

**EL DORADO COUNTY AIR QUALITY MANAGEMENT DISTRICT  
BOARD OF DIRECTORS  
AGENDA ITEM TRANSMITTAL  
Meeting of October 17, 2006**

<b>AGENDA TITLE:</b> Request to Approve Matching AB 923 DMV Funds for Carl Moyer Projects	
<b>DEPARTMENT:</b> AOMD/Environmental Mgmt.	<b>DEPT SIGNOFF:</b> <i>Gerri Silva</i>
<b>CONTACT:</b> Marcella McTaggart/Gerri Silva	<b>CAO USE ONLY:</b> <i>D</i>
<b>DATE:</b> 9-19-06	<b>PHONE:</b> 5306/6635
<b>DEPARTMENT SUMMARY AND REQUESTED BOARD ACTION:</b>	
<p>The El Dorado Air Quality Management District (EDCAQMD)/Environmental Management Department (EMD) is recommending the Board: (1) Approve Fiscal Year 2006/07 AB 923 funds from the EDCAQMD to be used as matching funds for two Carl Moyer Program qualified projects, located in the Lake Tahoe Air Basin, primarily funded by the Sacramento Metropolitan Air Quality Management District, (2) Authorize the Chairman to execute the two contracts in an amount not to exceed \$64,997, and (3) Approve the Budget Transfer to the appropriate projects accordingly (Non-General Fund).</p> <p><i>The budget transfer also includes an accounting correction for the Carl Moyer funding component previously approved by the board as a part of the FY 2006-07 budget amendment.</i></p>	
<b>CAO RECOMMENDATIONS:</b> <i>Recommend approval. Laura J. Hill 10/6/06</i>	
Financial impact? <input checked="" type="checkbox"/> Yes ( ) No	Funding Source: ( ) Gen Fund <input checked="" type="checkbox"/> Other
<b>BUDGET SUMMARY:</b>	Other: Special Revenue Funds
Total Est. Cost <span style="float:right">\$64,997</span>	<b>CAO Office Use Only:</b>
<b>Funding</b>	4/5's Vote Required <input checked="" type="checkbox"/> Yes ( ) No
Budgeted <span style="float:right">\$64,997</span>	Change in Policy ( ) Yes <input checked="" type="checkbox"/> No
New Funding _____	New Personnel ( ) Yes <input checked="" type="checkbox"/> No
Savings _____	<b>CONCURRENCES:</b>
Other _____	Risk Management <input checked="" type="checkbox"/>
Total Funding <span style="float:right">\$64,997</span>	County Counsel <input checked="" type="checkbox"/>
<b>Change in Net County Cost</b>	Other _____
<b>*Explain</b> Funds are available in the AQMD Special Revenue Fund.	
<b>BOARD ACTIONS:</b>	
<b>Vote:</b> Unanimous _____ Or _____	<p align="center">RECEIVED BOARD OF SUPERVISORS EL DORADO COUNTY 2006 OCT - 6 AM 11:08</p>
<b>Ayes:</b>	
<b>Noes:</b>	
<b>Abstentions:</b>	
<b>Absent:</b>	
Rev. 04/05	<p><b>I hereby certify that this is a true and correct copy of an action taken and entered into the minutes of the Board of Supervisors</b></p> <p><b>Date:</b> _____</p> <p><b>Attest: Cindy Keck, Board of Supervisors Clerk</b></p> <p><b>By:</b> _____</p>



*Environmental  
Health Division*

*Air Quality  
Management  
District*

*Solid Waste &  
Hazardous  
Materials  
Divisions*

*Vector Control*



**PLACERVILLE  
OFFICE**  
2850 Fairlane Ct.  
Building C  
Placerville, CA 95667

Ph. 530.621.5300  
Fax. 530.642.1531  
Fax. 530.626.7130

**SOUTH LAKE  
TAHOE OFFICE**  
3368 Lake Tahoe Blvd.  
Ste 303  
South Lake Tahoe, CA  
96150

Ph. 530.573.3450  
Fax. 530.542.3364

# COUNTY OF EL DORADO

## ENVIRONMENTAL MANAGEMENT DEPARTMENT

September 19, 2006

El Dorado County  
Air Quality Management District Board of Directors  
330 Fair Lane  
Placerville, CA 95667

**Subject: Request to Approve Matching AB 923 DMV Funds for Carl Moyer Projects**

Honorable Board Members:

**RECOMMENDATION:**

The El Dorado Air Quality Management District (EDCAQMD)/Environmental Management Department (EMD) is recommending the Board: (1) Approve Fiscal Year 2006/07 AB 923 funds from the EDCAQMD to be used as matching funds for two Carl Moyer Program qualified projects, located in the Lake Tahoe Air Basin, primarily funded by the Sacramento Metropolitan Air Quality Management District, (2) Authorize the Chairman to execute the two contracts in an amount not to exceed \$64,997, and (3) Approve the Budget Transfer to the appropriate projects accordingly (Non-General Fund).

**BACKGROUND:**

El Dorado County is divided between two air basins, the Lake Tahoe Air Basin and the Mountain Counties Air Basin. The El Dorado County portion of the Mountain Counties Air Basin is currently designated as serious federal ozone non-attainment area under the Clean Air Act (CAA), and the El Dorado County portion of the Lake Tahoe Air Basin is designated as attainment for the federal and state ozone standards.

The Sacramento Metropolitan Air Quality Management District (SMAQMD) manages the Carl Moyer Program funds for El Dorado County and Placer County. Qualified projects located within the Sacramento Federal Ozone Nonattainment Area, which includes the West Slope of El Dorado County, are fully funded by the SMAQMD. In 2001, the SMAQMD adopted a resolution that allows projects in the Lake Tahoe Air Basin to qualify for Carl Moyer Program funding with a match from the corresponding Air Quality Management District.

On March 21, 2006, the EDCAQMD Board of Directors approved an increase of Department of Motor Vehicle Fees under AB 923. AB 923 specifies that the fee increase can only be used to fund projects eligible for grants under the existing Carl Moyer Program or the New School Bus Replacement Program. The Board approved AB923 program allots at least 80% of these funds for school buses, thus leaving approximately \$67,000 annually to fund other qualified projects.

**REASONS FOR RECOMMENDATION:**

The SMAQMD qualified for Carl Moyer Program funding two projects located in the El Dorado County portion of the Lake Tahoe Air Basin. The following table provides the description of the projects and associated financial information:

<b>Project Proponent</b>	<b>Description</b>	<b>Total Project Cost</b>	<b>SMAQMD Carl Moyer Program Funding</b>	<b>Required EDCAQMD Match</b>
EDC Department of Transportation	Repower of three (3) snowblowers	\$288,240	\$216,201	\$43,239
City of South Lake Tahoe	Repower of two (2) snowblowers	\$148,050	\$111,292	\$21,758
<b>Total</b>		<b>\$436,290</b>	<b>\$327,493</b>	<b>\$64,997</b>

In order for the project proponents to complete the Program Funding Agreement with SMAQMD, the EDCAQMD Board of Directors must approve the required funding match. This recommendation is to approve the match funding, with the contracts between EDCAQMD and El Dorado County DOT, and between EDCAQMD and the City of South Lake Tahoe to be signed contingent upon signature of their agreement with SMAQMD.

County Counsel has reviewed and approved the attached contracts.

**FISCAL IMPACT:**

Funds in the amount of \$64,997 are available from the FY 06/07 Air Quality Management District Projects budget

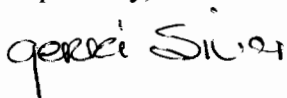
**NET COUNTY COST:**

None

**ACTION TO BE TAKEN FOLLOWING APPROVAL:**

1. Board Chairman to sign approved contract following execution of SMAQMD contract.
2. AQMD/EMD to forward executed Budget Transfer to Auditor/Controller for posting upon completion of project.

Respectfully,



Gerri Silva, M.S., REHS  
Environmental Management Interim Director

Respectfully,



Marcella McTaggart  
Air Pollution Control Officer

Attachment #1: Funding Agreement No. 003-AB923-06/07-11 with El Dorado County Department of Transportation

Attachment #2: Funding Agreement No. 007-AB923-06/07-11 with City of South Lake Tahoe

# CONTRACT ROUTING SHEET

Date Prepared: 07/10/2006

Need Date: 7-27-06

**PROCESSING DEPARTMENT:**

Department: AQMD-Environmental Mgmt

Dept. Contact: Linda Milligin/Carolyn Craig

Phone #: 6668/6649

Department

Head Signature: [Signature]

**CONTRACTOR:**

Name: EDC Department of Transportation *HAND DELIVERED*

Address: 2850 Fairlane Court

Placerville, CA 95667

Phone: \_\_\_\_\_

**CONTRACTING DEPARTMENT:** AQMD-Environmental Management-CHARGE TO 422100

Service Requested: Review of Agreement regarding AB923 funding for DOT SnowBlower Repower Projects.

Contract Term: 2013 Contract/Amendment Value: \$42,239.00

Compliance with Human Resources requirements? Yes:  No:

Compliance verified by: \_\_\_\_\_

**COUNTY COUNSEL:** (Must approve all contracts and MOU's)

Approved:  Disapproved:  Date: 7/24 By: [Signature]

Approved:  Disapproved:  Date: \_\_\_\_\_ By: \_\_\_\_\_

ASSIGNMENT

- 1. P1 Project change Exhibit A to Exhibit I
- 2. P3 "None" s/o "Nine" #3A
- 3. P5
- 4. P6B
- 5. P8
- 6. P14
- 7. P16

CONDITIONAL Approved subject to noted changes. [Signature]

**RISK MANAGEMENT:** (All contracts and MOU's except boilerplate grant funding agreements)

Approved:  Disapproved:  Date: 7/25/06 By: [Signature]

Approved:  Disapproved:  Date: \_\_\_\_\_ By: \_\_\_\_\_

JUL 25 2006

**OTHER APPROVAL:** (Specify department(s) participating or directly affected by this contract).

Departments:

Approved:  Disapproved:  Date: \_\_\_\_\_ By: \_\_\_\_\_

AUDITOR / CONTROLLER'S USE
TRANSFER # 27062
DATE
CODE BY

EL DORADO COUNTY APPROPRIATION TRANSFER (29130 GOV. CODE )  
**BUDGET TRANSFER REQUEST # 1**

TO BE COMPLETED BY THE DEPARTMENT
DOCUMENT TOTAL 1,222,950
NUMBER OF LINES 8
TRANSACTION CODE TOTAL * 38

Environment & Mgmt - AQMD  
 DEPARTMENT OR AGENCY NAME

BOS AGENDA TRANSMITTAL ATTACHED, DATED:

AGENDA TITLE

10/4/06  
 DATE

Richard B. ...  
 DEPARTMENT AUTHORIZATION SIGNATURE AND PHONE NUMBER

Carl Meyer Funding  
 PAGE 1 OF 1

COMPLETE THE INFORMATION BELOW, WITH JUSTIFICATION NARRATIVE OR ATTACH A MEMO.  
 REMOVE THE GOLD COPY AND SUBMIT COMPLETED REQUEST TO THE AUDITOR / CONTROLLER'S OFFICE.  
 A BUDGET TRANSFER REQUEST MUST BE AT LEAST TWO LINES, NOT EXCEED TWENTY SIX LINES, AND USE AN "ODD AND EVEN" NUMBERED TRANSACTION CODE \*  
 \* 002 = INCREASE ESTIMATED REVENUE  
 \* 003 = DECREASE ESTIMATED REVENUE  
 \* 011 = INCREASE IN APPROPRIATION / BOS APPROVED  
 \* 012 = DECREASE IN APPROPRIATION / BOS APPROVED

LINE NO.	TRANSFER CODE	AMOUNT	DATE	DESCRIPTION	AGENCY NAME
1	012	422,300	5240	43,239	El Dorado Bud Rev Above Carl Meyer Projects
2	011	422,300	5300	43,239	
3	002	306,252	1800	43,239	
4	003	306,252	0001	43,239	
5	002	422,300	0541	262,500	El Dorado Bud Rev Core TR 27035
6	003	422,200	0541	262,500	
7	002	422,300	0541	262,500	
8	003	422,200	0541	262,500	
9					
10					
11					
12					
13					

REVIEWED FOR FORMAT BY

APPROVED AND SO ORDERED THAT THE ABOVE TRANSFERS BE MADE (AS REQUESTED OR AMENDED) AND INCORPORATED IN THE MINUTES OF THIS MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF EL DORADO

JOBHARRIS, SA, AUDITOR/CONTROLLER  
 DATE 10/5/06

SIGNATURE: CHAIRMAN, BOARD OF SUPERVISORS  
 DATE

CHIEF ADMINISTRATIVE OFFICE - ANALYST  
 DATE 10/6/06

ATTEST: CLERK, BOARD OF SUPERVISORS  
 DISTRIBUTION: WHITE - BOS / YELLOW - AUDITOR / PINK - CHIEF ADMINISTRATIVE OFFICE / GOLD - DEPARTMENT

**FUNDING AGREEMENT NO. 003-AB923-06/07-11**

**WITH THE EL DORADO COUNTY DEPARTMENT OF TRANSPORTATION**

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**This Agreement No. 003-AB923-06/07-11** made and entered by and between the **EL DORADO COUNTY 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 "DISTRICT"); and the **EL DORADO COUNTY DEPARTMENT OF TRANSPORTATION**, a political subdivision of the State of California (hereinafter referred to as "COUNTY");

**WITNESSETH:**

**WHEREAS**, the California Clean Air Act requires local air pollution control DISTRICTS to reduce emissions from motor vehicles; and

**WHEREAS**, AB 923, codified in California Health and Safety Code section 44225, authorizes DISTRICT to impose an additional fee of up to two dollars upon certain registered motor vehicles within the DISTRICT, and the Governing Board of the DISTRICT has imposed said fee; and

**WHEREAS**, AB 923, codified in California Health and Safety Code section 44229 requires the DISTRICT to use said funds for projects (1) eligible for grants under the Carl Moyer Air Quality Standards Attainment Program; (2) the new purchase, retrofit, repower or add on equipment for previously unregulated agricultural sources of air pollution, (3) the new purchase of school buses pursuant to the Lower Emission School Bus Program, (4) an accelerated vehicle retirement or repair program, and

**WHEREAS**, COUNTY has proposed a Project that meets the eligibility criteria for grants under the Carl Moyer Air Quality Standards Attainment Program and has

applied to the Sacramento Metropolitan Air Quality Management District Heavy-Duty Low Emission Vehicle Incentive Program for funding, and

**WHEREAS**, Sacramento Metropolitan Air Quality Management District has approved the Project proposed by the COUNTY and will enter into Agreement Number VET-06-0103 (hereinafter referred to as “Agreement VET-06-0103”) with the COUNTY, and

**WHEREAS**, DISTRICT must contribute funding to Projects approved by Sacramento Metropolitan Air Quality Management in the Heavy-Duty Low Emission Vehicle Incentive Program located in ozone attainment areas such as the Lake Tahoe Air Basin; and

**WHEREAS**, COUNTY represents that it is willing and able to perform the activities set forth herein.

**NOW, THEREFORE**, DISTRICT and COUNTY mutually agree as follows:

**1. PROJECT**

COUNTY shall perform all activities and work necessary to complete the El Dorado County South Lake Tahoe Snowblower Repower Project set forth in the fully described attached “Agreement VET-06-0103,” marked Exhibit “1” attached hereto and incorporated herein by this reference. COUNTY agrees to furnish all labor, materials, equipment, licenses, permits, fees, and other incidentals necessary to perform and complete, per schedule, in a professional manner, the services described herein. COUNTY represents that COUNTY has the expertise necessary to adequately perform the Project specified in said Agreement VET-06-0103.

In the event of any conflict between or among the terms and conditions of this Agreement, Agreement VET-06-0103 incorporated herein, and the documents referred to and incorporated herein, such conflict shall be resolved by giving precedence in the following order of priority:

1. To the text of this Agreement;

2. Agreement Number VET-06-0103

**2. PERIOD OF PERFORMANCE/TIMETABLE**

COUNTY shall commence performance of work and produce all work products in accordance with the Work Statement and deadlines for performance identified in Agreement VET-06-0103, unless this Agreement is terminated sooner as provided for elsewhere in this Agreement.

If requested by the DISTRICT, COUNTY shall submit regular progress reports, at intervals determined by the DISTRICT, detailing the work performed during the current reporting period; work planned for the next reporting period; problems identified, solved, and/or unresolved; and the percentage of each task completed. COUNTY shall provide DISTRICT with a comprehensive final written report prior to the end of Agreement term. Said final report shall be complete and shall document the work performed under this Agreement.

**3. COMPENSATION**

DISTRICT will pay the COUNTY the sum of \$43,239.00 as follows:

COUNTY shall obtain through other sources sufficient additional monies to fund the total cost of the El Dorado County South Lake Tahoe Snowblower Repower Project as outlined in the Agreement VET-06-0103. Satisfactory written evidence of such funding commitments shall be provided to DISTRICT prior to the release by DISTRICT of any funds under this Agreement. In the event funding from other sources for the total cost of the Project is not received by COUNTY, DISTRICT reserves the right to terminate or renegotiate this Agreement. In accordance with Section 44233 of the California Health and Safety Code, COUNTY agrees to limit expenditure of funds for the purpose of administration to not more than five percent of the monies distributed to COUNTY. The DISTRICT is not obligated to pay COUNTY for administrative costs exceeding five percent of the actual total cost of the Project.



The total obligation of the DISTRICT under this Agreement SHALL NOT EXCEED **Forty Three Thousand Two Hundred Thirty Nine Dollars and 00/100 (\$43,239)**.

**A. PAYMENTS:** Advance payments shall not be permitted. Payments will be permitted only at which time an equivalent service has been completed. The DISTRICT shall reimburse COUNTY quarterly, in arrears, after receipt and verification submitted to DISTRICT, Attention: Marcella McTaggart. Payment shall be made to COUNTY by the DISTRICT upon submission and evaluation of the COUNTY'S invoice of claim. Said invoice of claim shall set forth the work completed pursuant to the El Dorado County South Lake Tahoe Snowblower Repower Project pursuant to this Agreement.

Upon receipt of proper documentation, and verification that COUNTY has satisfactorily completed the work for which compensation is sought, DISTRICT will issue payment to COUNTY within thirty (30) calendar days of such time.

The amount to be paid to COUNTY under this Agreement includes all sales and use taxes incurred pursuant to this Agreement, if any, including any such taxes due on equipment purchased by the COUNTY. The COUNTY shall not receive additional compensation for reimbursement of such taxes and shall not decrease work to compensate therefore.

Concurrently with the submission of any claim for payment, COUNTY 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 COUNTY'S performance of services under this Agreement shall be borne exclusively by COUNTY.

In no event shall compensation paid by the DISTRICT to the COUNTY for the performance of all services and activities under this Agreement exceed the amount set forth in paragraph 3 above.

**B. Surplus Funds:** Any compensation, which is not expended by COUNTY pursuant to the terms and, conditions of this Agreement by the Project completion date shall automatically revert to the DISTRICT. Only expenditures incurred by the COUNTY in the direct performance of this Agreement will be reimbursed by the DISTRICT. Allowable expenditures under this Agreement are specifically established and included in Agreement VET-06-0103.

**C. Closeout Period:** All final claims shall be submitted by COUNTY within sixty (60) days following the final month of activities for which payment is claimed. No action will be taken by DISTRICT on claims submitted beyond the 60-day closeout period.

#### **4. NON-ALLOCATION OF FUNDS**

The terms of this Agreement and the services to be provided there under 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 the COUNTY thirty (30) days prior written notice.

#### **5. INDEPENDENT COUNTY LIABILITY**

COUNTY is, and shall be at all times, deemed independent and shall be wholly responsible for the acts of COUNTY'S employees, associates, and subcontractors, in connection with the performance of COUNTY'S obligations under the El Dorado County South Lake Tahoe Snowblower Repower Project.

#### **6. TERMINATION**

**A. Breach of Agreement:** The DISTRICT may immediately suspend or terminate this Agreement, in whole or in part, where in the determination of the DISTRICT there is:

1. An illegal or improper use of funds;
2. A failure to comply with any term of this Agreement;

3. A substantially incorrect or incomplete report submitted to the DISTRICT; or
4. Improperly performed services.

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

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

**B. Without Cause:** Either party may terminate this Agreement at any time upon giving the other party at least thirty (30) days advance, written notice of intention to terminate. In such case, the COUNTY shall, subject to paragraph 3, be paid the reasonable value of all services satisfactorily rendered and actual, reasonable costs incurred up to the time of the termination.

## **7. 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.

## **8. INDEMNIFICATION**

COUNTY shall defend, indemnify, and hold 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, 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 the COUNTY'S activities and work necessary to complete the El Dorado County South Lake Tahoe Snowblower Repower Project unless such damage, loss, injury or death shall be caused by the sole or active negligence of the DISTRICT. This duty of COUNTY to indemnify and save DISTRICT harmless includes the duties to defend set forth in California Civil Code, Section 2778.

DISTRICT shall indemnify COUNTY against and hold it harmless from any loss, damage, and liability for damages, including attorney fees and other costs of defense incurred by COUNTY, whether for damage to or loss of property, or injury to or death of COUNTY'S officer's, agents, or employees which shall in any way arise out of or be connected with DISTRICT'S performance of its obligations hereunder, unless such damage, loss, injury, or death shall be caused solely by the negligence of the COUNTY.

#### **9. AUDITS AND INSPECTIONS**

COUNTY shall at any time during regular business hours, and as often as DISTRICT may deem necessary, make available to DISTRICT for examination all of its records and data with respect to the matters covered by this Agreement.

COUNTY shall, and upon request by DISTRICT, permit DISTRICT to audit and inspect all of such records and data necessary to ensure COUNTY'S compliance with the terms of this Agreement. COUNTY shall be subject to an audit by DISTRICT or its authorized representative to determine if the revenues received by COUNTY were spent for the reduction of pollution as provided in AB 923 and to determine whether said funds were utilized as provided by law and this Agreement. If, after audit, DISTRICT makes a determination that funds provided COUNTY pursuant to this Agreement were not spent in conformance with this Agreement, or AB 923 or any

other applicable provisions of law, COUNTY agrees to immediately reimburse DISTRICT all funds determined to have been expended not in conformance with said provisions.

COUNTY 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.

Because this Agreement exceeds Ten Thousand Dollars (\$10,000), COUNTY shall be subject to the examination and audit of the Auditor General for a period of three (3) years after final payment under Agreement (Government Code Section 10532).

**10. NOTICES 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 DISTRICT shall be in duplicate and addressed as follows:

**COUNTY**

El Dorado County  
Department of Transportation  
2850 Fairlane Court  
Placerville, CA 95667  
Attn: Richard Shepard  
Director

**DISTRICT**

El Dorado County  
Air Quality Management District  
2850 Fairlane Court  
Placerville, CA 95667  
Attn: Marcella McTaggart,  
Air Pollution Control Officer

**11. TIME IS OF THE ESSENCE**

It is understood that for COUNTY'S performance under this Agreement, time is of the essence. The parties reasonably anticipate that COUNTY will, to the reasonable satisfaction of the DISTRICT, complete all activities provided herein within the time schedule outlined in Agreement VET-06-0103.

**12. COMPLIANCE WITH APPLICABLE LAWS**

COUNTY will comply with all federal, State, and local laws and ordinances which are or may be applicable to the PROJECT to be undertaken by the COUNTY including but not limited to California Health and Safety Code sections 44220 et seq., all Air Resources Board and DISTRICT criteria there under, prevailing wage and work day definitions where applicable, contracting license requirements and permits.

**13. NO THIRD-PARTY BENEFICIARIES**

Nothing in this Agreement shall be construed to create any rights of any kind or nature in any other party not a named party to this Agreement.

**14. VENUE**

Any dispute resolution action arising out of this Agreement, including but not limited to litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California. COUNTY waives any removal rights it might have under Code of Civil Procedure section 394.

**15. 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.

**16. AGREEMENT ADMINISTRATOR**

The DISTRICT Officer or employee with responsibility for administration of this Agreement is Marcella McTaggart, Air Pollution Control Officer. The COUNTY Officer or employee with responsibility for administration of this Agreement is Richard Shepard, Department of Transportation Director.

**17. AUTHORIZED SIGNATURES**

The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by

law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

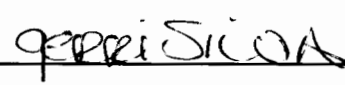
**18. PARTIAL INVALIDITY**

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

**REQUESTING DEPARTMENT CONCURRENCE:**

By:  Dated: 7-13-06

**Marcella McTaggart  
Air Pollution Control Officer**

By:  Dated: July 10, 2006

**Gerri Silva, M.S., R.E.H.S  
Interim Director, El Dorado County Environmental Management Dept.**

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as of the day and year first herein above written.

**COUNTY**  
**EL DORADO COUNTY**  
**DEPARTMENT OF TRANSPORTATION**

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

Date: 8/11/04

Date: \_\_\_\_\_

By:   
Richard Shepard  
Director

By: \_\_\_\_\_  
James R. Sweeney,  
Chairman

**Attest:**  
Cindy Keck,  
Clerk of the Board

Date: \_\_\_\_\_

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



**EXHIBIT “1”**

**SACRAMENTO METROPOLITAN AIR  
QUALITY MANAGEMENT DISTRICT**

**AGREEMENT NO. VET-06-0103**

**SACRAMENTO METROPOLITAN AIR QUALITY MANAGEMENT DISTRICT  
HEAVY-DUTY LOW EMISSION VEHICLE INCENTIVE PROGRAM AGREEMENT**

This Agreement (Agreement) is between the **Sacramento Metropolitan Air Quality Management District** (District), a public agency of the State of California, and **County of El Dorado** (Participant).

**1.0 Recitals**

- 1.1 The District is part of the Sacramento Federal Ozone Nonattainment Area (SFNA). The District is also in nonattainment of the state air quality standards for particulate matter and is impacted by the effects of toxic air contaminants, including diesel particulate matter and other pollutants from mobile sources.
- 1.2 Pursuant to Health and Safety Code §40961, the District is the local agency within the boundaries of the Sacramento district with the primary responsibility for the development, implementation, monitoring, and enforcement of air pollution control strategies, clean fuel programs, and motor vehicle use reduction measures.
- 1.3 Pursuant to Health and Safety Code §41062, §41081 and §41082, the District may undertake programs that include financial assistance or other incentives to fleet operators for the purchase, conversion, or operation of low-emission vehicle and engine technology, including but not limited to alternative fuels, zero-emission, and clean diesel technologies.
- 1.4 On February 5, 1998, the District Board of Directors approved Resolution No. 98-0007 authorizing the Heavy-Duty Low Emission Vehicle Incentive Program (Program), which is hereby incorporated by reference and made part of this agreement.
- 1.5 On April 26, 2001, the District Board of Directors approved Resolution No. 2001-020 authorizing the Air Pollution Control Officer (APCO) to execute agreements and make minor modifications to the Program for the purpose of maintaining consistency with the state Carl Moyer Memorial Air Quality Standards Attainment Program (Carl Moyer Program).
- 1.6 On July 26, 2001, the District Board of Directors approved Resolution No. 2001-039 authorizing the Air Pollution Control Officer (APCO) to make minor adjustments to the Heavy-Duty Low-Emission vehicle Incentive Program (Program) to fund a small percentage of projects under the Program that occur in districts that contain areas that are within the Sacramento Federal Ozone Non-Attainment Area (SFNA) as well as areas that are designated "Attainment" and therefore are not within the SFNA. These projects are within the boundaries of adjacent Air Districts that allow the SMQMD to manage their Moyer Funds.
- 1.7 On September 23, 2004, Governor Schwarzenegger signed Assembly Bills 923, 1394, and 2128 which made major changes to the Carl Moyer Program and projects funded using Department of Motor Vehicles Surcharges, expanding the Program to include light-duty vehicles, Fleet Modernization, and agricultural assistance projects.
- 1.8 To implement mobile source emission reduction projects, the Program provides incentives to fleet operators and individuals for the purchase, repower and/or retrofit of low-emission on-road motor vehicles, off-road mobile equipment, and agricultural water pumps.
- 1.9 The Participant wishes to participate in the Program by purchasing and operating the equipment described in this Agreement and represents that the purchase is not required by any local, state, and/or federal rule, regulation, memorandum, or other legally binding agreement, with the exception of certain agricultural projects described in Health and Safety Code §41081(d)(2)(ii).
- 1.10 The Participant has read and agreed to all requirements of the Program application and guidelines, the 2005 Carl Moyer Program Guidelines, and the County of Sacramento W-9 Waiver Form which are hereby incorporated into this Agreement.

- 1.11 This Agreement is a voluntary act intended to accelerate the introduction of low-emission vehicle and engine technology designed to reduce emissions of oxides of nitrogen, particulate matter, reactive organic gases, toxic air contaminants, and oxides of carbon within the SFNA.
- 1.12 This Agreement was approved for use by the Board of Directors of the Sacramento Metropolitan Air Quality Management District on July 28, 2005 by Resolution No. 2005-050.

## 2.0 Terms and Conditions

### 2.1 Definitions

- 2.1.1 "Applicable emission standards" are defined as the emission standards for oxides of nitrogen (NOx), particulate matter (PM), hydrocarbons, and carbon monoxide established by the California Air Resources Board (CARB) or the United States Environmental Protection Agency (USEPA) for a model year vehicle or engine, whichever is more stringent. For "phase-in" or "interim" engines the following standards apply:

Engine Model Year	Power Rating	NOx Standard	PM Standard
2007-2009 On-Road	All On-Road Heavy-Duty Diesel Engines	1.2 g/bhp-hr	0.01 g/bhp-hr
2012-2013 Off-Road	56 – 129 kW (75 – 174 HP)	2.2 g/kW-hr (1.6 g/bhp-hr)	0.02 g/kW-hr (0.01 g/bhp-hr)
2011-2013 Off-Road	130 – 560 kW (175 – 749 HP)	2.2 g/kW-hr (1.6 g/bhp-hr)	0.02 g/kW-hr (0.01 g/bhp-hr)

- 2.1.2 "Agricultural water pump" is defined as a stationary or portable device designed to move water used for agricultural purposes.
- 2.1.3 "Certified" is defined as a motor vehicle or engine that is certified by CARB or the USEPA to an emission standard or standards.
- 2.1.4 "Experimental Permit" is defined as an Executive Order issued by CARB for the experimental use of a non-certified or non-verified engine, fuel, or engine retrofit in California.
- 2.1.5 "Fleet Modernization" is defined as the transaction in which an older on-road motor vehicle or piece of off-road mobile equipment is destroyed and replaced with a similar motor vehicle or piece of equipment certified to a lower emission standard.
- 2.1.6 "Motor vehicle" is defined as a self-propelled device by which any person or property may be propelled, moved, or drawn upon a highway, excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks.
- 2.1.7 "Off-road equipment" is defined as a self-propelled device not intended for operation on a highway and is powered by an engine certified to off-road or nonroad emission standards.
- 2.1.8 "Repower" is defined as the process in which an old engine is replaced with a new engine.
- 2.1.9 "Retrofit" is defined as the installation of a device designed to reduce emissions from an engine.

- 2.1.10 "Sacramento Federal Nonattainment Area" is defined as the geographic region classified by the USEPA as nonattainment for the 8-hr ozone air quality standard including the Counties of Sacramento, Yolo, and portions of El Dorado, Placer, Solano, and Sutter. A map of these areas is provided in Exhibit A.
- 2.1.11 "Tier 3" is defined as the emission certification of an off-road compression ignition engine to the Tier 3 emission standards as described in §2423(b)(1) of the California Code of Regulations.
- 2.1.12 "Verified" is defined as a device, fuel, or system that is verified by CARB or the USEPA to reduce emissions from a mobile source by a verified amount.

## 2.2 Participant Obligations – the Participant will:

- 2.2.1 Purchase and operate the equipment described in Exhibit B within 180 days of execution of this Agreement. Participant may submit a written request to extend this Section if the project cannot be successfully completed due to circumstances beyond the Participant's reasonable control.
- 2.2.2 Ensure that a District approved Electronic Usage Meter is installed on the equipment described in Exhibit B for Fleet Modernization, locomotive, and marine projects.
- 2.2.3 Operate the equipment described in Exhibit B in the SFNA or within the boundaries of Placer and El Dorado Counties during the term of this agreement in accordance with the requirements in Exhibit C. In addition to meeting the operating requirements established in Exhibit C, 75% of the vehicles total operation must occur within California. Agricultural water pumps are required to operate 100% within the SFNA.
- 2.2.4 Maintain the minimum level of required insurance described in Exhibit D during the term of this Agreement, and ensure that the District is named as an additional insured under the policy.

## 2.3 Payment

- 2.3.1 The District will reimburse the Participant up to **\$216,201.00** towards the cost of the vehicle(s) or equipment identified in Exhibit B.
- 2.3.2 \_\_\_\_\_ By initializing this paragraph, the Participant authorizes the District to issue a two-party check in the name of the Participant and
- 2.3.3 No payments shall be issued under this Agreement prior to final inspection of the project by District personnel.
- 2.3.4 Any payments made under this Agreement are subject to the provisions and limitations of Health and Safety Code. The District shall have no liability for payment of any compensation and expenses that are found to be in contravention of the Health and Safety Code or any other local, state, or federal law. The Participant shall reimburse the District for any payments that are later found to be in contravention of this Agreement or of the Health and Safety Code or any other local, state, or federal law.
- 2.3.5 Payments made under this Agreement are subject to taxation and an IRS Form 1099 will be issued to the Participant. Funds may be withheld by the County of Sacramento as required by law for payment of tax liabilities and/or other court-ordered payments.

## 2.4 General Program Requirements

- 2.4.1 The Participant warrants that the vehicle(s)/engine(s) covered under this Agreement meets all the eligibility requirements described in the Program application and guidelines. The Participant further agrees to operate the vehicle(s)/engine(s) in a manner that is consistent with the eligibility requirements in the guidelines and the goals and objectives of the Program.

2.4.2 The Participant cannot apply for or receive additional incentive funds, including but not limited to the state Carl Moyer Program inter-district fund or any other air district fund, including those funds used as matching funds, for any equipment listed in Exhibit B of this Agreement. This requirement may be waived by District staff on an individual basis. If the District discovers that the Participant has applied for or received funds from these sources, the District will terminate this Agreement and require that any funds paid under this Agreement be returned to the District.

2.4.3 The Participant agrees to operate the equipment described in Exhibit B within the manufacturers specifications including all maintenance and fueling requirements. An operational odometer, hour meter, or other District-approved usage measuring device must be installed on all projects and maintained for continuous operation. Under no circumstances may the Participant make any modifications to or tamper with the vehicle, equipment, engine, emission control system(s), or any recording devices on the vehicle or equipment prohibited under CARB and USEPA regulations. The Participant also agrees to operate the vehicle, engine, and/or equipment in compliance with all local, state, and federal rules, laws, and regulations.

2.5 Engine Repower and Retrofit Requirements – This Agreement is  or is not  subject to the following requirements:

2.5.1 The low-emission engine or engine retrofit must be either:

- (i) CARB Certified; or
- (ii) CARB Verified; or
- (iii) Under an experimental permit issued by CARB; or
- (iv) In cases where federal law preempts state requirements, approved for use by the USEPA

Engines certified to a level that is less stringent than the standard applicable to the replaced engine for any pollutant are ineligible for funding under this agreement.

2.5.2 Any engine retrofit funded under this Agreement must reduce either oxides of nitrogen or particulate matter emissions by a minimum of 25% for either pollutant.

2.5.3 If the Participant is replacing or repowering an engine, the Participant must either:

- (i) Destroy the replaced or repowered engine in a manner acceptable to the District. If the engine is destroyed, the Participant must permit the District to inspect the destroyed engine; or
- (ii) Implement a District approved destruction alternative. The District may approve a destruction alternative only if special circumstances justifying the use of an alternative exist, and there is no detrimental impact to air quality.

2.5.4 The Participant must submit copies of invoices from service providers that confirm:

- (i) Installation of a functional odometer/hour meter; and
- (ii) PM control device installation verification (if applicable)

Each invoice must include vehicle/equipment identification number, engine serial number, odometer/hour meter reading, and date service was provided.

2.6 Fleet Modernization Requirements – This Agreement is  or is not  subject to the following requirements:

2.6.1 The replacement motor vehicle or piece of off-road equipment must be either:

- (i) CARB Certified; or
- (ii) Under an experimental permit issued by CARB; or
- (iii) In cases where federal law preempts state requirements, approved for use by the USEPA

Engines certified to a level that is less stringent than the standard applicable to the replaced engine for any pollutant are ineligible for funding under this agreement.

2.6.2 Motor vehicles equipped with 1993-1998 on-road heavy-duty diesel engines covered under the 1998 EPA/CARB Consent Decree and Settlement Agreement are ineligible for funding under the Program.

2.6.3 The Participant must meet the following requirements, and submit certifications to the District verifying that the following requirements have been met. Unless otherwise indicated, the certifications must be submitted to the District before the District will be obligated to release the incentive funds to the Participant. An example of each certification form is included in Exhibit E.

- (i) **Existing Vehicle Acceptance and Salvage Certificate Form:** This certificate must accompany the replaced motor vehicle or piece of off-road equipment when the truck is turned in to the vehicle dealership and then onto the salvage yard for destruction.
- (ii) **Vehicle / Equipment Inspection Certification Form:** This form certifies that the replaced motor vehicle or piece of off-road equipment and the replacement motor vehicle or piece of off-road equipment have been properly inspected to ensure that both vehicles comply with Program guidelines.

2.6.4 The Participant must submit copies of invoices from service providers that confirm:

- (i) Installation of digital odometer/hour meter; and
- (ii) Engine warranty description; and
- (iii) Vehicle/equipment finance documents; and
- (iv) PM control device installation verification

Each invoice must include vehicle identification number, engine serial number, odometer reading, and date service was provided.

2.6.5 The Participant agrees to the following motor vehicle title requirements:

- (i) The Participant will provide a copy of the replacement vehicle's title to the District, demonstrating that the District is named as a lien holder for the vehicle.
- (ii) The Participant must be the legal owner of the replacement vehicle through the length of this Agreement.
- (iii) If the replacement vehicle is financed, the Participant will list both the District and the Finance Company as lien holders for the vehicle.
- (iv) If the replacement vehicle is financed, and the loan is repaid before the termination of this Agreement, the Participant must ensure that the District remains a lien holder on the replacement vehicle through the end date listed in Section 2.10.1.

- (v) If the replacement vehicle is repossessed by the finance company, the Participant must reimburse the District in accordance with the termination formula in Section 2.8 funds received after under Section 2.3.2.
- (vi) Any changes to the replacement vehicle's title must be approved in writing by the District.

2.6.6 The replaced motor vehicle or piece of off-road equipment must be in good operating condition when the Participant delivers it to a District-approved vehicle dealership. The replaced motor vehicle or piece of off-road equipment must be subsequently transferred to a District-approved salvage yard for destruction. The Participant must ensure that a Nonrepairable Vehicle Certificate is filed with the Department of Motor Vehicles.

2.6.7 The Participant agrees to operate the replacement motor vehicle(s) or piece(s) of off-road equipment covered under this agreement in the same vocation as approved in the application to the Program. The Participant may petition the District for approval to change vocations. The Participant agrees that the District's determination will be final.

2.7 New Low-Emission Vehicle Purchase – This Agreement is  or is not  subject to the following requirements:

2.7.1 New low-emission vehicles must be certified by CARB to an oxides of nitrogen emission level below the applicable standard for that motor vehicle or piece of off-road mobile equipment. Low-emission vehicle or engine technology under an experimental permit from CARB are also eligible for funding under the Program.

2.7.2 The low-emission vehicle or engine technology funded under Section 2.7.1 must achieve at least a 30% reduction in oxides of nitrogen emissions as compared to the applicable baseline emission standards for the specific model year and power rating.

2.7.3 The low-emission vehicle or engine technology funded under Section 2.7.1 must not be certified to particulate matter, hydrocarbons, and/or carbon monoxide levels above the applicable baseline emission standards for the specific model year and power rating.

2.7.4 The Participant must submit copies of invoices from service providers that confirm:

- (i) Installation of digital odometer/hour meter; and
- (ii) Vehicle finance documents

Each invoice must include vehicle identification number, engine serial number, odometer reading, and date service was provided.

2.7.5 The Participant agrees to the following motor vehicle title requirements:

- (i) The Participant will provide a copy of the replacement vehicle's title to the District, demonstrating that the District is named as a lien holder for the vehicle.
- (ii) The Participant must be the legal owner of the replacement vehicle through the length of this Agreement.
- (iii) If the replacement vehicle is financed, the Participant will list both the District and the Finance Company as lien holders for the vehicle.
- (iv) If the replacement vehicle is financed, and the loan is repaid before the termination of this Agreement, the Participant must ensure that the District remains a lien holder on the replacement vehicle through the end date listed in Section 2.10.1.

- (v) If the replacement vehicle is repossessed by the finance company, the Participant must reimburse the District in accordance with the termination formula in Section 2.8 funds received after under Section 2.3.2.
- (vi) Any changes to the replacement vehicle's title must be approved in writing by the District.

2.8 Upon termination of this Agreement, if the vehicle/engine fails to fulfill the minimum required operation as described in Exhibit C, the Participant shall return to the District an amount based on the difference between the required operation amount and the actual amount according to the following formula:

$$A = I * [(O * L) - C] / (O * L)$$

A = Amount Owed to the District

I = Total Incentive Award

O = Annual Operational Requirement (miles, hours or gallons)

L = Length of the Agreement in Years

C = Actual Operation (miles, hours, or gallons)

The APCO may, at his or her sole discretion, relieve this obligation to return the funds after considering the circumstances leading to the failure to fulfill the minimum performance requirements. Additionally, the APCO may, at his or her sole discretion, require full reimbursement of all funds paid to the Participant as outlined in Section 2.10.11.

2.9 The parties acknowledge that this Agreement will be funded by incentive fund revenues being transferred to the District; however, the District may terminate this Agreement if: (i) it does not receive all or a portion of the revenues, or (ii) funds are not specifically appropriated for this Agreement in the District's final budget prior to the expiration of the Agreement and any Agreement extensions. If the District terminates this Agreement under this paragraph, it will serve notice of the action on the Participant within 10 working days

## 2.10 General Requirements

2.10.1 This Agreement shall begin upon execution by all parties and terminate on **12/31/2013**. No work may begin on this project until this Agreement is executed by all parties. For this Agreement, the timeframe indicated by the execution of this Agreement and the aforementioned termination date shall serve as the contract term including both the project completion and project implementation/life periods.

2.10.2 Except as specified in Section 2.10.2(ii), the receipt of funds and performance under this Agreement prohibits application for any form of emission reduction credit for the life of the contract term outlined in Section 2.10.1.

- (i) This prohibition includes, but is not limited to all attainment, nonattainment, criteria and noncriteria pollutants, Application for Emission Reduction Credits (ERC), Mobile Emission Reduction Credits (MERC) and/or Certificates of Advanced Placement (CAP). This prohibition extends to credits from all Air Quality Management or Air Pollution Control Districts.
- (ii) For projects involving the replacement of a stationary diesel agricultural water pump with an electric water pump in conjunction with the Pacific Gas & Electric Company's (PG&E) PUC-approved discounted AG-ICE electric rate program, PG&E may retain all of the carbon dioxide credits and a portion of the remaining emission credits for reductions generated through this Agreement. The portion of the remaining emission credits retained by PG&E will be the difference in emissions between a Tier 3 diesel engine and the emissions associated with generating electricity for the electric pump.

2.10.3 The District, CARB, or their designee may conduct an audit of the Participant's operations to verify that the Participant is complying with the Agreement terms.



- (i) As a condition of accepting funds, the Participant agrees to designate CARB as a third-party beneficiary with full auditing, inspection, and enforcement rights throughout the entire term of the Agreement.
- (ii) Any audits will be conducted at a reasonable time and with reasonable notice to the Participant. The Participant agrees to provide the District and CARB with on-site access to the vehicle(s)/equipment described in Exhibit B.

2.10.4 The Participant shall defend, indemnify, and hold harmless District, CARB, its officers, agents, employees and volunteers from any and all losses, costs, damages, fines or expenses (including attorney fees, court costs and expert fees) or liability of any kind or character to any person or property arising from, or alleged to arise from, any breach of the responsibilities required of the Participant by this Agreement or which are related in any way to the vehicle(s)/equipment, including any and all liability for general, special, consequential, or other damages resulting from the use of the vehicle(s)/equipment by the Participant, for which financial assistance or other incentives are received from the District by the Participant.

2.10.5 This section 2.10.5 shall survive the termination of this Agreement for three years following the end date listed in Section 2.10.1. The Participant shall keep the following records from the beginning of operation of the equipment described in Exhibit B through the end of the term described in Section 2.10.1 and for three years following the end date listed in Section 2.10.1. It is the responsibility of the Participant to maintain records adequate to document the subsequent information. The District may request these records at any time during the term of this Agreement, including:

<b>For On-Road Projects</b>	<b>For Off-Road Projects</b>
1. Copies of all driver log book entries for the preceding year	1. Hours operated
2. Miles traveled	2. Fuel consumed
3. Fuel consumed	3. Fuel cost
4. Fuel cost	4. Engine downtime
5. Vehicle downtime	5. Type and cost of maintenance performed
6. Type and cost of maintenance performed	

2.10.6 The Participant shall maintain in force at all times during the term of this Agreement and any extensions or modifications thereto, insurance in accordance with Exhibit C. In the event the Participant does not have the required certificate of insurance, or if the required insurance lapses, this Agreement shall be terminated immediately.

2.10.7 No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by both parties.

2.10.8 The Participant shall observe and comply with all applicable federal, state and District statutes, ordinances, regulations, rules, directives, and laws. This Agreement shall be deemed to be executed within the State of California and construed in accordance with and governed by the laws of the State of California. If a provision of this Agreement violates any applicable law or regulation, that provision will be stricken from the Agreement, and all other provisions will remain in full force. Any action or proceeding arising out of this Agreement shall be filed in a state court or federal court located in Sacramento, California.

2.10.9 No performance rendered or payment due under this Agreement may be delegated or assigned without the written consent of all the parties hereto. If the Participant assigns any of its rights or obligations under this contract, all of the terms and conditions of this contract shall apply to the Participant's assignee.

- 2.10.10 The Participant will submit written documentation of performance towards the requirements outlined in Exhibit C to the District by December 31 of each year until termination of this Agreement. The District may request additional performance documentation at its discretion.
- 2.10.11 This agreement may be terminated by the District upon 30-day notice if the Participant fails to meet any of the obligations established in this Agreement or outlined in the Carl Moyer Program guidelines or the Health and Safety Code. If the Agreement is terminated, the Participant will refund the entire incentive paid by the District. The APCO may, at his or her discretion, waive the refund or allow the Participant an opportunity to cure its failure to meet the Agreement obligations. Additionally, the District and/or CARB may seek all available remedies for breaches of any Agreement provisions, Carl Moyer Program requirements, or Health and Safety Code.
- 2.10.12 The Participant may not sell or encumber the equipment described in Exhibit B without the written consent of the District.
- 2.10.13 The District has made no representations or guarantees to the Participant regarding the quality, condition, or proposed use of the low emission vehicle and engine technology funded under this Agreement or the effects of such technology on the normal operations of the Participant.
- 2.10.14 If either of the events listed in this paragraph occur, the Participant must notify the District within 30 days of the date Participant knows, or should have known, that the event has occurred or is likely to occur:
- (i) The Participant suffers a catastrophic loss; or
  - (ii) The Participant files for bankruptcy; or
  - (iii) Any other event has occurred or is likely to occur that could impair the Participant's ability to perform the conditions of this Agreement.
- 2.10.15 This Agreement will bind the successors of the District and Participant in the same manner as if they were expressly named.
- 2.10.16 Correspondence between the District and Participant should be addressed to the following:

To District	To Participant
Gary A. Bailey Sacramento Metropolitan AQMD 777 12 <sup>th</sup> Street, 3 <sup>rd</sup> Floor Sacramento, CA 95814-1908 Phone: (916) 874-4800 FAX: (916) 874-4899	County of El Dorado 2441 Headington Road Placerville, CA, 95667 Phone: (530) 642-4900 FAX: (530) 642-9238

The address and/or contacts may be changed only by written notice to the other party. Such written notice may be given by mail or personal service.

- 2.10.17 This Agreement consists of the following:
- (i) Participant Agreement
  - (ii) Exhibit A – Map of Sacramento Federal Nonattainment Area
  - (iii) Exhibit B – Vehicle and Engine Information Page
  - (iv) Exhibit C – Performance Requirements
  - (v) Exhibit D – Insurance Requirements
  - (vi) Exhibit E – Certificates (for Fleet Modernization projects only)

**DISCLOSURE AGREEMENT:** The undersigned representative of Participant affirmatively states that neither they or any other representative of Participant will submit another application or sign another contract for the same engine(s), equipment, and/or vehicle(s) detailed in Exhibit B with any other source of funds, including but not limited to other air districts or multidistrict funding under the Carl Moyer Program.

Any owner or owner's designee who is found to have submitted multiple applications or signed multiple contracts for the same engine(s), equipment, and/or vehicle(s) shall, at a minimum, be disqualified from funding for that engine(s) from all sources, may be required to reimburse the public agencies for any monies received, and may also be banned from submitting future applications to any and all Carl Moyer Program solicitations. In addition, as a violation of law, including but not limited to the Health and Safety Code and Business and Professions Code, ARB and the districts may levee fines and/or seek criminal charges.

The County Officer or employee with responsibility for administering this agreement is Tom Celio, Deputy Director of Maintenance, Department of Transportation, or successor.

The undersigned representative of Participant has read and agrees to comply with all terms and conditions in this Agreement and also affirmatively states that he or she has legal authority to bind Participant to the terms and conditions of this Agreement.

**Approved by Participant "County of El Dorado"**

\_\_\_\_\_

**Date:** \_\_\_\_\_

Chairman  
Board of Supervisors  
El Dorado County

Attest:  
Cindy L. Keck  
Clerk of the Board of Supervisors

By: \_\_\_\_\_  
Deputy Clerk

**Date:** \_\_\_\_\_

**Approved by the Sacramento Metropolitan Air Quality Management District**

\_\_\_\_\_

**Date:** \_\_\_\_\_

Larry Greene  
Air Pollution Control Officer

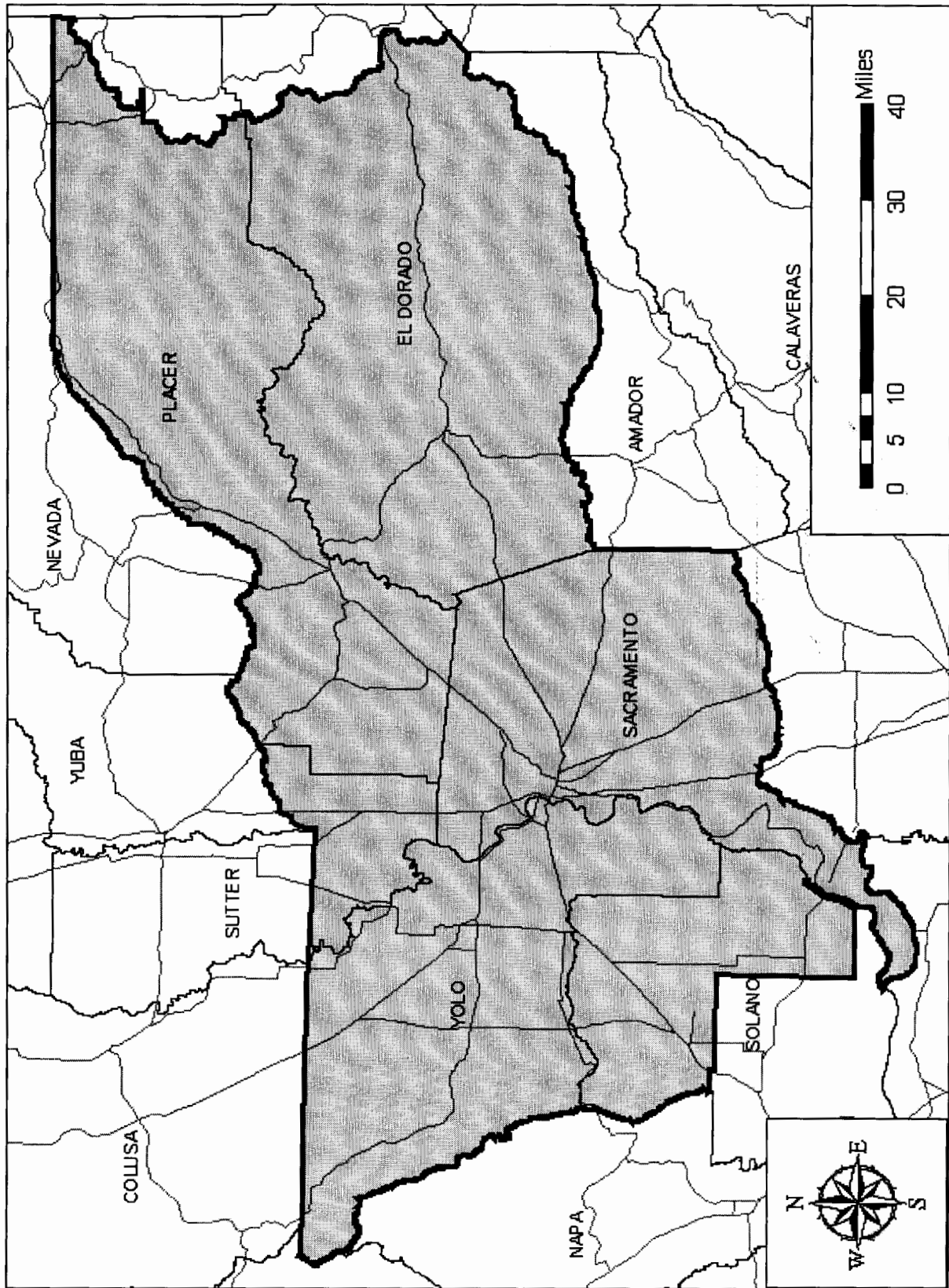
Reviewed by:

\_\_\_\_\_

**Date:** \_\_\_\_\_

Kathrine Pittard  
District Counsel

EXHIBIT A – MAP OF SACRAMENTO FEDERAL NONATTAINMENT AREA (SFNA)



**EXHIBIT B**

**Vehicle / Equipment Information Form**

**Vocation(s)** (Please list all vehicle/equipment uses): **Snow Removal**

**Equipment:** Snow Blower

**Project Type:** Repower

**Counties Vehicle Currently Operates** (check all that apply)

<input type="checkbox"/>	Sacramento	<input type="checkbox"/>	Yolo	<input type="checkbox"/>	Solano	<input checked="" type="checkbox"/>	El Dorado	<input type="checkbox"/>	Placer	<input type="checkbox"/>	Sutter
Main Location of Operation (include cross streets)											

**Annual Vehicle Usage Information** (be able to prove mileage/hours -- map available for reference)

	Within the Sacramento Ozone Non-Attainment Area		Outside of Sacramento Ozone Non-Attainment Area		Total Operation
	May-October	November-April	May-October	November-April	
Miles/Hours	350	0	0	0	350

**Existing Vehicle Information**

Make: Idaho Norland	Model: CAPS-H	Model Year: 1975	GVWR:
Vehicle Identification Number: 1068	Fleet Identification Number: 41-06	License Plate: E684190	Odometer: 12,369

**Existing Engine Information**

Make: Detroit Diesel	Model: 12V71	Model Yr: 1975	Serial Number: 12V045531	HP: 525	Hour Meter: 12,369
Fuel Type: Diesel					

**New or Replacement Vehicle Information**

Make:	Model:	Model Year:	GVWR:
Vehicle Identification Number:	Fleet Identification Number:	License Plate:	Odometer:

**New Engine or Retrofit System Information**

Make: Cummins	Model: QSK15	Model Yr: 2006	Serial Number:	HP: 485	NOx Cert: 3.00 g/bhp-hr
Fuel Type: Diesel					

**EXHIBIT B**

**Vehicle / Equipment Information Form**

**Vocation(s)** (Please list all vehicle/equipment uses): Snow Removal

**Equipment:** Snow Blower

**Project Type:** Repower

**Counties Vehicle Currently Operates** (check all that apply)

<input type="checkbox"/>	Sacramento	<input type="checkbox"/>	Yolo	<input type="checkbox"/>	Solano	<input checked="" type="checkbox"/>	El Dorado	<input type="checkbox"/>	Placer	<input type="checkbox"/>	Sutter
Main Location of Operation (include cross streets)											

**Annual Vehicle Usage Information** (be able to prove mileage/hours -- map available for reference)

	Within the Sacramento Ozone Non-Attainment Area		Outside of Sacramento Ozone Non-Attainment Area		Total Operation
	May-October	November-April	May-October	November-April	
Miles/Hours	350	0	0	0	350

**Existing Vehicle Information**

Make: Idaho Norland	Model: Caps-H	Model Year: 1974	GVWR:
Vehicle Identification Number: 1040	Fleet Identification Number: 41-02	License Plate: E651770	Odometer: 13,130

**Existing Engine Information**

Make: Detroit Diesel	Model: 12V71	Model Yr: 1974	Serial Number: 12VA045531	HP: 525	Hour Meter: 13,130
Fuel Type: Diesel					

**New or Replacement Vehicle Information**

Make:	Model:	Model Year:	GVWR:
Vehicle Identification Number:	Fleet Identification Number:	License Plate:	Odometer:

**New Engine or Retrofit System Information**

Make: Cummins	Model: QSX15	Model Yr: 2006	Serial Number:	HP: 500	NOx Cert: 0.00 g/bhp-hr
Fuel Type: Diesel					

**EXHIBIT B**

**Vehicle / Equipment Information Form**

**Vocation(s)** (Please list all vehicle/equipment uses): Snow Removal

**Equipment:** Snow Blower

**Project Type:** Repower

**Counties Vehicle Currently Operates** (check all that apply)

<input type="checkbox"/>	Sacramento	<input type="checkbox"/>	Yolo	<input type="checkbox"/>	Solano	<input checked="" type="checkbox"/>	El Dorado	<input type="checkbox"/>	Placer	<input type="checkbox"/>	Sutter
Main Location of Operation (include cross streets)											

**Annual Vehicle Usage Information** (be able to prove mileage/hours -- map available for reference)

	Within the Sacramento Ozone Non-Attainment Area		Outside of Sacramento Ozone Non-Attainment Area		Total Operation
	May-October	November-April	May-October	November-April	
Miles/Hours	350	0	0	0	350

**Existing Vehicle Information**

Make: Idaho Norland	Model: Caps-H	Model Year: 1979	GVWR:
Vehicle Identification Number: 1099	Fleet Identification Number: 41-07	License Plate: 1011644	Odometer: 7,889

**Existing Engine Information**

Make: Cummins	Model: KTA1150A	Model Yr: 1978	Serial Number: 31109206	HP: 600	Hour Meter: 7,889
Fuel Type: Diesel					

**New or Replacement Vehicle Information**

Make:	Model:	Model Year:	GVWR:
Vehicle Identification Number:	Fleet Identification Number:	License Plate:	Odometer:

**New Engine or Retrofit System Information**

Make: Cummins	Model: QSK19	Model Yr: 2002	Serial Number:	HP: 600	NOx Cert: 0.00 g/bhp-hr
Fuel Type: Diesel					

**EXHIBIT C – PERFORMANCE REQUIREMENTS**

**The below listed vehicle(s)/engine(s) must meet the minimum performance requirements shown to avoid reimbursement according to Section 2.8 of this Agreement**

Vehicle and Engine Year Make & Model*	Vehicle and Engine Serial Numbers*	Minimum Usage (hours or miles)	Anticipated Annual NOx Reduction (tons)	Payback Requirement per Hour/Mile	Maximum Incentive Amount **
2006 Cummins QSK15		2,450	1.11	\$29.42	\$72,067
2006 Cummins QSX15		2,450	1.20	\$29.42	\$72,067
2002 Cummins QSK19		2,450	1.10	\$29.42	\$72,067
<b>Total</b>			<b>3.41</b>		<b>\$216,201.00</b>

\* The District will fill in information upon verification of project completion.

\*\* The Maximum Incentive Amount includes \$650.00 towards the purchase and installation of a District-approved digital odometer.



## EXHIBIT D – INSURANCE REQUIREMENTS

### Verification of Coverage

Participant shall furnish the District with certificates evidencing the coverage required below. Certified copies of required endorsements must be attached to provided certificates. All certificates are to be received and approved by the District before work commences. The District reserves the right to require Participant to provide complete, certified copies of any policy of insurance offered in compliance with these specifications. As an alternative to insurance certificates, Participant's insurer may voluntarily provide complete, certified copies of all required insurance policies, including endorsements, effecting the coverage required by these specifications.

### Minimum Scope of Insurance

During the term of this Agreement, Participant shall, at its sole expense, obtain and maintain in full force and effect the type and limits of liability requirements as follows:

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001, most recent edition).
2. Insurance Services Office form CA 0001 (most recent edition) covering Automobile Liability, code 1 (any auto).
3. Worker's Compensation insurance as required by the State of California.
4. Comprehensive and collision coverage sufficient to replace the motor vehicle(s) and emission control system(s) included in this project.

### Minimum Limits of Insurance

Participant shall maintain limits no less than:

1. **General Liability:** \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** \$1,000,000 per accident for bodily injury and property damage.
3. **Worker's Compensation:** Statutory
4. **Comprehensive/Collision:** Equal to the full replacement cost

### Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII. The District Liability and Property Insurance Manager may waive or alter this requirement, or accept self-insurance in lieu of any required policy of insurance if, in the opinion of the Risk Manager, the interests of the District and the general public are adequately protected.

**EXHIBIT E – CERTIFICATES**

# CERTIFICATE

## Existing Vehicle Acceptance and Salvage

### Participant Agreement

Participant Agreement Number VET 06-0123

Contact  
Company Name  
Address  
City, State, Zip  
Phone Number

### Existing Vehicle / Engine Information

Make:	Engine Make:
Model:	Model:
Year:	Year:
VIN:	Engine Serial Number:
Odometer Reading:	Horsepower:

Date existing vehicle was accepted by dealership:

#### Dealership Statement:

I certify under penalty of perjury that: (i) ownership of the vehicle identified above was transferred to me on \_\_\_\_\_, and (ii) I understand that I have 30 days to transfer vehicle to an authorized salvage company for salvage, as provided in the Program guidelines and Master Agreement.

Dealership:  
Address:  
City, State, Zip:  
Phone Number:

(business stamp ok)

Authorized Name:

Authorized Signature:

Date:

Date salvage yard received vehicle:

#### Salvage Yard Statement:

I certify under penalty of perjury that within 30 days from the date I received the old vehicle or engine identified above: (i) the engine block was cracked, (ii) the vehicle frame rails cut, and (iii) a Non-Repairable Vehicle Notice has been filed with the DMV. Photos of the destroyed vehicle that are required under the Program Guidelines are attached to this Existing Vehicle Acceptance and Salvage Certificate.

Dealership:  
Address:  
City, State, Zip:  
Phone Number:

(business stamp ok)

Authorized Name:

Authorized Signature:	Date:
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## CERTIFICATE

### Vehicle / Equipment Inspection Form

#### Participant Agreement

Participant Information	Agreement Number VET
Contact Company Name Address City, State, Zip Phone Number	

Existing Vehicle / Engine Information	Inspection Date:
Vehicle Make:	Engine Make:
Model:	Model:
Year:	Year:
VIN:	Engine Serial Number:
Odometer Reading:	Horsepower:

New Vehicle / Engine Information	Inspection Date:
Vehicle Make:	Engine Make:
Model:	Model:
Year:	Year:
VIN:	Engine Serial Number:
Odometer Reading:	Horsepower:

**Dealership Statement:**

I certify under penalty of perjury that: (i) the information provided above is accurate, and (ii) that I understand that this Vehicle / Equipment Inspection Certificate is incorporated in the Master Agreement.

Dealership: Address: City, State, Zip: Phone Number:	(business stamp ok)
---	---------------------

Authorized Name:	
Authorized Signature:	Date:

# CONTRACT ROUTING SHEET

~~Due to COV on 9-5~~

Date Prepared: 08/18/2006

Need Date: ~~Jan 9-19 06/06~~  
9-5-06

**PROCESSING DEPARTMENT:**

Department: AQMD-Environmental Mgmt

**CONTRACTOR:**

Name: City of South Lake Tahoe

Dept. Contact: Linda Milligin/Carolyn Craig

Address: 1700 "D" Street

Phone #: 6668/6649

South Lake Tahoe, CA 96150

Department

Phone:

Head Signature: Geppi Silva

Hand Delivered  
8/22/06  
11:11 AM  
COUNTY COUNSEL

**CONTRACTING DEPARTMENT: AQMD-Environmental Management-CHARGE TO 422100**

Service Requested: **Review of Agreement regarding AB923 funding for City of SLT SnowBlower Repower Projects. PLEASE NOTE THAT TRISH BECK IS REVIEWING A SIMILAR EXHIBIT 1 FOR DOT-**

Contract Term: 2013 Contract/Amendment Value: \$21,758.00

Compliance with Human Resources requirements? Yes:  No:

Compliance verified by: \_\_\_\_\_

**COUNTY COUNSEL:** (Must approve all contracts and MOU's)

Approved:  Disapproved:  Date: 8/29/06 By: [Signature]  
Approved:  Disapproved:  Date: \_\_\_\_\_ By: \_\_\_\_\_

**ASSIGNMENT**  
DATE: 8/23/06  
ATTORNEY: MIKE C  
DEPT./INDEX NO.: 422100  
BY: [Signature]

① See typographical changes pg 7  
② Paragraph 8 Indemnity is Mutual Indemnity OK because other public entity.

Corrections made CAC 9/5/06

**RISK MANAGEMENT:** (All contracts and MOU's except boilerplate grant funding agreements)

Approved:  Disapproved:  Date: 8/30/06 By: [Signature]  
Approved:  Disapproved:  Date: \_\_\_\_\_ By: \_\_\_\_\_

AUG 29 2006

**OTHER APPROVAL:** (Specify department(s) participating or directly affected by this contract).

Departments:  
Approved:  Disapproved:  Date: \_\_\_\_\_ By: \_\_\_\_\_

**FUNDING AGREEMENT NO. 007-AB923-06/07-11**

**WITH THE CITY OF SOUTH LAKE TAHOE**

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**This Agreement No. 007-AB923-06/07-11** made and entered by and between the **EL DORADO COUNTY 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 "DISTRICT"); and the **CITY OF SOUTH LAKE TAHOE**, a political subdivision of the State of California (hereinafter referred to as "CITY");

**WITNESSETH:**

**WHEREAS**, the California Clean Air Act requires local air pollution control DISTRICTS to reduce emissions from motor vehicles; and

**WHEREAS**, AB 923, codified in California Health and Safety Code section 44225, authorizes DISTRICT to impose an additional fee of up to two dollars upon certain registered motor vehicles within the DISTRICT, and the Governing Board of the DISTRICT has imposed said fee; and

**WHEREAS**, AB 923, codified in California Health and Safety Code section 44229 requires the DISTRICT to use said funds for projects (1) eligible for grants under the Carl Moyer Air Quality Standards Attainment Program; (2) the new purchase, retrofit, repower or add on equipment for previously unregulated agricultural sources of air pollution, (3) the new purchase of school buses pursuant to the Lower Emission School Bus Program, (4) an accelerated vehicle retirement or repair program, and

**WHEREAS**, CITY has proposed a Project that meets the eligibility criteria for grants under the Carl Moyer Air Quality Standards Attainment Program and has

applied to the Sacramento Metropolitan Air Quality Management District Heavy-Duty Low Emission Vehicle Incentive Program for funding, and

**WHEREAS**, Sacramento Metropolitan Air Quality Management District has approved the Project proposed by the CITY and will enter into Agreement Number VET-06-0126 (hereinafter referred to as "Agreement VET-06-0126") with the CITY, and

**WHEREAS**, DISTRICT must contribute funding to Projects approved by Sacramento Metropolitan Air Quality Management in the Heavy-Duty Low Emission Vehicle Incentive Program located in ozone attainment areas such as the Lake Tahoe Air Basin; and

**WHEREAS**, CITY represents that it is willing and able to perform the activities set forth herein.

**NOW, THEREFORE**, DISTRICT and CITY mutually agree as follows:

**1. PROJECT**

CITY shall perform all activities and work necessary to complete the City of South Lake Tahoe Snowblower Repower Project set forth in the fully described attached "Agreement VET-06-0126," marked Exhibit "1" attached hereto and incorporated herein by this reference. CITY agrees to furnish all labor, materials, equipment, licenses, permits, fees, and other incidentals necessary to perform and complete, per schedule, in a professional manner, the services described herein. CITY represents that CITY has the expertise necessary to adequately perform the Project specified in said Agreement VET-06-0126.

In the event of any conflict between or among the terms and conditions of this Agreement, Agreement VET-06-0126 incorporated herein, and the documents referred to and incorporated herein, such conflict shall be resolved by giving precedence in the following order of priority:

1. To the text of this Agreement;

**2. PERIOD OF PERFORMANCE/TIMETABLE**

CITY shall commence performance of work and produce all work products in accordance with the Work Statement and deadlines for performance identified in Agreement VET-06-0126, unless this Agreement is terminated sooner as provided for elsewhere in this Agreement.

If requested by the DISTRICT, CITY shall submit regular progress reports, at intervals determined by the DISTRICT, detailing the work performed during the current reporting period; work planned for the next reporting period; problems identified, solved, and/or unresolved; and the percentage of each task completed. CITY shall provide DISTRICT with a comprehensive final written report prior to the end of Agreement term. Said final report shall be complete and shall document the work performed under this Agreement.

**3. COMPENSATION**

DISTRICT will pay the CITY the sum of \$21,758.00 as follows:

CITY shall obtain through other sources sufficient additional monies to fund the total cost of the City of South Lake Tahoe Snowblower Repower Project as outlined in the Agreement VET-06-0126. Satisfactory written evidence of such funding commitments shall be provided to DISTRICT prior to the release by DISTRICT of any funds under this Agreement. In the event funding from other sources for the total cost of the Project is not received by CITY, DISTRICT reserves the right to terminate or renegotiate this Agreement. In accordance with Section 44233 of the California Health and Safety Code, CITY agrees to limit expenditure of funds for the purpose of administration to not more than five percent of the monies distributed to CITY. The DISTRICT is not obligated to pay CITY for administrative costs exceeding five percent of the actual total cost of the Project.



The total obligation of the DISTRICT under this Agreement SHALL NOT EXCEED **Twenty One Thousand Seven Hundred Fifty Eight Dollars and 00/100 (\$21,758)**.

A. **PAYMENTS**: Advance payments shall not be permitted. Payments will be permitted only at which time an equivalent service has been completed. The DISTRICT shall reimburse CITY quarterly, in arrears, after receipt and verification submitted to DISTRICT, Attention: Marcella McTaggart. Payment shall be made to CITY by the DISTRICT upon submission and evaluation of the CITY'S invoice of claim. Said invoice of claim shall set forth the work completed pursuant to the City of South Lake Tahoe Snowblower Repower Project pursuant to this Agreement.

Upon receipt of proper documentation, and verification that CITY has satisfactorily completed the work for which compensation is sought, DISTRICT will issue payment to CITY within thirty (30) calendar days of such time.

The amount to be paid to CITY under this Agreement includes all sales and use taxes incurred pursuant to this Agreement, if any, including any such taxes due on equipment purchased by the CITY. The CITY shall not receive additional compensation for reimbursement of such taxes and shall not decrease work to compensate therefore.

Concurrently with the submission of any claim for payment, CITY 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 CITY'S performance of services under this Agreement shall be borne exclusively by CITY.

In no event shall compensation paid by the DISTRICT to the CITY for the performance of all services and activities under this Agreement exceed the amount set forth in paragraph 3 above.

**B. Surplus Funds:** Any compensation, which is not expended by CITY pursuant to the terms and, conditions of this Agreement by the Project completion date shall automatically revert to the DISTRICT. Only expenditures incurred by the COITY in the direct performance of this Agreement will be reimbursed by the DISTRICT. Allowable expenditures under this Agreement are specifically established and included in Agreement VET-06-0126.

**C. Closeout Period:** All final claims shall be submitted by CITY within sixty (60) days following the final month of activities for which payment is claimed. No action will be taken by DISTRICT on claims submitted beyond the 60-day closeout period.

#### **4. NON-ALLOCATION OF FUNDS**

The terms of this Agreement and the services to be provided there under 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 the CITY thirty (30) days prior written notice.

#### **5. INDEPENDENT CITY LIABILITY**

CITY is, and shall be at all times, deemed independent and shall be wholly responsible for the acts of CITY'S employees, associates, and subcontractors, in connection with the performance of CITY'S obligations under the City of South Lake Tahoe Snowblower Repower Project.

#### **6. TERMINATION**

**A. Breach of Agreement:** The DISTRICT may immediately suspend or terminate this Agreement, in whole or in part, where in the determination of the DISTRICT there is:

1. An illegal or improper use of funds;
2. A failure to comply with any term of this Agreement;

3. A substantially incorrect or incomplete report submitted to the DISTRICT; or
4. Improperly performed services.

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

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

**B. Without Cause:** Either party may terminate this Agreement at any time upon giving the other party at least thirty (30) days advance, written notice of intention to terminate. In such case, the CITY shall, subject to paragraph 3, be paid the reasonable value of all services satisfactorily rendered and actual, reasonable costs incurred up to the time of the termination.

## **7. 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.

## **8. INDEMNIFICATION**

CITY shall defend, indemnify, and hold 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, 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 the CITY'S activities and work necessary to complete the City of South Lake Tahoe Snowblower Repower Project unless such damage, loss, injury or death shall be caused by the sole or active negligence of the DISTRICT. This duty of CITY to indemnify and save DISTRICT harmless includes the duties to defend set forth in California Civil Code, Section 2778.

DISTRICT shall indemnify CITY against and hold it harmless from any loss, damage, and liability for damages, including attorney fees and other costs of defense incurred by CITY, whether for damage to or loss of property, or injury to or death of CITY'S officer's, agents, or employees which shall in any way arise out of or be connected with DISTRICT'S performance of its obligations hereunder, unless such damage, loss, injury, or death shall be caused solely by the negligence of the CITY.

#### **9. AUDITS AND INSPECTIONS**

CITY shall at any time during regular business hours, and as often as DISTRICT may deem necessary, make available to DISTRICT for examination all of its records and data with respect to the matters covered by this Agreement. CITY shall, and upon request by DISTRICT, permit DISTRICT to audit and inspect all of such records and data necessary to ensure CITY'S compliance with the terms of this Agreement. CITY shall be subject to an audit by DISTRICT or its authorized representative to determine if the revenues received by CITY were spent for the reduction of pollution as provided in AB 923 and to determine whether said funds were utilized as provided by law and this Agreement. If, after audit, DISTRICT makes a determination that funds provided CITY pursuant to this Agreement were not spent in conformance with this Agreement, or AB 923 or any

other applicable provisions of law, CITY agrees to immediately reimburse DISTRICT all funds determined to have been expended not in conformance with said provisions.

CITY 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.

Because this Agreement exceeds Ten Thousand Dollars (\$10,000), CITY shall be subject to the examination and audit of the Auditor General for a period of three (3) years after final payment under Agreement (Government Code Section 10532).

#### **10. NOTICES 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 DISTRICT shall be in duplicate and addressed as follows:

#### **CITY**

City of South Lake Tahoe  
1901 Airport Road, Suite 206  
South Lake Tahoe, CA 96150  
Attn: Hal Cole  
Mayor

#### **DISTRICT**

El Dorado County  
Air Quality Management District  
2850 Fairlane Court  
Placerville, CA 95667  
Attn: Marcella McTaggart,  
Air Pollution Control Officer

#### **11. TIME IS OF THE ESSENCE**

It is understood that for CITY'S performance under this Agreement, time is of the essence. The parties reasonably anticipate that CITY will, to the reasonable satisfaction of the DISTRICT, complete all activities provided herein within the time schedule outlined in Agreement VET-06-0126.

**12. COMPLIANCE WITH APPLICABLE LAWS**

CITY will comply with all federal, State, and local laws and ordinances which are or may be applicable to the PROJECT to be undertaken by the CITY including but not limited to California Health and Safety Code sections 44220 et seq., all Air Resources Board and DISTRICT criteria there under, prevailing wage and work day definitions where applicable, contracting license requirements and permits.

**13. NO THIRD-PARTY BENEFICIARIES**

Nothing in this Agreement shall be construed to create any rights of any kind or nature in any other party not a named party to this Agreement.

**14. VENUE**

Any dispute resolution action arising out of this Agreement, including but not limited to litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California. CITY waives any removal rights it might have under Code of Civil Procedure section 394.

**15. 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.

**16. AGREEMENT ADMINISTRATOR**

The DISTRICT Officer or employee with responsibility for administration of this Agreement is Marcella McTaggart, Air Pollution Control Officer. The CITY Officer or employee with responsibility for administration of this Agreement is Jose L. Mercado, Fleet Manager.

**17. AUTHORIZED SIGNATURES**

The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by

law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

**18. PARTIAL INVALIDITY**

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

**REQUESTING DEPARTMENT CONCURRENCE:**

By: Marcella McTaggart Dated: 8-18-06

**Marcella McTaggart  
Air Pollution Control Officer**

By: Gerri Silva Dated: August 18, 2006

**Gerri Silva, M.S., R.E.H.S  
Interim Director, El Dorado County Environmental Management Dept.**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first herein above written.

CITY  
CITY OF SOUTH LAKE TAHOE

DISTRICT  
EL DORADO COUNTY  
AIR QUALITY MANAGEMENT DISTRICT

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: *Hal Cole*  
Hal Cole  
Mayor

By: \_\_\_\_\_  
James R. Sweeney,  
Chairman

ATTEST:  
*Susan Alessi*  
Susan Alessi, City Clerk

Attest:  
Cindy Keck,  
Clerk of the Board

Date: \_\_\_\_\_

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



APPROVED AS TO FORM  
*Catherine L. DiCamillo*  
City Attorney