

**AGREEMENT**

This Agreement is made and entered into this 1<sup>st</sup> day of **January, 2016**, by and between the Northern Sierra Air Quality Management District, a unified air pollution control district formed pursuant to California Health and Safety Code §40150, et seq. (the "DISTRICT"), and the Nevada County Library (the "CONTRACTOR").

**RECITALS:**

**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 §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 (\$4 per vehicle in Nevada and Plumas Counties and \$2 per vehicle in Sierra County); and

**WHEREAS**, said legislation requires the DISTRICT to use said funds for activities to reduce 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**, DISTRICT staff reviews proposals for eligible projects for the purpose of making funding recommendations to the Governing Board of the DISTRICT; and

**WHEREAS**, on September 28, 2015, after holding a public meeting and considering the recommendations of DISTRICT staff, the DISTRICT Board of Directors approved funding for this project; and

**WHEREAS**, CONTRACTOR has proposed a project that meets the eligibility criteria for funding approved by the DISTRICT, which is consistent with the goals of Health and Safety Code §44220 through §44247; and

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

**NOW, THEREFORE**, based on their mutual promises, covenants, and conditions, the parties hereby agree as follows:

## **1. PROJECT**

CONTRACTOR shall perform all activities and work necessary to complete the project: **Enhance Online Services**, as set forth in the proposal, which is attached hereto and incorporated herein as Exhibit A. CONTRACTOR agrees to furnish all labor, materials, equipment, licenses, permits, fees, and other incidentals necessary to perform and complete, in a professional, the services described herein. CONTRACTOR represents that CONTRACTOR has the expertise necessary to adequately perform the project specified in said Exhibit A.

In the event of any conflict between or among the terms and conditions of this Agreement, the exhibits 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;
2. Exhibit A to this Agreement; and
3. The "AB 2766 DMV Surcharge Fund Program RFP" prepared by the DISTRICT and dated April 27, 2015 and
4. The "AB 2766 DMV Surcharge Fund Program Project Guidance.

## **2. PERIOD OF PERFORMANCE/TIMETABLE**

CONTRACTOR shall commence performance of work and produce all work product in accordance with the work schedule and deadlines for performance identified in Exhibit A, which is attached hereto and incorporated herein, unless this Agreement is terminated sooner as provided for elsewhere in this Agreement. In addition, the CONTRACTOR shall make arrangements with the DISTRICT to receive Project Guidance training from the DISTRICT for any CONTRACTOR's Program Manager assigned to the project during the term of the Agreement.

The CONTRACTOR shall submit regular progress reports, at intervals set forth in the Project Guidance or as otherwise requested by the DISTRICT, detailing the work performed during the current reporting period; work planned for the next reporting period; problems identified, solved, and the percentage of each task completed. CONTRACTOR shall provide DISTRICT with a comprehensive final written report prior to final reimbursement payment. Said final report shall be complete and shall document the work

performed under this Agreement, the emissions reduction achieved (if applicable), as calculated using the methodologies and format required by the DISTRICT, and shall report all co-funding and in-kind contributions actually received.

### **3. COMPENSATION**

In no event shall the total obligation of the DISTRICT under this Agreement exceed \$25,000 **for Exhibit A** compensation shall be for work completed in accordance with this agreement, starting January 1, 2016, and continuing through the term of this agreement, ending December 31, 2016.

CONTRACTOR shall obtain through other sources sufficient additional monies (co-funding) to fund the total cost of the project as outlined in Exhibit A. Satisfactory written evidence of such funding commitments shall be provided to DISTRICT prior to the release by DISTRICT of any funds under this Agreement, with the exception of user fee revenue. In the event funding from other sources for the balance of the cost of the project, as outlined in Exhibit A, is not received by CONTRACTOR, DISTRICT reserves the right to terminate or renegotiate this Agreement. In that event, if requested by the DISTRICT, CONTRACTOR shall return any DISTRICT funds advanced. All co-funding and in-kind contributions must be documented as they are received, in accordance with generally accepted accounting principles. The value assigned to in-kind contributions must be consistent with the market value of the goods or service being donated. Co-funding in the form of fee revenue must be documented as it is received (e.g. receipts log for cash), in accordance with generally accepted accounting principles. Fee revenue should normally be used to offset operating expenses or otherwise accrued per the proposal.

**A. PAYMENTS:** Advance payments shall not be permitted. The DISTRICT shall reimburse CONTRACTOR monthly (or quarterly), in arrears, after receipt of a reimbursement request that includes all documentation necessary to verify expenses were incurred, in compliance with the requirements listed in the *Project Guidance*, and the DISTRICT has approved payment. Reimbursement requests shall be mailed to Northern Sierra Air Quality Management District, Attention: Joe Fish.

Payment shall be made to CONTRACTOR by the DISTRICT upon submission and

evaluation of the CONTRACTOR'S invoice, documentation, and period report. Said invoice shall set forth the work completed pursuant to this Agreement, broken down by work tasks, in compliance with the *Project Guidance*. Allowable expenditures under this Agreement are specifically established and included in Exhibit A attached hereto and incorporated herein.

Upon receipt of proper documentation, and verification that CONTRACTOR has satisfactorily completed the work agreed to and for which compensation is sought, DISTRICT will issue payment to CONTRACTOR within thirty (30) calendar days.

The amount to be paid to CONTRACTOR under this Agreement includes all sales and use taxes incurred pursuant to this Agreement, if any. The CONTRACTOR shall not receive additional compensation for reimbursement of such taxes and shall not decrease work to compensate therefore.

Concurrently with the submission of any invoice for payment, CONTRACTOR shall certify (by providing copies of invoices issued, checks, receipts, or other documentation) that complete payment has been made to any and all subcontractors conducting any portion of the work of this contract.

No administrative costs are to be reimbursed for the work performed. Administrative costs must be borne by outside source funding or provided as "in-kind" contributions. Administrative costs, as used herein, are defined as overhead costs (e.g. salaries and benefits, and services and supplies of the administrative officer(s), legal personnel, maintenance and finance departments; of the governing body; and some secretarial support) that are **NOT** chargeable directly to a specific project or program or operating function, but are charged proportionately to the department or functions that do directly charge to a project or program. Indirect costs include administrative costs. Thus, direct costs for labor charged to a project must not include a portion that is administrative as defined above.

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

**B. Surplus Funds:** Any compensation 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 DISTRICT. Only expenditures incurred

by the CONTRACTOR in the direct performance of this Agreement will be reimbursed by the DISTRICT. Allowable expenditures under this Agreement are specifically established and included in Exhibit A, attached hereto and incorporated herein.

#### **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. Should sufficient funds not be allocated, 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**

In performance of the work, duties, and obligations assumed by CONTRACTOR under this Agreement, it is mutually understood and agreed that CONTRACTOR, including any and all of CONTRACTOR'S officers, agents, and employees, will at all times be acting and performing as an independent contractor and shall act in an independent capacity and not as an officer, agent, servant, employee, joint venturer, partner, or associate of the DISTRICT. Furthermore, DISTRICT shall have no right to control or supervise or direct the manner or method by which CONTRACTOR shall perform its work and function. However, DISTRICT shall retain the right to administer this Agreement so as to verify that CONTRACTOR is performing its obligations in accordance with the terms and conditions thereof.

Because of its status as an independent contractor, CONTRACTOR shall have absolutely no right to employment rights and benefits available to DISTRICT employees. CONTRACTOR shall be solely liable and responsible for providing to, or on behalf of, itself and save DISTRICT harmless from all matters relative to payment of CONTRACTOR'S employees, including compliance with Social Security, withholding, and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, CONTRACTOR may be providing services to others unrelated to the DISTRICT or to this Agreement.

**6. COMPLIANCE WITH ALL LAWS** CONTRACTOR and DISTRICT shall comply with all applicable provisions of law and the rules and regulations, if any, of governmental authorities having jurisdiction over the matters which are the subject of this agreement, and contractors shall maintain all necessary permits or licenses for the duration of this agreement.

**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 CONTRACTOR. Nor 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 CONTRACTOR the repayment to the DISTRICT of any funds disbursed to the CONTRACTOR under this Agreement which in the judgment of the DISTRICT were not expended in accordance with the terms of this Agreement. The CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR shall be promptly delivered to the DISTRICT.

## **8. MODIFICATION**

Any matters of this Agreement may be modified from time to time by the written consent of all the parties.

## **9. NON-ASSIGNMENT**

Neither party shall assign, transfer, or subcontract this Agreement, nor their rights or duties under this Agreement, without the prior, express, written consent of the other party. CONTRACTOR shall provide a written request to the DISTRICT for consent on any such changes described above. Contractor shall provide to the DISTRICT as much advance notice on developments related to such changes described above as is reasonably possible.

## **10. INDEMNIFICATION**

CONTRACTOR agrees to indemnify, save, hold harmless, and at DISTRICT'S request, defend the DISTRICT, its boards, committees, representatives, officers, agents, and employees from and against any and all damages, liabilities, claims, and losses (whether in contract, tort, or strict liability, including, but not limited to, personal injury, death, and property damage) occurring or resulting to DISTRICT which arise from any negligent or wrongful acts or omissions of CONTRACTOR, its officers, agents, subcontractors, or employees in their performance of this Agreement, and from any and all damages, liabilities, claims, and losses (whether in contract, tort, or strict liability, including, but not limited to, personal injury, death, and property damage), occurring or resulting to any person, firm, corporation, or entity who may be injured or damaged when such injury or damage arises from any negligent or wrongful acts, or omissions of CONTRACTOR, its officers, agents, subcontractors, or employees in their performance of this Agreement.

## **11. INSURANCE**

A. Without limiting the DISTRICT'S right to indemnification from CONTRACTOR or any third parties, CONTRACTOR, at its sole expense, shall maintain in full force and effect the following insurance policies throughout the term of this Agreement:

1. Commercial general liability insurance with minimum limits of coverage in the amount of One Million Dollars (\$1,000,000) per occurrence;
2. Commercial automobile liability insurance which covers bodily injury and property damage with a combined single limit with minimum limits of coverage in the amount of One Million Dollars (\$1,000,000) per occurrence;
3. Workers compensation insurance in accordance with California law.

**B.** Such insurance policies shall name the DISTRICT, its officers, agents, and employees, individually and collectively, as additional insured (except worker's compensation insurance). Such coverage for additional insured shall apply as primary insurance, and any other insurance maintained by the DISTRICT, its officers, agents, and employees, shall be excess only and not contributing with insurance provided under the CONTRACTOR'S policies herein. This insurance shall not be canceled or changed without a minimum of thirty (30) days' advance, written notice given to the DISTRICT.

**C.** Prior to the commencement of performing its obligations under this Agreement, CONTRACTOR shall provide certificates of insurance on the foregoing policies, as required herein, to the DISTRICT, showing that the coverage meets all of the requirements described above.

**D.** In the event CONTRACTOR fails to keep in effect at all times insurance coverage as herein provided, the DISTRICT may, in addition to other remedies it may have, suspend or terminate this Agreement upon the occurrence of such event.

**E.** If the CONTRACTOR is a government entity, then it may self-insure such of those risks identified above under the same terms and conditions set forth above.

## **12. AUDITS AND INSPECTIONS**

CONTRACTOR shall keep full books and records relating to work required by this contract. CONTRACTOR 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. CONTRACTOR shall, and upon request by DISTRICT, permit DISTRICT 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 DISTRICT or its authorized representative to determine if the revenues received by CONTRACTOR 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, DISTRICT 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 to DISTRICT all funds determined to have been expended not in conformance with said provisions.

Contractor shall be subject to the examination and audit of the Auditor General for a period of three (3) years after final payment under contract (Government Code §10532).

**13. NOTICES**

The persons and their addresses having authority to give and receive notices under this agreement are as follows:

<b>CONTRACTOR</b>	<b>DISTRICT</b>
Nevada County Library	Northern Sierra AQMD
Attn: Laurie Pappani	Attn: Gretchen Bennitt, Executive Director
980 Helling Way	P.O. Box 2509
Nevada City, CA 95959	Grass Valley, CA 95945

Any and all notices between the DISTRICT and the CONTRACTOR provided for or permitted under this Agreement or by law shall be in writing and shall be deemed duly served when personally delivered to one of the parties, or in lieu of such personal services, when deposited in the United States mail, postage prepaid, addressed to such party.

**14. POLITICAL ACTIVITY PROHIBITED**

None of the funds, materials, property, or services provided under this Agreement shall be used for any political activity, or to further the election or defeat of any candidate for public office contrary to federal or state laws, statutes, regulations, rules, or guidelines.

**15. LOBBYING PROHIBITED**

None of the funds provided under this Agreement shall be used for publicity, lobbying, or propaganda purposes designed to support or defeat legislation before the Congress of the United States of America or the Legislature of the Sate of California or any local agency.

**16. CONFLICT OF INTEREST**

No officer, employee, or agent of the DISTRICT shall have any direct or indirect personal financial interest in this Agreement. CONTRACTOR shall comply with all federal and state conflict of interest laws, statutes, and regulations, which shall be applicable to all parties and beneficiaries under this Agreement and any officer, agent, or employee of the DISTRICT.

**17. GOVERNING LAW**

This Agreement shall be governed in all respects by the laws of the State of California. Venue for any action arising out of this Agreement shall only be in Nevada County, California.

**18. BINDING ON SUCCESSORS**

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

**19. 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 DISTRICT, complete all activities provided herein within the time schedule outlined in the attachments to this Agreement, provided that CONTRACTOR is not caused unreasonable delay in such performance.

**20. DATA OWNERSHIP**

Upon termination or expiration of this Agreement, all data which is received, collected, produced, or developed by CONTRACTOR shall be delivered to the DISTRICT.

Contractor shall be allowed to retain a copy of any non-confidential data received, collected, produced, or developed by CONTRACTOR under this Agreement subject to the DISTRICT'S exclusive ownership rights stated herein. Accordingly, CONTRACTOR shall, if requested, surrender to DISTRICT all such data which is in its possession (including its subcontractors, or agents), without any reservation of right of title, not otherwise enumerated herein.

DISTRICT shall have the right at reasonable times during the term of this Agreement to inspect and reproduce any data received, collected, produced, or developed by CONTRACTOR under this Agreement. No reports, professional papers, information, inventions, improvements, discoveries, or data obtained, prepared, assembled, or developed by the CONTRACTOR, pursuant to this Agreement, shall be released or made available (except to the DISTRICT) without prior, express written approval of the DISTRICT while this Agreement is in force.

## **21. NO THIRD-PARTY BENEFICIARIES**

Notwithstanding anything else stated to the contrary herein, it is understood that CONTRACTOR'S services and activities under this Agreement are being rendered only for the benefit of DISTRICT, and no other person, firm, corporation, or entity shall be deemed an intended third-party beneficiary of this Agreement. All third party involvement shall relate to a bona fide air quality benefit, otherwise, the third party must be a co-funder, contributing at least a proportionate value for the benefit they are receiving.

## **22. OWNERSHIP OF EMISSIONS REDUCTIONS**

All emissions reductions achieved by the project are the property of the DISTRICT. The CONTRACTOR has no legal rights to any emissions reductions credits that may be generated as a result of the project. Emissions reductions from funded projects are not transferable and may not be used as emissions offsets.

## **23. CONTRACTOR'S REPRESENTATION**

CONTRACTOR shall present proof of license to do business in the state of California or provide other certification proving the contractor is a legal business entity. Proof shall also be provided showing that the person signing the agreement on behalf of

the CONTRACTOR is duly authorized to enter into a binding legal agreement.

**24. SEVERABILITY**

In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be unenforceable in any respect by a court of competent jurisdiction, such holding shall not affect any other provisions of this Agreement, and the Agreement shall then be construed as if such unenforceable provisions are not a part hereof.

**25. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the CONTRACTOR and DISTRICT with respect to the subject matter hereof and supersedes all previous negotiations, proposals, commitments, writings, advertisements, publications, and understandings of any nature whatsoever unless expressly included in this Agreement.

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

**CONTRACTOR:**  
Nevada County Library

**DISTRICT:**  
Northern Sierra AQMD

By: \_\_\_\_\_  
Signing Authority

By: \_\_\_\_\_  
Sharon Thrall, Chair

\_\_\_\_\_  
Print Name and Title (Signing Authority)

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Gretchen Bennett, Executive Director

Tax I.D. No. \_\_\_\_\_

Date: \_\_\_\_\_