

MEMORANDUM OF UNDERSTANDING

between

the
County of El Dorado
and the
City of Placerville

regarding

Cost Sharing Concerning the Purchase of Emulsion for Use by the County of El Dorado and the City of Placerville

THIS Memorandum of Understanding (“MOU”) is entered into by and between the County of El Dorado (“COUNTY”), a political subdivision of the State of California, and the City of Placerville (“CITY”), a general law city, regarding the sharing of costs for the purchase of emulsion for use by CITY and COUNTY.

RECITALS

WHEREAS, COUNTY annually requests bids for emulsion for its durapatch operation and thereafter retains a supply in a tank at COUNTY’s materials yard located on Missouri Flat Road in Placerville; and

WHEREAS, CITY is undertaking a durapatch program for road maintenance within its jurisdiction and, to that end, requires access to a supply of emulsion; and

WHEREAS, COUNTY’s standard agreement with its emulsion provider allows other public agencies to participate in the agreement; and

WHEREAS, COUNTY has determined that it is in the best interests of the residents of COUNTY to allow CITY to participate in COUNTY’s emulsion purchase agreement so that competitive pricing obtained through COUNTY’s procurement process can be shared with CITY; and

WHEREAS, COUNTY is willing to provide CITY access to its emulsion supply and CITY is willing to reimburse COUNTY at the then current contract price for emulsion;

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. TERM

This MOU shall become effective when fully executed by both parties hereto and shall expire five years thereafter.

2. REIMBURSEMENT

CITY agrees to reimburse COUNTY quarterly in arrears. Reimbursement shall be made within thirty (30) days following CITY's receipt of COUNTY's invoice for emulsion received by CITY during the subject period. For the purposes hereof, the reimbursement rates shall be equal to the current contract rate paid by COUNTY for emulsion at the time CITY takes delivery of each load. An additional two percent (2%) administrative processing fee will be added to each invoice.

Invoices shall be mailed to CITY at the following address:

City of Placerville
3101 Center Street
Placerville, California 95667
Attn.: Dave Warren
or to such other location as CITY directs.

3. CITY AGREES TO:

- a. Fill its durapatch machine with emulsion at COUNTY's Missouri Flat Road materials yard using CITY employees and in accordance with the training provided by COUNTY.
- b. Notify COUNTY through the Department of Transportation Highway Superintendent, or designee, twenty-four (24) hours in advance of picking up emulsion.
- c. Record on the log sheet located at the Missouri Flat materials yard each load of emulsion picked up, including the date of pickup, the quantity of emulsion, and the name of the CITY employee picking up the emulsion.
- d. CITY's Durapatcher machine has a net tank capacity of 220 gallons, and CITY agrees to log and pay for each load as having obtained a full 220 gallons of emulsion.
- e. Ensure the Missouri Flat materials yard is secure upon departure. CITY shall further be responsible for all keys issued to it for access to the Missouri Flat materials yard, and shall return the keys upon the expiration or earlier termination of this MOU. If the keys are lost or if CITY cannot return the keys for any reason, CITY shall be responsible for the costs of reproducing or replacing the keys or for the costs of re-keying locks.
- f. Immediately notify COUNTY through the Department of Transportation office at 530-642-4909 of any spill of material immediately.
- g. Provide and maintain insurance as further described below in §5g.

4. COUNTY AGREES TO:

- a. Provide CITY with keys and access to the Missouri Flat materials yard
- b. Provide training to CITY regarding emulsion loading procedures.
- c. Maintain a supply of emulsion in the tank.
- d. Invoice CITY quarterly for emulsion received by CITY

5. GENERAL PROVISIONS

- a. This MOU may be amended by written mutual consent of both parties.
- b. Either party may terminate this MOU upon thirty (30) days written notice to the other.
- c. This MOU does not supersede any law, rule or policy to which either party is subject.
- d. CITY shall be liable for any and all damages caused to any of COUNTY's facilities, equipment, vehicles, or other property as a result of any acts or failures to act on the part of CITY, its employees, agents, or contractors in connection with obtaining emulsion from COUNTY's materials yard pursuant to this MOU. Property damage to any COUNTY facilities, equipment, vehicles, or other property shall be identified and reported to the appropriate COUNTY officials.
- e. The CITY shall defend, indemnify, and hold the COUNTY harmless against and from any and all claims, suits, losses, damages, and liability for damages of every name, kind, and description, including attorneys' fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, COUNTY 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 the CITY's negligence or willful misconduct in its performance under this MOU. This duty to indemnify and hold the COUNTY harmless includes the duties to defend set forth in California Civil Code Section 2778.
- f. CITY is, and shall be at all times, deemed independent and shall be wholly responsible for the acts of its employees, associates, and contractors in connection with its performance under this MOU.

- g. CITY shall provide proof of a policy of insurance satisfactory to COUNTY's Risk Management Division and documentation evidencing that CITY maintains insurance that meets the following requirements:

Full Workers' Compensation and Employers' Liability Insurance covering all employees of CITY as required by law in the State of California.

- ii. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
- iii. Automobile Liability Insurance of not less than \$1,000,000 is required.
- iv. CITY shall furnish a certificate of insurance satisfactory to COUNTY's Risk Management Division as evidence that the insurance required above is being maintained.
- v. The insurance will be issued by an insurance company acceptable to COUNTY's Risk Management Division, or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.
- vi. CITY agrees that the insurance required herein shall be in effect at all times during the term of this MOU. In the event said insurance coverage expires at any time or times during the term of this MOU, CITY shall immediately provide a new certificate of insurance as evidence of the required insurance coverage. In the event CITY fails to keep in effect at all times insurance coverage as herein provided, COUNTY may, in addition to any other remedies it may have, terminate this MOU upon the occurrence of such event. New certificates of insurance are subject to the approval of COUNTY's Risk Management Division.
- vii. The certificate of insurance must include the following provisions stating that:
 - 1 The insurer will not cancel the insured's coverage without 30-day prior written notice to COUNTY; and
 2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, but only insofar as the operations under this MOU are concerned. This provision shall apply to all general and excess liability insurance policies.

- viii. CITY's insurance coverage shall be primary insurance as respects the COUNTY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by COUNTY, its officers, officials, employees, or volunteers shall be in excess of CITY's insurance and shall not contribute with it.
 - ix. Any deductibles or self-insured retentions must be declared to, and approved, by COUNTY. At the option of COUNTY, either: The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects COUNTY, its officers, officials, employees, and volunteers; or CITY shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
 - x. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the COUNTY, its officers, officials, employees, or volunteers.
 - xi. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
 - xii. CITY's obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this MOU.
 - xiii. The certificates of insurance shall meet such additional standards as may be determined by the contracting COUNTY department, either independently or in consultation with COUNTY's Risk Management Division as essential for protection of COUNTY.
- h. Neither this MOU, nor any part thereof may be assigned by CITY without the express written approval of COUNTY.

Any dispute resolution action arising out of this MOU, 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.

- j. If any provision of this MOU 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.

- k. This document and the documents referred to herein or exhibits hereto are the entire MOU between the parties, and they incorporate or supersede all prior written or oral agreements or understandings.

The parties to this MOU represent that the undersigned individuals executing this MOU on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties the obligations set forth herein.

6. NOTICES

Any notice required or permitted under this MOU shall be in writing and shall be served by United States Postal Service upon the other party.

Notice to COUNTY shall be in duplicate and addressed as follows:

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

Tom Celio,
Deputy Director,
Maintenance and Operations

With a copy to:

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

Attn. Tim C. Prudhel,
Contract Services Officer

Notice to CITY shall be addressed as follows:

City of Placerville
3101 Center Street
Placerville, CA 95667

Randy Pesses,
Director of Public Works

7. CONTRACT ADMINISTRATION

The COUNTY Officer or employee with responsibility for administering this MOU is Tom Celio, Deputy Director, Maintenance and Operations Division, Department of Transportation, or successor.

Contract Administrator Concurrence:

By: 
Tom Celio
Deputy Director,
Maintenance and Operations

Dated: 5/19/08

Requesting Department Concurrence:

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

Dated 5/14/08

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

-- COUNTY OF EL DORADO --

By: _____

Dated: _____

Board of Supervisors
"COUNTY"

Attest:
Cindy Keck
Clerk of the Board of Supervisors

By: _____
Deputy Clerk

Dated: _____

-- CITY OF PLACERVILLE --

By: 
John Driscoll
City Manager
"CITY"

Dated: 5/28/08