

BAAQMD

VW Mitigation Trust Fund Program Grant Agreement

VOLKSWAGEN MITIGATION TRUST FUND
ZERO EMISSION FREIGHT AND MARINE PROGRAM GRANT AGREEMENT
BETWEEN
THE BAY AREA AIR QUALITY MANAGEMENT DISTRICT

AND

SAN DIEGO UNIFIED PORT DISTRICT

VWFM-21-0162

This Volkswagen Mitigation Trust Fund Zero-Emission Freight and Marine Program grant agreement (“Agreement”) is made and entered into between San Diego Unified Port District, hereinafter referred to as “Grantee,” and the Bay Area Air Quality Management District, hereinafter referred to as the “Grantor” or “Air District,” hereinafter collectively referred to as the “Parties.”

RECITALS

- 1) The Volkswagen (“VW”) Environmental Mitigation Trust (“Trust”) was established as part of a settlement reached between the United States District Court for the Northern District of California and Volkswagen for VW’s use of illegal defeat devices in certain 2.0-liter and 3.0-liter diesel vehicles. Through the Trust, funding will be awarded to Eligible Mitigation Actions as prescribed in the settlement’s Consent Decree that are intended to fully mitigate the excess NOx emissions caused by VW’s use of illegal emissions testing defeat devices in subject diesel vehicles.
- 2) The California Air Resources Board (“CARB”) is the designated Lead Agency acting on the State’s behalf as beneficiary to implement California’s share of Trust funds totaling approximately \$423 million.
- 3) On May 25, 2018, CARB approved the Beneficiary Mitigation Plan for California, which contains the eligible mitigation actions (or project funding categories) that will be funded from the State’s allocation of the VW Trust, describes the goals and basic requirements for each category, and designated the Air District as the statewide administrator for the Zero-Emission Freight and Marine Projects category.
- 4) On March 13, 2019, CARB and the Air District executed a grant agreement (Grant Number: G18-VWM-02), pursuant to which Air District will administer VW Trust funds statewide for the Zero-Emission Freight and Marine Projects category.
- 5) The Zero-Emission Freight and Marine Program (“Program”) provides funding for the replacement of airport ground support equipment (“GSE”), forklifts, port cargo handling equipment (“CHE”), the repower of marine engines to zero-emissions, and installation of shore power at berths in Regulated California Waters. On May 12, 2021, following CARB’s approval, the Air District first released the Program Guidance for Zero-Emission Freight and Marine Program (“Program Guidance”) to describe requirements, applicant and project eligibility, application process, evaluation criteria, reporting, inspection, implementation and operation, and other requirements and subsequently updated the Program Guidance on the program website at <https://www.californiavwtrust.org/zero-freight-marine/> on May 28, 2021. The Grantee has affirmed it is an “eligible applicant” under the Program and has affirmed that it shall comply with all Program requirements set forth in the Zero-Emission Freight and Marine Program Solicitation (“Program Guidance”), which are incorporated herein and made a part hereof by this reference as if fully set forth herein.

BAAQMD**VW Mitigation Trust Fund Program Grant Agreement**

- 6) The Air District confirmed the eligibility for Program funding of the project component(s) proposed by Grantee based on cost-effectiveness, the Program Guidance, and the information provided in the Grantee's application ("Project").

In entering into this Agreement, the Air District has relied upon the Grantee's promises made and Grantee's representations in Grantee's complete project application in determining the eligibility of the Grantee at contract execution date, which are incorporated herein and made a part hereof by this reference as if fully set forth herein.

- 7) This Agreement is made pursuant to, and in accordance with, the requirements of the Program Guidelines. Any questions or disputes the Parties may have regarding the implementation of this Agreement shall be resolved in accordance with the Program Guidelines, attached hereto and incorporated herein as Exhibit E. 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 AGREES:**

- 1) To implement the Project in accordance with the terms and conditions of this Agreement and all attachments hereto. Failure to do so will be deemed a breach of this Agreement, and the Air District may terminate this Agreement pursuant to the termination provisions herein.
- 2) To maintain each piece of new, funded equipment ("Project Equipment") in good working order and in accordance with the manufacturer's specifications throughout the Project Equipment Operational Term (which is defined in Section III.1 below). No tampering or modification of the Project Equipment is allowed.

Project Equipment must be new and not have been previously owned or registered in any State, not have been purchased prior to Grant Agreement execution, and not be a converted or aftermarket product. Any equipment that has been converted by modifying the existing engine with aftermarket parts or equipment to create a zero-emission equipment are not eligible, unless the entire completed zero-emission equipment has received CARB approval.

- 3) To complete the Project in accordance with the payment and reporting conditions identified in Attachment A. The Air District's funding obligation under this Agreement is limited to reimbursement of Eligible Costs, the amount of which shall not exceed the Total Grant Funds Awarded specified in Attachment A Paragraph 5. Any Project costs that exceed Funds Awarded per project component, as allocated in in Attachment A Table 1, are the sole responsibility of the Grantee.
- 4) To allow the staff and third-party partners of the Air District to inspect the Project Equipment and to conduct financial and performance audits of the Project. Grantee agrees that the Air District, CARB, or their respective designated representatives shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Project. Grantee further agrees to cooperate fully with such inspections and audits, including providing on a timely basis copies of any Project records related to performance of this Agreement requested by the Air District or CARB.
- 5) To acknowledge the Air District and the Trust Program as a funding source for the Project in any related media events, articles, news releases or other publicity materials. Grantee must obtain prior written approval by the Air District in order to disseminate any report or other document describing the Program, the Project, or this Agreement.

BAAQMD

VW Mitigation Trust Fund Program Grant Agreement

- 6) To assure that all funds received under this Agreement are expended only in accordance with the requirements of the Program, this Agreement, and all applicable provisions of law and regulations.
- 7) If applicable, to permanently remove from service and destroy any equipment replaced as part of the Project (“Baseline Equipment”) by the deadline specified in Attachment A Paragraph 9, and to provide documentation to support destruction of the Baseline Equipment. Failure to permanently destroy the Baseline Equipment shall be deemed a breach of this Agreement.
- 8) To monitor the operational status of each piece of Project Equipment throughout the Project Equipment Operational Period. Grantee will notify the Air District in writing of any change in operational status of any Project Equipment funded and installed under this Agreement within thirty (30) calendar days of its occurrence. For purposes of this Agreement, a “change in operational status” occurs whenever any Project Equipment is removed from active service, relocated outside the boundaries of the census track designated in the application, wrecked, scrapped, sold, or transferred to another entity before full completion of the Project Equipment Operational Period. If Grantee fails to provide the required written notice of a change in operational status on a timely basis, Grantee is subject to the repayment requirements set forth in Paragraph 15 of Attachment A.
- 9) To neither seek nor accept other private or public financial incentives for the Project without prior approval from the Air District. If Grantee seeks or accepts such funds or incentives without prior Air District approval, the Air District may terminate this Agreement for breach, which may also disqualify Grantee from participating in future Air District incentive programs.
- 10) To obtain and maintain the insurance coverage specified in “Insurance Requirements,” Attachment B, and to comply with all insurance requirements set forth therein, including the provision of documentation of said insurance coverage. Failure to obtain and maintain the insurance coverage or to comply with all insurance requirements shall be deemed a breach of this Agreement.
- 11) **Reserved.**
- 12) To maintain and retain the Project records for at least three years from the date of the final Project payment or three complete annual reporting cycles following the date of the final Project payment, whichever period end date is later. An annual reporting cycle is a full calendar year.
- 13) To comply with all “Special Conditions,” set forth in Attachment A.
- 14) Nondiscrimination: During the performance of this Grant Agreement, the Grantee and its contractors shall not unlawfully discriminate against, harass, or allow harassment against any employee or applicant for employment because of sex, race, religious creed, color, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, sexual orientation, medical condition, marital status, age (over 40) or allow denial of family-care leave, medical-care leave, or pregnancy-disability leave. The Grantee and its contractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. The Grantee and its contractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, title 2, section 10000 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a-f), set forth in Chapter 5 of Division 4 of title 2 of the California Code of Regulations, are incorporated into this Grant Agreement by reference and made a part hereof as if set forth in full. The Grantee and its contractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- 15) To be bound by all the provisions of State Labor Code Section 1771 regarding prevailing wages paid to workers employed on public works and to provide confirmation of compliance if requested.

BAAQMD

VW Mitigation Trust Fund Program Grant Agreement

- 16) To accept tax liability associated with accepting grant funds.

SECTION II

AIR DISTRICT AGREES:

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

SECTION III

AIR DISTRICT AND GRANTEE AGREE:

- 1) Agreement Term, Project Equipment Operational Period, and Project Term: The term of this Agreement ("Agreement Term") begins on the Effective Date and shall remain in effect until the conclusion of all Project Equipment Operational Periods, as set forth in Attachment A unless this Agreement is terminated earlier. A Project Equipment Operational Period begins when the piece of Project Equipment has been successfully inspected by the Air District and concludes upon the satisfaction of the usage requirement and project life requirement for that piece of Project Equipment. The Project Term begins at the start of the earliest Project Equipment Operational Period and ends at the conclusion of all Project Equipment Operational Periods. The Project Equipment Operational Period for each piece of Project Equipment is set forth in Table 1 of Attachment A. In no event shall Grantee own and operate a piece of Project Equipment for less than three years from the date the new unit is put into service, or the minimum project term specified in the Program Guidelines, whichever is longer.
- 2) Termination:
 - a) Either party may terminate this Agreement at will, and without specifying any reason, at any time prior to the Air District's transfer of Project funds by notifying the other party in writing. The notice of termination shall specify the effective date of termination, which shall be no less than thirty (30) calendar days from the date of delivery of such notice. Notice shall be delivered in accordance with the Notice provisions set forth in Paragraph 5 below.
 - b) The Air District may terminate this Agreement for breach of the Agreement by Grantee by giving Grantee a minimum of ten (10) business days written notice of such breach and the opportunity to cure the breach within that period of time. The notice will specify the amount of Project Grant Funds to be reimbursed to the Air District, if any, which Grantee shall reimburse within thirty (30)

days of the effective date of termination. The Air District shall calculate the reimbursement based on the repayment formula set forth in Paragraph 15 of Attachment A.

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

San Diego Unified Port District
3165 Pacific Highway
San Diego, CA 92101

Air Pollution Control Officer
c/o Chengfeng Wang, Strategic Incentives Division
Bay Area Air Quality Management District
375 Beale Street, Suite 600
San Francisco, CA 94105
- 6) Contacts: The Contact for the Grantee shall be the person named in the Project application, which shall also list the Contact's address, telephone number, fax number and e-mail address. The Contact shall be the liaison to the Air District pertaining to implementation of this Agreement and shall be the contact for information about the Project. The Grantee shall notify the Air District of a change of the Contact's name or contact information in writing no later than thirty (30) days from the date of any change. The Contact for the Air District shall be the person named in the Air District's project application form. The Air District shall notify the Grantee of a change of the Contact's name or contact information in writing no later than thirty (30) days from the date of any change.

BAAQMD

VW Mitigation Trust Fund Program Grant Agreement

- 7) Project Number: All correspondence shall reference this Agreement, which is the same as the “Project Application Number.”
- 8) Integration of Agreement: This Agreement represents the final, complete, and exclusive statement of the agreement between the Grantee and the Air District and supersedes all prior and contemporaneous understandings and agreements of the Parties. No Party has been induced to enter into this Agreement nor is any party relying upon, any representation or warranty outside those expressly set forth herein.
- 9) Amendment: This Agreement may not be modified except in writing, signed by both Parties hereto, and any attempt to modify this Agreement orally shall be void and of no effect. Any change in Project scope shall constitute an amendment under this Agreement.
- 10) Independent Contractor: Grantee is an independent contractor. None of Grantee's officers, employees, agents, contractors, subcontractors, or vendors are, nor shall they be considered, officers, employees, agents, contractors, subcontractors, or vendors of the Air District.
- 11) Assignment and Leasing: Grantee may not assign, sell, transfer, license, or subcontract or otherwise transfer any rights or obligations under this Agreement without the prior written consent of the Air District. Any lease or rental entity that leases or rents Project Equipment maintains responsibility for all recordkeeping and reporting requirements and must disclose the recordkeeping and reporting requirements to the renter or lessee. The lease or rental agreement must be a minimum of 36 months, ensure that all required annual activity reports are submitted, and include requirements that the Project Equipment operates in California as required by this Agreement. Grantee must provide the Air District all requested information including lease or rental agreements within ten business days of written request.
- 12) Waiver: No waiver of a breach, of failure of any condition, or of any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, regardless of similarity, nor shall any waiver constitute a continuing waiver unless the writing so specifies. Further, the failure of a party to enforce performance by the other party of any term, covenant or condition of this Agreement and the failure of a party to exercise any rights or remedies hereunder shall not be deemed a waiver or relinquishment by that party to enforce future performance of any such terms, covenants or conditions, or to exercise any future rights or remedies.
- 13) Severability: If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions thereof shall not be affected.
- 14) Effective Date: The effective date of this Agreement is the date the Air District's Executive Officer/Air Pollution Control Officer executes this Agreement.
- 15) Eligible Costs: Only the actual Project costs described in Attachment A Paragraph 5 and that are incurred after the Effective Date and prior to termination of the Agreement or upon Air District's verification that Grantee has completed the Project, whichever occurs first, are eligible for reimbursement with Program Grant funds (“Eligible Costs”).
- 16) Cost Reduction: In the event that the “Total Project Cost” is less than the amount listed in Attachment A, the Air District shall recalculate its contribution to the Project in accordance with the provisions of Paragraph 4 of Attachment A.
- 17) Force Majeure: Neither CARB, the Air District nor Grantee shall be liable for or deemed to be in default for any delay or failure in performance under this Agreement or interruption of services resulting, directly or indirectly, from acts of God, enemy or hostile governmental action, civil commotion, strikes, lockouts, labor disputes, fire or other casualty, judicial orders, governmental controls, regulations or restrictions, inability to obtain labor or materials or reasonable substitutes for labor or materials necessary for

performance of the services, or other causes, except financial, that are beyond the reasonable control of CARB, the Air District or Grantee, for a period of time equal to the period of such force majeure event, provided that the party failing to perform notifies the other party within fifteen (15) calendar days of discovery of the force majeure event, and provided further that that party takes all reasonable action to mitigate the damages resulting from the failure to perform. Notwithstanding the above, if the cause of the force majeure event is due to party's own action or inaction, then such cause shall not excuse that party from performance under this Contract. Notwithstanding the above, fire or casualty loss to Project Equipment shall not excuse Grantee's to perform under this Agreement. Grantee shall be responsible to repair or replace Project Equipment or to reimburse the Air District in accordance with Attachment A Paragraph 15.

- 18) Governing Law: Any dispute that arises under or relates to this Agreement shall be governed by law, excluding any laws that direct the application of another jurisdiction's laws. Venue for resolution of any dispute that arises under or relates to this Agreement shall be San Francisco, California.
- 19) Emissions Testing: The Air District may conduct emissions testing, at its expense, on any Project Equipment that is purchased or modified as part of the Project, including a vehicle or vessel. Testing for a piece of Project Equipment will be limited to no more than once per calendar year during the Project Equipment Operational Period. Testing will be conducted according to a schedule agreed upon by both Parties.
- 20) Emission Reductions: The Air District retains the exclusive right to claim any NOx emission reduction credits under State or Federal law that might result from emissions reduced by the Project implemented pursuant to this Agreement. The emissions reduced by the Project may not be used by Grantee to comply with any local, State, or Federal air pollution regulation or law, or used to fulfill Grantee's obligations arising out of any order, settlement contract, memorandum of understanding, or other binding legal document.
- 21) Preliminary Inspection: Air District or its designee reserves the right to perform a preliminary inspection of any Baseline Equipment, as applicable, prior to implementation of the Project. Grantee shall facilitate and cooperate with any Air District inspection. Grantee must demonstrate to the Air District that any Baseline Equipment to be replaced under this Agreement is fully operational at the time of the preliminary inspection. Grantee must also facilitate the Air District in obtaining and confirming equipment information (e.g., model year, serial numbers, power rating) at the time of inspection. Failure to demonstrate that the applicable Baseline Equipment to be replaced is operational at the time of the preliminary inspection shall be deemed a breach of this Agreement and the Air District may terminate the Agreement per Section III.7.
- 22) Post-Project Inspection: Air District or its designee reserves the right to perform a post-project inspection of the Project Equipment funded under the terms of this Agreement to verify that the Project has been implemented according to the terms of this Agreement. Grantee shall facilitate the Air District inspection and make the new Project Equipment available for the post-project inspection, which may include a test to verify that the Project Equipment is fully operational and pre-installation interim inspection/s of engines, tanks or similar funded components whose tags or labels will not be visible after installation, to document that Project Equipment complies with Program requirements. Post-project inspection will include verification of the destruction of any replaced Baseline Equipment, as applicable. Grantee must contact the Air District to arrange post-project inspection and should provide at least two business days advanced notice for scheduling.
- 23) Compliance with Program Guidelines: The Grantee agrees to implement the Project in accordance with all requirements set forth in the Program Guidelines. Any questions or disputes the Parties may have regarding the implementation of this Agreement shall be resolved in accordance with the applicable Program Guidelines.

- 24) **Enforcement:** Both the Air District and CARB have the authority to inspect the Project, enforce the terms of this Agreement, and pursue repayment of grant funds for noncompliance with the terms and conditions of this Agreement or applicable state laws or regulations throughout the Agreement Term. The following circumstances are the bases under which the Air District seeks repayment of grant funds: Grantee's failure to comply with the terms of this Agreement, including the requirements set forth in Section I; Grantee's failure to implement the Project in compliance with Program Guidelines; as set forth in Attachment A and Grantee's failure to comply with requirements set forth in Attachment A, which could reduce the air quality benefits of this Project.
- 25) **Public Documents:** To the extent not otherwise prohibited by law, and to the extent required by the California Act (Government Code section 6250 et seq.), the Grantee will place in the public domain any software, written document or other product developed with Program funds as part of the Project.
- 26) **Survival of Terms:** Any terms of this Agreement that by their nature extend beyond the term (or termination) of this Agreement shall remain in effect until fulfilled and shall apply to both Parties' respective successors and assigns.
- 27) **Public Entities Conflict of Interest:** The Grantee warrants and represents that its public officials, including its officers and employees in their official capacity, presently have no interest and agrees that its public officials, including its officers and employees in their official capacity, will not acquire any interest which would represent a conflict of interest under California Government Code sections 1090 et seq. and 87100 et seq. during the performance of this Agreement.

BAAQMDVW Mitigation Trust Fund Program Grant Agreement

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

SIGNATURES:

Bay Area Air Quality Management District

By: _____

Date: _____

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

Approved as to legal form:

By: _____

Adan Schwartz
Acting District Counsel
Bay Area Air Quality Management District

Grantee

By: _____

Date: _____

Robert DeAngelas
C.E.O.
San Diego Unified Port District

ATTACHMENT A - PROJECT SPECIFIC INFORMATION

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

- 1. Grantee:** San Diego Unified Port District
- 2. Grant Number (Section III.7):** VWFM-21-0162
- 3. Air District Approval Date (Section III.14):** The Effective Date of this Agreement.
- 4. Total Grant Funds Awarded (Sections I.3, II.1, and III.15):** \$2,500,000

The Air District will pay the awarded Eligible Costs of the Project Equipment, less any amount from an Air District approved co-funding source as adjusted and set forth in Table 1 below. Payment shall not exceed the permitted Funds Awarded for the individual Project Equipment as specified in Table 1 below. In no event shall the Total Grant Funds Awarded for all Project Equipment exceed \$2,500,000. Funds Awarded may only be used to cover Eligible Costs as described in this Agreement.

- 5. Total Project Cost (Sections I.3 and III.15):** A detailed breakdown of project costs and Project Equipment information is shown in Table 1:

Berth Number	New Equipment or Eligible Cost Item Description*	Eligible Costs	Maximum % of Funding of Eligible Costs	Minimum Usage & Equipment Operational Period	% Operation in CA (% DAC or LIC**)	Funds Awarded
Berth 24-10/11	Shore power station with one shore power outlet 1000kW+ the National City Marine Terminal	\$6,600,000	100%	850 MWh electricity delivered to unregulated vessels, and 3 years	100% (100%)	\$2,500,000

Total award: \$2,500,000

* As an alternative to Project Equipment, Grantee may propose installation of equipment that will result in the same or better emissions reductions and meet or exceed the operational parameters as Project Equipment and specified in Attachment A of this Agreement ("Equivalent Equipment"). Installation of Equivalent Equipment in lieu of Project Equipment requires advanced written approval from the Air District.

** Percentage of usage occurring in impacted communities during the Project Equipment Operational Period.

6. Project Description: Shore Power Installation

Table 1 provides the details of the grid-based shore side power installation at Berths 24-10/11 at the National City Marine Terminal. Awarded projects will consist of the purchase and installation of the major infrastructure listed in Table 1, as well as all associated related and ancillary infrastructure, and is expected to operate in accordance with the Project details listed in Table 1. Any change in Project Equipment specifications or Project Description must receive written approval in advance by the Air District.

For shore power installation projects, the electricity delivered must be for vessels that are unregulated by the CARB At-Berth Regulation. If vessel visits do not provide surplus NOx emission reductions, the grant funding may be reduced or withdrawn by the Air District.

7. **Project Term (Section III.1):** Table 1 lists the required usage and Project Equipment Operational Period for each piece of Project Equipment. The “Total Usage” listed in Table 1 represents the minimum number of hours or ship visits (as applicable) the Project Equipment is to operate during the Project Equipment Operational Period which represents the minimum number of years over which the Project Equipment is to operate under this Agreement. The Project Equipment Operational Period begins when the Project Equipment has been confirmed operational by the Air District. The Project Term concludes upon the satisfaction of the usage and Project Equipment Operational Period requirements for each piece of Project Equipment and upon confirmation by the Air District that all Project requirements have been met.
8. **Operating Parameters:** Air District has awarded this Grant based upon Grantee’s agreement to operate the Project Equipment for the usage identified in Table 1 of this Attachment. Grantee shall operate Project Equipment within California and the Air District as specified in Table 1. In no event shall Grantee operate the Project Equipment less than the minimum project term specified in the Program Guidelines. Pursuant to Paragraph 15 of this Attachment, Grantee may be required to repay Grant funds if unable to satisfy the Project’s usage and project life requirements identified in Table 1.
9. **Project Schedule:** By no later than **January 31, 2024**, the shore power must be installed by Grantee and put into service and inspected by the Air District. Inspections may occur at any time prior to Grant Agreement execution and throughout the contract term. If applicable, Grantee must scrap the Baseline Equipment within 60 days of when the Project Equipment becomes operational. New equipment for heavy-lift forklifts, CHE, and GSE must be placed into service and operational within 18 months of a Notice to Proceed. Copies of purchase order must be submitted within 3 months of a Notice to Proceed.
10. **Reserved.**
11. **Reserved.**
12. **Reserved.**
13. **Project Implementation Report and Request for Payment (Section I):** No later than ninety (90) days from when the Project Equipment becomes operational, Grantee shall submit a Project Implementation Report, an IRS W-9 form, and a project invoice to request payment of the Eligible Costs of Project Equipment. The Project Implementation Report shall:
 - Provide documentation for all Eligible Costs, document the equipment serial number(s), and include a description of the Project Equipment purchased.
 - Demonstrate the costs are Eligible Costs and have been expended in compliance with the Project Description and, the Project Schedule.
 - Itemize the total funds requested for this reimbursement, which shall include an itemization of payments to vendors, consultants, and contractors.
 - 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.
 - Be submitted with a summary sheet that specifies the Project Number. If costs are incurred that are not directly related to the Project as described in Paragraph 5 of this Attachment, 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.

- Include proof of warranty as required by the Program Guidelines for the specific project option and type of Project Equipment described in Table 1 of this attachment.

14. Annual Monitoring Reports: The annual reporting cycle is a calendar year January 1 through December 31. Grantee shall submit an annual monitoring report each calendar year for the Project Term in a format approved and provided by the Air District. The monitoring report shall include, but is not limited to, the following information:

- Port, terminal, and berth name(s)/identifier(s) for the shore power system (System).
- Date and location of the System installation (operation).
- Total number of ship visits to the berth
- Total power usage (Megawatt-hours) dispensed to vessels that are not required to use shore power by CARB's At-Berth regulation using the System.
- Each use of the System (System), inclusive of the following information:
 - Vessel type, name, and Lloyd's numbers
 - Date and times that System initially plugged into vessel and subsequently unplugged from vessel
 - Total hours the System was connected to a vessel
 - Power usage (kilowatt-hour) supplied to the vessel to displace use of auxiliary engine(s).
- Date, time, and description of any equipment failure of the System that affected the ability of the vessel to control auxiliary engine emissions.
- Summary of System maintenance, source testing, and inspections conducted.
- Signed certification statement that all Project Equipment was operated in accordance with this Agreement and that all information submitted is true and accurate.
- A copy of any new or updated Terminal Plans submitted to CARB for reporting purposes under applicable shore power regulation(s)
- Other information as requested by the Air District.

The first annual report shall be submitted by February 1 of the year following execution of the Grant Agreement to cover the period from the start of the Project Equipment Operational Period through December 31 of the prior year. 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 Paragraph 9 of this Attachment. Subsequent annual reports shall be submitted by February 1st of each succeeding year with the final annual monitoring report due by February 1st following the last year of the Project Term. If Grantee fails to submit annual monitoring reports in a timely fashion, the Air District shall perform a project performance audit. Failure to submit monitoring reports could be considered a breach of this Agreement and may jeopardize Grantee's eligibility to participate in future incentive and grant programs.

15. Repayment of Grant Funds for Failure to Complete Project: Grantee shall repay the Total Grant Funds Awarded on a prorated basis for selling, retiring, scrapping, or removing any piece of Project Equipment from service within the boundaries of the Air District prior to completing its Project Equipment Operational Period. The fraction of funds to be repaid will be determined by subtracting the usage of the Project Equipment at the time of sale, retirement, scrapping, or removal from service from total usage pursuant to Paragraph 7 of this Attachment and dividing that result by the total usage. At its sole discretion, the Air District may waive repayment if it determines, that Grantee's failure to complete the Project was due to events beyond Grantee's reasonable control.

The Air District may waive repayment if, prior to sale of Project Equipment, the Grantee facilitates transfer of this Agreement by the Air District to the subsequent owner who agrees to assume all obligations under

this Agreement and specifically agrees to continue operation of the Project Equipment in order to provide equivalent emission reductions in accordance with Program Guidelines.

16. Special Conditions:

- A.** The Grantee shall operate the Project Equipment funded within disadvantaged or low-income communities throughout the Project Equipment Operational Period for a minimum of the percent usage specified in Table 1 of Attachment A to ensure that the Project directly reduces emissions in disadvantaged or low-income communities and helps to reduce public health risks associated with such air contaminants in the disadvantaged or low-income communities. The disadvantaged or low-income community parameter is based on the application materials submitted by the Grantee and is the basis for the calculation of emissions reductions achieved through the Project. A disadvantaged or low-income community is defined by the California Environmental Protection Agency as the top 25% most impacted census tracts in CalEnviroScreen (current version is 3.0), as depicted on the map in Attachment C of this Agreement.
- B.** Operation in California: For the duration of the Project Equipment Operational Period, Grantee shall operate the Project Equipment within California, and if applicable in the disadvantaged or low-income communities as specified in the “% Operation” column in Table 1 of Attachment A. Grantee must demonstrate, as part of the Annual Monitoring Reports, that the percentages of operation within California as identified in Table 1 have been achieved for each year of operation. Failure to do so may result in repayment of grant funds.
- C.** In addition to Paragraph 13 of Attachment A, the grantee must demonstrate with documented evidence that the project is expected to meet or has already met the electricity usage requirements (MWh delivered) specified in Table 1 of Attachment A to vessels not required to use shore power by CARB’s At-Berth regulation. The Air District may elect to issue partial payment(s) based on electricity already delivered or expected to be delivered at the Air District’s discretion.

If the actual amount of electricity delivered to vessels not required to use shore power by CARB’s At-Berth regulation is less than the amount specified in Table 1 of Attachment A, the maximum allowable reimbursement payment shall be pro-rated based on the following formula:

$$\text{Maximum Reimbursement (\$)} = \frac{\text{Original Funds Awarded (\$)} \times \text{Electricity Delivered (\# MWh)}}{\text{Electricity Required to be Delivered (\# MWh)}}$$

*Must be delivered to vessels not subject to California At-Berth Regulation

- D.** The installed shore power system must comply with international shore power design standards (ISO/IEC/IEEE 80005-1-2012 High Voltage Shore Connection Systems or the IEC/PAS 80005-3:2014 Low Voltage Shore Connection Systems).
- E. Reserved.**
- F.** 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.
- G.** As required by the Program Guidelines, Grantee shall ensure that Project Equipment shall be equipped with a tamper-proof, non-resetting hour or energy meter (as applicable). If this meter fails during the Project Equipment Operational Period, the Grantee must notify the Air District and take action to repair or replace the meter within thirty (30) days.

H. Reserved.

I. Reserved.

J. Reserved.

K. By signing this Section K, the Contact, on behalf of Grantee, certifies that the following statements are true statements and affirmations of the Grantee to the best of its knowledge:

1. I certify that the fleet, engine(s) and equipment are in compliance with all applicable Federal, State, and local air quality rules and regulations as of the Effective Date of this Agreement.
2. I understand that I must maintain compliance with all applicable Federal, State, and local air quality rules and regulations for the Project Term.
3. I have disclosed to the Air District all other all private or public financial incentives applied for or used for this Project.
4. I will not apply for, or receive other private or public financial incentives for the Project without prior approval from the Air District, including any sources that become available after the Effective Date of this Agreement. The receipt of additional public funding for the Project Equipment could result in a reduction of the Total Grant Funds Awarded.
5. I understand that the following requirements apply to additional private or public financial incentives used to support this Project.
 - a. Grantee must meet all criteria associated with each funding source used to fund the Project.
 - b. The total of all incentives for the Project must not exceed the total project costs.
 - c. Grantees that are not public entities must satisfy the match requirements using only eligible sources of funding, as laid out in the Program Guidance or as confirmed in writing by the Air District.
 - d. All NOx emission reductions achieved through this Project and paid for with Project Funds and Grantee matching funds [or funds comprising Total Grant Funds Awarded] will be credited as reductions to the VW Program. Matching funds may not lead to double counting of NOx benefits. Other emission reductions, such as greenhouse gas emissions, may be claimed by the other programs used in co-funding this project.

Signature: _____

Name (printed): _____

Title: _____ Date: _____

L. Security Interest: Grantee hereby grants the Air District a security interest in the Project Equipment that has been purchased partially or entirely with funding provided by the Air District pursuant to this Agreement and any amendments thereto. Grantee acknowledges and agrees that the Air District shall have all lien rights as a secured creditor on the Project Equipment throughout the Term of the Agreement. Grantee agrees and authorizes the Air District to file a Uniform Commercial Code (UCC) financing statement (Form UCC-1) or similar security instrument to secure its interests in the Project Equipment. In the event the Project Equipment is repossessed or Grantee files for dissolution or bankruptcy protection, Grantee shall notify the Air District within ten (10) business days of the repossession or court filing.

M. Reserved.

N. Reserved.

- O. Projects that include fueling or charging infrastructure Project Equipment:
- Grantee must either own the land on which the Project infrastructure is installed or control the land through a long-term lease, easement or other legal arrangement for the duration of the Project Term.
 - Work must be performed by a licensed contractor and infrastructure equipment and parts must be new. Remanufactured or refurbished equipment and parts are not eligible.
 - The fueling and charging infrastructure equipment must be in operating condition for the duration of the Project Term.
 - Grantee shall operate annually for the Projected Annual Usage and number of Hours or Visits specified in Table 1 of Attachment A.
 - Non-publicly accessible infrastructure equipment must operate without disruption and Grantee shall report any downtime to the Air District within 15 days of equipment malfunction outlining specified actions to return Project Equipment to service.
 - Fueling and charging infrastructure equipment must include an operational fuel/energy meter throughout the Project Term. If this meter fails for any reason, the fuel/energy meter must be repaired or replaced as soon as possible.
 - The Air District will review all invoiced costs submitted by Grantee upon Project completion to identify actual eligible and ineligible costs.
 - **Eligible fueling and charging infrastructure costs include:** Design and engineering, equipment (e.g., charging/fueling units, materials), installation directly related to the construction of the infrastructure, meter/data loggers.
 - **Ineligible fueling and charging infrastructure costs include:** Existing station/infrastructure upgrades, fuel and energy costs, non-essential equipment or hardware, operation cost (e.g., operational fees, maintenance, repairs, improvements, spare parts), insurance, data collection and reporting, Grantee administrative costs, travel/lodging, employee training and salaries, legal fees, real estate property purchases/leases, performance bond costs, construction management, storm water plan costs, security costs, testing and soil sampling, hazardous materials, including permitting, handling and disposal.

BAAQMD

VW Mitigation Trust Fund Program Grant Agreement

ATTACHMENT B - INSURANCE REQUIREMENTS

Grantee to initial next to each checked box indicating they have read their project insurance requirements.

Verification of Coverage:

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

Minimum Scope of Insurance

Throughout the Project Term as defined in 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:

☒ **1. Liability Insurance:**

Initial

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, vessels, engines or equipment operated by the Grantee.

Single Equipment 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, vessels, engines or equipment operated by the Grantee.

At the time the Grantee submits invoices for payment to the Air District, the Grantee must demonstrate that each piece of Project Equipment purchased under this Agreement, of which this is an Attachment, 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 each piece of Project Equipment must remain effective from the date of the invoice to the Air District to the end of the Project Equipment Operational Period as defined in Section III of the Agreement.

☒ **2. Property Insurance:**

Initial

in an amount of not less than the insurable value of Grantee's vehicles, vessels, engines or equipment funded under the Agreement of which this Attachment is a part, and initial covering all risks of loss, damage or destruction of such vehicles, vessels, engines or equipment.

☒ **3. Workers Compensation Insurance**

Initial

as required by California law 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.

ATTACHMENT C – DISADVANTAGED OR LOW-INCOME COMMUNITIES FOR GRANT FUNDING