

Five Star Automotive

AGREEMENT FOR SERVICES # AGMT 12-53388

THIS AGREEMENT, made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County"), and Five Star Automotive, a general partnership duly qualified to conduct business in the State of California, whose principal place of business address is 2119 Ruth Avenue, South Lake Tahoe, California 96150 (hereinafter referred to as "Contractor");

RECITALS

WHEREAS, County has determined that it is necessary to obtain a Contractor to provide automotive repair and maintenance services on an on-call basis for County vehicles in the South Lake Tahoe basin;

WHEREAS, Contractor has represented to County that it is specially trained, experienced, expert, and competent to perform the special services required hereunder, and County has determined to rely upon such representations;

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

WHEREAS, County has determined that the provision of such services provided by Contractor are in the public's best interest, and authorized by 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 agrees to furnish materials, supplies, parts, equipment, personnel, subcontractors and services necessary to provide on-call automotive repair and maintenance services for County vehicles in the South Lake Tahoe basin. Services shall include, but not be limited to, preventive maintenance; tune-ups; engine overhauls; smog inspections; windshield and glass repairs or replacements; tire mounting, installation, balancing, studding and repairs; alignments; minor body repairs; and maintenance and repair of brakes, air conditioning systems, electrical systems, suspension systems, engine cooling systems, transmissions and clutches. Hazardous materials generated in the performance of services under this Agreement shall be properly disposed of by Contractor in accordance with all federal, state and local regulations.

For each on-call work assignment, Contractor will provide a written quote to the Contract Administrator. Upon receipt and approval of each quote, the Contract Administrator will issue a separate written Work Order to Contractor identifying the specific vehicle or equipment to be repaired, a description of the work, a specific date by

which the work shall be completed, identification of subcontractors, if applicable, any deliverables, including reports or other documents to be supplied in connection with the work, and a not-to-exceed cost to complete the work. Contractor shall not commence work until receiving the written Work Order. No payment will be made for any work performed prior to the issuance of the written Work Order.

All of the services included in this Article are the responsibility of Contractor, unless specifically described as a task or item of work to be provided by County. Contractor shall be responsible for the supervision, administration and work performed by any subcontractor for services rendered under this Agreement.

ARTICLE II

Term: This Agreement shall become effective on March 23, 2012 and shall expire on March 22, 2013.

ARTICLE III

Compensation for Services: For services provided herein including any deliverables or reports that may be identified in the individual Work Orders issued pursuant to this Agreement, County agrees to pay Contractor upon the satisfactory completion and acceptance of each work assignment monthly in arrears. Payment shall be made within thirty (30) days following County receipt and approval of itemized invoices detailing services rendered.

For the purposes hereof, the billing rates shall be in accordance with Exhibit A, marked "Fee Schedule," incorporated herein and made by reference a part hereof.

The total amount of this Agreement inclusive of all work of subcontractors, costs, expenses and Work Orders shall not exceed \$150,000.

Itemized invoices shall follow the format specified by County and shall reference this Agreement number and the County-supplied Work Order number both on their faces and on any enclosures or backup documentation. Invoices which include charges for subcontractors or freight fees based on Contractor's cost shall be accompanied by backup documentation to substantiate Contractor's actual costs for the items billed. Copies of documentation attached to invoices shall reflect Contractor's charges for the specific services billed on those invoices. Contractor shall bill County for only one (1) Work Order per invoice. Invoices shall be mailed to County at the following address:

County of El Dorado
Department of Transportation
2850 Fairlane Court
Placerville, California 95667
Attn.: Administration Division – Accounts Payable

or to such other location as County directs.

In the event that Contractor fails to deliver the documents or other deliverables required by the individual Work Orders issued pursuant to this Agreement, 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 Article XII, Default, Termination, and Cancellation.

ARTICLE IV

Records Examination and Audit Requirements: Contractor and its subcontractors, if any are authorized hereunder, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the Contract, including but not limited to, the costs of administering the various aspects of the Contract. In accordance with Government Code Section 8546.7, all of the above-referenced parties shall make such materials available at their respective offices at all reasonable times during the contract period and for three (3) years from the date that final payment by County and all other pending matters are closed. Representatives of County, the State Auditor, and any duly authorized representative of other government agencies shall have access to any books, documents, papers and records that are pertinent to the Contract for audit, examination, excerpts, and transactions and copies thereof shall be furnished upon request.

ARTICLE V

Contractor's Project Manager: Contractor designates Steven H. Curtis, General Partner, as its Project Manager for this Agreement. Contractor's Project Manager, or County-approved designee, shall be accessible to County's Contract Administrator, or designee, during normal County working hours and shall respond within twenty-four (24) hours to County inquiries or requests. Contractor's Project Manager shall be responsible for all matters related to Contractor's personnel, operations and any subcontractors authorized under individual Work Orders issued including, but not limited to (1) assigning qualified personnel to perform the work and to prepare the deliverables required by the Work Orders; and (2) reviewing, monitoring, training and directing Contractor's personnel and any subcontractors authorized herein.

ARTICLE VI

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. There shall be no change in Contractor's Project Manager or subcontractors, which shall be established at the issuance of the written Work Orders issued pursuant to this Agreement, without prior written approval by County's Contract Administrator.

ARTICLE VII

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 agreed that in all matters pertaining to this Agreement, Contractor shall act as Contractor only to County 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 Contractor's responsibilities to County during the term hereof.

ARTICLE VIII

Confidentiality: Contractor and its subcontractors, if any are authorized herein, 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 including any subcontractors authorized under the individual Work Orders issued pursuant to this Agreement, shall not use or disclose, directly or indirectly at any time, any said confidential information, other than to County's Department of Transportation 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 IX

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. Notwithstanding this Article, Contractor is authorized to utilize the specific subcontractors authorized in individual Work Orders issued pursuant to this Agreement, for the particular tasks, work and deliverables identified therein. An approved Work Order identifying any authorized subcontractors shall be obtained by Contractor prior to a subcontractor commencing any work under this Agreement. At no time shall County be obligated to pay separately for subcontractor services. Contractor shall require each subcontractor, to the extent of the work to be performed by the subcontractor, to be bound to Contractor by the terms of this Agreement and to assume toward Contractor all of the obligations and responsibilities that Contractor, by this Agreement, assumes toward County.

ARTICLE X

Independent Contractor/Liability: 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, associates, and subcontractors, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

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 and subcontractors. County 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.

ARTICLE XI

Fiscal Considerations: The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, 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 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 County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

ARTICLE XII

Default, Termination, and Cancellation:

- A. Default: Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (Time to Cure), then such party shall be in default. The Time to Cure may be extended at the discretion of the party giving notice. 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.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the Time to Cure has expired.

- B. Bankruptcy: This Agreement, at the option of County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Contractor.

- C. **Ceasing Performance:** County may terminate this Agreement 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 or any individual Work Orders issued pursuant to the Agreement in whole or in part upon seven (7) calendar days' written notice by County for any reason. If such prior termination is effected, County will pay for satisfactory services rendered prior to the effective dates, as set forth in the Notice of Termination provided to Contractor, and for such other services which County may agree to in writing as necessary for contract resolution. In no event, however, shall County be obligated to pay more than the not-to-exceed amount of the Work Order or the total amount of the contract, as applicable. 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. In the event of termination for default, County reserves the right to take over and complete the work by contract or by any other means.

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 to County shall be in duplicate and addressed as follows:

<p>To County:</p> <p>County of El Dorado Department of Transportation 2441 Headington Road Placerville, California 95667</p> <p>Attn.: Tom Celio Deputy Director Maintenance and Operations</p>	<p>With a Copy To:</p> <p>County of El Dorado Department of Transportation 2850 Fairlane Court Placerville, California 95667</p> <p>Attn.: Janel Gifford Office Engineer/Contract Services Unit</p>
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or to such other location as County directs.

Notices to Contractor shall be in duplicate and addressed as follows:

<p>To Contractor:</p> <p>Five Star Automotive 2119 Ruth Avenue South Lake Tahoe, California 96150</p> <p>Attn.: Steven N. Curtis General Partner</p>	<p>With a Copy To:</p> <p>Five Star Automotive 2119 Ruth Avenue South Lake Tahoe, California 96150</p> <p>Attn.: Nancy J. Curtis General Partner</p>
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or to such other location as Contractor directs.

ARTICLE XIV

Indemnity: Contractor shall defend, indemnify, and hold County and its 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, 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 Contractor's services, operations or performance hereunder, regardless of the existence or degree of fault or negligence on the part of County, Contractor, subcontractor(s) and employee(s) of any of these, except for the sole, or active negligence of County, its officers, agents, employees and representatives, or as expressly provided 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 XV

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

- A. Full Workers' Compensation and Employers' 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 combined single limit per occurrence for bodily injury and property damage, including but not limited to endorsements for the following coverage: premises, personal injury, operations, products and completed operations, blanket contractual, and independent contractors' liability.
- C. Automobile Liability Insurance of not less than \$1,000,000 is required in the event motor vehicles are used by Contractor in performance of the Agreement.
- D. In the event Contractor is a licensed professional and is performing professional services under this Agreement, Professional Liability Insurance is required with a limit of liability of not less than \$1,000,000.
- E. Contractor shall furnish a certificate of insurance satisfactory to County's Risk Management Division as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to County's Risk Management Division, or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.
- G. Contractor agrees that the insurance required herein 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 contract, Contractor shall immediately provide a new certificate of insurance as evidence of the required insurance coverage. In the event 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 contract upon the occurrence of such event. New certificates of insurance are subject to the approval of County's Risk Management Division, and Contractor agrees that no work or services shall be performed prior to the giving of such approval.

- H. The certificate of insurance must include the following provisions stating that:
 - 1. The insurer will not cancel the insured's coverage without 30-day prior written notice to County; and
 - 2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, but only insofar as the operations under this Agreement are concerned. This provision shall apply to all general and excess liability insurance policies.
- I. Contractor's insurance coverage shall be primary insurance as respects County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, employees, or volunteers shall be in excess of Contractor's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to, and approved, by County. At the option of County, either: The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects County, its officers, officials, employees, and volunteers; or 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 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 the 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. The certificate of insurance shall meet such additional standards as may be determined by the contracting County department, either independently or in consultation with County's Risk Management Division as essential for protection of County.

In addition, Contractor shall ensure that all subcontractors authorized herein maintain workers' compensation, general liability, automobile liability and professional liability insurance as specified above and shall provide County with proof of same.

ARTICLE XVI

Licenses: Contractor warrants and represents that it and any subcontractors authorized under this Agreement are properly certified, registered and/or licensed to provide the services contemplated under this Agreement. Contractor further warrants and represents that it holds a valid California license pursuant to California Department of Consumer Affairs Bureau of Automotive Repair regulations, that its license is in good standing and that it possesses an Automobile Repair Dealer License as required by the categories and types of work to be performed under this Agreement. Contractor and all subcontractors authorized pursuant to this Agreement shall maintain such certifications, registrations and licenses in good standing throughout the term of this Agreement.

ARTICLE XVII

Environmental and Toxic Warranty: Contractor warrants that its operations concerning the services and materials provided under this Agreement are not and will not be in violation of any applicable environmental federal, state, or local statute, law, or regulation dealing with hazardous materials substances or toxic substances.

ARTICLE XVIII

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

ARTICLE XIX

Interest of Contractor: Contractor covenants that Contractor 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. Contractor further covenants that in the performance of this Agreement no person having any such interest shall be employed by Contractor.

ARTICLE XX

California Residency (Form 590): All independent Contractors providing services to County must file a State of California Form 590, certifying their California residency or, in the case of a corporation, certifying that they have a permanent place of business in California. Contractor will be required to submit a Form 590 prior to execution of this Agreement, or County shall withhold seven (7) percent of each payment made to

Contractor during the term of this Agreement. This requirement applies to any agreement/contract exceeding \$1,500.

ARTICLE XXI

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 Data Record Form with County.

ARTICLE XXII

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 prior to beginning work under this Agreement and at all times during the term of this Agreement.

ARTICLE XXIII

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 XXIV

Year 2000 Compliance: Contractor agrees that all hardware and software developed, distributed, installed, programmed, or employed as a result of this order will comply with ISO 9000 date format to correctly manipulate and present date-sensitive data.

Upon delivery of product and thereafter, the date and date logic component shall effectively and efficiently operate using a four-digit year.

Upon written notification by County of any hardware or software failure to comply with ISO 9000 date format, Contractor will replace or correct the failing component with compliant hardware or software immediately, at no cost to County.

ARTICLE XXV

Contract Administrator: The County Officer or employee with responsibility for administering this Agreement is Tom Celio, Deputy Director, Maintenance and Operations Division, Department of Transportation, or successor.

ARTICLE XXVI

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 the obligations set forth herein.

ARTICLE XXVII

Partial Invalidity: If any provision of the 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 XXVIII

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.

Contract Administrator Concurrence:

By: _____
Tom Celio
Deputy Director
Maintenance and Operations Division
Department of Transportation

Dated: _____

Requesting Department Concurrence:

By: _____
James W. Ware, P.E.
Director of Transportation

Dated: _____

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

-- COUNTY OF EL DORADO --

By: _____ Dated: _____

Board of Supervisors
"County"

Attest:
Suzanne Allen de Sanchez
Clerk of the Board of Supervisors

By: _____ Dated: _____
Deputy Clerk

-- FIVE STAR AUTOMOTIVE --

By: _____ Dated: _____
Steven N. Curtis
General Partner
"Contractor"

By: _____ Dated: _____
Nancy J. Curtis
General Partner
"Contractor"

Five Star Automotive

Exhibit A

Fee Schedule

<u>ITEM</u>	<u>RATE</u>
LABOR RATE	\$76.00/HOUR
PARTS & MATERIALS	20% OFF CONTRACTOR'S LIST PRICE PLUS TAX
SHOP FEES & ENVIRONMENTAL/HAZARDOUS WASTE DISPOSAL FEES	CONTRACTOR'S LIST PRICE
SUBCONTRACTOR CHARGES	CONTRACTOR'S COST*
FREIGHT FEES	CONTRACTOR'S COST*

* Invoices which include charges for subcontractors or freight fees based on Contractor's cost shall be accompanied by backup documentation to substantiate Contractor's actual costs for the items billed.