State of California

Proposition 1B:
Goods Movement Emission Reduction Program

GRANT AGREEMENT

Between
Air Resources Board and Local Agency

Fiscal Year Funds:	FY2008-09
Trade Corridor:	Bay Area
Funding Category:	Ships at Berth plus Cargo Handling Equipment
Local Agency:	Bay Area Air Quality Management District
Program Funds:	$20,000,000

Grant Number: G08GMBS1

This legally binding Proposition 1B: Goods Movement Emission Reduction Program (Program) GRANT AGREEMENT, including Exhibit 1 attached hereto, dated December 10, 2010 (Date) is made and executed between the STATE OF CALIFORNIA, AIR RESOURCES BOARD (ARB or Board) and the BAY AREA AIR QUALITY MANAGEMENT DISTRICT (Local Agency). The Program is intended to improve air quality and protect public health through the administration of State incentives for cleaner equipment and technologies associated with freight movement.

The Local Agency agrees to perform the work described in the Program grant application as modified and clarified in ARB Resolution 10-27 and in this Grant Agreement.

I. Term: This Grant Agreement shall be effective as of December 15, 2010 or full execution of this Grant Agreement (Start Date), whichever is later, and shall continue in full force and effect until such time as all conditions of the Grant Agreement have been met or until December 31, 2023 (End Date), whichever is later. This End Date does not include the 35-year records retention obligation for projects funded with State and federal bonds.

II. Documents incorporated by reference: This Grant Agreement shall incorporate herein by reference: the Local Agency Project Application; the *Final 2010 Proposition 1B: Goods Movement Emission Reduction Program Guidelines for Implementation* (Guidelines) as adopted by the Board on March 25, 2010, and the associated *Final 2010 Staff Report on Guidelines for Implementation* (Staff Report), plus

any subsequent amendments to those Guidelines that apply to Fiscal Year (FY) 2008-09 funds; ARB Resolutions 08-06, 08-12, 09-40, 10-18, 10-27; the *Staff Report on 2010 Funding Awards;* and the *Supplemental Procedures for Ships at Berth plus Cargo Handling Equipment Projects* (Supplemental Procedures). All of these documents are posted on the Program website at: http://www.arb.ca.gov/gmbond. The Local Agency is authorized to administer a Local Agency Project (Project) according to the requirements in the documents described above.

III. Local Agency project description: Subject to the terms and conditions of this Grant Agreement, ARB will provide funding up to the maximum amount of $20,000,000 (Budget Act Chapters 268 and 269, Statutes 2008 3900-001-6054 and 3900-490) to the Bay Area Air Quality Management District to administer a Project in the Bay Area Trade Corridor under the FY2008-09 Program. The Project is administration of Program incentives to equipment owners to upgrade equipment in the Ships at Berth, plus Cargo Handling Equipment (Ships at Berth) funding category. The Project shall comply with the provisions of this Grant Agreement, the Guidelines and any subsequent amendments, the Staff Report, and the Supplemental Procedures, all as interpreted and implemented by ARB staff.

IV. Definitions: All terms in this Grant Agreement are as defined in the Guidelines, unless otherwise specified in this Grant Agreement.

"Guidelines" means the Proposition 1B: Goods Movement Emission Reduction Program Guidelines for Implementation and accompanying Final Staff Report adopted March 25, 2010, any subsequent amendments to those Guidelines adopted by the Board or enacted via ARB Executive Order, and the Supplemental Procedures for Ships at Berth plus Cargo Handling Equipment Projects."

A. Funding Category-Specific Elements

A.1. Approved project alternatives: The Local Agency may implement the following approved project alternatives, consistent with the Guidelines:

- **Technology alternatives:** Not applicable.
- **Project implementation approaches and contractors:** Not applicable.
  Procedure/process alternatives: Not applicable.
- **Geographic operations:** The Local Agency may restrict eligibility for Ships at Berth plus Cargo Handling Equipment funding category projects to seaports and rail yards in the Bay Area Trade Corridor.

A.2. Funding and performance benchmarks: Based on the Local Agency application and ARB's funding award, the Local Agency shall complete equipment projects to achieve the estimated emission reductions and be eligible to receive up to the specified maximum Program funding amounts, as shown in Table 1 below.

Table 1. Program Funding and Performance Benchmarks for the Ships at Berth plus Cargo Handling Equipment Funding Category

Maximum Program Funding Authorized			Estimated		
Equipment Project Funds	Administrative Funds	Total Funds (Project plus Administrative)	Match Funding* and Source	Total Cost of Local Agency Project*	Emission Reductions Over Project Life* (lbs)
$19,417,476	$582,524 (3% of equipment project funds)	$20,000,000	$31.200,000 (Local-Port of Oakland) $4,200,000 (Federal-DOT)	$55,400,000	NOx: 5,500,000 PM: 95,000

* Since the actual mix of projects is unknown in advance, these cost and emission reduction estimates assume (but do not require) that project funds are spent on grid-based shorepower projects at $2.5 million of Program funding per berth.

The Local Agency shall not propose to offer Program funding at a level for each equipment project that exceeds the funding caps described in the Program Guidelines and, after reviewing invoices submitted by equipment owners, shall only pay for eligible expenses up to the funding caps.

A.3. Grant expenditure schedule: ARB shall authorize payment upon all of the following:

- Approval of a complete and accurate Grant Expenditure Request form.
- Approval of all required reports where applicable. At ARB's discretion, these reports may include entry by the Local Agency of equipment project data into an electronic database maintained by ARB.
- The availability of bond funds for the requested purpose, as documented in a letter from ARB authorizing the Local Agency to proceed with Project implementation. The Local Agency understands and agrees that ARB's authorization letter may include specific restrictions on expenditures listed in Tables 2 and 3 below, and the Local Agency agrees to comply with all restrictions.
- ARB's determination that the Local Agency can reasonably execute contracts and close out payment according to the Project Schedule.

The Local Agency may request ARB to expend administrative funds according to the schedule in Table 2, and equipment project funds according to the schedule in Table 3, for the Ships at Berth plus Cargo Handling Equipment funding category, subject to the availability of bond funds for the requested purpose as documented in a letter from ARB to the Local Agency.

Table 2. ARB Expenditure of Administrative Funds for the Ships at Berth plus Cargo Handling Equipment Funding Category

Administrative Funds	Percent of Administrative Funds	Requirements
Initial administrative funds	Up to 50% of total funds, as authorized via ARB letter	May be requested upon full execution of this Grant Agreement.
Additional administrative funds	Remaining funds, as authorized via ARB letter	May be requested after the Local Agency liquidates 100 percent of the total project funds and ARB staff verifies that this condition has been satisfied.

Table 3. ARB Expenditure of Equipment Project Funds for the Ships at Berth plus Cargo Handling Equipment Funding Category

Source Category	Equipment Project Funds	Percent of Equipment Project Funds	Requirements
Ships at berth	Initial equipment project funds	Up to 10% of funds, as authorized via ARB letter	May be requested once the Local Agency posts an ARB-approved competitively ranked equipment project list on its website that demonstrates a demand for eligible equipment projects at the requested funding level, and ARB staff has determined that the Local Agency's equipment project contract template meets the requirements of the Guidelines.
	Additional equipment project funds	Remaining funds, as authorized via ARB letter	May be requested once the Local Agency has fully executed contracts for all of the equipment projects and those projects are within 6 months of the anticipated post-inspection date.
Cargo handling equipment	Initial equipment project funds	Up to 100% of funds, as authorized via ARB letter	May be requested once the Local Agency posts an ARB-approved competitively ranked equipment project list on its website that demonstrates a demand for eligible equipment projects at the requested funding level, and ARB staff has determined that the Local Agency's equipment project contract template meets the requirements of the Guidelines.
	Additional equipment project funds	Remaining funds, as authorized via ARB letter	May be requested at any time after the initial expenditure based on an ARB-approved competitively ranked equipment project list that demonstrates demand for eligible equipment projects at the requested funding level.

A.4. Project schedule: The Local Agency shall obligate equipment project funds via executed equipment project contracts for the Ships at Berth funding category no later than 12 months after execution of this Grant Agreement.

From the date of equipment contract project execution, the Local Agency shall verify project completion and close out payment for: each cargo handling equipment project within 18 months, each non-grid-based shore power project or ship emissions capture and control system project within 2 years, and each grid-based shore power project no later than December 31, 2013. Other requirements applicable to this Local Agency Project that include, but are not limited to, evaluation of equipment projects and reporting to ARB shall continue through the End Date of this Grant Agreement.

A.5. Supplemental procedures: The Local Agency agrees to implement this Grant Agreement in accordance with the additional requirements identified in the Supplemental Procedures. These procedures are designed to maximize the opportunity for success in completing shore power projects with Program funding, but provide sufficient time for reallocation to other types of projects if the ships at berth projects are not likely to be finished on schedule.

B. General Program Provisions

B.1. Communication: All communication regarding this grant from the Local Agency to ARB should be directed to the ARB Grant Lead identified on ARB's Program website at: http://www.arb.ca.gov/gmbond. Send all grant correspondence, including reports and Grant Expenditure Requests, to the named Grant Lead at:

Prop. 1B Goods Movement Emission Reduction Program
Stationary Source Division
California Air Resources Board

Standard U.S. Mail	Other Mail Services
P.O. Box 2815	1001 "I" Street
Sacramento, California 95812	Sacramento, California 95814

Fax: (916) 327-7212

B.2. Direct payments to vendors: The Local Agency may make arrangements in Harbor Craft, Heavy Duty Diesel Truck, and Cargo Handling Yard equipment project contracts for Local Agency payments to go directly to the engine, truck, or retrofit dealer or manufacturer if requested by the equipment owner.

B.3. Disposal of old equipment: The Local Agency agrees to establish agreements with qualified salvage yards and verify scrappage/disposal of old vehicle, vessel, equipment, or engine consistent with requirements specified in the Guidelines.

B.4. Earned interest: The Local Agency agrees to maintain records and report on interest earned on Program funds in Local Agency accounts, and to expend earned interest according to the provisions in the Guidelines.

B.5. Eligible and ineligible costs: All Program expenditures by the Local Agency shall be directly tied to the purchase and installation of upgraded equipment or other eligible equipment project costs as defined in the Guidelines, or to Local Agency administration costs as allowed under this Grant Agreement and the Guidelines. Any cost specifically identified as ineligible in the Guidelines, or accompanying Staff Report cannot be paid for or reimbursed with Program funds.

B.6. Equipment project contracts: The Local Agency shall enter into a legally binding agreement with all equipment owners. The Local Agency agrees to include all equipment project requirements and conditions in contracts with equipment owners, including each provision specified in the Guidelines. The Local Agency agrees to be fully responsible for ensuring all projects comply with minimum criteria and procedures contained in the Guidelines. The Local Agency agrees to include provisions in equipment project contracts to allow ARB or its designee to inspect equipment projects, enforce the terms of Local Agency contracts with equipment owners, and pursue repayment of Program funds for noncompliance with the terms and conditions of the contracts or applicable State laws or regulations.

B.7. Equipment project inspections: The Local Agency shall complete equipment project pre-inspections prior to execution of an equipment project contract, except for Heavy-Duty Diesel Trucks. Post-inspections shall occur prior to the final grant funding payment made to the equipment owner, and after the Local Agency has a valid invoice from the equipment owner, except in the case of direct payment to vendor.

B.8. Funding recapture: The Local Agency agrees to obligate and expend Program funds in a timely manner, and agrees to comply with the recapture process described in the Guidelines.

B.9. Goods Movement Online Database: The Local Agency agrees to enter the required fields for equipment project data, including equipment owner application information submitted during a solicitation, pre- and post equipment inspection data, contract execution information, and expenditures of funds into the Goods Movement Online Database in a timely fashion.

B.10. Grant expenditure requests: Grant Expenditure Request Forms can be downloaded from the Proposition 1B: Goods Movement Emission Reduction Program website at: http://www.arb.ca.gov/gmbond. Goods and services must be paid for and received within the period from the beginning to the end of the term of the Grant Agreement. All supporting documentation included with the Grant Expenditure Request Form must contain the appropriate grant number prior to submission to ARB.

B.11. Guidelines conformance: The Local Agency agrees to implement the Project in conformance with all applicable requirements of the Guidelines. In the event of any conflicts between this Grant Agreement or any of its amendments, the existing legislation for Proposition 1B, and the Guidelines, the existing legislation shall control, followed by the Guidelines, any amendments to this Grant Agreement in the reverse order in which they were executed, and the Grant Agreement.

B.12. Insurance: For shore power and truck stop electrification projects involving construction of electric infrastructure to replace diesel engine use, the Local Agency shall ensure that the equipment owner provides and maintains insurance against fire, vandalism and other loss, damage, or destruction of the facilities or structures constructed pursuant to this Grant Agreement, if any, for the life of the equipment

project. This insurance shall be issued by a company or companies admitted to transact business in the State of California.

B.13. Non-performance: Non-performance by the Local Agency includes, but is not limited to, identified issues with any one or more of the following areas:

- Misuse of Program funds.
- Funding of ineligible equipment projects or other items.
- Failure to comply with the Guidelines or statutes.
- Failure to meet schedule milestones identified in the grant agreement.
- Failure to obligate or expend Program funds within established timelines.
- Insufficient performance or widespread deficiencies with Program oversight, enforcement, record keeping, contracting provisions, inspections, audit procedures, or any other Program element as determined by ARB staff.
- Exceeding administrative fund allotment.
- Insufficient, incomplete, or faulty project documentation.
- Failure to provide required documentation or reports requested by ARB, the Department of Finance (DOF), or other agencies in a timely manner.
- Poor performance as determined by an audit conducted by ARB, DOF or other designated agency or contractor.

B.14. Non-performance remedies: Remedies for resolving areas of Local Agency non-performance shall include, but are not limited to, these actions as described in the Guidelines:

- Local agency probation and a corrective action plan.
- Recovery of funds obligated under this Grant Agreement.
- Constraints on the local agency's opportunity to compete for future Program funds.

B.15. Non-performance remedies – fund reversion: Consistent with the provisions of the Guidelines for non-performance, ARB may require that all, or a portion of, the remaining unspent Program funds available for expenditure by ARB and/or the Local Agency plus any earned interest, revert back to the California Ports Infrastructure, Security, and Air Quality Improvement Account.

B.16. Non-performance remedies – withholding of funds: Consistent with the provisions of the Guidelines, ARB may withhold all or any portion of the grant funds provided for by this Grant Agreement in the event that the Local Agency has materially violated, or threatens to materially violate, any term, provision, condition, or commitment of this Grant Agreement; or the Local Agency fails to maintain reasonable progress toward completion of the Project.

B.17. Program acknowledgment: The Local Agency agrees to acknowledge the "Proposition 1B: Goods Movement Emission Reduction Program" as a funding source in any related media events or other publicity material.

B.18. Recordkeeping and records access for audits: The Local Agency agrees to establish an official file for the Project which shall adequately document all significant

actions relative to the Project. The Local Agency agrees that ARB, DOF, the Bureau of State Audits (BSA), or their designated representative(s) shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Grant Agreement. To meet State and federal bond requirements, the Local Agency agrees to maintain such records as specified in the Guidelines, as well as accounting records and reports for the fund accounts from which the proceeds were disbursed, for a possible audit through April 2045 or to send all records to ARB by the End Date of the Grant Agreement in an electronic format to be determined by ARB. The Local Agency agrees to allow the auditor(s) access and to copy such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Local Agency agrees to include a similar right of the State to audit records and interview staff in any contract related to performance of this Grant Agreement.

B.19. Reporting requirements: The Local Agency is responsible for submitting to ARB quarterly data updates, semi-annual reports, and Local Agency project completion reports as specified in the Guidelines. The Local Agency shall submit these updates and reports in the format and manner identified by ARB. The Local Agency agrees that ARB may identify the format and manner of these updates and reports after execution of this Grant Agreement. The Local Agency shall submit quarterly updates and semi-annual reports on the schedule to be established by ARB. The semi-annual reports shall continue through the End Date of the Grant Agreement.

B.20. Returned funds: Exclusive of earned interest, the Local Agency shall return funds received from ARB that it cannot obligate or liquidate by statutory deadlines. ARB may reallocate the returned funds upon approval of appropriation or reappropriation of the funds.

B.21. Small businesses: For shore power and truck stop electrification projects involving construction of electric infrastructure to replace diesel engine use, the Local Agency agrees to initiate outreach to small businesses for construction funded under this Grant Agreement, as described in the Guidelines.

B.22. Tax implications: The Local Agency agrees to notify equipment owners of possible tax implications from receipt of Program funds and encourage participants to consult a tax professional.

The undersigned parties agree to the terms and conditions as set forth in this Grant Agreement. The undersigned parties certify under the penalty of perjury that they are duly authorized to bind the parties to this Grant Agreement.

CALIFORNIA AIR RESOURCES BOARD **PROPOSITION 1B: GOODS MOVEMENT EMISSION REDUCTION PROGRAM**	
Local Agency Name BAY AREA AIR QUALITY MANAGEMENT DISTRICT	
Name Of Local Agency Representative With Signature Authority Jack P. Broadbent	
Title Executive Officer/APCO	
Mailing And Street Addresses 939 Ellis Street, San Francisco, CA 94109	
Local Agency Representative Signature Jack P Broadbent	**Date** 12/16/10
CALIFORNIA AIR RESOURCES BOARD	
Name Of ARB Representative With Signature Authority Socorro Watkins	
Title Chief (Acting), Administrative Services Division	
Mailing And Street Addresses P.O. Box 2815, Sacramento, California 95812 1001 "I" Street, Sacramento, California 95814	
ARB Representative Signature Socorro Watkins	**Date** 12.10.10
Amount Encumbered By This Grant Agreement $20,000,000	**Fiscal Year Funds** FY2008-09

EXHIBIT 1
STANDARD GRANT AGREEMENT PROVISIONS

1-1. Amendment: No amendment or variation of the terms of this Grant Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the Grant Agreement is binding on any of the parties.

1-2. Assignment: This grant is not assignable by the Local Agency, either in whole or in part, without the consent of ARB.

1-3. Availability of funds: ARB's obligations under this Agreement are contingent upon the availability of funds. In the event funds are not available, the State shall have no liability to pay any funds whatsoever to the Local Agency or to furnish any other considerations under this Agreement.

1-4. Compliance with law, regulations, etc.: The Local Agency agrees that it will, at all times, comply with and require its contractors and subcontractors to comply with all applicable federal and State laws, rules, guidelines, regulations, and requirements.

1-5. Computer software: The Local Agency certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Grant Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

1-6. Conflict of interest: The Local Agency certifies that it is in compliance with applicable State and/or federal conflict of interest laws.

1-7. Damages for breach affecting tax exempt status: In the event that any breach of any of the provisions of this Grant Agreement by the Local Agency shall result in the loss of tax exempt status for any State bonds, the Local Agency shall immediately reimburse the State in an amount equal to any damages paid by or loss incurred by the State due to such breach.

1-8. Disputes: The Local Agency shall continue with the responsibilities under this Grant Agreement during any dispute. Local Agency staff or management may work in good faith with ARB staff or management to resolve any disagreements or conflicts arising from implementation of this Grant Agreement. However, any disagreements that cannot be resolved at the management level within 30 days of when the issue is first raised with ARB staff shall be subject to resolution by the ARB Executive Officer, or his designated representative, whose decision shall be final and binding.

1-9. Environmental justice: In the performance of this Grant Agreement, the Local Agency shall conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures the fair treatment of people

of all races, cultures, and income levels, including minority populations and low-income populations of the State.

1-10. Fiscal management systems and accounting standards: The Local Agency agrees that, at a minimum, its fiscal control and accounting procedures will be sufficient to permit tracing of grant funds to a level of expenditure adequate to establish that such funds have not been used in violation of State law or this Grant Agreement. Unless otherwise prohibited by State or local law, the Local Agency further agrees that it will maintain separate Project accounts in accordance with generally accepted accounting principles.

1-11. Force majeure: Neither ARB nor the Local Agency shall be liable for or deemed to be in default for any delay or failure in performance under this Grant 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, etc.

1-12. Governing law and venue: This grant is governed by and shall be interpreted in accordance with the laws of the State of California. ARB and the Local Agency hereby agree that any action arising out of this Grant Agreement shall be filed and maintained in the Superior Court in and for the County of Sacramento, California, or in the United States District Court in and for the Eastern District of California. The Local Agency hereby waives any existing sovereign immunity for the purposes of this Grant Agreement.

1-13. Indemnification: The Local Agency agrees to indemnify, defend and hold harmless the State and the Board and its officers, employees, agents, representatives, and successors-in-interest against any and all liability, loss, and expense, including reasonable attorneys' fees, from any and all claims for injury or damages arising out of the performance by the Local Agency, and out of the operation of the Local Agency Project that is the subject of the Grant Agreement.

1-14. Local Agency's responsibility for work: The Local Agency shall be responsible for work and for persons or entities engaged in work, including, but not limited to, contractors, subcontractors, suppliers, and providers of services. The Local Agency shall be responsible for any and all disputes arising out of its contracts for work on the Project, including but not limited to payment disputes with contractors, subcontractors, and providers of services. The State will not mediate disputes between the Local Agency and any other entity concerning responsibility for performance of work.

1-15. Independent actor: The Local Agency, and its agents and employees, if any, in the performance of this Grant Agreement, shall act in an independent capacity and not as officers, employees or agents of ARB.

1-16. Nondiscrimination: During the performance of this Grant Agreement, the Local Agency and its contractors shall not unlawfully discriminate against, harass, or allow harassment against any employee or applicant for employment because of sex, race, religion, color, national origin, ancestry, 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 Local Agency and its contractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment.

1-17. No third party rights: The parties to this Grant Agreement do not create rights in, or grant remedies to, any third party as a beneficiary of this Grant Agreement, or of any duty, covenant, obligation or undertaking established herein.

1-18. Prevailing wages and labor compliance: If applicable, the Local Agency agrees to be bound by all the provisions of State Labor Code Section 1771 regarding prevailing wages. If applicable, the Local Agency shall monitor all agreements subject to reimbursement from this Grant Agreement to assure that the prevailing wage provisions of State Labor Code Section 1771 are being met.

1-19. Professionals: For shore power and truck stop electrification projects involving construction of electric infrastructure to replace diesel engine use, the Local Agency agrees that only licensed professionals will be used to perform services under this Grant Agreement where such services are called for and licensed professionals are required for those services under State law.

1-20. Severability: If a court of competent jurisdiction holds any provision of this Grant Agreement to be illegal, unenforceable or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of those provisions, will not be affected.

1-21. Termination: ARB may terminate this Grant Agreement by written notice at any time prior to completion of the Project, upon violation by the Local Agency of any material provision after such violation has been called to the attention of the Local Agency and after failure of the Local Agency to bring itself into compliance with the provisions of this Grant Agreement in accordance with the non-performance provisions set forth in the Guidelines.

1-22. Timeliness: Time is of the essence in this Grant Agreement. The Local Agency shall proceed with and complete the Project in an expeditious manner.

1-23. Waiver of rights: Any waiver of rights with respect to a default or other matter arising under the Grant Agreement at any time by either party shall not be considered a waiver of rights with respect to any other default or matter. Any rights and remedies of the State provided for in this Grant Agreement are in addition to any other rights and remedies provided by law.