AB 939 REGIONAL SCHOOL WASTE REDUCTION AND ENVIRONMENTAL EDUCATION GRANT PROGRAM FUNDING ASSISTANCE AGREEMENT

This AB 939 Regional School Waste Reduction and Environmental Education Grant Program Funding Assistance Agreement (this "Agreement") is made and entered into this day of _____, by and between County of Orange, a political subdivision of the State of California by and though its OC Waste & Recycling department (the "County") and _____, a municipal corporation ("School"). County and School are sometimes individually referred to as "Party", or collectively referred to as "Parties".

RECITALS

WHEREAS, the California Integrated Waste Management Act of 1989, as amended ("AB 939"), promotes the reduction, recycling and reuse of solid waste generated in the State of California; and

WHEREAS, AB 939 requires County and local jurisdictions to divert 50% of all solid waste on and after January 1, 2000, through source reduction, recycling, and composting activities; and

WHEREAS, by Resolution No. 06-070, County established its AB 939 surcharge for the purpose, among others, of encouraging recycling and diversion among self-haulers of solid waste; and

WHEREAS, the Orange County Board of Supervisors implemented the AB 939 Regional Recycling and Waste Diversion Grant Program (the "Program") by which cities within Orange County can apply for Program funds to develop new programs or significantly expand existing programs to enhance recycling efforts and the diversion of solid waste from County landfills; and

WHEREAS, School has proposed developing new programs and activities or substantial improvements to its recycling and waste diversion programs (the "Project"); and

WHEREAS, School has requested Program funding to assist with financing for Project in the amount of $[$_INSERT AWARD AMOUNT_], and

WHEREAS, County finds that Project will provide increased public education and recycling activities or programs for residents of Orange County; and

WHEREAS, County wishes to provide financial assistance to Project from Program funds in the amount of [$_INSERT AWARD AMOUNT_], as further provided for herein.

NOW, THEREFORE, School and County do hereby agree as follows:

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1. INCORPORATION OF RECITALS

Each Party finds and determines that the foregoing recitals are true and correct and are incorporated herein by this reference.

2. PURPOSE

The purpose of this Agreement is to provide Program funding for School's Project and to ensure that School uses the Program funds solely for the specific Project approved by the Orange County Board of Supervisors, as such Project is more particularly described in Section 3.

3. PROJECT

Project shall consist solely of [Project title]; specifically to make improvements, implement substantial enhancements to the existing recycling program, and/or perform infrastructure improvements as proposed in the grant application.
Project is located at [address or jurisdiction], California.

Project shall consist of:

School: [_____]
Project Name: [_____]
Project Location: [_____]
Project Description: [_____]
Approved Grant Amount: $###,###
Estimated Total Project Cost: $######

4. PROJECT COMPLETION

(a) School shall complete Project and fully utilize the Program funds authorized herein no later than 12 months following award of Program grant funding. If School is unable to complete Project or is unsuccessful in any part or portion of its Project or to fully utilize all Program funds for the purposes of Project within the 12 month period, unless this Agreement is otherwise terminated as provided herein, School agrees to return unused Program funds to County within 60 days following the 12 month anniversary of Program grant funding.

(b) Notwithstanding (a) above, extensions may be granted on a case-by-case basis in the sole discretion of the County. An extension is 6 months beyond the initial 12 months after award of Program funds and may be approved by the Manager of Recycling and Environmental Programs. The Director of OC Waste & Recycling may consider construction or multi-year projects separately and approve additional extensions of up to 12 months, not to exceed a total period of 3 years.

(c) A Grant Recipient Fulfillment Report, attached herein as Attachment 1 must be submitted no later than 30 days after completion of Project. Failure to timely

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complete and return the Grant Recipient Fulfillment Report may affect future County grant funding eligibility

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(d) If School's Project involves building or construction, School shall provide County a copy of the "Notice of Completion" as applicable, within thirty (30) days of School's approval.

5. PROGRAM FUNDING

Within 30 days following the execution of this Agreement by both Parties, County shall provide Program funding to School in the amount of [INSERT AWARD AMOUNT]. Program funds shall be paid solely from funds appropriated, if any, for allocation in County's 2008-2009 Fiscal Year AB 939 Surcharge Fund. No other County funds will be available for Program funding. In addition, in no event will any retroactive Program funding be permitted.

6. APPROPRIATION

County's Program funding obligations under this Agreement are contingent upon and subject to the availability of funds appropriated for this Grant by the Orange County Board of Supervisors. The failure of the Orange County Board of Supervisors to appropriate Program funds shall result in the immediate termination of this Agreement with no further obligation of the County.

7. MAINTENANCE OF EFFORT

To the extent Project consists, in whole or in part, of an enhancement of an existing project and/or School has committed its own funds for the purposes of all or a portion of Project, Program funding shall be used in addition to those School funds and will not be used by School to replace, reduce, substitute or eliminate any School funds used for Project or any part thereof.

8. ADMINISTRATION

As applicable, School shall have the sole responsibility for administering and obtaining all governmental agency approvals and permits for Project, including, but not limited to the selection of contractors, management of contractors' work, administration of contracts for compliance with the requirements of all applicable local zoning and building codes and other regulations, obtaining all permits as necessary and satisfying compliance with CEQA, as well as meeting all of County's requirements for grant administration.

9. OPERATIONS AND MAINTENANCE

School recognizes that it is solely responsible for the financial self-sufficient operations and maintenance of Project facilities. In the use and operation of this facility, School shall comply with all federal and local requirements and all requirements of the Program as administered and determined applicable by County.

10. ADDITIONAL SCHOOL REQUIREMENTS

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In addition to the other requirements of this Agreement, School shall:

a) Comply with all terms of this Agreement and any rules or procedures adopted by County in connection with the Program.

b) Provide management of, and staff assistance for, Project.

c) Regularly attend the County Bi-Monthly Recycling Coordinators meetings. Missing more than two of these meetings per year could affect eligibility for future grant funding.

d) Use the Program funding received from County only for the Project. If the Project is cancelled, downsized or substantially modified, written notice must be provided to OC Waste & Recycling Manager of Recycling and Environmental Programs who may request the submission of a new Program application submitted as necessary. Award of original Project funding does not imply that Project as cancelled, downsized or substantially modified will be approved with new application submittal.

e) Issue no final change orders for any Project construction which revises the intent of Project as described herein. Any proposed changes to a County-sponsored program or project utilizing these grant funds, including an extension of the program/project timeline, shall be approved at the sole discretion of the Director, OC Waste & Recycling. The County takes into consideration that other government and private funding may need to be coordinated to facilitate the completion of inter-agency programs and public-private partnerships. Proposed changes must fall under granting guidelines and criteria and provide a benefit to regional diversion or recycling efforts. It is important that the recipient initiate contact with the Manager of Recycling and Environmental Programs prior to making program changes.

f) If Project involves building improvements, assign a qualified resident engineer charged with overall contract administration and ensure that all project construction is in accordance with approved plans and specifications. At the end of construction, said engineer shall certify compliance with all applicable federal, state and local zoning and building codes.

11. NOTICES

Notices or other communications which may be required or provided under the terms of this Agreement shall be given as follows:

County: Director, OC Waste & Recycling
County of Orange
P. O. Box 4048
Santa Ana, CA 92702-4048

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School: School of [School name]
[Address]

All notices shall be deemed effective when in writing and delivered in person or deposited in the United States of America mail, first class postage, prepaid and addressed as above. Notwithstanding the above, County and School may also provide notices by facsimile transmittal, e-mail and any such notices, correspondence, reports and/or statements authorized or required by this Agreement, addressed in any other fashion shall be deemed not given. The parties hereto may change the addresses to which notices are to be sent by giving notices of such change to the other party.

12. TERMINATION

a) Prior to School committing the expenditure of Program funds, such as award of contracts to expend funds, either party may terminate this Agreement with or without cause, upon notice to the other party.

b) After School has made a commitment of Program funds, County may terminate this Agreement upon the breach of any provision of this Agreement by School. Except for breach by School under Paragraphs 13, and 6, School shall have 30 days following notice of breach by County to cure the breach.

c) Unless otherwise expressly provided herein, upon termination by County under a or b above, School shall re-pay the entire amount of Program funding to County within 30 days of the effective date of termination.

d) Notice of termination shall be in writing and shall state the cause for termination, if cause is required, and the date upon which such termination is effective.

13. FAILURE TO COMPLETE

School agrees that in the event it does not complete Project as specified in Paragraph 3 above, this Agreement shall be subject to termination as specified in Paragraph 12 above, and reassignment to County of grant funds as specified in Paragraph 4 above.

14. INDEMNIFICATION

School agrees to indemnify, defend and save harmless County, its elected officials, agents, officers and employees from and against any and all liability, expense, including defense costs and legal fees, and claims for damages of any nature whatsoever, including, but not limited to bodily injury, death, personal injury or property damage arising from or connected with School's activities, operations, or services provided hereunder, including without limitation, any workers' compensation suits, liability, or expenses arising from or connected with services performed on behalf of School by any person pursuant to this Agreement.

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15. STATUTE OF LIMITATIONS
The Parties agree that the statute of limitations for legal action under this Agreement shall commence to run following the date upon which County's audit rights under section 27 herein terminate.

16. WAIVER OF RIGHTS
The failure of County or School to insist upon strict performance of any of the terms and conditions of this Agreement shall not be deemed a waiver of any right or remedy that County or School may have, and shall not be deemed a waiver of the right to require strict performance of all the terms, covenants and conditions of the Agreement thereafter, nor a waiver of any remedy for the subsequent breach or default of any term, covenant or condition of this Agreement.

19. TERM OF AGREEMENT; SURVIVAL
The term of this Agreement shall commence upon execution by County's Board of Supervisors and shall terminate on [date], or on an earlier date subject to the performance required herein, or the cancellation provisions of this Agreement as permitted herein, provided however, that School's obligation under Paragraph 7 , shall remain in effect and enforceable by County unless all funds paid by County grant funds hereunder to School have been refunded to County . Notwithstanding any provision to the contrary herein, the provisions of Paragraphs 4, 9, 10, 14, 24, 27, 30, 32, 33, 34 shall survive the termination of this Agreement.

18. TIME OF THE ESSENCE
Time is of the essence in the performance of this Agreement.

19. ENTIRE AGREEMENT
This Agreement, including Attachment 1, which are attached hereto and incorporated herein by this reference, contains the entire contract between the Parties with respect to the matters herein and there are no exceptions, alternatives, substitutions, revisions, understandings, agreements, restrictions, promises, warranties or undertakings, whether oral or written, other than those set forth herein or referred to herein.

20. AMENDMENTS
No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties. For the purposes of this Agreement, the Director, OC Waste & Recycling may approve any amendment to this Agreement on behalf of the County.

21. GOVERNING LAW AND VENUE
This Agreement has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California, without reference to conflict of laws provisions. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure section

SAMPLE

394. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another venue.

22. INDEPENDENT CONTRACTOR
School shall be considered an independent contractor and neither School, its employees nor anyone working under School shall be considered an agent or an employee of School. Neither School, its employees nor anyone working under School, shall qualify for workers' compensation or other fringe benefits of any kind through County.

23. ASSIGNMENT; SUBCONTRACTING
The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the Parties. Furthermore, neither the performance of this Agreement nor any portion thereof may be assigned or sub-contracted by School without the express written consent of County. Any attempt by School to assign or sub-contract the performance or any portion thereof of this Agreement without the express written consent of County shall be invalid and shall constitute a breach of this Agreement.

24. DISCLAIMER OF WARRANTY
County makes no warranties, express or implied, including without limitation, the implied warranties of merchantability and fitness for a particular purpose, regarding the materials, equipment, services or products purchased, used, obtained and/or produced with funds awarded under this Agreement, whether such materials, equipment, services or products are purchased, used, obtained and/or produced alone or in combination with other materials, equipment, services or products. No County employees or agents have any right or authority to make any other representation, warranty or promise with respect to any materials, equipment, services or products, purchased, used, obtained, or produced with grant funds. In no event shall County be liable for special, incidental or consequential damages arising from the use, sale or distribution of any materials, equipment, services or products purchased or produced with grant funds awarded under this Agreement.

25. COMPLIANCE WITH LAW
School shall fully comply, at School's sole expense, with all federal state and local laws, statutes, standards, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capaSchool and all other laws applicable at the time during the term of this Agreement. School acknowledges that County is relying on School to ensure such compliance, and pursuant to the requirements of section [24] herein, School agrees that it shall defend, indemnify and hold County and County Indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.

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26. RECORDS
School shall keep an accurate record of all expenditures of Program funds by School and any subcontractors working for School in the performance of this Agreement. Such record shall be available for periodic inspection by County at reasonable times.

27. AUDITS; INSPECTIONS
School agrees to permit County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of School for the purpose of auditing or inspecting any aspect of performance under this Agreement. The inspection and/or audit will be confined to those matters connected with the performance of this Agreement including, but not limited to, the costs of administering the contract. County will provide reasonable notice of such an audit or inspection. County's right to audit School records shall extend for three (3) years following the date which is 12 months after County provides Program Funding to School on behalf of Project.

School agrees to maintain such records for possible audit for a minimum of three (3) years after final expenditure of Program funds, unless a longer period of records retention is stipulated under this Agreement or by law. School agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, School agrees to include a similar right to County to audit records and interview staff of any subcontractor related to performance of this Agreement.

28. PUBLICATION; ACKNOWLEDGEMENTS
All press releases, including graphic display information to be published in newspapers, magazines, etc., must be approved by County unless otherwise agreed to by both Parties.

School shall acknowledge County OC Waste & Recycling's Program support in each publication in any medium, including, but not limited to, news media, brochures, or other types of promotional material.

29. HEADINGS
The various headings and numbers herein, the grouping of provisions of this Agreement into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.

30. SEVERABILITY
If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

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31. CALENDAR DAYS
Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.

32. ATTORNEY FEES
In any action or proceeding to enforce or interpret any provision of this Agreement, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney's fees, costs and expenses.

33. WAIVER OF JURY TRIAL
To the extend enforceable under California law, each Party acknowledges that it is aware of and has had the opportunity to seek advise of counsel of its choice with respect to its rights to trial by jury, and each Party, for itself and its successors, creditors, and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any Party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this Agreement and /or any other claim of injury or damage.

34. INTERPRETATION
This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Agreement. In addition, each Party has been represented by experienced and knowledgeable independent legal counsel of their own choosing, or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each Party further acknowledges that they have not been influenced to any extent whatsoever in executing this Agreement by any other Party hereto or by any person representing them, or both. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the Party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purpose of the Parties and this Agreement.

35. AUTHORITY
The Parties to this Agreement represent and warrant that this Agreement has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.

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IN WITNESS WHEREOF, each Party hereto has executed this Agreement by a duly authorized representative as of the date set forth above.

COUNTY OF ORANGE, a political subdivision of the State of California

DATE: _____ BY:

_____

Michael B. Giancola, Director
OC Waste & Recycling
County of Orange

APPROVED AS TO FORM:
COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA

DATE: _____ BY:

_____

John H. Abbott, Deputy

ATTEST: SCHOOL OF [School name], a municipal corporation

DATE: _____ BY:

_____

[name]
Clerk of the Council

DATE: _____ BY:

_____

[name]
School Mayor

APPROVED AS TO FORM:

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DATE: _____ BY:

_____

[name]
School Attorney

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