehicle crossing of Ellis Creek on the Rubicon OHV Trail. Includes personnel time and contract costs.

For a list of Project Deliverables see page(s) 2 of this agreement. Any Project Deliverable costs listed on the attached pages are estimates.

CONSERVATION \$0 ENFORCEMENT \$0 RESTORATION \$0 NON-CESA \$93,301

By \_\_\_\_\_  
Grantee (Authorized Signature)

By \_\_\_\_\_  
State (Authorized Signature)

Title \_\_\_\_\_

Title Grants Manager, OHMVR Division

Date \_\_\_\_\_

Date \_\_\_\_\_

**CERTIFICATION OF FUNDING**

CONTRACT NO.: C32-04-075

FUND: Off-Highway Vehicle Trust Fund

AMOUNT: \$93,301

APPROPRIATION: Local Assistance

INDEX: 1550

OBJECT: 702

PCA: 62662

FY: 2006/2007

VENDOR I.D.: 4000000053.0

CHAPTER: 47/06

STATUTES: 2006

ITEM #: 3790-101-0263

I hereby certify upon my own personal knowledge that budgeted funds are available for this encumbrance.

Date: \_\_\_\_\_

DPR Accounting Officer

# PROJECT COSTS/DELIVERABLES (PC/D)

<b>APPLICANT: EI Dorado County, Dept. of Trans.</b>	<b>GEOGRAPHIC AREA: Not applicable</b>
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**Application Title: Rubicon Trail - Ellis Creek Crossing**

General Funding Category	Qty**	Unit	Unit Cost	Subtotal	Match*	Grant
<b>C E R N</b> (Mark one) (see below)						

**Activities:** Development of the engineering and Environmental documentation for an environmentally sound crossing of Ellis Creek on the Rubicon OHV Trail.

**Staff:**

			\$	\$	\$	\$
Senior Civil Engineer	524	hr	\$136.	\$71,264	\$22,963	\$48,301
Parks/Engineering staff Field trips	32	hr	\$100	\$3,200	\$3,200	\$
<b>Total</b>					<b>\$26,163</b>	

**Contracts:**

Environmental Documentation			\$45,000	\$45,000	\$	\$45,000
Contract administration Parks/Purchasing Depts.	50	hr	\$100	\$5,000	\$5,000	
<b>Total</b>				<b>\$124,464</b>		<b>\$93,301</b>

**Materials/Supplies:**

			\$	\$	\$	\$
			\$	\$	\$	\$
			\$	\$	\$	\$
<b>Total</b>						

**Vehicle Maintenance/FOR:**

			\$	\$	\$	\$
<b>Total</b>						

**Equipment:**

			\$	\$	\$	\$
			\$	\$	\$	\$
			\$	\$	\$	\$
<b>Total</b>						

**Other:**

Additional County Match			\$	\$	\$	\$
			\$	\$	\$	\$

<b>Total</b>						
<b>(DO NOT ROUND) Form Total</b>				<b>\$124,464</b>	<b>\$31,163</b>	<b>\$93,301.00</b>

<b>Funding Categories</b> <b>C = Conservation</b> <b>E = Enforcement</b> <b>R = Restoration</b> <b>N = (non-CESA)</b>	<p>* If an agency requesting a cooperative agreement wants to voluntarily report agency contributions, change the title from "Match" to " Agency Contributions"</p>
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\*\* Quantity and Unit: Enter the quantity ordered and appropriate unit of measure for each items (e.g., ea=each, pk = package, & bx = box)

Applicants may request administrative costs, not to exceed 10% of the total project(s) requested. If administrative costs are requested, please identify them on the Application Summary Sheet.

# PROJECT AGREEMENT GENERAL PROVISIONS (Local Agencies Only)

## General Provisions

### A. Definitions

1. The term "State" as used herein means the California State Department of Parks and Recreation.
2. The term "Act" as used herein means the Off-Highway Motor Vehicle Recreation Act of 2003 as amended.
3. The term "Project" as used herein means the project which is described on page 1 of this agreement and in the project application, which is hereby incorporated into this agreement by reference.
4. The term "Application" as used herein means the individual Project Application and its required attachments pursuant to the enabling legislation, regulations, and/or grant program, which is incorporated into this agreement by reference.
5. The term "Project Agreement" as used herein means the Application and the Project Agreement General Provisions.
6. The term "Grantee" as used herein means the party described as the Grantee on page 1 of the Project Agreement.

### B. Project Execution

1. Subject to the appropriation and availability of grant funds in the state budget, the State hereby awards to the Grantee the sum of money (grant money) stated on page 1 of the Project Agreement in consideration of and on condition that the sum be expended in carrying out the purposes as set forth in the Description of the Project on page 1 of the project agreement and the terms and conditions set forth in this agreement.

The Grantee assumes the obligation to furnish any additional funds that may be necessary to complete or carry out the project as described. Any modification or alteration in the project as set forth in the application on file with the State must be submitted to the State for approval. State's obligation to make grant payments is limited to the project as provided for herein, or as modified with the approval of the State.

2. The Grantee agrees to complete the Project in accordance with the project performance period set forth on page 1 of the Project Agreement, and under the terms and conditions of this agreement.
3. If the project includes development, the development plans, specifications and estimates or Force Account Schedule shall be reviewed and approved by the State prior to Grantee proceeding with the project. Unless the development plans, specifications and estimates are approved by the State, the State shall have no obligation to make grant payments for the work.

The Grantee, shall comply with all applicable current laws and regulations affecting Development Projects, including, but not limited to, legal requirements for construction contracts, building codes, health and safety codes, and laws and codes pertaining to individuals with disabilities. In addition, the Grantee shall complete the development work in accordance with the State approved development plans, specifications and estimates or Force Account Schedule. The Grantee shall make property or facilities acquired and/or developed pursuant to this agreement available for inspection upon request by the State to determine if development work is in accordance with the approved plans, specifications and estimates or Force Account Schedule, including a final inspection upon Project completion.

4. Prior to the commencement of any work, the Grantee agrees to submit any deviations from, or modifications or alterations to the Project representing more than 5% of the total grant amount to the State for prior approval.
5. If the project includes acquisition of real property, and the cost of which is to be reimbursed with grant moneys under this agreement, shall as required thereby, comply with Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 of the Government Code and any other applicable federal, state, or local laws or ordinances. Documentation of such compliance will be made available for review by the State upon request. Eminent domain may not be used to acquire property using the grant funds provided by this agreement.
6. If the project includes acquisition of real property, the purchase price shall be the fair market value of such property as established by an appraisal completed according to established current appraisal practices and methods as approved by both the Grantee and the State. Grantee agrees to furnish the State additional supportive appraisal material or justification as may be requested by the State to complete its review and approval of the fair market value.

Grantee agrees to furnish the State with preliminary title reports respecting such real property or such other evidence of title which is determined to be sufficient by the State. Grantee agrees to correct prior to or at the close of escrow any defects of title which in the opinion of State might interfere with the operation of the Project.

### C. Project Costs

1. The grant moneys to be provided to the Grantee under this agreement shall be disbursed as follows, but not to exceed in any event one-hundred (100) percent of the allowable project costs or the State grant amount as set forth on page 1 of this agreement whichever is less:
2. If the Project includes acquisition of real property, the State shall disburse to Grantee the grant moneys as follows, but not to exceed in any event the State grant amount set forth on page 1 of this agreement.

State will disburse the amount of the State approved purchase price together with State approved costs of acquisition. The State may elect to make disbursement for deposit into escrow.

3. If the Project includes development, after approval by State of Grantee's plans, specifications and estimates or Force Account Schedule and after completion of the Project or any phase or unit thereof, State shall disburse to Grantee upon receipt and approval by State of a statement of incurred costs from Grantee, the amount of such approved incurred costs shown on such statement, not to exceed the State grant amount set forth on page 1 of this agreement, or any remaining portion of such grant amount to the extent of such statement. Grantee, upon a showing that the project may not proceed without advance funding, may request advance payment of those funds needed up to a maximum of ninety (90) percent of the State grant amount allocated for development upon receipt and approval by State of Grantee plans, specifications and estimates or Force Account Schedule.

The statements to be submitted by Grantee shall set forth in detail the incurred or estimated cost of work performed or to be performed on development of the Project and whether performance will be by construction contract or by Force Account. Statements shall not be submitted, nor shall State make payments, more frequently than for work performed during ninety (90) day periods unless otherwise requested by State.

### D. Project Administration

1. The Grantee shall promptly submit such progress, performance or other reports concerning the status of work performed on the Project as the State may request. In any event, the Grantee shall provide the State a report showing total final expenditures.
2. The Grantee shall make property and facilities maintained, operated, acquired or developed pursuant to this agreement available for inspection by the State upon request.
3. The Grantee shall use any moneys advanced by the State under the terms of this agreement solely for the Project herein described.
4. The Grantee may be provided advanced payments for grants but only for those that are for Planning, Acquisition, and Facility Operation and Maintenance. The Grantee shall place such moneys in a separate interest bearing account, setting up and identifying such account prior to the advance, interest earned on grant moneys shall be used on the project or paid to the State. If grant moneys are advanced and not expended, the unused portion of the grant (plus interest) shall be returned to the State within sixty (60) days of completion of the Project or end of the Project performance period, whichever is earlier.

Income, after deduction for reasonable expenses associated with that income, that is earned by the Grantee from a State approved non-recreational use on an acquisition project, subsequent to taking title by the Grantee, but before use for OHV recreation, must be used by the Grantee for recreational purposes at the Project.

5. Any single piece of equipment purchased (equal to or greater than \$50,000) with at least ½ of the purchased cost paid from OHV funds shall be used for OHV Programs during the normal life of the equipment and then be returned to the State for disposal or surplus sale by the State. Notification of Off-Highway Motor Vehicle Recreation (OHMVR) Headquarters that a piece of equipment has become eligible for surplus status is the responsibility of the "grantee".

### E. Project Termination

1. The Grantee may unilaterally rescind this agreement at any time prior to the commencement of the Project. After Project commencement this agreement may be rescinded, modified or amended by mutual agreement in writing.
2. Failure by the Grantee to comply with the terms of this agreement or any other agreement under the Act may be cause for suspension of all obligations of the State hereunder.
3. Failure of the Grantee to comply with the terms of this agreement or contract under the enabling legislation may be cause for suspension of all obligations of the State hereunder. However, such failure shall not be cause for the suspension of all obligations of the State hereunder if in the judgment of the State such failure was due to no fault and beyond the control of the Grantee to prevent, mitigate, or remedy.

4. Because the benefit to be derived by the State, from the full compliance by the Grantee with the terms of agreement, is the, operation, development, preservation, protection and net increase in the quantity and quality of public outdoor recreation facilities available to the people of the State of California and because such benefit exceeds to an immeasurable and unascertainable extent the amount of money furnished by the State by way of grant moneys under the terms of this agreement, the Grantee agrees that payment by the Grantee to the State of an amount equal to the amount of the grant moneys disbursed under this agreement by the State would be inadequate compensation to the State for any breach by the Grantee of this agreement. The Grantee further agrees therefore, that the appropriate remedy in the event of a breach by the Grantee of this agreement shall be the specific performance of this agreement, unless otherwise agreed to by the State. Notwithstanding the foregoing, in the event of a breach of this agreement, or any portion thereof, which is due to no fault and beyond the control of the Grantee to prevent, mitigate, or remedy, the State's sole remedy shall be the reimbursement of any funds advanced or paid that pertain to the breached term or terms of this agreement.

#### F. Hold Harmless

1. Grantee hereby waives all claims and recourse against the State including the right to contribution of loss of damage to persons or property arising from, growing out of or in any way connected with or incident to this agreement except claims arising from the concurrent or sole negligence of State, its officers, agents and employees.
2. The Grantee shall protect indemnify, hold harmless and defend State, its officers, agents and employees against any and all claims, demands, damages, costs, expenses or liability costs arising out of the acquisition, development, construction, operation or maintenance of the property described as the Project which claims, demands or causes of action arise under Government code Section 895.2 or otherwise except for liability arising out of, and attributable to, the concurrent or sole negligence of State, its officers, or employees.
3. In the event State is named as codefendant under the provisions of Government Code Section 895 et seq., the Grantee shall notify the State of such fact and shall represent State in the legal action unless State undertakes to represent itself as codefendant in such legal action in which event the State shall bear its own litigation costs, expenses, and attorney's fees.
4. In the event of judgment against the State and the Grantee because of the concurrent negligence of the State and the Grantee, their officers, agents, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Neither party shall request, and each party hereby waives its right to, a jury apportionment.

#### G. Financial Records

1. The grantee shall retain all financial accounts, documents, and records for three (3) years from the expiration date of the project agreement, or three (3) years from the start of an audit engagement, whichever comes first, and until an audit started during the three (3) years has been completed and a report published.
2. During regular office hours each of the parties hereto and their duly authorized representatives shall have the right to inspect and make copies of any books, records or reports of the other party pertaining to this agreement or matters related thereto.

#### H. Use of Facilities

1. The property acquired or developed with grant moneys under this agreement shall be used by the Grantee only for the purpose for which the State grant moneys were requested and no other use of the area shall be permitted except by specific act of the Legislature.
2. The Grantee shall without cost to State, except as may be otherwise provided in this or any other grant agreement, operate and maintain the property acquired or developed pursuant to this agreement in the manner of and according to the provisions of this agreement, the Off-Highway Motor Vehicle Recreation Act and any related regulations, or any other provision of law which may be applicable to such operation and maintenance.
3. Use of the facilities shall comply with all applicable laws, including, but not limited to, the requirements for registration of all day use-vehicles with the Department of Motor Vehicles or identified under the Chappie-Z'berg Off-Highway Motor Vehicle Law of 1993.

#### I. Nondiscrimination

1. The Grantee shall not discriminate against any person on the basis of sex, race, color, national origin, religion, ancestry, or physical handicap in the use of any property or facility acquired or developed pursuant to this agreement.
2. The Grantee shall not discriminate against any person on the basis of residence except to the extent that reasonable differences in admission or other fees may be maintained on the basis of residence and pursuant to law.
3. All facilities shall be open to members of the public generally, except as noted under the special provisions of this project agreement.

**J. Application Incorporation**

1. The Application and any subsequent change or addition approved by the State is hereby incorporated in this agreement as though set forth in full in this agreement.

**K. Severability**

1. If a provision of this agreement or the Application thereof is held invalid, that invalidity shall not affect other provisions or applications of the agreement which can be given effect without the invalid provision or Application, and to this end the provisions of this agreement are severable.

**L. Governing Law**

1. This agreement shall be construed in accordance with and be governed by the laws of the State of California. Any legal action arising out of the terms of this agreement shall take place in the county wherein the project funded by this agreement is located. If the project is located in or among two or more counties, any legal action shall be taken in the county wherein the largest land area of the project is located.