

## RESOLUTION NO. 19-31

**Resolution Of The City Council Of The City Of Emeryville To Accept Funding From The Bay Area Air Quality Management District (BAAQMD) Commercial Lawn And Garden Exchange Program To Replace Gasoline-Burning Landscaping Tools With Equivalent Electric Tools At No Cost To The City And Appropriate Said Funding To Grant Fund 254**

**WHEREAS**, the City of Emeryville has adopted a Climate Action Plan 2.0 with goals to reduce greenhouse gas (GHG) emissions by 40% by 2030 and 80% by 2050; and

**WHEREAS**, the City of Emeryville has opted to purchase 100% GHG-free electricity through East Bay Community Energy for municipal uses; and

**WHEREAS**, gasoline-powered landscaping equipment contributes to GHG emissions, while equivalent cordless, electric- and battery-powered, zero-emission landscaping equipment does not; and

**WHEREAS**, cordless, electric- and battery-powered, zero-emission landscaping equipment also reduces noise exposure to workers and noise pollution within the community; and

**WHEREAS**, the Bay Area Air Quality Management District has, through a Settlement Agreement with ConocoPhillips Company related to GHG emissions, offered an incentive program to provide grants to reduce GHGs and other emissions; and

**WHEREAS**, the Bay Area Air Quality Management District has offered \$10,937.89 in grant funding to the City of Emeryville through this incentive program to purchase six cordless, electric- and battery-powered zero-emission landscaping tools and 18 batteries for the equipment, with the added requirement that the replaced gasoline-powered equipment be scrapped; now, therefore, be it


**RESOLVED**, by the City Council of the City of Emeryville to accept this funding and appropriate it to the Grant Fund 254.

**ADOPTED**, by the City Council of the City of Emeryville at a regular meeting held Tuesday, April 2, 2019, by the following vote:

AYES:	<u>5</u>	Mayor Medina, Vice Mayor Patz, and Council Members Bauters, Donahue, and Martinez
NOES:	<u>0</u>	
ABSTAIN:	<u>0</u>	
ABSENT:	<u>0</u>	

  
\_\_\_\_\_  
MAYOR

ATTEST:

  
\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
CITY ATTORNEY

COMMERCIAL LAWN AND GARDEN EQUIPMENT EXCHANGE PROGRAM  
GRANT AGREEMENT  
BETWEEN  
THE BAY AREA AIR QUALITY MANAGEMENT DISTRICT  
AND  
CITY OF EMERYVILLE

CLG2-13

This Commercial Lawn and Garden Equipment Exchange Program grant agreement ("Agreement") is made and entered into between City of Emeryville, 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 Commercial Lawn and Garden Equipment Exchange Program ("Program"), is an incentive program to provide grants in order to reduce greenhouse gas (GHG) emissions and emissions of oxides of nitrogen, particulate matter (PM10), and reactive organic compounds near the Conoco Phillips refinery from sources of air pollution attributable to commercial gasoline and diesel-fueled internal combustion engine lawn and garden equipment (such as commercial lawn mowers, leaf blowers, sweepers, chainsaws, line trimmers, and hedge trimmers), by replacing Equipment with commercial cordless, battery-electric, zero-emission lawn and garden equipment.
- 2) The California Attorney General (the "Attorney General"), entered a Settlement Agreement dated September 10, 2007 (the "Settlement Agreement") with ConocoPhillips Company ("Conoco") to resolve a dispute regarding the environmental impact of GHG emissions (primarily carbon dioxide) from the Clean Fuels Expansion Project at the refinery in Rodeo, California. The settlement Agreement requires Conoco to make a payment by June 1, 2009, to a carbon offset fund created by the Air District.
- 3) The Air District and the Attorney General entered into a Memorandum of Understanding (MOU) to implement a GHG reduction grant program using the funds received from Conoco, which MOU was executed on November 24, 2008 and amended on February 4, 2016.
- 4) The Air District has determined that the replacement of internal combustion lawn and garden ("CLG") equipment with electric-powered equipment will achieve permanent reductions in GHG emissions that are verifiable and quantifiable.
- 5) The Air District has determined that the replacement of internal combustion CLG equipment with electric-powered equipment will also achieve substantial co-benefits from reduced emissions of criteria pollutants and toxic air contaminants.
- 6) This Agreement is made pursuant and in accordance with the requirements of the Program. All Project Equipment funded under the terms of this Agreement must be verified as such. Any questions or disputes the Parties may have regarding the implementation of this Agreement shall be resolved in accordance with the guidelines for the 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 the Project Equipment according to the manufacturer's specifications throughout the Project Term, which is set forth in Section III.1 below. No tampering or modification of the Project Equipment is allowed.
- 3) To complete the Project in accordance with the payment and reporting conditions identified in Attachment A. The Air District's funding obligation under this Agreement is limited to reimbursement of Eligible Costs, the amount of which shall not exceed the Total Grant Funds Awarded, specified in Paragraph 4 of Attachment A. Any Project cost overruns are the sole responsibility of the Grantee.
- 4) To allow the staff and third-party representatives of the Air District and the Attorney General to inspect the Replacement Equipment and Project Equipment and to conduct financial and performance audits of the 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 the Attorney General.
- 5) To acknowledge the Air District and the Attorney General as a funding source for the Project in any related media events, articles, news releases or other publicity materials. Grantee must obtain prior written approval by the Air District in order to disseminate any report or other document describing the Program, the Project, or this Agreement.
- 6) To assure that all funds received under this Agreement are expended only in accordance with the requirements of the Program, this Agreement, and all applicable provisions of law and regulations.
- 7) To permanently destroy and remove from service any Replacement Equipment and to provide documentation to support destruction of the Replacement Equipment. Failure to permanently destroy the Replacement Equipment shall be deemed a breach of this Agreement.
- 8) To monitor the operational status of the Project Equipment throughout the Project Term. Grantee will notify the Air District in writing of any change in operational status of the Project Equipment funded and installed under this Agreement within 30 calendar days of its occurrence. For purposes of this Agreement, a "change in operational status" occurs whenever any Project Equipment is removed from active service, relocated outside the boundaries of Alameda County, wrecked, scrapped, sold, or transferred to another entity, before full completion of the Project Term. If Grantee fails to provide the required written notice of a change in operational status on a timely basis, the Grantee is subject to the repayment requirements set forth in Paragraph 15 of Attachment A.
- 9) To neither seek nor accept any additional grant funds or incentives from any State or Federal agency or any local air quality district in order to implement this Project. Grantee shall be deemed in breach of this Agreement if Grantee seeks or accepts such funds or incentives and as a result, the Air District may terminate this Agreement for breach.
- 10) To obtain and maintain throughout the Project Term the insurance coverage specified in "Insurance Requirements," Attachment B, and to comply with all insurance requirements set forth therein, including the provision of documentation of said insurance coverage. Failure to obtain and maintain the insurance coverage or to comply with all insurance requirements shall be deemed a breach of this Agreement.
- 11) Grantee shall use the Air District's approved logo as specified below:
  - a) The logo shall be displayed on the Project Equipment identified in the Project Description (Attachment A, Paragraph 6);
  - b) The logo shall be used on any printed material intended for public consumption associated with the Project; and



- 12) To maintain and retain the Project records for at least two years after contract expiration or three years after final project payment, whichever is later.
- 13) To comply with all “Special Conditions,” set forth in Attachment A, if any.

## SECTION II

## AIR DISTRICT AGREES:

- 1) To reimburse Grantee for Eligible Costs in an amount not to exceed the “Total Grant Funds Awarded,” set forth in Attachment A.
- 2) To endeavor to pay the undisputed invoiced amount of the Eligible Costs within thirty (30) calendar days of receipt of the invoice.
- 3) To deliver the payment following the Air District’s verification that Grantee has completed the Project. Verification by Air District may include physical inspection of any Replacement Equipment and of the Project Equipment specified in Attachment A, confirmation that the Project Equipment is operational and in service, and has reviewed and accepted evidence of the permanent destruction of any Replacement Equipment replaced as part of the Project.
- 4) To provide reasonable notice to Grantee prior to the Air District or the Attorney General conducting an inspection or audit of the Project. What constitutes “reasonable notice” shall be based in part upon any prior notice from the Attorney General received by the Air District of such Attorney General audit or inspection.

## SECTION III

## AIR DISTRICT AND GRANTEE AGREE:

- 1) Project Term: This Agreement will commence as of the Effective Date of this Agreement and shall remain in effect until the conclusion of all Project Equipment Operational Periods (“Project Term”), unless it terminates earlier as provided below. A Project Equipment’s Operational Period concludes upon the satisfaction of that Project Equipment’s project life requirement. Each Project Equipment’ Operational Period is set forth in Paragraph 7 of Attachment A. In no event shall Grantee operate any Project Equipment less than five (5) years under the terms of this Agreement.
- 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 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 or its officers, agents, employees, representatives and successors in interest of Grantee's duties and obligations under this Agreement, and arising out of removal, destruction and replacement of the Replacement Equipment and the operation of the Project Equipment that is the subject of this Agreement. .
- 5) Notices: Any notice required under this Agreement shall be in writing and made by personal delivery service, first class mail, or certified mail (return receipt requested) to the addressee for notice set forth below, or to such addressees which may be specified in writing by the Parties. Notices are effective upon receipt. Each Party shall promptly inform the other of any changes of addressees and any changes of address.

City Manager  
City of Emeryville  
1333 Park Avenue  
Emeryville, CA 94608

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

- 6) Contacts: The Contact for the Grantee shall be the person named in the Project application, which shall also list the Contact's address, telephone number, fax number and email address. The Contact shall be the liaison to the Air District pertaining to implementation of this Agreement and shall be the contact for information about the Project. The Grantee shall notify the Air District of a change of the Contact's name or contact information in writing no later than thirty (30) days from the date of any change. The Contact for the Air District shall be the person named in the Air District's project application form. The Air District shall notify the Grantee of a change of the Contact's name or contact information in writing no later than thirty (30) days from the date of any change.
- 7) Project Number: All correspondence shall reference this Agreement, which is the same as the "Project Application Number."
- 8) Integration of Agreement: This Agreement represents the final, complete, and exclusive statement of the agreement between the Grantee and the Air District and supersedes all prior and other contemporaneous understandings and agreements of the Parties pertaining to this Agreement. Neither Party has been induced to enter into this Agreement by, nor is either party relying upon any representation or warranty outside those expressly set forth herein.
- 9) Amendment: This Agreement may not be modified except in writing, signed by both Parties hereto, and any attempt to modify this Agreement orally shall be void and of no effect. Any change in Project scope shall constitute an amendment under this Agreement.
- 10) Independent Contractor: Grantee is an independent contractor. None of Grantee's officers, employees, agents, contractors, subcontractors, or vendors are, nor shall they be considered, officers, employees, agents, contractors, subcontractors, or vendors of the Air District.
- 11) Assignment: Grantee may not assign, sell, transfer, license, or subcontract or otherwise transfer any rights or obligations under this Agreement without the prior written consent of the Air District.

- 12) Waiver: No waiver of a breach, of failure of any condition, or of any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the Party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, whether or not similar, 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 for the Project Equipment that a) are listed in Paragraph 5 of Attachment A and b) are incurred after the Effective Date and prior to termination of the Project or upon Air District's verification that Grantee has completed the Project, whichever occurs first, are eligible 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 the Air District nor Grantee shall be liable for or deemed to be in default for any delay or failure in performance under this Agreement or interruption of services resulting, directly or indirectly, from acts of God, enemy or hostile governmental action, civil commotion, strikes, lockouts, labor disputes, fire or other casualty, judicial orders, governmental controls, regulations or restrictions, inability to obtain labor or materials or reasonable substitutes for labor or materials necessary for performance of the services, or other causes, except financial, that are beyond the reasonable control of the Air District or Grantee, for a period of time equal to the period of such force majeure event, provided that the party failing to perform notifies the other party within fifteen (15) calendar days of discovery of the force majeure event, and provided further that that party takes all reasonable action to mitigate the damages resulting from the failure to perform. Notwithstanding the above, if the cause of the force majeure event is due to party's own action or inaction, then such cause shall not excuse that party from performance under this Contract.
- 18) Governing Law: Any dispute that arises under or relates to this Agreement shall be governed by California law. 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. Testing will be limited to no more than once per year during the duration of this Agreement. Testing will be conducted according to a schedule agreed upon by both Parties.
- 20) Emission Reductions: The Air District retains the exclusive right to claim any emission reduction credits under state or federal law that might result from emissions reduced by the Project implemented pursuant to this Agreement. The emissions reduced by the Project may not be used by Grantee to comply with any local, state, or federal air pollution regulation or law, or used to fulfill Grantee's obligations arising out of any order, settlement contract, memorandum of understanding, or other binding legal document.
- 21) Preliminary Inspection: At the Air District's discretion, Air District may inspect the Replacement Equipment and may perform a preliminary inspection of the Project Equipment prior to implementation of the Project. Grantee shall facilitate and cooperate with any Air District inspection. Grantee may be required to demonstrate to the Air District that the Replacement Equipment is fully operational at the time of the preliminary inspection. Grantee must also facilitate the Air District in obtaining and confirming Replacement Equipment and Project Equipment information (e.g. Model year, serial numbers, power, etc.)



at the time of inspection. Failure to demonstrate that the Replacement Equipment 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.

- 22) Post-Project Inspection: Air District may perform a post-project inspection of the Project Equipment 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 Project Equipment available for the post-project inspection, which may include a test to verify that the Project Equipment is fully operational. The post-project inspection may include verification of the destruction of the Replacement Equipment.
- 23) Compliance with Attorney General and Air District guidelines: The Grantee agrees to implement the Project in accordance with all requirements of the Attorney General and Air District Project guidelines. Any questions or disputes the Parties may have regarding the implementation of this Agreement shall be resolved in accordance with the applicable Project guidelines.
- 24) Enforcement: Both the Air District and Attorney General have the authority to inspect the Project, enforce the terms of this Agreement, and pursue repayment of grant funds for noncompliance with the terms and conditions of this Agreement or applicable state laws or regulations throughout the Project Term. 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, as defined in Paragraph 6 of Attachment A; Grantee's failure to comply with the Project requirements set forth in Attachment A; and Grantee's actions specified in Attachment A, Paragraph 15, which could reduce the air quality benefits of this Project.

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

SIGNATURES:

**Bay Area Air Quality Management District**

By: \_\_\_\_\_

Date: \_\_\_\_\_

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

Approved as to legal form:

By: \_\_\_\_\_

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

**Grantee**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Christine Daniel  
City Manager  
City of Emeryville



Approved As To Form

**ATTACHMENT A - PROJECT SPECIFIC INFORMATION**

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

1. **Grantee:** City of Emeryville
2. **Project Number (Section III.7):** CLG2-13
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):** \$10,937.89

The Air District payment shall not exceed the permitted Funds Awarded for the individual Project Equipment. In no event shall the Total Grant Funds Awarded for all Project Equipment exceed the maximum of \$10,937.89. Air District grant funds may only be used for direct costs to purchase the Project Equipment described in this Agreement.

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

<b>Table 1: Detailed Project Description</b>		
<b>Equipment Scrapped ID (Description)</b>	<b>Funded Equipment</b>	<b>Funds Awarded</b>
Stihl Multi-purpose Cut-off Saw Model: MS192T (1)	Stihl Cut-off Saw Model: TSA-230 (1)	\$379.95
	Stihl Cut-off Saw Blade Model: 0835-092-2000 (1)	\$179.95
Stihl Hand-held Leaf Blower Model: BGF86 (1)	Stihl Hand-held Leaf Blower Model: BGA-100 (1)	\$296.95
Stihl Weed Trimmer Model: FS110R (1)	Stihl Weedeater Model: FSA-85 (1)	\$194.95
Stihl Hedge Trimmer Model: HS80 (1)	Stihl Hedge Trimmer Model: HAS-66 (1)	\$186.95
Stihl Pole Pruner Model: HT101 (1)	Stihl Pole Pruner Model: HTA85 (1)	\$449.00
Toro 6.7HP Walk-behind Mower Model: 20332 (1)	Stihl Walk-behind Mower Model: RMA-370 (1)	\$296.95
NA	Stihl Battery Backpack Model: AR 3000 (8)	\$6,799.60
NA	Stihl Lithium Ion Battery Model: AP 300 (4)	\$579.80
NA	Stihl High Speed Charger Model: AL 500 (6)	\$647.70
Subtotal		\$10,011.80
Tax Rate		9.25%
Sales Tax		\$926.09
<b>Total award:</b>		<b>\$10,937.89</b>

**6. Project Description: Commercial Lawn and Garden Equipment Replacement**

Table 1 provides the details of the Replacement Equipment and Project Equipment. Any change in Project Equipment specifications or Project Description must receive written approval in advance by the Air District.

The Replacement Equipment to be scrapped must be fully operational at the time of preliminary inspection by Air District staff. If the Replacement Equipment to be scrapped is not operational, the grant funding may be withdrawn by the Air District. The Replacement Equipment to be scrapped shall be destroyed upon completion of the Project.

- 7. Project Term (Section III.1 & Section III.14):** Grantee shall commence using the Project Equipment within four months of taking possession of the Project Equipment and will maintain the Project Equipment in good repair and in accordance with manufacturer's specifications for its intended purpose for a minimum of 5 years after receiving delivery of it.
- 8. Operating Parameters:** Air District has awarded this Grant based upon Grantee's agreement to operate the Project Equipment exclusively (100%) in Alameda County. In no event shall Grantee operate the Project Equipment less than five (5) years under the terms of this Agreement. Pursuant to Paragraph 15 of this Attachment, Grantee may be required to repay Grant funds if unable to satisfy the Project's minimum project life requirements of five (5) years.
- 9. Project Schedule:** By no later than **May 15, 2019**, the work set forth in the Project Description in Attachment A, Paragraph 6, must be completed by the Grantee and inspected by the Air District, or its designee.
- 10. RESERVED.**
- 11. RESERVED.**
- 12. RESERVED.**
- 13. Project Implementation Report and Request for Payment (Section I):** No later than thirty (30) days from completion of the work set forth in the Project Description, Grantee shall submit a Project Implementation Report, an IRS W-9 form and a project invoice to request payment of the Eligible Costs of the Project. The Project invoice shall:
  - Provide documentation for all Eligible Costs, document the Project 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.
  - Include copies of invoices that document the goods provided by vendors and any other Eligible Costs.
  - Be submitted with a summary sheet that specifies the Program Project Number. If costs are incurred that are not directly related to the Project as described in Paragraph 6 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.

Upon verification that the Project has been completed according to the terms of this Agreement, that the Project Equipment has been installed and is fully operational and the Replacement Equipment has been removed from service and destroyed, the Air District will issue final payment of the Grant Funds Awarded.



- 14. Annual Monitoring Reports:** Grantee shall submit an annual monitoring report each calendar year for the Project Term, in a format approved by the Air District. The monitoring report shall provide information regarding annual hours of operation, locations where the unit described in Paragraph 6 of this Attachment operated, percentage of operating hours within the boundaries of Alameda County, and proof of insurance. The first annual report shall be submitted by **February 1, 2020** to cover the period from January 1, 2019 through December 31, 2019. 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 within 60 days following the end 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 Contract and may jeopardize Grantee's eligibility to apply for grant funding for any future projects.
- 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 Project Equipment from service within the boundaries of Alameda County during the Project Term prior to having achieved the total usage of operation by the end of the Project Term. 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. The Air District may waive such repayment if it determines at its sole discretion, that Grantee's failure to complete the Project was due to events beyond Grantee's reasonable control.

The Air District may waive repayment by the Grantee if, prior to a sale of the Project Equipment, the Grantee enters into a written agreement with the Air District and 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 required by this Agreement.

- 16. Special Conditions:** None.

Grantee certification:

1. I have disclosed to the District all other public funds that have been applied for or received for the Project.
2. I understand that I must maintain compliance with all applicable federal, state, and local air quality rules and regulations for the Project Term.

Signature: \_\_\_\_\_

Name: Christine Daniel

Title: City Manager Date: \_\_\_\_\_

**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 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:**

_____	A limit of not less than \$1,000,000 per occurrence. Such insurance shall be of the type usual and
Initial	customary to the business of the Grantee, and to the operation of the equipment operated by the Grantee.

At the time the Grantee submits invoices for payment to the Air District, the Grantee must demonstrate that the equipment purchased in the Funding 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 must remain effective from the date of the invoice to the Air District to the end of the project life as defined in Section IV of the Agreement.

☒ **2. Property Insurance for New Equipment Purchase:**

_____	In an amount of not less than the insurable value of Grantee's Project Equipment funded under the
Initial	Agreement of which this Attachment is a part, and initial covering all risks of loss, damage or
	destruction of such
	Project Equipment.

**Acceptability of Insurers**

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