

El Dorado County Chamber of Commerce

El Dorado Stay & Play Shuttle

FUNDING AGREEMENT #470-F1611

THIS AGREEMENT, made and entered by and between the **El Dorado County Air Quality Management District**, a county air pollution control district formed pursuant to California Health and Safety Code section 40100, et seq. (hereinafter referred to as "AQMD"); and **El Dorado County Chamber of Commerce**, (hereinafter referred to as "Grantee");

WITNESSETH:

WHEREAS, the California Clean Air Act requires local air pollution control districts to reduce emissions from motor vehicles; and

WHEREAS, AB2766, codified in California Health and Safety Code section 44220, et seq., authorizes districts to impose a fee of up to four dollars upon certain registered motor vehicles within the AQMD, and the Governing Board of AQMD has imposed said fee; and

WHEREAS, said legislation requires AQMD to use said funds for activities related to reducing air pollution from motor vehicles and for related planning, monitoring, enforcement, and technical studies necessary for the implementation of the California Clean Air Act of 1988; and

WHEREAS, Grantee has proposed a Project that meets the eligibility criteria of AQMD and that has been approved by AQMD and the Governing Board of AQMD for funding; and

WHEREAS, Grantee represents that it is willing and able to perform the activities set forth herein;

NOW, THEREFORE, AQMD and Grantee mutually agree as follows:

ARTICLE I

Project: Grantee shall perform all activities and work necessary to complete the El Dorado Stay & Play Shuttle (hereinafter referred to as "Project"); as set forth in Exhibit A, marked "Scope of Work" attached hereto and incorporated herein by this reference. Grantee agrees to furnish all labor, materials, equipment, licenses, permits, fees, and other incidentals necessary to perform and complete, per schedule, in a professional manner, the services described herein.

Grantee represents that Grantee has the expertise necessary to adequately perform the Project specified in Exhibit A.

In the event of any conflict between or among the terms and conditions of this Agreement, the conflict shall be resolved by giving precedence in the following order of priority:

1. The text of this Agreement;
2. Exhibit A, Scope of Work;
3. Exhibit B, marked "Budget Itemization," attached hereto and incorporated herein by this reference.
4. Exhibit C, marked "Request for Proposals El Dorado County Air Quality Management District Motor Vehicle Emission Reduction Projects 2016 & 2017," attached hereto and incorporated herein by this reference (RFP) released by AQMD, and dated October 30, 2015; and

ARTICLE II

Period of Performance/Timetable: Grantee shall commence performance of work and produce all work products in accordance with Exhibit A unless this Agreement is terminated sooner as provided for in ARTICLE IX, Termination.

Grantee shall submit periodic performance reports and a comprehensive final report. The periodic reports shall detail the work performed during the previous period; work planned for the next period; problems identified, solved, and/or unresolved; and the percentage of each task completed. Grantee shall provide AQMD with a comprehensive final written report by February 28, 2018. Said final report shall be complete and shall document the work performed under this Agreement.

ARTICLE III

Term: The term of this Agreement shall be effective upon final execution by the parties and shall cover the period from March 8, 2016, through February 28, 2018, unless terminated earlier in accordance with ARTICLE IX, Termination. All eligible Project costs, except for final report preparation costs, must be incurred prior to December 31, 2017.

ARTICLE IV

Compensation: AQMD will pay Grantee for work completed in accordance with this Agreement the total sum of \$151,000.00 as set forth in Exhibit B as follows:

- A. Grantee shall obtain through other sources sufficient additional monies to fund the total cost of the Project as outlined in the Proposal. Satisfactory written evidence of such funding commitments shall be provided to AQMD prior to the release by AQMD of any funds under this Agreement. In the event funding from other sources for the total cost of the Project is not received by Grantee, AQMD reserves the right to terminate or renegotiate this Agreement. In accordance with Section 44233 of the California Health and Safety Code, Grantee agrees to limit expenditure of funds for the purpose of administration to not more than five percent of the monies distributed to Grantee.

- B. The total obligation of AQMD under this Agreement shall not exceed \$151,000.00.
- C. AQMD is not obligated to pay Grantee for administrative costs exceeding five (5) percent of the actual total cost of the Project.
- D. Match must be at least 20% of requested and awarded funding or at least 16.66% of total Project budget identified in the application.

ARTICLE V

Payments: Payments will be permitted only at which time an equivalent service has been completed. AQMD will reimburse Grantee monthly, in arrears, after receipt and verification of submitted invoices. Invoices shall be mailed to AQMD at the following address:

El Dorado County Air Quality Management District
330 Fair Lane, Bldg A
Placerville, CA 95667
Attn: Dave Johnston, Air Pollution Control Officer

Payment will be made by AQMD upon submission and evaluation of Grantee's invoice of claim. Said invoice of claim shall set forth the work completed pursuant to this Agreement.

Upon receipt of proper documentation and verification that Grantee has satisfactorily completed the work for which compensation is sought, and that the work is in accordance with Exhibit A, AQMD will issue payment to Grantee within forty-five (45) calendar days of verification.

The amount to be paid to Grantee under this Agreement includes all sales and use taxes incurred pursuant to this Agreement, if any, including any such taxes due on equipment purchased by Grantee. Grantee shall not receive additional compensation for reimbursement of such taxes and shall not decrease work to compensate therefore.

Concurrently with the submission of any claim for payment, Grantee shall certify (through copies of invoices issued, checks, receipts, and the like) that complete payment has been made to any and all subcontractors as provided.

It is understood that all expenses incidental to Grantee's performance of services under this Agreement shall be borne exclusively by Grantee.

In no event will compensation paid by AQMD to Grantee for the performance of all services and activities under this Agreement exceed the amount set forth ARTICLE IV, Compensation.

Any compensation under this Agreement, which is not expended by Grantee pursuant to the terms and conditions of this Agreement by the Project completion date, shall automatically revert to AQMD. Only expenditures incurred by the Grantee in the direct

performance of this Agreement will be reimbursed by AQMD. Allowable expenditures under this Agreement are specifically established and included in Exhibit B.

ARTICLE VI

Non-Allocation of Funds: The terms of this Agreement and the services to be provided thereunder are contingent on the approval of funds by the appropriating government agency. Should sufficient funds not be allocated, the services provided may be modified or this Agreement terminated at any time by giving Grantee thirty (30) days prior written notice.

ARTICLE VII

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 VIII

Independent Contractor Liability: Grantee is, and shall be at all times, deemed as an independent contractor and shall be wholly responsible for the acts of Grantee's employees, associates, and subcontractors, in connection with the implementation of the Project, and in performance of the work, duties and obligations by Grantee under this Agreement.

Grantee shall be responsible for performing the work under this Agreement in a safe, professional, skillful, and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. AQMD shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to Grantee or its employees. AQMD shall retain the right to administer this Agreement so as to verify that Grantee is performing its obligations in accordance with the terms and conditions thereof.

ARTICLE VIII, Independent Contractor Liability, shall survive any termination of this Agreement.

ARTICLE IX

Termination: AQMD may immediately suspend or terminate this Agreement, in whole or in part, where in the determination of AQMD there is:

1. An illegal or improper use of the grant funds;
2. A failure to comply with any term of this Agreement;
3. A substantially incorrect or incomplete report submitted to AQMD; or
4. Improperly performed services.

In no event shall any payment by AQMD constitute a waiver by AQMD of any breach of this Agreement or any default, which may then exist on the part of Grantee. Neither shall such payment impair or prejudice any remedy available to AQMD with respect to the breach or default. AQMD shall have the right to demand of Grantee the repayment to AQMD of any funds disbursed to Grantee under this Agreement which in the judgment of AQMD were not expended in accordance with the terms of this Agreement. Grantee shall promptly refund any such funds upon demand.

In addition to immediate suspension or termination, AQMD may impose any other remedies available at law, in equity, or otherwise specified in this Agreement.

Either party may terminate this Agreement at any time upon giving the other party at least thirty (30) days advance, written notice of intention to terminate. In such case, AQMD will, subject to ARTICLE IV, Compensation, pay its pro rata share of the reasonable value of all services satisfactorily rendered and actual, reasonable costs incurred up to the time of the termination. Upon such termination, the entire work product produced by Grantee shall be promptly delivered to AQMD.

ARTICLE X

Indemnity: Grantee shall defend, indemnify, and hold AQMD, its Board, officers, agents, employees, and representatives and the County of El Dorado, its Board, officers, agents, employees and representatives harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorneys' fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, AQMD and the County of El Dorado 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 Grantee, its officers, agents, subcontractors or employees in their performance of this Agreement unless such claim, loss, damage, injury or death is the result of the sole or active negligence of AQMD and the County of El Dorado. This duty of Grantee to indemnify and save AQMD and the County of El Dorado harmless includes the duties to defend set forth in California Civil Code, Section 2778.

This indemnification obligation shall survive any termination of this Agreement.

ARTICLE XI

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

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Grantee 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 aggregate limit.
- C. Automobile Liability Insurance of not less than \$1,000,000.00 is required in the event motor vehicles are used by Grantee in the performance of the Agreement.
- D. Grantee shall furnish a certificate of insurance satisfactory to the El Dorado County Risk Manager as evidence that the insurance required above is being maintained.

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- E. 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.
- F. Grantee 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, Grantee 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 the 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 Grantee agrees that no work or services shall be performed prior to the giving of such approval. In the event Grantee fails to keep in effect at all times insurance coverage as herein provided, AQMD may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.
- G. The certificate of insurance must include the following provisions stating that:
1. The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to AQMD and the County of El Dorado; and
 2. AQMD, its officers, officials, employees, and volunteers and 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.
- H. Grantee's insurance coverage shall be primary insurance as respects AQMD, its officers, officials, employees and volunteers and the County of El Dorado, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by AQMD, its officers, officials, employees or volunteers and the County of El Dorado, its officers, officials, employees or volunteers shall be excess of Grantee's insurance and shall not contribute with it.
- I. Any deductibles or self-insured retentions must be declared to and approved by AQMD and the County of El Dorado, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects AQMD, its officers, officials, employees, and volunteers and the County of El Dorado, its officers, officials, employees, and volunteers; or Grantee shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- J. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to AQMD, its officers, officials, employees or volunteers and the County of El Dorado, its officers, officials, employees or volunteers.
- K. The insurance companies shall have no recourse against AQMD, its officers and employees or any of them or 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.

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

ARTICLE XII

Audits, Inspections and Enforcement: Grantee shall at any time during regular business hours, and as often as AQMD may deem necessary, make available to AQMD for examination all of Grantee's records and data with respect to the matters covered by this Agreement. Grantee shall, and upon request by AQMD, permit AQMD to audit and inspect all of such records and data necessary to ensure Grantee's compliance with the terms of this Agreement. Grantee shall be subject to an audit by AQMD or its authorized representative to determine if the revenues received by Grantee were spent for the reduction of air pollution as provided in AB2766 and to determine whether said funds were utilized as provided by law and this Agreement. If, after audit, AQMD makes a determination that funds provided Grantee pursuant to this Agreement were not spent in conformance with this Agreement, or AB2766 or any other applicable provisions of law, Grantee agrees to immediately reimburse AQMD all funds determined to have been expended not in conformance with said provisions.

Grantee shall retain all records and data for activities performed under this Agreement for at least three (3) years from the date of final payment under this Agreement or until all state and federal audits are completed for that fiscal year, whichever is later.

Grantee 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, Grantee 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.

The obligations set forth in this ARTICLE XII, Audits, Inspections and Enforcement, shall survive any termination of this Agreement.

ARTICLE XIII

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 shall be in duplicate and addressed as follows:

To AQMD:
El Dorado County
Air Quality Management District
330 Fair Lane
Placerville, CA 95667

Attn: Dave Johnston
Air Pollution Control Officer

or to such other location as AQMD directs.

Notices to Grantee shall be addressed as follows:

El Dorado County Chamber of Commerce
542 Main Street
Placerville, CA 95667

Attn: Laurel Brent-Bumb
Chief Executive Officer

or to such other location as Grantee directs.

ARTICLE XIV

Change of Address: In the event of a change in address for Grantee's principal place of business, Grantee's Agent for Service of Process, or Notices to Grantee, Grantee shall notify AQMD in writing as provided in ARTICLE XIII, Notice to Parties. Said notice shall become part of this Agreement upon acknowledgment in writing by AQMD's 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 XV

Time is of the Essence: It is understood that for Grantee's performance under this Agreement, time is of the essence. The parties reasonably anticipate that Grantee shall, to the reasonable satisfaction of AQMD, complete all activities provided herein within the time schedule outlined in Exhibit A to this Agreement.

ARTICLE XVI

Compliance with Applicable Laws: Grantee shall comply with all federal, State, and local laws and ordinances which are or may be applicable to the Project to be undertaken by Grantee including but not limited to California Health and Safety Code sections 44220 et seq, all Air Resources Board and AQMD criteria thereunder, prevailing wage and work day definitions where applicable, Government Code Section 8546.7, contracting license requirements and permits.

ARTICLE XVII

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 XVIII

Contract Administrator: The AQMD Officer or employee with responsibility for administration of this Agreement is Dave Johnston, the Air Pollution Control Officer, or successor. The Grantee Officer or employee with responsibility for administration of this Agreement is Laurel Brent-Bumb, 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

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 XXI

Business License: 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 or City of South Lake Tahoe or City of Placerville business license unless exempt under County Code Section 5.08.070.

ARTICLE XXII

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. Grantee attests that it has no current business or financial relationship with any AQMD employee(s) that would constitute a conflict of interest with provision of services under this Agreement and will not enter into any such business or financial relationship with any such employee(s) during the term of this Agreement. AQMD represents that it is unaware of any financial or economic interest of any public officer or employee of Grantee 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 ARTICLE IX, Termination, herein.

ARTICLE XXIII

Interest of Public Official: No official or employee of AQMD who exercises any functions or responsibilities in review or approval of services to be provided by Grantee under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall

any such official or employee of AQMD have any interest, direct or indirect, in this Agreement or the proceeds thereof.

ARTICLE XXIV

Interest of Grantee: Grantee covenants that Grantee presently has no personal interest or financial interest, and shall not acquire same in any manner or degree, in either: 1) any other contract connected with or directly affected by the services to be performed by this Agreement; or, 2) any other entities connected with or directly affected by the services to be performed by this Agreement. Grantee further covenants that in the performance of this Agreement no person having any such interest shall be employed by Grantee.

ARTICLE XXV

Confidentiality: Grantee 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. Grantee, and all Grantee's staff, employees, and representatives, shall not use or disclose, directly or indirectly at any time, any said confidential information without prior written approval from AQMD except, other than to AQMD 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 XXVI

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

ARTICLE XXVII

Contractor to AQMD: It is understood that the services provided under this Agreement shall be prepared in and with cooperation from AQMD and its staff. It is further agreed that in all matters pertaining to this Agreement, Grantee shall act as Contractor only to AQMD and shall not act as contractor to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with Grantee's responsibilities to AQMD during term hereof.

ARTICLE XXVIII

California Residency (FORM 590): Grantee will submit a Form 590 prior to execution of this Agreement, or seven (7) percent of each payment made to Grantee will be withheld during the term of this Agreement. This requirement applies to any agreement/contract exceeding \$1,500.

ARTICLE XXIX

County Payee Data Record Form: Grantee shall file a County Payee Data Record Form with El Dorado County, unless Grantee has on file with El Dorado County a Department of the Treasury Internal Revenue Service Form W-9.

ARTICLE XXX

Binding on Successors: This Agreement, including all covenants and conditions contained therein, shall be binding upon and inure to the benefit of the parties, including their respective successors-in-interest, assigns, and legal representatives.

ARTICLE XXXI

No Third Party Beneficiaries: Except as otherwise provided in ARTICLE XII, Audits, Inspections and Enforcement, 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 XXXII

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 XXXIII

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 Department and Agreement Administrator Concurrence:

By: _____

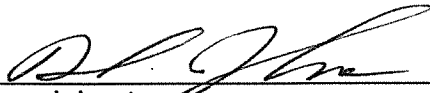

Dave Johnston
Air Pollution Control Officer

Dated: _____

5/10/16

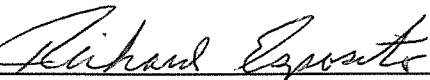
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below.

--COUNTY OF EL DORADO
AIR QUALITY MANAGEMENT DISTRICT--

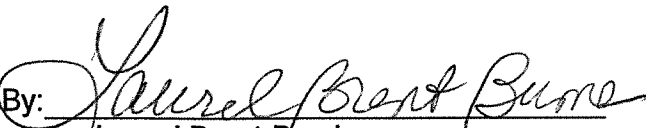
By: 
Dave Johnston
Air Pollution Control Officer
"AQMD"

Dated: 5/10/16

--EL DORADO COUNTY CHAMBER OF COMMERCE--

By: 
Richard Esposito
President
"Grantee"

Dated: 5/9/16

By: 
Laurel Brent-Burns
Chief Executive Officer and
Corporate Secretary

Dated: 5 9 16

EL DORADO COUNTY CHAMBER OF COMMERCE

EXHIBIT A

SCOPE OF WORK

Shuttle Operations

Grantee shall provide year round County visitor shuttle service to regional venues, destinations, events and attractions and comply with all applicable licensing requirements.

- 1) Grantee shall provide shuttle service from site of the World Gold Panning Championship, hotels and lodging facilities located within El Dorado County.
- 2) Grantee shall advertise the availability of the shuttle.
- 3) Grantee shall market shuttle service with local venues, hotels, and the public.
- 4) Grantee shall accept reservations by telephone, email/website, or social media.
- 5) Grantee shall post shuttle schedules and all reservations on website.
- 6) Grantee shall track and report number of roundtrip riders and shuttle mileage.
- 7) Grantee shall inform riders of transportation alternatives.

Acknowledgement

Grantee shall acknowledge grant funding by prominently posting the statement, "Shuttle service funded by a Grant from the El Dorado County Air Quality Management District", on:

- 1) All press releases and marketing activities.
- 2) All printed flyers.
- 3) El Dorado County Chamber of Commerce Website.

Reporting

Periodic performance reports shall be prepared by grantee and submitted to AQMD to document grant funded activities. Reports must provide sufficient information to allow AQMD to ensure project is on schedule and within parameters approved by AQMD. Reports shall include:

- 1) Agreement number, contractor name and reporting period.
- 2) Description of work completed arranged according to tasks in scope of work.
- 3) Payment request, itemization of expenditures and supporting documentation.
- 4) Documentation of marketing efforts with local venues, hotels, and the public.
- 5) Documentation of ridership and shuttle service mileage.
- 6) Description of work to be conducted during remainder of agreement term.
- 7) Any program improvement recommendations

A final comprehensive project report shall be prepared by grantee and submitted to AQMD by February 28, 2018.

El Dorado County Chamber of Commerce

Exhibit B

Budget Itemization

Line Item	Title/Classification	No. of Hours	Hourly Rate	Total Costs
			and Costs	
Personnel				
1	Coordinators	900	\$30	\$27,000
	Subtotal			\$27,000
Operations				
2	Contracted Transportation Services		\$106,000	\$106,000
3	Marketing, Advertising, Welcome Kits and Merchant fees		\$11,000	\$11,000
4	Administrative Costs including report preparation, accounting, payroll, utilities and leasing or renting space (limited to 5%)		\$7,000	\$7,000
	Subtotal		\$ 124,000	\$124,000
				\$151,000
Match				
5	Coordination & Cost Share contribution		\$14,000	\$14,000
6	In Kind Event Trans. Management	150	\$30	\$4,500
7	In Kind Volunteer	1260	\$10	\$12,600
8	Marketing and Advertising		\$2,500	\$2,500
				\$33,600
				\$184,600

The not-to-exceed amount of this Funding Agreement is \$151,000.00. The distribution of hours and expenses between staff and tasks are estimates only. This Exhibit represents the composition of the total not-to-exceed budget for the Funding Agreement. In the performance of the scope of services to be provided in accordance with this budget, Grantee may request to reallocate the hours and expenses listed herein among personnel and among the various tasks identified herein, so long as the total not-to-exceed amount is not exceeded and subject to Contract Administrator's written approval. In no event shall the "not-to-exceed" amount of this Funding Agreement be exceeded.

Exhibit C

Request for Proposals El Dorado County Air Quality Management District Motor Vehicle Emission Reduction Projects 2016 & 2017

Background

In 1990, Assembly Bill 2766 (AB 2766) was adopted into the California Health and Safety Code. AB 2766 authorized the Department of Motor Vehicles (DMV) to collect a motor vehicle registration clean air surcharge of \$4 per vehicle. Revenues generated from the surcharge are utilized by the Air Quality Management District (AQMD) for grant programs that reduce air pollution from motor vehicles in order to implement the California Clean Air Act and internal operations. Grant programs include alternative fueled vehicles, electric vehicle infrastructure, shuttles, park and ride facilities, bike trails, dirt road paving and others. Internal operations include planning, monitoring, enforcement and technical studies.

Purpose

This is a competitive grant program with the sole purpose of improving air quality. The AQMD's goal is to identify projects that reduce motor vehicle emissions at the lowest cost per ton of emissions reduced. Project information and cost-effectiveness rankings are then presented to the El Dorado County Air Quality Management District Board of Directors for award consideration. Grants funds are to subsidize emission reduction projects, not supplant existing normal operating expenses.

Grant Funding

Approximately \$600,000 will be available for the grant term, contingent upon Board of Directors approval. The Board of Directors reserves the right to approve proposals, reject proposals, or fund an amount less than the amount requested.

Matching Funds

Match must be at least 20% of requested and awarded funding or at least 16.66% of total project budget identified in the application.

Example: \$50,000 requested/awarded will require at least \$10,000 in match.

\$50,000 x 20% = \$10,000

\$10,000/\$60,000 = 16.66%

All applicants must contribute minimum matching funds equal to or greater than 20% of the grant amount requested. The Match Share requirement must be fulfilled after receiving the Notice to Proceed and throughout the grant term. The Match Share may be monetary and/or in-kind (non-dollar) contributions. Volunteer services are acceptable in-kind contributions and will be valued as the number of volunteer hours at the current State of California minimum hourly wage rate, or other appropriate rate if identified in the subsequent agreement. Other non-dollar contributions will be considered. The Match Share must be actual cost to the grant applicant of matching services.

Applicant Eligibility

El Dorado County jurisdictions including: cities, special districts, other political subdivisions and jurisdictions joined together by JPAs or MOUs, private companies, private individuals and

non-profit organizations are eligible to apply for these grants. Applicants may jointly submit regional project applications.

Eligible Project Examples (Other projects that reduce motor vehicle emissions are also encouraged)

Alternative Fuel Vehicle Infrastructure

1. Electric Vehicle Supply Equipment (EVSE) installation and upgrade.
2. Alternative gas or liquid fuel equipment installation and upgrade.

Fugitive PM10 Emission Reduction

Projects to reduce vehicle fugitive dust (PM10) emissions. Project examples include:

1. Paving unpaved public access road(s) that have an average of at least 100 one-way vehicle trips per day or serve a minimum of ten occupied residences.
2. Treatment of unpaved public access road(s) with a long-term (lasting at least one year) dust palliative (excluding oil and water). Eligible roads must have an average of at least 100 one-way vehicle trips per day or serve a minimum of ten occupied residences.
3. Signage to reduce speed on unpaved public access roads
4. Incremental cost of PM10 efficient street sweepers used on paved public roads

Public Education

The California Clean Air Act requires districts include a public education element in their attainment plans. Public education programs should deliver a focused message encouraging behavioral changes that reduce motor vehicle emissions. Project examples include:

1. Development/distribution of educational materials on how residents can improve air quality.
2. Development and distribution of educational materials to at-risk populations on the health impacts of poor air quality and how to avoid them.
3. Air quality curriculum development and implementation in school districts.

Vehicle Miles Traveled (VMT) Reduction

Projects to reduce motor vehicle trips by providing alternative methods of travel. Examples of these projects include:

1. Videoconferencing systems that reduce the vehicle trips of the public to public facilities
2. Construction of public park and ride facilities
3. Subsidies for new commuter vanpools
4. Construction of bike paths that serve schools or employment centers
5. Shuttle services

Vehicle Retrofit and Replacement

Projects that reduce mobile source tail pipe emissions by retrofit or replacement of vehicles and engines with eligible, new (2016 model or later) vehicles and engines, and related fueling infrastructure. Replaced vehicles and engines must be scrapped. Examples of these projects include:

1. Replacement of old light-duty motor vehicles (8500 lbs. or less) with a new light-duty electric, hybrid, alternative fuel or other low emitting vehicle that meets the zero emission vehicle (ZEV), alternative technology partial zero emission vehicle (ATPZEV), or partial zero emission vehicles (PZEV) standard.
2. Replacement of old medium-duty (8501 lbs – 14,000 lbs.) vehicles with new low emitting medium-duty vehicle that meets the ZEV or super low emission vehicles (SULEV) standard.

3. Replacement of an old heavy-duty vehicle (14,001 lbs or greater) with a low emission alternative fuel vehicle (AFV) of the same class.
4. Replacement of an old high emitting engine in a heavy-duty vehicle with a new alternative fueled low emitting engine.
5. Liquefied and compressed natural gas or electric vehicle infrastructure projects

Eligible Costs

Eligible costs are direct costs associated with implementing the project, which are incurred after receiving the Notice to Proceed and by the end of the grant term. AQMD reserves the right to make final determinations regarding cost eligibility for each project.

Ineligible Costs

Any costs not directly related to the project are ineligible for grant or matching funds. Ineligible costs using grant or matching funds including, but are not limited to:

- Costs not specifically identified in the Proposal, unless approved in writing by the Air Pollution Control Officer (APCO) prior to costs being incurred;
- Costs covered by another government grant, contract or loan;
- Expenses incurred for meetings, workshops, training not associated with the project;
- Personnel travel or per diem costs, unless approved in writing by the APCO prior to the costs being incurred;
- Food or beverages;
- Overhead expenses such as costs for utilities, office supplies, and other miscellaneous costs incurred during the project;
- Overtime costs (except for local government staffing during evening or weekend events when law or labor contract requires overtime compensation), unless approved in writing by the APCO prior to the costs being incurred.
- Any personnel costs not directly related to salaries and/or benefits;
- Any personnel costs incurred as a result of any employee assigned to the project funded by the grant while not actually working on the project (i.e., working on other tasks, use of accrued sick leave, vacation, etc.)
- Any costs not consistent with local, state, and federal guidelines and regulations;
- Interest charges or payments on bonds or indebtedness required to finance project costs;
- Fines or penalties due to violation of federal, state or local laws, ordinances or regulations;
- Cameras, cell phones, electronic personal data devices and/or pagers;
- Costs connected with contractor claims against the grantee; and
- Any costs not deemed appropriate by the APCO.

Audit Requirements

All grantees are required to comply with the following:

1. **Audit/Records Access:** Grantees agree that AQMD, El Dorado County Auditor, California Air Resources Board, Bureau of State Audits, or their designated representative(s) shall have the right to review and copy any records and supporting documentation pertaining to contract performance. Grantees agree to maintain such records for a minimum of three years after final payment, unless a longer period of records retention is stipulated, or until completion of any action and resolution of all issues which may arise as a result of any litigation, dispute or audit, whichever is later. Grantees agree to allow designated representative(s) access to such records during normal business hours and allow interviews of any employees who might reasonably have information related to such records. Further,

grantees agree to include a similar right to audit records and interview staff in any contract or subcontract related to contract performance.

2. **Personal Jurisdiction Waiver:** If as a result of an audit finding, AQMD seeks reimbursement of costs paid to a grantee, the grantee hereby waives any jurisdictional defenses as a defense to any action in any court of the State of California for recovery of such funds.

Payment of Grant Funds

Grant funds are paid on a reimbursement basis for the actual eligible costs directly related to the implementation of the project as approved in the Contract. All payment requests must include an itemization with documentation of claimed expenses (e.g., itemized receipts, proof of payment invoices, billable personnel hours, etc.).

A minimum of ten percent (10%) of documented expenses on each payment request must be applied to the match requirement. The AQMD shall not under any circumstances reimburse Contractor for commitments made by Contractor for services not performed or materials not received.

Reporting Requirements

The AB 2766 grant is performance based. Periodic performance reports are required to ensure projects are on schedule and within parameters approved by AQMD. A final report summarizing all grant activities is due February 28, 2018.

Grant Term

The grant term is from the Notice to Proceed date through December 31, 2017. Term may be shortened if all project activities will be completed well in advance of December 31, 2017. All costs must be incurred during this term. The final payment request is due February 28, 2018. Failure to submit final payment request and final report with appropriate documentation by the due date will result in Payment Request rejection and forfeiture of claims for costs incurred.

GRANT PROGRAM MILESTONES

Activity	Date
Request for Proposal Issued	10/30/15
Proposal Deadline (no extensions allowed)	12/18/15 at 5PM
Review and Ranking of Applications	January 2015*
Board Receives Proposals, Rankings and Awards Grants	February 2015*
Contract Preparation	March 2015*
AQMD Board Hearing to Approve Contracts	TBD 2015*
Grant Performance Period	Notice to Proceed – 12/31/17
Final Report and Payment Request Due	2/28/18

* Tentative

Proposals

Proposal submittal constitutes an agreement to all conditions set forth in the RFP. Proposals must include all required information, letters of support, and technical appendices as follows:

Project Summary (Attachment 1) - Provide basic information indicated, including a brief project overview.

Contents Checklist (Attachment 2) - Use the checklist sheet to ensure that all required proposal contents are included.

Authorization Letter/Resolution – For public agencies, provide governing body letter /resolution authorizing proposal submittal. Authorization must identify grant administrator. For joint proposals, the authorization must be signed by an authorized representative from each entity.

Project Description - Identify objectives and describe project scope of work.

Project Organization/Background - A description of your ability to implement project. Describe previous, similar, successful projects. If using sub-contractors, identify and state their qualifications. If sub-contractors have not been identified, state qualifications to be met.

Emission Benefits/Cost Effectiveness - Estimate total lifetime NOx, ROG, and PM-10 emission reductions. You must use any historical data on ridership, vehicle miles traveled, participation or other metric in the calculations. Calculations, assumptions and data necessary for estimates must be included in proposal and will be verified by AQMD staff. Automated Methods to Calculate Cost-Effectiveness and other cost-effectiveness analysis information is at: <http://www.arb.ca.gov/planning/tsaq/eval/eval.htm> Use **May 2013** emission factors found on that same webpage.

Work Statement - Describe work phases, tasks and deliverables in sequence. Include all relevant information regarding materials, equipment and personnel involved with the project.

Acknowledgment - All recipients must provide public acknowledgment that project was funded by AQMD with AB2766 Funds. Acknowledgments include placards on equipment, acknowledgment in a public education address or pamphlets, etc. Describe acknowledgment.

Funding Request/Breakdown of Cost - Include amount of money requested from AB2766 DMV Surcharge fund and total project cost. Estimate cost for each task. Identify source of funding for each task. Itemized any equipment to be purchased and the proportion of the cost of each piece of equipment to be paid with AB2766 DMV Surcharge funds. Grant funds may only be used to fund the portion of equipment's cost related to the provision of air quality benefit.

Matching Funds – State if matching funds are monetary or in-kind (non-dollar). AQMD staff will evaluate matching funds. Ineligible funds will not be used in cost-effectiveness determination. Provide proof (letter of commitment) that matching funds are available. Matching funds must be available when the grantee enters into contract with AQMD and must be used to fund project. If matching funds become unavailable, projects will be cancelled.

Monitoring Program - A monitoring program is required for all projects. Describe how project objectives will be measured and reported to the AQMD.

Evaluation

Proposals will be evaluated as described in Attachment 3.

Respondents are advised that:

- Responses will be accepted on a continuous basis after RFP is released up until the deadline.
- Incomplete responses will not be accepted.
- All components of the proposal are mandatory.
- Failure to include all requested information may result in rejection.
- Minor or inconsequential deviations may be waived by the Air Pollution Control Officer.
- AQMD reserves the right to reject any and all of the responses to the RFP.

Limitations:

This RFP does not commit AQMD to award contracts, pay any proposal presentation costs, or procure or contract for services or supplies. Respondents are entirely responsible for proposal development costs. All proposals become AQMD property and will not be returned.

Contacts:

Technical
Dave Johnston, Air Pollution Control Officer
Air Quality Management District
330 Fair Lane
Placerville, CA 95667
(530) 621-7578

Administrative
Michele Weimer
Community Development Agency
2850 Fairlane Court
Placerville, CA 95667
(530) 621-5670

Submission of Proposals:

Two copies of all responses to this RFP must be received in the Air Quality Management District office at 330 Fair Lane, Placerville, CA 95667. Responses must be marked **Attn. Adam Baughman, Time Critical, Please hand deliver.**

Proposal Withdrawal and Modifications

Applicants may withdraw their proposal by submitting a written request to the APCO, signed by the applicant or authorized agent at any time prior to the proposal submission deadline. The respondent may thereafter submit a new proposal prior to the deadline. Proposal modifications, oral or written, will not be considered after the deadline. Applicants are not to initiate contact with and lobby AQMD during the project evaluation phase about proposed projects.

Notification:

The AQMD will notify applicants within one week of AQMD Board of Directors decision.

Contract:

Projects chosen for funding will be required to enter into a contract with AQMD. Grantees must comply with County vendor and insurance requirements for service agreements. AQMD may require a proposal to be modified prior to being included as an attachment to a contract to help clarify the project commitment.

S:\GRANTS\DMV-2766\2014-2015\AB 2766 Request for Proposal 2014-2015.doc

Attachment 1

PROJECT SUMMARY

Applicant:

Contact Person:

Address:

Telephone:

FAX:

Email:

Project Description:

Estimated Emission Reductions/Cost-Effectiveness	
Useful Life of Project (years)	
Total Lifetime Emissions Reduced (lbs. of ROG, NO _x , PM-10)	
Cost-Effectiveness (total project costs)*	
Cost-Effectiveness (AQMD Funded project costs)*	

* See Attachment 3 for instructions

Budget Summary	AB 2766 Funds	Matching Funds	In-Kind Match	Total Project Costs
Materials	\$	\$	\$	\$
Personnel	\$	\$	\$	\$
Other	\$	\$	\$	\$
TOTAL	\$	\$	\$	\$

BUDGET ITEMIZATION

Expand Table as necessary to itemize all expenditures

Line Item	Title/Classification	No. Of Hours	Salary Rate	Benefit %	Total	Total Costs
Personnel						
Contracts (removal, transportation, disposal)						
Materials & Supplies						
Equipment Rental						
Other Costs						

PROJECT GRAND TOTAL: \$ _____

Attachment 2

CONTENTS CHECKLIST

Applicant: _____

- Project Summary Sheet (Cover) – page _____
- Request for Proposal Contents Checklist (Second Page) – page _____
- Authorization Letter/Resolution page _____
- Project Description – page _____
- Project Organization/Background – page _____
- Emission Benefits/Cost Effectiveness – page _____
(*Must utilize **May 2013** Emission Factors*)
- Work Statement – page _____
- Funding Request/Cost Breakdown – page _____
- Matching Funds – page _____
- Schedule of Deliveries/Self-Monitoring Program – page _____
- Local TRPA Review (If Applicable) – page _____
- 2 Copies of Proposal – page _____

Attachment 3

PROPOSAL EVALUATION CRITERIA

The following criteria are for reference only. AQMD staff will determine a score and make a recommendation to the AQMD Board of Directors. The Board of Directors will make the final award determinations. Applicants must provide sufficient, accurate data to allow AQMD staff to accurately evaluate cost effectiveness. Required data may include time of operation, ridership and vehicle miles traveled. Projects should be designed to achieve the maximum emission reduction at the lowest cost.

Cost Effectiveness - 90 Points

Cost effectiveness will be determined for total project costs (total of grant funds and matching funds):

<u>Points</u>	<u>\$/Pound of Motor Vehicle Pollutants</u>
90	\$0 - 10/lb.
80	\$10 - 25/lb.
70	\$25 - 50/lb.
60	\$50 - 75/lb.
50	\$75 - 125/lb.
40	\$125 - 200/lb.
30	\$200 - 400/lb.
20	\$400 - 999/lb
10	>\$1000/lb

Preferred Projects – 10 Points

Points are awarded for projects having benefits in addition to motor vehicle emissions reduction. Additional benefits include reduction of non motor vehicle emissions, such as burning, and projects that improve quality of life for County residents. Projects with additional benefits are:

- Projects that include new technology demonstration and introduction
- Enhanced Transit/Shuttle Service Projects
- Biomass Transport Reduction

If two or more projects receive the same score, priority will be given to the lowest cost project.

Attachment 4

SAMPLE CONTRACT

FUNDING AGREEMENT NO. #XXX-FXXX

This Agreement No. XXX-FXXX made and entered by and between the **EL DORADO COUNTY AIR QUALITY MANAGEMENT DISTRICT**, a county air pollution control district formed pursuant to California Health and Safety Code section 40100, et seq. (hereinafter referred to as "AQMD"); and **XYZ**, (hereinafter referred to as "CONTRACTOR");

WITNESSETH:

WHEREAS, the California Clean Air Act requires local air pollution control districts to reduce emissions from motor vehicles; and

WHEREAS, AB 2766, codified in California Health and Safety Code section 44220, et seq., authorizes districts to impose a fee of up to four dollars upon certain registered motor vehicles within AQMD, and the Governing Board of the AQMD has imposed said fee; and

WHEREAS, said legislation requires AQMD to use said funds for activities related to reducing air pollution from motor vehicles and for related planning, monitoring, enforcement, and technical studies necessary for the implementation of the California Clean Air Act of 1988; and

WHEREAS, CONTRACTOR has proposed a Project that meets the eligibility criteria of AQMD and that has been approved by AQMD and the Governing Board of AQMD for funding; and

WHEREAS, CONTRACTOR represents that it is willing and able to perform the activities set forth herein.

NOW, THEREFORE, AQMD and CONTRACTOR mutually agree as follows:

1) PROJECT

- a) CONTRACTOR shall perform all activities and work necessary to complete the *Project Description* (hereinafter referred to as "Project"); as set forth in the fully described "Proposal" attached hereto as Exhibit A and incorporated herein by this reference. CONTRACTOR agrees to furnish all labor, materials, equipment, licenses, permits, fees, and other incidentals necessary to perform and complete, per schedule, in a professional manner, the services described herein. CONTRACTOR represents that CONTRACTOR has the expertise necessary to adequately perform the Project specified in said Proposal.
- b) In the event of any conflict between or among the terms and conditions of this Agreement, the Proposal incorporated herein, and the documents referred to and incorporated herein, such conflict shall be resolved by giving precedence in the following order of priority:
- i) To the text of this Agreement;
 - ii) To the "Motor Vehicle Emission Reduction Projects Request for Proposals" (RFP) released by AQMD and dated October 30, 2015.

2) PERIOD OF PERFORMANCE/TIMETABLE

- a) CONTRACTOR shall commence performance of work and produce all work products in accordance with the Work Statement and deadlines for performance identified in Exhibit A, unless this Agreement is terminated sooner as provided for elsewhere in this Agreement.
- b) CONTRACTOR shall submit quarterly performance reports and a comprehensive final report. The quarterly reports shall detail the work performed during the previous quarter; work planned for the next quarter; problems identified, solved, and/or

unresolved; and the percentage of each task completed. Quarterly reports shall be due 30 days after the end of the previous calendar quarter. CONTRACTOR shall provide AQMD with a comprehensive final written report by February 28, 2018. Said final report shall be complete and shall document the work performed under this Agreement.

3) TERM

The term of this Agreement shall be for the period of March 1, 2016 through December 31, 2017 unless terminated earlier in accordance with Article 7, Termination. All eligible project costs, except for final report preparation costs, must be incurred prior to December 31, 2015.

4) COMPENSATION

a) AQMD will pay CONTRACTOR for work completed in accordance with this Agreement the sum of XXX DOLLARS AND NO CENTS (\$XX) as follows:

i) CONTRACTOR shall obtain through other sources sufficient additional monies to fund the total cost of the Project as outlined in the Proposal. Satisfactory written evidence of such funding commitments shall be provided to AQMD prior to the release by AQMD of any funds under this Agreement. In the event funding from other sources for the total cost of the Project is not received by CONTRACTOR, AQMD reserves the right to terminate or renegotiate this Agreement. In accordance with Section 44233 of the California Health and Safety Code, CONTRACTOR agrees to limit expenditure of funds for the purpose of administration to not more than five percent of the monies distributed to CONTRACTOR.

ii) The total obligation of AQMD under this Agreement shall not exceed xxx DOLLARS AND NO CENTS (\$xx).

iii) AQMD is not obligated to pay CONTRACTOR for administrative costs exceeding five percent of the actual total cost of the Project.

b) PAYMENTS

i) Advance payments shall not be permitted. Payments will be permitted only at which time an equivalent service has been completed. AQMD shall reimburse CONTRACTOR quarterly, in arrears, after receipt and verification of submitted invoices. Invoices shall be mailed to AQMD at the following address:

El Dorado County Air Quality Management District
ATTN: Dave Johnston, Air Pollution Control Officer
330 Fair Lane, Bldg A
Placerville, CA 95667

Payment shall be made to CONTRACTOR by AQMD upon submission and evaluation of the CONTRACTOR'S invoice of claim. Said invoice of claim shall set forth the work completed pursuant to this Agreement.

ii) Upon receipt of proper documentation, and verification that CONTRACTOR has satisfactorily completed the work for which compensation is sought and that the work is in accordance with the Proposal (Exhibit A) attached hereto, AQMD will issue payment to CONTRACTOR within forty five (45) calendar days of verification.

iii) The amount to be paid to CONTRACTOR under this Agreement includes all sales and use taxes incurred pursuant to this Agreement, if any, including any such taxes due on equipment purchased by the CONTRACTOR. CONTRACTOR shall not receive additional compensation for reimbursement of such taxes and shall not decrease work to compensate therefore.

- iv) Concurrently with the submission of any claim for payment, CONTRACTOR shall certify (through copies of invoices issued, checks, receipts, and the like) that complete payment has been made to any and all subcontractors as provided.
- v) It is understood that all expenses incidental to CONTRACTOR'S performance of services under this Agreement shall be borne exclusively by CONTRACTOR.
- vi) In no event shall compensation paid by AQMD to CONTRACTOR for the performance of all services and activities under this Agreement exceed the amount set forth in section 4(a) above.

c) **SURPLUS FUNDS**

Any compensation under this Agreement, which is not expended by CONTRACTOR pursuant to the terms and conditions of this Agreement by the Project completion date, shall automatically revert to AQMD. Only expenditures incurred by the CONTRACTOR in the direct performance of this Agreement will be reimbursed by AQMD. Allowable expenditures under this Agreement are specifically established and included in the Proposal (Exhibit A).

d) **CLOSEOUT PERIOD**

All final claims shall be submitted by CONTRACTOR within sixty (60) days following the final month of activities for which payment is claimed. No action will be taken by AQMD on claims submitted beyond the 60-day closeout period.

5) NON-ALLOCATION OF FUNDS

The terms of this Agreement and the services to be provided thereunder are contingent on the approval of funds by the appropriating government agency. Should sufficient

funds not be allocated, the services provided may be modified or this Agreement terminated at any time by giving CONTRACTOR thirty (30) days prior written notice.

6) INDEPENDENT CONTRACTOR LIABILITY

- a) CONTRACTOR is, and shall be at all times, deemed as an independent contractor and shall be wholly responsible for the acts of CONTRACTOR'S employees, associates, and subcontractors, in connection with the implementation of the Project, and in performance of the work, duties and obligations by CONTRACTOR under this Agreement.
- b) CONTRACTOR shall be responsible for performing the work under this Agreement in a safe, professional, skillful, and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. AQMD shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to CONTRACTOR or its employees. AQMD shall retain the right to administer this Agreement so as to verify that CONTRACTOR is performing its obligations in accordance with the terms and conditions thereof.
- c) Section 6 shall survive any termination of this Agreement.

7) TERMINATION

- a) BREACH OF AGREEMENT
 - i) AQMD may immediately suspend or terminate this Agreement, in whole or in part, where in the determination of AQMD there is:
 - (1) An illegal or improper use of funds;
 - (2) A failure to comply with any term of this Agreement;
 - (3) A substantially incorrect or incomplete report submitted to AQMD; or

- (4) Improperly performed services.
 - ii) In no event shall any payment by AQMD constitute a waiver by AQMD of any breach of this Agreement or any default, which may then exist on the part of CONTRACTOR. Neither shall such payment impair or prejudice any remedy available to AQMD with respect to the breach or default. AQMD shall have the right to demand of CONTRACTOR the repayment to AQMD of any funds disbursed to CONTRACTOR under this Agreement which in the judgment of AQMD were not expended in accordance with the terms of this Agreement. CONTRACTOR shall promptly refund any such funds upon demand.
 - iii) In addition to immediate suspension or termination, AQMD may impose any other remedies available at law, in equity, or otherwise specified in this Agreement.
- b) WITHOUT CAUSE
- i) Either party may terminate this Agreement at any time upon giving the other party at least thirty (30) days advance, written notice of intention to terminate. In such case, AQMD shall, subject to Section 4 Compensation, pay its pro rata share of the reasonable value of all services satisfactorily rendered and actual, reasonable costs incurred up to the time of the termination. Upon such termination, the entire work product produced by CONTRACTOR shall be promptly delivered to AQMD.

8) **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.

9) INDEMNIFICATION

- a) CONTRACTOR shall defend, indemnify, and hold AQMD, its Board, officers, agents, and employees harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorneys fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, AQMD 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, its officers, agents, subcontractors or employees in their performance of this Agreement unless such claim, loss, damage, injury or death is the result of the sole or active negligence of AQMD. This duty of CONTRACTOR to indemnify and save AQMD harmless includes the duties to defend set forth in California Civil Code, Section 2778.
- b) This indemnification obligation shall survive any termination of this Agreement.

10) INSURANCE

- a) CONTRACTOR shall provide proof of a policy of insurance satisfactory to the El Dorado County Risk Manager and documentation evidencing that CONTRACTOR maintains insurance that meets the following requirements:
- i) Full Workers' Compensation and Employers' Liability Insurance covering all employees of CONTRACTOR as required by law in the State of California.
- ii) 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 aggregate limit.

- iii) Automobile Liability Insurance of not less than \$1,000,000.00 is required in the event motor vehicles are used by CONTRACTOR in the performance of the Agreement.
- iv) CONTRACTOR shall furnish a certificate of insurance satisfactory to the El Dorado County Risk Manager as evidence that the insurance required above is being maintained.
- v) 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.
- vi) 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 the 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 CONTRACTOR fails to keep in effect at all times insurance coverage as herein provided, AQMD may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.
- vii) The certificate of insurance must include the following provisions stating that:
 - (1) The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to AQMD, and;

- (2) AQMD, 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.
- viii) CONTRACTOR's insurance coverage shall be primary insurance as respects AQMD, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by AQMD, its officers, officials, employees or volunteers shall be excess of CONTRACTOR's insurance and shall not contribute with it.
- ix) Any deductibles or self-insured retentions must be declared to and approved by AQMD, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects AQMD, its officers, officials, employees, and volunteers; or CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- x) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to AQMD, its officers, officials, employees or volunteers.
- xi) The insurance companies shall have no recourse against AQMD, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- xii) CONTRACTOR's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
- xiii) 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.

11) AUDITS AND INSPECTIONS

- a) CONTRACTOR shall at any time during regular business hours, and as often as AQMD may deem necessary, make available to AQMD for examination all of CONTRACTOR'S records and data with respect to the matters covered by this Agreement. CONTRACTOR shall, and upon request by AQMD, permit AQMD to audit and inspect all of such records and data necessary to ensure CONTRACTOR'S compliance with the terms of this Agreement. CONTRACTOR shall be subject to an audit by AQMD or its authorized representative to determine if the revenues received by CONTRACTOR were spent for the reduction of air pollution as provided in AB 2766 and to determine whether said funds were utilized as provided by law and this Agreement. If, after audit, AQMD makes a determination that funds provided CONTRACTOR pursuant to this Agreement were not spent in conformance with this Agreement, or AB 2766 or any other applicable provisions of law, CONTRACTOR agrees to immediately reimburse AQMD all funds determined to have been expended not in conformance with said provisions.
- b) CONTRACTOR shall retain all records and data for activities performed under this Agreement for at least three (3) years from the date of final payment under this Agreement or until all state and federal audits are completed for that fiscal year, whichever is later.
- c) Because this Agreement exceeds Ten Thousand Dollars (\$10,000), 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.

d) The obligations set forth in this section shall survive any termination of this Agreement.

12) NOTICES 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 shall be in duplicate and addressed as follows:

CONTRACTOR

AQMD

El Dorado County
Air Quality Management District
330 Fair Lane
Placerville, CA 95667
Attn: Air Pollution Control Officer

13) 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 AQMD in writing as provided in Section 12 Notices to Parties, Notice to Parties. Said notice shall become part of this Agreement upon acknowledgment in writing by AQMD's 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.

14) TIME IS OF THE ESSENCE

It is understood that for CONTRACTOR'S performance under this Agreement, time is of the essence. The parties reasonably anticipate that CONTRACTOR will, to the reasonable satisfaction of AQMD, complete all activities provided herein within the time schedule outlined in the Proposals to this Agreement.

15) COMPLIANCE WITH APPLICABLE LAWS

CONTRACTOR will comply with all federal, State, and local laws and ordinances which are or may be applicable to the PROJECT to be undertaken by CONTRACTOR including but not limited to California Health and Safety Code sections 44220 et seq, all Air Resources Board and AQMD criteria there under, prevailing wage and work day definitions where applicable, Government Code Section 8546.7, contracting license requirements and permits.

16) NO THIRD-PARTY BENEFICIARIES

Except as otherwise set forth herein, nothing in this Agreement shall be construed to create any rights of any kind or nature in any other party not a named party to this Agreement.

17) 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.

18) 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.

19) CONTRACT ADMINISTRATOR

The AQMD Officer or employee with responsibility for administration of this Agreement is Dave Johnston, the Air Pollution Control Officer or his successor. The CONTRACTOR Officer or employee with responsibility for administration of this Agreement is *Name*, or his successor.

20) 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.

21) 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.

22) BUSINESS LICENSE

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 or City of

South Lake Tahoe or City of Placerville business license unless exempt under County Code Section 5.08.070.

23) BINDING ON SUCCESSORS

This Agreement, including all covenants and conditions contained therein, shall be binding upon and inure to the benefit of the parties, including their respective successors-in-interest, assigns, and legal representatives.

REQUESTING CONTRACT ADMINISTRATOR CONCURRENCE:

By: _____ **Dated:** _____

**Dave Johnston
Air Pollution Control Officer
El Dorado County Air Quality Management District**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first herein below written.

CONTRACTOR

**AQMD
EL DORADO COUNTY
AIR QUALITY MANAGEMENT DISTRICT**

Date: _____

Date: _____

By: _____

By: _____

**Name
Title**

**Ron Briggs,
Chair
Board of Directors**

**Attest:
Jim Mitrison,
Clerk of the Board**

Date: _____

By: _____