

FUNDING AGREEMENT NO. 013-DMV-05/06-11

WITH THE EL DORADO COUNTY DEPARTMENT OF TRANSPORTATION

This Agreement No. 013-DMV-05/06-11 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 2766, codified in California Health and Safety Code section 44223, authorizes districts to impose a fee of up to four dollars upon certain registered motor vehicles within the district, and the Governing Board of the DISTRICT has imposed said fee; and

WHEREAS, said legislation requires the DISTRICT to use said funds for activities related to reducing air pollution from motor vehicles and for related planning, monitoring, enforcement, and technical studies necessary for the implementation of the California Clean Air Act of 1988; and

WHEREAS, COUNTY has proposed a project that meets the eligibility criteria of the DISTRICT and that has been approved by DISTRICT for funding; 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 **"Diesel Fleet Retrofits"** project set forth in the fully described "Proposal" 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 Proposal.

In the event of any conflict between or among the terms and conditions of this Agreement, the Proposal 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. Proposal to this Agreement; and
3. To the "Motor Vehicle Emission Reduction Projects Request for Proposals" (RFP) prepared by the DISTRICT and dated 2005-2006.

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 the Proposal, Page 6, of this Agreement, unless this Agreement is

terminated sooner as provided for elsewhere in this Agreement. This Agreement may be extended for one (1) additional year if mutually agreed between the parties hereto in writing not less than thirty (30) days prior to the expiration of the then current 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 \$487,076 as follows:

COUNTY shall obtain through other sources sufficient additional monies to fund the total cost of the “**Diesel Fleet Retrofits**” project as outlined in the Proposal, Pages 1, 5-1, and 7. 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, as outlined in the Proposal, Pages 1, 5-1, and 7, 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 Four Hundred Eighty Seven Thousand Seventy-Six Dollars and 00/100 (\$487,076).

A. PAYMENTS: Advance payments shall not be permitted.

Payments will be permitted only at which time equivalent services have been satisfactorily rendered. The DISTRICT shall reimburse COUNTY quarterly, in arrears, after receipt and verification submitted to El Dorado County Air Quality Management 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 of the "Diesel Fleet Retrofits" 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 the Proposal, Pages 1, 5-1, and 7.

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.

5. 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.

6. 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 installation, operation, use and maintenance of the "**Diesel Fleet Retrofits.**"

7. 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. Upon such termination, all the work product produced by COUNTY shall be promptly delivered to the DISTRICT.

8. 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.

9. 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 "**Diesel Fleet Retrofits.**" 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.

10. 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 2766 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 2766 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).

11. 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

12. 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 the Proposals to this Agreement, provided that COUNTY is not caused unreasonable delay in such performance.

13. 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 thereunder, prevailing wage and work day definitions where applicable, contracting license requirements and permits.

14. 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.

15. VENUE

Any dispute resolution action arising out of this Agreement, including but no 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.

16. 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.

17. AGREEMENT ADMINISTRATOR

The County Officer or employee with responsibility for administration of this Agreement is Marcella McTaggart, Air Pollution Control Officer.

18. 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.

19. 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: 10-6-05

Marcella McTaggart

Air Pollution Control Officer

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

COUNTY

DISTRICT

EL DORADO COUNTY
DEPT. OF TRANSPORTATION

EL DORADO COUNTY
AIR QUALITY MANAGEMENT
DISTRICT


Date: 10/12/05

Date: 10/25/05

By: 
Richard Shepard,
Director of Transportation

By: Charlie Paine
Charlie Paine,
Chairman

Attest:
Cindy Keck,
Clerk of the Board
Date: 10/25/05

By: 
Clerk

PROPOSAL

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