

RECEIVED
2019 DEC -5 PM 4:52
BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

CARL MOYER PROGRAM GRANT AGREEMENT
BETWEEN
THE BAY AREA AIR QUALITY MANAGEMENT DISTRICT
AND
MT. DIABLO UNIFIED SCHOOL DISTRICT
21SBP77

This Carl Moyer Program grant agreement ("Agreement") is made and entered into between Mt. Diablo Unified School District, hereinafter referred to as "Grantee," and the Bay Area Air Quality Management District, hereinafter referred to as the "Grantor" or "Air District," hereinafter collectively referred to as the "Parties."

RECITALS

- 1) The Carl Moyer Memorial Air Quality Standards Attainment Program, California Health and Safety Code section 44275 et seq. ("Program"), is an incentive program to provide grants in order to reduce emissions of oxides of nitrogen, particulate matter (PM10), and reactive organic compounds in the State from sources of air pollution, such as heavy-duty and light-duty diesel vehicles, off-road construction equipment, marine vessels and agricultural sources of pollution, by measures such as replacement of engines with cleaner-than-required engines or installation of emission reduction equipment ("Equipment").
- 2) The California Air Resources Board ("CARB"), which oversees and administers the Program, has adopted guidelines and criteria for the Program's implementation entitled, *The Carl Moyer Program Guidelines, Approved Revision 2017* and subsequent CARB advisories issued for Program implementation (together the "CARB Program Guidelines"). The Air District implements the Program in the San Francisco Bay Area air basin in accordance with the CARB Program Guidelines and the criteria and guidelines of the Air District.
- 3) Based on the information provided in the Grantee's project application ("Project"), the Air District determined that the Grantee proposed a project to replace or install Equipment that is eligible for Program funding and meets the CARB Program Guidelines and the Air District's criteria and guidelines, including cost-effectiveness requirements. In entering into this Agreement, the Air District has relied upon the representations in Grantee's project application.
- 4) This Agreement is made pursuant and in accordance with the requirements of the Program, established by the California State Legislature and implemented by CARB. All Equipment funded under the terms of this Agreement ("Project Equipment") must be certified as required by CARB Program Guidelines. Any questions or disputes the Parties may have regarding the implementation of this Agreement shall be resolved in accordance with the CARB Program Guidelines.
- 5) On November 20, 2019, the Board of Directors of the Air District approved the Air District's recommendation to enter into an Agreement with Grantee to implement the Project, provided Grantee meets all of the CARB Program Guidelines.

SECTION I

GRANTEE AGREES:

- 1) To implement the Project in accordance with the terms and conditions of this Agreement and all attachments hereto. Failure to do so will be deemed a breach of this Agreement, and the Air District may terminate this Agreement pursuant to the termination provisions herein.
- 2) To maintain each piece of Project Equipment according to the manufacturer's specifications throughout the Project Equipment Operational Term, as defined in Section III.1 below. No tampering or modification of the Project Equipment is allowed.
- 3) To complete the Project in accordance with the payment and reporting conditions identified in Attachment A. The Air District's funding obligation under this Agreement is limited to reimbursement of Eligible

Costs, the amount of which shall not exceed the Total Grant Funds Awarded specified in Attachment A paragraph 4. Any Project cost overruns are the sole responsibility of the Grantee.

- 4) To allow the staff and third-party representatives of the Air District and CARB to inspect the Project Equipment and to conduct financial and performance audits of the Project. Grantee agrees that the Air District, CARB, the CA Department of General Services, CA Department of Finance, the CA Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Project. Grantee further agrees to cooperate fully with such inspections and audits, including providing on a timely basis copies of any Project records related to performance of this Agreement requested by the Air District or CARB.
- 5) To acknowledge the Air District and the Carl Moyer Program as a funding source for the Project in any related media events, articles, news releases or other publicity materials. Grantee must obtain prior written approval by the Air District in order to disseminate any report or other document describing the Program, the Project, or this Agreement.
- 6) To assure that all funds received under this Agreement are expended only in accordance with the requirements of the Program, this Agreement, and all applicable provisions of law and regulations.
- 7) To permanently destroy and remove from service any Equipment replaced as part of the Project (“Baseline Equipment”) and to provide documentation to support destruction of the Baseline Equipment. Failure to permanently destroy the Baseline Equipment shall be deemed a breach of this Agreement.
- 8) To monitor the operational status of each piece of Project Equipment throughout the Project Equipment Operational Period. Grantee will notify the Air District in writing of any change in operational status of any Project Equipment funded and installed under this Agreement within 30 calendar days of its occurrence. For purposes of this Agreement, a “change in operational status” occurs whenever any Project Equipment is removed from active service, relocated outside the boundaries of the Air District, wrecked, scrapped, sold, or transferred to another entity, before full completion of the Project Equipment Operational Period. If Grantee fails to provide the required written notice of a change in operational status on a timely basis, the Grantee is subject to the repayment requirements set forth in Paragraph 15 of Attachment A.
- 9) To neither seek nor accept other private or public financial incentives for the Project without prior approval from the Air District. If Grantee seeks or accepts such funds or incentives without prior Air District approval, the Air District may terminate this Agreement for breach, which may also disqualify Grantee from participating in future Air District incentive programs.
- 10) To obtain and maintain the insurance coverage specified in “Insurance Requirements,” Attachment B, and to comply with all insurance requirements set forth therein, including the provision of documentation of said insurance coverage. Failure to obtain and maintain the insurance coverage or to comply with all insurance requirements shall be deemed a breach of this Agreement.
- 11) To use the Air District’s approved logo on any printed material intended for public consumption associated with the Project and on any signs posted at the site of any construction associated with the Project. The logo provided by the Air District shall be displayed on the Project Equipment identified in Attachment A, Paragraph 5.
- 12) To maintain and retain the Project records for at least two years after Agreement expiration or three years after final project payment, whichever is later.
- 13) To comply with all “Special Conditions,” set forth in Attachment A.
- 14) Nondiscrimination: During the performance of this Grant Agreement, the Grantee and its contractors shall not unlawfully discriminate against, harass, or allow harassment against any employee or applicant for employment because of sex, race, religious creed, color, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, sexual orientation, medical condition, marital status, age (over 40) or allow denial of family-care leave, medical-care leave, or pregnancy-disability leave. The Grantee and its contractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. The Grantee and its contractors shall

comply with the provisions of the Fair Employment and Housing Act (Gov. Code section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, title 2, section 10000 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a-f), set forth in Chapter 5 of Division 4 of title 2 of the California Code of Regulations, are incorporated into this Grant Agreement by reference and made a part hereof as if set forth in full. The Grantee and its contractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

- 15) To be bound by all the provisions of State Labor Code Section 1771 regarding prevailing wages paid to workers employed on public works and to provide confirmation of compliance if requested.
- 16) To accept tax liability associated with accepting grant funds.

SECTION II

AIR DISTRICT AGREES:

- 1) To reimburse Grantee for Eligible Costs in an amount not to exceed the "Total Grant Funds Awarded," set forth in Attachment A.
- 2) To endeavor to pay the undisputed invoiced amount of the Eligible Costs within thirty (30) calendar days of receipt of the invoice.
- 3) To deliver the payment following the Air District's verification that Grantee has completed the Project. Verification by Air District will include physical inspection of any Project Equipment specified in Attachment A, confirmation that the Project Equipment is operational and in service, and has reviewed and accepted evidence of the permanent destruction of any Baseline Equipment replaced as part of the Project.
- 4) To provide reasonable notice to Grantee prior to the Air District or CARB conducting an inspection or audit of the Project. What constitutes "reasonable notice" may be based in part upon any prior notice from CARB received by the Air District of such CARB audit or inspection.
- 5) CARB is an intended third-party beneficiary of this Agreement and shall have the right to enforce the terms of the Agreement to ensure emission reductions are obtained.

SECTION III

AIR DISTRICT AND GRANTEE AGREE:

- 1) Agreement Term, Project Operational Period, and Project Term: The term of this Agreement ("Agreement Term") begins on the Effective Date and shall remain in effect until the conclusion of all Project Equipment Operational Periods, as set forth in Attachment A unless this Agreement is terminated earlier. A Project Equipment Operational Period begins when the piece of Project Equipment has been successfully inspected by the Air District and concludes upon the satisfaction of the usage requirement and project life requirement for that piece of Project Equipment. The Project Term begins at the start of the earliest Project Equipment Operational Period and ends at the conclusion of all Project Equipment Operational Periods. The Project Equipment Operational Period for each piece of Project Equipment is set forth in Table 1 of Attachment A. In no event shall Grantee operate a piece of Project Equipment for less than the minimum project term specified in the CARB Program Guidelines.
- 2) Termination:
 - a) Either party may terminate this Agreement at will, and without specifying any reason, at any time prior to the Air District's transfer of Project funds by notifying the other party in writing. The notice of termination shall specify the effective date of termination, which shall be no less than thirty (30) calendar days from the date of delivery of such notice. Notice shall be delivered in accordance with the Notice provisions set forth in Paragraph 5 below.

- b) The Air District may terminate this Agreement for breach of the Agreement by Grantee by giving Grantee a minimum of ten (10) business days written notice of such breach and the opportunity to cure the breach within that period of time. The notice will specify the amount of Project Grant Funds to be reimbursed to the Air District, if any, which Grantee shall reimburse within thirty (30) days of the effective date of termination. The Air District shall calculate the reimbursement based on the repayment formula set forth in Paragraph 15 of Attachment A.
 - c) The Air District shall not pay any Project Grant Funds in the event that this Agreement is terminated and no funds have been expended by Grantee. If the Project has been completed and the Air District has paid the grant funds to Grantee, Grantee may not terminate this Agreement pursuant to subparagraph 2(a), unless it reimburses the Air District the amount of Project Grant Funds due based on the repayment formula set forth in Paragraph 15 of Attachment A.
- 3) Additional Acts and Documents: Each party agrees to do all such things and take all such actions, and to make, execute and deliver such other documents and instruments that are reasonably required to carry out the provisions, intent and purpose of this Agreement. All attachments to this Agreement are expressly incorporated herein by this reference and made a part hereof as though fully set forth.
 - 4) Indemnification: Grantee shall indemnify and hold harmless CARB, the Air District, its officers, employees, agents, representatives, and successors-in-interest from and against any and all liability, loss, expense, including reasonable attorneys' fees, or claims for injury or damages arising out of the performance by Grantee of its duties and obligations under this Agreement, and arising out of the operation of the engine and vehicle, vessel, locomotive or other equipment that is the subject of this Agreement by the Grantee or its officers, agents, employees, representatives and successors in interest.
 - 5) Notices: Any notice required under this Agreement shall be in writing and made by personal delivery service, first class mail, or certified mail (return receipt requested) to the addressee for notice set forth below, or to such addressees which may be specified in writing by the Parties. Notices are effective upon receipt. Each Party shall promptly inform the other of any changes of addressees and any changes of address.

Grantee Company
Company Address
City, State Zip Code

Air Pollution Control Officer
Bay Area Air Quality Management District
375 Beale Street, Suite 600
San Francisco, CA 94105

- 6) Contacts: The Contact for the Grantee shall be the person named in the Project application, which shall also list the Contact's address, telephone number, fax number and email address. The Contact shall be the liaison to the Air District pertaining to implementation of this Agreement and shall be the contact for information about the Project. The Grantee shall notify the Air District of a change of the Contact's name or contact information in writing no later than thirty (30) days from the date of any change. The Contact for the Air District shall be the person named in the Air District's project application form. The Air District shall notify the Grantee of a change of the Contact's name or contact information in writing no later than thirty (30) days from the date of any change.
- 7) Project Number: All correspondence shall reference this Agreement, which is the same as the "Project Application Number."
- 8) Integration of Agreement: This Agreement represents the final, complete and exclusive statement of the agreement between the Grantee and the Air District and supersedes all prior and contemporaneous understandings and agreements of the Parties. No Party has been induced to enter into this Agreement nor is any party relying upon, any representation or warranty outside those expressly set forth herein.

- 9) Amendment: This Agreement may not be modified except in writing, signed by both Parties hereto, and any attempt to modify this Agreement orally shall be void and of no effect. Any change in Project scope shall constitute an amendment under this Agreement.
- 10) Independent Contractor: Grantee is an independent contractor. None of Grantee's officers, employees, agents, contractors, subcontractors, or vendors are, nor shall they be considered, officers, employees, agents, contractors, subcontractors, or vendors of the Air District.
- 11) Assignment: Grantee may not assign, sell, transfer, license, or subcontract or otherwise transfer any rights or obligations under this Agreement without the prior written consent of the Air District.
- 12) Waiver: No waiver of a breach, of failure of any condition, or of any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, regardless of similarity, nor shall any waiver constitute a continuing waiver unless the writing so specifies. Further, the failure of a party to enforce performance by the other party of any term, covenant or condition of this Agreement and the failure of a party to exercise any rights or remedies hereunder shall not be deemed a waiver or relinquishment by that party to enforce future performance of any such terms, covenants or conditions, or to exercise any future rights or remedies.
- 13) Severability: If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions thereof shall not be affected.
- 14) Effective Date: The effective date of this Agreement is the date the Air District's Executive Officer/Air Pollution Control Officer executes this Agreement.
- 15) Eligible Costs: Only the actual Project costs described in Attachment A paragraph 5 and that are incurred after the Effective Date and prior to termination of the Agreement or upon Air District's verification that Grantee has completed the Project, whichever occurs first, are eligible for reimbursement with Program Grant funds ("Eligible Costs").
- 16) Cost Reduction: In the event that the "Total Project Cost" is less than the amount listed in Attachment A, the Air District shall recalculate its contribution to the Project in accordance with the provisions of Paragraph 4 of Attachment A.
- 17) Force Majeure: Neither CARB, the Air District nor Grantee shall be liable for or deemed to be in default for any delay or failure in performance under this Agreement or interruption of services resulting, directly or indirectly, from acts of God, enemy or hostile governmental action, civil commotion, strikes, lockouts, labor disputes, fire or other casualty, judicial orders, governmental controls, regulations or restrictions, inability to obtain labor or materials or reasonable substitutes for labor or materials necessary for performance of the services, or other causes, except financial, that are beyond the reasonable control of CARB, the Air District or Grantee, for a period of time equal to the period of such force majeure event, provided that the party failing to perform notifies the other party within fifteen (15) calendar days of discovery of the force majeure event, and provided further that that party takes all reasonable action to mitigate the damages resulting from the failure to perform. Notwithstanding the above, if the cause of the force majeure event is due to party's own action or inaction, then such cause shall not excuse that party from performance under this Contract. Notwithstanding the above, fire or casualty loss to Project Equipment shall not excuse Grantee's to perform under this Agreement. Grantee shall be responsible to repair or replace Project Equipment or to reimburse the Air District in accordance with Attachment A paragraph 15.
- 18) Governing Law: Any dispute that arises under or relates to this Agreement shall be governed by law, including Health & Safety Code section 44280 et seq., its accompanying regulations and the CARB Program Guidelines, excluding any laws that direct the application of another jurisdiction's laws. Venue for resolution of any dispute that arises under or relates to this Agreement shall be San Francisco, California.
- 19) Emissions Testing: The Air District may conduct emissions testing, at its expense, on any Project Equipment that is purchased or modified as part of the Project, including a vehicle or vessel. Testing for a

piece of Project Equipment will be limited to no more than once per calendar year during the Project Equipment Operational Period. Testing will be conducted according to a schedule agreed upon by both Parties.

- 20) Emission Reductions: The Air District retains the exclusive right to claim any emission reduction credits under state or federal law that might result from emissions reduced by the Project implemented pursuant to this Agreement. The emissions reduced by the Project may not be used by Grantee to comply with any local, state, or federal air pollution regulation or law, or used to fulfill Grantee's obligations arising out of any order, settlement contract, memorandum of understanding, or other binding legal document.
- 21) Preliminary Inspection: Air District or its designee shall perform a preliminary inspection of the Baseline Equipment prior to implementation of the Project. Grantee shall facilitate and cooperate with any Air District inspection. Grantee must demonstrate to the Air District that the Baseline Equipment to be replaced under this Agreement is fully operational at the time of the preliminary inspection. Grantee must also facilitate the Air District in obtaining and confirming equipment information (e.g. model year, serial numbers, power) at the time of inspection. Failure to demonstrate that the Baseline Equipment to be replaced is operational at the time of the preliminary inspection shall be deemed a breach of this Agreement and the Air District may terminate the Agreement per Section III.7.
- 22) Post-Project Inspection: Air District or its designee shall perform a post-project inspection of the Project Equipment funded under the terms of this Agreement to verify that the Project has been implemented according to the terms of this Agreement. Grantee shall facilitate the Air District inspection and make the new Project Equipment available for the post-project inspection, which may include a test to verify that the Project Equipment is fully operational and pre-installation interim inspection/s of engines, tanks or similar funded components whose tags or labels will not be visible after installation, to document that Project Equipment complies with Program requirements. Post-project inspection will include verification of the destruction of the replaced Baseline Equipment. Grantee must contact the Air District to arrange post-project inspection and should provide at least two business days advanced notice for scheduling.
- 23) Compliance with CARB Program Guidelines: The Grantee agrees to implement the Project in accordance with all requirements of the CARB Program Guidelines. Any questions or disputes the Parties may have regarding the implementation of this Agreement shall be resolved in accordance with the applicable CARB Program Guidelines.
- 24) Enforcement: Both the Air District and CARB have the authority to inspect the Project, enforce the terms of this Agreement, and pursue repayment of grant funds for noncompliance with the terms and conditions of this Agreement or applicable state laws or regulations throughout the Agreement Term. The following circumstances are the bases under which the Air District seeks repayment of grant funds: Grantee's failure to comply with the terms of this Agreement, including the requirements set forth in Section I; Grantee's failure to implement the Project in compliance with CARB Program Guidelines; as set forth in Attachment A and Grantee's failure to comply with requirements set forth in Attachment A, which could reduce the air quality benefits of this Project.
- 25) Public Documents: To the extent not otherwise prohibited by law, and to the extent required by the California Act (Government Code section 6250 et seq.), the Grantee will place in the public domain any software, written document or other product developed with Program funds as part of the Project.
- 26) Survival of Terms: Any terms of this Agreement that by their nature extend beyond the term (or termination) of this Agreement shall remain in effect until fulfilled and shall apply to both Parties' respective successors and assigns.
- 27) Public Entities Conflict of Interest: The Grantee warrants and represents that its public officials, including its officers and employees in their official capacity, presently have no interest and agrees that its public officials, including its officers and employees in their official capacity, will not acquire any interest which would represent a conflict of interest under California Government Code sections 1090 et seq. and 87100 et seq. during the performance of this Agreement.

IN WITNESS WHEREOF, the Parties to this Agreement have caused this Agreement to be duly executed on their behalf by their authorized representatives.

SIGNATURES:

Bay Area Air Quality Management District

By: 

Date: 12/11/19

Jack P. Broadbent
Executive Officer/Air Pollution Control Officer
Bay Area Air Quality Management District

Approved as to legal form:

By: 


Brian C. Bungler
District Counsel
Bay Area Air Quality Management District

Grantee

By: 

Date: 12/04/19

Dr Robert Martinez
Mt. Diablo Unified School District