

LAKE TAHOE UNIFIED SCHOOL DISTRICT 2013 SEP -5 PM 3: 15

FUNDING AGREEMENT #138-F1411

This Agreement, 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 **Lake Tahoe Unified School District**, (hereinafter referred to as "DISTRICT");

WITNESSETH:

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

WHEREAS, AB 923, codified in California Health and Safety Code (H&SC) 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 (H&SC section 44229(b)) requires AQMD to use said funds to implement programs that AQMD determines remediate air pollution, such as: (1) projects 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, or retrofit of emissions control equipment for existing, school buses pursuant to the Lower-Emission School Bus Program adopted by the state board; (4) an accelerated vehicle retirement or repair program, and

WHEREAS, DISTRICT has proposed a Project Proposal 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; and,

WHEREAS, it is the intent of the parties hereto that such activities be in conformity with all applicable federal, state and local laws;

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

1) PROJECT / PROJECT MILESTONES

- a) DISTRICT shall perform all activities and work necessary to complete the Project as set forth in the “AB 923 Funding Application, School Bus Retrofit 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 (School Bus Retrofit Project Completion and Implementation, Workplan and Schedule, and all applicable updates, amendments, and clarifications) and agrees that:
- i) After retrofitting is completed, DISTRICT shall own, operate, and maintain the retrofitted school bus within El Dorado County in a daily use status for five years or more. DISTRICT is responsible for reporting to AQMD, on a yearly basis (Exhibit B) and in accordance with guidelines established by the APCO, the use status of each retrofitted bus. If DISTRICT fails to own, operate, and maintain the retrofitted bus for at least five years after retrofitting is complete, DISTRICT shall immediately reimburse to AQMD the pro rata share of the awarded funding based on the minimum five year requirement.
- ii) DISTRICT agrees to operate and maintain the retrofitted school bus, including the emissions retrofit equipment itself, in accordance with the manufacturer’s recommendations and the terms of this Agreement.
- iii) The obligations set forth above shall survive any termination of this Agreement.

- b) 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:
- i) To the text of this Agreement;
 - ii) To the California Air Resources Board (ARB) 2008 Lower-Emission School Bus Program (LESBP) Guidelines, issued April 15, 2008 including all applicable updates, amendments and clarifications.
 - iii) Exhibit A to this Agreement; and
 - iv) To the "School Bus Retrofit Request for Proposals" (RFP) released to Interested Parties by the AQMD and dated May 20, 2013.

2) TERM: PERFORMANCE TIMETABLE

DISTRICT shall commence performance of work and produce all work products, and complete the Project within the deadlines for performance, as identified in Exhibit A of this Agreement, unless this Agreement is terminated sooner as provided for elsewhere in this Agreement. No work may begin on the Project until this Agreement is fully executed.

3) REIMBURSEMENT / FUNDING CAP

- a) AQMD will reimburse the DISTRICT for the cost of the Project in an amount not to exceed \$186,171 as follows:
- i) If the funding identified above does not cover the total cost of the Project as outlined in the Proposal, DISTRICT shall obtain through other sources sufficient additional monies to fund the total cost of the Project as outlined in the Proposal. Proof of such additional monies in the form required by AQMD shall be submitted to AQMD for approval prior to starting any work under this Agreement. 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 in its sole discretion.

- ii) The total obligation of AQMD under this Agreement SHALL NOT EXCEED **One Hundred Eighty Six Thousand, One Hundred Seventy One Dollars and 00/100 (\$186,171)** inclusive of all applicable sales taxes and use taxes.
- iii) In no event shall funding under this Agreement exceed the applicable funding cap set forth in the LESBP Guidelines.

b) **PAYMENTS**

- i) AQMD shall reimburse DISTRICT pursuant to the requirements of 2008 LESBP Guidelines (Chapter V, Section N) as summarized in Exhibit A, after itemized invoices and verification are submitted to El Dorado County Air Quality Management District, Attention: Dave Johnston and such invoices and verification are approved by AQMD as set forth below. Said invoice shall set forth in detail the work completed pursuant to this Agreement.
- ii) After receipt and approval of itemized invoices and supporting documentation and after verification by the APCO 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 approval and verification. Submitted documentation must include the original invoice from the DISTRICT to AQMD for the amount allowable under the LESBP.
- iii) 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.

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

v) In no event shall reimbursement paid by AQMD to DISTRICT for the performance of all services and activities under this Agreement exceed the amount set forth in Section 3 above.

c) SURPLUS FUNDS

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

d) CLOSEOUT PERIOD

All final claims for reimbursement shall be submitted by DISTRICT to AQMD within sixty (60) days after the final retrofit under this Agreement is completed. No action will be taken by AQMD and no reimbursement made on claims submitted beyond the 60-day closeout period.

4) NON-ALLOCATION OF FUNDS

The terms of this Agreement and the reimbursement to be provided hereunder are contingent on the approval of funding by the appropriating government agency. If sufficient funds are not allocated for LESBP, AQMD may request that the Project be modified and the Agreement amended or AQMD may, in its sole discretion, terminate this Agreement at any time by giving the DISTRICT written notice of termination of this Agreement due to non-allocation of funds. Such notice shall be effective immediately subject to reimbursement for activities properly performed prior to termination and as limited by available funding.

5) INDEPENDENT DISTRICT LIABILITY

- a) DISTRICT is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs work required by the terms of this Agreement and exclusively assumes responsibility for the acts of DISTRICT's employees, associates, and subcontractors in connection with the performance of DISTRICT's obligations under the Project and this Agreement.
- b) DISTRICT 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 DISTRICT or its employees.
- c) Section 5 shall survive any termination of this Agreement.

6) TERMINATION

a) BREACH OF AGREEMENT

- i) AQMD may immediately suspend or terminate this Agreement, in whole or in part, or withhold payment, where in the determination of 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 is submitted to the AQMD; or
 - (4) A failure to submit documentation detailing disposition of the retrofitted school bus, in compliance with the 2008 LESBP Guidelines; or
 - (5) 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 the DISTRICT.

Neither shall such payment impair or prejudice any remedy available to AQMD with respect to the breach or default. DISTRICT shall promptly refund to AQMD, upon demand, any funds disbursed to DISTRICT under this Agreement which in the judgment of AQMD were not expended in accordance with the terms of this Agreement. This obligation of the DISTRICT to refund monies shall survive any termination of the Agreement.

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 without cause at any time upon giving the other party thirty (30) days advance, written notice of termination. In such case, AQMD shall, pursuant to the requirements of Section 3, reimburse DISTRICT for completed retrofits performed prior to the time of the termination. However, DISTRICT acknowledges and agrees that its obligations under Section 1 PROJECT survive any termination of this Agreement.

7) 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.

8) INDEMNIFICATION

a) The DISTRICT shall defend, indemnify, and hold 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 services, operations, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of AQMD, the DISTRICT, contractor(s), subcontractor(s) and employee(s) of any of these, except for the sole, or active negligence of AQMD, its officers and employees, or as expressly prescribed by statute. This duty of the DISTRICT to indemnify and save AQMD 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.

9) **INSURANCE**

DISTRICT, at its sole cost and expense, shall carry insurance or self-insure its activities in connection with this Agreement, and obtain, keep in force and maintain, insurance or equivalent programs of self-insurance, for general liability and business automobile liability adequate to cover its potential liabilities hereunder. DISTRICT agrees to provide thirty (30) days advance written notice of any cancellation, termination or lapse of any of the insurance or self-insurance coverage.

10) **AUDITS, INSPECTIONS AND ENFORCEMENT**

- a) DISTRICT shall maintain and retain all required documentation and records pertaining to the Project listed in 2008 LESBP Guidelines (Appendix E, Section B). DISTRICT shall retain the documentation for activities performed under this Agreement for at least two years from the termination of DISTRICT's obligations under this Agreement or until all state and federal audits are completed for the applicable fiscal year, whichever is later.
- b) The AQMD, ARB, 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. The AQMD and ARB, as an intended third party beneficiary, have the right to audit and enforce the terms of the Agreement at any time during the Agreement term plus two years. DISTRICT shall maintain such records for possible audit for a minimum of the Agreement term plus two years. DISTRICT shall 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 for a minimum of the Agreement term plus two years. Further, the DISTRICT agrees to include a similar right of AQMD and the State to audit records and interview staff in any subcontract related to performance of the Agreement. The AQMD, ARB, or their designated representative shall have the right to inspect the Project equipment during the entire term of the Agreement plus two years as long as it is still in use after the Agreement term. If, after audit, AQMD, ARB 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.

- c) Because this Agreement exceeds 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, District 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.
- d) The obligations set forth in this section shall survive any termination of this Agreement.

11) 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 addressed as follows:

AIR QUALITY MANAGEMENT DISTRICT
330 Fair Lane
Placerville, CA 95667
ATTN: Dave Johnston, Air Pollution Control Officer

or to such other location as the County directs.

with a copy to:

COUNTY OF EL DORADO
Chief Administrative Office
Procurement and Contracts Division
360 Fair Lane
Placerville, CA 95667
ATTN: Terri Daly, Purchasing Agent

Notices to DISTRICT shall be addressed as follows:

LAKE TAHOE UNIFIED SCHOOL DISTRICT
1021 Al Tahoe Blvd
South Lake Tahoe, CA, 96150
ATTN: Steven Morales, Director of Facilities

or to such other location as the DISTRICT directs.

12) CHANGE OF ADDRESS

In the event of a change in address for DISTRICT's principal place of business, DISTRICT's Agent for Service of Process, or Notices to DISTRICT, DISTRICT shall notify AQMD in writing as provided in ARTICLE 11, 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.

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 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, criteria, and program requirements, California Health and Safety Code sections 44220 et seq, all ARB and AQMD criteria there under, prevailing wage requirements and work day definitions where applicable, Government Code Section 8546.7, contracting license requirements and permits.

15) CHP SAFETY INSPECTION AFTER RETROFIT

DISTRICT agrees to have a CHP safety certification inspection [per Title 13, CCR section 1272(c)] after the installation of the emission control device and prior to the bus's return to service.

Upon satisfactory completion of the CHP safety certification inspection, DISTRICT must obtain a copy of written documentation from CHP personnel that the retrofitted bus is still structurally acceptable to safely transport students. This documentation shall consist of a copy of a Safety Compliance Report/Terminal Record Update (CHP 343), or a copy of a Vehicle/Equipment Inspection Report Motor Carrier Safety Operations form (CHP 343A).

16) MAINTENANCE

DISTRICT shall operate and maintain the installed retrofit devices according to the manufacturer's warranty specifications with the diesel particulate filters cleaned periodically (also known as "periodic maintenance" and "baking and de-ashing") for as long as DISTRICT owns and operates each retrofitted bus.

17) FUEL ADDITIVES

DISTRICT agrees fuel additives are not allowed to be used unless specifically identified as allowable in the retrofit device verification Executive Order.

18) NO THIRD-PARTY BENEFICIARIES

Except as otherwise set forth herein, 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.

19) 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.

20) 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.

21) AGREEMENT ADMINISTRATOR

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

22) 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.

23) 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.

24) 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.

Exhibit A

**SCHOOL BUS RETROFIT PROJECT COMPLETION
AND IMPLEMENTATION WORKPLAN AND SCHEDULE FOR**

LAKE TAHOE UNIFIED SCHOOL DISTRICT

The Lower-Emission School Bus Program (LESBP) provides grants for retrofit of school buses to lower emissions and 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 retrofit equipment, subject to LESBP constraints.

LAKE TAHOE UNIFIED SCHOOL DISTRICT (DISTRICT) has submitted the attached “AB923 Funding Application School Bus Retrofit (Application)” to the El Dorado County Air Quality Management District (AQMD) seeking incentive funds to retrofit ten (10) existing school buses with emissions control equipment.

Bus ID	Vehicle Yr	Vehicle Make	VIN	Eng Year	Eng Make
5	1985	International	HVUBGGN7HGHA20406	1994	International
6	1998	Thomas	1T7HT4B28X1070173	1998	Cummins
22	1998	Thomas	1T7HT4B28X1070188	1998	Cummins
24	1991	Thomas	1T7M4W989M1109271	1991	Cummins
26	1994	Thomas	1T75T4B20S1133148	1994	Caterpillar
27	1995	International	1HVBDABK2SH682145	1995	International
28	1996	Thomas	1T75U4B2XT1141644	1996	Cummins
29	1995	Thomas	1T75T4B23T1133260	1995	Cummins
30	1995	Thomas	1T75T4B29T1133263	1995	Cummins
31	1996	Thomas	1T75U4B29V1141640	1996	Cummins

Additionally, the following equipment and services rendered:

Donaldson Regeneration Machine -Thermal Oven
Data Logging
Spare Filter

The school buses to be retrofitted and associated equipment meet all the eligibility requirements as described in the 2008 LESBP Guidelines.

I. PROJECT COMPLETION (ends 1 year from signed Agreement date)

TASK 1 – Order of Retrofit Emissions Control Equipment

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

- Order California Air Resources Board (ARB) verified Level 3 diesel emissions control equipment as appropriate for the make, model and year of bus to be retrofitted. A current list of verified technologies can be found here: <http://www.arb.ca.gov/diesel/verdev/vt/cvt.htm>

TASK 2 – Installation of Emissions Control Equipment on School Bus

Within 1 year of date of signed Agreement:

- DISTRICT must install the retrofit equipment on the school bus. DISTRICT must maintain all documentation pertaining to the retrofitted bus per requirements detailed in Appendix E of the 2008 LESBP Guidelines.

TASK 3 – Invoice AQMD

Within **60 days** of delivery and installation of retrofit equipment, DISTRICT shall invoice AQMD and provide the following information:

- Copy of the Purchase Order, original Vendor Invoice and Proof of Payment.
- Documentation certifying install of the retrofit equipment as detailed in Appendix H of the 2008 LESBP Guidelines.
- A copy of the Department of CA Highway Patrol Inspection Approval Certificate (292 Card) for the retrofitted bus.
- A copy of the registration for the retrofitted bus.
- Any other documentation deemed necessary by AQMD to verify compliance with this Agreement and the 2008 LESBP Guidelines.

II. PROJECT IMPLEMENTATION

(5 years beginning on final invoice payment of retrofit equipment)

TASK 4 – Bus Operation

- DISTRICT shall own, operate and maintain the retrofitted bus within El Dorado County in a daily use status for at least five years (per 2008 LESBP requirements) which coincides with the end of the Agreement. Fuel additives are not allowed to be used unless specifically identified as allowable in the Engine Certification Executive Order.

TASK 5 – Annual Usage Reporting and Records Submittal

Within **1 year and 60 days** of the date of the signed Agreement, and every year after until the end of the Agreement, the DISTRICT shall submit to AQMD the following records:

- Exhibit B completed for each retrofitted bus including annual mileage for each bus. The Exhibit must be signed by an authorized agent of the DISTRICT.
- 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 all documents and records pertaining to the retrofitted Project.
- DISTRICT acknowledges that this Agreement is subject to examination and audit by the California State Auditor pursuant to Government Code Section 8546.7

Requesting Agreement Administrator Concurrence:

By: 
Dave Johnston
Air Pollution Control Officer

Dated: 9/12/13

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

DISTRICT

**EL DORADO COUNTY
AIR QUALITY MANAGEMENT DISTRICT**

Date: Sept 3, 2013

Date: 9-10-13

By: 
Wendy David
President
Board of Trustees

By: 
Ron Briggs,
Chairman

Attest:
James S. Mitrison
Clerk of the Board

Date: 9-10-13

By: 

