



SAMPLE CONTRACT

**Funding Agreement XXX-DMV-12/13-BOS
Between
El Dorado County Air Quality Management District
And
XYZ**

This Agreement No. XXX-DMV-12/13-BOS made and entered by and between the **EL DORADO COUNTY AIR QUALITY MANAGEMENT DISTRICT**, a county air pollution control district formed pursuant to California Health and Safety Code section 40100, et seq. (hereinafter referred to as "AQMD"); and XYZ (hereinafter referred to as "CONTRACTOR" or "GRANTEE");

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 44220, et seq., authorizes districts to impose a fee of up to four dollars upon certain registered motor vehicles within the AQMD, and the Governing Board of the AQMD has imposed said fee; and

WHEREAS, said legislation requires the AQMD 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, CONTRACTOR has proposed a Project that meets the eligibility criteria of the AQMD and that has been approved by AQMD for funding; and

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

NOW, THEREFORE, AQMD and CONTRACTOR mutually agree as follows:

SCOPE OF WORK

CONTRACTOR shall perform all activities and work necessary to complete the River Shuttle Project (hereinafter referred to as "Project") set forth and further described in Exhibit A, Scope of Work, attached hereto and incorporated herein by this reference. CONTRACTOR 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. CONTRACTOR represents that CONTRACTOR has the expertise necessary to adequately perform the Project specified in said Scope of Work and 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. The text of this Agreement, including Exhibit A Scope of Work;
2. The "Motor Vehicle Emission Reduction Projects Request for Proposals" (RFP) released to Interested Parties by the AQMD on 2/3/12, Exhibit B;
3. Budget Itemization, Exhibit D; and
3. Proposal to this Agreement, Exhibit C.

1. PERIOD OF PERFORMANCE/TIMETABLE

CONTRACTOR shall commence performance of work and produce all work products in accordance with the Scope of Work and Term, unless this Agreement is terminated sooner as provided for elsewhere in this Agreement.

CONTRACTOR shall submit quarterly performance reports, detailing the work performed during the previous calendar quarter; work planned for the remainder of grant period; problems identified, solved, and/or unresolved; and the percentage of each task completed. Quarterly performance reports shall be due 60 days after the end of each calendar quarter. CONTRACTOR shall provide AQMD with a comprehensive final written report prior by February 28, 2014. Final written report shall fully document the work performed under this Agreement.

2. TERM

The term of this Agreement shall be effective upon final execution by all parties and shall expire on February 28, 2014 unless terminated earlier in accordance with Article 7, Termination. All eligible project costs, except for final report preparation costs, must be incurred prior to December 31, 2013. This Agreement may be extended upon the same terms and conditions if mutually agreed upon in writing prior to the expiration of the Agreement.

3. COMPENSATION

For satisfactory services performed in accordance with this Agreement, AQMD will pay the CONTRACTOR up to the sum of **One Hundred Thousand and 00/100 (\$100,000)** as set forth in Exhibit D Budget and as follows:

CONTRACTOR shall obtain through other sources sufficient matching additional monies to fund at least 20% of the total cost of the Project as outlined in the Proposal. Satisfactory written evidence of such matching funding commitments shall be provided to AQMD prior to the release by AQMD of any funds under this Agreement. In the event matching funding from other sources for the total cost of the Project is not received by CONTRACTOR, AQMD reserves the right to terminate or renegotiate this Agreement. CONTRACTOR shall expend matching funds on eligible expenditures and account for matching funds expenditures throughout the project, by providing documentation of such matching funds within five (5) business day of County's request.

The AQMD is not obligated to pay CONTRACTOR for administrative costs exceeding five percent (5%) of the actual total cost of the Project. Under this agreement administrative costs SHALL NOT EXCEED Five Thousand Dollars and 00/100 (\$5,000).

The total obligation of the AQMD under this Agreement SHALL NOT EXCEED **One Hundred Thousand and 00/100 (\$100,000)**.

A. Payments: Advance payments shall not be permitted. Payments will be permitted only at which time an equivalent service has been completed. The AQMD shall reimburse CONTRACTOR quarterly, in arrears, for satisfactory services after receipt and verification submitted to El Dorado County Air Quality Management District, Attention: Dave Johnston or his successor. Payment shall be made to CONTRACTOR by the AQMD upon submission and evaluation of the CONTRACTOR'S invoice. Said invoice

shall set forth the work completed pursuant to this Agreement. Each invoice shall identify, account for, and document funds allocated/expended to the 20% match provided by the CONTRACTOR and the administrative costs.

Upon receipt of proper documentation, and verification that CONTRACTOR has satisfactorily completed the work for which compensation is sought, AQMD will issue payment to CONTRACTOR within forty five (45) calendar days of verification.

The amount to be paid to CONTRACTOR 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 CONTRACTOR.

Concurrently with the submission of any claim for payment, CONTRACTOR shall certify (through copies of invoices issued, checks, receipts, and such other) that complete payment has been made to any and all subcontractors as provided.

It is understood that all expenses incidental to CONTRACTOR's performance of services under this Agreement shall be borne exclusively by CONTRACTOR.

In no event shall compensation paid by the AQMD to the CONTRACTOR for the performance of all services and activities under this Agreement exceed the amount set forth in Article 4, Compensation.

B. Administrative Costs: Costs that are associated with the management, clerical, and general functions within an organization, which cannot be directly applied to an expense category related to operations, are considered administrative. Administrative Costs are defined as costs associated with report preparation, accounting, payroll, and leasing or renting space for the operation of the organization, or such other costs with County's written consent. Ineligible costs under Exhibit B are excluded.

C. Surplus Funds: Any compensation under this agreement, which is not expended by CONTRACTOR pursuant to the terms and conditions of this Agreement by the Project completion date, shall automatically revert to the AQMD. Only expenditures incurred by the CONTRACTOR in the direct performance of this Agreement for satisfactory services performed will be reimbursed by the AQMD. Allowable expenditures under this

Agreement are specifically established in the Scope of Work and included in the Proposal.

D. Closeout Period: All final claims shall be submitted by CONTRACTOR within sixty (60) days following the final month of activities for which payment is claimed. No action will be taken by and AQMD will not be liable for any claims submitted beyond the 60-day closeout period.

4. NON-ALLOCATION OF FUNDS

The terms of this Agreement and the services to be provided thereunder are contingent on the approval of funds by the appropriating government agency and receipt of collected funds from the California Department of Motor Vehicles. Should sufficient funds not be allocated or received, the services provided may be modified or this Agreement terminated at any time by giving the CONTRACTOR thirty (30) days prior written notice.

5. INDEPENDENT CONTRACTOR LIABILITY

CONTRACTOR is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by terms of this Agreement. CONTRACTOR exclusively assumes responsibility for acts of its employees, associates, and subCONTRACTOR's, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

CONTRACTOR shall be responsible for performing the work under this Agreement in a safe, professional, skillful and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. County shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to CONTRACTOR or its employees.

6. DEFAULT, TERMINATION and CANCELLATION

A. Breach of Agreement: AQMD may immediately suspend or terminate this Agreement, in whole or in part, where in the determination of the AQMD 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 AQMD; or
4. Improperly performed services.

B. Default: Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (time to cure), then such party shall be in default. The time to cure may be extended at the discretion of the party giving notice. Any extension of time to cure must be in writing, prepared by the party in default for signature by the party giving notice and must specify the reason(s) for the extension and the date on which the extension of time to cure expires.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the time to cure has expired. In the event of termination for default, the AQMD reserves the right to take over and complete the work by contract or by any other means.

C. Bankruptcy: This Agreement, at the option of the AQMD, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of CONTRACTOR.

D. Ceasing Performance: The AQMD may terminate this Agreement in the event CONTRACTOR ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.

E. Termination or Cancellation without Cause: The AQMD may terminate this Agreement in whole or in part upon seven (7) calendar days written notice by the AQMD without cause. If such prior termination is effected, the AQMD will pay for satisfactory services rendered prior to the effective dates as set forth in the Notice of Termination provided to CONTRACTOR, and for such other services, which the AQMD may agree to in writing as necessary for contract resolution. In no event, however, shall the AQMD be obligated to pay more than the total amount of the contract. Upon receipt of a Notice of Termination, CONTRACTOR shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the notice directs otherwise. Upon such termination, the entire work product produced by CONTRACTOR shall be promptly delivered to the AQMD.

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. INDEMNITY

CONTRACTOR shall defend, indemnify, and hold the AQMD harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorney's fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, the AQMD 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 CONTRACTOR's services, operations, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of the AQMD, the CONTRACTOR, subCONTRACTOR(s) and employee(s) of any of these, except for the sole, or active negligence of the AQMD, its officers and employees, or as expressly prescribed by statute. This duty of CONTRACTOR to indemnify and save The AQMD harmless includes the duties to defend set forth in California Civil Code Section 2778.

10. INSURANCE

CONTRACTOR shall provide proof of a policy of insurance satisfactory to the El Dorado County Risk Manager and documentation evidencing that CONTRACTOR maintains insurance that meets the following requirements:

- A. Full Workers' Compensation and Employers' Liability Insurance covering all employees of CONTRACTOR as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage.
- C. Automobile Liability Insurance of not less than \$1,000,000.00 is required in the event motor vehicles are used by the CONTRACTOR in the performance of the Agreement.
- D. CONTRACTOR shall furnish a certificate of insurance satisfactory to the El Dorado County Risk Manager as evidence that the insurance required above is being maintained.
- E. The insurance will be issued by an insurance company acceptable to Risk Management, or be provided through partial or total self-insurance likewise acceptable to Risk Management.
- F. CONTRACTOR agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, CONTRACTOR agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and CONTRACTOR agrees that no work or services shall be performed prior to the giving of such approval. In the event the CONTRACTOR fails to keep in effect at all times insurance coverage as herein provided, the AQMD may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.
- G. The certificate of insurance must include the following provisions stating that:
 - 1. The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to the AQMD, and;
 - 2. The AQMD, its officers, officials, employees, and volunteers are included as additional insured, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.

- H. The CONTRACTOR's insurance coverage shall be primary insurance as respects the AQMD, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the AQMD, its officers, officials, employees or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.
- I. Any deductibles or self-insured retentions must be declared to and approved by the AQMD, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the AQMD, its officers, officials, employees, and volunteers; or the CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- J. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the AQMD, its officers, officials, employees or volunteers.
- K. The insurance companies shall have no recourse against the AQMD, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- L. CONTRACTOR's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
- M. In the event CONTRACTOR cannot provide an occurrence policy, CONTRACTOR shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- N. Certificate of insurance shall meet such additional standards as may be determined by the AQMD either independently or in consultation with Risk Management, as essential for the protection of the AQMD.

11. AUDITS AND INSPECTIONS

CONTRACTOR shall at any time during regular business hours, during hours of project operations, and as often as AQMD may deem necessary, make available to AQMD or its authorized representatives for examination all of CONTRACTOR's records and data with respect to the matters covered by this Agreement and allow AQMD staff or its authorized representatives to perform performance audit inspections. CONTRACTOR shall, and upon request by AQMD, permit AQMD to audit and inspect all of such records and data necessary to ensure CONTRACTOR's compliance with the terms of this Agreement. CONTRACTOR shall be subject to an audit by AQMD or its authorized representative to determine if the revenues received by CONTRACTOR 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, AQMD makes a determination that funds provided CONTRACTOR pursuant to this Agreement were not spent in conformance with this Agreement, or AB 2766 or any other applicable provisions of law, CONTRACTOR agrees to immediately reimburse AQMD all funds determined to have been expended not in conformance with said provisions. In the event AQMD must retain attorney services or other collection fees and costs in the course of recovering such fund, CONTRACTOR shall be liable for such fees and costs and interest at the rate of 10% per annum.

CONTRACTOR 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), CONTRACTOR 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).

12. 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 AQMD shall be in duplicate and addressed as follows:

CONTRACTOR

AQMD

Attn:

El Dorado County
Air Quality Management District
330 Fair Lane
Placerville, CA 95667
Attn: Dave Johnston
Air Pollution Control Officer

13. TIME IS OF THE ESSENCE

It is understood that for CONTRACTOR's performance under this Agreement, time is of the essence. The parties reasonably anticipate that CONTRACTOR will, to the reasonable satisfaction of the AQMD, complete all activities provided herein within the time schedule outlined in the Proposals to this Agreement.

14. CONFLICT OF INTEREST

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

15. COUNTY BUSINESS LICENSE

It is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of El Dorado County without possessing a County business license unless exempt under County Code Section 5.08.070.

16. COMPLIANCE WITH APPLICABLE LAWS

CONTRACTOR 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 CONTRACTOR including but not limited to California Health and Safety Code sections 44220 et seq, all Air Resources Board

and AQMD criteria there under, prevailing wage and work day definitions where applicable, contracting license requirements and permits.

17. 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.

18. 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. CONTRACTOR waives any removal rights it might have under Code of Civil Procedure section 394.

19. 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.

20. AGREEMENT ADMINISTRATOR

The AQMD Officer or employee with responsibility for administration of this Agreement is Dave Johnston, Air Pollution Control Officer or his successor. The CONTRACTOR Officer or employee with responsibility for administration of this Agreement is Dan Crandall, President/CEO or his successor.

21. 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.

22. 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: _____ **Date:** _____

Dave Johnston
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.

CONTRACTOR
_____, **INC.**

AQMD
EL DORADO COUNTY
AIR QUALITY MANAGEMENT DISTRICT

Date: _____

Date: _____

By: _____

By: _____

John Knight
Chair

“Contractor”

By: _____
Corporate Secretary

Attest:
Terri Daly, Acting
Clerk of the Board

Date: _____

By: _____