

# Chimney Smoke Reduction Incentive Program (RIP)

**CONTRACTOR AGREEMENT # \_\_\_\_\_**

**THIS AGREEMENT**, made and entered into by and between the County of El Dorado Air Quality Management District, a county air quality management district formed pursuant to California Health and Safety Code section 40100, et seq. (hereinafter referred to as "AQMD"), and \_\_\_\_\_, duly qualified to conduct business in the State of California, whose principal place of business is \_\_\_\_\_ (hereinafter referred to as "Installer");

## WITNESSETH:

**WHEREAS**, the State Woodstove Reduction Incentive Program ("RIP") is part of a statewide program that puts cap-and-trade dollars to work strengthening rural area economies, improving public health and the environment, and reducing fire risk; and

**WHEREAS**, the California Air Resources Board ("CARB") developed Program Guidelines for the implementation of the Woodsmoke Reduction Program ("Program"); and

**WHEREAS**, AQMD is being allocated a portion of statewide funding appropriated by Assembly Bill 1613 to incentivize replacement projects in El Dorado County; and

**WHEREAS**, additionally, AQMD receives funding to assist the Placer County Air Pollution Control District ("Placer APCD") with replacement projects in Placer County; and

**WHEREAS**, the Program encourages households to voluntarily replace uncertified wood stoves, wood inserts, and eligible fireplaces (used as a primary source of heat) with cleaner burning, more efficient heating devices; and

**WHEREAS**, the Program requires AQMD to provide program grantees ("Grantees") with a list of approved installers to perform the installation of replacement heating devices and provide education of the Grantee on proper device operation and maintenance; and

**WHEREAS**, incentive funding is available on a first-come, first served basis, and the Program will continue until the allocated funds are depleted; and

**WHEREAS**, AQMD and Placer APCD wish to establish agreements with professional installers that are appropriately licensed and insured to install qualified devices in compliance with all applicable State, county and city codes and ordinances and will agree to abide to the terms and conditions of the Program;

**NOW, THEREFORE**, AQMD and Contractor mutually agree as follows:

**Services to be Provided:** AQMD hereby engages Installer to perform, and Installer hereby agrees to perform, the services described in Exhibit A in conformity with the terms of this Agreement. The services are generally described as follows:

- Inspect installation site;
- Work with grantees to identify basic heating devices that will adequately replace the devices being removed;
- Obtain building permits;
- Properly remove and ensure old wood stoves are rendered inoperable and recycled;
- Install the devices to code;
- Provide training to Grantees on proper device operation, maintenance and, for those installing new wood stoves, proper wood selection and storage;
- Provide all supporting documentation to AQMD as requested.

**Term:** This Agreement shall become effective upon execution and shall expire on \_\_\_\_\_, unless terminated earlier in accordance with the "Termination" Article.

**Compensation:** Installer's sole compensation for services performed in conformity with the terms of this Agreement shall be paid to the Installer by the Grantee. AQMD shall not provide funding or compensation directly to the Installer.

**Subcontractors:** Upon the request of AQMD, Installer shall certify (through copies of invoices issued, checks, receipts, and the like) that complete payment has been made to any and all subcontractors as provided. It is understood that all expenses incidental to Installer's performance of services under this Agreement shall be borne exclusively by Installer.

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

**Accident Prevention:** Installer shall exercise all reasonable and necessary precautions for the protection of persons and property. All care shall be employed to ensure that the work proceeds under the highest standards of safety and prudence and in compliance with all applicable laws and regulations.

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

**Non-Allocation of Funds:** The terms of this Agreement and the services to be provided thereunder are contingent on the approval of funds by the appropriating

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

**Changes to Agreement:** This Agreement may be amended by mutual consent of the Contract Administrators. Said amendments shall become effective only when in writing and fully executed by the Contract Administrators.

**Contractor to AQMD:** It is understood that the services provided under this Agreement shall be prepared in and with cooperation from AQMD and its staff. It is further agreed that in all matters pertaining to this Agreement, Installer 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 Installer's responsibilities under this Agreement during term hereof.

**Confidentiality:** Installer 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. Installer, and all Installer's staff, employees, and representatives, shall not use or disclose, directly or indirectly at any time, any said confidential information, other than to AQMD for the purpose of, and in the performance of, this Agreement. This confidentiality provision shall survive after the expiration or earlier termination of this Agreement.

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

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

The "Independent Contractor Liability" Article, shall survive any termination of this Agreement.

**Fiscal Considerations:** The parties to this Agreement recognize and acknowledge that AQMD may not expend funds for products, equipment, or services not budgeted in a given fiscal year. It is further understood that in the normal course of AQMD business, AQMD 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, AQMD 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 AQMD released from any further liability hereunder.

In addition to the above, should the Board of Directors during the course of a given year for financial reasons reduce or order a reduction in the budget for AQMD for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of AQMD, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

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

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

Installer acknowledges that if total compensation under this Agreement is greater than \$10,000.00, this Agreement is subject to examination and audit by the California State Auditor for a period of three (3) years, or for any longer period required by law, after final payment under this Agreement, pursuant to California Government Code § 8546.7. In order to facilitate these potential examinations and audits, Installer shall maintain, for a period of at least three (3) years, or for any longer period required by law, after final payment under the contract, all books, records, and documentation necessary to demonstrate performance under the Agreement.

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

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

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

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

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

Either party may terminate this Agreement for any or no reason at any time upon giving the other party at least thirty (30) days advance, written notice of intention to terminate. In such case, AQMD shall, subject to the "Compensation" Article, pay its pro rata share of the reasonable value of all services satisfactorily rendered and actual, reasonable costs incurred up to the time of the termination. Upon such termination, the entire work product produced by Installer and any unexpended funds shall be promptly delivered to AQMD.

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

To AQMD:

County of El Dorado  
Air Quality Management District  
345 Fair Lane, Building T-1  
Placerville, California 95667

Attn: Dave Johnston, Air Pollution Control Officer

or to such other location as AQMD directs.

Notices to Installer shall be addressed as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

or to such other location as Installer directs.

**Change of Address:** In the event of a change in address for Installer's principal place of business, Installer's Agent for Service of Process, or Notices to Installer, Installer shall notify AQMD in writing as provided in the "Notice to Parties" Article. Said notice shall

become part of this Agreement upon acknowledgment in writing by AQMD's Contract Administrator, and no further amendment of the Agreement shall be necessary provided that such change of address does not conflict with any other provisions of this Agreement.

**Indemnity:** Installer shall defend, indemnify, and hold AQMD, El Dorado County and the State of California, their Board, officers, agents, and employees harmless against and from any and all claims, suits, losses, damages, and liability for damages of every name, kind, and description, including attorneys' fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, AQMD or El Dorado County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with or resulting from the purchase, installation, maintenance, or use of the installed heating devices or the performance by Installer, its officers, agents, subcontractors, or employees of Installer's duties under this Agreement, unless such claim, loss, damage, injury or death is the result of the sole or active negligence of AQMD or El Dorado County. This duty of Installer to indemnify and save AQMD and El Dorado County harmless includes the duties to defend set forth in California Civil Code Section 2778. Except as provided in this Article, in no event shall AQMD or El Dorado County be liable to Installer or any third party for any direct, indirect, consequential, special, incidental, or punitive damages for the design, manufacture, operation, maintenance, performance, or demonstration of the installed heating devices under any theory, including but not limited to tort, contract, breach of warranty, or strict liability.

This indemnification obligation shall survive any termination of this Agreement.

**Insurance:**

- A. Installer shall provide proof of a policy of insurance satisfactory to County of El Dorado's Risk Management Division and documentation evidencing that Installer maintains insurance that meets the following requirements:
  - 1. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000 aggregate limit.
  - 2. Automobile Liability Insurance of not less than \$1,000,000 is required in the event motor vehicles are used by Subcontractor in the performance of the Agreement.
  - 3. Full Workers' Compensation and Employers' Liability Insurance covering all employees of Subcontractor as required by law in the State of California.
- B. Installer shall furnish certificates of insurance satisfactory to County of El Dorado's Risk Management Division as evidence that the insurance required above is being maintained.
- C. The insurance will be issued by an insurance company acceptable to County of

El Dorado's Risk Management Division or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.

- D. Installer agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Installer agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the written approval of Risk Management and Installer agrees that no work or services shall be performed prior to the giving of such written approval. In the event Installer fails to keep in effect at all times insurance coverage as herein provided, the County of El Dorado and/or AQMD may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.
- E. The certificates of insurance must include the following provisions stating that:
1. The insurer will not cancel the insured's coverage without prior written notice to County of El Dorado and AQMD; and
  2. AQMD, its officers, officials, employees, and volunteers and the County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
  3. State of California, its officers, officials, employees, and volunteers are included as additional insured, on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- F. The insurance coverage required herein shall be primary insurance as respects County of El Dorado, AQMD, their officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by County of El Dorado, AQMD, their officers, officials, employees, or volunteers shall be in excess of Installer's insurance and shall not contribute with it.
- G. Any deductibles or self-insured retentions must be declared to, and approved by, the County of El Dorado and AQMD. At the option of the County of El Dorado and AQMD, either: The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County of El Dorado, AQMD, their officers, officials, employees, and volunteers; or Installer shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

- H. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County of El Dorado, AQMD, their officers, officials, employees, or volunteers.
- I. The insurance companies shall have no recourse against the County of El Dorado, AQMD, their officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- J. Installer's obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.
- K. In the event Installer cannot provide an occurrence policy, Installer 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.
- L. The certificates of insurance shall meet such additional standards as may be determined by the County of El Dorado and AQMD, either independently or in consultation with County's Risk Management Division as essential for protection of the County of El Dorado and AQMD.

**Conflict of Interest:** The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and Section 87100 relating to conflict of interest of public officers and employees. Installer attests that it has no current business or financial relationship with any AQMD employee(s) that would constitute a conflict of interest with provision of services under this Agreement and will not enter into any such business or financial relationship with any such employee(s) during the term of this Agreement. AQMD represents that it is unaware of any financial or economic interest of any public officer or employee of Installer relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement either party may immediately terminate this Agreement by giving written notice as detailed in the "Termination" Article, herein.

**Nondiscrimination:**

- A. This Agreement involves funding from the state and, as a consequence, Installer and any of its subcontractors shall comply with all applicable nondiscrimination statutes and regulations during the performance of this Agreement including but not limited to the following: Installer and its employees, representatives, and subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status; Installer shall, unless exempt, comply with the applicable provisions of the Fair Employment and Housing Act (Government Code, Sections 12900 et seq.) and applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Sections 7285.0 et seq.); and the applicable regulations of the Fair Employment and Housing Commission

implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations incorporated into this Agreement by reference and made a part hereof as if set forth in full. Installer, its employees, representatives, and subcontractors shall give written notice of their obligations under this clause as required by law.

- B. Where applicable, Installer shall include these nondiscrimination and compliance provisions in any of its agreements that affect or are related to the services performed under this Agreement.
- C. Installer's signature shall provide any certifications necessary under the laws of the State of California, including but not limited to Government Code Section 12990.

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

**Licenses:** Installer represents that it and any and all subcontractors, if any, employed under this Agreement are duly certified or licensed in good standing by the State of California to perform the services contemplated under this Agreement, and that Installer and all subcontractors shall maintain said certificates and licenses in good standing throughout the term of this Agreement.

**Business License:** County of El Dorado'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 County of El Dorado without possessing a County of El Dorado business license unless exempt under County Ordinance Code Section 5.08.070. Installer warrants and represents that it shall comply with all of the requirements of County of El Dorado's Business License Ordinance, where applicable, prior to beginning work under this Agreement and at all times during the term of this Agreement.

**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.

**Contract Administrator:** The AQMD Officer or employee with responsibility for administration of this Agreement is Dave Johnston, Air Pollution Control Officer, or successor. The Installer Officer or employee with responsibility for administration of this Agreement is \_\_\_\_\_, or successor.

**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.

**Rights to Emission Reductions:** Installer transfers and conveys to AQMD all rights and claims to ownership of the emission reductions achieved through the installation and operation of any electric vehicle charging station or any installation supplies funded by this Agreement. Installer shall not use or attempt to use the emission reductions achieved by the Project as emission reduction credits. Installer hereby fully and completely relinquishes such rights for the useful life of the Project.

**Partial Invalidity:** If any provision, sentence, or phrase of the Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions, sentences, or phrases will continue in full force and effect without being impaired or invalidated in any way.

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

**No Third Party Beneficiaries:** Nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this Agreement.

**Counterparts:** This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

**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.

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

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

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
Dave Johnston  
Air Pollution Control Officer

-- \_\_\_\_\_ --

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
"Installer"

