



## FUNDING AGREEMENT

AGREEMENT MADE THIS \_\_ DAY OF \_\_\_\_\_, 2006, BETWEEN ICF Incorporated, LLC, 9300 Lee Highway, Fairfax, VA ("Administrator") and School District/Address ("Recipient").

WHEREAS, Toyota Motor Corporation ("Donor") retained Administrator, a nationally recognized consulting firm with both Clean Air Act and funding administration expertise, to design and oversee a program to reduce diesel emissions from in-service fleet vehicles, including enhancement of the availability of ultra-low sulfur diesel fuel for such fleets; and

WHEREAS, the purpose of this Agreement is to set out the terms and conditions under which Administrator will make funds available to Recipient to retrofit diesel-fueled school buses with emission control equipment.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties hereto agree as follows:

### 1. TERM

- a. **Effective Date.** This Agreement shall become effective upon the date first set forth above.
- b. **Duration.** Unless earlier terminated or withdrawn from in accordance with Section 6.a of this Agreement, this Agreement shall expire upon Administrator's issuance of a Certificate of Completion as provided in Section 4.d of this Agreement.

### 2. FUNDING CONDITIONS GENERALLY

- a. **Program Description.** The official description of this funding program is provided in the Program Description, describing the application process, eligibility criteria, and other important information. The Program Description accompanies this Agreement as Exhibit A and is incorporated by reference and made part of this Agreement.
- b. **Funding Application.** The terms upon which funds are to be provided are as described in the Funding Application which accompanies this Agreement as Exhibit B and which is incorporated by reference and made part of this Agreement.

This project was undertaken in connection with the settlement of an enforcement action, *United States v. Toyota Motor Corporation*, brought on behalf of the U.S. Environmental Protection Agency under the Clean Air Act.

### 3. COVENANTS BY FUND RECIPIENT

- a. **Adherence to Funding Application and Covenants; Duty to Cooperate.** Recipient covenants to adhere to the Funding Application and the Covenants set forth in this Section 3. Deviation from the Funding Application or Covenants may affect payments under this Agreement. Recipient agrees to cooperate with Administrator to effectuate the purposes of this Agreement.
- b. **Restriction on Use of Funds; Return of Funds Not Spent in Accordance With Agreement.** Recipient shall not use any funds provided under this Agreement except in accordance with this Agreement. Recipient acknowledges and accepts an unqualified obligation to return any and all funds disbursed by Administrator under this Agreement but not spent by Recipient in accordance with Sections 2 or 3 of this Agreement.
- c. **Assumption of the Risk.** Recipient assumes all risk relating to or arising from its use of Program funds, including, without limitation, risks relating to installation of retrofit equipment on school buses and performance of school buses once retrofitted.
- d. **Documentation.** Recipient shall be required to provide proof to Administrator of Recipient's fulfillment of the Funding Application and the Covenants set forth in this Section 3. Acceptability of such proof shall be committed to Administrator's reasonable discretion. Required documentation may include, but will not necessarily be limited to the following:
  - (i) **Documentation of Services and/or Materials Purchased.** Recipient shall provide one (1) copy of final approved invoices for the services and/or materials purchased in accordance with the Funding Application. Invoices shall show quantities of services and/or materials purchased and part names and numbers (as appropriate). In addition, recipient shall provide proof of warranty. All retrofit equipment must be sold with a warranty that provides for part replacement for a period of 100,000 miles or 5 years (whichever comes first). Recipient shall explain any deviations from the planned services and/or materials described in the Funding Application and acknowledges that no amount greater than the Total Funding Requested in Section 2 of the Funding Application shall be disbursed. In addition, recipient shall provide proof of purchase of ultra-low sulfur diesel fuel.
  - (ii) **Certification of Installation.** Recipient shall provide a copy of the certificate of installation for each diesel particulate filter installed. Recipient shall also provide a copy of the vendor's data logging results. The certificate of installation form must include information about the vendor, the school buses, the school bus engines, and the particulate filter kits. The data logging results must include information about the results of the data logging, the dates of data logging, the location of the data logger probe, and a statement from the vendor attesting that the buses meet the filter verification requirements.
  - (iii) **Project Installation Report.** Recipient shall provide Administrator with a Project Installation Report in a form to be specified by the Administrator but which shall include, but not be limited to, contact information, diesel particulate filter information (number & type installed), installation vendor information, ULSD usage information, anti-idling policy information, final funding request information, any problems encountered during installation, and the certification of an authorized representative (in such form as Administrator shall require) that the invoices for services and materials are complete and accurate and that the work has been completed and deemed to be satisfactory. If not already supplied, the Project Installation Report shall include a copy of the final Bus Data Spreadsheet (Section 4, Table 4-2 from the Funding Application) and a final copy of the Payee Information (Section 10 of the Funding Application). If not provided with the Funding

Application, documentation of other emission reduction program (e.g., an anti-idling program) shall be included.

- e. **Record Keeping.** Recipient shall maintain the Documentation described in Section 3.d of this Agreement for a period of three years following (i) Administrator's issuance of a certificate of Completion as provided in Section 4.d of this Agreement, or (ii) earlier termination or withdrawal in accordance with Section 6.a of this Agreement.
- f. **Maintenance.** Recipients are required to make all reasonable efforts, including the assertion of equipment warranty claims, to use and maintain properly for a period of at least four years the diesel particulate filters purchased and installed under this Program. If, in the course of the Administrator's inspections, it appears that equipment is not functioning properly and the malfunction might give rise to a warranty claim, the Administrator will recommend to the fund recipient that it pursue a warranty claim. Failure to use and maintain properly the retrofit equipment may require that all or a portion of the funding awarded for the retrofit not used or properly maintained be returned to the Administrator.
- g. **Inspection.** Recipient acknowledges and agrees that Administrator may review, audit, and inspect, at reasonable times and in a reasonable manner, (i) Recipient's documentation as required by Section 3.d of this Agreement, and/or (ii) facilities (including buses) at which activities funded by the Program funds are performed for purposes of assessing Recipient's fulfillment of Sections 2.b and 3 of this Agreement. Recipient shall assure Administrator's and the U.S. Environmental Protection Agency's access to third-party facilities at which activities funded by the Program funds are performed.
- h. **Compliance with Laws; Insurance.** Recipient agrees to conduct, and to ensure that any contractors hired with Program funds will conduct all activities in compliance with applicable federal, state, and local laws, regulations, and ordinances; to secure all appropriate necessary public or private permits and consents; and to obtain and maintain all appropriate insurance against liability for injury to persons or property arising from its use of the Program funds.

#### 4. COVENANTS BY ADMINISTRATOR

- a. **Disbursement of Program Funds.** Subject to Administrator's receipt of Program funds from Donor and Administrator's other rights under this Agreement, if Recipient fulfills the conditions of Sections 2.b and 3 of this Agreement, Administrator shall authorize disbursement of Program funds to Recipient or to Recipient's designated payee as identified in Section 10 of the Funding Application.
- b. **No Additional Support.** By authorizing disbursement of funds pursuant to Section 4.a of this Agreement, Administrator assumes no obligation to provide further funding beyond the terms provided in this Agreement.
- c. **Taxes.** Administrator will report as appropriate Recipient's funding as income to the Recipient on IRS Form 1099 unless Recipient has indicated to Administrator that it is exempt. Administrator and Donor are not responsible for any taxes that may be imposed on Recipient as a result of Recipient's receipt of the Program funds.
- d. **Certificate of Completion.** Administrator shall review Recipient's Payment Documentation (including invoices, warranties, certificates of installation, Project Installation Report [as described in Section 3.d.(iii) of this Agreement] and attachments), as well as four Annual Reports in 2006, 2007, 2008, and 2009 and, if deemed satisfactory in Administrator's sole discretion, provide a Certificate of Completion. Such certificate shall indicate Administrator's determination that Recipient's use of Program funds adhered to the Funding Application and Covenants in Section 3 of this Agreement and that

Administrator waives any right to the return of disbursed funds that might otherwise exist under this Agreement.

## 5. DISPUTES

- a. **Good Faith Negotiations.** The parties will attempt in good faith to resolve through negotiation any dispute, claim or controversy arising out of or relating to this Agreement. Either party may initiate negotiations by providing written notice in letter form to the other party, setting forth the subject of the dispute and the relief requested ("Initial Notice"). The recipient of such Initial Notice shall respond within five (5) days with a written statement of its position on, and recommended solution to, the dispute. If the dispute is not resolved by this exchange of the Initial Notice and response, then representatives of each party with full settlement authority will meet at a mutually agreeable time and place within twenty (20) days of the date of the Initial Notice in order to exchange relevant information and perspectives, and to attempt to resolve the dispute.
- b. **Arbitration.** Should the negotiations provided in Section 5.a be unsuccessful, or shall the meeting of the representatives of each party with full settlement authority not take place within twenty days of the date of the Initial Notice, the matter may be submitted by either party to arbitration and no written or oral representation made during the course of the preceding settlement negotiations shall be deemed to be a party admission. The arbitration shall be conducted in accordance with the rules of the American Arbitration Association. The arbitral panel shall hold hearings in Washington, D.C., and shall consist of three arbitrators unless both parties agree in writing to a single-arbitrator panel. The award rendered by the arbitrators shall be final and judgment may be entered upon it in accordance with the applicable law in any court having jurisdiction thereof.

## 6. REMEDIES

- a. **Administrator's Termination Right; Recipient's Right to Withdraw.** Administrator may terminate Recipient's participation, or Recipient may withdraw from the Agreement, upon five (5) days written notice to the other party. Recipient's failure to adhere to Sections 2 or 3 of this Agreement shall be cause for termination. In the event of termination or withdrawal, Administrator shall stop the disbursement of funds. In the event of termination by the Administrator, Administrator agrees to pay all documented, non-cancelable commitments made by Recipient prior to notice of termination, subject to the requirements of Section 3.b of this Agreement. Within thirty (30) days of receipt of notice of termination or service of notice of withdrawal, Recipient shall repay to Administrator all funds that have been disbursed but not expended in accordance with Sections 2 or 3 of this Agreement.
- b. **Exclusive Remedy.** Recipient acknowledges and agrees that its sole and exclusive remedy with respect to the subject matter of this Agreement, or directly or indirectly connected with or related to such subject matter, shall be for Administrator's breach of Section 4.a of this Agreement, and Recipient otherwise expressly waives any right to an action under state, federal, or common law; sounding in negligence, strict liability, tort; or any other legal theory. In no event shall Administrator's liability exceed ten thousand dollars.
- c. **Limitation on Damages.** Notwithstanding Recipient's exclusive remedy under Section 6.b, Administrator shall not be responsible for delay or failure in performance resulting from causes beyond its reasonable control. In no event shall Administrator be liable to Recipient for any special, incidental, or consequential damages, even if advised of the possibility of such damages.
- d. **Release and Indemnity of Donor.** Recipient hereby releases and covenants not to sue Donor, now and forever, and agrees to indemnify and hold Donor harmless, from any and all claims, demands,

actions, or causes of actions of whatever kind or nature, either known or unknown, discovered or undiscovered, arising out of or directly or indirectly connected with or related to the subject matter of this Agreement.

- e. **Release and Indemnity of Administrator.** Except for damages provided under Section 6.b., above, the Recipient hereby releases and covenants not to sue Administrator, now and forever, and agrees to indemnify and hold Administrator harmless, from any and all claims, demands, actions, or causes of actions of whatever kind or nature, either known or unknown, discovered or undiscovered, arising out of or directly or indirectly connected with or related to the subject matter of this Agreement.
- f. **Return of Funds by Recipient.** If at any time it is determined, through documentary evidence, inspection, or other means, that buses retrofitted using funds provided by this Agreement have been fueled with any substance other than ultra-low sulfur diesel fuel, or that Recipient has not made all reasonable efforts to install and maintain retrofit equipment in good working order, including the assertion of equipment warranty claims, Recipient shall be liable to return to the Administrator the entire amount of funds received for the retrofit of that particular bus (inclusive of ultra-low sulfur diesel fuel subsidy, if applicable). The Administrator shall make the final determination regarding the return of funds and may determine that Recipient is not required to return funds if Recipient can demonstrate that it cannot return the funds without ceasing the funding of an essential service.

7. GENERAL

- a. **No Agency.** Nothing in this Agreement shall be construed to imply that Recipient, or any of its employees, agents, representatives, or contractors, are agents of the Administrator or Donor.
- b. **No Third-Party Beneficiaries.** This Agreement shall be for the sole benefit of the parties to the Agreement and Donor and is not intended nor shall it be construed to give any other person any legal or equitable right, benefit, remedy, or claim.
- c. **Notices.** All notices and other communications between and among the parties to this Agreement shall be addressed to the following:

If to Recipient:

*Name*  
*Title*  
*School District*  
*Street Address*  
*City, State Zip*

If to Administrator:

David Bruce  
Senior Vice President  
ICF Incorporated, LLC  
9300 Lee Highway  
Fairfax, VA 22031

- d. **Amendments.** No amendment to this Agreement shall be deemed effective unless in writing and signed by authorized representatives of the parties.

- e. **Survival.** The obligations, covenants, and agreements set forth in Sections 3.b and c; Sections 5.a and b; and Sections 6.b, c, d, e, and f of this Agreement shall survive the expiration or earlier termination of this Agreement.
- f. **No Waiver.** No waiver of any breach of this Agreement shall operate as a waiver of any similar subsequent breach or any breach of any other provision of this Agreement.
- g. **Authority.** Each undersigned representative of a party certifies that he or she is fully authorized to enter into this Agreement and to execute and legally bind such party to this Agreement.
- h. **Captions.** Captions in this Agreement are used only for convenience in finding the subject matters and are not part of this Agreement or to be used in determining the intent of the parties or to otherwise interpret this Agreement.
- i. **Severability.** If any provision of this Agreement is held invalid by a court of competent jurisdiction, such provision shall be severed from this Agreement and to the extent possible, this Agreement shall continue without affect to the remaining provisions.
- j. **Assignment.** Recipient may not assign its rights nor delegate its duties under this Agreement without prior written approval of Administrator.
- k. **Governing Law.** The validity, enforceability and interpretation of this Agreement shall be determined and governed by the laws of the District of Columbia and, where applicable by virtue of preemption, under the laws of the United States of America. By entering into this Agreement, Recipient agrees to submit to the jurisdiction of the courts of the District of Columbia.
- l. **Entire Agreement; Precedence.** This Agreement contains the entire agreement of the parties, and there are no understandings or agreements between the parties that are not expressed in this Agreement. In the event of a conflict in the terms and conditions of this Agreement and the attached Funding Application and the Program Description, this Agreement shall take precedence, followed by the Funding Application, and lastly the Program Description.
- m. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be an original and together shall constitute one and the same instrument binding on the parties.

IN WITNESS WHEREOF, each party has caused this Agreement to be duly executed on its behalf by their duly authorized agents.

**Administrator**

**Recipient**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

Exhibits

A - Program Description

B - Funding Application