

FUNDING AGREEMENT

Rule 310 – Calexico Unified School District

THIS FUNDING AGREEMENT (“AGREEMENT”) entered into this _____ day of _____, 2019, is by and between the IMPERIAL COUNTY AIR POLLUTION CONTROL DISTRICT, a political subdivision of the State of California (“ICAPCD”) and the CALEXICO UNIFIED SCHOOL DISTRICT, a California public school district (“DISTRICT”) (individually, “Party” collectively, “Parties”).

RECITALS

WHEREAS DISTRICT submitted an application, and was selected, for Rule 310 mitigation funding in the amount of three hundred thirty-thousand dollars (\$330,000) from ICAPCD to assist with the paving of the parking area located at 1085 Andrade Avenue in Calexico, CA (bus and staff parking lots) (“PROJECT”) in an attempt to mitigate PM₁₀ pollutants resulting from the DISTRICT; and

WHEREAS DISTRICT submitted a request to increase the funding amount for this PROJECT in the amount of four hundred six thousand four hundred eighty dollars (\$406,480) to incorporate prevailing wages and actual costs of the PROJECT based on bids submitted to DISTRICT;

WHEREAS ICAPCD believes the DISTRICT request is both cost-effective and provides air quality and health benefits to a large number of citizens in Imperial County;

NOW THEREFORE, for and in consideration of the mutual promises set out herein, ICAPCD and DISTRICT have and hereby agree as follows:

1. That this AGREEMENT shall begin upon the execution, signed by both Parties, and shall terminate upon completion of **Exhibit “A,”** attached hereto and incorporated herein by this reference.
2. DISTRICT represents and warrants that the people executing this AGREEMENT on behalf of DISTRICT have the authority of DISTRICT to sign this AGREEMENT and bind DISTRICT to the performance of all duties and obligations assumed by DISTRICT herein.
3. DISTRICT shall provide all materials and labor to perform the work outlined in this AGREEMENT and as set forth on **Exhibit “A.”**
4. DISTRICT shall construct, install, place, and perform all described work in conformance with the California Uniform Building Code and all other applicable statutes, rules and regulations.

5. DISTRICT, on its own behalf, and on the behalf of its agents and employees, agrees that DISTRICT is acting in an independent contractor and not as an agent, officer, or employee of ICAPCD.

6. In no event shall ICAPCD be obligated to pay out funds to, or on behalf of, DISTRICT in an amount greater than **four hundred six thousand four hundred eighty dollars (\$406,480)**, for the paving of the parking area of the PROJECT, payable upon full execution of this AGREEMENT and **Exhibit “A.”** Payment of the award amount shall be made directly to DISTRICT. DISTRICT also agrees that work done prior to the execution of this AGREEMENT is at DISTRICT’s own cost and expense.

7. DISTRICT represents and warrants that any employee, contractor, subcontractor, or agent who will be performing any of the duties and obligations required by this AGREEMENT shall possess all required licenses and authorities, as well as the experience and training, to perform such tasks.

8. The Parties agree that time is of the essence in the completion of the PROJECT, and that ICAPCD shall monitor all progress related to the DISTRICT to ensure it is completed in a timely fashion. For purposes of this AGREEMENT, “timely fashion” shall mean the PROJECT shall be completed as specified in **Exhibit “A.”** Any requests for extensions of time to perform in a timely fashion shall be in writing and forwarded to the attention of the ICAPCD’s Air Pollution Control Officer. All requests shall outline the factual basis for the extension request.

9. DISTRICT shall submit periodic status reports to ICAPCD’s Air Pollution Control Officer that illustrate DISTRICT’s progress toward completion of the PROJECT.

10. As between ICAPCD and DISTRICT, DISTRICT is deemed responsible and liable for, and DISTRICT shall indemnify and hold harmless and defend, ICAPCD and any and all of its officers, agents, servants, or employees, against any and all claims, loss, damage, charge, or expense, including attorney’s fees and costs, whether direct or indirect, to which ICAPCD or such officers, agents, servants, or employees may be put or subject, by reason of any damage, loss, or injury of any kind or nature whatever, to persons or property, caused by or resulting from or in connection with any negligent act or action, or any neglect, or failure to act, when under a duty to act, on the part of DISTRICT, in its performance hereunder. In addition to any remedy authorized by law, so much of the money due to the DISTRICT under this AGREEMENT as shall be considered necessary by ICAPCD, may be retained until disposition has been made of any claim for damages.

11. Nothing herein contained shall be construed to create, and the Parties hereto expressly disclaim any intent to create, any form of agency relationship, joint venture or partnership.

12. If any term or provision of this AGREEMENT, or the application of such provision to a particular situation, is held by a court of competent jurisdiction to be void, invalid, or otherwise unenforceable, the remaining terms and provisions shall continue in full force and effect.

13. If any material provision of this AGREEMENT, or the application of such provision to a particular situation, is held by a court of competent jurisdiction to be void, invalid or otherwise unenforceable, then the Party claiming the benefit of such provision may, upon written notice to the other party, terminate this AGREEMENT.

14. This AGREEMENT is made and entered into in Imperial County, California. This AGREEMENT shall be construed and enforced in accordance with the laws of the State of California, except that the Parties agree that any action brought by either Party regarding this AGREEMENT shall be brought in a court of competent jurisdiction in Imperial County or, if appropriate, in the Federal District Court serving Imperial County.

15. The Parties hereto agree to act in good faith and deal fairly with the other Party in the performance of this AGREEMENT.

16. Notices required hereunder shall be in writing and may be given either personally or U.S. Mail. Notice personally given shall be deemed given when delivered to the Party to whom the notice is addressed. Any Party may upon ten (10) days written notice to the other Party, change the address where notices are to be sent.

NOTICES TO COUNTY

Imperial County Air Pollution Control District
150 South Ninth Street
El Centro, CA 92243
Telephone: 442/265-1800
Facsimile: 442/265-1799
Attn: Matt Dessert, Air Pollution Control Officer

Clerk Of The Board Of Supervisors
940 Main Street Ste. 209
El Centro, CA 92243
Telephone: 442/265-1020
Facsimile: 442/265-1027
Attn: Blanca Acosta, Clerk of the Board of Supervisors

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NOTICES TO DISTRICT

Calexico Unified School District
1085 Andrade Avenue
Calexico, CA 92231
Telephone: 760/768-3876
Attn. Jeremey Nielsen, Director of Facilities

17. This AGREEMENT constitutes the full and complete agreement between the Parties. All prior agreements and understandings with respect to the subject matter of this AGREEMENT are merged herein. This AGREEMENT may be executed in counterparts.

18. The Parties have and hereby agree that the indemnification provision set forth at Paragraph 10 of this AGREEMENT is a material factor in the ICAPCD Board of Directors' approval of this AGREEMENT. Notwithstanding anything in this AGREEMENT to the contrary, the full execution by DISTRICT and the delivery of this AGREEMENT to ICAPCD is a condition precedent to the effectiveness of this AGREEMENT.

19. Any failure by either Party to perform any term or provision of this AGREEMENT, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other Party, unless such period is extended by mutual written consent, shall constitute a default under this AGREEMENT. Any notice given pursuant to this section shall specify the nature of the alleged failure and, where possible, the manner in which the failure may be satisfactorily cured.

20. Upon failure to cure as herein provided, the party alleging the failure may terminate this AGREEMENT or institute legal or equitable proceedings to enforce this AGREEMENT.

21. DISTRICT shall not have the right to transfer all or any portion of its interest, rights and obligations under this AGREEMENT except in conjunction with the transfer of a like interest in the DISTRICT. Any transfer of an equity interest in the DISTRICT shall require assumption by the transferee of a proportional part of the rights and obligations hereunder. Notwithstanding such transfer, DISTRICT shall remain responsible for the full performance of the rights and obligations imposed upon DISTRICT herein.

22. The Parties acknowledge that this AGREEMENT has been negotiated at arm's length. Legal counsel for both ICAPCD and DISTRICT have been provided the opportunity to review this AGREEMENT, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of the same or any subsequent amendments thereto.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT on the day and year first above written.

**IMPERIAL COUNTY AIR
POLLUTION CONTROL DISTRICT**

CALEXICO UNIFIED SCHOOL DISTRICT

RYAN E. KELLEY, Chairman
Board of Directors

CARLOS GONZALES, Superintendent

ATTEST:

By: _____
BLANCA ACOSTA,
Clerk of the Board

APPROVED AS TO FORM:
KATHERINE TURNER, County Counsel

By: _____
Adam G. Crook,
Deputy County Counsel

By: _____