

CONTRACT ROUTING SHEET

Date Prepared: 02/04/2010

Need Date: 02/19/2010

PROCESSING DEPARTMENT:

Department: Environmental Mgmt

Dept. Contact: Marcella McTaggart

Phone #: 5306

Department

Head Signature: *Marcella McTaggart*

CONTRACTOR:

Name: Black Oak Mine Unified School District

Address: 6540 Wentworth Springs Rd. Georgetown, CA 95634

Attn: Tammy J. Gabel, Ed.D.

Phone: (530) 333-8300

CONTRACTING DEPARTMENT: EMD/AQMD-PLEASE CHARGE TO 422100

Service Requested: Review of Contract for Use of AB 923 Funds

Contract Term: 12/31/10 Contract/Amendment Value: \$163,183.63

Compliance with Human Resources requirements? Yes: No:

Compliance verified by: _____

COUNTY COUNSEL: (Must approve all contracts and MOU's)

Approved: Disapproved: Date: 2/7/10 By: *WJG*

Approved: Disapproved: Date: 3/5/10 By: *WJG*

See Confidential Memo OK

See attached response to Confidential Memo (updates highlighted in yellow)

See Confidential memo 3-5-10

RISK MANAGEMENT: (All contracts and MOU's except boilerplate grant funding agreements)

Approved: Disapproved: Date: 3/9/10 By: *WJG*

Approved: Disapproved: Date: _____ By: _____

OTHER APPROVAL: (Specify department(s) participating or directly affected by this contract).

Departments: _____

Approved: Disapproved: Date: _____ By: _____

Approved: Disapproved: Date: _____ By: _____

FUNDING AGREEMENT NO. 018-AB923-09/10-BOS
WITH BLACK OAK MINE UNIFIED SCHOOL DISTRICT

This Agreement No. 018-AB923-09/10-BOS made and entered by and between the **EL DORADO COUNTY AIR QUALITY MANAGEMENT DISTRICT**, a county air quality management district formed pursuant to California Health and Safety Code section 40100, et seq. (hereinafter referred to as "AQMD"); and Black Oak Mine Unified School District (hereinafter referred to as "DISTRICT");

WITNESSETH:

WHEREAS, the California Clean Air Act requires local air pollution control districts to reduce emissions from motor vehicles; and

WHEREAS, AB 923, codified in California Health and Safety Code section 44225, authorizes districts to impose an additional fee of up to two dollars upon certain registered motor vehicles within the AQMD, and the Governing Board of the AQMD has imposed said fee; and

WHEREAS, AB 923 requires the AQMD to use said funds for projects (1) eligible for grants under the Carl Moyer Air Quality Standards Attainment Program; (2) the new purchase, retrofit, repower or add on equipment for previously unregulated agricultural sources of air pollution, (3) the purchase of new school buses pursuant to the Lower-Emission School Bus Program; (4) an accelerated vehicle retirement or repair program, and

WHEREAS, DISTRICT has proposed a Project that meets the eligibility criteria of the AQMD and that has been approved by AQMD for funding; and

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

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

1. PROJECT

DISTRICT shall perform all activities and work necessary to complete the Project set forth in the fully described "AB 923 Funding Application, New School Bus Replacement Work Plan and Schedule" attached hereto as Exhibit A and incorporated herein by this reference. DISTRICT 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. DISTRICT represents that DISTRICT has the expertise necessary to adequately perform the Project specified in Exhibit A (New School Bus Replacement Project Completion and Implementation, Workplan and Schedule) and agrees that:

1. DISTRICT shall own and operate the new bus for five years or more. In the case DISTRICT fails to own and operate the bus for five years, AQMD will be entitled to recover from DISTRICT a pro rata share of the awarded funding.
2. DISTRICT agrees to operate and maintain the new school bus in accordance with the manufacturer's recommendations and the terms of this Agreement.

In the event of any conflict between or among the terms and conditions of this Agreement, the Proposal 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. To the text of this Agreement;
2. To the California Air Resources Board (CARB) 2008 Lower-Emission School Bus Program (LESBP) Guidelines, issued April 15, 2008.
3. Exhibit A to this Agreement; and
4. To the "School Bus Replacement Request for Proposals" (RFP) released to Interested Parties by the AQMD and dated November 1, 2009.

2. PERIOD OF PERFORMANCE/TIMETABLE

DISTRICT shall commence performance of work and produce all work products, and complete the project per deadlines for performance, as identified in Exhibit A of this Agreement, unless this Agreement is terminated sooner as provided for elsewhere in this Agreement.

The DISTRICT shall ensure the existing school bus, which is being replaced, is dismantled within sixty (60) days of the receipt of the new, replacement bus, in accordance with the definition of "dismantle" set forth in 2008 LESBP Guidelines, Appendix A. In accordance with Appendix E of the 2008 LESBP Guidelines, DISTRICT shall obtain, retain and send to AQMD required documentation of the disposal of the replaced bus. DISTRICT shall submit all other regular reports as specified in Exhibit A.

3. TERM

The term of this Agreement shall be for period of April 13, 2010 to December 31, 2015 and shall consist of two separate time frames:

1. Project Completion – the term shall be for the period of April 13, 2010 through December 31, 2010 unless terminated earlier in accordance with paragraph 7, Termination.
2. Project Implementation – the term shall be for the period of December 31, 2010 through December 31, 2015.

4. COMPENSATION

AQMD will pay the DISTRICT the sum of **\$163,183.63** as follows:

DISTRICT shall obtain through other sources sufficient additional monies to fund the total cost of the Project as outlined in the Proposal. In the event funding from other sources for the total cost of the Project is not received by DISTRICT, AQMD reserves the right to terminate or renegotiate this Agreement.

The total obligation of the AQMD under this Agreement SHALL NOT EXCEED **One Hundred Sixty Three Thousand One Hundred and Eighty Three Dollars and 63/100 (\$163,183.63)**.

A. PAYMENTS

The AQMD shall reimburse DISTRICT pursuant to the requirements of 2008 LESBP Guidelines (Chapter V, Section N) as summarized in Exhibit A, after receipt and verification are submitted to El Dorado County Air Quality Management District, Attention: Marcella McTaggart. Payment shall be made to DISTRICT by the AQMD upon submission and evaluation of the DISTRICT's invoice of claim. Said invoice of claim shall set forth the work completed pursuant to this Agreement.

Upon receipt of proper documentation, and verification that DISTRICT has satisfactorily completed the work for which compensation is sought and that the work is in accordance with the Exhibit A attached hereto, AQMD will issue payment to DISTRICT within forty-five (45) calendar days of verification. Submitted documentation must include the original invoice from the DISTRICT to the AQMD for the amount allowable under the LESBP.

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

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

In no event shall compensation paid by the AQMD to the DISTRICT for the performance of all services and activities under this Agreement exceed the amount set forth in Section 4 paragraph 4 above.

B. Surplus Funds

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

C. Closeout Period

All final claims shall be submitted by DISTRICT within sixty (60) days following the final month of activities for which payment is claimed. No action will be taken by AQMD on claims submitted beyond the 60-day closeout period.

5. NON-ALLOCATION OF FUNDS

The terms of this Agreement and the services to be provided there under 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 DISTRICT thirty (30) days prior written notice.

6. INDEPENDENT DISTRICT LIABILITY

DISTRICT is, and shall be at all times, deemed independent and shall be wholly responsible for the acts of DISTRICT's employees and associates in connection with the performance of DISTRICT's obligations under the Project.

7. TERMINATION**A. Breach of Agreement**

AQMD may immediately suspend or terminate this Agreement, in whole or in part, where in the determination of the AQMD 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 AQMD; or
4. A failure to submit documentation detailing disposition of the replaced school bus, in compliance with the 2008 LESBP Guidelines, within 60 days of accepting delivery of the new school bus; or
5. Improperly performed services.

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

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

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 AQMD shall, subject to paragraph 3, 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, all the work product produced by DISTRICT shall be promptly delivered to the 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 duly authorized officers of the parties hereto.

9. INDEMNIFICATION

DISTRICT shall defend, indemnify, and hold the AQMD 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 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 DISTRICT's activities and work necessary to complete the Project unless such claim, loss, damage, injury or death is the result of the sole or active negligence of the AQMD. This duty of DISTRICT to indemnify and save AQMD harmless includes the duties to defend set forth in California Civil Code, Section 2778.

AQMD shall indemnify DISTRICT against and hold it harmless from any loss, damage, and liability for damages, including attorney fees and other costs of defense incurred by DISTRICT, whether for damage to or loss of property, or injury to or death of DISTRICT's officer's, agents, or employees which shall in

any way arise out of or be connected with AQMD's performance of its obligations hereunder, unless such damage, loss, injury, or death shall be caused by the sole or active by negligence of the DISTRICT.

10. INSURANCE

DISTRICT shall provide proof of a policy of insurance or self insurance satisfactory to the AQMD and documentation evidencing that the DISTRICT maintains insurance that meets the following requirements:

A. Liability:

1. Commercial General Liability Insurance of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage.
2. Automobile Liability Insurance of not less than One Million Dollars (\$1,000,000) is required in the event any funds under this agreement are used to purchase, maintain, retrofit, modify or operate a motor vehicle.

B. DISTRICT shall furnish a certificate of insurance satisfactory to the AQMD as evidence that the insurance required above is being maintained.

C. The insurance will be issued by an insurance company acceptable to the AQMD or be provided through partial or total self-insurance likewise acceptable to the AQMD.

D. DISTRICT 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 during the term of this Agreement, DISTRICT agrees to provide at least 30 days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less that the remainder of the term of the Agreement, or for a period of not less than one year. New certificates of insurance are

subject to the approval of the AQMD and DISTRICT agrees that no Work or services shall be performed prior to the giving of such approval. In the event the DISTRICT fails to keep in effect at all times insurance coverage as herein provided, AQMD may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.

E. The certificate of insurance must include the following provisions stating that:

1. The insurer will not cancel the insured's coverage without 30 days prior written notice to the County; and
2. The AQMD, its officers, officials, employees, and volunteers are included as additional insured, but only insofar as the operations under this Agreement are concerned. This provision shall apply to all liability policies except worker's compensation and professional liability insurance policies.

F. The DISTRICT's insurance coverage shall be primary insurance as respects the AQMD, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the AQMD, its officers, officials, employees or volunteers shall be excess of the DISTRICT's insurance and shall not contribute with it.

G. Any deductibles or self-insured retentions must be declared to and approved by the AQMD. At the option of the AQMD, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the AQMD, its officers, officials, employees, and volunteers; or the DISTRICT shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

H. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the AQMD, its officers, officials, employees, or volunteers.

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

J. DISTRICT's obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.

K. In the event DISTRICT cannot provide an occurrence policy, DISTRICT shall provide insurance covering claims made as a result of performance of this Agreement for not less than three years following completion of performance of this Agreement.

L. The certificate of insurance shall meet such additional standards as may be determined by the AQMD as essential for protection for the AQMD.

11. AUDITS AND INSPECTIONS

The AQMD, CARB, the California Department of Finance (DoF), or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of the Agreement – this includes programmatic and fiscal records and documentation. DISTRICT shall agree to maintain required records for possible audit for a minimum of the contract term plus two years. DISTRICT shall agree to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the DISTRICT agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of the contract. The AQMD, CARB, or their designated representative shall have the right to inspect the project equipment during the entire term of the Agreement plus two years and as long as it is still in use after the Agreement term. If, after audit, AQMD, CARB or DoF make a determination that funds provided to DISTRICT pursuant to

this Agreement were not spent in conformance with this Agreement, the 2008 LESBP Guidelines or any other applicable provisions of law, DISTRICT agrees to immediately reimburse AQMD all funds determined to have been expended not in conformance with said provisions.

In accordance with 2008 LESBP Guidelines (Appendix E, Section B) DISTRICT shall retain all required documentation and records pertaining to the Project. DISTRICT shall retain the documentation for activities performed under this Agreement for at least two years from the expiration term of this Agreement or until all state and federal audits are completed for that fiscal year, whichever is later.

Because this Agreement exceeds Ten Thousand Dollars (\$10,000), DISTRICT shall also be subject to the examination and audit of the Auditor General for a period of three years after final payment under Agreement (Government Code Section 10532).

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 to AQMD shall be in duplicate and addressed as follows:

DISTRICT

Black Oak Mine Unified School District
640 Wentworth Springs Road
Georgetown, CA 95634
Attn: Tammy J. Gabel, Ed.D.
Superintendent

AQMD

El Dorado County
Air Quality Management District
2850 Fairlane Court
Placerville, CA 95667
Attn: Marcella McTaggart,
Air Pollution Control Officer

13. TIME IS OF THE ESSENCE

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

14. COMPLIANCE WITH APPLICABLE LAWS

DISTRICT will comply, for the full term of this Agreement, with all federal, State, and local laws and ordinances which are or may be applicable to the PROJECT to be undertaken by the DISTRICT including but not limited to the 2008 LESBP Guidelines, California Health and Safety Code sections 44220 et seq, all CARB and AQMD criteria there under, prevailing wage and work day definitions where applicable, contracting license requirements and permits.

15. NO THIRD-PARTY BENEFICIARIES

Except as otherwise noted in paragraph 11, nothing in this Agreement shall be construed to create any rights of any kind or nature in any other party not a named party to this Agreement.

16. 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. DISTRICT waives any removal rights it might have under Code of Civil Procedure section 394.

17. 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.

18. AGREEMENT ADMINISTRATOR

The AQMD Officer or employee with responsibility for administration of this Agreement is Marcella McTaggart, Air Pollution Control Officer.

19. 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.

20. 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.

21. 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 or City of South Lake Tahoe or City of Placerville business license unless exempt under County Code Section 5.08.070.

AGREEMENT ADMINISTRATOR CONCURRENCE:

By: Marcella McTaggart

Dated: 03-22-2010

**Marcella McTaggart
Air Pollution Control Officer**

REQUESTING DEPARTMENT CONCURRENCE:

By: Gerri Silva

Dated: April 6, 2010

**Gerri Silva, M.S., R.E.H.S
Director, El Dorado County Environmental Management Dept.**

By: Marcella McTaggart

Dated: 03-22-2010

**Marcella McTaggart
Air Pollution Control Officer**

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

**DISTRICT
BLACK OAK MINE UNIFIED SCHOOL
DISTRICT**

**EL DORADO COUNTY
AIR QUALITY MANAGEMENT DISTRICT**

Date: 4/5/10

Date: _____

By: 
Tammy J. Gabel, Ed.D.
Superintendent

By: _____
Norma Santiago,
Chair

Attest:
Suzanne Allen de Sanchez,
Clerk of the Board

Date: _____

By: _____

EXHIBIT A

NEW SCHOOL BUS REPLACEMENT PROJECT COMPLETION AND IMPLEMENTATION WORKPLAN AND SCHEDULE

Exhibit A

**NEW SCHOOL BUS REPLACEMENT PROJECT COMPLETION AND IMPLEMENTATION
WORKPLAN AND SCHEDULE FOR**

BLACK OAK MINE UNIFIED SCHOOL DISTRICT

The Lower-Emission School Bus Program (LESBP) provides grants for the purchase of new, lower emission school buses to reduce school children's exposure to both cancer-causing and smog forming pollution. The intent is to offset up to 100% of the cost of a basic school bus plus selected safety options, subject to LESBP constraints.

BLACK OAK MINE UNIFIED SCHOOL DISTRICT (DISTRICT) has submitted the attached "AB923 Funding Application New School Bus Replacement (Application) and Vehicle Quotation" to the El Dorado County Air Quality Management District (AQMD) seeking incentive funds to replace an existing school bus (1977Crown School Bus, VIN No. 38148) with a new 2010 Bluebird D3RE School Bus. The school bus to be replaced meets all the eligibility requirements as described in the 2008 LESBP Guidelines.

I. PROJECT COMPLETION (December 31, 2010)

TASK 1 – Order of Replacement Bus

Upon execution of the contract by both parties the DISTRICT shall:

- Order the replacement school bus as specified in the attached Vehicle Quotation (2010 Bluebird D3RE)
- Notify the AQMD upon delivery and acceptance of the school bus (2008 LESBP Guidelines Chapter V, Section N)

TASK 2 – Disposal of the Replaced School Bus

Within **60 days** of accepting delivery of the new replacement bus:

- The replaced bus (1977Crown School Bus, VIN No. 38148) must be taken out of service and dismantled per definition of "dismantle" set forth in 2008 LESBP Guidelines (Appendix A)
- DISTRICT must maintain all documentation pertaining to the disposal of the replaced bus per requirements detailed in Appendix E of the 2008 LESBP Guidelines.

TASK 3 – Invoice AQMD

Within **60 days** of delivery and acceptance of the new replacement bus, DISTRICT shall invoice AQMD and provide the following information:

- Copy of the Purchase Order, original Vendor Invoice and Proof of Payment
- Documentation certifying disposal of the replaced bus (1977 Crown School Bus, VIN No. 38148) as detailed in Appendix E, Section B (and also in Chapter V, Section N) of the 2008 LESBP Guidelines.

TASK 4 – Reporting and Records Submittal

Within **60 days** of accepting delivery of the new replacement bus DISTRICT shall submit to AQMD the following records:

- A copy of the Department of CA Highway Patrol Inspection Approval Certificate (292 Card) for the new replacement bus
- A copy of the registration for the replacement bus.

II. PROJECT IMPLEMENTATION (December 31, 2015)

- DISTRICT shall own, operate and maintain the new replacement bus within El Dorado County in a daily use status for five years or more. Fuel additives are not allowed to be used unless specifically identified as allowable in the Engine Certification Executive Order.
- In accordance with Appendix E, Section B of the 2008 LESBP Guidelines DISTRICT shall retain, for the full term of this Agreement plus two years (December 31, 2017), all documents and records pertaining to the new bus replacement Project.