

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF PLACERVILLE AUTHORIZING THE
PURCHASE OF ONE (1) UNMARKED POLICE VEHICLE**

This Agreement 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 **CITY OF PLACERVILLE**, (hereinafter referred to as "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 AQMD's jurisdiction, and the Governing Board of the AQMD has imposed said fee; and

WHEREAS, said legislation requires 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, GRANTEE has proposed a project that meets the eligibility criteria of AQMD and that has been approved by AQMD and the Governing Board of AQMD for funding; and

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

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

1) PROJECT

a) GRANTEE shall perform all activities and work necessary to complete the proposed electric vehicle replacement project (hereinafter referred to as "Project"); as set forth in the fully described "Scope of Work" attached hereto as Exhibit A and incorporated herein by this reference. GRANTEE 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. GRANTEE represents that GRANTEE has the expertise necessary to adequately perform the Project specified in Exhibit A.

b) In the event of any conflict between or among the terms and conditions of this Agreement, such conflict shall be resolved by giving precedence in the following order of priority:

- i) To the text of this Agreement;
- ii) To Exhibit A, "Scope of Work";

iii) To Exhibit B, "Motor Vehicle Emission Reduction Projects Request for Proposals" (RFP) released by AQMD and dated July 24, 2020;

iii) To Exhibit C, "Budget".

iv)

2) PERIOD OF PERFORMANCE/TIMETABLE

a) GRANTEE shall commence performance of work and produce all work products in accordance with Exhibit A, unless this Agreement is terminated earlier in accordance with Article 7, Termination.

b) GRANTEE shall submit quarterly performance reports and a comprehensive final report. The quarterly reports shall detail the work performed during the previous quarter; work planned for the next quarter; problems identified, solved, and/or unresolved; and the percentage of each task completed. Quarterly reports shall be due 30 days after the end of the previous calendar quarter. GRANTEE shall provide AQMD with a comprehensive final written report by sixty (60) days following the third anniversary of the purchase of the replacement electric vehicle. Said final report shall be complete and shall document the work performed under this Agreement.

3) TERM

The term of this Agreement shall be effective upon final execution by the parties and shall cover the period of March 15, 2021 through sixty (60) days following the third anniversary of the purchase of the replacement electric vehicle unless terminated earlier in accordance with Article 7, Termination. All eligible project costs, must be incurred prior to June 30, 2022.

4) COMPENSATION

a) AQMD will pay GRANTEE for work completed in accordance with this Agreement the sum of THIRTY SIX THOUSAND EIGHT HUNDRED DOLLARS (\$36,800) as follows:

i) GRANTEE shall obtain through other sources sufficient additional monies to fund the total cost of the Project as outlined in the Proposal. Satisfactory written evidence of such funding commitments shall be provided to AQMD prior to the release by AQMD of any funds under this Agreement. In the event funding from other sources for the total cost of the Project is not received by GRANTEE, AQMD reserves the City of Placerville Page 4 of 17 Funding Agreement 5515 right to terminate or renegotiate this Agreement. In accordance with Section 44233 of the California Health and Safety Code, GRANTEE agrees to limit expenditure of funds for the purpose of administration to not more than five percent of the monies distributed to GRANTEE.

ii) The total obligation of AQMD under this Agreement shall not exceed THIRTY SIX THOUSAND EIGHT HUNDRED DOLLARS (\$36,800)

iii) GRANTEE's match must be at least twenty percent (20%) of requested and awarded

funding or at least sixteen and sixty six hundredths percent (16.66%) of the total Project budget identified in the application.

b) PAYMENTS

i) Advance payments shall not be permitted. Payments will be permitted only at which time an equivalent service has been completed. AQMD shall reimburse GRANTEE in arrears, after receipt and verification of submitted invoices. Invoices shall be mailed to AQMD at the following address:

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

Payment shall be made to GRANTEE by AQMD upon submission and evaluation of the GRANTEE'S invoice of claim. Said invoice of claim shall set forth the work completed pursuant to this Agreement.

ii) Upon receipt of proper documentation, and verification that GRANTEE has satisfactorily completed the work for which compensation is sought and that the work is in accordance with Exhibit A, "Scope of Work", AQMD will issue payment to GRANTEE within forty five (45) calendar days of verification.

iii) The amount to be paid to GRANTEE 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 GRANTEE. GRANTEE shall not receive additional compensation for reimbursement of such taxes and shall not decrease work to compensate therefore.

iv) Concurrently with the submission of any claim for payment, GRANTEE 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.

v) It is understood that all expenses incidental to GRANTEE'S performance of services under this Agreement shall be borne exclusively by GRANTEE.

vi) In no event shall compensation paid by AQMD to GRANTEE for the performance of all services and activities under this Agreement exceed the amount set forth in section 4(a) above.

c) SURPLUS FUNDS

Any compensation under this Agreement, which is not expended by GRANTEE pursuant to the terms and conditions of this Agreement by the Project completion date, shall automatically revert to AQMD. Only expenditures incurred by the GRANTEE in the direct performance of this Agreement will be reimbursed by AQMD. Allowable expenditures under this Agreement are specifically established and included in Exhibit C, "Budget".

d) CLOSEOUT PERIOD

All final claims shall be submitted by GRANTEE within sixty (60) days following the date of purchase of the replacement electric vehicle. No action will be taken by AQMD on claims submitted beyond the sixty (60) day closeout period.

5) 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. Should sufficient funds not be allocated, the services provided may be modified or this Agreement terminated at any time by giving GRANTEE thirty (30) days prior written notice.

6) INDEPENDENT CONTRACTOR LIABILITY

- a) GRANTEE is, and shall be at all times, deemed as an independent contractor and shall be wholly responsible for the acts of GRANTEE'S employees, associates, and subcontractors, in connection with the implementation of the Project, and in performance of the work, duties and obligations by GRANTEE under this Agreement.
- b) GRANTEE 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. AQMD 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 GRANTEE or its employees. AQMD shall retain the right to administer this Agreement so as to verify that GRANTEE is performing its obligations in accordance with the terms and conditions thereof.
- c) Section 6, Independent Contractor Liability, shall survive any termination of this Agreement.

7) TERMINATION

a) BREACH OF AGREEMENT

i) AQMD may immediately suspend or terminate this Agreement, in whole or in part, where in the determination of AQMD there is:

- (1) An illegal or improper use of grant funds;
- (2) A failure to comply with any term of this Agreement;
- (3) A substantially incorrect or incomplete report submitted to AQMD; or
- (4) Improperly performed services.

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

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

b) **WITHOUT CAUSE**

i) 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, AQMD shall, subject to Section 4, Compensation, pay its pro rata share of the reasonable value of all services satisfactorily rendered and actual, reasonable costs incurred up to the time of the termination. Upon such termination, the entire work product produced by GRANTEE and any unexpended funds shall be promptly delivered to AQMD.

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 the Contract Administrators.

9) INDEMNIFICATION

a) GRANTEE shall defend, indemnify, and hold AQMD, its Board, officers, agents, employees, and representatives and the County of El Dorado, its Board, officers, agents, employees, and representatives 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, AQMD or the County of El Dorado 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 acts or omissions of GRANTEE, its officers, agents, subcontractors, or employees in their performance of this Agreement unless such claim, loss, damage, injury or death is the result of the sole or active negligence of AQMD or the County of El Dorado. This duty of GRANTEE to indemnify and save AQMD and the County of El Dorado harmless includes the duties to defend set forth in California Civil Code Section 2778.

b) This indemnification obligation shall survive any termination of this Agreement.
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10) INSURANCE

a) GRANTEE shall provide proof of a policy of insurance satisfactory to the County of El Dorado's Risk Management Division and documentation evidencing that GRANTEE maintains insurance that meets the following requirements:

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

ii) 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 aggregate limit.

iii) Automobile Liability Insurance of not less than \$1,000,000.00 is required in the event motor vehicles are used by GRANTEE in the performance of the Agreement.

iv) GRANTEE shall furnish a certificate of insurance satisfactory to the County of El Dorado'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 the County of El Dorado's Risk Management Division, or be provided through partial or total selfinsurance likewise acceptable to the Risk Management Division.

vi) GRANTEE 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, GRANTEE 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 City of Placerville Page 10 of 17 Funding Agreement 5515 certificates of insurance are subject to the approval of the County of El Dorado's Risk Management Division and GRANTEE agrees that no work or services shall be performed prior to the giving of such approval. In the event GRANTEE fails to keep in effect at all times insurance coverage as herein provided, AQMD and/or the County of El Dorado may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.

vii) 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 AQMD and the County of El Dorado, and;

(2) AQMD, its officers, officials, employees, and volunteers, and 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.

viii) GRANTEE's insurance coverage shall be primary insurance as respects AQMD, its officers, officials, employees, and volunteers and the County of El Dorado, their officers, officials, employees and volunteers. Any insurance or self-insurance maintained by AQMD, its officers, officials, employees or volunteers and the County of El Dorado, their officers, officials, employees, and volunteers shall be excess of GRANTEE's insurance and shall not contribute with it.

ix) Any deductibles or self-insured retentions must be declared to, and approved by, AQMD and the County of El Dorado. At the option of AQMD and the County of El Dorado, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects AQMD, its officers, officials, employees, and volunteers and the County of El Dorado, its officers, officials, employees, and volunteers; or GRANTEE 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 AQMD, its officers, officials, employees, or volunteers and the County of El Dorado, its officers, officials, employees or volunteers.

xi) The insurance companies shall have no recourse against AQMD, its officers and employees or any of them or the County of El Dorado, its officers or employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.

xii) GRANTEE's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.

xiii) In the event GRANTEE cannot provide an occurrence policy, GRANTEE 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.

xiv) The certificates of insurance shall meet such additional standards as may be determined by AQMD and the County of El Dorado, either independently or in consultation with the County of El Dorado's Risk Management Division as essential for protection of AQMD and the County of El Dorado.

11) AUDITS AND INSPECTIONS

a) GRANTEE shall at any time during regular business hours, and as often as AQMD may deem necessary, make available to AQMD for examination all of GRANTEE'S records and data with respect to the matters covered by this Agreement. GRANTEE shall, and upon request by AQMD, permit AQMD to audit and inspect all of such records and data necessary to ensure GRANTEE'S compliance with the terms of this Agreement. GRANTEE shall be subject to an audit by AQMD or its authorized representative to determine if the revenues received by GRANTEE were spent for the reduction of air 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 GRANTEE pursuant to this Agreement were not spent in conformance with this Agreement, or AB 2766 or any other applicable provisions of law, GRANTEE agrees to immediately reimburse AQMD all funds determined to have been expended not in conformance with said provisions.

b) GRANTEE 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.

c) GRANTEE acknowledges that if total compensation under this Agreement is greater than Ten Thousand Dollars (\$10,000), 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, GRANTEE 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.

- c) The obligations set forth in this section shall survive any termination of this Agreement.

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 shall be in duplicate and addressed as follows:

GRANTEE:

City of Placerville Police Department
730 Main Street
Placerville, CA 95667 330 Fair Lane
Attn : John Meuser, Commander Placerville, CA 95667

AQMD:

El Dorado County
Air Quality Management District
Attn: Dave Johnston, APCO

Or to such other location as GRANTEE Directs

Or to such other location as AQMD directs

13) CHANGE OF ADDRESS

In the event of a change in address for GRANTEE's principal place of business, GRANTEE's Agent for Service of Process, or Notices to GRANTEE, GRANTEE shall notify AQMD in writing as provided in Section 12, Notice to Parties. Said notice shall become part of this Agreement upon acknowledgment in writing by AQMD's 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.

14) TIME IS OF THE ESSENCE

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

15) COMPLIANCE WITH APPLICABLE LAWS

GRANTEE will comply with all federal, State, and local laws and ordinances which are or may be applicable to the PROJECT to be undertaken by GRANTEE including but not limited to California Health and Safety Code sections 44220 et seq, all Air Resources Board and AQMD criteria thereunder, prevailing wage and work day definitions where applicable, Government Code Section 8546.7, contracting license requirements and permits.

16) NO THIRD-PARTY BENEFICIARIES

Except as otherwise set forth herein, nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person of legal entity not a party to the Agreement.

17) CALIFORNIA FORUM AND LAW

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.

18) 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.

19) CONTRACT ADMINISTRATOR

The AQMD Officer or employee with responsibility for administration of this Agreement is Dave Johnston, Air Pollution Control Officer, or successor. The GRANTEE Officer or employee with responsibility for administration of this Agreement is John Meuser, Commander, or successor.

20) 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.

21) PARTIAL INVALIDITY

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

22) BUSINESS LICENSE

County of El Dorado's Business License Ordinance provides that it is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of County of El Dorado without possessing a County of El Dorado business license unless exempt under County Ordinance Code Section 5.08.070. GRANTEE warrants and represents that it shall comply with all of the requirements of County of El Dorado's Business License Ordinance, where applicable, prior to beginning work under this Agreement and at all times during the term of this Agreement.

23) BINDING ON SUCCESSORS

This Agreement, including all covenants and conditions contained therein, shall be binding upon and inure to the benefit of the parties, including their respective successors-in-interest, assigns, and legal representatives.

24) TAXES

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

25) CONTRACTOR TO AQMD

It is understood that the services provided under this Agreement shall be prepared in and with cooperation from AQMD and its staff. It is further agreed that in all matters pertaining to this Agreement, GRANTEE shall act as Contractor only to AQMD and shall not act as contractor to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with GRANTEE'S responsibilities to AQMD during term hereof.

26) CALIFORNIA RESIDENCY (FORM 590)

GRANTEE will submit a Form 590 prior to execution of this Agreement, or seven (7) percent of each payment made to GRANTEE will be withheld during the term of this Agreement. This requirement applies to any agreement/contract exceeding \$1,500.

27) COUNTY PAYEE DATA RECORD FORM

GRANTEE shall file a County Payee Data Record Form with El Dorado County, unless GRANTEE has on file with El Dorado County a Department of the Treasury Internal Revenue Service Form W-9.

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

**GRANTEE
CITY OF PLACERVILLE**

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

Date: _____ Date: _____
By: _____ By: _____

- AYES:**
- NOES:**
- ABSENT:**
- ABSTAIN:**

Mayor Dennis Thomas

ATTEST:

Regina O'Connell, City Clerk