

AMENDMENT 1
TO

AGREEMENT FOR CARL MOYER HEAVY-DUTY
LOW EMISSION INCENTIVE PROGRAM

TO
BUTTE COUNTY AIR QUALITY MANAGEMENT DISTRICT
AGREEMENT # CM8-05-
Effective Date of this Amendment is _____

Agreement is amended as follows:

Agreement Section 2.3.1.

Change #1

The District will reimburse the participant up to \$_____ towards the cost of the vehicle(s) or equipment identified in Exhibit B.

changed to:

The District will reimburse the participant up to \$_____ towards the cost of the vehicle(s) or equipment identified in Exhibit B. Itemized invoices must be received prior to District payment.

Agreement Section 2.4.2

Change #2

The Participant cannot apply for or receive additional incentive funds, including but not limited to the state Carl Moyer Program inter-district fund or any other air district fund, including those funds used as matching funds, for any equipment listed in Exhibit A of this Agreement. This requirement may be waived by District staff on an individual basis. If the District discovers that the Participant has applied for or received funds from these sources, the District will terminate this Agreement and require that any funds paid under this Agreement be returned to the District.

changed to:

The Participant certifies that by signing this Agreement, Participant shall not submit another application or sign another contract for the same specific engines(/vehicle) with any other source of funds, including, but not limited to, other districts or to ARB for multi-district solicitation. Any Participant or Participant's designee who is found to have submitted multiple applications or

Amendment 1 to Agreement #CM8-05-___

signed multiple contracts for the same engines(/vehicle) shall, at minimum, be disqualified from funding for that engine(/vehicle) from all sources and may also be banned from submitting future applications to any and all Carl Moyer program solicitations. In addition, as a violation of law, including but not limited to the Business and Professions Code, ARB and the District may levy fines and/or seek criminal charges.

Agreement Section 2.10.1.

Change #3

This Agreement shall begin upon execution by all parties and terminate on _____.

changed to:

This Agreement shall begin upon execution by all parties and terminate on _____. However, no work may begin until this agreement is fully executed. This time period is the project term (with a minimum of 3 years). During this time, participant is required to operate the program funded engine/vehicle according to the terms of this contract. By executing this agreement, the participant agrees to operate the engine/vehicle according to the terms of this agreement and to cooperate with the District and ARB in implementation, monitoring, enforcement, or other efforts to assure the emission's benefits are real, quantifiable, surplus and enforceable.

Agreement Section 2.10.5.

Change #4

The Participant shall keep the following records from the beginning of operation of the equipment described in Exhibit A through the end of the term described in Section 2.10.1. It is the Participant's responsibility to maintain records adequate to document the subsequent information. The District may request these records at any time during the term of this Agreement, including:

changed to:

The Participant shall keep the following records from the beginning of operation of the equipment described in Exhibit A through the end of the term described in Section 2.10.1. These documents shall be retained for a period of 3 years following the term of the contract. It is the Participant's responsibility to maintain records adequate to document the subsequent information. The District may request these records at any time during the term of this Agreement, including:

Amendment 1 to Agreement #CM8-05-___

Agreement Section 2.10.8.

Change #5

The Participant shall observe and comply with all applicable federal, state and BCAQMD statutes, ordinances, regulations, rules, directives, and laws.

changed to:

This Agreement shall be deemed to be executed within the State of California and construed in accordance with and governed by the laws of the State of California. Any action or proceeding arising out of this Agreement shall be filed in a state court or federal court located in Sacramento, California.

Agreement Section 2.10.14.

Change #6

If either of the events listed in this paragraph occur, the Participant must notify the District within 30 days of the date Participant knows, or should have known, that the event has occurred or is likely to occur:

- (i) The Participant suffers a catastrophic loss; or
- (ii) The Participant files for bankruptcy; or
- (iii) Any other event has occurred or is likely to occur that could impair the Participant's ability to perform the conditions of this Agreement.

changed to:

The Participant shall observe and comply with all applicable federal, state and BCAQMD statutes, ordinances, regulations, rules, directives, and laws.

If any of the events listed in this paragraph occur, the Participant must notify the District within 30 days of the date Participant knows, or should have known, that the event has occurred or is likely to occur:

- (i) The Participant suffers a catastrophic loss; or
- (ii) The Participant files for bankruptcy; or
- (iii) Any other event has occurred or is likely to occur that could impair the Participant's ability to perform the conditions of this Agreement.

Amendment 1 to Agreement #CM8-05-___

Notwithstanding the occurrence of any of the above, however, the Participant acknowledges that it must comply with all laws as set forth herein and acknowledges that it is responsible for nonperformance and for not meeting any of the obligations under this agreement. The District and ARB have the authority to fine the Participant or seek other remedies available under the law for noncompliance with the Carl Moyer Program requirements and nonperformance of the contract.

Agreement Section 2.10.17.

Change #7 add the following:

This agreement consists of, and incorporates by reference Exhibit B, the annual vehicle/equipment usage of:

Butte County: _____miles/hours;

Outside of Butte County (within California): _____miles/hours.

All other terms and conditions of this agreement remain in full force and effect.

Approved by Participant

_____ **Date:** _____

Approved by the Butte County Air Quality Management District

_____ **Date:** _____
W. James Wagoner
Air Pollution Control Officer

Approved to as form:

_____ **Date:** _____
Greg Einhorn
District Counsel

Amendment 1 to Agreement #CM8-05-___