

**GOODS MOVEMENT PROGRAM GRANT AGREEMENT
BETWEEN
THE BAY AREA AIR QUALITY MANAGEMENT DISTRICT
AND
NAME**

CONTRACT (PROJECT) NUMBER: ####

This grant agreement ("Agreement") is made and entered into between NAME ("Grantee") and the Bay Area Air Quality Management District ("Air District"), hereinafter referred to jointly as the "Parties."

RECITALS

- 1) The Air District has established and is implementing an incentive Program ("Program") for equipment used to move goods along the primary California trade corridors according to requirements of the Proposition 1B: Goods Movement Emission Reduction Program ("GMERP"). Under the Program, equipment will be replaced or converted or charging or fueling infrastructure will be installed to enable freight enterprises to achieve early or surplus emission reductions under the California Air Resources Board ("CARB") "Airborne Toxic Control Measure for In-Use Diesel-Fueled Transport Refrigeration Units (TRU) and TRU Generator Sets, and Facilities Where TRUs Operate" (Section 2477 of Article 8, Chapter 9 Title 13 of the California Code of Regulations).
- 2) The Program is funded with GMERP funding from CARB.
- 3) The Air District issued a call for Program projects, and the Grantee submitted an application for a Program project on or before the submittal deadline, and Grantee's application is incorporated herein by reference.
- 4) Based on the information contained in the Grantee's application the Air District has determined that the Grantee has proposed a zero-emission vehicle or equipment replacement ("Project") that meets basic application requirements of the CARB 2015 GMERP Guidelines ("Guidelines"). Final eligibility is based on a completed pre-inspection, and the verification that the Project meets all the requirements for this Program.

SECTION I

GRANTEE OBLIGATIONS

- 1) The Grantee shall implement the Project using specified Equipment ("Project Equipment"), as described more fully in Attachment A, "Project Description." The Grantee shall 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, CARB, or their designee may pursue any remedy available under the law or under the terms of this Agreement, including repayment of Grant Funds as described in Paragraph 13 of Attachment A.
- 2) Certain terms and conditions in this Agreement, including, but not limited to, Right to Claim Emission Reductions, Section III.20, and Attachment A, Paragraphs 6, 7, 8 and 12 are intended to implement Guidelines requirements. If CARB acts to revise the Guidelines requirements or other CARB requirements applicable to this Agreement, and the Air District notifies the Grantee of these revised requirements, the Grantee shall comply with the revised requirements as described in the notification from the Air District.
- 3) The Grantee understands and agrees that the Air District or its designee may conduct a pre-inspection on all equipment to be replaced pursuant to this Agreement ("Existing Equipment") to verify that all requirements of the GMERP Program regarding eligibility of Existing Equipment are met. This includes but is not limited to the year of the vehicle or engine to be replaced, operational conditions or usage, or truck weight rating (GVWR) and engine certified emission rating.

- 4) The Grantee understands that this Agreement was entered into prior to completion of all steps necessary to determine Project eligibility. Grantee further understands the Project will not be considered eligible for funding until the Air District has notified the Grantee in writing (1) that the Air District or its designee has completed the pre-inspection and eligibility review and found the Project eligible, (2) that funding is available, (3) that the contract has been executed, and (4) that the Grantee may proceed with the Project. Grantee further understands that unless otherwise approved by CARB, Projects not completed on or before April 11, 2024 are ineligible for funding and the Air District will not pay any Project Grant Funds for monies expended by the Grantee and will terminate the Project. Grantee hereby agrees that, although pre-orders of equipment for the proposed Project are not prohibited prior to Grantee's receipt of the notification from the Air District described in this Section I, Paragraph 4, any expenditure prior to the notification is at the Grantee's own risk, and any costs incurred may not be reimbursed if the Project is found not to be eligible.
- 5) The Grantee understands and agrees that CARB, or its designee, as a third-party beneficiary, has the right to audit and enforce this Agreement throughout the Term of this Agreement and until the second anniversary of the last day of the Operational Period or three years after final payment, whichever is later. The obligation to allow CARB or its designee to audit until the time specified shall survive expiration or termination of this Agreement.
- 6) The Grantee understands and agrees that the Air District will only reimburse the Grantee for eligible Project costs. Eligible Project costs are those costs that the Grantee expends that the Air District determines are verified by invoices and are allowable under the Program Guidelines and this Agreement.
- 7) The Grantee shall complete the Project and operate the Project Equipment in compliance with all applicable federal, State and local laws, and shall use licensed professionals where licensed professionals are required by law.
- 8) The Grantee shall maintain the Project Equipment, as defined and listed in Attachment A, in good working order and according to manufacturer's recommendations throughout the Operational Period.
- 9) The Grantee shall 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 Attachment A, Paragraph 4 and limited by the conditions set forth in Attachment A. Any Project cost in excess of the Total Grant Funds Awarded is the sole responsibility of the Grantee.
 - b) The Grantee shall submit, or direct their equipment dealer 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 in Attachment A, Paragraph 5, 8 and 11 and any modifications made pursuant to Section I.2, or through amendment pursuant to Section III.3, or through written waiver pursuant to Section III.15. 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. The invoice shall be accompanied by a request for the Air District or its designated agents to conduct post-inspection or shall be submitted with post-inspection documents provided by an Air District-certified vendor as required by the Program.
 - c) The Grantee shall submit the final invoice to the Air District no later than ten (10) days after the deadline set forth in the Project Schedule in Attachment A, Paragraphs 5, 8 and 11.

- d) The Grantee shall 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, proof of current insurance, and the Project Schedule, as set forth in Attachment A. The Grantee shall retain, all documents, invoices, and correspondence associated with the application, award, contract, monitoring, enforcement, and reporting requirements at least two years after Operational Period or three years after final payment, whichever is later, as defined in Attachment A. For the purposes of ongoing evaluations or auditing, records shall be readily available and accessible to the Air District, CARB, and their designated agents upon request.
- 10) The Grantee shall allow the Air District, CARB, and their designated agents to inspect the Project and to conduct reasonable financial and performance audits of the Project to enforce terms of the Agreement. Performance audits by their nature may need to occur with less notice and in shorter time frames and the Air District reserves the right to determine when and how these audits will occur. The 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, CARB and their designated agents.
- 11) The Grantee shall acknowledge the Air District and the GMERP 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.
- 12) The Grantee shall 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 and the Guidelines.
- 13) The Grantee shall monitor the Project and operational status of the Project Equipment throughout the Operational Period. The Grantee shall notify the Air District in writing of any material change in operational status of the Project Equipment funded and installed under this Agreement within thirty (30) calendar days of its occurrence. For purposes of this Agreement, a "Change in operational status" occurs whenever any Project Equipment funded under this Agreement is removed from active service, removed from goods movement service, wrecked, scrapped, sold, or transferred to another entity, before full completion of the Operational Period specified in Attachment A. If the Grantee fails to operate the Project Equipment for the full Operational Period specified in Attachment A, the Air District may require repayment of the Total Grant Funds paid, in accordance with the provisions set forth in the Paragraph 13 of Attachment A.
- 14) The Grantee shall 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, except for any funds or incentives approved by both the Air District and CARB prior to or at the time of application and described in the application.
- 15) The Grantee shall obtain and maintain the insurance coverage specified in Attachment B, "Insurance Requirements," and 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.
- 16) The Grantee shall use the Air District's approved logo as specified below:
- a) The logo will be displayed on the funded Project Equipment; and
 - b) The logo will be used on any printed material intended for public consumption associated with the Project.
- 17) The Grantee shall comply with all "Special Conditions" listed in Attachment A, Paragraph 14.

- 18) The Grantee agrees that any accident, damage, loss, or theft of Project Equipment shall be handled in accordance with Attachment C.
- 19) The Grantee understands that any delegation of its duties and obligations under this Agreement must comply with Section III.12 and agrees to comply with the requirements of Attachment D for any sale or transfer of Project Equipment.
- 20) The Grantee is hereby informed that accepting grant funds from the Program may lead to tax liability and that by signing this contract, agrees to accept this liability.
- 21) The Grantee agrees that this Agreement is binding on and will inure to the benefit of Grantee's heirs, executors, administrators, and successors in interest.
- 22) The Grantee shall require that all subcontractors comply with the terms of this Agreement.

SECTION II

AIR DISTRICT OBLIGATIONS

- 1) The Air District will reimburse the Grantee the total amount of eligible Project costs in an amount not to exceed the Total Grant Funds Awarded in Attachment A.
- 2) The Air District's reimbursement obligation under this contract is contingent upon the availability of funds from which payment for Agreement purposes can be made. No legal liability on the part of the Air District for any payment will arise until funds are made available to the Air District for this Agreement, and the Air District notifies the Grantee in writing that funds are available and that the Grantee may proceed with the Project.
- 3) The Air District will endeavor to pay the Grantee the undisputed amount of an approved invoice within forty-five (45) calendar days of the Air District's approval of the invoice as set forth in Attachment A, Paragraph 11. Before an invoice can be approved, any post-inspection required by the Program must be satisfactorily completed.
- 4) The Air District will provide timely notice to the Grantee prior to the Air District conducting an audit and will make best efforts to provide timely notice of any performance and fiscal audits of the Project to be conducted by CARB, State auditors, or their authorized representatives, which audits may include record and equipment inspections.
- 5) The Air District will provide the Grantee a copy of final State and Air District fiscal and performance audits of the Project.
- 6) The Air District will provide the Grantee with all required Air District-approved Project reporting forms.
- 7) The Air District will make its logo available to the Grantee.

SECTION III

GENERAL PROVISIONS

- 1) **Effective Date:** The effective date of this Agreement is the date that the Executive Officer/Air Pollution Control Officer executes this Agreement (Effective Date).
- 2) **Agreement Term:** The term of this Agreement begins on the Effective Date of this Agreement and will continue in full force and effect until the end of the Operational Period, which is defined in Attachment A, Paragraph 6 unless terminated or cancelled sooner in accordance with Section 7 below. The Grantee cannot commence any work on the Project in reliance on this Agreement prior to the date of notification described in Section I.4 and Section II.2.

- 3) Amendment: This Agreement may not be modified except in writing, signed by both Parties, and any attempt at oral modification of this Agreement shall be void and of no effect. Any change in Project scope shall constitute an amendment under this Agreement.
- 4) 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, 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 ten (10) business days from the date of any change.
- 5) Notices: All notices that are required under this Agreement shall be provided in the manner set forth herein, unless specified otherwise. Notice to a party shall be delivered to the attention of the person at the address listed below at Attachment A, Paragraph 9, or to such other person or persons as may hereafter be designated by that party in writing. Notice shall be in writing sent by e-mail OR delivered in person. Notices shall be deemed to have been received on the date of such transmission, provided such date was a business day and delivered prior to 4:00 p.m. PST/PDT. Otherwise, receipt of notices shall be deemed to have occurred on the following business day.
- 6) 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.
- 7) Termination:
 - a) Voluntary. Either Party may terminate this Agreement at will, and without specifying any reason, at any time prior to the Grantee's expenditure of funds for approved and eligible costs and expenses in furtherance of the Project by providing written notice of the termination. The notice of termination shall specify the effective date of termination and shall be delivered no less than thirty (30) calendar days prior to the effective date of termination. Such termination shall be without penalty or further liability between the Parties arising from or related to alleged nonperformance or breach of this Agreement. The Parties may jointly agree to terminate this Agreement after Grantee's receipt of Project Grant Funds if (1) Project Equipment is accidentally rendered inoperable or stolen, and Grantee elects to terminate the Agreement pursuant to the procedures in Attachment C, (2) Grantee sells or transfers Project Equipment pursuant to the procedures in Attachment D, and, through a novation, the Air District and the new owner substitute a new agreement for this Agreement, or (3) Grantee elects to a buy-out of this Agreement pursuant to the procedures in Attachment E.
 - b) Default. The Project shall be disqualified from grant funds if the pre-inspection by the Air District reveals a discrepancy with the application submitted by the Grantee that would affect the Project's ranking or eligibility status with respect to the Program Guidelines. The Air District may terminate this Agreement for material breach of the Agreement by the Grantee. The Air District shall deliver to the Grantee a written notice of the event of default, which shall specify that if the Grantee fails to cure the default within ten (10) business days from delivery of such notice, the Air District may terminate this Agreement at any time thereafter. If the Grantee fails to cure the default and the Air District elects to terminate the Agreement, the Air District shall provide notice to the Grantee of such election. The notice will specify the amount of Project Grant Funds to be reimbursed to the Air District, if any, which the 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 13 of Attachment A.
 - c) The Air District may, in its sole discretion, terminate this agreement without notice in the event that Grantee fails to meet the Project Schedule, as specified in Attachment A, Section 8, and that the Operational Period has not commenced in accordance with Attachment A, Section 6.

- d) The Air District shall not pay any Project Grant Funds in the event that this Agreement is terminated and that no funds have been expended by the Grantee. If the Project has been completed and the Air District has paid the Grant Funds to the Grantee, the Grantee may not terminate this Agreement, unless it reimburses the Air District the amount of Project Grant Funds due based on the repayment formula set forth in Attachment A, Paragraph 13, in which case such reimbursement along with the other remedies in the referenced Paragraph shall be available to the Air District and CARB as remedy against the Grantee for alleged breach of this Agreement.
- 8) 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.
- 9) Time of the Essence: Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing may not be construed to limit or deprive a Party of the benefits of any change in schedule made through amendment pursuant to Section III.3 or as allowed through written waiver pursuant to Section III.15 below.
- 10) Indemnification: The Grantee shall indemnify and hold harmless CARB, the Air District, 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 the Grantee of its duties under this Agreement, including its implementation of the Project and its operation of the Project Equipment, and shall require any third party who owns or operates the Project Equipment or who completes or implements the Project to indemnify and hold harmless CARB and the Air District, 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 their completion or implementation of the Project. The Grantee's indemnification obligation and its obligation to have applicable third parties indemnify the Air District shall survive expiration or termination of this Agreement.
- 11) Reasonable Consent and Approval: Except as otherwise provided in this Agreement, whenever a Party is required or permitted to give its consent or approval under this Agreement, such consent or approval shall not be unreasonably withheld or delayed.
- 12) Assignment: Neither Party shall assign, sell, license, or otherwise transfer any of its rights nor shall either Party delegate any of its duties or obligations under this Agreement to a third party without the prior written consent of the other Party. Any attempted assignment or delegation in violation of this provision is voidable at the option of the non-assigning and non-delegating Party and will entitle that Party to terminate this Agreement. In the event of such assignment, sale, transfer, license, or subcontract by the Grantee to a third party, all obligations and duties under this Agreement shall become the obligations and duties of the successor entity.
- 13) Independent Contractor: Grantee and its officers, employees, agents, and representatives shall not be considered employees or agents of the Air District or of CARB.
- 14) 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 Proposition 1B: Goods Movement Emission Reduction Program funds as part of the Project.
- 15) Waiver: No waiver of a breach, or 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, failure, right or remedy, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

- 16) 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 them, will not be affected.
- 17) Force Majeure:
- a) Neither CARB, the Air District nor the 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, inability to obtain labor or materials or reasonable substitutes for labor or materials necessary for the performance of the Project, government declared pandemics, or other causes, except financial, that are beyond the reasonable control of CARB, the Air District or the 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.
 - b) Notwithstanding Section III.17(a), if the cause of the force majeure event is due to a Party's own action or inaction, then such cause shall not excuse that Party from performance under this Contract.
 - c) Notwithstanding Section III.17(a), fire or casualty loss to Project Equipment shall not excuse Grantee's failure to perform under this Agreement. Grantee shall be responsible to repair or replace Project Equipment or to reimburse the Air District in accordance with Paragraph 13 of Attachment A.
- 18) Governing Law: This Agreement and any dispute that arises from the relationship between the Parties to this Agreement shall be governed by California law, including the CARB California Goods Movement Bond Program Guidelines, but excluding any laws that direct the application to another jurisdiction's laws. Venue for resolution of any dispute that arises from or relates to this Agreement, including mediation, shall be San Francisco, California.
- 19) Public Entities: Conflict of Interest: If the Grantee is a public entity, it 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.
- 20) Right to Claim Emission Reductions: The Air District and CARB retain the exclusive right to claim any emission reduction credits under State or federal law that might result from emissions reduced by the Project. The emissions reduced by the Project may not be used by the Grantee to comply with any local, State, or federal air pollution regulation or law, or used to fulfill the Grantee's obligations pursuant to a legal settlement. All of the emission reduction benefits of funded projects are creditable towards applicable State Implementation Plan commitments and California's greenhouse gas reduction targets.
- 21) Integration of Agreement: This Agreement, including all attachments hereto and the Grantee's application, represents the final, complete and exclusive statement of the Agreement between the Air District and the Grantee related to the Parties' rights and obligations under, and subject matter of, this Agreement 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.
- 22) Penalty for Falsifying Information: In entering into this Agreement, the Air District has relied upon the representations in Grantee's application, which is incorporated by this reference as if fully set forth herein, in determining the eligibility of Grantee. Grantee agrees that the information submitted in its application, including information about its eligibility status and Project, and the information provided to the Air

District in furtherance of this Agreement, is accurate, true, and correct. The Air District or CARB may consider submission of false information a criminal offense, punishable under penalty of perjury under the laws of California. Grantee acknowledges, understands, and accepts that by providing or making any false statements or providing false information, Grantee may be in violation of California law. All statements, responses, and information are subject to investigation and any incomplete, unclear, false, or dishonest statement, response, or information may be grounds for disqualification from receiving any existing or further funding or participating in any programs or projects using Air District or CARB-provided funds, or from doing business with the State of California or the Air District. If false information is or was provided, the Air District or CARB may require Grantee to return the Funds Awarded, may exclude Grantee from participation in future funding programs, and may pursue other remedies available under the law.

23. Authority to Sign: The persons executing this Agreement certify that they have the legal authority to bind their respective entities to all terms and conditions set forth herein.

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

Grantee

By: _____

By: _____

Philip M. Fine
Executive Officer/Air Pollution Control Officer
Bay Area Air Quality Management District

Name
Title
Business

Date: _____

Date: _____

Approved as to legal form:

By: _____

Alexander Crockett
District Counsel
Bay Area Air Quality Management District

ATTACHMENT A - PROJECT SPECIFIC INFORMATION

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

1. **Grantee:** Name
2. **Contract (Project) Number (Section III.5):** ###
3. **Air District Approval Date (Section III.1):** Effective Date
4. **Total Grant Funds Awarded (Sections I.6, II.1):** Total Grant Funds Awarded: \$\$\$\$ The Air District will pay the Project Costs up to the maximum of funding limits defined in Program Guidelines for Projects described in Project Description. Air District grant funds may only be used for direct costs to purchase or install the equipment described. Taxes, consulting services or any other cost not eligible for Program funds are ineligible costs under this Agreement.
5. **Project Description:** Replace diesel-powered equipment and install charging or fueling infrastructure – The Grantee shall replace the Existing Equipment with the Project Equipment and install charging or fueling infrastructure as shown in the table below. If the Project consists of multiple pieces of Equipment, each is individually denoted below by the Project Number followed by the Equipment Number as set forth in the table (e.g., 23GMTR1-1, 23GMTR1-2, etc.).

Table 1: Detailed Project Description							
Existing Equipment Description	Project Equipment Description	Project Equipment Total Cost	Match Funds	Eligible Costs*	Location of Operation	Annual Usage (Hours) and Emissions Reductions	Award Amount
Equipment: Type Equipment ID Year Make Model Engine: Year Make Model hp, Fuel type	Equipment: Type Equipment ID Year Make Model Engine: Year Make Model hp, Fuel type	\$ _____	\$ _____	\$ _____	_____% in the Air District _____% in CA	____Hrs ____Emissions Reductions	\$ _____
Infrastructure Description		\$ _____	\$ _____	\$ _____			\$ _____
Project cost breakdown (including technology/equipment purchase, labor for retrofit/installation, etc.).							
Total Program Funds							\$ _____

* Eligible costs include purchase and installation of electrical infrastructure or equipment. Ineligible costs include design, engineering, consulting, environmental review, legal fees, permits, licenses and associated fees, taxes, metered costs, insurance, operation, maintenance, and repair.

The table above reflects the Project as proposed by the Grantee in the grant application and as approved by the Air District. The Air District has awarded this Grant based on the Grantee's Existing Equipment, total annual usage, and the total PM reduced and total NOx reduced by the Project. Any changes to the Existing or Project Equipment, usage or other factors affecting the calculation of emissions reductions or Funds Awarded must be requested in writing by the Grantee prior to incurring costs for the Project in reliance on this Agreement, and the Air District must approve the changes in writing to the Grantee. Any changes to the Project described may require amendment of this Agreement (Section III, Paragraph 3). Changes to the Project will be approved by the Air District only if these comply with the Program Guidelines and result in:

- Grant Funds Awarded amount equal to or less than the amount described in the table above, and
- a calculated Project cost-effectiveness equal to or greater than the amount/s described in the table above, and
- the re-ranking of the adjusted Project remaining above the funding line (i.e., cutoff line) on the ranklist on which the Project was originally ranked.

The Engine for Project Equipment must meet CARB certification requirements (if applicable) for zero-emissions of the fuel type specified in Project Description. Any exceptions must be approved by the Air District prior to Grantee incurring costs for the Project and must comply with Program requirements.

Project Equipment shall be "new." For project types requiring purchase of new equipment, "new" is defined as equipment not used or previously-owned.

Grantee or its designee (e.g., equipment dealer) shall surrender Existing Equipment to a licensed dismantler that is certified by the Air District within fifteen (15) days after receiving the fully-operational Project Equipment. Prior to destruction, Existing Equipment must be in operable working condition. Existing Equipment shall be physically destroyed in such a manner to eliminate the possibility of future operation. The Engine block shall be punctured and for replacement projects, Existing Vehicle frame rails shall be cut to ensure that mobile equipment shall not be used again.

6. **Operational Period (Section II.2 & Section III.2):** The Operational Period shall commence on the date when the first Project Equipment has been successfully inspected in a post-project inspection by the Air District. **After the Project Equipment is placed into service as documented by the post-project inspection, this Agreement shall remain in full force and effect for infrastructure Projects and other Equipment Projects, for five (5) years or 10,000 hours, whichever comes first, unless terminated pursuant to Section III.7.** A post-project inspection shall be conducted by the Air District or its designee after the Project Equipment has been purchased and is ready to be placed into service. The post-project inspection shall document the date the Project Equipment was operational and verify that Project Equipment conforms to the Project Description.
7. **Operating Parameters:** Grantee shall continue usage described in the Project Description for the Operational Period. The Grantee shall operate Project Equipment in a port or intermodal railyard or freight facility within the four major CA trade corridors for 100% of each unit's total operating usage and shall operate in goods movement service the majority of the time. Project Equipment must serve the same function as Existing Equipment did before replacement. The Grantee shall properly maintain the Project Equipment in good operating condition and according to the manufacturer's recommendations.

Pursuant to Paragraph 13 of this Attachment, the Grantee may be required to repay Grant funds upon the occurrence of specified actions that would reduce the air quality benefits of this Agreement.

8. **Project Schedule:** For Project Equipment purchases, the Grantee shall submit a copy of the CARB engine Executive Order and the purchase order for the Project Equipment to the Air District no later than [DATE]. By no later than [DATE], the Project must be completed by Grantee and inspected by the Air District or its designee. Projects failing to meet this deadline may be terminated and, if terminated, the Air District will not pay any Project Grant Funds for monies expended by the Grantee. Grantee must submit its request for payment in accordance with Paragraph 11 of this Attachment.

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

<u>Grantee:</u> Name Address Email	<u>Air District:</u> Bay Area Air Quality Management District 375 Beale Street, Suite 600 San Francisco, CA 94105 Attn: Director of Strategic Incentives Project #: [project #] grants@baaqmd.gov
---	--

10. **Contacts (Section III.4):** Contact persons for day-to-day activities of the Project are:

<u>Grantee:</u> Name Address Email	<u>Air District:</u> Bay Area Air Quality Management District 375 Beale Street, Suite 600 San Francisco, CA 94105 Attn: Director of Strategic Incentives Project #: [project #] grants@baaqmd.gov
---	--

11. **Request for Payment (Section I.9 (a-d)):** The Grantee shall submit an invoice to request payment of Grant Funds within thirty (30) days of completion of the work set forth in the Project Description. . The invoice shall provide documentation for all Project costs and document the make, model, and serial number for the Equipment purchased. If costs are incurred that are not directly related to the Project as described in Paragraph 5, 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 based on completion of required inspections by the Air District or its designated agents, the Air District will issue payment of the Grant Funds to the Grantee. For Projects involving multiple pieces of Equipment, the Air District will issue progress payment/s for individual Equipment at the request of the Grantee if (1) the Project Equipment has been delivered and is operational, and (2) the post-inspection has been successfully completed. At the request of Grantee, the Air District may make direct payments to vendors or financing entities, or may make payment by two-party check to Grantee and vendors or financing entities.

12. **Annual Monitoring Reports:** The Grantee shall be responsible for annual reporting to the Air District. The Grantee shall submit annual reports for the Equipment Operational Period (see Paragraph 6), in a format approved by the Air District. The monitoring report shall include, but is not limited to (as applicable):

- Contact information (owner name, address, phone, etc.)
- Proof of current California Equipment registration
- Fleet size

- Proof of insurance
- Current usage or hour meter reading and PTO or auxiliary hour meter usage
- For charging or fueling infrastructure, the annual hours of operation or documented estimate and description of any events resulting in non-use of the Equipment for more than one week
- Certification of 100% operations within California and confirmation of Equipment operating location (e.g., home port, freight facility address)
- Summary of maintenance performed and inspections conducted
- Certification that the Project was operated in accordance with this Agreement and that all information submitted is true and accurate.

The first annual report shall be submitted by February 1 of the calendar year following Project Completion as described in Attachment A, Paragraph 8 and will report on any activity in the previous calendar year, January 1 through December 31. 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 8. Subsequent annual reports shall be submitted by February 1 of each succeeding year with the final annual monitoring report due by February 1 after the last year of the Operational Period. Project records must be retained for at least two years after contract expiration or three years after final Project payment, whichever is later. This obligation to retain records shall survive expiration or termination of this Agreement.

If the Grantee fails to submit annual monitoring reports in a timely manner, the Air District may perform a Project performance audit and impose other penalties as described in this Agreement. Failure to submit monitoring reports is considered a breach of the terms of the Grant Agreement and may jeopardize the Grantee's eligibility to apply for grant funding for any future projects.

13. Repayment of Grant Funds for Failure to Complete Project (Section I.13 III.7): Equipment Project contract non-performance includes, but is not limited to:

- Failure to meet the terms and conditions of an executed Grant Agreement, including, but not limited to Equipment operating conditions and geographic restrictions
- Equipment or Engine is non-operational or malfunctioning or damaged
- Failure to operate or maintain Equipment in accordance with manufacturer's recommendations
- Intentional destruction of Equipment
- Failure to meet established deadlines for Equipment Project completion
- Failure to allow for an electronic monitoring device, or tampering with an installed device or data
- Misuse of direct payments-to-vendors provisions
- Insufficient, incomplete, or faulty Project documentation
- Failure to provide required documentation or reports in a timely manner.

The Grantee shall repay the Total Grant Funds Awarded on a prorated basis based on the Operational Period. Additional remedies available to the Air District based on non-performance shall include:

- Termination of the contract
- A ban on the equipment owner's ability to participate in future incentive programs administered by the Air District
- Prohibiting a specific piece of equipment from participating in another incentive program administered by the Air District
- Other fiscal penalties on the Grantee based on the severity of the non-performance
- Such other remedies as are available at law or in equity.

If the failure to complete the Project results from accident rendering Project Equipment inoperable or theft of Project Equipment, repayment shall be handled as described in Attachment C.

If the failure to complete the Project results from Grantee's sale of Project Equipment without compliance with the transfer/sale requirements of Attachment D, the remedies set forth in this Paragraph 13 may be imposed.

If the Grantee expects to be unable to complete the Project and obtains Air District approval for buy-out of this Agreement pursuant to Attachment E, repayment shall be handled as described in Attachment E.

The repayment obligations above shall survive expiration or termination of this Agreement.

14. Special Conditions:

- A. The Grantee shall at any time during the contract Term agree to accept the installation and use of an on-board electronic monitoring device if requested by the Air District.
- B. The Grantee shall demonstrate proof of Equipment warranty meeting the Program requirements according to Program Guidelines.
- C. Grantee shall not use any Equipment funded by the Proposition 1B: Goods Movement Emission Reduction Program towards a fleet compliance strategy until CARB-specified dates allow. CARB will post and update information on the Goods Movement Program website: <https://ww2.arb.ca.gov/our-work/programs/proposition-1b-goods-movement-emission-reduction-program>.
- D. Funding for this Project and for Equipment included in the Project Description is contingent upon successful completion of a compliance check by CARB that verifies the Grantee's fleet complies with all CARB regulations and Program requirements. Grantee shall maintain Program eligibility, including remaining in compliance with all CARB regulations, throughout the funding process.
- E. Until the Project Equipment listed in Attachment A Paragraph 5 is placed into service, Grantee is required to maintain any Existing Equipment as required by the Program Guidelines, including but not limited to maintaining California-based registration, usage and operability, Engine and other Equipment eligibility characteristics.
- F. For Project Equipment purchases, the Grantee shall submit a copy of the CARB engine Executive Order (or equivalent) and the purchase order for the Project Equipment to the Air District no later than ninety (90) calendar days after contract execution. Documentation shall show that the Project Equipment meets all requirements of the Program and meets eligibility requirements of the Project as described in Attachment A, paragraph 5.
- G. For equipment installation projects, if the Grantee does not own the site where the Project Equipment will be installed, the Grantee has submitted a project acknowledgment letter from the owner of the site where the Project Equipment will be installed. Such Project acknowledgment letter provides the site owner's confirmation that (1) Grantee will be allowed to install and operate the Project Equipment at the site, (2) the Project Equipment will be the property of Grantee, and (3) the Air District, CARB, or their designees will be allowed to access the site, Project Equipment, and associated records for inspections, Program reviews, or fiscal audits. The Project acknowledgment letter is incorporated as part of this Agreement as Attachment F.
- H. Reinstatement of a withdrawn or cancelled project is at the sole discretion of the Air District, in accordance with the Guidelines.

ATTACHMENT B - INSURANCE AND WARRANTY 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 Term as defined in Section III of the Agreement of which this Attachment is a part, Grantee shall obtain and maintain in full force and effect the insurance as set forth below:

Liability Insurance:

Corporations and Public Entities - 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 or equipment operated by the Grantee.

Single Vehicle Owners - a limit of not less than \$750,000 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 or equipment operated by the Grantee.

At the time the Grantee submits invoices for payment to the Air District, the Grantee must demonstrate that any Equipment funded under the Agreement of which this Attachment is a part, is covered under the following property insurance, if Grantee has not already demonstrated possession of this insurance to the Air District. The property insurance for the Equipment must remain effective from the date of the invoice to the Air District to the end of the Operational Period as defined in Paragraph 6 of Attachment A of the Agreement.

Property Insurance for Vehicle and Equipment Purchase – coverage, including as applicable comprehensive and collision, in an amount of not less than the insurable value of the Project Equipment under the Agreement of which this Attachment is a part, and covering all risks of loss, damage or destruction of such vehicle(s) or equipment. The Air District encourages Grantee to name Air District as loss-payee on the insurance policy when practicable.

Workers Compensation Insurance – As applicable and as required by California law, Workers Compensation Insurance and employers liability insurance with a limit not less than \$1 million.

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.

Minimum Warranty Requirements of the Program

Grantee is required to accept and keep in-force the minimum warranties required by the Program for Project Equipment. The minimum warranty for charging or fueling equipment is three years. The Grantee is responsible for all maintenance and other actions necessary to keep the warranty in effect. The Grantee is also responsible for maintaining documentation of warranty according to Guidelines of the Program and to make available this documentation upon request for the purposes of review or audit according to Section II.4.

ATTACHMENT C – EQUIPMENT ACCIDENTALLY RENDERED INOPERABLE OR STOLEN

If the Grantee's insurance company or the Air District determines that Project Equipment has been accidentally rendered inoperable, the Grantee may replace the inoperable Equipment with equipment certified to equal or lower emission levels, and continue with the terms of this Agreement or request to close-out the terms of this Agreement with the Air District. The Grantee shall notify the Air District if the Grantee chooses to use his/her own funds to replace the Project Equipment with equipment certified to equal or lower emission levels, and continue with the terms of this Agreement. The Grantee shall be responsible for providing the Air District with updated information for the new equipment.

If the Grantee reports to the Air District that the Project Equipment has been stolen, and this is confirmed by a police report and an insurance company determination of loss due to theft, the Grantee may replace the stolen Equipment with equipment certified to equal or lower emission levels at his/her own cost, and continue with the terms of this Agreement or request to close-out the terms of this Agreement with the Air District.

The Grantee shall notify the Air District if he or she chooses to close-out this Agreement due to accident or theft. The Grantee shall provide supporting documentation (e.g., salvage title, policy report, insurance company determination, copy of insurance company reimbursement quote/check, and/or other) to the Air District exhibiting that the Equipment was accidentally rendered inoperable or stolen and remit the following amount to the Air District:

Insurance reimbursement amount (minus any lien amounts)

or

$$\text{Contract Recapture Amount} = \text{Contract Value} - \left(\text{Elapsed Equipment Project Life} \times \frac{\text{Contract Value}}{\text{Equipment Project Life}} \right)$$

Example: A Grantee receives \$50,000 in Program funding for a truck replacement project. The Grantee signs an equipment project agreement for five years (60 months). Three years and six months (42 months) after the project has been post-inspected and placed into operation, the equipment is rendered inoperable according to the above description. The Grantee may request to close-out the terms of the agreement and pay \$15,000 to the Air District.

$$\text{Contract Recapture Amount: } \$15,000 = \$50,000 - (42 \text{ months} \times (\$50,000/60 \text{ months}))$$

ATTACHMENT D – EQUIPMENT TRANSFER/SALE REQUIREMENTS

The Grantee shall be fully and legally responsible for the operation of equipment funded under this Program in compliance with the terms and conditions of this Agreement. The Grantee may not assign, sell, transfer, license, or subcontract any rights or obligations to a third party without the express prior written consent of the Air District.

Prior to completing any transfer of ownership, the Grantee shall inform the party purchasing Project Equipment of the provisions of this Agreement, and disclose the remaining Operational Period. The Grantee shall be responsible for establishing contact between the new owner and the Air District to facilitate the transfer of the contract provisions and terms. The Grantee shall provide the Air District with the purchase price of all sold Project Equipment.

The Grantee shall provide any prospective new owner with valid contact information for the Air District so the new owner can assume legal responsibility under this Agreement or enter into a new agreement with the Air District for the remainder of the Operational Period. The Grantee shall not be relieved of the legal obligation to fulfill the conditions of this Agreement unless the Grantee, the new owner, and the Air District execute a novation agreement that includes all outstanding requirements of this Agreement.

If the Grantee chooses to sell Project Equipment for any reason, or is required to replace Project Equipment with cleaner equipment prior to the end of the Operational Period, the Grantee shall notify the Air District and receive prior written consent for the transaction from the Air District. Prior to completing the replacement transaction, the Grantee shall make the new equipment available for inspection by the Air District to verify the equipment meets all Program requirements.

If Project Equipment is sold without compliance with this section, any of the remedies set forth in Attachment A, Section 13 shall be imposed.

To avoid the limits on transfer or sale set forth in this Attachment D, Grantee may elect to buy-out this Agreement pursuant to the procedures in Attachment E prior to the transfer or sale.

ATTACHMENT E – OPTIONAL PROJECT AGREEMENT BUY-OUT

The Grantee shall be fully and legally responsible for the operation of equipment funded under this Program in compliance with the conditions of this Agreement. The Grantee may not assign, sell, transfer, license, or subcontract any rights or obligations to a third party without the express prior written consent of the Air District.

If the Grantee cannot meet the obligations of this Agreement for any reason, and the procedures set forth in Attachments C or D do not apply or the Grantee does not wish to rely upon them, the Grantee may request to buy-out the remaining time on this Agreement prior to the end of the Operational Period. The Grantee shall notify the Air District and receive prior written consent for the transaction from the Air District. The Grantee shall remit the Agreement buy-out amount to the Air District, based on the remainder of the contract value and an administrative fee. The Agreement buy-out amount shall be determined according to the formula shown below.

Agreement Buy-out Formula:

$$\text{Contract Buy - Out Amount} = \left(\text{Contract Value} - \frac{\text{Elapsed Equipment Project Life} \times \text{Contract Value}}{\text{Equipment Project Life}} \right) + \text{Admin Fee}$$

The Administrative Fee shall be:

- \$5,000 for truck projects.
- \$10,000 for locomotive, commercial harbor craft, and cargo equipment projects.
- \$250,000 for ships at berth projects.

Example: An equipment owner receives \$50,000 in Program funding for a truck replacement project. The owner signs an equipment project contract for five years (60 months). Three years and six months (42 months) after the project has been post-inspected and placed into operation, the equipment owner requests to close-out the outstanding contract. The equipment owner may request to close-out the terms of the agreement and pay \$20,000 to the Air District.

$$\text{Contract Buy-out Amount: } \$20,000 = (\$50,000 - (42 \text{ months} \times (\$50,000/60 \text{ months})) + \$5,000$$