

**FUNDING AGREEMENT # \_\_\_\_\_**

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This Agreement is made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County"), and El Dorado County Water Agency, duly authorized by the El Dorado County Water Agency Act, Chapter 96 of the 1959 Water Agency Act, whose mailing address is 4330 Golden Center Drive, Suite C, Placerville, CA 95667 (hereinafter referred to as "EDCWA" or "Recipient")

**Recitals**

**WHEREAS**, the County wishes to encourage water conservation in the County by supporting and promoting water conservation projects that may include, but are not limited to, updates to and modernization of existing irrigation systems to bring them into conformity with the 2015 Model Water Efficient Landscape Ordinance (MWEL0); and

**WHEREAS**, there are non-County public facilities in the County that currently have irrigation systems that were installed prior to the effective date of the MWEL0 and/or water systems (indoor or outdoor) that are outdated and/or in need of repair or replacement; and

**WHEREAS**, the County has appropriated funding for the purpose of providing a one-time contribution of \$55,000 (Fifty-Five Thousand Dollars) ("Contribution") to EDCWA to increase water conservation in El Dorado County and to further the goal of ensuring that El Dorado County has adequate water for today and in the future; and

**WHEREAS**, EDCWA desires to accept the Contribution from the County; and

**WHEREAS**, County and EDCWA intend that the Contribution be utilized through EDCWA's existing Cost Share Grant Program ("Program") for an eligible project or projects in order to achieve a water savings of at least 9 acre-feet per year; and

**WHEREAS**, County and EDCWA intend that the Contribution be solely a cash contribution to support the ongoing Program and that EDCWA will remain solely responsible for managing the Program, including but not limited to, determining eligible project(s), selecting project(s) for cost share grant funding, allocating the amount of funding for selected project(s), determining matching funds and in-kind contributions, and monitoring and managing Program compliance; and

**WHEREAS**, the Contribution provided herein will serve a public purpose and provide a valuable public benefit in that it will conserve water, a vital public resource, which is in the long term interest of all County residents as well as the State of California as a whole; and

**WHEREAS**, the parties agree the Contribution and use of the Contribution will be in conformity with all applicable federal, state and local laws and use of the Contribution will be in conformity with EDCWA's Program requirements, regulations and policies.

**NOW THEREFORE**, the parties do hereby agree as follows:

#### **ARTICLE 1**

**Scope of Services:** Recipient shall perform services and provide deliverables described in Exhibit "A" marked "Scope of Work", incorporated herein and made by reference a part hereof. It is understood that funding provided by County is not intended to fully fund the services and deliverables described in Exhibit "A". Recipient is responsible for securing other sources of funding necessary to fully fund and deliver the services and deliverables described in Exhibit "A."

All of the services included in this Agreement and Exhibit "A," are the sole responsibility of Recipient. Recipient shall be solely responsible for the supervision, administration, and work performed by any sub-recipient, sub-consultant or subcontractor, if applicable, for services rendered under this Agreement.

#### **ARTICLE 2**

**Term:** This Agreement shall become effective when fully executed by the parties hereto ("Effective Date") and shall cover the period starting on the Effective Date and shall remain in effect until terminated by any party or until all work contemplated hereunder shall be completed as determined by EDCWA.

#### **ARTICLE 3**

**Payment and Use of Funds:** Within thirty (30) days of the Effective Date, County will advance funds to Recipient in the amount of \$55,000.00 (Fifty-Five Thousand Dollars) to be paid to El Dorado County Water Agency and deposited into the EDCWA Program fund. The Contribution is a one-time contribution and shall be used solely to provide funding to eligible project(s) for eligible expenses under the EDCWA Program as set forth in Exhibit A, "Use of Contribution from County of El Dorado for Water Savings Projects." The purpose of the water saving project(s) is to prevent the waste of water and to achieve a water savings of at least 9 acre-feet per year.

Recipient expressly agrees that any funds paid by County under this Agreement shall not be used, directly or indirectly, for any other purposes, without prior written approval from County.

The total amount of this Agreement shall not exceed \$55,000.00.

#### **ARTICLE 4**

**Reports Required:** Recipient shall submit a written Annual Report to the Contract Administrator no later than February 1st of each contract year until the Agreement is terminated, and upon termination a Final Report shall be provided within 30-days of termination. The Annual Report shall include a narrative summary, in reasonable detail, regarding the disposition of funds and the status of the activities and deliverables identified in Exhibit "A", Scope of Work, as well as an analysis demonstrating the estimated water savings for each project(s) funded by the Contribution.

Recipient shall maintain records, books, documents, and other evidence sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this Agreement, including any matching costs and expenses, all of which will be deemed to constitute "records" for purposes of this section. Such records shall clearly reflect the cost and scope of the services provided.

Recipient's facility or office or such part thereof as may be engaged in the performance of this Agreement and its records shall be subject at all reasonable times to inspection, audit and reproduction by County, the state or any of its duly authorized representatives, including the Comptroller General of the United States.

The provisions of this Article 4 shall survive termination of this Agreement.

#### **ARTICLE 5**

**Independent Contractor/Liability:** Recipient 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. Recipient exclusively assumes responsibility for acts of its employees, associates, agents, sub-recipients, sub-consultants and subcontractors, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

Recipient shall be responsible for performing the work under this Agreement in a safe, professional, skillful and workmanlike manner and shall be solely liable for its own negligence and negligent acts of its employees, associates, agents, sub-recipients, sub-consultants and subcontractors. 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, its employees, associates, agents, sub-recipients, sub-consultants and subcontractors.

#### **ARTICLE 6**

**Recognition of County:** Recipient agrees to credit the County for the funding on all printed or internet materials generated for the Scope of Work during the term of the Agreement by using the County seal and text ("Funded (in part) by El Dorado County") unless otherwise requested or agreed upon with the County. Electronic versions of print and web-ready logo will be provided upon request. If there are no printed materials, credit to the County is to be announced by Recipient verbally at the event or program.

#### **ARTICLE 7**

**Local Sourcing:** Recipient shall make every reasonable effort to secure and/or purchase materials, supplies and labor from local businesses and the local labor pool. For purposes of this Contract, a local business is one that maintains a current business license from the Treasurer Tax Collector of El Dorado County.

#### **ARTICLE 8**

**Political Activity:** Pursuant to California Government Code §54964 and §54964.5, Recipient shall not expend or authorize the expenditure of any funds provided to it pursuant to this agreement, or use any property owned or funded in whole or in part by the County, in support of any political activity including but not limited to support or opposition of a candidate for public office or any ballot measure.

#### **ARTICLE 9**

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

**ARTICLE 10**

**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.

**ARTICLE 11**

**Assignment:** This Agreement is not assignable by Recipient in whole or in part without the express written consent of County.

**ARTICLE 12**

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

**ARTICLE 13**

**Default, Termination, and Cancellation:**

- A. 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, County reserves the right to take over and complete the work by contract or by any other means.

- B. Bankruptcy: This Agreement, at the option of the County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Recipient.
- C. Ceasing Performance: County may terminate this Agreement in the event Recipient ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.

#### **ARTICLE 14**

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

COUNTY OF EL DORADO  
Chief Administrative Office  
330 Fair Lane  
Placerville, CA 95667  
ATTN: Don Ashton, Chief Administrative Officer  
or to such other location as the County directs.

Notices to Recipient shall be addressed as follows:

EL DORADO COUNTY WATER AGENCY  
4330 Golden Center Drive, Suite C  
Placerville, CA 95667  
ATTN: Kenneth V. Payne, P.E., General Manager  
or to such other location as Recipient directs.

#### **ARTICLE 15**

**Change of Address:** In the event of a change in address for Recipient's principal place of business, Recipient shall notify County in writing pursuant to the provisions contained in this Agreement under the Article titled "Notice to Parties". Said notice shall become part of this Agreement upon acknowledgment in writing by the County Contract Administrator, and no further amendment of the Agreement shall be necessary provided that such change of address does not conflict with any other provisions of this Agreement.

#### **ARTICLE 16**

**Indemnity:** The Recipient 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 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, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the Recipient's services, operations, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of the County, the Recipient, subcontractor(s) and employee(s) of any of these, except for the sole, or active negligence of the County, its officers and employees, or as expressly prescribed by statute. This duty of Recipient to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

#### **ARTICLE 17**

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

- A. Full Worker's Compensation and Employer's Liability Insurance covering all employees of Recipient 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 and a \$2,000,000.00 aggregate limit.
- C. Automobile Liability Insurance of not less than \$1,000,000.00 is required in the event motor vehicles are used by the Recipient in the performance of the Agreement.
- D. Recipient shall furnish a certificate of insurance satisfactory to the County of El Dorado 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. Recipient 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, Recipient 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 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 Recipient agrees that no work or services shall be performed prior to the giving of such approval. In the event the Recipient 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 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 prior written notice to County, and;
  - 2. The County of El Dorado, its officers, officials, employees and volunteers are included as additional insured on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- H. The Recipient's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be in excess of the Recipient's insurance and shall not contribute with it.
- I. Any deductibles or self-insured retentions must be declared to and approved by the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees and volunteers; or the Recipient 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 County, its officers, officials, employees or volunteers.

- K. 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.
- L. Recipient's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
- M. In the event Recipient cannot provide an occurrence policy, Recipient 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 contracting County Department either independently or in consultation with Risk Management, as essential for protection of the County.

#### **ARTICLE 18**

**Interest of Public Official:** No official or employee of County who exercises any functions or responsibilities in review or approval of services to be provided by Recipient under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any such official or employee of County have any interest, direct or indirect, in this Agreement or the proceeds thereof.

#### **ARTICLE 19**

**Interest of Recipient:** Recipient covenants that it presently has no personal interest or financial interest, and shall not acquire same in any manner or degree in either: 1) any other contract connected with or directly affected by the services to be performed by this Agreement; or, 2) any other entities connected with or directly affected by the services to be performed by this Agreement. Recipient further covenants that in the performance of this Agreement no person having any such interest shall be employed by Recipient.

#### **ARTICLE 20**

**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. Recipient attests that it has no current business or financial relationship with any County 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. County represents that it is unaware of any financial or economic interest of any public officer or employee of Recipient 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".

#### **ARTICLE 21**

**Nondiscrimination:** In completing the Scope of Work, employing personnel, or in any other respect of this Agreement, Recipient shall not employ discriminatory practices on the basis of race, color, sex, age, religion, sexual orientation, national origin or ancestry, or physical or mental disability.

## **ARTICLE 22**

**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.

## **ARTICLE 23**

**Administrator:** The County Officer or employee with responsibility for administering this Agreement is Don Ashton, Chief Administrative Officer, or designee.

## **ARTICLE 24**

**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.

## **ARTICLE 25**

**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.

## **ARTICLE 26**

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

## **ARTICLE 27**

**No Joint Venture:** This Agreement shall not create a joint venture, partnership or any other relationship of association between the County and Recipient.

## **ARTICLE 28**

**No Agency:** Except as the parties may specify in writing, neither party shall have authority, express or implied, to act on behalf of the other party in any capacity whatsoever as an agent. Neither party shall have any authority, express or implied, pursuant to this Agreement, to bind the other party to any obligation whatsoever.

## **ARTICLE 29**

**Compliance with Laws, Rules and Regulations:** Recipient shall, at all times while this Agreement is in effect, comply with all applicable laws, ordinances, statutes, rules, and regulations governing its conduct.

## **ARTICLE 30**

**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.

## **ARTICLE 31**

**Entire Agreement:** This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral Agreements or understandings.



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

-- COUNTY OF EL DORADO --

Dated: 9/29/2020  
Brian Veerkamp  
"County"

By: B. K. Veerkamp  
Chairman, Board of Supervisors

Attest:  
Kim Dawson  
Clerk of the Board of Supervisors

By: K. Schaeffer  
Deputy Clerk

Dated: 9/29/2020

-- RECIPIENT --

Dated: 10/02/2020

EL DORADO COUNTY WATER AGENCY

By: Kenneth V. Payne  
Kenneth V. Payne  
General Manager  
"Recipient"

**Exhibit "A"**  
**EDCWA**  
**Scope of Work Memo**



To: David Livingston, County Counsel, County of El Dorado  
From: Kenneth V. Payne, P.E., General Manager *KVP*  
Date: August 17, 2020,  
RE: Use of Contribution from County of El Dorado for Water Savings Projects

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**Purpose:** The following outlines the proposed use of a one-time, \$55,000.00 contribution from the County of El Dorado ("County") to El Dorado County Water Agency (EDCWA) pursuant to a funding agreement to be entered into between the County and EDCWA. The County's contribution is to be used by EDCWA to identify, and assist with, the implementation of water savings project(s) by non-County, public facilities. The purpose of said water savings project(s) will be to prevent the waste of water in existing irrigated landscapes, consistent with the Model Water Efficient Landscape Ordinance (MWELO), and/or to prevent the waste of water in water systems (indoor or outdoor) that are outdated and/or in need of repair or replacement in order to achieve a water savings of at least 9 acre-feet per year.

The following describes the project-level approach for achieving and demonstrating the targeted water savings.

- **Identify facilities for water savings** Begin August 2020
  - Estimated Contribution = \$ 2,500
  - Compile list of non-County owned public facilities including acreage and baseline outdoor water usage (e.g., crop or irrigation type)
  - Screen list of facilities based on potential for water savings. Potential options for water savings include, but are not limited to:
    - Change landscaping to plant species which are native to the area
    - Install more efficient irrigation systems
    - Install smart meters to inform real-time water application needs
    - Convert grass to artificial turf
    - Design for onsite storm water capture
    - Incorporate recirculating water features
    - Updating, repairing or replacing indoor or outdoor water systems
  - Contact owners/operators of screened facilities to identify their interest in collaboration. Owners may include other public entities such as community service districts, water agencies, school districts, etc.,
  - Select facility(ies) to collaborate with for implementing the water savings
  
- **Develop Options for Water Savings for Selected Facilities** Begin Fall 2020
  - Estimated Contribution = \$ 5,000
  - Evaluate potential options for savings
  - Estimate total water use of options
  - Compute water savings from baseline usage
  - Select facilities
  
- **Prepare Landscape Documentation Package** Begin Spring 2021
  - Estimated Contribution = \$ 15,000
  - Project information
  - Water efficient landscape worksheet
  - Soil management report

**EXHIBIT A**

- Landscape design plan
- Irrigation design plan
- Grading design plan
  
- **Implement project** Spring 2021 to July 2022
  - Estimated Contribution = \$ 30,000
  - Including potential permitting and environmental documentation, stakeholder outreach, funding and financing strategies, agreements/contracts, etc.
  -
  
- **Certify completion of project** July 2022
  - Estimated Contribution = \$ 1,000
  
- **Reporting to County of El Dorado, County Counsel** On-Going
  - Estimated Contribution = \$ 1,500
  - At the completion of each stage, EDCWA will notify County Counsel of completion.
  - If a Landscape Documentation Package(s) is required, a copy of such Landscape Documentation Package(s) will be provided to the County prior to installation of the project(s)