

AGREEMENT FOR SERVICES #6537

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**THIS AGREEMENT** is 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 Staples & Associates, Inc., dba Staples Energy, a Wisconsin Corporation, duly qualified to conduct business in the State of California, whose principal place of business is 3555 Landco Drive, Suite A, Bakersfield, CA 93308 (*Mailing: N28W23050 Roundy Drive, Suite 100, Pewaukee, WI 53072*), and whose local place of business is 9901 Horn Road, Suite C, Sacramento, CA 95827, (hereinafter referred to as "Contractor");

**RECITALS**

**WHEREAS**, County has determined that it is necessary to obtain a Contractor to provide home energy weatherization related services to qualifying, low-income residents of El Dorado County. Services to include heating and air conditioning system design, installation, and repair services on an "as requested" basis for the County of El Dorado Health and Human Services Agency; and

**WHEREAS**, Contractor has represented to County that it is specially trained, licensed, experienced, expert, and competent to perform the special services described in Article I, "Scope of Services;" that it is an independent and bona fide business operation, advertises and holds itself as such, is in possession of a valid business license, and is customarily engaged in an independently established business that provides similar services to others; and County relies upon those representations; and

**WHEREAS**, on March 29, 2022, Contractor's response to Request for Qualifications (RFQ) 22-918-027 for the provision of weatherization services was deemed to be qualified; and

**WHEREAS**, it is the intent of the parties hereto that such services be in conformity with all applicable federal, state and local laws; and

**WHEREAS**, County has determined that the provision of such services provided by Contractor are in the public's best interest and that there are specialty skills, qualifications, and equipment not expressly identified in County classifications involved in the performance of the work in accordance with El Dorado County Ordinance Code, Chapter 3.13.030(b), El Dorado County Charter, Section 210(b)(6), and/or Government Code Section 31000;

**NOW, THEREFORE**, County and Contractor mutually agree as follows:

## ARTICLE I

**Scope of Services:** Contractor shall furnish personnel, equipment, materials, and services necessary to provide heating and air conditioning system and mechanical ventilation design, installation, and repair services on an “as requested” basis for clients (“Clients”) of the Health and Human Services Agency (“HHSA”). Services shall only be provided contingent upon approval by HHSA’s Program Supervisor or Program Manager.

Home Energy Weatherization related services may include the following:

- Electrical work, as it relates to weatherization and appliance repair and replacement services;
- Heating, Venting, and Air Conditioning (HVAC) repair and replacement;
- Water heater replacement; and
- Fireplace repair or replacement (including wood, gas, and pellet stoves).

Additional information pertaining to these services is as follows:

- A. Electrical: Services include but are not limited to the following:
  1. Providing and installing properly grounded electrical receptacles for appliances and troubleshooting.
  2. Wiring of mechanical ventilation. All associated diagnostics to be performed by County. Mechanical ventilation to be supplied by County.
  3. Other electrical work related to weatherization.
- B. HVAC: Services associated with the weatherization Program include diagnosis, repair, and replacement of heating and cooling sources. Contractor is required to perform a combustion gas analysis test on all combustion appliances worked on to ensure they are operating per manufacture specifications and are safe, and must provide proof of said test. Services include the following:
  1. Heating source repair and replacement (e.g., exterior wall direct vent, interior wall and floor furnace, forced air unit and split systems, mobile home furnace, multi-unit central system, package-dual package.)
  2. Cooling source repair and replacement (e.g., air conditioning wall or window units, evaporative coolers, forced air unit and split systems, multi-unit central system.)
- C. Water heater repair and replacement, including electric, propane, mobile home, and multiunit central systems.
- D. Fireplace/stove repair and replacement includes wood, gas, and pellet.

### Additional Requirements and Considerations

- A. Contractor will be required to complete any accepted/approved bid within 15 business days, regardless of size, scope, or location.
- B. The final decision as to repair or replacement of any systems related to Weatherization shall be at the discretion of the County.
- C. Contractor performing Weatherization activities as a result of an accepted/approved bid will be required to provide any necessary supplies, materials, and equipment to accomplish the work-related activities and to perform said activities within the timeframe established by the County.
- D. Contractor will also be required to complete project-related documents and invoices to HHSA for Weatherization related activities, in compliance with County, Department of Community

Services and Development’s Low Income Home Energy Assistance Program, the California Department of Community Services and Development’s Department of Energy Weatherization Assistance Program. Contractor will adhere to all Federal, State, County and city if applicable, laws, regulations and guidance regarding Weatherization Services requirements.

- E. Contractor must possess and maintain an active Class “B” General Building Contractor License, issued by the California Contractors State Licensing Board (CSLB). Contractor must also possess and maintain the required licenses and certifications associated with the work performed as required by the CSLB.
- F. Contractor shall ensure that its employees performing weatherization services under this agreement have completed required trainings and are certified to perform the required tasks.

Services may be performed throughout El Dorado County and including but not limited to the following Alpine County zip codes: Bear Valley 95223, Kirkwood 95646, and Markleeville 96120.

**ARTICLE II**

**Term:** This Agreement shall become effective upon final execution by both parties hereto and shall cover the period **July 1, 2022 through June 30, 2025**, unless terminated earlier pursuant to the provisions contained herein below in the Article(s) titled “Fiscal Considerations” or “Default, Termination, and Cancellation.”

**ARTICLE III**

**Compensation for Services:**

- A. **Rates:** For the purposes of this Agreement, the billing rate shall be in accordance with the following:

Service Type	Hourly Rate
Electrical Services	\$165
Appliance Repair and Replacement Services	\$190
HVAC	\$190
Water Heater Repair and Replacement Services	\$145
Fireplace/Stove Repair and Replacement Services	\$190

At the time of diagnosis and dependent upon instruction from County, if cost of repair or replacement of parts is less than or equal to \$300.00, inclusive of labor, Contractor may perform necessary repairs or replacements and invoice County upon completion of work. HHS A Program Supervisor or HHS A Program Manager must approve said invoice prior to submission for reimbursement by County.

Repair or replacement bids must include all parts and labor. If said repair or replacement of parts and labor exceeds \$300.00, Contractor shall first obtain written approval from HHS A Program Supervisor or HHS A Program Manager before commencing with work.

- B. **Invoices:** It is a requirement of this Agreement that Contractor shall submit an original invoice, similar in content and format with the following sample

available at: [https://www.edcgov.us/Government/hhsa/Pages/hhsa\\_contractor\\_resources.aspx](https://www.edcgov.us/Government/hhsa/Pages/hhsa_contractor_resources.aspx). Itemized invoices shall follow the format specified by County and shall reference this Agreement number on their faces and on any enclosures or backup documentation. Copies of documentation attached to invoices shall reflect Contractor's charges for the specific services billed on those invoices.

Each invoice shall contain the following data:

1. Contractor name, address, and telephone number.
2. Service Dates.
3. Type of service(s) provided.
4. Rate for each service (i.e. diagnosis, repair, or replacement) and labor.
5. Total amount billed to the County of El Dorado under the subject invoice and authorization.

The County shall not pay for unauthorized services, incomplete, or unsatisfactory services.

Invoices shall be sent as follows, or as otherwise directed in writing by County:

<b><i>Email (preferred method):</i></b>	<b><i>U.S. Mail:</i></b>
<p><a href="mailto:CSinvoice@edcgov.us">CSinvoice@edcgov.us</a>            Please include in the subject line:            "Contract #, Service Month, Description /            Program</p>	<p>County of El Dorado            Health and Human Services Agency            Attn: Finance Unit            3057 Briw Road, Suite B            Placerville, CA 95667-5321</p>

or to such other location as County directs.

For services provided herein, including any deliverables that may be identified herein, Contractor shall submit invoices for services fifteen (15) days following the end of a "service month." For billing purposes, a "service month" shall be defined as a calendar month during which Contractor provides services in accordance with Article I, "Scope of Services." For all satisfactory services provided herein, County agrees to pay Contractor monthly in arrears and within forty-five (45) days following the County's receipt and approval of itemized invoice(s) identifying services rendered. County may withhold or delay any payment if Contractor fails to comply with any provision of this Agreement.

1. Supplemental Invoices: For the purpose of this Agreement, supplemental invoices shall be defined as invoices submitted for additional services rendered during a month for which a prior invoice has already been submitted to County. Supplemental invoices should include the standard invoice format with description of services rendered and a detailed explanation why the invoice was not submitted in the approved timeframe.
  - 1.1. For those situations where a service is disallowed by HHSA on an invoice, or inadvertently not submitted on an invoice, and a corrected invoice is later submitted ("Supplemental Invoice"), Supplemental Invoices for services provided during the period July 1st through June 30th for each fiscal year of this Agreement and received by HHSA after July 31 of the subsequent fiscal year, shall be neither accepted nor paid by the County. Requests for exceptions to pay an invoice received after July 31

of the subsequent year, must be submitted in writing and must be approved by HHS's Chief Fiscal Officer

C. **Maximum Obligation:** The maximum obligation for services and deliverables provided under this Agreement shall not exceed **\$358,500**, inclusive of all costs and expenses.

In the event that Contractor fails to deliver the services, documents or other deliverables required herein, County at its sole option may delay the monthly payment for the period of time of the delay, cease all payments until such time as the deliverables are received, or proceed as set forth herein below in the Article titled "Default, Termination, and Cancellation." In no event shall County be obligated to pay Contractor for any amount above the Maximum Obligation of this Agreement.

**ARTICLE IV**

**Federal Funding Notification:** An award/subaward or contract associated with a covered transaction may not be made to a subrecipient or contractor who has been identified as suspended or debarred from receiving federal funds. Additionally, counties must annually verify that the subrecipient and/or contractor remains in good standing with the federal government throughout the life of the agreement/contract.

Pursuant to 2 CFR 180.300(a), counties are required to fulfill their above-mentioned verification responsibilities using the federal System for Award Management (SAM). The federal SAM is an official website of the federal government through which counties can perform queries to identify if a subrecipient or contractor is listed on the federal SAM excluded list and thus suspended or debarred from receiving federal funds.

A. System for Award Management: Contractor is required to obtain and maintain an active registration in the System for Award Management (SAM.gov). Noncompliance with this requirement shall result in corrective action, up to and including termination pursuant to the provisions contained herein this Agreement under the Article(s) titled "Fiscal Considerations" or "Default, Termination, and Cancellation."

- 1) The Contractor must register and maintain an "Active" status within SAM at <https://sam.gov/content/home>.
- 2) If County cannot access or verify "Active" status, the Contractor must immediately update the information as required.

B. Catalog of Federal Domestic Assistance: Pursuant to the Office of Management and Budget (OMB) Uniform Grants Guidance, all recipients and sub-recipients of federal funds must be provided the Catalog of Federal Domestic Assistance (CFDA) number at the time the contract is awarded. The following are CFDA numbers, award specific information, and program titles for programs administered by the County on behalf of California Department of Community Services and Development and that may apply to this contract:

Federal Funding Information		
<b>Contractor:</b>	<b>Staples &amp; Associates, Inc., dba Staples Energy</b>	<b>UEI #: RAF4NALJ9VL8</b>
<b>Award Term:</b>	<b>July 1, 2022 through June 30, 2025</b>	<b>EIN #:</b>
<b>Total Federal Funds Obligated: \$358, 500</b>		
Federal Award Information		

Federal Funding Information			
CFDA Number	Federal Award ID Number (FAIN)	Federal Award Date / Amount	Program Title
93.568	2201 CALIEA	2021	Low Income Energy Assistance Program (LIHEAP)
<b>Project Description:</b>	Low income weatherization assistance program		
<b>Awarding Agency:</b>	CA Department of Community Services and Development		
<b>Pass-through Entity</b>	County of El Dorado, Health and Human Services Agency		
<b>Indirect Cost Rate or de minimus</b>	Indirect Cost Rate: _____	De minimus <input checked="" type="checkbox"/>	
Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>	Award is for Research and development.	

#### ARTICLE V

**Lobbying Certification:** The Contractor, by signing this Agreement, hereby certifies to the best of his or her knowledge and belief, that:

- A. No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the Contractor shall complete and submit Standard Form SF-LLL, OMB Number 0348-0046 "Disclosure of Lobbying Activities" in accordance with its instructions. A copy of Form SF-LLL can be downloaded and completed at <https://www.grants.gov/web/grants/forms/post-award-reporting-forms.html>.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. This certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

#### ARTICLE VI

**Warranty:** The Contractor warrants to the County that materials and equipment furnished under the Contract will be of good quality and new, unless otherwise required or permitted by the

Contract, that the Work will be free from defects or flaws and is of the highest quality of workmanship and that the work will conform with the requirements of the Contract. Work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective.

## **ARTICLE VII**

**Fraud or Abuse Reporting:** Contractor acknowledges and agrees to comply with mandated reporter requirements pursuant to provisions of Welfare and Institution Code, Section 15630-15632. Additionally, during the performance of this Agreement, the Contractor shall report immediately by phone to (530) 642-4800 or other such phone number that may be provided and in writing to the County of El Dorado Department of Human Services at 3057 Briw Road, Placerville, CA 95667, any known or suspected incidents of fraud or abuse to clients or household occupants observed or learned of during the delivery of Contractor services.

### **Audits, Compliance, and Monitoring:**

- A) Contractor shall provide a copy of any Audit to County within thirty (30) days of completion of said audit.
- B) Audits and compliance monitoring by any representative of the Federal government, State government, or County may include the review of any and all terms related to this Agreement. Audits or monitoring by the County may be performed by way of annual Contract Monitoring Surveys. Contractors receiving a Contract Monitoring Survey shall, within sixty (60) days of receipt, complete and return the survey along with all documentation, details, and supporting materials required by the survey or otherwise necessary for the County to verify compliance with the terms and conditions of the Agreement. Failure to return the survey within the specified time period may result in the withholding of payment from the Contractor until such time as compliance with the terms of the Agreement can be verified. Verifying compliance may necessitate additional on-site reviews should information submitted by the Contractor be deemed insufficient or inaccurate.
- C) All files, records, documents, sites, and personnel are subject to review by representatives from County, State or Federal government.
- D) Upon notification of an exception or finding of non-compliance, the Contractor shall submit evidence of Corrective Action within thirty (30) days, or as otherwise specified in the notice of required corrective action provided by the County. Continued non-compliance beyond due date for submission of Corrective Action may lead to termination of this Agreement in accordance with the Article titled "Default, Termination, and Cancellation."
- E) Failure by County to notify or require Corrective Action does not constitute acceptance of the practice of waiver of the County's right to enforce.

## **ARTICLE VIII**

### **Nondiscrimination:**

- A) County may require Contractor's services on projects involving funding from various state and/or federal agencies, and as a consequence, Contractor shall comply with all applicable nondiscrimination statutes and regulations during the performance of this Agreement including but not limited to the following: Contractor and its employees and representatives shall not unlawfully discriminate against any employee or applicant for employment because of race,

religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age, or sex; Contractor shall, unless exempt, comply with the applicable provisions of the Fair Employment and Housing Act (Government Code, Sections 12900 et seq.) and applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Sections 7285.0 et seq.); the applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations incorporated into this Agreement by reference and made a part hereof as if set forth in full; and Title VI of the Civil Rights Act of 1964, as amended, the California Family Rights Act (Government Code Section 12945.2), the Unruh Civil Rights Act (California Civil Code, Division I, Part 2, Section 51, et seq), the Ralph Civil Rights Act (California Civil Code, Division I, Part 2, Section 51.7), the California Trafficking Victims Protection Act (California Civil Code, Division I, Part 2, Section 52.5), the Disabled Persons Act (California Civil Code, Division I, Part 2.5), and as applicable, Section 11135 et. seq., of the California Government Code, prohibiting discrimination in all state-funded programs. Contractor and its employees and representatives shall give written notice of their obligations under this clause as required by law.

- B) Where applicable, Contractor shall include these nondiscrimination and compliance provisions in any of its agreements that affect or are related to the services performed herein.
- C) Contractor's signature shall provide any certifications necessary under the federal laws, the laws of the State of California, including but not limited to Government Code Section 12990 and Title 2, California Code of Regulations, Section 11102.
- D) Contractor shall comply with **Exhibit A**, "Vendor Assurance of Compliance with the County of El Dorado Health and Human Services Agency Nondiscrimination in State and Federally Assisted Programs," attached hereto, incorporated by reference herein, and thus made a part hereof. Contractor shall acknowledge compliance by signing and returning **Exhibit A** upon request by County.

## **ARTICLE IX**

**Taxes:** Contractor certifies that as of today's date, it is not in default on any unsecured property taxes or other taxes or fees owed by Contractor to County. Contractor agrees that it shall not default on any obligations to County during the term of this Agreement.

## **ARTICLE X**

**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 XI**

**Contractor to County:** It is understood that the services provided under this Agreement shall be prepared in and with cooperation from County and its staff. It is further understood that this Agreement does not create an exclusive relationship between County and Contractor, and Contractor may perform similar work or services for others. However, Contractor shall not enter into any agreement with any other party, or provide any information in any manner to any other party, that would conflict with Contractor's responsibilities or hinder Contractor's performance of services



hereunder, unless County's Contract Administrator, in writing, authorizes that agreement or sharing of information.

## **ARTICLE XII**

**Confidentiality:** Contractor shall maintain the confidentiality and privileged nature of all records, including billing records, together with any knowledge therein acquired, in accordance with all applicable state and federal laws and regulations, as they may now exist or may hereafter be amended or changed. Contractor, and all Contractor's staff, employees, and representatives, shall not use or disclose, directly or indirectly at any time, any said confidential information, other than to County's Contract Administrator for the purpose of, and in the performance of, this Agreement. This confidentiality provision shall survive after the expiration or earlier termination of this Agreement.

## **ARTICLE XIII**

**HIPAA Compliance:** All data, together with any knowledge otherwise acquired by Contractor during the performance of services provided pursuant to this Agreement, shall be treated by Contractor and Contractor's staff as confidential information. Contractor shall not disclose or use, directly or indirectly, at any time any such confidential information. If Contractor receives any individually identifiable health information ("Protected Health Information" or "PHI"), Contractor shall maintain the security and confidentiality of such PHI as required by applicable laws and regulations, including the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the regulations promulgated thereunder.

## **ARTICLE XIV**

**Assignment and Delegation:** Contractor is engaged by County for its unique qualifications and skills as well as those of its personnel. Contractor shall not subcontract, delegate or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County.

In the event Contractor receives written consent to subcontract services under this Agreement, Contractor is required to ensure subcontractor remains in compliance with the terms and conditions of this Agreement. In addition, Contractor is required to monitor subcontractor's compliance with said terms and conditions, and provide written evidence of monitoring to County upon request.

## **ARTICLE XV**

**Independent Contractor:** The parties intend that an independent contractor relationship will be created by this contract. Contractor is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by the terms of this Agreement. Contractor exclusively assumes responsibility for acts of its employees, agents, affiliates, and subcontractors, if any are authorized herein, as they relate to the services or work to be performed under this Agreement during the course and scope of their employment by Contractor. Those persons will be entirely and exclusively under the direction, supervision, and control of Contractor.

County may designate the tasks to be performed and the results to be accomplished under this Agreement, provide information concerning the work or services, approve or disapprove the final

work product and/or services provided, and set deadlines for the completion of the work or services, but County will not control or direct the manner, means, methods, or sequence in which Contractor performs the work or services for accomplishing the results.

Contractor, including any subcontractor or employees of Contractor, shall not receive, nor be eligible for, any benefits County provides for its employees, including, but not limited to, vacation pay, paid holidays, life insurance, health insurance, social security, disability insurance, pension, or 457 plans. Contractor shall not receive, nor be eligible for, workers' compensation, including medical and indemnity payments. County is not responsible for withholding, and shall not withhold, Federal Income Contribution Act amounts or taxes of any kind from any payments which it owes Contractor. Contractor shall not be subject to the work schedules or vacation periods that apply to County employees.

Contractor shall be solely responsible for paying its employees, and for withholding Federal Income Contribution Act amounts and other taxes, workers' compensation, unemployment compensation, medical insurance, life insurance, or any other benefit that Contractor provides for its employees.

Contractor acknowledges that it has no authority to bind the County or incur any obligations on behalf of the County with regard to any matter, and shall not make any agreements or representations on the County's behalf.

## **ARTICLE XVI**

**Fiscal Considerations:** The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, El Dorado County is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment or services not budgeted in a given fiscal year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products or equipment subject herein. Such notice shall become effective upon the adoption of a final budget which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce, or order a reduction, in the budget for any County department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of the County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

## **ARTICLE XVII**

**Audit by California State Auditor:** Contractor 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, Contractor 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 XVIII**

### **Default, Termination, and Cancellation:**

- A. Termination by Default: If either party becomes aware of an event of default, that party shall give written notice of said default to the party in default that shall state the following:
1. The alleged default and the applicable Agreement provision.
  2. That the party in default has ten (10) days upon receiving the notice to cure the default (Time to Cure).

If the party in default does not cure the default within ten (10) days of the Time to Cure, then such party shall be in default and the party giving notice may terminate the Agreement by issuing a Notice of Termination. The party giving notice may extend the Time to Cure at their discretion. Any extension of Time to Cure must be in writing, prepared by the party in default for signature by the party giving notice, and must specify the reason(s) for the extension and the date in which the extension of Time to Cure expires.

If County terminates this Agreement, in whole or in part, for default:

1. County reserves the right to procure the goods or services, or both, similar to those terminated, from other sources and Contractor shall be liable to County for any excess costs for those goods or services. County may deduct from any payment due, or that may thereafter become due to Contractor, the excess costs to procure from an alternate source.
2. County shall pay Contractor the sum due to Contractor under this Agreement prior to termination, unless the cost of completion to County exceeds the funds remaining in the Agreement. In which case the overage shall be deducted from any sum due Contractor under this Agreement and the balance, if any, shall be paid to Contractor upon demand.
3. County may require Contractor to transfer title and deliver to County any completed work under the Agreement.

The following shall be events of default under this Agreement:

1. Failure by either party to perform in a timely and satisfactory manner any or all of its obligations under this Agreement.
2. A representation or warranty made by Contractor in this Agreement proves to have been false or misleading in any respect.
3. Contractor fails to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Agreement, unless County agrees, in writing, to an extension of the time to perform before that time period expires.
4. A violation of the Article titled "Conflict of Interest."

B. Bankruptcy: County may terminate this Agreement immediately in the case of bankruptcy, voluntary or involuntary, or insolvency of Contractor.

C. Ceasing Performance: County may terminate this Agreement immediately in the event Contractor ceases to operate as a business or otherwise becomes unable to substantially perform any term or condition of this Agreement.

D. Termination or Cancellation without Cause: County may terminate this Agreement, in whole or in part, for convenience upon thirty (30) calendar days' written Notice of Termination. If such termination is effected, County will pay for satisfactory services rendered before the effective date of termination, as set forth in the Notice of Termination provided to Contractor, and for any other services that County agrees, in writing, to be 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, Contractor 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 XIX**

**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 addressed as follows:

COUNTY OF EL DORADO  
Health and Human Services Agency  
3057 Briw Road, Suite B  
Placerville, CA 95667  
ATTN: Contracts Unit

or to such other location as the County directs.

with a copy to

COUNTY OF EL DORADO  
Chief Administrative Office  
Procurement and Contracts Division  
330 Fair Lane  
Placerville, CA 95667  
ATTN: Purchasing Agent

Notices to Contractor shall be addressed as follows:

STAPLES & ASSOCIATES, INC.  
dba STAPLES ENERGY  
9901 HORN ROAD, SUITE C  
SACRAMENTO, CA 95827  
ATTN: Nathan Baer, COO, Or successor

or to such other location as the Contractor directs.

#### **ARTICLE XX**

**Change of Address:** In the event of a change in address for Contractor's principal place of business, Contractor's Agent for Service of Process, or Notices to Contractor, Contractor shall notify County in writing pursuant to the provisions contained herein above under the Article titled "Notice to Parties." Said notice shall become part of this Agreement upon acknowledgment in writing by the County Contract Administrator, and no further amendment of the Agreement shall be necessary provided that such change of address does not conflict with any other provisions of this Agreement.

#### **ARTICLE XXI**

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

#### **ARTICLE XXII**

##### **Litigation:**

- A. County, promptly after receiving notice thereof, shall notify the Contractor in writing of the commencement of any claim, suit, or action against the County or State of California or its officers or employees for which the Contractor must provide indemnification under this Agreement. The failure of the County to give such notice, information, authorization, or assistance shall not relieve the Contractor of its indemnification obligations.
- B. Contractor, promptly after receiving notice thereof, shall immediately notify the County in writing of any claim or action against it which affects, or may affect, this Agreement, the terms and conditions hereunder, or the County or State of California, and shall take such action with respect to said claim or action which is consistent with the terms of this Agreement and the interest of the County and State.

#### **ARTICLE XXIII**

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

- A) Full Worker's Compensation and Employer's Liability Insurance covering all employees of Contractor as required by law in the State of California.
- B) Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000.00 aggregate limit.
- C) Automobile Liability Insurance of not less than \$1,000,000.00 is required in the event motor vehicles are used by the Contractor in the performance of the Agreement.
- D) In the event Contractor is a licensed professional or professional consultant, and is performing professional services under this Agreement, professional liability is required with a limit of liability of not less than \$1,000,000.00 per occurrence.
- E) Contractor 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.
- F) The insurance will be issued by an insurance company acceptable to Risk Management, or be provided through partial or total self-insurance likewise acceptable to Risk Management.
- G) Contractor 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, Contractor 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 Contractor agrees that no work or services shall be performed prior to the giving of such approval. In the event the 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.
- H) 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.
- I) The Contractor's insurance coverage shall be primary insurance as respects the 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 Contractor's insurance and shall not contribute with it.
- J) 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 Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- K) 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.
- L) 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.
- M) Contractor's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.

- N) 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.
- O) Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with Risk Management, as essential for protection of the County.

#### **ARTICLE XXIV**

**Force Majeure:** Neither party will be liable for any delay, failure to perform, or omission under this Agreement that is due to any cause that it is beyond its control, not due to its own negligence, and cannot be overcome by the exercise of due diligence. In that event, the affected party will:

1. Promptly give written notice to the other of the fact that it is unable to so perform and the cause(s) that is beyond its control; and
2. Once the cause(s) has ceased, provide written notice to the other party and immediately resume its performance under this Agreement.

For purposes of this Article, “cause that is beyond its control” includes labor disturbances, riots, fires, earthquakes, floods, storms, lightning, epidemics, war, disorders, hostilities, expropriation or confiscation of properties, failure of and delays by carriers, interference by civil or military authorities, whether legal or de facto, and whether purporting to act under some constitution, decree, or law, or otherwise, or acts of God.

#### **ARTICLE XXV**

**Waiver:** No failure on the part of the parties to exercise any rights under this Agreement, and no course of dealing with respect to any right hereunder, shall operate as a waiver of that right, nor shall any single or partial exercise of any right preclude the exercise of any other right. The remedies herein provided are cumulative and are not exclusive of any other remedies provided by law.

#### **ARTICLE XXVI**

**Conflict of Interest:** The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and Section 87100 relating to conflict of interest of public officers and employees. Contractor attests that it has no current business or financial relationship with any County employee(s) that would constitute a conflict of interest with provision of services under this contract and will not enter into any such business or financial relationship with any such employee(s) during the term of this Agreement. County represents that it is unaware of any financial or economic interest of any public officer or employee of Contractor relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement either party may immediately terminate this Agreement by giving written notice as detailed in the Article titled “Default, Termination and Cancellation.”

#### **ARTICLE XXVII**

**California Residency (Form 590):** If Contractor is a California resident, Contractors must file a State of California Form 590, certifying its California residency or, in the case of a corporation,

certifying that it has a permanent place of business in California. The Contractor will be required to submit a Form 590 prior to execution of an Agreement or County shall withhold seven (7) percent of each payment made to the Contractor during term of the Agreement. This requirement applies to any agreement/contract exceeding \$1,500.00.

#### **ARTICLE XXVIII**

**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 XXIX**

**County Business License:** County's Business License Ordinance provides that 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 business license unless exempt under County Ordinance Code Section 5.08.070. Contractor warrants and represents that it shall comply with all of the requirements of County's Business License Ordinance, where applicable, prior to beginning work under this Agreement and at all times during the term of this Agreement.

#### **ARTICLE XXX**

**Licenses:** Contractor hereby represents and warrants that Contractor and any of its subcontractors employed under this Agreement has all the applicable licenses, permits, and certifications that are legally required for Contractor and its subcontractors to practice its profession or provide the services or work contemplated under this Agreement in the State of California. Contractor and its subcontractors shall obtain or maintain said applicable licenses, permits, or certificates in good standing throughout the term of this Agreement.

#### **ARTICLE XXXI**

**Administrator:** The County Officer or employee with responsibility for administering this Agreement is Margaret Williams, Program Manager, Health and Human Services Agency, Community Services Division, or successor.

#### **ARTICLE XXXII**

**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 XXXIII**

**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 (Cal. Civ. Code §§ 1633.1 to 1633.17) as amended from time to time.

**ARTICLE XXXIV**

**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 XXXV**

**California Forum and Law:** 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 XXXVI**

**No Third Party Beneficiaries:** Nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this agreement.

**ARTICLE XXXVII**

**Counterparts:** This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

**ARTICLE XXXVIII**

**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.

**Requesting Contract Administrator Concurrence:**

By: \_\_\_\_\_  
Margaret Williams  
Program Manager, Community Services  
Health and Human Services Agency

Dated: \_\_\_\_\_

**Requesting Department Head Concurrence:**

By: \_\_\_\_\_  
Daniel Del Monte  
Interim Director  
Health and Human Services Agency

Dated: \_\_\_\_\_

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

**-- COUNTY OF EL DORADO --**

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Lori Parlin, Chair  
Board of Supervisors  
"County"

ATTEST:  
Kim Dawson  
Clerk of the Board of Supervisors

By: \_\_\_\_\_  
Deputy Clerk

Dated: \_\_\_\_\_

**-- CONTRACTOR --**

STAPLES & ASSOCIATES, INC.  
dba STAPLES ENERGY  
(A WISCONSIN CORPORATION)

By: \_\_\_\_\_  
Nathan Baer  
Managing Partner/COO  
"Contractor"

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Jessica Landrum  
Corporate Secretary  
"Contractor"

Dated: \_\_\_\_\_

(AMW)

**EXHIBIT A**  
**“VENDOR ASSURANCE OF COMPLIANCE WITH**  
**THE COUNTY OF EL DORADO HEALTH AND HUMAN SERVICES AGENCY**  
**NONDISCRIMINATION IN STATE**  
**AND FEDERALLY ASSISTED PROGRAMS”**

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NAME OF VENDOR/RECIPIENT: Staples & Associates, Inc. dba Staples Energy

HEREBY AGREES THAT it will comply with Title VI and VII of the Civil Rights Act of 1964 as amended; Section 504 of the Rehabilitation Act of 1973 as amended; the Age Discrimination Act of 1975 as amended; the Food Stamp Act of 1977, as amended and in particular section 272.6; Title II of the Americans with Disabilities Act of 1990; California Civil Code Section 51 et seq., as amended; California Government Code section 11135-11139.5, as amended; California Government Code section 12940 (c), (h) (1), (i), and (j); California Government Code section 4450; Title 22, California Code of Regulations section 98000 – 98413; Title 24 of the California Code of Regulations, Section 3105A(e); the Dymally-Alatorre Bilingual Services Act (California Government Code Section 7290-7299.8); Section 1808 of the Removal of Barriers to Interethnic Adoption Act of 1996; and other applicable federal and state laws, as well as their implementing regulations [including 45 Code of Federal Regulations (CFR) Parts 80, 84, and 91, 7 CFR Part 15, and 28 CFR Part 42], by ensuring that employment practices and the administration of public assistance and social services programs are nondiscriminatory, to the effect that no person shall because of ethnic group identification, age, sex, color, disability, medical condition, national origin, race, ancestry, marital status, religion, religious creed or political belief be excluded from participation in or be denied the benefits of, or be otherwise subject to discrimination under any program or activity receiving federal or state financial assistance; and HEREBY GIVE ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all federal and state assistance; and THE VENDOR/RECIPIENT HEREBY GIVES ASSURANCE THAT administrative methods/procedures which have the effect of subjecting individuals to discrimination or defeating the objectives of the California Department of Social Services (CDSS) Manual of Policies and Procedures (MPP) Chapter 21, will be prohibited.

BY ACCEPTING THIS ASSURANCE, the vendor/recipient agrees to compile data, maintain records and submit reports as required, to permit effective enforcement of the aforementioned laws, rules and regulations and permit authorized CDSS and/or federal government personnel, during normal working hours, to review such records, books and accounts as needed to ascertain compliance. If there are any violations of this assurance, CDSS shall have the right to invoke fiscal sanctions or other legal remedies in accordance with Welfare and Institutions Code section 10605, or Government Code section 11135-11139.5, or any other laws, or the issue may be referred to the appropriate federal agency for further compliance action and enforcement of this assurance.

THIS ASSURANCE is binding on the vendor/recipient directly or through contract, license, or other provider services, as long as it receives federal or state assistance.

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Date

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Signature

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Address of vendor/recipient

(08/13/01)