

Cummins West, Inc.

**AGREEMENT FOR SERVICES # AGMT 05-979
Amendment II**

THIS AMENDMENT II to that Agreement for Services # AGMT 05-979 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 Cummins West, Inc., a corporation duly qualified to conduct business in the State of California, whose principal place of business is 14775 Wicks Boulevard, San Leandro, California 94577, and whose local office address is 875 Riverside Parkway, West Sacramento, California 95605 (hereinafter referred to as "Contractor");

R E C T A L S

WHEREAS, Contractor has been engaged by County to assist its Department of Transportation (hereinafter referred to as "DOT") with its diesel fleet retrofit project pursuant to Agreement for Services # AGMT 05-979 and Amendment I to AGMT 05-979, incorporated herein and made by reference a part hereof; and

WHEREAS, the parties hereto desire to amend Agreement for Services # AGMT 05-979 to eliminate the Task Order requirement and to update the Project Budget, amending **ARTICLE I Scope of Services** and **Exhibit A Scope of Work**; and

WHEREAS, the parties hereto desire to amend Agreement for Services # AGMT 05-979 to decrease the not-to-exceed compensation amount of the Agreement by \$205,040.45, and to add a new fee schedule for the remaining term of the Agreement, amending **ARTICLE III Compensation for Services** and revising **Exhibit B Price Schedule**; and

WHEREAS, the parties hereto desire to amend Agreement for Services # AGMT 05-979 to change one of County's Notices recipients, amending **ARTICLE XVI Notice to Parties**; and

WHEREAS, the parties hereto desire to amend Agreement for Services # AGMT 05-979 to include guarantees for the Cleaire Horizon emission control devices, amending **ARTICLE XXI Guarantees**; and

WHEREAS, the parties hereto desire to amend Agreement for Services # AGMT 05-979 to change County's Contract Administrator, amending **ARTICLE XXVIII Contract Administrator**; and

WHEREAS, the parties hereto desire to amend Agreement for Services # AGMT 05-979 to include County's business license requirements, adding **ARTICLE XXXII, Business License**;

NOW, THEREFORE, County and Contractor mutually agree to amend the terms of the Agreement in this Amendment II to Agreement for Services # AGMT 05-979, to read as follows:

ARTICLE I

Scope of Services: For the period prior to the effective date of this Amendment, Contractor agrees to furnish materials, labor, equipment and services necessary to provide and install Cleaire Longview emission control devices or Cleaire Horizon emission control devices on designated DOT equipment and to provide staff training for the routine maintenance required for those devices at DOT's Headington Road and Shakori Drive facilities. Services shall include, but not be limited to, those tasks as identified in Amended Exhibit A, marked "Amended Scope of Work and Project Budget," incorporated herein and made by reference a part hereof.

For the period beginning with the effective date of this Amendment and continuing through the remaining term of the Agreement, Contractor agrees to furnish materials, parts, incidentals, labor, equipment and services necessary to provide and install Cleaire Longview emission control devices or Cleaire Horizon emission control devices on designated DOT vehicles and to provide staff training for the routine maintenance required for those devices at the DOT's Headington Road and Shakori Drive facilities. Services shall include, but not be limited to, those tasks as identified in Revised Amended Exhibit A, marked "Revised Amended Scope of Work and Project Budget," incorporated herein and made by reference a part hereof.

ARTICLE III

Compensation for Services: For services provided herein, County agrees to pay Contractor 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, for the period beginning March 7, 2006 and continuing through November 13, 2006, the billing rates shall be in accordance with Exhibit B, marked "Price Schedule," incorporated herein and made by reference a part hereof.

For the period beginning November 14, 2006 and continuing until the effective date of this Amendment II to AGMT 05-979, the billing rates shall be in accordance with Amended Exhibit B, marked "Amended Price Schedule," incorporated herein and made by reference a part hereof.

For the period beginning with the effective date of this Amendment II to AGMT 05-979 through the expiration date of October 24, 2008, the billing rates shall be in accordance with Revised Exhibit B, marked "Revised Price Schedule," incorporated herein and made by reference a part hereof.

The total amount of this Agreement, as amended, shall not exceed \$382,104.30, inclusive of all costs and expenses.

Itemized invoices shall follow the format specified by County and shall reference this Agreement number and the DOT equipment number both on their faces and on any enclosures or back-up documentation. Contractor shall bill County for only one DOT unit of equipment per invoice. Copies of documentation attached to invoices shall reflect Contractor's charges for the specific parts, materials and services billed on those invoices.

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.

ARTICLE XVI

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:

County of El Dorado
Department of Transportation
2441 Headington Road
Placerville, California 95667

Tom Celio,
Deputy Director of Maintenance
and Operations

With a Copy To:

County of El Dorado
Department of Transportation
2850 Fairlane Court
Placerville, California 95667

Attn: Tim C. Prudhel,
Contract Services Officer

or to such other location as County directs.

Notices to Contractor shall be addressed as follows:

Cummins West, Inc.
875 Riverside Parkway
West Sacramento, California 95605

Mike Doherty,
Vice President of Finance

or to such other location as Contractor directs.

ARTICLE XXI

Guarantees:

- A. For the purposes of this Agreement, the warranty periods for the Cleaire Longview J Series, the Cleaire Longview K Series, and the Cleaire Horizon emission control devices including all parts, equipment and materials to be provided by Contractor associated with the installation of those devices, shall be in accordance with "Table 1. Warranty Period," as identified in Exhibit C, marked "Warranty," incorporated herein and made by reference a part hereof. Contractor warrants and guarantees

for the period specified from the date of invoice that the work shall be free from all defects due to faulty materials or workmanship and Contractor shall promptly make such corrections as may be necessary, including repairs of any damage to other parts of the equipment or vehicle resulting from such defects. County will give notice of observed defects with reasonable promptness.

- B. Contractor expressly agrees to act as co-guarantor of the emission control devices and all such parts, equipment and materials, and Contractor shall supply County with all warranty and guaranty documents relative to the emission control devices, parts, equipment and materials incorporated in the services provided and guaranteed by its suppliers or manufacturers.
- C. Contractor warrants to County that emission control devices, materials, parts and equipment furnished under this Agreement will be of good quality and new, unless otherwise required or permitted by the Agreement, that the work performed will be free from defects or flaws and is of the highest quality of workmanship and that the services provided will conform with the requirements of this Agreement and with the requirements and regulations of the California Air Resources Board. Work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective.

ARTICLE XXVIII

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

The Agreement is further amended to add the following Article:

ARTICLE XXXII

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

Except as herein amended, all other parts and sections of Agreement for Services # 05-979 and Amendment I to AGMT 05-979 shall remain unchanged and in full force and effect.

Contract Administrator Concurrence:

By: _____
Tom Celio
Deputy Director of Maintenance
and Operations

Dated

Requesting Department Concurrence:

By: _____
Richard W. Shepard, P.E.
Director of Transportation

Dated: _____

IN WITNESS WHEREOF, the parties hereto have executed this Amendment II to Agreement for Services # AGMT 05-979 on the dates indicated below, the latest of which shall be deemed to be the effective date of this Amendment.

-- COUNTY OF EL DORADO --

By: _____ Dated _____

Board of Supervisors
"County"

Attest:
Cindy Keck
Clerk of the Board of Supervisors

By: _____ Dated: _____
Deputy Clerk

-- CUMMINS WEST, INC.

By: _____ Dated _____
Mike Doherty
Vice President of Finance
"Contractor"

By: _____ Dated: _____
Corporate Secretary

Cummins West, Inc.

Revised Amended Exhibit A

Revised Amended Scope of Work and Project Budget

Scope of Work

Installation

Contractor shall furnish all materials, parts, incidentals, labor, equipment and services necessary to provide and install Cleaire Longview emission control devices or Cleaire Horizon emission control devices on designated DOT vehicles. The type of device installed will be dependent upon the California Air Resources Board (CARB) certification for the year, use and type of vehicle. All service shall be provided at Contractor's facility located at 875 Riverside Parkway, West Sacramento, California. DOT shall deliver the vehicles to and pick up the vehicles from Contractor's facility. The scheduling of work shall be mutually agreed upon by County's Contract Administrator and Contractor based on the availability of the vehicles for service and the availability of parts for installation

Should Contractor determine that any repairs to the vehicles are required prior to installation of emission control devices, Contractor shall immediately notify County's Contract Administrator regarding the nature, scope and cost of the required repairs. Contractor shall not begin any such repair work without prior written authorization from County's Contract Administrator. Any such repair work, if it is authorized, shall be performed under a separate contract or purchase order.

Retrofit installations shall be completed within five (5) working days of the receipt of the vehicle by Contractor.

Upon completion of the work, an inspection of the installation by County's Contract Administrator or designee shall take place and a list shall be generated of any non-compliant work. All issues shall be resolved prior to acceptance of the work. There shall be no additional charges to County associated with any work required to remedy non-compliant work. Upon completion of the work and County's acceptance of the work, Contractor shall issue its invoice in accordance with the provisions of this Agreement.

Maintenance Training

Contractor shall provide training sessions to designated DOT staff on the routine maintenance procedures for the Cleaire Longview emission control device and for the Cleaire Horizon emission control device at the DOT's facilities at 2441 Headington Road, Placerville, California and at 1121 Shakori Drive, Meyers, California, at times to be mutually agreed upon. There shall be no additional charge to County for these training sessions.

A minimum of two (2) training sessions shall be provided prior to the expiration date of this Agreement.

Project Budget

<u>Equip #</u>	<u>Description</u>	<u>Device</u>	<u>Total Retrofit Cost</u>	<u>Matching Funds-Road Fund</u>	<u>EDCAQMD Funds</u>
21-08	2003 Ford F550 Dump Truck*	Horizon	\$14,944.13	\$3,736.03	\$11,208.10
28-10	2005 Ford F550*	Horizon	\$14,944.13	\$3,736.03	\$11,208.10
28-11	2005 Ford F550*	Horizon	\$14,944.13	\$3,736.03	\$11,208.10
28-09	2005 Ford F550*	Horizon	\$14,944.13	\$3,736.03	\$11,208.10
21-06	2003 Ford F550	Horizon	\$14,944.13	\$3,736.03	\$11,208.10
21-07	2003 Ford F550	Horizon	\$14,944.13	\$3,736.03	\$11,208.10
39-04	2004 Int'l PB Patcher	Horizon	\$14,944.13	\$3,736.03	\$11,208.10
79-02	2004 Vactor Truck	Horizon	\$14,944.13	\$3,736.03	\$11,208.10
21-09	2006 Ford	Horizon	\$14,944.13	\$3,736.03	\$11,208.10
32-04	2006 Ford	Horizon	\$14,944.13	\$3,736.03	\$11,208.10
	Totals for work under Amendment II		\$149,441.30	\$37,360.30	\$112,081.00
38-03	1996 Int'l Herbicide Truck	Longview	\$19,101.25	\$4,775.50	\$14,325.75
	Totals for work under Amendment I		\$19,101.25	\$4,775.50	\$14,325.75
25-09	1996 Int'l Dump Truck	Longview	\$20,825.25	\$6,499.50	\$14,325.75
24-04	1996 Int'l Dump Truck 4x4	Longview	\$19,101.25	\$4,775.50	\$14,325.75
23-19	1997 Int'l Dump Truck	Longview	\$19,101.25	\$4,775.50	\$14,325.75
23-20	1997 Int'l Dump Truck	Longview	\$19,101.25	\$4,775.50	\$14,325.75
24-05	2000 Int'l Dump Truck	Longview	\$19,101.25	\$4,775.50	\$14,325.75
23-22	2001 Int'l Dump Truck	Longview	\$19,101.25	\$4,775.50	\$14,325.75
23-21	2001 Int'l Dump Truck	Longview	\$19,101.25	\$4,775.50	\$14,325.75
71-04	2001 Schwarze Sweeper	Longview	\$19,101.25	\$4,775.50	\$14,325.75
71-05	2001 Schwarze Sweeper	Longview	\$19,101.25	\$4,775.50	\$14,325.75
25-10	2002 Int'l Dump Truck	Longview	\$20,825.25	\$6,499.50	\$14,326.75
28-08	2003 Int'l Service Truck	Longview	\$19,101.25	\$4,775.50	\$14,325.75
	Totals for work under original Agreement		\$213,561.75	\$55,978.50	\$157,583.25
	Total Project Costs under the Agreement Amendment I and Amendment II		\$382,104.30	\$98,114.30	\$283,990.00

Cummins West, Inc.

Revised Exhibit B

Revised Price Schedule

One of the following devices will be installed on the units of equipment, based upon the California Air Resources Board certification related to year, use and type of vehicle.

Claire Longview Device – J Series

<u>Product</u>	<u>Description</u>	<u>Amount</u>
Claire	Claire Longview	\$14,900.00
Kit	Installation Kit	600.00
Labor	Installation	2,400.00
	Tax	1,201.25
	Total	<hr/> \$19,101.25

Claire Longview Device – K Series

<u>Product</u>	<u>Description</u>	<u>Amount</u>
Claire	Claire Longview - K Series	\$16,500.00
Kit	Installation Kit	600.00
Labor	Installation	2,400.00
	Tax	1,325.25
	Total	<hr/> \$20,825.25

Claire Horizon Device

<u>Product</u>	<u>Description</u>	<u>Amount</u>
Claire	Claire Horizon Device	\$10,950.00
Kit	Installation Kit	600.00
Labor	Installation	2,499.00
		895.13
	Total	<hr/> \$14,944.13

Cummins West, Inc.

Revised Exhibit C

Revised Warranty



June 2007

On-Road Product Warranty

Product Warranty

YOUR WARRANTY RIGHTS AND OBLIGATIONS

Cleaire Advanced Emission Controls, LLC warrants the diesel emission control system in the application for which it is sold or leased to be free from defects in design, materials, workmanship, or operation of the diesel emission control system which cause the diesel emission control system to fail to conform to the emission control performance level it was verified to, or to the requirements in the California Code of Regulations, Title 13, Sections 2700 to 2706, and 2710 (as such Sections existed when the diesel emission control system was sold to you), for the periods of time listed in Table 1, provided there has been no abuse, neglect, or improper maintenance of your diesel emission control system, vehicle or equipment, as specified in the owner's manuals. Where a warrantable condition exists, this warranty also covers the engine from damage caused by the diesel emission control system, subject to the same exclusions for abuse, neglect or improper maintenance of your vehicle or equipment. Where a warrantable condition exists, Cleaire will repair or replace your diesel emission control system at no cost to you, including diagnosis, parts and labor. Please review your owner's manual for other warranty information. Your diesel emission control system may include a core part (e.g., particulate filter, diesel oxidation catalyst, selective catalytic reduction converter) as well as hoses, connectors, a backpressure monitor (if applicable), and other emission-related assemblies.

WARRANTY COVERAGE

For an engine used in an application listed in Table 1, the warranty period will be the years or hours or miles of operation shown in Table 1, whichever occurs first. If any emission-related part of your diesel emission control system is defective in design, materials, workmanship, or operation of the diesel emission control system thus causing the diesel emission control system to fail to conform to the emission control performance level it was verified to, or to the requirements in the California Code of Regulations, Title 13, Sections 2700 to 2706, and 2710 (as such Sections existed when the diesel emission control system was sold to you), within the warranty period, as defined above, Cleaire will repair or replace the diesel emission control system, including parts and labor.

In addition, Cleaire will replace or repair the engine components to the condition they were in prior to the failure, including parts and labor, for damage to the engine proximately verifiably caused by the diesel emission control system. This also includes those relevant diagnostic expenses in the case in which a warranty claim is valid. Cleaire may, at its option, instead pay the fair market value of the engine prior to the time the failure occurred.

OWNER'S WARRANTY RESPONSIBILITY

As the vehicle, engine, or equipment owner, you are responsible for performing the required maintenance described in your owner's manual. Cleaire recommends that you retain all maintenance records and receipts for maintenance expenses for your vehicle, engine, or equipment, and diesel emission control system. If you do not keep your receipts or fail to perform all scheduled maintenance, Cleaire may have grounds to deny warranty coverage. You are responsible for presenting your vehicle, equipment, or engine, and diesel emission control system to a Cleaire-authorized dealer as soon as a problem is detected. The warranty repair or replacement generally will be completed in a reasonable amount of time, not to exceed 30 days. If a replacement is needed, this may be extended to 90 days should a replacement not be available, but must be performed promptly after a replacement becomes available.

If you have questions regarding your warranty rights and responsibilities, you should contact Cleaire at 1-800-308-2111 or the California Air Resources Board at 9528 Telstar Avenue, El Monte, CA 91731, or (800) 363-7664, or electronic mail: helpline@arb.ca.gov.

On-Road Product Warranty

Installation Warranty

YOUR WARRANTY RIGHTS AND OBLIGATIONS

The Cleaire-authorized installer warrants that the installation of the diesel emission control system is free from defects in workmanship or materials which cause the diesel emission control system to fail to conform to the emission control performance level it was verified to, or to the requirements in the California Code of Regulations, Title 13, Sections 2700 to 2706 (as such Sections existed when the diesel emission control system was sold to you). The warranty period and the extent of the warranty coverage provided by the Cleaire-authorized installer is the same as the product warranty provided by Cleaire, and the same exclusions apply.

OWNER'S WARRANTY RESPONSIBILITY

As the vehicle, engine, or equipment owner, you are responsible for presenting your vehicle, engine, or equipment, and diesel emission control system to the Cleaire-authorized installer as soon as a problem with the installation is detected.

If you have questions regarding your warranty rights and responsibilities, you should contact a Cleaire-authorized dealer, or Cleaire at 1-800-308-2111, or the California Air Resources Board at 9528 Telstar Avenue, El Monte, CA 91731, or (800) 363-7664, or electronic mail: helpline@arb.ca.gov.

Warranty Clarifications

(Which do not limit or modify the provisions of the above product warranty or installation warranty in any way)

The product warranty above is the sole warranty made by Cleaire Advanced Emission Controls, LLC. There are no other warranties, expressed or implied, or of merchantability or fitness for a particular purpose.

For the purpose of the product warranty and installation warranty, abuse or neglect includes vehicle accidents, ignoring the system indicator lights, blending lubricating oil with fuel, or any engine failure or condition that allows excess lubricating oil, coolant, contaminants or debris to enter the exhaust system. The owner shall not use any fuel additive or lube oil additive that is not approved for use in diesel engines equipped with catalytic mufflers.

Cleaire is not responsible for incidental or consequential damages, which include, but are not limited to fines, theft, vandalism, or collisions. The owner is responsible for incidental costs such as communication expenses, meals, and lodging incurred by owner or employees of owner as a result of a warrantable condition.

The verified diesel emission control system must be installed and serviced by Cleaire-authorized personnel. Installation or service by unauthorized personnel may result in a denial of coverage under the product warranty or the installation warranty.

On-Road Product Warranty

Table 1

Engine Type	Engine Size	Warranty Period
On-Road	Light heavy-duty, 70 to 170 hp, Gross Vehicle Weight Rating (GVWR) less than 19,500 lbs.	5 years or 150,000 miles
	Medium heavy-duty, 170 to 250 hp, GVWR from 19,500 lbs. to 33,000 lbs.	
	Heavy heavy-duty, exceeds 250 hp, GVWR exceeds 33,000 lbs.	
	Heavy heavy-duty, exceeds 250 hp, GVWR exceeds 33,000 lbs., and the truck is: Typically driven over 100,000 miles per year, and 2. Has less than 300,000 miles on the odometer at the time of installation.	2 years, unlimited miles

There are three parts to the product warranty and installation warranty coverage: 1) Emission-related part coverage, 2) Base system coverage and 3) Miscellaneous part coverage.

1) The emission-related part coverage is 5 year / 150,000 miles for on-road applications. Coverage includes parts and labor on warrantable failures.

Horizon™ emission-related parts	Longview® emission related parts
Non-catalyzed diesel particulate filter	Catalyzed diesel particulate filter
MLC™	MLC™
Thermocouple(s)	Thermocouples
High voltage controls box	Diesel fuel pump
Heater module	Injector assembly

2) The base system coverage is 1 year / 50,000 miles for on-road applications. Coverage includes standard non-emission-related parts supplied with the system. This warranty coverage is over and beyond the emission-related parts warranty as required by CARB and/or the EPA.

Horizon™ and Longview® base system parts	
Inlet cone	Outlet cone ¹
	Electrical harness and extensions
High voltage plug and receptacle ²	Mounting plate ²

3) The miscellaneous part coverage is 30 days / unlimited miles for on-road applications and warrants parts are free from defects in material and factory workmanship. Coverage includes replacement only for any other parts not specifically listed above.

¹ Cone failures due to improper support are not covered.

² Included in Horizon™/Skyline™ system but not Longview®/Lonestar™

On-Road Product Warranty

Warranty Limitations

Cleaire shall in no event be liable for failures resulting from owner or operator abuse or neglect of the engine upstream of the Cleaire product, including but not limited to: operation without adequate coolant, fuel or lubricants; overfueling; overspeeding; lack of maintenance of lubricants, fuels cooling or air intake systems; improper storage, starting, warm-up, running or shutdown practices.

Cleaire shall in no event be liable for failures or maintenance resulting from engine condition or engine component failures upstream of the Cleaire product, including but not limited to: turbo failure, engine oil consumption, residual ash within diesel particulate filter, or leaking or failed engine fuel injector.

Cleaire shall in no event be liable for towing charges, maintenance items such as oil filters, belts, hoses, etc.; communication expenses, meals, lodging and incidental expenses incurred by owner or employees of owner, "down-time" expenses, overtime expenses, cargo damages and all business costs and losses of revenue resulting from a warrantable failure.

Cleaire shall in no event be liable for failures resulting from improper repair by anyone other than Cleaire or its authorized representative or the use of parts not approved by Cleaire.

Cummins West, Inc.

AGREEMENT FOR SERVICES # AGMT 05-979
Amendment I

THIS AMENDMENT I to that Agreement for Services # AGMT 05-979 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 Cummins West, Inc., a corporation duly qualified to conduct business in the State of California, whose principal place of business is 14775 Wicks Boulevard, San Leandro, California 94577, and whose local office address is 875 Riverside Parkway, West Sacramento, California 95605, (hereinafter referred to as "Contractor");

R E C T A L S

WHEREAS, Contractor has been engaged by County to assist its Department of Transportation with its diesel fleet retrofit project pursuant to Agreement for Services # AGMT 05-979, incorporated herein and made by reference a part hereof; and

WHEREAS, the parties hereto desire to amend Agreement for Services # AGMT 05-979 to add a new retrofit device, amending **ARTICLE I Scope of Services, Exhibit A Scope of Work, and Exhibit B Price Schedule**; and

WHEREAS, the parties hereto desire to amend Agreement for Services # AGMT 05-979 to extend the expiration date of March 7, 2007 for approximately nineteen (19) additional months, amending **ARTICLE II Term**; and

WHEREAS, the parties hereto desire to amend Agreement for Services # AGMT 05-979 to increase the compensation for services by \$373,583, amending **ARTICLE III Compensation for Services**;

NOW, THEREFORE, County and Contractor mutually agree to amend the terms of the Agreement in this Amendment I to Agreement for Services # AGMT 05-979, to read as follows:

ARTICLE I

Scope of Services: Contractor agrees to furnish materials, labor, equipment and services necessary to provide and install Cleaire Longview emission control devices or Cleaire Horizon emission control devices on designated Department of Transportation equipment and to provide staff training for the routine maintenance required for those devices at the Department's Headington Road and Shakori Drive facilities. Services shall include, but not be limited to, those tasks as identified in Amended Exhibit A, marked "Amended Scope of Work and Project Budget," incorporated herein and made by reference a part hereof.

ARTICLE II

Term: This Agreement shall become effective when fully executed by the parties hereto and shall expire October 24, 2008.

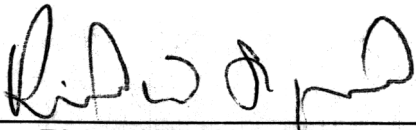
ARTICLE III

Compensation for Services: For services provided herein, County agrees to pay Contractor monthly in arrears. Payment shall be made within thirty (30) days following County receipt and approval of itemized invoice(s) detailing services rendered. For the purposes hereof, the billing rates shall be in accordance with Amended Exhibit B, marked "Amended Price Schedule," incorporated herein and made by reference a part hereof.

The total amount of this Agreement, as amended, shall not exceed \$587,144.75 inclusive of all expenses.

Except as herein amended, all other parts and sections of Agreement for Services # AGMT 05-979 shall remain unchanged and in full force and effect.

Requesting Department Concurrence:

By: 
Richard W. Shepard, P.E.
Director of Transportation

Dated: 10/6/10

IN WITNESS WHEREOF, the parties hereto have executed this Amendment I to Agreement for Services # AGMT 05-979 on the dates indicated below, the latest of which shall be deemed to be the effective date of this Amendment.

- COUNTY OF EL DORADO -

By: John R. Sweeney 11/14/06

Board of Supervisors
"County"

Attest:
Cindy Keck
Clerk of the Board of Supervisors

By: Deborah Taylor Dated: 11/14/06
Deputy Clerk

CUMMINS WEST, NC.

By: Mike Doherty Dated: 10/16/06
Mike Doherty
Vice President of Finance
"Contractor"

By: Corporate Dated

Amended Exhibit A

Amended Scope of Work and Project Budget

Scope of Work

Installation

Contractor shall furnish all materials, labor, equipment and services necessary to provide and install Cleaire Longview emission control devices or Cleaire Horizon emission control devices on El Dorado County Department of Transportation vehicles. The type of device installed will be dependent upon the California Air Resources Board (CARB) certification for the year, use and type of vehicle. All service will be provided at Contractor's facility located at 875 Riverside Parkway, West Sacramento, California. The Department of Transportation (Department) will deliver equipment to and pick up equipment from Contractor's facility.

Specific task assignments and work requirements will apply to each installation. An inspection of each vehicle will be performed by the Contract Administrator, or his designee, and by Contractor at which time the specific tasks for each installation shall be determined. Repairs to the equipment that are necessary prior to the installation of the emission control device will be identified and facilitated by the Department.

Following the inspection, the Contract Administrator will issue an approved Task Order to Contractor containing a scope of work including the type of device to be installed based on the CARB certification, a schedule, a not-to-exceed cost to complete the work and a notice to proceed for that installation. No payment will be made for any work performed prior to the issuance of an approved Task Order.

When the work detailed in the Task Order is complete, an inspection of the installation by the Contract Administrator or his designee will take place and a Punch List will be generated of any non-compliant work. All issues will be resolved prior to acceptance of the work. Upon completion and acceptance, an invoice will be issued in accordance with the provisions of the Contract.

All communications with Contractor throughout this project will be handled by the Contract Administrator or his designee.

Maintenance Training

Contractor shall provide training to designated Department staff on the routine maintenance procedures for the Cleaire Longview emission control device and the Cleaire Horizon emission control device at the Department's facilities at 2241 Headington Road, Placerville, California and at 1121 Shakori Drive, Meyers, California, at times to be mutually agreed upon. There shall be no charge to County for these training sessions.

A separate Task Order shall be issued for each training session. Each Task Order for training sessions shall generally describe the training to be provided, the duration of each training session and the time and location of each training session. A minimum of two (2) training sessions shall be provided prior to the expiration date of this Agreement.

Project Budget

<u>Equip #</u>	<u>Description</u>	<u>Device</u>	<u>Total Retrofit Cost</u>	<u>Matching Funds-Road Fund</u>	<u>EDCAQMD Funds</u>
25-04	1990 Int'l Dump Truck	Horizon		\$3,527.56	\$10,582.69
25-05	1990 Int'l Dump Truck	Horizon			\$10,582.69
33-02	1990 Peterbuilt Tractor	Horizon			
25-06	1991 Int'l Dump Truck	Horizon			
34-06	1991 Int'l Water Truck	Horizon			
23-17	1992 Int'l Dump Truck	Horizon			
23-18	1992 Int'l Dump Truck	Horizon			
25-07	1992 Int'l Dump Truck	Horizon			
34-07	1992 Int'l Water Truck	Horizon			
89-03	1993 Ford Paint Striper	Horizon			
39-02	1993 Int'l PB Patcher	Horizon			
39-03	1994 Int'l PB Patcher	Horizon			
24-08		Horizon			
24-10		Horizon			
24-11		Horizon			
24-09	2004 Ford F550*	Horizon			
35-01		Horizon			
38-03		Longview			
21-06		Longview	\$19,101.25		
21-07	2003 Ford F550	Longview			
25-11		Longview			
25-12		Longview			
39-04		Longview			
79-02	2004 Vector Truck	Longview			
	Totals for work under Amendment I		\$373,583.00	\$93,397.00	\$280,186
25-09	1996 Int'l Dump Truck	Longview		\$6499.50	
24-04	1996 Int'l Dump Truck 4x4	Longview			
	1997 Int'l Dump Truck	Longview			
	1997 Int'l Dump Truck	Longview	\$19,101.25		
24-05	2000 Int'l Dump Truck	Longview			
23-22	2001 Int'l Dump Truck	Longview			
23-21	2001 Int'l Dump Truck	Longview			\$14,
71-04	2001 Schwarze Sweeper	Longview			
71-05	2001 Schwarze Sweeper	Longview			
		Longview			
		Longview			
	Totals for work under original Agreement			\$55,978.50	\$157,583.25
	Total Project Costs under the Agreement and this Amendment I		\$587,144.75	\$149,375.50	\$437,769.25

Amended Exhibit B

Amended Price Schedule

Based upon the California Air Resources Board certification related to year, use and type of vehicle, one of the following devices will be installed on the units of equipment as specified by the Contract Administrator in the Task Order for each installation.

Cleaire Longview Device – J Series

<u>Product</u>	<u>Description</u>	<u>Amount</u>
Cleaire	Cleaire Longview	\$14,900.00
Kit	Installation Kit	600.00
Labor	Installation	2,400.00
		1,201.25
		<hr/> \$19,101.25

Cleaire Longview Device – K Series

<u>Product</u>	<u>Description</u>	<u>Amount</u>
Cleaire	Cleaire Longview - K Series	\$16,500.00
Kit	Installation Kit	600.00
Labor	Installation	2,400.00
		1,325.25
	Total	<hr/> \$20,825.25

Cleaire Horizon Device

<u>Product</u>	<u>Description</u>	<u>Amount</u>
Cleaire	Cleaire Horizon Device	\$10,500.00
Kit	Installation Kit	600.00
Labor	Installation	2,150.00
	Tax	860.25
		<hr/> \$14,110.25

Cummins West, Inc.

Diesel Fleet Retrofit Project

AGREEMENT FOR SERVICES # AGMT 05-979

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 Cummins West, Inc., a corporation duly qualified to conduct business in the State of California, whose principal place of business is 14775 Wicks Boulevard, San Leandro, California 94577, and whose local office address is 875 Riverside Parkway, West Sacramento, California 95605, (hereinafter referred to as "Contractor");

RECITALS

WHEREAS, County has proposed a diesel retrofit project that meets the eligibility criteria of the El Dorado County Air Quality Management District (hereinafter referred to as "District") and that has been approved by the District for funding; and

WHEREAS, County has determined that it is necessary to obtain a Contractor to assist its Department of Transportation (Department) with that diesel fleet retrofit project; and

WHEREAS, Contractor has agreed to furnish and install Cleaire Longview emission control devices on eleven (11) of the Department's diesel powered vehicles and to provide staff training for the routine maintenance required for those devices; and

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

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

WHEREAS, County has determined that the provision of such services provided by Contractor are in the public's best interest, and authorized by El Dorado County Charter, Section 210(b)(6) and/or Government Code 31000;

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

ARTICLE I

Scope of Services: Contractor agrees to furnish materials, labor, equipment and services necessary to provide and install Cleaire Longview emission control devices on designated Department of Transportation equipment and to provide staff training for the routine maintenance required for those devices at the Department's Headington Road and Shakori Drive facilities. Services shall include, but not be limited to, those tasks as identified in Exhibit A, marked "Scope of Work," incorporated herein and made by reference a part hereof.

ARTICLE II

Term: This Agreement shall become effective when fully executed by both parties hereto and shall expire one year thereafter.

ARTICLE III

Compensation for Services: For products and services provided herein, County agrees to pay Contractor monthly in arrears. Payment shall be made within thirty (30) days following County receipt and approval of itemized invoice(s) detailing services rendered. For the purposes hereof, the billing rates shall be in accordance with Exhibit B, marked "Price Schedule," incorporated herein and made by reference a part hereof.

Itemized invoices shall follow the format specified by County and shall reference this Agreement number and the individual Task Order number(s) assigned for the specific services being billed, both on their faces and on any enclosures or back-up documentation. Invoices shall be mailed to the Contract Administrator at the following address:

County of El Dorado
Department of Transportation
2441 Headington Road
Placerville, California 95667
Attn: Dennis Milligin

or to such other location as County directs.

The total amount of this Agreement shall not exceed \$213,561.75, inclusive of all expenses.

ARTICLE IV

Prevailing Wage: County requires Contractor's services on public works project(s) involving local, State and/or Federal funds to which prevailing wage requirements may apply. As a consequence, Contractor shall comply with all applicable State and Federal prevailing wage rates, statutes, rules and regulations then in effect. In the event of conflict between applicable Federal and State provisions, the higher prevailing wage rate shall apply. Contractor shall use the general prevailing wage rates determined by the Director of Industrial Relations for the county in which the work is to be done, which are available at the offices of the District Director of Transportation for the district in which the work is situated. Contractor shall comply with all wage requirements, as set forth in Labor Code Sections 1770 et seq., 1773.2, 1775, 1776, 1810, & 1813. Changes, if any, to the general prevailing wage rates will be available at the same location. Federal minimum wage rates are determined by the United States Secretary of Labor and may be examined at the office described above. Future effective general prevailing wage rates which have been predetermined and are on file with the California Department of Industrial Relations are referenced but not printed in the general prevailing wage rates.

ARTICLE V

Payment of all Federal, State or City Taxes: Any federal, state or city tax payable on the articles furnished by Contractor under this Agreement shall be included in rates quoted herein and paid by Contractor.

ARTICLE VI

Compliance with all Applicable Laws: Contractor shall conform to and abide by all Federal, State and local labor and safety laws, ordinances, rules and regulations. All work and materials shall be in full accordance with the latest rules and regulations of the California Air Resources Board, the Department of Motor Vehicles, safety orders of the Division of Industrial Safety and any or all other applicable laws and regulations. Nothing in this Agreement, including but not limited to, any directions or Task Orders provided to Contractor, is to be construed to permit work not conforming to these regulations.

ARTICLE VII

Audits, Inspections and Record Retention: County is relying on assistance or grants for a portion of the funding for the services to be provided under this Agreement. As a requirement in County's Funding Agreement to obtain those grant funds, County is required to comply with certain audit and inspection requirements and to extend the requirements of these sections to third party contracts. Contractor shall at any time during regular business hours, and as often as County or District may deem necessary, make available to County and District for examination all of its records and data with respect to the matters covered by this Agreement. Contractor shall, and upon request by County or District, permit County and District 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 audit by County, District or its authorized representatives to determine if the funds paid to Contractor under this Agreement were properly used for the reduction of pollution as provided in AB 2766 and to determine whether the funds were utilized as provided by law and in accordance with County's Funding Agreement. If, after audit, County or District makes a determination that funds paid to Contractor pursuant to this Agreement were not spent in conformance with County's Funding Agreement, or AB 2766 or any other applicable provisions of law, Contractor agrees to immediately reimburse County all funds determined to have been expended not in accordance with said provisions.

Contractor shall retain all invoices, 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.

Because this Agreement exceeds Ten Thousand Dollars (\$10,000), Contractor shall be subject to the examination and audit of the State Auditor for a period of three (3) years after final payment under the Agreement.

ARTICLE VIII

Workers' Compensation: Contractor shall comply with Labor Code Sections 3700 et seq., requiring it to obtain Workers' Compensation Insurance, and sign a certificate of knowledge thereof.

CERTIFICATE OF KNOWLEDGE - LABOR CODE SECTION 3700

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers'

compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this Contract.

Signed G. J. 't Date 2/16/06

ARTICLE IX

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 X

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 term hereof.

ARTICLE XI

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

ARTICLE XII

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.

ARTICLE XIII

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 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. 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 XIV

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 the County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

ARTICLE XV

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 in 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 the 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 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 total amount of the contract. 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 XVI

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:

County of El Dorado
Department of Transportation
2441 Headington Road
Placerville, California 95667

Dennis Milligin,
Equipment Superintendent

With a Copy To:

County of El Dorado
Department of Transportation
2850 Fairlane Court
Placerville, California 95667

Attn: Tim C. Prudhel,
Contract Services Officer

or to such other location as County directs.

Notices to Contractor shall be addressed as follows:

Cummins West, Inc.
875 Riverside Parkway
West Sacramento, California 95605

Mike Doherty,
Vice President of Finance

or to such other location as Contractor directs.

ARTICLE XVII

Indemnity: Contractor shall defend, indemnify, and hold the County and the District 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 or District 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 the County or District, the

Contractor, subcontractor(s) and employee(s) of any of these, except for the sole, or active negligence of the County or District, their officers and employees, or as expressly provided by statute. This duty of Contractor to indemnify and save County and District harmless includes the duties to defend set forth in California Civil Code Section 2778.

ARTICLE XVIII

Insurance: 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:

- 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 the 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 the El Dorado County Risk Manager as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to the 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 the Risk Manager, 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 the 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 liability policies except Workers' Compensation and professional liability insurance policies.

The Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.

- J. Any deductibles or self-insured retentions must be declared to, and approved, by the County. At the option of the County, either: The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees, and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Contractor's obligations shall not be limited by the foregoing insurance requirements and shall survive 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 the Risk Management Division as essential for protection of the County.

ARTICLE XIX

Licenses:

Contractor warrants and represents that it and each of the personnel employed or otherwise retained by Contractor to perform work under this Agreement are properly certified and/or licensed to provide the services contemplated herein.

ARTICLE XX

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 XXI

Guarantees:

- A. For the purposes of this Agreement, the warranty periods for the Cleaire Longview J Series and for the Cleaire Longview K Series emission control devices including all parts, equipment and materials to be provided by Contractor associated with the installation of those devices, shall be in accordance with "Table 1. Warranty Period," as identified in Exhibit C, marked "Warranty," incorporated herein and made by reference a part hereof. Contractor warrants and guarantees for the period specified from the date of invoice that the work shall be free from all defects due to faulty materials or workmanship and Contractor shall promptly make such corrections as may be necessary, including repairs of any damage to other parts of the equipment or vehicle resulting from such defects. County will give notice of observed defects with reasonable promptness.
- B. Contractor expressly agrees to act as co-guarantor of the emission control devices and all such parts, equipment and materials, and Contractor shall supply County with all warranty and guaranty documents relative to the emission control devices, parts, equipment and materials incorporated in the services provided and guaranteed by its suppliers or manufacturers.
- C. Contractor warrants to County that emission control devices, materials, parts and equipment furnished under this Agreement will be of good quality and new, unless otherwise required or permitted by the Agreement, that the work performed will be free from defects or flaws and is of the highest quality of workmanship and that the services provided will conform with the requirements of this Agreement and with the requirements and regulations of the California Air Resources Board. Work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective.

ARTICLE XXII

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 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 XXIII

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 XXIV

California Residency (Form 590): All independent Contractors providing services to the 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. The 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 the Contractor during the term of this Agreement. This requirement applies to any agreement/contract exceeding \$1,500.

ARTICLE XXV

Taxpayer Identification Number (Form W-9): All independent contractors or corporations providing services to the County must file a Department of the Treasury Internal Revenue Service Form W-9, certifying their Taxpayer Identification Number.

ARTICLE XXVI

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. Contractor waives any removal rights it might have under Code of Civil Procedure Section 394.

ARTICLE XXVII

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 the 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 the County.

ARTICLE XXVIII

Contract Administrator: The County Officer or employee with responsibility for administering this Agreement is Dennis Milligin, Equipment Superintendent, Department of Transportation, or successor.

ARTICLE XXIX

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.

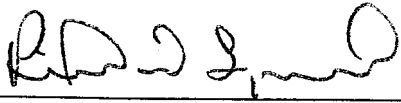
ARTICLE XXX

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 XXXI

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 Concurrence:

By: 
Richard W. Shepard, P.E.
Director of Transportation

Dated: 1/12/04

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated below, the latest of which shall be deemed to be the effective date of this Agreement.

-- COUNTY OF EL DORADO

By: James R. Sweeney
JAMES R. SWEENEY, CHAIRMAN
Board of Supervisors
"County"

Dated: 3/7/06

Attest:
Cindy Keck
Clerk of the Board of Supervisors

By: [Signature]
Deputy Clerk

Dated: 3/7/06

-- CUMMINS WEST, NC. --

By: [Signature]
Mike Doherty
Vice President of Finance
"Contractor"

Dated: 2/16/06

By: [Signature]
Corporate Secretary

Dated: 2/16/06

Cummins West, Inc.

Exhibit A

Scope of Work

Installation

Contractor shall furnish all materials, labor, equipment and services necessary to provide and install Cleaire Longview emission control devices on eleven (11) El Dorado County Department of Transportation units of equipment. All service will be provided at Contractor's facility located at 875 Riverside Parkway, West Sacramento, California. The Department of Transportation (Department) will deliver equipment to and pick up equipment from Contractor's facility.

Specific task assignments and work requirements will apply to each installation. An inspection of each vehicle will be performed by the Contract Administrator, or his designee, and by Contractor at which time the specific tasks for each installation shall be determined. Repairs to the equipment that are necessary prior to the installation of the emission control device will be identified and facilitated by the Department.

Following the inspection, the Contract Administrator will issue an approved Task Order to Contractor containing a scope of work, a schedule, a not-to-exceed cost to complete the work and a notice to proceed for that installation. No payment will be made for any work performed prior to the issuance of an approved Task Order.

When the work detailed in the Task Order is complete, an inspection of the installation by the Contract Administrator or his designee will take place and a Punch List will be generated of any non-compliant work. All issues will be resolved prior to acceptance of the work. Upon completion and acceptance, an invoice will be issued in accordance with the provisions of the Contract.

All communications with Contractor throughout this project will be handled by the Contract Administrator or his designee.

Maintenance Training

Contractor shall provide training to designated Department staff on the routine maintenance procedures for the Cleaire Longview emission control devices at the Department's facilities at 2241 Headington Road, Placerville, California and at 1121 Shakori Drive, Meyers, California, at times to be mutually agreed upon. There shall be no charge to County for these training sessions.

A separate Task Order shall be issued for each training session. Each Task Order for training sessions shall generally describe the training to be provided, the duration of each training session and the time and location of each training session. A minimum of two (2) training sessions shall be provided prior to the expiration date of this Agreement.

Cummins West, Inc.

Exhibit B

Price Schedule

Based upon the age and type of equipment, the Cleaire Longview J Series emission control device will be provided and installed on the following nine (9) units of equipment:

Equipment #s: 23-19, 23-20, 23-21, 23-22, 24-04, 24-05, 28-08, 71-04, and 71-05.

<u>Product</u>	<u>Description</u>	<u>Amount/Unit</u>	<u>Units</u>	<u>Extended Total</u>
Cleaire	Cleaire Longview - J Series	\$14,900.00	9	\$134,100.00
Kit	Installation Kit	600.00	9	5,400.00
Labor	Installation	2,400.00	9	21,600.00
		1,201.25	9	10,811.25
		<u>\$19,101.25</u>	<u>9</u>	<u>\$171,911.25</u>

Based upon the age and type of equipment, the Cleaire Longview K Series emission control device will be provided and installed on the following two (2) units of equipment:

Equipment #s: 25-09, 25-10.

<u>Product</u>	<u>Description</u>	<u>Amount/Unit</u>	<u>Units</u>	<u>Extended Total</u>
Cleaire	Cleaire Longview - K Series	\$16,500.00	2	\$33,000.00
Kit	Installation Kit	600.00	2	1,200.00
Labor	Installation	2,400.00	2	4,800.00
	Tax	1,325.25	2	2,650.50
	Total	<u>\$20,825.25</u>	<u>2</u>	<u>\$41,650.50</u>

Total Project Cost \$213,561.75

Exhibit C

Warranty

Cummins West, Inc. dba Cleaire Advanced Emission Controls will be hereafter known as "Cleaire" for this Warranty Statement.

This warranty statement is the sole warranty made by Cleaire. There are no other warranties, expressed or implied, or of merchantability or fitness for a particular purpose. Table 1 lists the warranty period.

Table 1. Warranty Period

Engine Type	Engine Size	Warranty Period
On-Road	Light heavy-duty, 70 to 170 hp, Gross Vehicle Weight Rating (GVWR) less than 19,500 lbs.	5 years or 60,000 miles
	Medium heavy-duty, 170 to 250 hp, GVWR from 19,500 lbs. to 33,000 lbs.	5 years or 100,000 miles
	Heavy heavy-duty, exceeds 250 hp, GVWR exceeds 33,000 lbs.	5 years or 150,000 miles
Off-Road (includes portable engines) and Stationary	Under 25 hp, and for constant speed engines rated under 50 hp with rated speeds greater than or equal to 3,000 rpm	3 years or 1,600 hours
	At or above 25 hp and under 50 hp	4 years or 2,600 hours
	At or above 50 hp	6 years or 4,200 hours

For the purpose of this warranty, abuse or neglect includes vehicle accidents, ignoring the Longview system status lights, blending lubricating oil with fuel, or any engine failure or condition that allows excess lubricating oil, coolant, contaminants or debris to enter the exhaust system.

Cleaire is not responsible for incidental or consequential damages, which include, but are not limited to, fines, theft, vandalism, or collisions. The owner is responsible for incidental costs such as communication expenses, meals, and lodging incurred by owner or employees of owner as a result of a warrantable condition.

The verified diesel emission control system must be installed by Cleaire authorized personnel. Installation by unauthorized personnel will void this warranty.

PRODUCT WARRANTY

YOUR WARRANTY RIGHTS AND OBLIGATIONS

Cleaire warrants the diesel emission control system in the application for which it is sold or leased to be free from defects in design, materials, workmanship, or operation of the diesel emission control system which cause the diesel emission control system to fail to conform to the emission control performance level it was verified to, or to the requirements in the California Code of Regulations, Title 13, Sections 2700 to 2706, and 2710, for the periods of time listed in Table 1, provided there has been no abuse, neglect, or improper maintenance of your diesel emission control system, vehicle or equipment, as specified in the owner's manuals. Where a warrantable condition exists, this warranty also covers other vehicle or equipment parts from damage caused by the diesel emission control system, subject to the same exclusions for abuse, neglect or improper maintenance of your vehicle or equipment. Please review your owner's manual for other warranty information. Your diesel emission control system may include a core part (e.g., particulate filter, diesel oxidation catalyst, selective catalytic reduction converter) as well as hoses, connectors, a backpressure monitor (if applicable), and other emission-related assemblies. Where a warrantable condition exists, Cleaire will repair or replace your diesel emission control system at no cost to you including diagnosis, parts, and labor.

WARRANTY COVERAGE

For an engine size and application, the warranty period will be the years or hours of miles of operation shown in Table 1, whichever occurs first.

If any emission-related part of your diesel emission control system is defective in design, materials, workmanship, or operation of the diesel emission control system thus causing the diesel emission control system to fail to conform to the emission control performance level it was verified to, or to the requirements in the California Code of Regulations, Title 13, Sections 2700 to 2706, and 2710, within the warranty period, as defined above, Cleaire will repair or replace the diesel emission control system, including parts and labor.

In addition, Cleaire will replace or repair the vehicle, equipment, or engine components to the condition they were in prior to the failure, including parts and labor, for damage to the engine or other vehicle components proximately caused by the verified diesel emission control strategy. This also includes those relevant diagnostic expenses in the case a warranty claim is valid. Cleaire may, at its option, instead pay the fair market value of the vehicle, equipment, or engine prior to the time the failure occurs.

OWNER'S WARRANTY RESPONSIBILITY

As the (vehicle, engine, equipment) owner, you are responsible for performing the required maintenance described in your owner's manual. Cleaire recommends that you retain all maintenance records and receipts for maintenance expenses for your vehicle, engine, or equipment, and diesel emission control system. If you do not keep your receipts or fail to perform all scheduled maintenance, Cleaire may have grounds to deny warranty coverage. You are responsible for presenting your vehicle, equipment, or engine and diesel emission control system to a Cleaire-authorized dealer as soon as a problem is detected. The warranty repair or replacement should be completed in a reasonable amount of time, not to exceed 30 days. If a replacement is needed, this may be extended to 90 days should a replacement not be available, but must be performed as soon as a replacement becomes available. Failure to complete the warranty information requested by Cleaire within 30 days of installation of the diesel emission control system may void this warranty.

If you have questions regarding your warranty rights and responsibilities, you should contact Cleaire at 1-800-308-2111 or the California Air Resources Board at 9528 Telstar Avenue, El Monte, CA 91731, or (800) 363-7664, or electronic mail: helpline@arb.ca.gov.

INSTALLATION WARRANTY

YOUR WARRANTY RIGHTS AND OBLIGATIONS

The Cleaire-authorized installer warrants that the installation of the diesel emission control system is free from defects in workmanship or materials which cause the diesel emission control system to fail to conform to the emission control performance level it was verified to, or to the requirements in the California Code of Regulations, Title 13, Sections 2700 to 2706. The warranty period and the extent of the warranty coverage provided by the Cleaire-authorized installer is the same as the product warranty provided by Cleaire, and the same exclusions apply.

OWNER'S WARRANTY RESPONSIBILITY

As the (vehicle, engine, equipment) owner, you are responsible for presenting your vehicle, engine, or equipment and diesel emission control system to the Cleaire-authorized installer as soon as a problem with the installation is detected.

If you have questions regarding your warranty rights and responsibilities, you should contact a Cleaire-authorized dealer, or Cleaire at 1-800-308-2111, or the California Air Resources Board at 9528 Telstar Avenue, El Monte, CA 91731, or (800) 363-7664, or electronic mail: help@arb.ca.gov.

Cummins West, Inc.

Diesel Fleet Retrofit Project

AGREEMENT FOR SERVICES # AGMT 05-979

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 Cummins West, Inc., a corporation duly qualified to conduct business in the State of California, whose principal place of business is 14775 Wicks Boulevard, San Leandro, California 94577, and whose local office address is 875 Riverside Parkway, West Sacramento, California 95605, (hereinafter referred to as "Contractor");

RECITALS

WHEREAS, County has proposed a diesel retrofit project that meets the eligibility criteria of the El Dorado County Air Quality Management District (hereinafter referred to as "District") and that has been approved by the District for funding; and

WHEREAS, County has determined that it is necessary to obtain a Contractor to assist its Department of Transportation (Department) with that diesel fleet retrofit project; and

WHEREAS, Contractor has agreed to furnish and install Cleaire Longview emission control devices on eleven (11) of the Department's diesel powered vehicles and to provide staff training for the routine maintenance required for those devices; and

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

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

WHEREAS, County has determined that the provision of such services provided by Contractor are in the public's best interest, and authorized by El Dorado County Charter, Section 210(b)(6) and/or Government Code 31000;

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

ARTICLE I

Scope of Services: Contractor agrees to furnish materials, labor, equipment and services necessary to provide and install Cleaire Longview emission control devices on designated Department of Transportation equipment and to provide staff training for the routine maintenance required for those devices at the Department's Headington Road and Shakori Drive facilities. Services shall include, but not be limited to, those tasks as identified in Exhibit A, marked "Scope of Work," incorporated herein and made by reference a part hereof.

ARTICLE II

Term: This Agreement shall become effective when fully executed by both parties hereto and shall expire one year thereafter.

ARTICLE III

Compensation for Services: For products and services provided herein, County agrees to pay Contractor monthly in arrears. Payment shall be made within thirty (30) days following County receipt and approval of itemized invoice(s) detailing services rendered. For the purposes hereof, the billing rates shall be in accordance with Exhibit B, marked "Price Schedule," incorporated herein and made by reference a part hereof.

Itemized invoices shall follow the format specified by County and shall reference this Agreement number and the individual Task Order number(s) assigned for the specific services being billed, both on their faces and on any enclosures or back-up documentation. Invoices shall be mailed to the Contract Administrator at the following address:

County of El Dorado
Department of Transportation
2441 Headington Road
Placerville, California 95667
Attn: Dennis Milligin

or to such other location as County directs.

The total amount of this Agreement shall not exceed \$213,561.75, inclusive of all expenses.

ARTICLE IV

Prevailing Wage: County requires Contractor's services on public works project(s) involving local, State and/or Federal funds to which prevailing wage requirements may apply. As a consequence, Contractor shall comply with all applicable State and Federal prevailing wage rates, statutes, rules and regulations then in effect. In the event of conflict between applicable Federal and State provisions, the higher prevailing wage rate shall apply. Contractor shall use the general prevailing wage rates determined by the Director of Industrial Relations for the county in which the work is to be done, which are available at the offices of the District Director of Transportation for the district in which the work is situated. Contractor shall comply with all wage requirements, as set forth in Labor Code Sections 1770 et seq., 1773.2, 1775, 1776, 1810, & 1813. Changes, if any, to the general prevailing wage rates will be available at the same location. Federal minimum wage rates are determined by the United States Secretary of Labor and may be examined at the office described above. Future effective general prevailing wage rates which have been predetermined and are on file with the California Department of Industrial Relations are referenced but not printed in the general prevailing wage rates.

ARTICLE V

Payment of all Federal, State or City Taxes: Any federal, state or city tax payable on the articles furnished by Contractor under this Agreement shall be included in rates quoted herein and paid by Contractor.

ARTICLE VI

Compliance with all Applicable Laws: Contractor shall conform to and abide by all Federal, State and local labor and safety laws, ordinances, rules and regulations. All work and materials shall be in full accordance with the latest rules and regulations of the California Air Resources Board, the Department of Motor Vehicles, safety orders of the Division of Industrial Safety and any or all other applicable laws and regulations. Nothing in this Agreement, including but not limited to, any directions or Task Orders provided to Contractor, is to be construed to permit work not conforming to these regulations.

ARTICLE VII

Audits, Inspections and Record Retention: County is relying on assistance or grants for a portion of the funding for the services to be provided under this Agreement. As a requirement in County's Funding Agreement to obtain those grant funds, County is required to comply with certain audit and inspection requirements and to extend the requirements of these sections to third party contracts. Contractor shall at any time during regular business hours, and as often as County or District may deem necessary, make available to County and District for examination all of its records and data with respect to the matters covered by this Agreement. Contractor shall, and upon request by County or District, permit County and District 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 audit by County, District or its authorized representatives to determine if the funds paid to Contractor under this Agreement were properly used for the reduction of pollution as provided in AB 2766 and to determine whether the funds were utilized as provided by law and in accordance with County's Funding Agreement. If, after audit, County or District makes a determination that funds paid to Contractor pursuant to this Agreement were not spent in conformance with County's Funding Agreement, or AB 2766 or any other applicable provisions of law, Contractor agrees to immediately reimburse County all funds determined to have been expended not in accordance with said provisions.

Contractor shall retain all invoices, 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.

Because this Agreement exceeds Ten Thousand Dollars (\$10,000), Contractor shall be subject to the examination and audit of the State Auditor for a period of three (3) years after final payment under the Agreement.

ARTICLE VIII

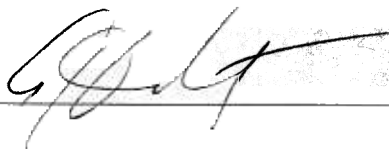
Workers' Compensation: Contractor shall comply with Labor Code Sections 3700 et seq., requiring it to obtain Workers' Compensation Insurance, and sign a certificate of knowledge thereof.

CERTIFICATE OF KNOWLEDGE - LABOR CODE SECTION 3700

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers'

compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this Contract.

Signed: _____



Date _____

2/16/06

ARTICLE IX

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 X

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 term hereof.

ARTICLE XI

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

ARTICLE XII

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.

ARTICLE XIII

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 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. 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 XIV

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 the County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

ARTICLE XV

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 in 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 the 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 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 total amount of the contract. 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 XVI

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:

County of El Dorado
Department of Transportation
2441 Headington Road
Placerville, California 95667

Attn.: Dennis Milligin,
Equipment Superintendent

With a Copy To:

County of El Dorado
Department of Transportation
2850 Fairlane Court
Placerville, California 95667

Attn: Tim C. Prudhel,
Contract Services Officer

or to such other location as County directs.

Notices to Contractor shall be addressed as follows:

Cummins West, Inc.
875 Riverside Parkway
West Sacramento, California 95605

Attn.: Mike Doherty,
Vice President of Finance

or to such other location as Contractor directs.

ARTICLE XVII

Indemnity: Contractor shall defend, indemnify, and hold the County and the District 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 or District 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 the County or District, the

Contractor, subcontractor(s) and employee(s) of any of these, except for the sole, or active negligence of the County or District, their officers and employees, or as expressly provided by statute. This duty of Contractor to indemnify and save County and District harmless includes the duties to defend set forth in California Civil Code Section 2778.

ARTICLE XVIII

Insurance: 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:

- 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 the 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 the El Dorado County Risk Manager as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to the 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 the Risk Manager, 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 the 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 liability policies except Workers' Compensation and professional liability insurance policies.

The Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.

- J. Any deductibles or self-insured retentions must be declared to, and approved, by the County. At the option of the County, either: The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees, and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Contractor's obligations shall not be limited by the foregoing insurance requirements and shall survive 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 the Risk Management Division as essential for protection of the County.

ARTICLE XIX

Licenses:

Contractor warrants and represents that it and each of the personnel employed or otherwise retained by Contractor to perform work under this Agreement are properly certified and/or licensed to provide the services contemplated herein.

ARTICLE XX

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 XXI

Guarantees:

- A. For the purposes of this Agreement, the warranty periods for the Cleaire Longview J Series and for the Cleaire Longview K Series emission control devices including all parts, equipment and materials to be provided by Contractor associated with the installation of those devices, shall be in accordance with "Table 1. Warranty Period," as identified in Exhibit C, marked "Warranty," incorporated herein and made by reference a part hereof. Contractor warrants and guarantees for the period specified from the date of invoice that the work shall be free from all defects due to faulty materials or workmanship and Contractor shall promptly make such corrections as may be necessary, including repairs of any damage to other parts of the equipment or vehicle resulting from such defects. County will give notice of observed defects with reasonable promptness.
- B. Contractor expressly agrees to act as co-guarantor of the emission control devices and all such parts, equipment and materials, and Contractor shall supply County with all warranty and guaranty documents relative to the emission control devices, parts, equipment and materials incorporated in the services provided and guaranteed by its suppliers or manufacturers.
- C. Contractor warrants to County that emission control devices, materials, parts and equipment furnished under this Agreement will be of good quality and new, unless otherwise required or permitted by the Agreement, that the work performed will be free from defects or flaws and is of the highest quality of workmanship and that the services provided will conform with the requirements of this Agreement and with the requirements and regulations of the California Air Resources Board. Work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective.

ARTICLE XXII

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 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 XXIII

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 XXIV

California Residency (Form 590): All independent Contractors providing services to the 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. The 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 the Contractor during the term of this Agreement. This requirement applies to any agreement/contract exceeding \$1,500.

ARTICLE XXV

Taxpayer Identification Number (Form W-9): All independent contractors or corporations providing services to the County must file a Department of the Treasury Internal Revenue Service Form W-9, certifying their Taxpayer Identification Number.

ARTICLE XXVI

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. Contractor waives any removal rights it might have under Code of Civil Procedure Section 394.

ARTICLE XXVII

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 the 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 the County.

ARTICLE XXVIII

Contract Administrator: The County Officer or employee with responsibility for administering this Agreement is Dennis Milligin, Equipment Superintendent, Department of Transportation, or successor.

ARTICLE XXIX

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.

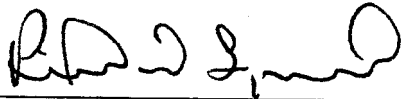
ARTICLE XXX

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 XXXI

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 Concurrence:

By: 

Richard W. Shepard, P.E.
Director of Transportation

Dated: 1/12/04

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates indicated below, the latest of which shall be deemed to be the effective date of this Agreement.

-- COUNTY OF EL DORADO --

By: James R. Sweeney
JAMES R. SWEENEY, CHAIRMAN
Board of Supervisors
"County"

Dated: 3/7/06

Attest:
Cindy Keck
Clerk of the Board of Supervisors

By: [Signature]
Deputy Clerk

Dated: 3/7/06

CUMMINS WEST, NC. --

By: [Signature]
Mike Doherty
Vice President of Finance
"Contractor"

Dated: 2/16/06

By: [Signature]
Corporate Secretary

Dated: 2/16/06

Cummins West, Inc.

Exhibit A

Scope of Work

Installation

Contractor shall furnish all materials, labor, equipment and services necessary to provide and install Cleaire Longview emission control devices on eleven (11) El Dorado County Department of Transportation units of equipment. All service will be provided at Contractor's facility located at 875 Riverside Parkway, West Sacramento, California. The Department of Transportation (Department) will deliver equipment to and pick up equipment from Contractor's facility.

Specific task assignments and work requirements will apply to each installation. An inspection of each vehicle will be performed by the Contract Administrator, or his designee, and by Contractor at which time the specific tasks for each installation shall be determined. Repairs to the equipment that are necessary prior to the installation of the emission control device will be identified and facilitated by the Department.

Following the inspection, the Contract Administrator will issue an approved Task Order to Contractor containing a scope of work, a schedule, a not-to-exceed cost to complete the work and a notice to proceed for that installation. No payment will be made for any work performed prior to the issuance of an approved Task Order.

When the work detailed in the Task Order is complete, an inspection of the installation by the Contract Administrator or his designee will take place and a Punch List will be generated of any non-compliant work. All issues will be resolved prior to acceptance of the work. Upon completion and acceptance, an invoice will be issued in accordance with the provisions of the Contract.

All communications with Contractor throughout this project will be handled by the Contract Administrator or his designee.

Maintenance Training

Contractor shall provide training to designated Department staff on the routine maintenance procedures for the Cleaire Longview emission control devices at the Department's facilities at 2241 Headington Road, Placerville, California and at 1121 Shakori Drive, Meyers, California, at times to be mutually agreed upon. There shall be no charge to County for these training sessions.

A separate Task Order shall be issued for each training session. Each Task Order for training sessions shall generally describe the training to be provided, the duration of each training session and the time and location of each training session. A minimum of two (2) training sessions shall be provided prior to the expiration date of this Agreement.

Cummins West, Inc.

Exhibit B

Price Schedule

Based upon the age and type of equipment, the Cleaire Longview J Series emission control device will be provided and installed on the following nine (9) units of equipment:

Equipment #s: 23-19, 23-20, 23-21, 23-22, 24-04, 24-05, 28-08, 71-04, and 71-05.

<u>Product</u>	<u>Description</u>	<u>Amount/Unit</u>	<u>Units</u>	<u>Extended Total</u>
Cleaire	Cleaire Longview - J Series	\$14,900.00	9	\$134,100.00
Kit	Installation Kit	600.00	9	5,400.00
Labor	Installation	2,400.00	9	21,600.00
	Tax	1,201.25	9	10,811.25
	Total	<u>\$19,101.25</u>	9	<u>\$171,911.25</u>

Based upon the age and type of equipment, the Cleaire Longview K Series emission control device will be provided and installed on the following two (2) units of equipment:

Equipment #s: 25-09, 25-10.

<u>Product</u>	<u>Description</u>	<u>Amount/Unit</u>	<u>Units</u>	<u>Extended Total</u>
Cleaire	Cleaire Longview - K Series	\$16,500.00	2	\$33,000.00
Kit	Installation Kit	600.00	2	1,200.00
Labor	Installation	2,400.00	2	4,800.00
		1,325.25	2	2,650.50
		<u>\$20,825.25</u>	2	<u>\$41,650.50</u>
Total Project Cost				<u>\$213,561.75</u>

Exhibit C

Warranty

Cummins West, Inc. dba Cleaire Advanced Emission Controls will be hereafter known as "Cleaire" for this Warranty Statement.

This warranty statement is the sole warranty made by Cleaire. There are no other warranties, expressed or implied, or of merchantability or fitness for a particular purpose. Table 1 lists the warranty period.

Table 1. Warranty Period

Engine Type	Engine Size	Warranty Period
On-Road	Light heavy-duty, 70 to 170 hp, Gross Vehicle Weight Rating (GVWR) less than 19,500 lbs.	5 years or 60,000 miles
	Medium heavy-duty, 170 to 250 hp, GVWR from 19,500 lbs. to 33,000 lbs.	5 years or 100,000 miles
	Heavy heavy-duty, exceeds 250 hp, GVWR exceeds 33,000 lbs.	5 years or 150,000 miles
Off-Road (includes portable engines) and Stationary	Under 25 hp, and for constant speed engines rated under 50 hp with rated speeds greater than or equal to 3,000 rpm	3 years or 1,600 hours
	At or above 25 hp and under 50 hp	4 years or 2,600 hours
	At or above 50 hp	6 years or 4,200 hours

For the purpose of this warranty, abuse or neglect includes vehicle accidents, ignoring the Longview system status lights, blending lubricating oil with fuel, or any engine failure or condition that allows excess lubricating oil, coolant, contaminants or debris to enter the exhaust system.

Cleaire is not responsible for incidental or consequential damages, which include, but are not limited to, fines, theft, vandalism, or collisions. The owner is responsible for incidental costs such as communication expenses, meals, and lodging incurred by owner or employees of owner as a result of a warrantable condition.

The verified diesel emission control system must be installed by Cleaire authorized personnel. Installation by unauthorized personnel will void this warranty.

PRODUCT WARRANTY

YOUR WARRANTY RIGHTS AND OBLIGATIONS

Cleaire warrants the diesel emission control system in the application for which it is sold or leased to be free from defects in design, materials, workmanship, or operation of the diesel emission control system which cause the diesel emission control system to fail to conform to the emission control performance level it was verified to, or to the requirements in the California Code of Regulations, Title 13, Sections 2700 to 2706, and 2710, for the periods of time listed in Table 1, provided there has been no abuse, neglect, or improper maintenance of your diesel emission control system, vehicle or equipment, as specified in the owner's manuals. Where a warrantable condition exists, this warranty also covers other vehicle or equipment parts from damage caused by the diesel emission control system, subject to the same exclusions for abuse, neglect or improper maintenance of your vehicle or equipment. Please review your owner's manual for other warranty information. Your diesel emission control system may include a core part (e.g., particulate filter, diesel oxidation catalyst, selective catalytic reduction converter) as well as hoses, connectors, a backpressure monitor (if applicable), and other emission-related assemblies. Where a warrantable condition exists, Cleaire will repair or replace your diesel emission control system at no cost to you including diagnosis, parts, and labor.

WARRANTY COVERAGE

For an engine size and application, the warranty period will be the years or hours of miles of operation shown in Table 1, whichever occurs first.

If any emission-related part of your diesel emission control system is defective in design, materials, workmanship, or operation of the diesel emission control system thus causing the diesel emission control system to fail to conform to the emission control performance level it was verified to, or to the requirements in the California Code of Regulations, Title 13, Sections 2700 to 2706, and 2710, within the warranty period, as defined above, Cleaire will repair or replace the diesel emission control system, including parts and labor.

In addition, Cleaire will replace or repair the vehicle, equipment, or engine components to the condition they were in prior to the failure, including parts and labor, for damage to the engine or other vehicle components proximately caused by the verified diesel emission control strategy. This also includes those relevant diagnostic expenses in the case a warranty claim is valid. Cleaire may, at its option, instead pay the fair market value of the vehicle, equipment, or engine prior to the time the failure occurs.

OWNER'S WARRANTY RESPONSIBILITY

As the (vehicle, engine, equipment) owner, you are responsible for performing the required maintenance described in your owner's manual. Cleaire recommends that you retain all maintenance records and receipts for maintenance expenses for your vehicle, engine, or equipment, and diesel emission control system. If you do not keep your receipts or fail to perform all scheduled maintenance, Cleaire may have grounds to deny warranty coverage. You are responsible for presenting your vehicle, equipment, or engine and diesel emission control system to a Cleaire-authorized dealer as soon as a problem is detected. The warranty repair or replacement should be completed in a reasonable amount of time, not to exceed 30 days. If a replacement is needed, this may be extended to 90 days should a replacement not be available, but must be performed as soon as a replacement becomes available. Failure to complete the warranty information requested by Cleaire within 30 days of installation of the diesel emission control system may void this warranty.

If you have questions regarding your warranty rights and responsibilities, you should contact Cleaire at 1-800-308-2111 or the California Air Resources Board at 9528 Telstar Avenue, El Monte, CA 91731, or (800) 363-7664, or electronic mail: helpline@arb.ca.gov.

INSTALLATION WARRANTY

YOUR WARRANTY RIGHTS AND OBLIGATIONS

The Cleaire-authorized installer warrants that the installation of the diesel emission control system is free from defects in workmanship or materials which cause the diesel emission control system to fail to conform to the emission control performance level it was verified to, or to the requirements in the California Code of Regulations, Title 13, Sections 2700 to 2706. The warranty period and the extent of the warranty coverage provided by the Cleaire-authorized installer is the same as the product warranty provided by Cleaire, and the same exclusions apply.

OWNER'S WARRANTY RESPONSIBILITY

As the (vehicle, engine, equipment) owner, you are responsible for presenting your vehicle, engine, or equipment and diesel emission control system to the Cleaire-authorized installer as soon as a problem with the installation is detected.

If you have questions regarding your warranty rights and responsibilities, you should contact a Cleaire-authorized dealer, or Cleaire at 1-800-308-2111, or the California Air Resources Board at 9528 Telstar Avenue, El Monte, CA 91731, or (800) 363-7664, or electronic mail: help@arb.ca.gov.