

AGREEMENT NO. XX-XX

**YOLO-SOLANO AIR QUALITY MANAGEMENT DISTRICT
CARL MOYER PROGRAM**

**Agreement Regarding the Replacement of Off-Road Mobile, Portable and Stationary
Equipment, Vehicles and Engines using Carl Moyer Program Funds**

THIS AGREEMENT (“Agreement”) is made effective **(DATE)** between the Yolo-Solano Air Quality Management District, a public agency of the State of California, (“**DISTRICT**”) and **(NAME)** (“**CONTRACTOR**”), jointly referred to as the “Parties” herein and who agree as follows.

WHEREAS California Health and Safety Code sections 44275-44299.2 authorize the California Air Resources Board (CARB) to allocate Carl Moyer Program (CMP) funds to local air quality districts to provide financial incentives to both the public and private sectors to implement eligible projects to reduce emissions from on-road, marine, locomotive, agricultural, and off-road engines; and

WHEREAS, CARB developed the Carl Moyer Program Guidelines, and the DISTRICT has developed Policies and Procedures that incorporate and implement these CARB guidelines (collectively referred to as the “Moyer Guidelines”): and

WHEREAS, CARB also develops other programs to reduce mobile source emissions which may use these Moyer Guidelines with minor modifications; and

WHEREAS, CARB has proposed to allocate a portion of these funds to the DISTRICT to implement projects pursuant to the Carl Moyer Program Guidelines; and

WHEREAS, on November 10, 2021, the DISTRICT Board of Directors approved Resolution No. 21-07, authorizing local implementation of the Carl Moyer Program, which provides incentives to companies and individuals for the purchase, repower and/or retrofit of low emission on and off-road mobile equipment, agricultural water pumps, infrastructure, and other projects; and

WHEREAS, CONTRACTOR has reviewed and is familiar with the Moyer Guidelines and other guidelines that are applicable to the funding sources used to fund equipment under this agreement; and

WHEREAS, CONTRACTOR wishes to participate in the program by purchasing and operating the vehicles or equipment described in this Agreement and represents that the purchase is not required by any local, state, and/or federal rule, regulation, memorandum, or other legally binding agreement; and

WHEREAS, CONTRACTOR has requested that the DISTRICT provide CMP monies to CONTRACTOR for those project(s) described in Exhibit A, subject to the terms and conditions set forth in this Agreement and/or set forth by law; and

WHEREAS, DISTRICT staff has carefully reviewed the described project(s) and have found them to be within the requirements of the Moyer Guidelines; and

WHEREAS, CONTRACTOR operates at least 75% of total annual hours within the DISTRICT’s boundaries; and

WHEREAS, it is therefore recommended to authorize a grant not to exceed \$XXXXXXX to the CONTRACTOR for the project(s) described in Exhibit A.

NOW THEREFORE, the Parties agree as follows:

1. **Obligations of CONTRACTOR:**

- A. Within 180 days of execution of this Agreement, CONTRACTOR shall fully and properly complete the project(s) described in Exhibit A, attached hereto and incorporated herein by this reference, subject to the terms and conditions of this Agreement, and/or as required by federal, state or local laws. CONTRACTOR understands that said project(s) shall not be required by any local, state and/or federal rule, regulation, or MOU currently in effect.
- B. Unless otherwise directed by the Air Pollution Control Officer (hereinafter referred to as the APCO), the CONTRACTOR shall include the DISTRICT's name as sponsor on all public information materials, advertising, signs and displays prepared by CONTRACTOR in conjunction with the project(s) as described in Exhibit A.
- C. Without cost to DISTRICT, CONTRACTOR shall furnish and, as necessary, obtain all labor, materials, equipment, required licenses, permits, fees, and other legal authorizations from all applicable federal, state, and local jurisdictions necessary to commence and properly complete, in a professional manner, the project(s) described in Exhibit A.
- D. Prior to DISTRICT releasing any funds under this Agreement, CONTRACTOR is subject to all the following requirements or limitations:
 - 1) The project must meet the criteria listed under Requirements in Exhibit B, attached hereto and incorporated herein by this reference.
 - 2) The Agreement must be signed and the project's milestones, as described in Exhibit C, attached hereto and incorporated herein by this reference, met before any grant funds are released to CONTRACTOR including the secure of all additional matching or co-funding funding set forth in Exhibit C of this Agreement.
 - 3) The new equipment shall not be purchased prior to the effective date of the Agreement.
 - 4) The new equipment, as described in Exhibit A, must be delivered to CONTRACTOR, fully operational. If during the project life, the odometer or hour meter fails for any reason, the devise must be repaired or replaced as soon as possible at the owner's expense.
 - 5) The old, replaced equipment must be permanently destroyed, or other methods of destruction may be allowed; however, the DISTRICT must pre-approve any alternative form of destruction, as described in Exhibit B.
 - 6) The replaced equipment may not be sold/given to another person in which the intent is to part out the equipment into individual pieces and then be sold to

another party.

- 7) CONTRACTOR shall provide a copy of (1) the invoice for new equipment described in Exhibit A, and (2) copies of all invoice documents associated with the purchase and installation of new equipment described in Exhibit A, detailing costs associated with parts, labor, and miscellaneous charges in, including a copy of the CONTRACTOR's finalized itemized paid invoice, invoices for work performed to meet Program eligibility requirements, and the finance agreement for any portion of the New Equipment purchase price to be privately financed.
 - 8) CONTRACTOR shall provide a copy of an engine warranty that verified the New Equipment meets the Program requirements.
 - 9) CONTRACTOR shall operate the vehicle/equipment described in Exhibit A within the manufacturer's specifications including all maintenance and fueling requirements. Under no circumstances shall the CONTRACTOR make modifications to or tamper with the engine, equipment emission control systems, or any recording devices on the vehicle or equipment prohibited under California Air Resources Board and United States Environmental Protection Agency's regulations.
- E. The receipts of funds and performance under this Agreement prohibits application for any form of emission reduction credit for the life of the Agreement term outlined in Section 5, Terms and Conditions.
- This prohibition includes, but is not limited to all attainment, nonattainment, criteria and non-criteria pollutants, application for emission reduction credits (ERC), mobile emission reduction credits (MERC) and/or certificates of advanced placement (CAP). This prohibition extends to credits from all air quality management or air pollution control districts.
- F. The CONTRACTOR may not sell or encumber the vehicle/equipment described in Exhibit A, without the written consent of the District.
- G. CONTRACTOR shall operate the equipment described in Exhibit A within the jurisdiction of the DISTRICT during the term of this agreement in accordance with the requirements in Exhibit B.
- G. CONTRACTOR shall follow the requirements as described in Exhibit B.
- H. CONTRACTOR understands and agrees that the DISTRICT has the authority and reserves the right to monitor and enforce the terms of this Agreement at any time.
- I. CONTRACTOR agrees to allow the DISTRICT to inspect the old and new vehicle/equipment during the term of this Agreement as set forth in Section 5.
- J. CONTRACTOR shall submit all required reports as described in Exhibit D, Reporting Requirements, attached hereto and incorporated herein by this reference.

- K. CONTRACTOR shall furnish the DISTRICT with certificate(s) of insurance as described in Exhibit E, attached hereto and incorporated herein by this reference.

2. **CONTRACTOR's Warranties:**

The CONTRACTOR warrants that:

- A. It has completed an Off-Road Equipment Replacement Application and all the information presented in the Form is complete and accurate. CONTRACTOR's Application for the Carl Moyer Program is incorporated by reference in this Agreement.
- B. Both the Old and Existing Equipment, Engine or Vehicle and the new equipment meets all the criteria established in the Program Guidelines in effect at the time this Agreement is signed, as well as the goals and objectives of the Program.
- C. The purchase of the new equipment described in Exhibit A is not required by any law or regulation with the exception of certain agricultural projects described in Health and Safety Code Section 41081(d)(2)(ii). If the CONTRACTOR is a public agency, CONTRACTOR further warrants that board policies do not require the purchase.
- D. It will not make any modifications to, or tamper with the new equipment, engine, emission control systems or any recording devices on the new equipment and will not modify engine performance (including changes in horsepower), emission characteristics, engine emission components (not including repairs with substantially similar original equipment manufacturer replacement parts), or the engine emission control function in any manner.
- E. It has read and agrees to all requirements of the Program application and guidelines, including the applicable Moyer Guidelines. The CONTRACTOR also agrees to read and meet all subsequent revisions to and advisories regarding the Moyer Guidelines.

3. **Obligations of DISTRICT:**

- A. During all or part of the project implementation, DISTRICT is responsible for monitoring the project to assure the project is operational and emission reductions are realized, which may include the following:
- 1) **Inspections and Audits:** The project funded under this Agreement may be subject to inspection by the District, or their designee at any time. Any inspection will be conducted at a reasonable time and with reasonable notice to CONTRACTOR. Inspections may include the pre-, post-, salvage, and audit inspections as identified below.
 - 2) **Pre-inspection:** DISTRICT may conduct a pre-inspection of the old or existing vehicle/equipment including the engine to verify that the old or existing vehicle/equipment qualifies for funding and that the information supplied in the CONTRACTOR's application is correct.
 - 3) **Post-inspection:** DISTRICT may conduct an inspection after the new vehicle/equipment is purchased and/or installed to verify that the new vehicle/equipment meets the program requirements.

- 4) **Salvage Inspection:** DISTRICT may conduct salvage inspections to ensure that, at the time of salvage, the old or existing vehicle/equipment engine to be destroyed, is in the same condition it was in at the pre-inspection. If the condition of the old or existing vehicle, engine or equipment has changed, DISTRICT may deny or decrease the payment authorized under Section 4A. DISTRICT may also conduct a post-salvage inspection to verify destruction or disposal of the old or existing vehicle, engine or equipment, if applicable.

B. Except for the payment obligations set forth in Section 4 of this Agreement, DISTRICT shall have no other obligations or responsibilities to CONTRACTOR under this Agreement. In addition, DISTRICT has made no representations or guarantees regarding the quality, condition, or proposed use of the low emission vehicle and engine technology funded under this Agreement or the effects of such technology on the normal operations of the CONTRACTOR.

4. **Payment:**

- A. DISTRICT shall pay CONTRACTOR an amount not to exceed \$XXXXXXX in accordance with Exhibit(s) A, B, C, and D subject to all the following limitations and requirements:
 - 1) CONTRACTOR has obtained all required licenses, permits, fees, and other legal authorizations from all applicable federal, state, and local jurisdictions necessary to commence and properly complete, in a professional manner, the project(s) described in Exhibit A.
 - 2) Labor, equipment, material, supply costs and other charges are in conformance with the requirements of Exhibit(s) A, B and C.
 - 3) No component of the monies to be paid by DISTRICT to CONTRACTOR is for grant administrative or any interest costs.
 - 4) DISTRICT shall not reimburse the CONTRACTOR for any expenses incurred by CONTRACTOR in the performance of any project(s) described in Exhibit A unless such reimbursement is specifically authorized in Exhibit B and C.
 - 5) Third Party Payment: At the time of invoicing, the CONTRACTOR may authorize DISTRICT to issue a two-party check to the vendor of the Participant's choice. If the CONTRACTOR does not request a two-party check, DISTRICT will issue a single-party check to the CONTRACTOR once proof of payment is received.
 - 6) Taxation: Payments made under this Agreement may be subject to taxation. CONTRACTOR is encouraged to consult with a tax professional regarding the taxability of payments from this program. CONTRACTOR is not entitled to payment until it submits a completed W-9 form to the DISTRICT prior to payment. The payment information will be forwarded to both the State of California and the United States Treasury, and an IRS Form 1099 will be issued to the CONTRACTOR.

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5. **Terms and Conditions:**

A. The term of this Agreement is from the date on which the Agreement is signed by CONTRACTOR and terminate on **(DATE)**. The Project Completion period is 180 days beginning with the execution of the Agreement the Parties and ending with the initial operation of the new equipment as verified by the post-inspection. The Project implementation period is the period immediately following the Project Completion period. Notwithstanding the expiration or early termination of this Agreement, DISTRICT security interest in the new equipment will continue in full force and effect until CONTRACT fully satisfies its obligations under this Agreement. In no event shall the Project Implementation/Life be less than three (3) years.

The Agreement term must extend to the end of the project life and the new vehicle/equipment must remain in service for the project life.

- B. No work shall commence prior to the Agreement start date, except at CONTRACTOR's cost and risk, and no charges are authorized until this Agreement is fully executed.
- C. The Agreement term shall follow the time frames as described in Exhibit C. Project life shall be no less than three (3) years from the time that all milestones listed in Exhibit C are met and the DISTRICT has accepted the project as complete.
- D. Notwithstanding anything to the contrary in this Agreement, DISTRICT may immediately terminate this Agreement if the DISTRICT's governing board or the APCO determines that CONTRACTOR's undertaking of the project(s) described in Exhibit A directly and significantly jeopardizes the health, safety and/or welfare of any person; and/or the projects are in violation of the requirements of the CMP or any other federal, state or local laws.
- E. DISTRICT may also terminate this Agreement if the DISTRICT does not receive all or a portion of the revenues received under CMP. If the DISTRICT terminates this Agreement under this paragraph, it will serve notice of the action on the CONTRACTOR within ten (10) business days.
- F. If this Agreement is terminated due to a breach by CONTRACTOR of its obligations and responsibilities as set forth in this Agreement, CONTRACTOR shall repay DISTRICT all grant monies paid to CONTRACTOR by DISTRICT pursuant to this Agreement within thirty (30) calendar days of the effective date of termination.
- G. This Agreement shall survive the termination of this Agreement for ten (10) years following end date as described by Section 4.A.

6. **Reimbursements:**

- A. Notwithstanding the provisions in Section 5 regarding termination, the CONTRACTOR is subject to the reimbursement requirements of this paragraph, which are in addition to, and do not offset or displace, any other recovery rights that DISTRICT may have in the event the Agreement is terminated or breached.
- B. If average usage over a three (3) year period for a contracted engine, equipment, or

vehicle is less than 70 percent of the activity required in the contract, the District may choose, but is not limited to, the options listed within this section.

- C. DISTRICT will determine whether a reimbursement is required after reviewing the annual reports required under Section 1J and Exhibit D. If the CONTRACTOR has failed to submit a report for any year, DISTRICT will assume that none of the operational requirements were met for that year.
- D. If the CONTRACTOR fails to fulfill the minimum operational requirements listed in Exhibit B by the termination date of the agreement, it may be required to refund a pro rata portion of the amount paid to CONTRACTOR by DISTRICT. The reimbursement amount will be calculated using the following formula:

$$A = I * [(O*L) - C] / (O*L)$$

A = Amount Owed to DISTRICT

I = Total Incentive Award

O = Annual Operational Requirement (miles, hours, or gallons)

L = Length of the Agreement in Years

C = Actual Operation (miles, hours, or gallons, measure consistent with "O")

- E. If the Agreement is terminated prior to the termination date listed in Section 5, DISTRICT may demand repayment of a prorated amount using the formula in Section 6D. For Agreements without minimum annual operational requirements the following formula may be applied:

$$A = I - [I*(T/L)]$$

A = Amount Owed to DISTRICT

I = Total Incentive Award

L = Length of the Agreement in Months

T = Elapsed Project Life in Months

- F. APCO of the DISTRICT may, at his or her sole discretion, relieve in full or part, the obligation to reimburse funds after considering the circumstances leading to the failure to fulfill the minimum performance requirements. CONTRACTOR must submit request for such a waiver to the DISTRICT, see DISTRICT's CMP Policies and Procedures Manual Section XVI. Project Nonperformance.

7. **Insurance:**

- A. Without limiting the obligation of CONTRACTOR to provide indemnification pursuant to Section 5 of this Agreement, CONTRACTOR shall maintain in force at all times during the term of this Agreement and any extensions or modifications thereto, insurance or self-insurance covering its operations and naming DISTRICT as additional insured in the amounts and types of insurance as stated in Insurance Requirements attached hereto as Exhibit E and incorporated herein by this reference.
- B. The APCO is authorized to execute amendments and waivers, with or without conditions, to the insurance requirements of this Agreement subject to the

concurrence of the DISTRICT's Risk Manager.

7. **Indemnification:**

CONTRACTOR shall indemnify, defend, and hold harmless the DISTRICT, employees, agents, directors and volunteers from and against all claims, losses, damages, liability, and expenses (including attorney fees) caused in whole and in part by an act or omission of the CONTRACTOR arising out of or alleged to arise out of the obligations and responsibilities imposed on the CONTRACTOR by this Agreement. In providing any defense, CONTRACTOR shall use legal counsel reasonably acceptable to the APCO and District Counsel. The indemnification requirement shall survive the termination or expiration of this Agreement.

8. **Non-discrimination in Services and Benefits:**

CONTRACTOR certifies that any service provided pursuant to this Agreement shall be without discrimination based on color, race, creed, national origin, religion, sex, age, sexual preference, or physical or mental disability in accordance with all applicable Federal and State laws and regulations and any administrative directives established by the DISTRICT Governing Board or the APCO. For the purpose of this Agreement, distinctions on the grounds of color, race, creed, national origin, religion, sex, age, sexual preference, or physical or mental disability include, but are not limited to, the following: denying a participant any service or benefit which is different, or is provided in a different manner or at a different time from that provided to other participants under this Agreement; subjecting a participant to segregation or separate treatment in any way in the enjoyment or any advantage or privilege enjoyed by others receiving any service or benefit; treating a participant differently from others in determining whether the participant has satisfied any admission, enrollment quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any service or benefit; and the assignment of times or places for the provision of services on the basis of color, race, creed, national origin, religion, sex, age, sexual preference, or physical or mental disability of the participants to be served.

9. **NOTICES:**

- A. All notices shall be deemed to have been given when made in writing and delivered or mailed to DISTRICT and CONTRACTOR at their respective addresses as follows:

To DISTRICT:
Yolo-Solano Air Quality
Management District
Attn: APCO
1947 Galileo Court, Suite 103
Davis, CA 95618

To CONTRACTOR:

- B. In lieu of written notice to the above addresses, any party may provide notices through facsimile machines and/or email provided confirmation of delivery is obtained at the time of transmission of the notices and provided the following facsimile telephone numbers and/or email addresses are used:

To DISTRICT

Fax: (530) 757-3670
Email: Notify@ysaqmd.org

To CONTRACTOR

Fax:

Email:

- C. Any party may change the address, facsimile number and/or email address to which such communications are to be given by providing the other parties with written notice of such change at least fifteen (15) calendar days prior to the effective date of the change.
- D. All notices shall be effective upon receipt and shall be deemed received through delivery if personally served or served using facsimile machines, or on the fifth (5th) day following deposit in the mail if sent by first class mail.

10. **CONFLICT OF INTEREST:**

- A. CONTRACTOR shall comply with the laws and regulations of the State of California and District regarding conflicts of interest, including, but not limited to, Article 4 of Chapter 1, Division 4, Title 1 of the California Government Code, commencing with Section 1090, and Chapter 7 of Title 9 of said Code, commencing with Section 87100 including regulations promulgated by the California Fair Political Practices Commission.
- B. CONTRACTOR covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of CONTRACTOR's obligations and responsibilities hereunder. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed. This covenant shall remain in force until CONTRACTOR completes performance of the obligations and responsibilities required of it under this Agreement.
- C. CONTRACTOR agrees that if any fact comes to its attention, which raises any question as to the applicability of any conflict of interest law or regulation, CONTRACTOR will immediately inform the DISTRICT and provide all information needed for resolution of the question.

11. **STATUS OF CONTRACTOR:**

- A. It is understood and agreed by the Parties hereto that CONTRACTOR is an independent contractor, and that no relationship of employer-employee exists between the DISTRICT and CONTRACTOR. Neither CONTRACTOR nor CONTRACTOR's assigned personnel shall be entitled to any benefits payable to employees of the DISTRICT. CONTRACTOR hereby indemnifies and holds the DISTRICT harmless from any and all claims that may be made against the DISTRICT based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement or any services provided pursuant to this Agreement.
- B. It is further understood and agreed by the Parties hereto that neither CONTRACTOR nor CONTRACTOR's assigned personnel shall have any right to act on behalf of the DISTRICT in any capacity whatsoever as an agent or to bind the DISTRICT to any obligation whatsoever.

- C. It is further understood and agreed by all the Parties hereto that CONTRACTOR must issue all forms required by federal and state laws for income and employment tax purposes, including W-2 and 941 forms, for all of CONTRACTOR's assigned personnel.

12. **AUDIT OF RECORDS:**

- A. CONTRACTOR shall keep all necessary books and records in connection with the work performed under this Agreement in order that DISTRICT or a third-party designee may properly audit all expenditures made pursuant hereto. CONTRACTOR further agrees that DISTRICT or a third-party designee shall have access, at all reasonable times, to the books, records, and accounts kept by CONTRACTOR in connection with all monies expended under this Agreement, for purpose of making an audit of all expenditures made by CONTRACTOR in the performance of this Agreement.
- B. During the period of this Agreement and continuing for five (5) years after expiration or termination of this Agreement, CONTRACTOR shall retain such records as may be necessary for an audit of the work performed, expenditures made pursuant to this Agreement and an accounting of funds for this Agreement. Upon written request, CONTRACTOR shall retain or surrender said records for such additional time as may be in progress at the time that the records retention requirements would have expired. At least thirty (30) calendar days prior to any destruction of these records at any time, CONTRACTOR shall notify the APCO. Upon such notification, the APCO shall either agree to the destruction or authorize the records to be forwarded to the DISTRICT office for further retention.

13. **ASSIGNMENT AND SUBCONTRACTS:**

The services required of CONTRACTOR under this Agreement are not assignable in whole or in part. In addition, CONTRACTOR shall not subcontract any portion of the services required of CONTRACTOR by this Agreement without the express written consent of the DISTRICT Governing Board or their designee. If any portion of the services required of CONTRACTOR is subcontracted, CONTRACTOR shall be fully responsible to the DISTRICT for all work undertaken by subcontractors.

14. **AMENDMENT:**

This Agreement may be amended only by written instrument signed by the DISTRICT and CONTRACTOR.

15. **WAIVER:**

The waiver by the DISTRICT or any of its officers, agents or employees or the failure of the DISTRICT or its officers, agents or employees to take action with respect to any right conferred by, or any breach of any obligation or responsibility of this Agreement shall not be deemed to be a waiver of such obligation or responsibility, or subsequent breach of same, or of any terms, covenants or conditions of this Agreement.

16. **APPLICABLE LAWS:**

In the performance of the services required by this Agreement, CONTRACTOR shall comply with all applicable Federal, State, and DISTRICT statutes, ordinances, regulations, directives and laws. This Agreement shall be deemed to be executed within the State of California and construed in accordance with and governed by the laws of the State of California. Any action or proceeding arising out of this Agreement shall be filed in a California State court located in Woodland,

California.

17. **DISPUTES:**

Any dispute arising under this Agreement shall be decided by the APCO, who shall put his or her decision in writing and mail a copy thereof to the address for the notice to CONTRACTOR. The decision of the APCO shall be final unless within thirty (30) days from the date such copy is mailed to CONTRACTOR; CONTRACTOR appeals the decision in writing to the DISTRICT Governing Board. Any such written appeal shall detail the reasons for the appeal and contain copies of all documentation supporting CONTRACTOR's position. In connection with any appeal proceeding under this paragraph, CONTRACTOR shall be afforded the opportunity to be heard and offer evidence in support of its appeal to the DISTRICT's Governing Board at a regular Board meeting. Pending a final decision of the dispute, CONTRACTOR shall proceed diligently with the performance of this Agreement and in accordance with the DISTRICT Governing Board's decision. The decision of the DISTRICT's Governing Board on the appeal shall be final for purposes of exhaustion of administrative remedies.

18. **STATUTORY LIMITATIONS:**

This Agreement and any payments to CONTRACTOR hereunder are subject to the provisions and limitations imposed by or based on the CMP and Moyer Guidelines. DISTRICT shall have no liability for payment of any monies that are found to be in contravention of the CMP. CONTRACTOR shall reimburse DISTRICT for any monies paid by DISTRICT to CONTRACTOR under this Agreement, which are found to be in contravention of the Carl Moyer Program.

19. **AUTHORIZED REPRESENTATIVE:**

The person executing this Agreement on behalf of CONTRACTOR affirmatively represents that he/she has the requisite legal authority to enter into this Agreement on behalf of CONTRACTOR and to bind CONTRACTOR to the terms and conditions of this Agreement. Both the person executing this Agreement on behalf of CONTRACTOR and CONTRACTOR understand that the DISTRICT is relying on this representation in entering into this Agreement.

20. **ADDITIONAL PROVISIONS**

- A. Where there is a doubt as to whether a provision of this document is a covenant or a condition, the provision shall carry the legal effect of both.
- B. Except where specifically stated otherwise in this document, the promises in this Agreement benefit the DISTRICT and CONTRACTOR only. They are not intended to, nor shall they be interpreted or implied to, give any enforcement rights to any other persons (including corporate) which might be affected by the performance or non-performance of this Agreement, nor do the Parties hereto intend to convey to anyone any "legitimate claim of entitlement" with the meaning and rights that phrase has been given by case law.

21. **ENTIRE AGREEMENT:**

This Agreement constitutes the entire agreement between the DISTRICT and CONTRACTOR and supersedes all prior negotiations, representations, or agreements, whether written or oral. In the event of a dispute between the Parties as to the language of this Agreement or the construction or meaning of any term hereof, this Agreement shall be deemed to have been drafted by the Parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against any party to this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year as indicated below.

Yolo-Solano Air Quality Management District
"DISTRICT"

By _____
Mat Ehrhardt, P.E.
Executive Director/Air Pollution Control Officer

Date _____

(NAME)
"CONTRACTOR"

By _____
(Name of Signatory)

Date _____

**EXHIBIT A
WORK STATEMENT**

Agreement Regarding the New Purchase, Replacement of Off-Road Mobile, Portable and Stationary Equipment, Vehicles and Engines using Carl Moyer Program Funds

CONTRACTOR PROJECT DESCRIPTION:

CONTRACTOR must purchase one (1) new **(Equipment Make and Model)** with a Tier 4 Final engine to replace one (1) **(Make Model Existing Equipment) (VIN #XXXXX /Engine serial #XXXX)**.

The new tractor must be delivered to the CONTRACTOR. District staff must inspect the new tractor after the tractor is delivered to the CONTRACTOR.

The old tractor or equipment must be destroyed to the satisfaction of the District. Destruction of the old tractor or equipment must be verified through a District salvage inspection and photo documentation in accordance with this agreement. This must be completed prior to payment of the agreed amount stated in this agreement by the District to the CONTRACTOR for the new tractors.

EXHIBIT B REQUIREMENTS

The following requirements must be satisfied by the CONTRACTOR:

1. The new vehicle/equipment must meet all the criteria established by the Carl Moyer Program Guidelines in effect at the time this Agreement is signed, including, but not limited to the following:
 - a. The replacement vehicle/equipment funded under this AGREEMENT shall perform the same operations as the replaced vehicle/equipment.
 - b. The replacement vehicle/equipment must operate in a manner that is consistent with the Program eligibility requirements, the goals and objectives of the Program, the terms of this Agreement, and all local, state and federal rules, laws and regulations.
 - c. The engine in the replacement vehicle/equipment must be certified to the most recent Model Year/Tier standard. Alternative Model Year/Tier standards will be subject to DISTRICT approval.
 - d. The existing and new off- road vehicle must have a gross vehicle weight rating (GVRW) of 8,501 pounds or greater. The existing and new off-road equipment must have an engine with 25 horsepower or greater. (For projects in which the actual engine horsepower cannot be determined based on the engine label, manual, and engine records, the engine horsepower can be estimated by the following formula: Engine hp = Power Take Off hp X 120 percent).
 - e. The replacement off-road equipment must have an engine horsepower rating that does not exceed 125% of the horsepower of the replaced equipment. Any engine with a horsepower above this range must be pre-approved by the DISTRICT prior to purchase.
 - f. The replacement vehicle/equipment must have an operating odometer/hour meter.
 - g. Prior to purchasing new vehicle/equipment, engine certifications must be verified with an ARB Executive Order for that engine by the DISTRICT.

 2. Prior to the release of funds by the DISTRICT, CONTRACTOR must satisfy the requirements listed below:
 - a. Purchase the new vehicle/piece of equipment as specified in EXHIBIT A, WORK STATEMENT.
 - b. All projects must meet the current minimum Carl Moyer Program Cost Effectiveness limit.
 - c. Only the minimum attachments normally sold with the original vehicle/equipment, as determined by the DISTRICT are eligible for reimbursement on the new vehicle/piece of equipment.
 - d. The existing (old) vehicle/piece of equipment, also listed in EXHIBIT A, must be permanently destroyed with at least a 3" hole cut, drilled, punched, or hammered into the engine block and the frame of the equipment cut in a way as to render it permanently inoperable. The old vehicle/piece of equipment must be disposed of in accordance with the Carl Moyer Program Guidelines. Other methods of destruction may be allowable; however, the DISTRICT must pre-approve any alternative form of destruction.
 - e. Copies of invoices relative to the purchase of equipment funded through this Agreement shall be submitted to the DISTRICT in an original format and include the Agreement Number. Along with submitting a Claim Form for reimbursement, the CONTRACTOR will provide copies of all paid receipts and proof of in-kind support (when applicable) associated with the project funded under this Agreement.
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- f. Submit a Claim Form to the DISTRICT, for the amount of requested grant funds for reimbursement.
 - g. Submit a W-9 IRS form to the DISTRICT, with the signed Agreement.
 - h. Documents as described in Exhibit E, Insurance Requirements must be provided to the DISTRICT.
3. The replacement vehicle/equipment must have an operating odometer/hour meter. The odometer/hour meter shall be maintained for continuous operation during the life of the project.
4. The replacement vehicle/equipment must operate within the District at least 75% of the total operation.
5. The replaced vehicle/equipment may not be sold/given to another person in which the intent is to part out the equipment into individual pieces and then be sold to another party.
6. The equipment associated with this PROJECT must be made available for inspection by the DISTRICT staff in accordance with Section 3.A.
7. Record annual miles/hours of operation of the new vehicle/equipment and provide information to DISTRICT as stated in Exhibit D, Reporting Requirements.
8. Display on the equipment that partial funding was made available from the DISTRICT. Graphics used for this purpose will be provided by DISTRICT Staff.
9. Notify the DISTRICT in writing if installation and/or implementation of this PROJECT will deviate from the scope of work outlined in the CONTRACTOR'S application. This notification will be submitted at least 30 days in advance of any request for payment and must be approved by the APCO prior to the disbursement of any funds.

Minimum Operational Requirements:

The replacement equipment listed in Exhibit A, must operate a minimum of (XX) hours/miles during the Project Implementation/Life in order to achieve the emission reductions required for the project. Annual usage should be proportionate during each year of Project Implementation. District staff will review annual reporting and if average usage over a three (3) year period for a contracted engine, equipment, or vehicle is less than 70 percent of the activity required in the contract may result in a reimbursement request pursuant to Section 6 of the Agreement.

Records and Records Retention

This Agreement requires the CONTRACTOR to maintain records and retain the records after the term of the Agreement. For replacement project, records shall be retained for no less than ten (10) years following equipment delivery.

**EXHIBIT C
COST SCHEDULE AND PROJECT MILESTONES**

Budget: Amount to be Awarded by YSAQMD \$XXXXXX
 Co-funding (including in-kind) \$XXXXXX
 Total Project Amount: \$XXXXXX

Project Timeline: Proposed Start Date: (Date)
 Proposed Project Completion End Date: (Date)
 Project Implementation/Life End Date: (Date)

Total Budget Breakdown:

	DISTRICT Grant	Other Match/ Co-Funding	Total
Capital	\$XXXXX	\$XXXXXX	\$XXXXXX
Grant Administration	\$XXXXXXXXXX	\$XXXXX	\$XXXXXX
Totals	\$XXXXX	\$XXXXXX	\$XXXXXX

Project Milestones

Projected Timeline: New Vehicle/Equipment Delivery Date: _____
 Replaced Equipment Proof of Destruction Date: _____
 New Equipment In-Use Date: _____

AGREEMENT must be fully executed and the project must be completed and accepted by the District prior to release of grant funds in accordance with Exhibits A and B. Copies of the information below must be submitted to the District once the new equipment is delivered, and prior to the release of DISTRICT funds.

New Vehicle/Equipment Purchased as applicable

- | | |
|--|--|
| Copy of Final Invoice and Warranty from Vender | Engine Manufacturer |
| Copy of Title | Engine Model Year/Tier including CARB Executive Order |
| Purchase Order | Vehicle GVWR/Engine Horsepower |
| Date of Vehicle/Equipment Delivery | Executive Order |
| Vehicle/Equipment Identification Number | Fuel Type: Hybrid-Electric, CNG, Diesel, Electric, Propane, Other. |
| Vehicle/Equipment Manufacturer | Claim Form |
| Model | W-9 IRS Form |
| Vehicle/Equipment Model Year | Certificate(s) of Insurance |
| Engine Serial Number | |

Payment:

Payment(s) shall be made by the DISTRICT to the CONTRACTOR within thirty (30) days after all requirements are met as outlined in the Agreement.

EXHIBIT D
REPORTING REQUIREMENTS

Annual Monitoring Report:

CONTRACTOR shall provide the DISTRICT annual Monitoring Reports as described below:

The CONTRACTOR must submit an Annual Monitoring Report following Project Implementation each year on March 31st for the duration of the Project Implementation/Life.

CONTRACTOR is required to track annual usage for the new vehicle or equipment, in terms of hours or miles per year, provide location and submit annual updates to districts while under contract. If during the project life, the hour meter fails for any reason, the hour meter must be repaired or replaced as soon as possible at the owner's expense.

If annual usage is more than 30 percent below the Agreement's minimum operational requirement, CONTRACTOR shall describe any conditions that significantly impacted project usage. If necessary, CONTRACTOR may request a waiver from the DISTRICT per Chapter 3, Section BB(4)(E) of the 2017 Carl Moyer Program Guidelines Program.

Report Content: The project annual report shall be submitted using the DISTRICT's Annual Monitoring Report form, CONTRACTOR will be required to update and/or provide the following information:

- A. Grantee name, address, and telephone number.
- B. Information needed to uniquely identify the project engine, vehicle, or equipment, such as engine make, model, horsepower, serial number, fleet identification number and project number.
- C. Operation location(s) and estimated percentage of time the vehicle or equipment has been operated in the air district since the previous annual report.
- D. Readings of the usage device (e.g., hour meter, odometer, or electronic monitoring unit) and a photograph of the usage device.
- E. For projects with usage requirements, if usage is more than 30 percent below the minimum operational requirement, describe any conditions that are likely to have affected project usage, such as weather, permits, or major maintenance.

Failure to Comply: If CONTRACTOR failures to comply with reporting requirements, DISTRICT may require repayment in accordance with Section 6, or, at its sole discretion institute on-site monitoring and inspection measures.

Report if Equipment Becomes Non-operational: CONTRACTOR must notify DISTRICT within seven (7) days if the new equipment funded under Agreement becomes non-operational.

EXHIBIT E
INSURANCE REQUIREMENTS

1. During the term of this Agreement, CONTRACTOR shall at all times maintain, at its expense, the following coverages and requirements. The comprehensive general liability insurance shall include broad form property damage insurance.
 - A. Minimum Coverages (as applicable) - Insurance coverage shall be with limits not less than the following:
 - 1) Comprehensive General Liability – \$1,000,000/occurrence and \$2,000,000/aggregate
 - 2) Automobile Liability – \$1,000,000/occurrence (general) and \$500,000/occurrence (property) [include coverage for Hired and Non-owned vehicles.]
 - 3) Workers’ Compensation – Statutory Limits/Employers’ Liability - \$1,000,000/accident for bodily injury or disease (If no employees, this requirement automatically does not apply.)
 - B. The DISTRICT, its officers, agents, employees and volunteers shall be named as additional insured on all but the workers’ compensation.
 - 1) The Additional Insured coverage under the CONTRACTOR’s policy shall be “primary and non-contributory” and will not seek contribution from the DISTRICT’s or self-insurance and shall be at least as broad as CG 20 01 04 13.
 - 2) The limits of Insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess Insurance. Any umbrella or excess Insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and noncontributory basis for the benefit of the DISTRICT (if agreed to in a written contract or agreement) before the DISTRICT’s self-insurance shall be called upon to protect it as a named insured.
 - C. Said policies shall remain in force through the life of this Agreement and, shall be payable on a “per occurrence” basis unless the DISTRICT’s Risk Manager specifically consents in writing to a “claims made” basis. For all “claims made” coverage, in the event that the CONTRACTOR changes insurance carriers CONTRACTOR shall purchase “tail” coverage covering the term of this Agreement and not less than three years thereafter. Proof of such “tail” coverage shall be required at any time that the CONTRACTOR changes to a new carrier prior to receipt of any payments due.
 - D. The CONTRACTOR shall declare all aggregate limits on the coverage before commencing performance of this Agreement, and the DISTRICT’s Risk Manager reserves the right to require higher aggregate limits to ensure that the coverage limits required for this Agreement as set forth above are available throughout the performance of this Agreement.
 - E. Any deductibles or self-insured retentions must be declared to and are subject to the approval of the DISTRICT’S Risk Manager. All self-insured retentions (SIR) must be disclosed to Risk Management for approval and shall not reduce the limits of liability. Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied either by the named Insured or DISTRICT.

- F. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the DISTRICT (ten (10) days for delinquent insurance premium payments).
 - G. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise approved by the DISTRICT's Risk Manager.
 - H. The policies shall cover all activities of CONTRACTOR, its officers, employees, agents and volunteers arising out of or in connection with this Agreement.
 - I. For any claims relating to this Agreement, the CONTRACTOR 's insurance coverage shall be primary, including as respects the DISTRICT, its officers, agents, employees and volunteers. Any insurance maintained by the DISTRICT shall apply in excess of, and not contribute with, insurance provided by CONTRACTOR's liability insurance policy.
 - J. The insurer shall waive all rights of subrogation against the DISTRICT, its officers, employees, agents and volunteers.
2. Prior to commencing services pursuant to this Agreement, CONTRACTOR shall furnish the DISTRICT with original endorsements reflecting coverage required by this Agreement. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received by, and are subject to the approval of, the DISTRICT before work commences. Upon DISTRICT's request, Contractor shall provide complete, certified copies of all required insurance policies, including endorsements reflecting the coverage required by these specifications.
3. During the term of this Agreement, CONTRACTOR shall furnish the DISTRICT with original endorsements reflecting renewals, changes in insurance companies and any other documents reflecting the maintenance of the required coverage throughout the entire term of this Agreement. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. Upon DISTRICT's request, CONTRACTOR shall provide complete, certified copies of all required insurance policies, including endorsements reflecting the coverage required by these specifications. DISTRICT reserves the right to obtain a full-certified copy of any Insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.
4. CONTRACTOR agrees to include with all Subcontractors in their subcontract the same requirements and provisions of this agreement including the indemnity and Insurance requirements to the extent they apply to the scope of the Subcontractor's work. Subcontractors hired by CONTRACTOR agree to be bound to CONTRACTOR and the DISTRICT in the same manner and to the same extent as CONTRACTOR is bound to the DISTRICT under the Contract Documents. Subcontractor further agrees to include these same provisions with any Sub-subcontractor. A copy of the Owner Contract Document Indemnity and Insurance provisions will be furnished to the Subcontractor upon request. The CONTRACTOR shall require all Subcontractors to provide a valid certificate of insurance and the required endorsements included in the agreement prior to commencement of any work and the CONTRACTOR will provide proof of compliance to the DISTRICT.
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5. CONTRACTOR shall maintain insurance as required by this contract to the fullest amount allowed by law and shall maintain insurance for a minimum of five years following the completion of this project. In the event CONTRACTOR fails to obtain or maintain completed operations coverage as required by this agreement, the DISTRICT at its sole discretion may purchase the coverage required and the cost will be paid by CONTRACTOR.