

1 NOW, THEREFORE, the AUTHORITY and GRANTEE agree as follows:

2 1. PROGRAM

3 The purpose of this Agreement is to provide to GRANTEE, pursuant to the Authority's
4 School Bus Replacement Program and consistent with the terms and conditions provided for herein,
5 full or partial reimbursement for costs incurred by GRANTEE in assisting the Authority's objective
6 of replacing the oldest school busses in Fresno County with clean fuel busses equipped with seat
7 belts. Under this Program, the Authority provides funding to be used toward the purchase of new
8 lower-emission replacement school busses equipped with air conditioning and seat belts.
9 GRANTEE has agreed to participate in the Program and hereby acknowledges that its eligibility for
10 reimbursement shall be governed by the provisions set forth in this Agreement.
11

12 2. DESCRIPTION OF NEW VEHICLE

13 A. Funding under this Agreement shall be utilized by GRANTEE for
14 replacement of two school busses No. 102 (VIN# 1FDJE37M4JHC10311) and No. 43
15 (VIN#1C9WJ1GA8KC102203) with two new lower-emission school busses.
16

17 B. No payment shall be made by AUTHORITY toward GRANTEE's
18 acquisition of the new school bus, except in accordance with the provisions of this Agreement.

19 C. GRANTEE agrees that the current school busses that are being replaced will
20 be destroyed and appropriate certification to establish proof of destruction shall be supplied to
21 AUTHORITY by GRANTEE, as a condition of payment of reimbursement to GRANTEE
22 hereunder.

23 D. All busses supplied pursuant to this Agreement shall meet all State and
24 Federal emission standards and regulations in effect in Fresno County as of the date of delivery and
25 shall include certified seat belts for all occupants.
26

27 E. All busses supplied pursuant to this Agreement shall be fueled by diesel or
28 compressed natural gas ("CNG").

1 F. The equipment level eligible for reimbursement pursuant to this Agreement
2 shall be that of a standard "California School Bus" meeting all California emission and safety
3 standards applicable with respect to such vehicle as of the effective date of this Agreement.
4 GRANTEE may specify additional options if desired, but the cost of all such additional equipment
5 shall be at GRANTEE's sole expense.

6 G. Under the AUTHORITY's Program, air conditioning generally is considered
7 an eligible option at AUTHORITY expense, provided that the bus is initially ordered with the air
8 conditioning option. Because the retrofitting of air conditioning is deemed by AUTHORITY to be
9 prohibitively expensive, air conditioning will not be provided at AUTHORITY expense if the bus
10 was initially ordered without that option. This requirement shall be equally and fully applicable
11 with regard to any bus for which GRANTEE also receives participating funds for the acquisition
12 thereof from another funding source (as expressly contemplated in Paragraph 6.C below), as shown
13 by the following example:
14

15 EXAMPLE: Given that the Air District's program does not consider air conditioning
16 an eligible option, if the Air District's program covers some or all of the other costs
17 incurred in GRANTEE's acquisition of a bus, the AUTHORITY's Program will make
18 up the difference, which may include the cost of air conditioning if (and only if) the air
19 conditioning option was specifically included by GRANTEE when initially ordering
20 the bus.

21 H. The replacement busses shall be sized to satisfy GRANTEE's anticipated
22 needs and shall not be restricted to the equivalent size of the equipment being replaced.

23 3. OBLIGATIONS OF AUTHORITY

24 A. AUTHORITY shall reimburse GRANTEE for the direct net out of pocket
25 cost of purchasing replacement diesel or compressed natural gas ("CNG") busses, equipped as
26 specified in Section 2 above. Net out of pocket cost means the delivered cost of the vehicle(s)
27 equipped as specified in Section 2 less any other funds available to GRANTEE to offset delivered
28 cost. Overhead and administrative costs are not eligible for reimbursement. Although GRANTEE

1 may purchase additional equipment over and above that specified in Section 2, GRANTEE
2 understands and agrees, and hereby acknowledges, that the cost of any such additional equipment
3 shall be the sole financial responsibility of GRANTEE, and will not be eligible for reimbursement
4 pursuant to the terms of this Agreement. In the event that any such additional equipment is
5 included in the purchase, it shall be a condition of GRANTEE's eligibility for payment by the
6 AUTHORITY of any reimbursement hereunder that the invoice for purchase of the replacement
7 busses shall be itemized, in order to clearly identify the reimbursable cost of the busses consistent
8 with the specifications listed in Section 2, which shall be distinguished and listed separately from
9 the cost of the additional equipment not eligible for reimbursement hereunder.
10

11 B. The term "reimbursement," as used in this Agreement, is intended to provide
12 the parties with flexibility to allow AUTHORITY to either make payment to GRANTEE following
13 its purchase of the new busses, or in the alternative to make payment directly to a vendor of
14 GRANTEE's choice, selected in accordance with Paragraph 6.A.

15 C. AUTHORITY shall issue payment to GRANTEE within thirty (30) working
16 days of receipt by AUTHORITY of a properly documented and verified claim for payment or
17 purchase order and all requested documentation for new busses has been received.
18

19 D. Funding for reimbursement of GRANTEE shall be provided only in
20 accordance with the terms of this Agreement, and shall only be allowed for use by GRANTEE
21 toward the purchase of the new school busses in accordance with the provisions hereof and the
22 limitations on AUTHORITY's reimbursement obligations, based on the description and
23 specifications provided in Section 2.
24

25 E. Payment will be issued upon verification that the new school busses have
26 been purchased and delivered to GRANTEE with clear title in GRANTEE's name. As a condition
27 precedent to AUTHORITY's obligation to issue payment or provide GRANTEE with
28 reimbursement hereunder, GRANTEE shall provide to AUTHORITY written documentation

1 sufficient to establish that the new busses that are the subject of this Agreement: (i) have undergone
2 a successful California Highway Patrol safety certification inspection; (ii) are properly insured in
3 accordance with all applicable legal requirements; (iii) are fully operative and ready to be placed
4 into service; and (iv) has appropriate funding signage affixed to the bus as required by the Measure
5 C Extension Expenditure Plan.

6 G. AUTHORITY'S maximum financial obligation pursuant to this Agreement
7 shall not exceed \$375,441.91 (Three Hundred Seventy-Five Thousand Four Hundred Forty-One
8 Dollars and Ninety-One Cents).

9
10 4. AGREEMENT TERM

11 A. Unless earlier terminated as provided in Section 11 hereof, this Agreement shall
12 expire by its terms thirty (30) days after AUTHORITY's receipt of written notification of
13 GRANTEE's placement of the new busses into service.

14 B. GRANTEE shall take delivery and place the new school busses into service within
15 one (1) year of the Effective Date of this Agreement, and GRANTEE's failure to comply with this
16 requirement shall constitute grounds for termination of this Agreement under the provisions of
17 Paragraph 11.b together with Section 15 herein below. Provided, however, that the time for
18 GRANTEE's performance under this Paragraph may be extended, for good cause shown and based
19 also on substantial progress having been made by GRANTEE. (Such an extension may be granted
20 on the AUTHORITY's behalf by the Executive Director for a period not exceeding 60 days, and
21 may be further extended by action of the AUTHORITY's Board for a period not exceeding an
22 additional 120 days.)

23
24
25 5. REPORTING

26 GRANTEE shall submit monthly reports, on the first working day of each month, during the
27 term of this Agreement, stating the status of the school bus procurement. GRANTEE's monthly
28 reporting requirements shall end upon written notification to AUTHORITY of GRANTEE's

1 placement of the busses into service. Provided, however, that GRANTEE additionally shall have an
2 ongoing obligation, as to each bus supplied pursuant to this Agreement, to notify AUTHORITY
3 whenever any such bus is removed from service for any reason other than routine maintenance; and
4 provided further, that such obligation on the part of GRANTEE shall survive termination (or
5 expiration of the term) of this Agreement, and shall continue until such time as GRANTEE
6 permanently removes each such bus from service or transfers ownership of any such bus.

7
8 6. OBLIGATIONS OF GRANTEE

9 A. GRANTEE shall purchase new school busses as specified in Section 2 and
10 and GRANTEE further shall certify to AUTHORITY that the price paid for the busses purchased
11 pursuant to this Agreement was established using an open and competitive process or “piggyback”
12 bid and represents fair market value of the equipment at the time of delivery.

13 B. Each of the busses purchased pursuant to this Agreement must undergo a
14 California Highway Patrol safety certification inspection after purchase and prior to introduction
15 into service.

16
17 C. It is specifically contemplated by GRANTEE and AUTHORITY that
18 GRANTEE may obtain from other sources (including but not limited to the Air District’s school bus
19 program) sufficient additional funds to finance up to the full cost incurred in the purchase of the
20 new school busses specified herein, and in such case the AUTHORITY will subsidize the remainder
21 of the qualifying cost pursuant to Section 2 of acquisition in accordance with the terms of this
22 Agreement.

23
24 D. In the event GRANTEE cannot obtain sufficient funds to complete the
25 purchase of the new school busses, AUTHORITY reserves the right to terminate this Agreement.
26 In the event of termination by the AUTHORITY, GRANTEE shall refund to the AUTHORITY,
27 upon request, any funds previously received by GRANTEE from AUTHORITY pursuant to this
28 Agreement.

1 7. GENERAL CONDITIONS

2 A. GRANTEE agrees that the new school busses shall be equipped with safety
3 seat belts.

4 B. GRANTEE certifies that as of the date of execution of this Agreement, it has
5 not yet purchased or entered into any arrangement to replace the busses specifically identified in
6 Paragraph 2.A.

7 C. GRANTEE agrees that Authority or its designee(s) shall be allowed to
8 inspect the school busses and/or any and all records (including but not limited to those referenced in
9 Section 19 herein below) relating to the new school busses, for a period of not less than five years
10 following receipt of final payment under this Agreement unless Authority agrees in writing to an
11 earlier disposition.
12

13 D. GRANTEE agrees that each of the school busses to be purchased pursuant to
14 this Agreement shall in fact be a new vehicle (i/.e., no prior registered owner(s)) and shall, by a test
15 method approved by the United States Environmental Protection Agency and/or the California Air
16 Resources Board, be certified for sale in California, or in the alternative, appropriately authorized
17 by all responsible agencies for operation in California under an experimental permit. Each of the
18 new school busses shall meet or exceed emission standards currently in effect in California.
19

20 E. GRANTEE agrees and represents that each of the new school busses supplied
21 pursuant to this Agreement is and shall be based and operated primarily within Fresno County and
22 shall remain so throughout its useful service life.

23 F. In the event GRANTEE subsequently sells or for any reason transfers title
24 and ownership of any of the new school busses supplied pursuant to this Agreement, GRANTEE
25 shall pay to AUTHORITY, if requested by AUTHORITY, either the proceeds of such sale or
26 transfer, or an amount equal to the fair market value of the bus(ses) at the time of sale or transfer,
27 whichever is greater. Such obligation on the part of GRANTEE, as to each bus supplied pursuant to
28

1 this Agreement, shall survive termination (or expiration of the term) of this Agreement, and shall
2 continue until such time as GRANTEE permanently removes each such bus from service or
3 transfers ownership of any such bus.

4 8. INSURANCE

5 GRANTEE shall provide Authority with proof of insurance in types and amounts approved
6 by Authority prior to any payment of funds under this Agreement.

7 9. AVAILABILITY OF FUNDING

8 The terms of this Agreement and the services to be provided hereunder are contingent on the
9 availability of funds. In the event sufficient funds are not available, the services provided hereunder
10 may be modified or this Agreement terminated at any time by giving GRANTEE thirty (30) days'
11 prior written notice.
12

13 10. NONASSIGNMENT

14 Neither party shall assign, transfer, or subcontract this Agreement, nor their rights or duties
15 under this Agreement, without the prior express, written consent of the other party.
16

17 11. TERMINATION

18 AUTHORITY may immediately suspend or terminate this Agreement, in whole or in part,
19 or withhold payment where in the determination of AUTHORITY there is:

- 20 a. An illegal or improper use of funds;
21 b. A failure to comply with any term of this Agreement; or
22 c. A substantially incorrect or incomplete report submitted to AUTHORITY.
23

24 In no event shall any payment by AUTHORITY constitute a waiver by AUTHORITY of any breach
25 of this Agreement or any default that may then exist on the part of GRANTEE, nor shall such
26 payment impair or prejudice any remedy available to AUTHORITY with respect to the breach or
27 default. AUTHORITY shall have the right to demand of GRANTEE the repayment to
28 AUTHORITY of any funds disbursed to GRANTEE under this Agreement that, in the judgment of

1 AUTHORITY, were not expended in accordance with the terms of this Agreement. GRANTEE
2 shall promptly refund any such funds upon demand. In addition to immediate suspension or
3 termination, Authority may impose any other remedies available at law, in equity, or otherwise
4 specified in this Agreement.

5 12. INDEMNIFICATION

6 GRANTEE agrees to indemnify, save, hold harmless, and at AUTHORITY'S request,
7 defend AUTHORITY, its boards, committees, representatives, officers, agents, and employees from
8 and against any and all costs and expenses (including reasonable attorneys' fees and litigation
9 costs), damages, liabilities, claims, and losses (whether in contract, tort, or strict liability, including,
10 but not limited to, personal injury, death, and property damage) occurring or resulting to
11 AUTHORITY which arises from or is in any way related to the performance of GRANTEE, its
12 officers, agents, subcontractors, suppliers, or employees in their performance of this Agreement.

13 13. NOTICES

14 The persons and their addresses having authority to give and receive notices under
15 this Agreement are as follows:
16
17

18
19 GRANTEE

20 Jesse Bath, Director of Transportation
21 Central Unified School District
22 4200 N. Grantland
23 Fresno, CA 93723
24 (559) 275-9734
25 jbath@centralusd.k12.ca.us

26 AUTHORITY

27 Mike Leonardo, Executive Director
28 Fresno County Transportation
Authority
2220 Tulare Street, Suite 2101
Fresno, California 93721
(559) 600-3282
mike@thefcta.com

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

5 14. GOVERNING LAW

6 This Agreement shall be governed in all respects by the laws of the State of
7 California. Venue for any action arising out of this Agreement shall only be in Fresno County,
8 California.
9

10 15. TIME IS OF THE ESSENCE

11 It is understood that GRANTEE's time of performance under this Agreement, is of
12 the essence. The parties reasonably anticipate that GRANTEE will, to the reasonable satisfaction of
13 AUTHORITY, complete all activities provided herein within the time schedule outlined in this
14 Agreement; provided, however, that GRANTEE may be excused from timely performance in the
15 event of a reasonable delay in such performance that is acknowledged by AUTHORITY as having
16 been caused by circumstances entirely outside GRANTEE's control or otherwise not attributable to
17 any fault of GRANTEE.
18

19 16. ENTIRE AGREEMENT

20 This Agreement constitutes the entire Agreement between GRANTEE and
21 AUTHORITY with respect to the subject matter hereof and supersedes all previous negotiations,
22 proposals, commitments, writings, advertisements, publications, and understandings of any nature
23 whatsoever unless expressly included in this Agreement.
24

25 17. MODIFICATION

26 Any matters of this Agreement may be modified from time to time by the written
27 consent of all the parties without in any way affecting the remainder.

28 18. NO FINANCIAL THIRD-PARTY BENEFICIARIES

1 Notwithstanding anything else stated to the contrary herein, it is understood that
2 GRANTEE services and activities under this Agreement are being rendered only for the benefit of
3 AUTHORITY, and no other person, firm, corporation, or entity shall be deemed an intended
4 financial third-party beneficiary of this Agreement.

5 19. AUDIT

6 At any time during normal business hours and as often as AUTHORITY deems necessary
7 GRANTEE shall make available to AUTHORITY or its agents for examination at GRANTEE
8 business office all of GRANTEES data and records with respect to all matters pertaining to the
9 functions performed under the terms of this agreement and GRANTEE will permit AUTHORITY
10 or its agents to audit, examine and make excerpts or transcripts from such data and records.
11 GRANTEE shall maintain such data and records in an accessible location and condition for a period
12 of not less than five years following receipt of final payment under this Agreement unless Authority
13 agrees in writing to an earlier disposition.
14

15 20. TERMINATION

16 Either party may terminate this Agreement at any time by giving at least thirty (30) days
17 written notice to the other of such termination. In that event, GRANTEE shall be paid the amount
18 of money payable to GRANTEE as of the date of such termination, in accordance with the terms
19 and conditions set forth in this Agreement.
20

21 //

1
2 IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as
3 of the day and year first above written.

4
5 **FRESNO COUNTY**
6 **TRANSPORTATION AUTHORITY**

7 BY: _____

8 ERNEST "BUDDY" MENDES

9 TITLE: CHAIRMAN

10 FEDERAL I.D. NO. 77-0159920

GRANTEE,
CENTRAL UNIFIED SCHOOL
DISTRICT

BY: _____

TITLE: _____

TAX ID NO. 770559747

11 REVIEWED AND RECOMMENDED
12 FOR APPROVAL

13 BY _____

14 MIKE LEONARDO

15 EXECUTIVE DIRECTOR

16 FRESNO COUNTY TRANSPORTATION

17 AUTHORITY

18 APPROVED AS TO LEGAL FORM

19 DANIEL C. CEDERBORG

20 COUNTY COUNSEL

21 BY: _____

22 Michael E. Rowe, Principal Deputy County
23 Counsel

24 APPROVED AS TO ACCOUNTING FORM

25 OSCAR J. GARCIA, C.P.A.

26 AUDITOR-CONTROLLER/
27

28 TREASURER-TAX COLLECTOR

BY: _____

ORG/ACCOUNT: 4831/9607/42525

Project No.: Environmental Enhancement Program/School Bus Replacement Program