

AGREEMENT FOR SERVICES #483-M1111

**El Dorado County Air Quality Management District and  
Sacramento Metropolitan Air Quality Management District  
Memorandum of Understanding**

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**THIS AGREEMENT is** made between the El Dorado County Air Quality Management District (EDCAQMD) and the Sacramento Metropolitan Air Quality Management District (SMAQMD), referred to collectively as the “Parties”;

**R E C I T A L S**

**WHEREAS**, EDCAQMD has determined that it is necessary to obtain a technical review of its air quality services and operations;

**WHEREAS**, EDCAQMD and SMAQMD are both located in the Sacramento Federal Ozone Nonattainment Area; SMAQMD administers many clean air programs on behalf of EDCAQMD and other regional air districts, such as the Carl Moyer Memorial Air Quality Standards Attainment Program, the Sacramento Emergency Clean Air & Transportation Program, and the Lower Emission School Bus Program;

**WHEREAS**, SMAQMD is in a unique technical, management, and geographic position to assist the EDCAQMD with technical and operations review;

**WHEREAS**; the EDCAQMD has determined that the provision of such services by SMAQMD are in the public’s best interest;

**WHEREAS**, it is the intent of the Parties that these services conform with all applicable federal, state and local laws; and

**WHEREAS**, EDCAQMD has determined that the provision of these services by SMAQMD is in the public's best interest, and that these services are more economically and feasibly performed by SMAQMD, operating as an outside independent consultant, and are authorized by El Dorado County Charter, Section 210 (b) (6) and Government Code 31000;

**NOW, THEREFORE**, EDCAQMD and SMAQMD agree as follows:

**ARTICLE I**

**Scope of Services:**

- A. SMAQMD will make available personnel to assist the EDCAQMD Air Pollution Control Officer (APCO) with professional and technical review of functions, processes, procedures. Services will include but are not limited to:

1. Analyze EDCAQMD operations and identify procedures to streamline operations;
  2. Provide guidance and review the results of an evaluation of EDCAQMD Rules and identification of Rule amendments or additions that would be in the best interest of EDCAQMD;
  3. Review of procedures and supporting policies for compliance and enforcement, including procedures for the issuance of a Notice to Comply or Notice of Violation, as well as the penalty fee determination process;
  4. Review of policies and procedures related to the Mutual Settlement and Hearing Board process;
  5. Identification and analysis of productivity levels and timelines associated with inspections and permit processing;
  6. Representation before regional, state, and federal agencies, if approved by both Parties.
  7. Consultation with and assistance to the EDCAQMD APCO in the performance of his duties under Health and Safety Code section 40752.
- B. It is the intent of both the SMAQMD and the EDCAQMD that services provided by SMAQMD will be performed by the most qualified staff available, given the nature of the particular task and the desire to minimize costs to EDCAQMD.
- C. SMAQMD personnel will perform services for EDCAQMD according to a schedule agreeable to both Parties.
- D. Provision of SMAQMD services may be in person at the EDCAQMD office or at other locations as determined necessary by the EDCAQMD.
- E. Nothing in this Agreement affects the existing regional programs SMAQMD administers on behalf of EDCAQMD, or entitles SMAQMD to compensation for those services.
- F. EDCAQMD agrees to furnish SMAQMD staff with equipment, information, and records necessary to perform the services hereunder.

## **ARTICLE II**

**Term:** This Agreement is effective upon final execution by both Parties and expires on June 30, 2012, unless extended by written agreement.

## **ARTICLE III**

### **Compensation for Services:**

- A. For services provided herein, the EDCAQMD agrees to pay SMAQMD within forty- five (45) days following EDCAQMD's receipt and approval of itemized invoices detailing the services rendered. The invoice must contain at a minimum the date of service, identification of the individual providing the service, a general description of the

services(s) provided, and the amount of time spent on each category of service provided.

- B. Billing rates are established in Exhibit A, marked "Fee Schedule," which is fully incorporated into this MOU.
- C. Reimbursement for mileage expenses for SMAQMD staff will not exceed the rates to be paid to El Dorado County employees under the current Board of Supervisors Travel Policy at the time mileage expenses are incurred.
- D. The total amount of this Agreement, including all expenses, will not exceed \$40,000.

**ARTICLE IV**

**Changes to Agreement:** This Agreement may be amended by mutual consent of the parties hereto. Said amendments will become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

**ARTICLE V**

**Assignment and Delegation:** SMAQMD is engaged by EDCAQMD for its unique qualifications and skills as well as those of its personnel. SMAQMD may 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 EDCAQMD.

**ARTICLE VI**

**Independent Consultant/Liability:** SMAQMD is, and will be at all times, deemed independent and will be wholly responsible for the manner in which it performs services required by terms of this Agreement. SMAQMD exclusively assumes responsibility for acts of its employees, associates, and sub-consultants, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

SMAQMD will 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. EDCAQMD will have no right of control over the manner in which work is to be done and will, therefore, not be charged with responsibility of preventing risk to SMAQMD or its employees.

## **ARTICLE VIII**

### **Fiscal Considerations:**

- A. Notwithstanding any other provision of this Agreement to the contrary, EDCAQMD will 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 will 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 will be automatically terminated and EDCAQMD released from any further liability hereunder, with the exception of payment for services performed prior to cancellation.
  
- B. In addition to the above, should the EDCAQMD Board of Directors, during the course of a given year for financial reasons, reduce or order a reduction in the budget for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of the EDCAQMD, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

## **ARTICLE IX**

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

- A. **Ceasing Performance:** EDCAQMD may terminate this Agreement in the event SMAQMD ceases to operate as a public agency, or otherwise becomes unable to substantially perform any term or condition of this Agreement.
  
- B. **Termination or Cancellation without Cause:** Either Party may terminate this Agreement in whole or in part, and without cause, upon seven (7) calendar days written notice to the other Party. If EDCAQMD terminates the contract under this provision, it will pay for satisfactory services rendered prior to the effective dates as set forth in the Notice of Termination provided to SMAQMD, and for such other services that EDCAQMD may agree to in writing as necessary for contract resolution. In no event, however, will EDCAQMD be obligated to pay more than the total amount of the contract. Upon receipt of a Notice of Termination from EDCAQMD, SMAQMD will promptly discontinue all services affected as of the effective date of termination set forth in the Notice of Termination, unless the Notice directs otherwise.

**ARTICLE X**

**Notice to Parties:** All notices to be given by the parties hereto will be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested.

Notices to EDCAQMD will be addressed as follows:

County of El Dorado  
Air Quality Management District  
330 Fair Lane  
Placerville, CA 95667  
ATTN: Mike Applegarth, Interim Air Pollution Control Officer

or to other such locations as EDCAQMD directs.

Notices to SMAQMD will be addressed as follows:

Sacramento Metropolitan Air Quality Management District  
777 12<sup>th</sup> Street, 3<sup>rd</sup> Floor  
Sacramento, CA 95814  
ATTN: Larry Greene, Executive Director/APCO

or to other such locations as SMAQMD directs.

**ARTICLE XI**

**Indemnity:** To the fullest extent of the law, SMAQMD will defend, indemnify, and hold the EDCAQMD 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, EDCAQMD 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 SMAQMD's activities or performance hereunder, regardless of the existence or degree of fault or negligence on the part of the EDCAQMD, except for the sole or active negligence of the EDCAQMD, its officers and employees, or as expressly provide by statute. This duty of SMAQMD to indemnify and save County harmless includes the duties to defend set for in California Civil Code Section 2778.

To the fullest extent of the law, the EDCAQMD will defend, indemnify, and hold SMAQMD 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, excluding SMAQMD employees acting pursuant to this Agreement, 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 EDCAQMD's activities or performance hereunder, regardless of the existence or degree of fault or negligence on the part of SMAQMD, except for the sole or active negligence of SMAQMD, its officers and employees, or as expressly provided by statute. This duty of the EDCAQMD to indemnify and save SMAQMD harmless includes the duties to defend set forth in California Civil Code Section 2788.

**ARTICLE XII**

**Insurance:** SMAQMD has provided copies of its insurance policy to the El Dorado County Risk Manager, who has determined that the policies are satisfactory. SMAQMD agrees to maintain the same insurance coverage, including the amount and type of coverage, throughout the term of this Agreement, including any extensions to this Agreement (see Exhibit B, SMAQMD Certificate of Insurance Coverage). In the event said insurance coverage expires at any time or times during the term of this Agreement, SMAQMD agrees to provide to EDCAQMD copies of a new insurance policy for its review and approval. SMAQMD agrees that no work or services may be performed prior to the giving of such approval. In the event the SMAQMD fails to keep insurance policies in effect at all times, EDCAQMD may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.

**ARTICLE XIII**

**Interest of Public Official:** No official or employee of EDCAQMD who exercises any functions or responsibilities in review or approval of services to be provided by SMAQMD 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 EDCAQMD have any interest, direct or indirect, in this Agreement or the proceeds thereof.

**ARTICLE XIV**

**Interest of Consultant:** Except as otherwise set forth herein, SMAQMD covenants that SMAQMD 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. SMAQMD further covenants that in the performance of this Agreement no person having any such interest shall be employed by SMAQMD.

**ARTICLE XV**

**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. SMAQMD attests that it has no current business or financial relationship with any EDCAQMD employee(s) that would constitute a conflict of interest with provision of services under this contract and will not enter into any such business or financial relationship with any such employee(s) during the term of this Agreement. EDCAQMD represents that it is unaware of any financial or economic interest of any public officer or employee of SMAQMD relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement either party may immediately terminate this Agreement by giving written notice as detailed in the Article in the Agreement titled, "Termination and Cancellation".

**ARTICLE XVI**

**Relationship of the Parties:** It is expressly understood that this is an Agreement by and between two independent parties and that this is not indented to, and will not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever other than that of an independent party.

**ARTICLE XVII**

**Administrator:** The EDCAQMD employee with responsibility for administering this Agreement is Mike Applegarth, Interim Air Pollution Control Officer or successor.

**ARTICLE XVIII**

**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 XIX**

**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 XX**

**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 will be resolved in accordance with the laws of the State of California.

**ARTICLE XXI**

**Entire Agreement:** This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral Agreements or understandings.

**Requesting Contract Administrator Concurrence:**

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

Mike Applegarth  
Interim Air Pollution Control Officer  
El Dorado County Air Quality Management District

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

**- - El Dorado County Air Quality Management District - -**

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

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

Raymond J. Nutting, Chairman  
Board of Directors  
El Dorado County Air Quality Management District

ATTEST:

Suzanne Allen de Sanchez, Clerk  
of the Board of Supervisors

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

Deputy Clerk

**- - Sacramento Metropolitan Air Quality Management District - -**

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

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

Larry Greene  
Air Pollution Control Officer/Executive Director  
Sacramento Metropolitan Air Quality Management District

Reviewed by: \_\_\_\_\_

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

Kathrine Pittard  
District Counsel

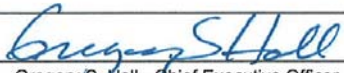


**Exhibit A  
Fee Schedule**

<b>Title</b>	<b>Hourly Rate*</b>
Stationary Source Division Manager	\$140.00
Program Supervisor	\$117.00
Program Coordinator	\$102.00

*\*Salary and benefits are included in the hourly rate.*

## Exhibit B SMAQMD Certificate of Insurance Coverage

Issue Date (MM/DD/YYYY) 7/1/2010 12:00:00 AM		MEMBER'S CERTIFICATE OF COVERAGE			1.02	
This is to certify that coverages selected below have been issued to the Member named below for the period indicated. This certificate is not an insurance policy or an agreement of coverage and does not amend, extend or alter the coverage afforded by the agreements listed herein. Notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the coverage described herein is subject to all the terms, exclusions, and conditions of the specific coverage document. This certificate of coverage evidences the limits of coverage in effect at the inception of the agreements shown; limits shown may have been reduced by paid claims. This certificate is issued as a matter of information only and confers no rights upon the certificate holder.						
<b>Participating Member:</b> Sacramento Metropolitan Air Quality Management District 777 12th Street, 3rd Floor Sacramento, CA 95814-1908			<b>Member Number:</b> BOP-7062		<b>Entity Affording Coverage:</b> Special District Risk Management Authority 1112 I Street, Suite 300 Sacramento, California 95814 Toll-Free 800.537.7790    www.sdrma.org	
Type of Coverage	Policy Number	Effective Date	Expiration Date	Limits		
<input checked="" type="checkbox"/> <b>General Liability</b> Personal Injury and Property Damage Occurrence Form	LCA-SDRMA-201011	07/01/2010	07/01/2011	Per Occurrence	\$10,000,000	
<input checked="" type="checkbox"/> <b>Public Officials and Employees Errors</b> Occurrence Form	LCA-SDRMA-201011	07/01/2010	07/01/2011	Per Occurrence	\$10,000,000	
				General Aggregate	\$10,000,000	
<input checked="" type="checkbox"/> <b>Personal Liability Coverage for Board Members</b> Occurrence Form	LCA-SDRMA-201011	07/01/2010	07/01/2011	Per Occurrence	\$500,000	
				General Aggregate	\$500,000	
<input checked="" type="checkbox"/> <b>Employment Practices Liability</b> Occurrence Form	LCA-SDRMA-201011	07/01/2010	07/01/2011	Per Occurrence	\$10,000,000	
				General Aggregate	\$10,000,000	
<input checked="" type="checkbox"/> <b>Employee Benefits Liability</b> Occurrence Form	LCA-SDRMA-201011	07/01/2010	07/01/2011	Per Occurrence	\$10,000,000	
				General Aggregate	\$10,000,000	
<input checked="" type="checkbox"/> <b>Employee Dishonesty Coverage</b>	EDC-SDRMA-201011	07/01/2010	07/01/2011	Per Occurrence	\$400,000	
<input checked="" type="checkbox"/> <b>Auto Liability</b> Personal Injury and Property Damage	LCA-SDRMA-201011	07/01/2010	07/01/2011	Per Occurrence	\$10,000,000	
<input type="checkbox"/> <b>Auto Physical Damage</b>	LCA-SDRMA-201011	07/01/2010	07/01/2011	Limits on File		
<input checked="" type="checkbox"/> <b>Uninsured / Underinsured Motorists</b>	UMI-SDRMA-201011	07/01/2010	07/01/2011	Each Accident	\$750,000	
<input type="checkbox"/> <b>Trailer Coverage</b>	LCA-SDRMA-201011	07/01/2010	07/01/2011	Limits on File		
<input checked="" type="checkbox"/> <b>Property Coverage</b> Includes Fire, Theft and Flood Property Damage	PPC-SDRMA-201011	07/01/2010	07/01/2011	Each Occurrence	\$1,000,000,000	
					Replacement cost for Scheduled Property	
<input checked="" type="checkbox"/> <b>Boiler and Machinery Coverage</b>	BMC-SDRMA-201011	07/01/2010	07/01/2011	Each Occurrence	\$100,000,000	
					Replacement cost for Scheduled Property	
<input checked="" type="checkbox"/> <b>Workers' Comp.</b> A. Statutory Workers' Comp. B. Employers' Liability Coverage	WCP-SDRMA-201011	07/01/2010	07/01/2011	Each Occurrence	Statutory	
				Each Occurrence	\$5,000,000	
Description; All listed coverage is in effect only for the time period specified.						
				 Gregory S. Hall - Chief Executive Officer		