

CARL MOYER PROGRAM GRANT AGREEMENT
BETWEEN
THE BAY AREA AIR QUALITY MANAGEMENT DISTRICT
AND
«COMPANY»

08MOY«APPLICATION_»

This Carl Moyer Program grant agreement (“Agreement”) is made and entered into between «Company», hereinafter referred to as “Grantee,” and the Bay Area Air Quality Management District, hereinafter referred to as the “Grantor” or “Air District,” interchangeably.

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 to owners of heavy-duty and light-duty diesel vehicles, off-road construction equipment, and agricultural sources of pollution to fund the incremental costs of repowering or retrofitting engines, eligible equipment, and other sources of air pollution with cleaner-than-required engines and equipment in order to reduce oxides of nitrogen, and particulate matter (PM10), and reactive organic compounds in the State.
- 2) The Air District implements the Program in the San Francisco Bay Area air basin in accordance with the criteria and guidelines of the California Air Resources Board (“CARB”) and the Air District.
- 3) The Air District determined that the Grantee has proposed a project that is eligible and meets the CARB and Air District criteria and guidelines, including cost-effectiveness, based on the eligibility criteria and on information provided in the Grantee’s project application (“Project”).
- 4) On April 4, 2007, the Board of Directors of the Air District approved the Air District’s recommendation to enter into a contract with Grantee to implement the Project, provided Grantee meets all of the Program criteria and guidelines.

SECTION I

GRANTEE AGREES:

- 1) To implement the Project in accordance with the terms and conditions of this Agreement and all attachments thereto. 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 the Project vehicles, engines, or equipment according to the manufacturer’s specifications throughout the Project Term, which is set forth in Attachment A.
- 3) To complete the Project in accordance with the following payment and reporting conditions:
 - a) The Air District’s funding obligation under this Agreement is limited to the Total Grant Funds Awarded, specified in and limited by the conditions set forth in Paragraph 4 of Attachment A. Any Project cost overruns are the sole responsibility of the Grantee.
 - b) To submit an invoice to the Air District for reimbursement of eligible costs incurred to complete the Project that demonstrates compliance with the Project Description and the Project Schedule. The invoice shall itemize the total funds requested for this reimbursement, which shall include an itemization of payments to vendors, consultants, and contractors. The invoice shall also include copies of invoices that document the goods and services provided by vendors, consultants, and contractors and documentation of the total hours incurred to complete the Project, the hourly rates of

- any labor charges, the costs of such goods, and any other eligible costs. The invoice shall be submitted with a summary sheet that specifies the Program project number.
- c) To submit the invoice by the deadline set forth in the Project Schedule set forth in Attachment A.
 - d) To maintain and submit records with the Annual Reports that document that Grantee has complied with all Project Specific Information, including but not limited to the Project Description, Operating Parameters, and the Project Schedule, set forth in Attachment A. Grantee shall maintain all records in a central location for at least three years following the end of the Project Term, as defined in Attachment A.
- 4) To allow the Air District, CARB, and their designated agents to inspect the Project and to conduct financial and performance audits of the Project. Grantee further agrees to cooperate fully with such inspections and audits, including providing 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. The Air District shall approve in writing any report or other document describing the Program, this grant, or this Agreement prior to release of any such report or document.
 - 6) To assure that all funds received under this Agreement are expended only in accordance with this Agreement and all applicable provisions of law and their implementing regulations.
 - 7) To permanently destroy any engine(s) replaced as part of the Project and to provide documentation to support destruction of the engine(s). Failure to permanently destroy the engine(s) shall be deemed a breach of this Agreement.
 - 8) To monitor the operational status of the Project equipment throughout the Project Term. Grantee will notify the Air District in writing of any change in operational status of the Project engine(s) or 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 engine or equipment funded under this Agreement 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 Term specified in Attachment A. If Grantee fails to provide the required written notice of a change in operational status on a timely basis, the Air District may require repayment of the Total Grant Funds paid, in accordance with the provisions set forth in Paragraph 15 of Attachment A.
 - 9) To neither seek nor accept any additional grant funds or incentives from any State of California agency or any local air quality district in order to implement this Project. Grantee shall be deemed in breach of this agreement if Grantee seeks or accepts such funds or incentives and as a result, the Air District may terminate this Agreement and/or disqualify Grantee from receiving any future grant funds if Grantee violates this clause.
 - 10) To obtain and maintain throughout the Project Term 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 and to comply with all insurance requirements shall be deemed a breach of this Agreement.
 - 11) Grantee shall use the Air District’s approved logo as specified below:
 - a) The logo will be displayed on the vehicle(s) identified in the Project Description (Attachment A, Paragraph 6); and
 - b) The logo will be used on any printed material intended for public consumption associated with the Project.
 - 12) To comply with all “Special Conditions” listed in Attachment A.

SECTION II

AIR DISTRICT AGREES:

- 1) To reimburse Grantee for eligible Project costs in an amount not to exceed the "Total Carl Moyer Funds Awarded," set forth in Attachment A.
- 2) To endeavor to pay the undisputed invoiced amount of the Project Cost 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 engine specified in Attachment A, confirmation that the engine(s) or equipment is operational and in service, and has reviewed and accepted evidence of the permanent destruction of any engine(s) replaced as part of the Project.
- 4) To provide timely notice to Grantee prior to conducting an audit or inspection and to provide reasonable notice prior to an audit or inspection by CARB. "Reasonable notice" shall be based in part upon the advance notice Air District has of such CARB audit or inspection.

SECTION III

AIR DISTRICT AND GRANTEE AGREE:

- 1) **Project Term:** This Agreement will commence as of the Effective Date of this Agreement and shall remain in effect until the end of the Project Term, which is defined in Paragraph 7 of Attachment A, unless it terminates earlier as provided below.
- 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 provision set forth in Paragraph 5 below.
 - b) The Air District may terminate this Agreement for breach of the Agreement by Grantee by giving a minimum of ten (10) business days written notice of delivery of such default notice to Project Sponsor and Project Sponsor does not cure such default 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, as shall be reasonably requested to carry out the provisions, intent and purpose of this Agreement.
- 4) **Indemnification:** Grantee shall indemnify and hold harmless the Air District and its officers, employees, agents, representatives, and successors-in-interest 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 this Agreement, and 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, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of 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 or first class mail, to the addressee for notice set forth in Attachment A, or to such addressees which may be specified in writing by the parties hereto. Notices are effective upon receipt. Each party shall promptly inform the other of any change of persons for receipt of notice and of any change of address.
 - 6) Contacts: All Project and Program reports and correspondence shall be directed to each party's respective contact. The person listed as Contact in Attachment A will be that party's representative and liaison between the parties to concerning their day-to-day activities under this Agreement about the Project. Each party shall promptly notify the other party of any change of Contact or Contact's address.
 - 7) Project Number: All correspondence shall reference the "Project Number" listed in Attachment A.
 - 8) Integration of Agreement: This Agreement represents the final, complete and exclusive statement of the agreement between the parties related to the Project and Grantee's implementation of the Project 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 and the Project may only be amended by mutual agreement in writing and signed by both parties, except as specifically provided for herein, prior to implementation of any modification. The Contacts for the Air District and Grantee may jointly authorize in writing any minor schedule revisions that do not extend the Project Term and Project changes that do not reduce the emission reductions associated with the Project. Any change in the Agreement or scope of the Project without prior approval by Air District shall be deemed a breach of this Agreement. Any attempt to modify this Agreement orally shall be void and of no effect.
 - 10) Independent Contractor: Grantee is an independent contractor. None of Grantee's agents, contractors, subcontractors, vendors or employees shall be construed as agents, contractors, subcontractors, vendors or employees of the Air District.
 - 11) Assignment: Grantee may not assign, sell, transfer, license, or subcontract any rights or obligations under this Agreement to a third party without the express prior written consent of the Air District. In the event of such assignment, sale, transfer, license, or subcontract by Grantee to a third party, all obligations and duties under this Agreement shall become the obligations and duties of the successor entity.
 - 12) 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 of those provisions, will not be affected.
 - 13) Effective Date: The effective date of this Agreement is the date the Executive Officer/Air Pollution Control Officer executes this Agreement.
 - 14) Eligible Costs: Only Project costs incurred after the Effective Date and prior to termination of the Project or upon Air District's verification that Grantee has completed the Project, whichever occurs first, are eligible to receive Program Grant funds.
 - 15) Cost Reduction: The Air District may prorate or otherwise reduce its contribution to the Project in the event that the "Total Project Cost" is less than the amount listed in Attachment A.

- 16) Force Majeure: Neither 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 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.
- 17) Governing Law: Any dispute that arises under or relates to this Agreement shall be governed by California law, including Health & Safety Code section 44280 et seq., its accompanying regulations and the CARB Carl Moyer Program guidelines, excluding any laws that direct the application to another jurisdiction's laws. Venue for resolution of any dispute that arises under or relates to this Agreement shall be San Francisco, California.
- 18) Emissions Testing: The Air District may conduct emissions testing, at its expense, on any engine purchased or modified as part of the Project. Testing will be limited to no more than once per year during the duration of this Agreement. Testing will be conducted according to a schedule agreed upon by both parties.
- 19) 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.
- 20) Preliminary Inspection: At the Air District's discretion, Air District staff may perform a preliminary inspection of the Project engine(s) or 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 each engine to be replaced under this Agreement is fully operational at the time of the preliminary inspection. Failure to demonstrate that the old engine(s) 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.
- 21) Post-Project Inspection: Air District staff shall perform a post-project inspection of the engine(s) or 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 engine(s) available for the post-project inspection. Grantee shall make the old engine(s) available for inspection or, at the discretion of the Air District, furnish documentation to demonstrate that the old engine(s) was destroyed. The post-project inspection may include an operational test to verify that the engine(s) or equipment is fully functional.
- 22) Compliance with Carl Moyer Program Guidelines: This Agreement is made pursuant to the Carl Moyer Program, as established in Chapter 9 of the California Health and Safety Code. All engine(s) or equipment funded under the terms of this Agreement must be certified or verified by the California Air Resources Board (CARB) to meet Carl Moyer Program requirements. Any questions or disputes the

parties may have regarding the implementation of this Agreement shall be resolved in accordance with the guidelines for the Carl Moyer Program as promulgated by the California Air Resources Board.

- 23) Enforcement: Both the Air District and the California Air Resources Board 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 Project Term as defined in Attachment A. The Air District may seek repayment of grant funds if Grantee fails to comply with the requirements set forth in Section I.10 and I.11, if Grantee takes certain actions that would reduce the air quality benefits of this Agreement as specified in Attachment A, Paragraph 15, or if Grantee otherwise fails to comply with the terms 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: _____

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: _____

«Person_Signing_Contract»
«Title_of_Person_Signing»
«Company»

ATTACHMENT A - PROJECT SPECIFIC INFORMATION

[Note: The section numbers shown in parenthesis below refer to Sections in the Grant Agreement.]

The Carl Moyer Program application submitted by Grantee dated on or before December 22, 2006 is incorporated herein by this reference.

1. **Grantee:** «Company»
2. **Project Number (Section III.7):** 08MOY«Application_»
3. **Air District Approval Date (Section III.13):** Effective Date
4. **Total Grant Funds Awarded (Sections I.3, II.1, and III.15):** Total Grant Award: «Award». The Air District will pay the Total Project Cost, less the baseline cost of «Baseline_Cost» (i.e., the engine rebuild cost), up to a maximum of «Award». Air District grant funds may only be used for direct costs to purchase and install the engines described in this Agreement.
5. **Total Project Cost (Sections I.3 and III.15):** «Total_Project_Cost»
6. **Project Description: «Project_Descriptions_Title»**
«Project_Description» The old engine(s) must be fully operational at the time of preliminary inspection by Air District staff. If the old engine(s) are not operational, the grant funding may be withdrawn by the Air District. The old engine(s) shall be destroyed upon completion of the project. Any change in engine specifications or Project Description must receive written approval in advance by the Air District.

	Old Engines	New Engines
Manufacturer / Model	«OE_Make_Model»	«NE_Make_Model»
Model Year	«OE_Model_Year»	«NE_Year»
Horsepower	«OE_Horsepower»	«NE_Horsepower»
Serial #	«Baseline_Engine_Serial_Number»	Not Available
Emissions Standard	«Baseline_Engine_Tier»	«Reduced_Engine_Tier»

7. **Project Term (Section III.1 & Section III.13):** The Project Term shall commence on the Effective Date. Unless terminated pursuant to Section III.2, this Agreement shall remain in full force and effect until «Project_Life» («Years») years after the equipment returns to service as reported to the Air District in the Project Implementation Report or until each engine operates for «Total_Hours» hours, whichever comes first. In no event shall Grantee operate the engine(s) less than three (3) years under the terms of this Agreement.
8. **Operating Parameters:** Air District has awarded this Grant based upon Grantee's agreement to operate each engine that is the subject of this Project for «Annual_Hours_of_Operation» hours each calendar year for «Project_Life» years, for a total of «Total_Hours» hours. Grantee shall operate each engine within the Air District for at least «Percent_Operation_in_District»% of each engine's total operating hours.

Pursuant to Paragraph 15 of this Attachment, Grantee may be required to repay Grant funds upon the occurrence of specified actions that would reduce the air quality benefits of this Agreement.

9. **Project Schedule:**

Within thirty (30) days from the Effective Date of this Agreement, Grantee shall submit a proposed Project Schedule to Air District for approval. The proposed Project Schedule shall include, at a minimum:

- Deadline to issue a purchase order for each engine;
- Deadline to complete work listed in the Project Description;
- Deadline to submit the Project Implementation Report for each engine, together with the invoice(s) and summary sheet(s).

Air District must approve the Project Schedule prior to Grantee commencing the work under the Project Description.

10. Notices (Section III.5): Any written notice required is to be addressed to:

<u>Grantee:</u>	<u>Air District:</u>
«Person_Signing_Contract»	Jack P. Broadbent
«Contact_Title»	Executive Officer/Air Pollution Control Officer
«Company»	Bay Area Air Quality Management District
«Street_Address»	939 Ellis Street
«City_County_State_Zip_Code»	San Francisco, CA 94109

11. Contacts (Section III.6): Contact persons for day-to-day activities of the Project are:

<u>Project Contact:</u>	<u>Air District:</u>
«Contact_Name»	Joseph Steinberger
«Contact_Title»	Principal Environmental Planner
«Company»	Bay Area Air Quality Management District
«Contact_Phone_Number_____»	(415) 749-5018
«Contact_Email»	jsteinberger@baaqmd.gov

12. Confirmation of Purchase Order: Grantee shall submit a copy of the Purchase Order to the Air District within thirty (30) days of the execution date of the Purchase Order. If Grantee fails to execute a Purchase Order by the required date and to submit a copy of the Purchase Order to the Air District within thirty (30) days of the execution date, the Air District may terminate this Agreement.

13. Project Implementation Report and Request for Payment (Section I): No later than thirty (30) days from completion of the work set forth in the Project Description, Grantee shall submit a Project Implementation Report and an invoice to request payment of the Air District grant funds. The invoice shall provide documentation for all Project costs and document the serial number for the engines purchased. If costs are incurred that are not directly related to the Project as described in Paragraph 6, all such costs must either be deleted when the Project invoice is prepared, or clearly identified as costs that are not eligible for reimbursement by the Air District. Upon verification that the Project has been completed according to the terms of this Agreement, that the engines funded under the terms of this Agreement are fully operational, and that the old engines have been destroyed, the Air District will issue payment of the grant funds and a Project Implementation Verification Letter to Grantee.

14. Annual Monitoring Reports: Grantee shall submit an annual monitoring report each calendar year for the Project Term (see Paragraph 7), in a format approved by the Air District. The monitoring report shall provide information regarding annual fuel consumption, annual hours of operation, locations where the unit described in Paragraph 6 above operated, percentage of operating hours within the boundaries of the Air District, and proof of insurance. The first annual report shall be submitted by August 1, 2008 to cover the period from July 1, 2007 through June 30, 2008. The first annual report shall include a report on the Grantee's progress in meeting milestones listed in the Project Schedule as set forth in Attachment A, Paragraph 9. Subsequent annual reports shall be submitted by August 1 of each succeeding year with the final annual monitoring report due by August 1 in the last year of the Project Term. If Grantee fails to submit annual monitoring reports in a timely fashion, the Air District shall perform a project performance

audit. Failure to submit monitoring reports may jeopardize Grantee's eligibility to apply for grant funding for any future projects.

15. Repayment of Grant Funds For Failure to Complete Project (Section I.1 & I.10): Grantee shall repay the Total Grant Funds Awarded on a prorated basis for selling, retiring, scrapping, or removing any engine from service within the boundaries of the Air District during the Project Term prior to having achieved «Total_Hours» hours of operation for that engine or for failing to achieve «Total_Hours» hours of operation by the end of the Project Term. The fraction of funds to be repaid will be determined by subtracting the number of hours of operation on the engine at the time of sale, retirement, scrapping, or removal from service from «Total_Hours» and dividing that result by «Total_Hours». Air District may waive such repayment if Grantee demonstrates that such events were beyond Grantee's reasonable control as determined by Air District.

This section will not be applicable if the engine is sold and the subsequent owner or operator of the engines signs a successor contract with the Air District assuming all obligations under this Agreement and guaranteeing that the engine will continue to be used in the geographical boundaries of the Air District, so as to provide equivalent emission reductions.

16. Special Conditions:

- A. Grantee shall ensure that the new engines installed per this Agreement are equipped with a tamper-proof, non-resetting hour meter.
- B. The Project Sponsor shall operate each engine funded under the terms of this Agreement within impacted communities throughout the Project Useful Life for a minimum of «Total_Percent_in_AB1390»% of the total operating hours per year to ensure that the Project directly reduces particulate matter (PM 2.5) in impacted communities or helps to reduce public health risks associated with such air contaminants in the impacted communities. The impacted community parameter is based on the Project Sponsor's application and is the basis for the calculation of emissions reductions achieved through the Project.

The Air District defines an impacted community as a shaded area depicted on the PM Exposure Map, a copy of which is attached to this Agreement as Attachment C.

- C. Annual Reports: The Annual Report shall document the percentage of time or mileage each engine funded under the terms of this Agreement has operated within impacted communities during the report period and that the Project Sponsor has complied with the minimum operating parameters set forth in the application and this Agreement.

ATTACHMENT B - INSURANCE REQUIREMENTS

VERIFICATION OF COVERAGE

Grantee shall provide the Air District certificates and/or other evidence of the insurance coverage required below. The Air District reserves the right to require Grantee to provide complete, certified copies of any insurance offered in compliance with these specifications. Certificates, policies and other evidence provided shall specify that the Air District shall receive 30 days advanced notice of cancellation from the insurers.

MINIMUM SCOPE OF INSURANCE

Throughout the Project Term as defined in Attachment A, Grantee shall, at its sole expense, obtain and maintain in full force and effect:

1. **Liability Insurance** with a limit of not less than \$1,000,000 per occurrence. Such insurance shall be of the type usual and customary to the business of the Grantee and to the operation of the vehicles, vessels, engines or equipment operated by the Grantee.
2. **Property Insurance** in an amount of not less than the insurable value of Grantee's vehicles, vessels, engines or equipment and covering all risks of loss, damage or destruction of such vehicles, vessels, engines or equipment.

ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII. The Air District may, at its sole discretion, waive or alter this requirement or accept self-insurance in lieu of any required policy of insurance.

ATTACHMENT C – PM Exposure Map

