

ATTACHMENT 3

SAMPLE GRANT PROVISIONS

This sample may be slightly modified before final grant agreements are executed.

**\$25 Million for Purchase of Low-Emission Construction Equipment
by Public Agencies Program**

GRANT AWARD & AUTHORIZATION FORM

Funding under the \$25 Million for Purchase of Low Emission Construction Equipment by Public Agencies Program (Program) has been approved as follows:

Grantee:
Contact Person:
Project Name:
Project Life:
Project Amount:

Grant Award (sum of all project amounts):
Grant Number:

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

Air Resources Board:

Grantee: (Name of Public Agency)

Signature of Authorized Official

Signature of Authorized Official

Name: Marie LaVergne

Name:

Title: Administrative Services Division Chief

Title:

Date: _____

Date: _____

CONTACTS

The Air Resources Board (ARB) contact for program issues relating to this grant is Ms. Stacey Dorais. Correspondence regarding required program reports should be directed to:

Stacey Dorais
Mobile Source Control Division, North
Air Resources Board
P.O. Box 2815
Sacramento, California 95812

Phone: (916) 322-2383

The ARB contact for financial matters relating to this Grant Award is Ms. Lauri Brunkhorst. Correspondence regarding financial matters should be directed to:

Lauri Brunkhorst
Administrative Services Division
Air Resources Board
P.O. Box 1436
Sacramento, California 95812

Phone: (916) 322-8215

Grant Award Agreement

General

The Grantee understands and agrees that, although Grantee is being awarded a Grant, such Grant is not being issued without conditions, and Grantee's receipt and continued possession of the Grant is contingent on Grantee meeting all the requirements specified in this Grant Award Agreement (Agreement). Grantee's failure to meet the terms, conditions, and requirements of this Agreement throughout the term of this Agreement shall result in forfeiture and return to ARB of a pro-rated portion of the awarded Grant, as specified in this Agreement, as well as other remedies that may apply under California law.

Equipment Requirements

- For purposes of this Agreement, "equipment" shall include engines, equipment, and retrofits, and includes the singular and plural.
- All "equipment" purchased under this Agreement shall be ARB certified or ARB verified and meet the most stringent oxides of nitrogen (NOx), particulate matter (PM) and reactive organic gas (ROG) or non-methane hydrocarbon (NMHC) standards and requirements applicable at the time the Grant is executed.
- The new "equipment" must not have been purchased by Grantee prior to the date of execution of the Agreement.
- For engine or equipment replacements, the engine or equipment to be replaced must be scrapped within 90 days after being replaced. For purposes of this Agreement, "scrapped" means destroying or rendering the "equipment" useless either by punching a hole in the engine block, and/or cutting the structural components of the equipment, or some other manner acceptable to ARB. The engine and/or equipment to be replaced shall either be scrapped by Grantee, or Grantee may transfer the engine and/or equipment to another agency which must in turn scrap an equivalent piece of engine and/or equipment approved by ARB. Documentation of the destruction of the engine and/or equipment that was replaced (i.e. photos, receipts, etc.) must be provided to the ARB or its designee within 10 days of the engine's and/or equipment's destruction.
- Grantee shall operate all new or retrofitted "equipment" purchased under this Agreement for the project life's duration and for the estimated number of hours specified in this Agreement. Grantee shall operate all such new or retrofitted "equipment" solely within California during the estimated number of hours specified in the Appendix, and such estimated hours shall not include maintenance or testing of the "equipment". If the actual hours of usage deviate by more than 20 percent from the estimated hours of usage, the Grantee must provide an explanation in the annual report.

Project Completion

Project completion is the time period from the date the ARB issues the Agreement to the Grantee to when the project becomes operational. This includes the time period when the “equipment” is ordered, delivered, and installed. The Grantee must complete the project by June 30, 2008. ARB reserves the right to grant extensions on a case-by-case basis provided a written request is submitted to ARB by May 31, 2008 that details the basis for the delay and the expected completion of the project. No projects may extend past June 30, 2009.

Project Implementation/Life

The project implementation (a.k.a. project life) means the period of time during which the Grantee is required to operate and maintain their Program-funded engine/vehicle according to the terms of this Agreement. The project life is 5 years. The Grantee understands and agrees to operate the engine/vehicle according to the terms of this Agreement and to cooperate with ARB or its designee in implementation, monitoring, and enforcement.

The monitoring phase shall be five years. Grantee understands and agrees that the ARB or its designee has the authority and reserves the right to monitor and enforce the terms of this Agreement at any time during the project life to ensure emission reductions are obtained. The ARB will seek whatever legal, equitable, and other remedies are available under State law for the Grantee’s failure to comply with this Program’s requirements and failure to fully perform under the Agreement.

Monitoring/Reporting

The Grantee shall monitor the Projects for the full project life of 5 years. The Grantee shall submit a copy of the required project reports to ARB by **June 30 of each year of the project**. The project report shall include “equipment” usage (hours of operation) and location. The Grantee shall maintain records and retain the records for at least three years after the termination of the Program.

Description of “Equipment”

- The description of the “equipment” can be found in the Appendix.
- ARB reserves the right to make modifications to a project provided a written request from the Grantee is submitted and approved.

Maintenance of the Engine/Vehicle/Retrofit

The Grantee is required to maintain the “equipment” according to the manufacturer’s specifications for the life of the project. The Grantee shall not tamper or allow another to tamper with the “equipment”. The Grantee is also responsible for installing and maintaining a working hour meter, or other ARB-approved usage measuring device, for projects that document hours of operation as a means of calculating emissions reductions and cost-effectiveness. If the hour meter/usage device fails, the Grantee remains responsible for validating any hours not recorded by the hour meter/usage

device. The Grantee must either repair or replace the non-operating meter/device or provide other documentation of “equipment” operating hours acceptable to ARB.

Nonperformance

The ARB has the authority to fine the Grantee or seek other remedies available under the law for noncompliance with Program requirements and nonperformance with the Agreement. ARB reserves the right to consider unforeseen circumstances beyond the Grantee’s control in determining penalties for nonperformance. Nonperformance that results in loss of emission reductions to be achieved pursuant to this Agreement shall result in forfeiture of the Agreement and return to ARB of a pro-rated amount as follows:

$$\text{Money to be refunded} = \text{original grant amount} \times \{1 - [(\text{actual use in hours}) / (\text{estimated use in hours})]\}$$

On-Site Inspections

ARB or its designee(s) reserve(s) the right to inspect the “equipment” and/or records relating to the engine for the duration of this Program.

Auditing

Grantee agrees that the State shall have the right to audit all records relating to the Grant. Grantee agrees to maintain such records for a minimum of eight years after final payment, the end of the project life, or termination of this Agreement, whichever is later, unless a longer period is stipulated. Further, Grantee agrees to include a similar right of the State to audit records in any subcontract related to performance of this Agreement.

Insurance

Grantees are required to carry and (as required by annual reports or requested during monitoring and auditing) provide proof of insurance covering the new “equipment” throughout the term of the agreement.

Indemnification

Grantee agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Grantee in the performance of this Agreement.

Disputes

In the event a dispute is not otherwise disposed of by the Grantee and the ARB contact staff specified in this Agreement, the Executive Officer of the ARB shall review and render a decision in full and final resolution within 30 days. All requests for resolution must be made in writing to the Executive Officer. The Grantee shall continue to perform all duties and obligations specified in this Agreement while a dispute is under review.

Severability

If a provision of this agreement violates any applicable law or regulation, that provision will be stricken from the agreement, and all other provisions will remain in full force.

Incorporation by Reference

The Grantee's application for the Agreement is incorporated herein by reference.

Governing Law

This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.

Disbursement of Funds

ARB shall reimburse the Grantee an amount not to exceed the amount specified in this Agreement. Reimbursement under this Agreement is dependent upon submission of a written request using the provided Grant Disbursement Request form. The written request must include:

- Grantee's name
- Grant agreement number
- Grant amount
- Equipment identification number
- Engine/retrofit serial number
- Itemized invoice for all work completed or bill of sale. This invoice must not be dated prior to the effective date of the Agreement.

Upon verification and approval of the written request, the Grantee shall receive payment in approximately four to six weeks.

APPENDIX

Description of Current Engine/Equipment

Funding under this Agreement shall be utilized by Grantee only toward the replacement of the following engine(s) and equipment(s).

Current Engine

- Serial Number:
- Make:
- Model:
- Model Year:
- Fuel Type:
- Horsepower Rating:

Current Equipment

- Serial Number:
- Make:
- Model:
- Model Year:

Description of New Engine/ Equipment/Retrofit

Funding under this Agreement shall be utilized by Grantee toward the purchase of the following technology(s).

New Engine

- Make:
- Model:
- Model Year:
- Fuel Type:
- Horsepower Rating:
- Estimated Annual Hours of Operation (excluding hours for maintenance or testing):

APPENDIX

New Equipment

- Serial Number:
- Make:
- Model:
- Model Year:
- Estimated Annual Hours of Operation (excluding hours for maintenance or testing):

New Retrofit

- Manufacturer:
- Name:
- Estimated Annual Hours of Operation (excluding hours for maintenance or testing):

SAMPLE