

ORIGINAL

Funding Agreement

Between the County of El Dorado and The Clean Tahoe Program

Funding Agreement #3038

THIS FUNDING AGREEMENT, (hereinafter referred to as "Agreement") made and entered by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County"), and The Clean Tahoe Program, a non-profit corporation, duly qualified to conduct business in the State of California, whose principal place of business is 2074 Lake Tahoe Boulevard, Suite #6, South Lake Tahoe, California 96150 (hereinafter referred to as "Clean Tahoe");

RECITALS

WHEREAS, the specific purpose of Clean Tahoe is to enhance the visual quality of the Lake Tahoe environment through community education, citizen involvement, and litter and nuisance abatement;

WHEREAS, Clean Tahoe has represented to County that it is specially trained, experienced, expert, and competent to perform the specialized 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 federal, state, and local laws;

WHEREAS, the County Board of Supervisors has passed an annual Resolution establishing waste management fees for the County portion of the Lake Tahoe Basin, in part, to fund programs, including but not limited to solid waste diversion and Clean Tahoe, within County Service Area 10, Zone "C", to comply with the state mandated statutory requirements;

WHEREAS, on a fiscal year basis, it is the intent of County to fund the specialized services to be performed by Clean Tahoe in accordance with said resolution.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, County and Clean Tahoe mutually agree as follows:

ARTICLE I

Scope of Services: Clean Tahoe shall serve County's portion of the Lake Tahoe Basin by providing the following services for the duration of this Agreement:

1. Tour all Lake Tahoe Basin County neighborhoods and Meyers business area each week, except west shoreline area, to clean up roadside litter and debris. Clean Tahoe shall provide an average of eighteen (18) hours of service to designated County areas per week during the period of April 1 through September 30 of each year, and eight (8) hours of services to designated County areas per week during the period of October 1 through March 31 of each year.
2. Clean roadside litter from the west shoreline area once during the spring and once during the fall. The west shoreline area is defined as Highway 89, between the entrance to Baldwin Beach and the El Dorado County line in Tahoma, California.
3. Respond to requests from residents to clean-up litter and/or contact property owners to clean-up litter. Whenever possible, Clean Tahoe shall respond to resident requests within twenty-four (24) hours.
4. Issue/post courtesy notices and shelter enclosure specification sheets to property owners where litter and debris are found. Copies of such notices shall be provided to County's Community Development Services, Environmental Management Department staff at the South Lake Tahoe office location. Properties shall be re-inspected within ten (10) days. If the problem still exists after twenty (20) days, Clean Tahoe shall refer the property to the Contract Administrator for enforcement.
5. Provide at least one (1) "Community Clean-up Day" per year for County residents to dispose of trash or other unwanted items at the South Tahoe Refuse Co. Transfer Station. The cost to County residents shall not exceed \$5 per truck or trailer load. Clean Tahoe shall inform County's Contract Administrator of the selected date(s) at least three (3) months before the event.
6. Assist in sponsoring one (1) "Clean-up Day" per year in Tahoma. Clean Tahoe sponsorship includes \$2,000 towards disposal of material and the assistance of Clean Tahoe field crew with the pick-up of furniture, appliances, and/or other bulk items from local residences. Clean Tahoe shall schedule this event with County's Contract Administrator.
7. For senior citizens who request this service, Clean Tahoe shall provide physical assistance and/or pay the disposal fee, if a financial need exists, to dispose of unwanted materials.
8. Maintain and service designated trash containers at least once per week. Clean Tahoe may request additional cans, and those cans may be incorporated into this Agreement upon written consent of County. County may request Clean Tahoe to transfer cans to new locations or remove cans as needed. The total number of cans serviced under this Agreement shall not exceed fourteen (14), unless otherwise approved by County.

9. Upon execution of this Agreement, the trash containers/cans that are approved to be serviced include:
- a. Two (2) cans placed year-round at County's offices on Takela Street (3368 Lake Tahoe Boulevard).
 - b. One (1) can placed year-round on the path between Roadrunner and Pioneer Trail.
 - c. Two (2) cans placed year-round near the road by the 76 Gas Station (2933 Highway 50).
 - d. Three (3) cans placed near the street by Lira's Supermarket (2977 Highway 50), including two (2) cans placed year-round and one (1) additional can for the period of Memorial Day through Labor Day each year.
 - e. One (1) can placed year-round near the street by The Getaway Café (3140 Highway 50).
 - f. Two (2) cans placed year-round near the Divided Sky and Meyers Downtown Café (3200 Highway 50).
 - g. One (1) can placed on the path near the U.S. Post Office (1285 Apache Avenue) for the period of Memorial Day through Labor Day each year.
 - h. One (1) can placed on the path near Bob Dog Pizza (3160 Highway 50) for the period of Memorial Day through Labor Day each year.
 - i. One (1) can placed on the path near Century 21 (3141 Highway 50) for the period of Memorial Day through Labor Day each year.

10. The trash containers/cans shall remain the property of County. Clean Tahoe shall notify County's Contract Administrator, or designee, of any problems, damage, malfunctions, and necessary repairs or replacements.

Clean Tahoe shall perform all services in a manner consistent with that level of care and skill ordinarily exercised by other members of Clean Tahoe's profession currently practicing in the same locality and under similar conditions. No other representation, express or implied, is included or intended in this Agreement, or in any report, opinion, documents, or other instrument of service.

ARTICLE II

Period of Performance: Upon final execution of this Agreement, Clean Tahoe shall commence performance of all services and produce all work products in accordance with ARTICLE I, Scope of Services, unless this Agreement is terminated sooner as provided in ARTICLE VI, Termination.

ARTICLE III

Term: This Agreement shall become effective upon final execution by both parties hereto and shall cover the period of June 26, 2018 through June 30, 2021.

ARTICLE IV

Compensation for Services: For services provided herein, County agrees to compensate Clean Tahoe annually based on the amounts invoiced, as provided below, and subject to the limit of the parcel fees established and collected pursuant to the annual Resolution adopted by County's Board of Supervisors confirming said fees including any interest earned on the fee revenue. The total fees collected by County under said authority varies each fiscal year, and is not determined until the close of the fiscal year. Therefore, so long as the services provided by Clean Tahoe are satisfactorily rendered and no breach of this Agreement exists, invoices shall be paid up to the amount established in and collected pursuant to the Resolution of County's Board of Supervisors Confirming Waste Management Fees for the Tax Year for Zones of Benefit Within County Service Area No. 10, Zone "C," including any penalties and costs on delinquent prior year parcel fees, plus the amount of any annual interest earned on the fee revenue.

In no event shall the amount due annually to Clean Tahoe under this Agreement exceed the amount of the funds actually collected in revenue for Clean Tahoe for the zone during the fiscal year. The total compensation payable to Clean Tahoe under this Agreement shall not exceed the total revenue received during the period covered during this Agreement, including current year parcel fee assessments, prior year delinquent parcel fee assessments, penalties and costs on delinquent prior year parcel fees, and any interest earned on the fee revenue.

Subject to the limitations on payment to be made by County set forth above and pursuant to Board of Supervisors Resolution 218-99, the County will, under its franchising authority, authorize Clean Tahoe to receive from South Tahoe Refuse Co. and South Tahoe Refuse Co. to pay Clean Tahoe funds equal to an additional fifteen cents (\$0.15) per month on each refuse account serviced by South Tahoe Refuse Co. in the unincorporated portion of County. All such additional funds shall be used by Clean Tahoe for purposes consistent with this Agreement. At no time shall this additional payment of such funds be an obligation of County and all such funds shall be paid to Clean Tahoe and accounted for by South Tahoe Refuse Co.

Clean Tahoe shall provide an average of eighteen (18) hours of service to designated County areas per week during the period of April 1 through September 30 of each year, and eight (8) hours of services to designated County areas per week during the period of October 1 through March 31 of each year, at a rate of \$36.06 per hour.

An itemized invoice and cost report shall be required as proper documentation and verification that Clean Tahoe has satisfactorily completed the services for which compensation is sought. Payment will be made within forty-five (45) days following County's receipt and approval of invoices and cost reports, whichever is received later. Invoices and cost reports shall be submitted bi-annually for services performed for the prior six (6) months. The invoice and cost report for the period covering July 1 through December 31 of each year shall be submitted by January 31 of the following year, and

the itemized invoice and cost report for the period covering January 1 through June 30 of each year shall be submitted by July 15.

Cost reports accompanying the itemized invoices shall detail the accomplishment of the activities and outcomes described in ARTICLE I, Scope of Services, above. The cost report may be submitted with the invoices, but shall be submitted to County's Contract Administrator no later than thirty (30) days of the end of the period covered by the corresponding invoice. Invoices will not be paid prior to County's receipt and approval of the cost report for that period. Cost reports should include, but not be limited to, time accounting records, records of service calls, records of tours performed, events sponsored, and other documentation of activities performed at Clean Tahoe offices.

A cost report summarizing the services performed for the full fiscal year shall accompany the invoice for the period covering January 1 through June 30. Invoices shall be mailed to County at the following address:

County of El Dorado
Community Development Services
Administration and Finance Division
2850 Fairlane Court
Placerville, California 95667
Attn.: Accounts Payable

or to such other location as County directs.

ARTICLE V

Independent Contractor Liability: Clean Tahoe is, and shall be at all times, deemed independent and shall be wholly responsible for the acts of Clean Tahoe's employees, associates, and subcontractors, in connection with this Agreement.

ARTICLE VI

Termination: 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 Clean Tahoe thirty (30) days prior written notice.

Either party may terminate this Agreement upon thirty (30) days written notice which indicates that County does not intend to continue to levy and appropriate necessary funds, or that Clean Tahoe intends to terminate providing services pursuant to this Agreement.

ARTICLE VII

Changes to Agreement: It is mutually understood and agreed that no alteration or variation of the terms of this Agreement shall be valid unless made in writing and fully executed by duly authorized officers of the parties hereto.

ARTICLE VIII

Prior Agreement/Assignment of Agreement: Neither this Agreement, nor any part thereof, nor any monies due or to become due hereunder, may be assigned by Clean Tahoe without the express written approval of County.

This instrument constitutes the sole and only Agreement between County and Clean Tahoe respecting Clean Tahoe and costs for said program, and correctly sets forth the obligations of County and Clean Tahoe to each other as of its effective date. This Agreement incorporates or supersedes all prior written or oral agreements or understandings. Any agreements or representations respecting Clean Tahoe or the Agreement not expressly set forth in this Agreement are null and void.

ARTICLE IX

Attorney’s Fees: The prevailing party in any dispute shall be entitled to its attorney’s fees and costs.

ARTICLE X

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:

To County

With a copy to:

County of El Dorado
Community Development Services
Environmental Management Department
2850 Fairlane Court
Placerville, California 95667

County of El Dorado
Community Development Services
Administration and Finance Division
2850 Fairlane Court
Placerville, California 95667

Attn.: Greg Stanton, REHS
Director
Environmental Management
Department

Attn.: Michele Weimer
Administrative Services Officer
Contracts and Procurement Unit

or to such other location as County directs.

Notices to Clean Tahoe shall be addressed as follows:

The Clean Tahoe Program
2074 Lake Tahoe Boulevard, Suite #6
South Lake Tahoe, California 96150

Attn.: Catherine Cecchi, Executive Director

or to such other location as Clean Tahoe directs.

ARTICLE XI

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

Indemnity: Clean Tahoe 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 Clean Tahoe's services, operations, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of County, Clean Tahoe, 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 Clean Tahoe to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

ARTICLE XIII

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

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Clean Tahoe 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 and a \$2,000,000 aggregate limit.
- C. Automobile Liability Insurance of not less than \$1,000,000 is required in the event motor vehicles are used by Clean Tahoe in performance of the Agreement.
- D. In the event Clean Tahoe 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. Clean Tahoe 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. Clean Tahoe 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 Agreement, Clean Tahoe shall immediately provide a new certificate of insurance as evidence of the required insurance coverage. In the event Clean Tahoe fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event. New certificates of insurance are subject to the approval of County's Risk Management Division, and Clean Tahoe 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 prior written notice to County; and
 - 2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- I. Clean Tahoe'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 Clean Tahoe'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 Clean Tahoe 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. Clean Tahoe's obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.

- N. In the event Clean Tahoe cannot provide an occurrence policy, Clean Tahoe 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.

ARTICLE XIV

Audits and Inspections: Clean Tahoe shall maintain complete financial records for a minimum of five (5) fiscal years after the termination of this Agreement that clearly reflect the costs of services for which compensation is received under this Agreement. Any apportionment of costs shall be made in accordance with generally accepted accounting principles and shall evidence proper audit trails reflecting the true cost of services.

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

ARTICLE XV

Venue: This Agreement is to be governed by and construed in accordance with the laws of the State of California. Any dispute resolution arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in the County of El Dorado, California. Clean Tahoe waives any rights to transfer of the case as it might have under Code of Civil Procedure Section 394.

ARTICLE XVI

Contract Administrator: The County officer or employee with the responsibility of administering this Agreement is Greg Stanton, REHS, Director, Community Development Services, Environmental Management Department or successor. The Clean Tahoe Officer or employee with responsibility for administering this Agreement is Catherine Cecchi, Executive Director, or successor.

ARTICLE XVII

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 XVIII

Partial Invalidity: If any provision, part, sentence, or word of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions, parts, sentences, and words will continue in full force and effect with being impaired or invalidated in any way.

ARTICLE XIX

No Third-Party Beneficiaries: The terms and conditions of this Agreement, expressed or implied, exist only for the benefit of the parties to this Agreement and their respective successors and assignments. This Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than Clean Tahoe and County. No other person or entity shall have any rights, interests, or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third party beneficiary or otherwise.

ARTICLE XX

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 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.

Contract Administrator and Department Concurrence:

By: 
Greg Stanton, REHS
Director
Environmental Management Department

Dated: 6/20/18

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


-- COUNTY OF EL DORADO --

By: 

Dated: 6/26/2018

Board of Supervisors
"County"

Attest:
James S. Mitrison
Clerk of the Board of Supervisors

By: 
Deputy Clerk

Dated: 6/26/2018

-- THE CLEAN TAHOE PROGRAM --

By: 
Peter Spellman
President

Dated: 6/15/18

By: 
Michael Phillips
Vice President/Secretary

Dated: 6/15/2018