

Agenda Date: October 15, 2009
Agenda Placement: Regular
Estimated Time: 10 minutes
Continued Item: No

Board Agenda Item

TO: Air Pollution Control District Board

FROM: Terry Dressler, Air Pollution Control Officer

CONTACT: Ron Tan (961-8812),
Bill Dillon, Deputy County Counsel (569-2950)

SUBJECT: Innovative Technology Group (ITG) Program

RECOMMENDATION:

Adopt the attached resolution clarifying the additional authority delegated to the Control Officer to execute grant agreements.

SUMMARY:

In order to better facilitate the administration of the District emissions reductions grants program, the Control Officer recommends that the authority delegated to the Control Officer to make appropriate amendments to the Standard Grant Agreement, on a case by case basis, as dictated by the particular requirements of the proposed project be specifically clarified. The Board will still determine the basic parameters of each grant program, including program eligibility, program cost effectiveness, and maximum grant funding. Grants will still be limited to a not-to-exceed amount of \$150,000, must be on the Standard Agreement, and must be reviewed and approved by Risk Management, the Auditor-Controller and County Counsel.

DISCUSSION:

The Santa Barbara County Air Pollution Control District ("District") has a long history of providing grant funds to projects to reduce air pollution. These projects began with funds from oil and gas projects related to development on the Outer Continental Shelf in the 1980's and 1990's and later expanded to include fees on automobiles from Department of Motor Vehicle

registrations and then the Carl Moyer Memorial Air Quality Standards Attainment Program ("Moyer Program").

Established pursuant to Section 44275 of the California Health and Safety Code, the Moyer Program is administered and overseen by the Air Resources Board which provides incentives for cleaner heavy-duty diesel engines in the state. The District has participated in all eleven years of the Moyer Program, and has received Air Resources Board grants totaling \$4,761,534. The District has provided \$1,298,127 in matching funds for a program total of \$6,059,661 (including administration) that have been utilized to reduce through Year 10 a combined total of 1183 tons of nitrogen oxide, reactive organic gas and particulate matter emissions from heavy-duty diesel engines in Santa Barbara County.

The District's Innovative Technology Group is responsible for administering the Moyer Program consistent with Air Resources Board Guidelines. These Guidelines specify, among other requirements, that recipients of Moyer program funds enter into a standard grant agreement with the District.

Because the District Board's bi-monthly meetings made it difficult to obligate funding in a timely manner, your Board in 2002 delegated to the Control Officer the authority to enter into and approve individual grant agreements up to the amount of \$100,000 per agreement. This amount was increased to \$150,000 by your Board in 2005. This authority was delegated with the following five conditions:

1. The Board must have authorized the overall grant program (e.g., agricultural booster pump grant program, marine vessel engine repower program);
2. The Board must have authorized an overall budget for the particular grant program and the total dollar amount of all grants approved by the Control Officer shall be within the budget authorized by the Board;
3. All grants must meet or exceed the established cost-effectiveness limits established by the Board;
4. Individual grants shall be on the standard grant agreement used by the District and shall reviewed and approved as to form by Risk Management, the Auditor-Controller and County Counsel; and
5. Individual grant amounts shall not exceed one hundred and fifty thousand dollars (\$150,000).

Additionally, the Control Officer is required to report to your Board at each regular Board hearing summarizing all grants approved by the Control Officer since the prior regular hearing. The report includes number of grants, name(s) of grantees, project types, project locations, grant amounts, project cost-effectiveness, emission reductions and amount of program allocation remaining.

Based on past experiences with the administration of this program, the District requests that the Board clarify the Control Officer's authority, consistent with the above delegation of authority,

that acknowledges that the Control Officer can make appropriate changes to the Standard Grant agreement on a case by case basis in order to better implement the program.

The issue areas and authority requested is set forth in Attachment 1 to the Resolution. The number references correspond to paragraph numbers in the Standard Agreement, which is set forth in Attachment 2 to the Resolution.

RESOLUTION OF THE
AIR POLLUTION CONTROL DISTRICT BOARD
COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA

| | | |
|--|---|----------------------|
| In the Matter of Delegating Authority to |) | Resolution No. _____ |
| The Air Pollution Control Officer for |) | |
| Certain Innovative Technology Group Grants |) | |
| _____ |) | |

RECITALS

- 1) WHEREAS, the Board wishes to continually improve the efficient operation of the Santa Barbara County Air Pollution Control District, including the Innovative Technologies Group grant program; and
- 2) WHEREAS, the Board wishes to retain authority over the grant program initiation parameters and fiscal allocations; and
- 3) WHEREAS, the Board wishes to delegate authority to the Control Officer to enter into and approve certain grant agreements for emissions reduction projects within specified parameters.
- 4) WHEREAS, the Board previously delegated authority to the Control Officer for certain grant agreements up to \$150,000 to fund emission reduction programs.

NOW, THEREFORE, IT IS HEREBY RESOLVED THAT:

- 1) The Board hereby delegates authority to the Control Officer to execute individual grant agreements that meet specified parameters for authorized Innovative Technology Group Programs.
- 2) The parameters for each individual grant approved by the Control Officer shall be as follows:
 - a. The Board shall have authorized the overall grant program (e.g., Lower Emission School Bus Program).
 - b. The Board shall have authorized an overall budget for the particular grant program. The total dollar amount of all grants approved by the Control Officer shall be within the budget authorized by the Board.
 - c. All grants must meet or exceed the cost-effectiveness limits established by the Board.
 - d. Individual grants shall utilize the standard District grant agreement and shall to be reviewed and approved by Risk Management, the Auditor-Controller, and County Counsel.

- e. Individual grants amounts shall not exceed one hundred and fifty thousand dollars (\$150,000).
- f. The Control Officer may modify the Standard Grant Agreement as set forth in Attachment 1 to this Resolution.

3) This Board resolution hereby supersedes Resolution No. 02-16 in its entirety.

4) The Control Officer shall provide reports to the Board at each regularly scheduled hearing of all grants approved by the Control Officer since the prior hearing. The reports shall include the number of grants executed, names of grantees, project types, project locations, grant amounts, project cost-effectiveness, and amount of program allocation remaining.

PASSED AND ADOPTED by the Santa Barbara County Air Pollution Control District Board, County of Santa Barbara, State of California, this 15th day of October 2009, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

Clerk of the Board

Santa Barbara County Air Pollution Control
District, State of California

By _____
Deputy

Chairperson

APPROVED AS TO FORM

DENNIS MARSHALL
SANTA BARBARA COUNTY COUNSEL

By: William M. Wilson
Deputy

ROBERT W. GEIS
Auditor Controller

By: Robert W. Geis

RAY AROMATORIO
Risk Program Administrator

By: Ray Aromatorio

Attachment 1

General: The Control Officer is authorized to make minor technical or grammatical changes to the Standard Agreement, as necessary in his judgment.

Recitals. The Control Officer may amend the recitals to reflect the particular source of funding, such as the Carl Moyer Program, project type, such as marine vessel engine replacements, and inclusion of the Air Resources Board as a third party beneficiary, where appropriate.

1. **Obligations to be Performed.** No change from existing Standard Agreement. The actual proposal for the project shall come from the grantee

2. **Time of Performance.** Amendment to existing Standard Agreement. The standard time of performance shall be three (3) years except as provided as following:

- a) The Control Officer may extend this time of performance up to five (5) years to ensure a project will meet Carl Moyer Program cost-effectiveness criteria.
- b) For projects involving agricultural equipment (e.g., diesel engine booster pumps, tractors) funded with ARB or the District's matching funds the time of performance may be from one (1) to ten (10) years, as determined based on guidelines of the Air Resources Board.

3. **Grant funding.** No change from existing Standard Agreement. The Control Officer is authorized to approve any grant on the Standard Grant Agreement for an amount up to and including \$150,000. Where the Air Resources Board is the source of funding, the 2008 Carl Moyer Guideline provision regarding Disclosure of Funds (Attachment E) will be added to the grant agreement.

4. **Matching Funds.** Amendment to existing Standard Agreement. Normally, matching funds are required and often include installation costs, which can be significant, such as in the case of the marine vessels engine repowerment program. The Control Officer is authorized to not require matching funds on a case by case basis (e.g., certain school bus replacements).

5. **Non Partnership.** No change from existing Standard Agreement. This is a standard condition that shall not be changed.

6. **Status of Grantee.** No change from existing Standard Agreement. This is a standard condition that shall not be changed.

7. **Records.** Amendment to existing Standard Agreement. The Control Officer shall be authorized to make reasonable changes to record keeping requirements, consistent with the standards and recommendations of the Auditor and, where Carl Moyer or other similar State funds are involved, the Air Resources Board.

8. **Grant Reporting.** Amendment to existing Standard Agreement. The Control Officer shall be authorized to make reasonable changes to record keeping requirements, consistent with the recommendations of the Auditor and, where Carl Moyer or other similar State funds are involved, the Air Resources Board.

9. **Audit and Review.** Amendment to existing Standard Agreement. The Control Officer shall be authorized to make reasonable changes to record keeping requirements, consistent with the recommendations of the Auditor and, where Carl Moyer or other similar State funds are involved, the Air Resources Board.

10. **Indemnification and Insurance.** Formalization of current practice. The Control Officer shall always require indemnification. Insurance is generally not required in grant agreements because the liability exposure to the District is very low where the District's role is limited to granting money to a grantee who has proposed a low emissions project. The Control Officer is authorized to require insurance in unusual circumstances. The Control Officer shall consult with Risk Management and County Counsel in such situations. The Control Officer shall require insurance whenever necessary to meet Air Resources Board's Carl Moyer Program Guidelines or other similar formally established requirements of Air Resources Board.

11. **Nondiscrimination.** No change from existing Standard Agreement. This is a standard condition that shall not be changed.

12. **Title to Low Emissions Equipment.** No change from existing Standard Agreement. This is a standard condition that shall not be changed.

13. **Right to Emissions Reduction.** No change from existing Standard Agreement. This is a standard condition that shall not be changed.

14. **Disposal of Replaced Equipment.** Amendment to existing Standard Agreement. The Control Officer may delete this paragraph where the grant does not involve disposal of replaced equipment.

15. **Termination.** Amendment to existing Standard Agreement. Grantee's obligation to repay the grant where grantee has terminated the grant shall be adjusted to reflect the time of performance.

16. **Conflict of Interest.** No change from existing Standard Agreement. This is a standard condition that shall not be changed.

17. **Taxes.** No change from existing Standard Agreement. This is a standard condition that shall not be changed.

18. **Project Logos.** Amendment to existing Standard Agreement. The Control Officer shall have the discretion to not include this provision.

19. **Public Education.** Amendment to existing Standard Agreement. The Control Officer shall have the discretion to not include this provision.

20. **Remedies not Exclusive.** No change from existing Standard Agreement. This is a standard condition that shall not be changed.

21. **Publication.** Amendment to existing Standard Agreement. The Control Officer shall have the discretion to not include this provision.

22. **Waivers.** No change from existing Standard Agreement. This is a standard condition that shall not be changed.

23. **Amendment.** No change from existing Standard Agreement. This is a standard condition that shall not be changed.

24. **California Law to Apply.** No change from existing Standard Agreement. This is a standard condition that shall not be changed.

25. **Assignment.** No change from existing Standard Agreement. This is a standard condition that shall not be changed.

26. **Grant Agreement Integrated.** No change from existing Standard Agreement. This is a standard condition that shall not be changed.

27. **Conflicts Between Grant Agreement and Incorporated Attachments.** No change from existing Standard Agreement. This is a standard condition that shall not be changed.

28. **Provisions Required by Law Deemed Inserted.** No change from existing Standard Agreement. This is a standard condition that shall not be changed.

29. **Unusual Circumstances.** No change from existing Standard Agreement. This is a standard condition that shall not be changed.

30. **Air Resources Board as Third Party Beneficiary.** Amendment to existing Standard Agreement. This condition that shall be included in all Carl Moyer

program contracts and any other program where ARB provides funding and requires that it be named as a third party beneficiary.

31. **Point of Contact.** No change from existing Standard Agreement. The Control Officer is authorized to designate and amend the designation of a point of contact as necessary.

Signature Page. No change from existing Standard Agreement. Contract shall be approved by County Counsel, Risk Management and the Auditor-Controller.

Attachment A: No change from existing Standard Agreement. This attachment is based on information provided by the prospective grantee and included in the agreement if approved for funding by the District, based on criteria for funding projects.

Attachment B: Grant Invoice Payment Schedule. Amendment to existing Standard Agreement. The Control Officer shall have discretion to determine when grant monies shall be paid. Normally, payment will be after the grantee has submitted an invoice for the purchase of low emissions equipment.

Attachment C: Grant Narrative Report Format. No change from existing Standard Agreement. The Control Officer is authorized to update as needed. Information required on the form is to be provided by the grantee.

Attachment D: County of Santa Barbara Unlawful Discrimination Ordinance. No change from existing Standard Agreement. Control Officer may incorporate by reference where approved by County Counsel. Generally, the Ordinance shall be attached to the grant agreement.

Attachment E: ARB Carl Moyer Program Guideline Provision on Disclosure of Funds. New attachment required by the Air Resources Board when ARB funds are used.

Attachment F: Standard Indemnification and Insurance Provision. No change from existing Standard Agreement. This condition is included only if required by Risk Management and County Counsel.

Attachment 2
Standard Grant Agreement

GRANT AGREEMENT

between

The Santa Barbara County Air Pollution Control District

and

[GRANTEE'S NAME]

This Grant Agreement, hereinafter referred to as "Agreement", is made this ____ day of _____ 20__, between the Santa Barbara County Air Pollution Control District, hereinafter referred to as "DISTRICT," and _____, hereinafter referred to as "GRANTEE".

RECITALS

WHEREAS, the DISTRICT is a county air pollution control agency with the primary responsibility for preparing and implementing the Clean Air Plan to achieve and maintain state and federal air quality standards in the County of Santa Barbara as mandated by the California Clean Air Act and Federal Clean Air Act;

WHEREAS, Santa Barbara County does not meet state health-based air quality standards for ozone and particulate matter ("PM₁₀");

WHEREAS, oxides of nitrogen ("NO_x") and reactive organic gases ("ROG") are precursors to the formation of ozone, and PM₁₀ from diesel-fueled engines has been classified as a Toxic Air Contaminant, and the generation of NO_x, ROG, and PM₁₀ from internal combustion engines used in on-road and off-road motor vehicles and industrial equipment are a significant contributor to the county's total emissions of these pollutants;

WHEREAS, the DISTRICT has funds provided by the California Air Resources Board (Carl Moyer Program), and the California Department of Motor Vehicles (AB923- \$2 Surcharge Fee Program), and wishes to utilize a portion of these funds for a emissions reduction program approved by the Board;

WHEREAS, the California Air Resources Board is an intended third party beneficiary for the purposes of this Agreement; as such the Board reserves the right to enforce the terms of this Agreement;

WHEREAS, the DISTRICT is interested in encouraging the demonstration and implementation of low-emissions programs under cooperative agreements with government, industry, and local businesses;

WHEREAS, GRANTEE has submitted a proposal to _____, which meet the requirements of the Carl Moyer Program Guidelines, and therefore, becomes eligible to receive funds from the DISTRICT for this equipment repower;

WHEREAS, GRANTEE represents it is highly qualified and experienced in its professional field, is able to perform the activities described in the STATEMENT OF GRANT OBLIGATIONS attached to this Agreement as Attachment A, and will not commence these activities until this Agreement is fully executed;

WHEREAS, the DISTRICT has reviewed and decided to fund GRANTEE's proposal at an amount determined by the Air Pollution Control Officer; and

WHEREAS, the District Board of Directors has delegated authority to the Control Officer to execute certain grant agreements and this Agreement falls within that delegation authority.

NOW, THEREFORE, in consideration of the mutual promises and conditions listed below, it is hereby agreed between the DISTRICT and GRANTEE as follows:

GRANT TERMS AND CONDITIONS

1. Obligations to be Performed Under this Agreement.

Within the time specified in paragraph 2 (Time of Performance), GRANTEE shall perform all of the obligations described in this Agreement and set forth in the STATEMENT OF GRANT OBLIGATIONS, which is attached hereto as Attachment A and incorporated herein by this reference.

GRANTEE agrees to furnish all labor, materials, equipment, required licenses, permits, fees, and other appropriate legal authorization from all applicable federal, state, and local jurisdictions necessary to perform and complete, per schedule, in a professional manner, the obligations described herein.

2. Time of Performance.

This Agreement shall commence on the date of signing by the GRANTEE and the DISTRICT (either the Board of Directors or the Control Officer). GRANTEE shall have the replacement engines (hereinafter "low emissions equipment") as described in Attachment A (Statement Of Grant Obligations), installed and operating on or before _____. The time for installation may be extended, in writing, by the Control Officer for good cause. Operation shall commence upon completion of installation and shall continue for _____.

3. Grant Funding.

DISTRICT hereby agrees to provide funds to GRANTEE in the amount not to exceed \$_____ toward the purchase of the low emissions equipment. GRANTEE shall invoice the DISTRICT in accordance with the schedule specified in Attachment B (Grant Invoice Payment Schedule). GRANTEE shall provide DISTRICT any information necessary to verify the accuracy of the invoice. The DISTRICT will pay GRANTEE within thirty days of receipt of GRANTEE's invoice. All invoices or other payment documents must include the assigned

DISTRICT contract number. Failure to properly reference this contract number may result in a delay of payment.

GRANTEE shall not submit another application or sign another contract to receive funding from any other source for the same specific low emissions equipment covered by this Agreement, other than any loan application or loan contract necessary to fund GRANTEE's cost share obligation for the project.

4. Matching Funds.

GRANTEE shall provide matching funds, as described in Attachment A (Statement Of Grant Obligations), as a condition of receiving this grant from the DISTRICT. Failure to provide such funds shall be, at the discretion of the Control Officer, grounds for termination of this Agreement. Upon such termination, GRANTEE shall within 14 days of termination, return any grant funds received from the DISTRICT under this Agreement.

5. Non-Partnership.

This Agreement is not intended by the parties to constitute or create a joint venture, pooling arrangement, or formal business organization of any kind. The rights and obligations of the parties shall be only those expressly set forth herein.

6. Status of GRANTEE.

GRANTEE and GRANTEE's subcontractors shall perform all services under this Agreement as independent contractors and not as employees, officers or agents of DISTRICT or the County of Santa Barbara.

7. Records.

GRANTEE shall keep, and provide to DISTRICT or its agents, upon request, accurate financial records (including invoices and published price lists on which this Agreement was based) necessary to enable DISTRICT to review GRANTEE's performance of this Agreement. These records shall demonstrate the grant funding has been used for the purchase of the low emissions equipment described in the Grant Proposal. GRANTEE shall maintain all such records for at least three years after the termination of this Agreement.

8. Grant Reporting.

GRANTEE shall submit report(s) to the DISTRICT in accordance with the schedule and format specified in Attachment C (Grant Narrative Reports Format). Should GRANTEE fail to submit these reports to the DISTRICT, GRANTEE shall make the low emissions equipment available for on-site monitoring by the DISTRICT for the term of the Agreement. Such onsite monitoring shall not relieve GRANTEE of its obligation to submit all required reports.

9. Audit and Review.

DISTRICT or its agents shall have the right to audit and review the records identified in Paragraph 7 (Records), above, maintained by GRANTEE pursuant to the terms of this Agreement to the extent necessary to verify the grant has been used in accordance with the terms of this Agreement. Any such audit and review will be conducted by DISTRICT or County of Santa Barbara auditors or, at GRANTEE's option and expense, by a mutually acceptable third party accounting firm.

10. Indemnification.

GRANTEE shall defend, indemnify and save harmless DISTRICT and the County of Santa Barbara (COUNTY), their officers, agents and employees from any and all claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities arising out of this Agreement or occasioned by the performance or attempted performance of the provisions hereof; including, but not limited to, any act or omission to act on the part of the GRANTEE or his agents or employees or other independent contractors directly responsible to him; except those claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities resulting solely from the negligence or willful misconduct of the DISTRICT.

11. Nondiscrimination Clause.

GRANTEE shall abide by the Unlawful Discrimination Ordinance, Article XIII of Chapter 2 of the Santa Barbara County Code, which is attached hereto as Attachment D (County Of Santa Barbara Unlawful Discrimination Ordinance) and incorporated herein by this reference.

12. Title to Low Emissions Equipment.

Title to, and risk of loss, of the low emissions equipment shall at all times vest in and with GRANTEE. GRANTEE acknowledges that DISTRICT did not supply, design or manufacture the low emissions equipment or any of its components. This low emissions equipment is commercially manufactured and sold by a manufacturer determined by GRANTEE. DISTRICT specifically disclaims all warranties, express and implied, including the implied warranties of merchantability and fitness for the intended purpose, as to the low emissions equipment, any test equipment, or the field tests. In no event shall DISTRICT be liable to GRANTEE or any third party for any direct, indirect, consequential, special, incidental, or punitive damages for the design, manufacture, operation, maintenance, performance, or demonstration of the low emissions equipment under any theory, including but not limited to, tort, contract, breach of warranty, or strict liability.

13. Rights to Emission Reductions.

GRANTEE affirmatively certifies to the DISTRICT that the project described in Attachment A (Statement of Grant Obligations) is not required by any local, state and/or federal rule, regulation or Memorandum of Understanding currently in effect. GRANTEE

transfers and conveys to DISTRICT all rights and claim to ownership of the emission reductions achieved through the installation and operation of the low emissions equipment funded by the Agreement. GRANTEE shall not use or attempt to use the emission reductions achieved by the low emissions equipment as emission reduction credits. GRANTEE hereby fully and completely relinquishes such rights for the useful life of the low emissions equipment.

14. Disposal of Replaced Equipment.

GRANTEE shall not use, or allow the use of, the existing equipment being replaced with the new low emissions equipment. In addition, GRANTEE shall not sell, gift, or otherwise transfer ownership of the replaced equipment to another party for operation. Within 30 days of the installation of the new low emission equipment, GRANTEE shall dispose of the replaced equipment in such a manner that it is not reusable. Within 3 days of disposal, GRANTEE shall provide written notice to the DISTRICT stating the equipment's serial number, date of disposal, the location of the engine, and the method by which the engine was rendered unusable. If GRANTEE fails to properly dispose of the replaced engines, GRANTEE shall return the funds provided by the DISTRICT for the new low emissions equipment. GRANTEE may remove and retain ownership of any parts from the replaced equipment, provided that the engine block from the replaced equipment is disposed of as described herein.

15. Termination.

a) DISTRICT. DISTRICT may, in its sole discretion, terminate this Agreement for convenience by giving thirty (30) days prior written notice to GRANTEE. GRANTEE shall not incur any unnecessary expenses or costs which are reimbursable under this Agreement during this period except those absolutely necessary to close out all activities related to the Agreement. Any other charges incurred by GRANTEE during this period will not be compensated by DISTRICT unless approved in writing by the Control Officer.

The DISTRICT may also terminate this Agreement for cause should GRANTEE default in the performance of this Agreement or materially breach any of its provisions. Such termination shall be by written notice and shall be effective upon receipt by GRANTEE. The DISTRICT may seek whatever legal, equitable, and other remedies available under State law for the GRANTEE's failure to comply and fully perform under the Agreement.

b) GRANTEE. GRANTEE may terminate its obligation to operate the low emissions equipment funded under this Agreement for good cause, provided that, if requested by the Control Officer, GRANTEE shall reimburse the DISTRICT for the Grant funding specified in Paragraph 3 (Grant Funding), as follows:

| <u>Termination Date</u> | <u>Reimbursement Due to District</u> |
|-------------------------|--------------------------------------|
| Prior to Operation | 100 percent of Grant Funding |
| Year 1 of Operation | 100 percent of Grant Funding |
| Year 2 of Operation | 60 percent of Grant Funding |

Year 3 of Operation
After year 3 of Operation

20 percent of Grant Funding
0 percent of Grant Funding

The year of the operation shall be determined in reference to Paragraph 2 (Time of Performance). GRANTEE'S notice of termination shall be in writing and shall be effective upon completion of the terms of this paragraph. Such notice shall terminate GRANTEE's obligation under Paragraphs 1 (Obligations to be Performed Under this Agreement) and 2 (Time of Performance) of this Agreement.

16. Conflict of Interest.

GRANTEE understands and acknowledges that the funds awarded under this Grant Agreement may only be awarded to GRANTEE in compliance with the requirements of the California Political Reform Act ("PRA"), California Government Code Section 87100 *et seq.* GRANTEE understands and acknowledges that the PRA prohibits any public official from participating in any governmental decision in which the public official knows he or she has a financial interest.

For the purposes of this provision, a "public official" is any person employed in the Innovative Technology Program at DISTRICT or any other public official of the DISTRICT or County of Santa Barbara who participated in the negotiation or making of this Agreement.

For the purposes of this provision, "GRANTEE" includes GRANTEE and GRANTEE's subcontractors and employees, business associates and business partners (including all personnel named in GRANTEE'S Proposal) who will receive a financial benefit from this Grant Agreement.

GRANTEE represents and warrants that a "conflict of interest" did not exist during the process that led to the award of this Grant Agreement. A conflict of interest exists if any of the following are true:

- a) GRANTEE is a business entity in which a public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more;
- b) GRANTEE has been a source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided to, received by, or promised to a public official within 12 months prior to GRANTEE's submission of an application to the DISTRICT for this Grant award.
- c) GRANTEE is a business entity in which a public official is a director, officer, partner, trustee, employee, or holds any position of management;
- d) GRANTEE has been a donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating three hundred forty dollars (\$340) or more in value provided or promised to a

public official within 12 months prior to GRANTEE's submission of an application to the DISTRICT for this Grant award.

GRANTEE shall disclose any conflict of interest to DISTRICT in writing prior to execution of this Agreement. DISTRICT may, in its sole discretion, decline to award or may terminate the grant to GRANTEE if a conflict of interest existed prior to the full execution of this Agreement. Failure of GRANTEE to comply with this provision shall be a material breach of this Agreement and shall, at DISTRICT's discretion, result in a total forfeiture of all Grant funds received under this Grant Agreement. GRANTEE shall also be liable to DISTRICT for treble damages of the amount of the Grant and DISTRICT's reasonable attorney's fees in any litigation necessary to enforce this provision.

17. Taxes.

GRANTEE shall be responsible for payment of all taxes due as a result of the Agreement. GRANTEE's Federal Tax Identification Number or Social Security Number shall be on file with DISTRICT prior to payment of grant funds.

18. Project Logos.

At the option of the DISTRICT, GRANTEE shall allow the placement of a DISTRICT logo on project facilities or equipment. The placement design, style and color will be determined mutually by DISTRICT and GRANTEE.

19. Public Education.

GRANTEE, upon request of DISTRICT, will participate in and assist with a one day public education and demonstration concerning the GRANTEE's project. GRANTEE will allow reasonable access by DISTRICT and the public to project facilities and equipment during this demonstration.

20. Remedies Not Exclusive.

No remedy herein conferred upon or reserved to DISTRICT is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

21. Publication.

DISTRICT shall have the right of prior written approval of any document which shall be disseminated to the public by GRANTEE in which GRANTEE utilized information obtained from DISTRICT in connection with performance under this Grant Agreement.

Information, data, documents, or reports developed by GRANTEE for DISTRICT,

pursuant to the Grant Agreement, shall be part of DISTRICT's public record. GRANTEE may use or publish, at its own expense, such information provided to DISTRICT. The following acknowledgment of support and disclaimer must appear in each document disseminated, whether copyrighted or not, and based upon the work performed under this Grant Agreement.

"This report was prepared as a result of work sponsored by the Santa Barbara County Air Pollution Control District (SBCAPCD). The opinions, findings, conclusions, and recommendations are those of the author and do not necessarily represent the views of SBCAPCD. SBCAPCD, its officers, employees, contractors, and subcontractors make no warranty, expressed or implied, and assume no legal liability for the information in this report. SBCAPCD has not approved or disapproved this report, nor has SBCAPCD passed upon the accuracy or adequacy of the information contained herein."

GRANTEE shall inform its officers, employees, and subcontractors involved in the performance of this Grant Agreement of the restrictions contained herein and require compliance with the above publication terms.

22. Waivers.

The waiver by either party to this Agreement of any term, covenant, or condition of this Agreement or of any provision, ordinance, or law, shall not be deemed to be a continuing waiver of such term, covenant, condition, or law, or of any subsequent breach or violation of the same, or of any other term, covenant, ordinance of law.

23. Amendment.

This Agreement may only be amended in writing executed by the DISTRICT Board and GRANTEE or, where authorized by the Board, by the Control Officer and GRANTEE.

24. California Law to Apply.

This Agreement shall be construed under and in accordance with the laws of the State of California. All obligations created under this Agreement are performable in California.

25. Assignment.

This Agreement shall not be assigned by GRANTEE without the prior written consent of the Control Officer. In the event GRANTEE desires to sell, lease, or otherwise transfer the low emissions equipment, GRANTEE shall promptly notify DISTRICT and shall provide the potential buyer or other transferee with a copy of this Agreement. The buyer or other transferee must agree in writing to abide by the terms of this Agreement prior to GRANTEE closing any such sale, lease or other transfer.

26. Grant Agreement Integrated.

This Agreement represents the entire and integrated Agreement between DISTRICT and GRANTEE and supersedes any and all other negotiations, representations, and/or agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other agreement, statement or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding.

27. Conflicts Between Grant Agreement and Incorporated Attachments.

With the exception of the County's Unlawful Discrimination Ordinance, to the extent that any provisions in any of the other attachment(s) which are incorporated into this Agreement by reference, conflict with any provision contained in this Agreement, the provision of this Agreement shall take precedence and govern.

28. Provisions Required by Law Deemed Inserted.

Each and every provision of law and clause required by law to be inserted in this Grant Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted or is not correctly inserted, then upon application of either party, this Grant Agreement shall forthwith be physically amended to make such insertion or correction.

29. Unusual Circumstances.

The parties shall be excused from performing their respective obligations in the event they are prevented from performing so by reason of circumstances beyond their control, including, but not limited to, strikes and other labor disputes, wars, civil commotion, natural calamity, fire, equipment breakdown or failures. In the event of any delay described above, the time for performance may be extended by mutual agreement for a period equal to the length of the delay.

30. Air Resources Board as Third Party Beneficiary.

GRANTEE acknowledges that Carl Moyer Program Funds or California DMV-\$2 Surcharge Fee funds have been provided for this Agreement by the State of California through the administration and oversight of the California Air Resources Board. The Air Resources Board shall be a third party beneficiary for the purposes of this Agreement and, as such, the Board shall have the right to enforce the terms of this Agreement, including seeking whatever legal, equitable and other remedies are available under State law for GRANTEE's failure to fully perform under this Agreement.

31. Point of Contact.

All notices referenced in this Agreement shall be in writing and shall be given by first class mail addressed as follows, or at such other address or to such person that the parties may from time to time designate in writing:

GRANTEE

DISTRICT

Santa Barbara County Air Pollution Control
District
260 North San Antonio Rd., Suite A
Santa Barbara, California 93110
Attn: Al Ronyecz

This Grant Agreement between Santa Barbara County Air Pollution Control District and Baroda Farms, Inc. was executed at _____, California on the day and year first above written.

ATTEST:

TERRY DRESSLER
Clerk of the Board

Santa Barbara County Air Pollution Control
District, State of California

By _____
Deputy

By _____
Terry Dressler
Air Pollution Control Officer

APPROVED AS TO FORM:

[Grantee's Name]

RAY AROMATORIO
Risk Program Administrator

By _____

By _____
[Title]

Date: _____

APPROVED AS TO FORM:

ROBERT W. GEIS
Auditor Controller

By _____

APPROVED AS TO FORM

DENNIS MARSHALL
County Counsel

By _____
Deputy

ATTACHMENT A
STATEMENT OF GRANT OBLIGATIONS

PROJECT DESCRIPTION:

MATCHING FUNDS:

The matching funds required as a condition of this Agreement are described as follows:

PROJECT SCHEDULE:

GRANTEE shall implement the project consistent with the following schedule:

| Task | Months After Effective Date of Grant Agreement | | | | | | | | | |
|--|--|---|---|---|--------|----|---------|----|---------|----|
| | 1 | 2 | 3 | 4 | 5 - 15 | 16 | 17 - 27 | 28 | 29 - 39 | 40 |
| Purchase/Install new Low Emissions Equipment | | | | | | | | | | |
| Disposal of Replaced Diesel Engines | | | | | | | | | | |
| Operations/Data Collection for Low Emissions equipment | | | | | | | | | | |
| Reporting to District | | | | | | | | | | |

*By [DATE] (per paragraph 2, page 2: Time of Performance)

ATTACHMENT B
GRANT INVOICE PAYMENT SCHEDULE

GRANTEE shall invoice the DISTRICT as follows:

- Not-to-exceed (NTE) total of \$ _____ upon delivery, installation, and satisfactory operation of the new low emissions equipment, as specified above in Attachment A (Statement of Grant Obligations), and itemized as follows:
 - ❖ **[Equipment description]:** Not-to-exceed \$ _____ for specified low-emissions equipment
 - ❖ **[Equipment description]:** Not-to-exceed \$ _____ for specified low-emissions equipment
- Attach a copy of vendors' invoice to GRANTEE for the specified low emissions equipment, and include model number, model year, and itemized breakdown of all equipment purchased.
- GRANTEE may invoice the DISTRICT separately for each project as they are completed or for both projects in total, as specified above.

ATTACHMENT C
GRANT NARRATIVE REPORTS FORMAT

GRANTEE shall submit an annual narrative report to the District after the first year of operation of the specified low emissions equipment. The purpose of these reports is to provide the DISTRICT with feedback as to GRANTEE's experience with the low emissions equipment and for reporting required under the state Carl Moyer Program. The reports shall include the following items:

1. Name, address, and telephone of GRANTEE;
2. Make and model and location of equipment purchased;
3. Operating hours for the low emissions equipment for the most recent 12 months of operation;
4. Provide the estimated percentage change in operating expenses associated with the new low emissions equipment;
5. Discussion of condition of equipment including any repairs, problems, or benefit with the equipment.
6. Any conditions (e.g., weather, permits) that significantly affected the annual usage of equipment from routine service.
7. Submit proof of insurance covering the specified low emissions equipment.

ATTACHMENT D
COUNTY OF SANTA BARBARA UNLAWFUL DISCRIMINATION ORDINANCE

Sec. 2-95. Prohibition of unlawful discrimination in employment practices. The County of Santa Barbara reserves the right to terminate forthwith each and every written contract and agreement (except purchase orders) for goods and/or services entered into by the County of Santa Barbara or by its joint powers, agencies or agents with the consent of the other parties (hereinafter called "contractor") including but not limited to concessions, franchises, construction agreements, leases, whether now in effect or hereinafter made if the county finds that the contractor is discriminating or has discriminated against any employee or applicant for employment in violation of any applicable state or federal laws, rules or regulations which may now or hereafter specifically prohibit such discrimination on such grounds as race, religion, sex, color, national origin, physical handicap when otherwise qualified, Vietnam era veteran/disabled, or age.

Such finding may only be made after contractor has had a full and fair hearing on notice of thirty (30) days before an impartial hearing officer at which hearing contractor may introduce evidence, produce witnesses and have the opportunity to cross-examine witnesses produced by the county. Further, any finding of discrimination must be fully supported by the facts developed at such hearing and set forth in a written opinion; and in addition, contractor may move in the appropriate court of law for damages and/or to compel specific performance of a contractor or agreement if any the above procedures are not afforded to the contractor. If contractor is not found to have engaged in unlawful discriminatory practices, county shall pay all costs and expense of such hearing, including reasonable attorneys' fees to contractor in accordance with current Santa Barbara County Superior Court schedule of attorneys' fees for civil trials. If contractor is found to have engaged in such unlawful discriminatory employment practices, contractor shall pay all such costs, expenses and attorneys' fees.

Whether or not a contract or agreement is still in existence at the time of final determination of such unlawful discrimination, the contractor shall forthwith reimburse county for all damages directly stemming from such discrimination; however, those damages shall not exceed and are not reimbursable in an amount which exceeds amounts paid contractor under the terms of the contract or agreement.

Nothing in this section 2-95 shall directly or by interpretation give a private cause of action to any third party (not a signatory to the contract or agreement) including employees past or present, or applicants for employment to contractor, it being the sole purpose of this clause to administratively assure compliance with the nondiscrimination clauses contained herein.

Employment practices shall include, but are not limited to employment, promotion, demotion, transfer, recruitment and advertising for recruitment, layoff or other termination, rate of pay, employee benefits and all other forms of compensation selection for training and apprenticeship and probationary periods.

Contractor shall permit access at all reasonable time and places to all of its records of employment, advertising, application forms, tests and all other pertinent employment data and records, to the County of Santa Barbara, its officers, employees and agents for the purpose of investigation to ascertain if any unlawful discrimination as described herein has occurred or is being practiced, provided that such records are relevant to a complaint of an unlawful discriminatory practice which has been forwarded to contractor reasonably prior to the time contractor is asked to make such records available. In addition, all such records shall be deemed "Confidential" by the officers, employees and agent of the county. No records or copies of such records may be removed from the premises of contractor and no

disclosure, oral or written of such record, may be made to third parties except as provided within the agreement.

Provided, however, that in the event of a hearing to determine whether or not contractor is engaging in unlawful discrimination in employment practices as defined herein, the board of supervisors of Santa Barbara County may issue subpoenas to require that certified copies of such records be made available to the hearing.

Failure to fully comply with any of the foregoing provisions relating to unlawful discrimination in employment practices shall be deemed to be a material breach of any contract or agreement with the County of Santa Barbara. All persons contracting with or who have contracts for goods or services with the county shall be notified that this chapter applies to their contract or agreement with the County of Santa Barbara. (Ord. No. 2946, SS 1; Ord. No. 2993, SS 1; Ord. No. 3018, SS 1)

Sec. 2-95.5. Exceptions. Notwithstanding any other provisions in this article, any party contracting with the County of Santa Barbara having an affirmative action program which has been approved within thirty-six (36) months from the date of the contract by an agency of the federal government shall be deemed to be in compliance with the provisions of this article upon furnishing documentary evidence of such approval satisfactory to the county affirmative action officer. Loss of such approval shall be immediately reported by such party to the county affirmative action officer.

Sec. 2-96. Purchase orders. Purchase orders shall contain the following clause as grounds for termination of such purchase order.

"If complaint is made that seller is engaging in discriminatory employment practices made unlawful by applicable state and federal laws, rules or regulations, and the State Fair Employment Practice Commission or the Federal Equal Employment Opportunities Commission determines that such unlawful discrimination exists, then the County of Santa Barbara may forthwith terminate this order." (Ord. No. 2946, § 1)

Sec. 2-97. Affirmative action officer. At the discretion of the county affirmative action officer, he or she shall promptly and thoroughly investigate, or cause to be investigated reports and complaints from whatever source, that any party contracting with the County of Santa Barbara is engaging, or during the term of a contract or agreement with the County of Santa Barbara has engaged, in any unlawful discriminatory employment practices as described in Section 2-95 of this Code. If the investigation discloses reason to believe such unlawful discrimination does exist or has existed and the conditions giving rise thereto have not been changed so as to prevent further such unlawful discrimination, and the said party shall not forthwith terminate such unlawful discrimination, take all appropriate steps to prevent a recurrence of such or other unlawful practices, and compensate the person or persons unlawfully discriminated against for any and all loss incurred by reason of such unlawful discrimination, all to the satisfaction of the affirmative action officer, then the affirmative action officer shall cause the matter to be presented for action to the State Fair Employment Practices Commission or the Federal Equal Employment Opportunities Commission, or both, and to any other concerned state or federal agencies or officers.

If and when it has been finally determined by the affirmative action officer, county counsel, or state or federal regulatory agencies that such unlawful discriminatory employment practice has in fact so occurred or are being carried on, then the affirmative action officer shall forthwith present the entire matter to the board of supervisors of the county, together with all damages, costs and expense related thereto and incurred by county, for appropriate action by the board of supervisors in accord with the

intent and purposes of this article and of the affirmative action program of the County of Santa Barbara (Ord. No. 2946, § 1).

ATTACHMENT E

THIS IS AN ARB DISCLOSURE STATEMENT. WILL BE ATTACHED.

ATTACHMENT F
STANDARD INDEMNIFICATION AND INSURANCE PROVISIONS

INDEMNIFICATION

GRANTEE shall defend, indemnify and save harmless DISTRICT and the County of Santa Barbara (COUNTY), their officers, agents and employees from any and all claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities arising out of this Agreement or occasioned by the performance or attempted performance of the provisions hereof; including, but not limited to, any act or omission to act on the part of the GRANTEE or his agents or employees or other independent contractors directly responsible to him; except those claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities resulting from the sole negligence or willful misconduct of the DISTRICT.

GRANTEE shall notify DISTRICT immediately in the event of any accident or injury arising out of or in connection with this Agreement.

INSURANCE

Without limiting the GRANTEE's indemnification of DISTRICT and the COUNTY, GRANTEE shall procure the following required insurance coverages at its sole cost and expense. All insurance coverages are to be placed with insurers which (1) have a Best's rating of no less than A: VII, and (2) are admitted insurance companies in the State of California. All other insurers require the prior approval of DISTRICT. Such insurance coverage shall be maintained during the term of this Agreement. Failure to comply with the insurance requirements shall place GRANTEE in default. Upon request by DISTRICT, GRANTEE shall provide a certified copy of any insurance policy to DISTRICT within ten (10) working days.

1. Workers' Compensation Insurance: Statutory Workers' Compensation and Employers Liability Insurance shall cover all GRANTEE's staff while performing any work incidental to the performance of this Agreement. The policy shall provide that no cancellation, or expiration or reduction of coverage shall be effective or occur until at least thirty (30) days after receipt of such notice by DISTRICT. In the event GRANTEE is self-insured, it shall furnish to DISTRICT a copy of Certificate of Consent to Self-Insure issued by the Department of Industrial Relations for the State of California. This provision does not apply if GRANTEE has no employees as defined in Labor Code Section 3350 et seq. during the entire period of this Agreement and GRANTEE submits a written statement to DISTRICT stating that fact.
2. General and Automobile Liability Insurance: The general liability insurance shall include bodily injury, property damage and personal injury liability coverage, shall afford coverage for all premises, operations, products and completed operations of GRANTEE and shall include contractual liability coverage sufficiently broad so as to include the insurable liability

assumed by the GRANTEE in the indemnity and save harmless provisions [above] of the Indemnification Section of this Agreement between DISTRICT and GRANTEE. The automobile liability insurance shall cover all owned, non-owned and hired motor vehicles that are operated on behalf of GRANTEE pursuant to GRANTEE's activities hereunder. GRANTEE shall require all subcontractors to be included under its policies or furnish separate certificates and endorsements to meet the standards of these provisions by each subcontractor. DISTRICT and the COUNTY, their officers, agents, and employees shall be Additional Insured status on any policy. A cross liability clause, or equivalent wording, stating that coverage will apply separately to each named or additional insured as if separate policies had been issued to each shall be included in the policies. A copy of the endorsement evidencing that the policy has been changed to reflect the Additional Insured status must be attached to the certificate of insurance. The limit of liability of said policy or policies for general and automobile liability insurance shall not be less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Any deductible or Self-Insured Retention {SIR} over \$10,000 requires approval by DISTRICT.

Said policy or policies shall include severability of interest or cross liability clause or equivalent wording. Said policy or policies shall contain a provision of the following form:

"Such insurance as is afforded by this policy shall be primary and if the COUNTY has other valid and collectible insurance, that other insurance shall be excess and non-contributory."

If the policy providing liability coverage is on a 'claims-made' form, the GRANTEE is required to maintain such coverage for a minimum of three years following completion of the performance or attempted performance of the provisions of this agreement. Said policy or policies shall provide that DISTRICT shall be given thirty (30) days written notice prior to cancellation or expiration of the policy or reduction in coverage.

GRANTEE shall submit to the office of the designated DISTRICT representative certificate(s) of insurance documenting the required insurance as specified above prior to this Agreement becoming effective. DISTRICT shall maintain current certificate(s) of insurance at all times in the office of the designated DISTRICT representative as a condition precedent to any payment under this Agreement. Approval of insurance by DISTRICT or acceptance of the certificate of insurance by DISTRICT shall not relieve or decrease the extent to which the GRANTEE may be held responsible for payment of damages resulting from GRANTEE's services or operations pursuant to the contract, nor shall it be deemed a waiver of DISTRICT rights to insurance coverage hereunder.

In the event the GRANTEE is not able to comply with DISTRICT's insurance requirements, DISTRICT may, at its sole discretion and at the GRANTEE's expense, provide compliant coverage.

The above insurance requirements are subject to periodic review by DISTRICT and the COUNTY. The COUNTY's Risk Manager is authorized to change the above insurance requirements, with the concurrence of County Counsel, to include additional types of insurance coverage or higher coverage limits, provided that such change is reasonable based on changed risk of loss or in light of past claims against DISTRICT and the COUNTY or inflation. This option may be exercised during any amendment of this Agreement that results in an increase in the nature of DISTRICT's or the COUNTY's risk and such change of provisions will be in effect for the term of the amended Agreement. Such change pertaining to types of insurance coverage or higher coverage limits must be made by written amendment to this Agreement. GRANTEE agrees to execute any such amendment within thirty (30) days of acceptance of the amendment or modification.