

File No. 101011

Committee Item No. 5

Board Item No. 34

### COMMITTEE/BOARD OF SUPERVISORS

#### AGENDA PACKET CONTENTS LIST

Committee: Land Use and Economic Development Date August 9, 2010

Board of Supervisors Meeting

Date August 10, 2010

#### Cmte Board

- |                                     |                                     |  |
|-------------------------------------|-------------------------------------|--|
| <input type="checkbox"/>            | <input type="checkbox"/>            | Motion                                       |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Resolution                                   |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Ordinance                                    |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Legislative Digest                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Budget Analyst Report                        |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Legislative Analyst Report                   |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Youth Commission Report                      |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Introduction Form (for hearings)             |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/>            | MOU  |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Subcontract Budget                           |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Contract/Agreement                           |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Form 126 – Ethics Commission                 |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Application                                  |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Public Correspondence                        |

#### OTHER

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Completed by: Alisa Somera

Date August 6, 2010

Completed by: [Signature]

Date August 10, 2010

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document can be found in the file.



1 [Accept and Expend Grant - Diesel Emissions Reduction Act - Pier 27 Shoreside Power -  
2 \$1,000,000]

3 **Resolution authorizing the San Francisco Port Commission to accept and expend a**  
4 **grant from the U.S. Environmental Protection Agency in the amount of \$1,000,000**  
5 **under the Diesel Emissions Reduction Act, to assist in the installation of a shoreside**  
6 **power facility for cruise ships at Pier 27.**

7  
8 WHEREAS, Shoreside power allows cruise ships to connect to a conventional power  
9 grid while at berth, thereby alleviating the need for those vessels to operate large, diesel  
10 engines to generate electrical power; and

11 WHEREAS, On September 27, 2005, the Port of San Francisco's Cruise Terminal  
12 Environmental Advisory Committee (CTEAC) recommended the adoption of shoreside power  
13 for cruise ships at any future cruise terminal development at the Port; and

14 WHEREAS, On September 27, 2005, the San Francisco Port Commission endorsed  
15 CTEAC's recommendation for shoreside power for cruise ships; and

16 WHEREAS, On April 4, 2007, the Bay Area Air Quality Management District  
17 (BAAQMD) awarded to the Port of San Francisco a Carl Moyer Program grant of \$1,900,000  
18 to partially fund a project to design and install shoreside power equipment for cruise ships at  
19 Pier 27 (the Project); and

20 WHEREAS, In December 2007, this Board authorized the Port Commission to accept  
21 and expend the BAAQMD grant funds under Resolution 671-07; and

22 WHEREAS, On April 14, 2010, the San Francisco Public Utilities Commission (SF  
23 PUC) and the Port of San Francisco entered into a Memorandum of Understanding, whereby  
24 the SF PUC agreed to provide \$1,300,000 in SF PUC capital funds to the Port of San  
25 Francisco to contribute to the Project; and

1           WHEREAS, The Port of San Francisco has budgeted \$1,000,000 million of its own  
2 funds to contribute to the Project costs; and

3           WHEREAS, The San Francisco Board of Supervisors enacted Ordinance 125-08 on  
4 July 16, 2008, which it modified by Ordinance 147-09, on June 30, 2009, authorizing the Port  
5 of San Francisco to enter into a contract for design and installation of the Project for an  
6 amount not to exceed \$4,848,135, and for an additional amount not to exceed \$350,000 for  
7 operation and maintenance of the Project; and

8           WHEREAS, the total funding from BAAQMD, SF PUC, and the Port of San Francisco is  
9 currently \$4,200,000 of the \$5,198,135 contract amount for Project costs; and

10          WHEREAS, On March 19, 2010, the U.S. Environmental Protection Agency (US EPA)  
11 awarded a grant of \$1,000,000 to the Port of San Francisco under the Diesel Emissions  
12 Reduction Act (DERA) to assist in further funding of the Project; and

13          WHEREAS, This grant does not create any new positions, and will not require an  
14 amendment to the Annual Salary Ordinance; and

15          WHEREAS, The Port Commission proposes to maximize use of available grant funds  
16 on program expenditures by not including indirect costs in the grant budget; now, therefore,  
17 be it

18          RESOLVED, That the Board of Supervisors authorizes the San Francisco Port  
19 Commission to accept and expend \$1,000,000 in grant funds from the US EPA for installation  
20 of a shoreside power system for cruise ships at Pier 27; and, be it

21          FURTHER RESOLVED, That the Board of Supervisors hereby authorizes the  
22 Executive Director of the Port to immediately enter into an agreement with the US EPA for the  
23 acceptance and expenditure of these US EPA grant funds, and to execute any documents  
24 required to implement the US EPA grant, including any letters of intent, amendments,  
25 augmentations to or extensions thereof; and, be it

1 FURTHER RESOLVED, That the Board of Supervisors hereby waives inclusion of  
2 indirect costs in the grant budget; and be it

3 FURTHER RESOLVED, That the Executive Director of the Port, or her designee, is  
4 authorized to approve, sign and execute an agreement to hold US EPA, as the granting  
5 agency, harmless from liability arising out of the Project.

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Recommended:

Monique Meyer  
Department Head

Approved: [Signature]  
For Mayor

Approved: [Signature]  
Controller

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO

2010 JUL 27 PM 4:48

BY \_\_\_\_\_  
RC

**TO:** Angela Calvillo, Clerk of the Board of Supervisors  
**FROM:** Daley Dunham  
**DATE:** July 20, 2010  
**SUBJECT:** Accept and Expend Federal Grant Funds

**GRANT TITLE:** Grant from the US EPA under the Diesel Emissions Reduction Act in the amount of \$1,000,000 for installation of a shoreside power facility at the Port of San Francisco's Pier 27.

Attached please find the original and 4 copies of each of the following:

- Proposed grant resolution; original signed by Department, Mayor, Controller
- Grant information form, including disability checklist
- Grant agreement (draft)
- Award Letter
- Other (Explain):

**Special Timeline Requirements:**

**Due to critical timing reasons, this resolution will be introduced without reference to committee.**

Departmental representative to receive a copy of the adopted resolution:

Name: Daley Dunham Phone: 415.274.0454

Interoffice Mail Address: Port of San Francisco, Pier 1

Certified copy required Yes  No

(Note: certified copies have the seal of the City/County affixed and are occasionally required by funding agencies. In most cases ordinary copies without the seal are sufficient).

File Number: 101011  
(Provided by Clerk of Board of Supervisors)

**Grant Information Form**  
(Effective January 2000)

Purpose: Accompanies proposed Board of Supervisors resolutions authorizing a Department to accept and expend grant funds.

The following describes the grant referred to in the accompanying resolution:

1. Grant Title: **Diesel Emissions Reduction Act - Pier 27 Shoreside Power**
2. Department: **Port of San Francisco**
3. Contact Person: **Daley Dunham** Telephone: **415-274-0454**
4. Grant Approval Status (check one):  
 Approved by funding agency  Not yet approved
5. Amount of Grant Funding Approved or Applied for: **\$1 million**
- 6a. Matching Funds Required: **n/a**  
b. Source(s) of matching funds (if applicable): **n/a**
- 7a. Grant Source Agency: **US EPA**  
b. Grant Pass-Through Agency (if applicable): **n/a**
8. Proposed Grant Project Summary:

**This \$1 million US EPA grant completes funding for the proposed \$5.2 million shoreside power installation at the Port's Pier 27.**

**Other sources of funding consist of \$1 million in Port capital funds, \$1.9 million in grant funds from the Bay Area Air Quality Management District, and \$1.3 million from the San Francisco Public Utilities Commission. This project will achieve significant air pollution reductions.**

9. Grant Project Schedule, as allowed in approval documents, or as proposed:

Start-Date: **April 1, 2010** End-Date: **December 31, 2012**

10. Number of new positions created and funded: **None**
11. If new positions are created, explain the disposition of employees once the grant ends? **n/a**
- 12a. Amount budgeted for contractual services: **\$1,000,000 of the funds granted from the US EPA; of the \$5.2 million project total, all is budgeted for contractual services.**  
b. Will contractual services be put out to bid? **No – this was a sole-source agreement, authorized by Board of Supervisors Ordinance 147-09.**  
c. If so, will contract services help to further the goals of the department's MBE/WBE

**FORM SFEC-126**  
**NOTIFICATION OF CONTRACT APPROVAL**  
(S.F. Campaign and Government Conduct Code § 1.126)

<b>City Elective Officer Information</b> <i>(Please print clearly)</i>	
Name of City elective officer(s): Members, San Francisco Board of Supervisors	City elective office(s) held: Members, San Francisco Board of Supervisors
<b>Contractor Information</b> <i>(Please print clearly)</i>	
Name of Contractor: Cochran, Inc.	
<i>Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.</i>	
(See attached list)	
Contractor address: 12500 Aurora Avenue North - PO Box 33524, Seattle WA 98133	
Date that contract was approved: June 30, 2009	Amount of contract: \$5,198,000
Describe the nature of the contract that was approved:	
Design, purchase, and construction of shoreside power system at Port's Pier 27, plus three (3) years operation and maintenance of said system.	
Comments:	

This contract was approved by (check applicable)

The City elective officer(s) identified on this form

A board on which the City elective officer(s) serves San Francisco Board of Supervisors

Print Name of Board

The board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on the form sits

Print Name of Board

<b>Filer Information</b> <i>(Please print clearly)</i>	
Name of filer: Clerk of the San Francisco Board of Supervisors	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: BOS.Legislation@sfgov.org

Signature of the Elective Officer (if submitted by City elective officer)

Date Signed

Signature of Board Secretary or Clerk (if Submitted by Board Secretary or Clerk)

Date Signed



Additional Information for Form SFEC-126

**Contractor Information for Cochran, Inc.**

- 1) Members of the Contractor's Board of Directors
  - Robert Cochran
  - Gordon Cochran
  - LeeAnn Cochran
  - Michael Cochran
  - Bill Doran
  - Ray Brown
  
- 2) Contractor's Officers
  - (a) CEO: LeeAnn Cochran
  - (b) CFO: Bryce Massey
  - (c) COO: Bill Doran (President)
  
- 3) Any person who has more than a 20% ownership in Contractor
  - Robert Cochran
  - Gordon Cochran
  - LeeAnn Cochran
  - Michael Cochran
  
- 4) Any subcontractor listed in bid or contract
  - MacMillan Electric, Inc.
  
- 5) Any political committee sponsored or controlled by the Contractor
  - None



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105

**R9 Tracking #: 10-118**

March 19, 2010

Mr. Daley Dunham  
Principal Administrative Analyst  
San Francisco Port Commission  
Pier 1  
San Francisco, CA 94111

**Re: Diesel Emission Reduction Act (DERA) 2009/2010 National Clean Diesel Funding Assistance Program (EPA-OAR-OTAQ-09-10)**

Dear Mr. Dunham:

We are pleased to inform you that EPA has selected the San Francisco Port Commission to receive \$1,000,000 from the Diesel Emissions Reduction Act (DERA) funds under the National Clean Diesel Funding Assistance Program. The proposal outlines the installation of a Shorepower shore-to-ship 20 MW electrical connection, to which hotelling cruise ships at San Francisco Pier 27 will connect.

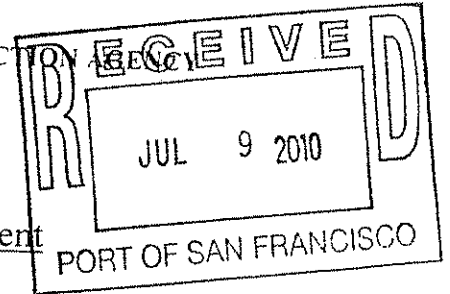
These funds will be awarded as a competitive assistance grant funds through a cooperative agreement. The work plan in the application package should cover a grant and project period between June 1, 2010 and September 30, 2011. EPA encourages each recipient to efficiently complete these clean diesel projects, and draw down project funds, as soon as reasonably possible. Please be advised that similar to past DERA grants, this grant will require regular reporting and documentation of your progress on this project. This will include, but not be limited to providing diesel emission reduction calculations, and the input parameters for those calculations, changes to the scope of work, and any other challenges, how they are overcome, and overall progress.

EPA is able to offer approximately 50% of the total amount requested in the San Francisco Port Commission application, received in December 2009. Please scale the project accordingly, and in consultation with the Sector Lead, listed below. Please apply for **\$1,000,000** under the Diesel Emissions Reduction Act. The Catalog of Federal Domestic Assistance Number for this award is 66.039. With your application, please include a detailed budget and work plan, including milestones and deliverables. The original and one copy of your application and work plan must be submitted to the address below by **April 9, 2010**:

Carolyn Truong  
Manager, Grants Management Office (MTS-7)  
Management and Technical Services Division  
U.S. EPA, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105



Assistance Agreement or Amendment

Enclosed is a signed Assistance Agreement or Amendment from the U.S. Environmental Protection Agency Region 9. Please review the entire document, including the terms and conditions, which set forth your legal responsibilities to EPA. For further information concerning administrative requirements, please refer to the Code of Federal Regulations and OMB Cost Circulars.

Within 21 days of receipt, please sign and date the FIRST page of the Agreement and send a scanned version of the first page to: [GrantsRegion9@epa.gov](mailto:GrantsRegion9@epa.gov). If you do not have access to a scanner, make a copy for your own records and mail the FIRST page to the following address:

U.S. EPA, Region 9  
Grants Management Office, MTS-7  
75 Hawthorne Street  
San Francisco, CA 94105

As another option, you may fax the FIRST page to (415) 947-3556 with a cover page addressed to: Grants Management Office, MTS-7


We suggest that you make additional copies for your Project Manager, Finance/Fiscal Officer and any other personnel in your organization requiring information about the award.

If you or your staff have any questions of a programmatic nature, please contact your EPA Project Officer. Questions relating to administrative or fiscal matters should be directed to your EPA Grants Specialist. Both contacts are shown on page 1 of the award. You may also access our Region 9 website for additional information to help you manage your grant at:

<http://www.epa.gov/Region9/funding>

For information regarding payments and financial reports, please refer to the following website for the Las Vegas Finance Center:

<http://www.epa.gov/ocfo/finservices/payinfo.htm>

	<b>U.S. ENVIRONMENTAL PROTECTION AGENCY</b>  <b>Cooperative Agreement</b>	<b>ASSISTANCE ID NO.</b>			<b>DATE OF AWARD</b> 07/01/2010	
		PRG	DOC ID	AMEND#		
		DE - 00T36901 - 0			<b>MAILING DATE</b> 07/08/2010	
		<b>TYPE OF ACTION</b> New			<b>PAYMENT METHOD:</b> ACH#	
<b>RECIPIENT TYPE:</b> Municipal		<b>Send Payment Request to:</b> Las Vegas Finance Center, Fax (702) 798-2423				
<b>RECIPIENT:</b> San Francisco Port Commission Pier 1 San Francisco, CA 94111 EIN: 94-1705778		<b>PAYEE:</b> San Francisco Port Commission Pier 1 San Francisco, CA 94111				
<b>PROJECT MANAGER</b> Daley Dunham Pier 1 San Francisco, CA 94111 E-Mail: daley.dunham@sfport.com Phone: 415-274-0454		<b>EPA PROJECT OFFICER</b> Angela Latigue 75 Hawthorne Street, AIR-8 San Francisco, CA 94105 E-Mail: latigue.angela@epa.gov Phone: 415-947-4170		<b>EPA GRANT SPECIALIST</b> Danielle Carr Grants Management Office, MTS-7 E-Mail: Carr.Danielle@epa.gov Phone: 415-972-3871		
<b>PROJECT TITLE AND DESCRIPTION</b> National Clean Diesel Program - Port of SF This cooperative agreement will achieve significant diesel reductions in the San Francisco Bay Area by providing shoreside power to cruise ships berthed at the Port of San Francisco/Pier 27. This project will consist of the design, purchase, and installation of a shore-to-ship electrical connection system having appropriate infrastructure sufficient to provide a dual voltage, 6.6 kV/11 kV system with design capacity of at least 16 megawatts for berthed cruise ships. This assistance agreement provides full funding in the amount of \$1,000,000. Pre-award costs have been approved back to 04/01/2010.						
<b>BUDGET PERIOD</b> 04/01/2010 - 12/31/2012		<b>PROJECT PERIOD</b> 04/01/2010 - 12/31/2012		<b>TOTAL BUDGET PERIOD COST</b> \$5,200,000.00		
				<b>TOTAL PROJECT PERIOD COST</b> \$5,200,000.00		
<b>NOTICE OF AWARD</b>						
Based on your application dated 04/07/2010, including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA), hereby awards \$1,000,000. EPA agrees to cost-share 19.23% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$1,000,000. Such award may be terminated by EPA without further cause if the recipient fails to provide timely affirmation of the award by signing under the Affirmation of Award section and returning all pages of this agreement to the Grants Management Office listed below within 21 days after receipt, or any extension of time, as may be granted by EPA. This agreement is subject to applicable EPA statutory provisions. The applicable regulatory provisions are 40 CFR Chapter 1, Subchapter B, and all terms and conditions of this agreement and any attachments.						
<b>ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)</b>			<b>AWARD APPROVAL OFFICE</b>			
<b>ORGANIZATION / ADDRESS</b> U.S. EPA, Region 9 Grants Management Office, MTS-7 75 Hawthorne Street San Francisco, CA 94105			<b>ORGANIZATION / ADDRESS</b> U.S. EPA, Region 9 Air Division, AIR-1 75 Hawthorne Street San Francisco, CA 94105			
<b>THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY</b>						
<b>SIGNATURE OF AWARD OFFICIAL</b> Digital signature applied by EPA Award Official		<b>TYPED NAME AND TITLE</b> Nancy Lindsay, Acting Assistant Regional Administrator			<b>DATE</b> 07/01/2010	
<b>AFFIRMATION OF AWARD</b>						
<b>BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION</b>						
<b>SIGNATURE</b>		<b>TYPED NAME AND TITLE</b> Monique Moyer, Executive Director			<b>DATE</b>	

Budget Summary Page

Table A - Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$0
2. Fringe Benefits	\$0
3. Travel	\$0
4. Equipment	\$0
5. Supplies	\$0
6. Contractual	\$5,200,000
7. Construction	\$0
8. Other	\$0
9. Total Direct Charges	\$5,200,000
10. Indirect Costs: % Base	\$0
11. Total (Share: Recipient <u>80.77</u> % Federal <u>19.23</u> %.)	\$5,200,000
12. Total Approved Assistance Amount	\$1,000,000
13. Program Income	\$0
14. Total EPA Amount Awarded This Action	\$1,000,000
15. Total EPA Amount Awarded To Date	\$1,000,000

Detailed Table B Budget Page: 1

Table B - Program Element Classification (Non-construction)	Total Approved Allowable Budget Period Cost
1. There is no requirement for a cost-share contribution from applicants for projects involving Verified Retrofit Technologies as defined in Section I.D.2.a, Verified Idle Reduction Technologies in Section I.D.2.b.	\$
The recipient is legally obligated to meet the proposed voluntary cost-share that is included in the approved project budget as reflected in this assistance agreement.	
2.	\$
3.	\$
4.	\$
5.	\$
6.	\$
7.	\$
8.	\$
9.	\$
10.	\$
11. Total (Share: Recip % Fed %)	\$
12. Total Approved Assistance Amount	\$

financial assistance award. EPA will respond to the proposed fair share objectives/goals within 30 days of receiving the submission. If proposed fair share objectives/goals are not received within the 120 day time frame, the recipient may not expend its EPA funds for procurements until the proposed fair share objectives/goals are submitted.

A recipient of a Continuing Environmental Program Grant or other annual grant agrees to create and maintain a bidders list. A recipient of an EPA financial assistance agreement to capitalize a revolving loan fund also agrees to require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Refer to 40 CFR Section 33.501 (b) and (c) for specific requirements and exemptions.

4. The recipient agrees to complete and submit to the Grants Management Office, MTS-7, a MBE/WBE Utilization Report (EPA Form 5700-52A), within 30 days after the end of the Federal fiscal year; i.e., by October 30 of each calendar year. Negative reports are required. Only procurements with certified MBE/WBEs are counted towards a recipient's MBE/WBE accomplishments. A final MBE/WBE report must be submitted within 90 days after the end of the project period. Your grant cannot be officially closed without all MBE/WBE reports. EPA Form 5700-52A may be obtained from the EPA Office of Small Business Program's Home Page on the internet at [www.epa.gov/osbp](http://www.epa.gov/osbp).

5. When procuring services, equipment, and/or supplies under this assistance agreement, the recipient will follow the same policies and procedures it uses for procurements from its non-Federal funds. The recipient will follow their own procurement policies and procedures provided that the policies and procedures conform with EPA regulations 40 CFR Part 31.36 or 30.44 (as applicable) which state that all procurement transactions will be conducted in a manner providing full and open competition.

6. Payment to consultants. Per 40 CFR Part 31.36(j), EPA's participation in the salary rate (excluding overhead and travel) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors shall be limited to the maximum daily rate for a Level IV of the Executive Schedule, to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills and if the terms of the contract provide the recipient with responsibility for the selection, direction, and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. As of January 1, 2010, the rate is \$596 per day and \$74.50 per hour. This rate does not include overhead or travel costs and the recipient may pay these in accordance with its normal travel practices.

Subagreements with firms or individuals for services which are awarded using the procurement requirements in 40 CFR Parts 30 or 31, as applicable, are not affected by this limitation unless the terms of the contract provide the recipient with responsibility for the selection, direction, and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. See 40 CFR Part 31.36(j)(2) or Part 30.27(b).

7. To implement requirements of Section 106 of the Trafficking Victims Protection Act of 2000, as amended, the following provisions apply to this award:

a. We, as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity: (1) is determined to have violated an applicable prohibition in the Prohibition Statement below; or (2) has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in the Prohibition Statement below through conduct that is either: (a) associated with performance under this award; or (b) imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR part 1532. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in the Prohibition Statement below.

b. Our right to terminate unilaterally that is described in paragraph a of this award term: (1) implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and (2) is in addition to all other remedies for noncompliance that are available to us under this award.

c. You must include the requirements of the Prohibition Statement below in any subaward you make to a private entity.

similar term or condition in any subsequent lower tier covered transactions. The recipient acknowledges that failing to disclose the information as required at 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

Recipient may access the Excluded Parties List System at [www.epls.gov](http://www.epls.gov). This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

15. EPA's financial obligations to the recipient are limited by the amount of federal funding awarded to date as shown on line 15 in its EPA approved budget. If the recipient incurs costs in anticipation of receiving additional funds from EPA, it does so at its own risk.

16. Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this assistance agreement. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

17. Congress has prohibited EPA from using its FY 2010 appropriations to provide funds to the Association of Community Organizations for Reform Now (ACORN) or any of its subsidiaries. None of the funds provided under this agreement may be used for subawards/subgrants or contracts to ACORN or its subsidiaries. Recipients should direct any questions about this prohibition to their EPA Grants Management Office.

18. This award includes **\$3,200,000**, of non-federal third party contributions. Third party contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantees. As applicable, these records must reflect how the value is placed on third party contributions. The value of third party contributions must be applicable to the period to which the cost sharing or matching requirement apply (**40 CFR Part 31.24**).

#### 19. SUBAWARD POLICY

Recipient agrees to follow applicable sub-grant procedures in accordance with 40 CFR Part 30, or Part 31, as appropriate. Subgrants/subawards do not have to be competed; however, successful applicants cannot use subgrants/subawards to avoid requirements in EPA regulations for competitive procurement by using subgrants/subawards to acquire commercial services or products from for-profit organizations.

Recipient agrees to comply with the following when selecting sub-recipients and establishing sub-awards:

- a) to establish all sub-award agreements in writing;
- b) to maintain primary responsibility for ensuring successful completion of the EPA-approved project (this responsibility cannot be delegated or transferred to a sub-recipient);
- c) to ensure that any sub-award(s) comply with the standards in Section 210(a)-(d) of OMB Circular A-133 and will not be used to acquire commercial goods or services for the recipient;
- d) to ensure that any sub-award(s) are awarded to eligible sub-recipient(s) and that proposed sub-award costs are necessary, reasonable, and allocable;
- e) to ensure that any sub-award(s) to 501(c)(4) organizations do not involve lobbying activities;
- f) to monitor the performance of the sub-recipient(s) and ensure that they comply with all applicable regulations, statutes, and terms and conditions which flow down in the sub-award;
- g) to obtain the appropriate consent from the EPA Project Officer prior to making a sub-award to a foreign or international organization, or a sub-award to be performed in a foreign country; and
- h) to obtain prior approval from the EPA Project Officer for any new sub-award work that is not outlined in the approved work plan in accordance with 40 CFR Parts 30.25 and 31.30, as applicable.

Recipient agrees that any questions about the eligibility of a sub-recipient or other issues pertaining to the sub-award(s) will be addressed to the recipient's EPA Project Officer listed on the first page of your assistance award or assistance amendment document.

Recipient agrees to be responsible for selection of any sub-recipient(s) and, if applicable, for conducting sub-award competitions.

Additional information regarding sub-awards may be found at:  
<http://www.epa.gov/ogd/guide/subaward-policy-part-2.pdf>.

report: 1) Evidence that the replacement activity is an "early replacement," and would not have occurred during the project period through normal attrition (i.e. without the financial assistance provided by EPA). Supporting evidence can include verification that the vehicles or equipment being replaced have useful life left and fleet characterization showing fleet age ranges and average turnover rates per the vehicle or fleet owner's budget plan, operating plan, standard procedures, or retirement schedule; and 2) Evidence of appropriate scrappage or remanufacture, including the engine serial number and/or the vehicle identification number (VIN). For projects that take place in an area affected by, or includes affected vehicles, engines or equipment affected by Federal, State or local law mandating emissions reductions the recipient must provide in the final report evidence that emission reductions funded with EPA funds were implemented prior to the effective date of the mandate and/or are in excess of (above and beyond) those required by the applicable mandate. The final report shall be submitted to the Project Officer within 90 days after the expiration or termination of the assistance agreement.

**P6. Use of Funds Restriction:**

- a) **Mandated Measures:** Recipient agrees that funds under this award cannot be used for emissions reductions that are mandated under Federal, State or local law. This refers to specific compliance dates within the mandate, not when the mandate is passed. Voluntary or elective emissions reductions measures shall not be considered to be "mandated", regardless of whether the reductions are included in the State implementation plan of a State.
- b) **Normal Attrition:** Recipient agrees that funds under this award cannot be used for emission reductions that result from vehicle/equipment replacements or repowers that would have occurred through normal attrition/fleet turnover during the project period. Any question as to eligibility of a vehicle/equipment replacement or repower should be directed to the EPA Project Officer.
- c) **Fleet Expansion:** Recipient agrees that funds under this award, including subawards/subgrants, cannot be used for the purchase of vehicles or equipment to expand a fleet. The recipient agrees that:
  - i. The replacement vehicle, engine, or equipment will perform the same function as the vehicle, engine, or equipment that is being replaced (e.g., an excavator used to dig pipelines would be replaced by an excavator that continues to dig pipelines);
  - ii. The replacement vehicle, engine, or equipment will be of the same type and similar gross vehicle weight rating or horsepower as the vehicle, engine, or equipment being replaced (e.g., a 300 horsepower bulldozer is replaced by a bulldozer of similar horsepower).
  - iii. The engine being replaced will be scrapped or rendered permanently disabled within ninety (90) days of the replacement, or returned to the original engine manufacturer for remanufacturing to a certified cleaner emission standard. Permanently disabling the engine while retaining possession of the engine is an acceptable scrapping method. Disabling the engine may be completed by drilling a hole in the engine block (the part of the engine containing the cylinders). Alternatively, disabling the engine may be completed by removing the engine oil from the crankcase, replacing it with a 40 percent solution of sodium silicate and running the engine for a short period of time at low speeds, thus rendering the engine inoperable. Remanufacturing of non-road engines requires that the engine be returned to the original engine manufacturer for remanufacturing to a certified cleaner emission standard. Remanufacturing of highway engines requires that the engine be returned to the original engine manufacturer for remanufacturing to MY 2007 or newer certified emission standards. Other acceptable scrappage methods may be considered and will require prior EPA approval. If scrapped or remanufactured engines are to be sold, program income requirements apply.
  - iv. The vehicle/equipment being replaced will be scrapped or rendered permanently disabled within ninety (90) days of the replacement, or returned to the original engine manufacturer for remanufacturing to a certified cleaner emission standard. Permanently disabling the chassis and the engine (see iii above) while retaining possession of the vehicle/equipment is an acceptable scrapping method. Disabling the chassis may be completed by cutting the chassis in half. Remanufacturing of non-road vehicles/equipment requires that the vehicle/equipment be returned to the original engine manufacturer for remanufacturing to a certified cleaner emission standard. Remanufacturing of highway vehicles/equipment requires that the vehicle/equipment be returned to the original engine manufacturer for remanufacturing to MY 2007 or newer certified emission standards. Other acceptable scrappage methods may be considered and will require prior EPA approval. Vehicle/equipment components that are not part of the engine or chassis may be salvaged from the unit being replaced (e.g. plow blades, shovels, seats, etc.). If scrapped or remanufactured vehicles/equipment or salvaged vehicle/equipment chassis or components are to be sold, program income requirements apply.
  - v. For tire replacement projects, the original tires should be scrapped according to local or state



(c) Deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based. This means that the recipient shall spend program income on project activities before spending/requesting federal funds for project activities. This may result in unspent federal funds at the end of the project period.

The recipient will maintain records adequate to document the extent to which transactions generate program income and the disposition of program income.

**P11. Equipment Use, Management, and Disposition**

Recipient agrees the equipment acquired under this assistance agreement will be subject to the use and management and disposition regulations at 40 CFR 30.34 and 31.32, as applicable. Equipment is defined as tangible non-expendable personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. Certified or verified technologies, vehicles, engines and nonroad equipment are considered to be equipment to the extent they fall within this definition.

Recipient agrees that at the end of the project period the Recipient will continue to use the equipment purchased under this assistance agreement in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds.

Equipment acquired by the Recipient, a subrecipient, or third-party and funded in whole or in part by the National Clean Diesel Funding Assistance Program is needed to achieve diesel emissions reductions until the equipment is no longer capable of achieving the verified or certified reduction in diesel emissions. Recipients, sub-recipients, or third-parties must ensure that they or another party continues to use the equipment for its intended purpose of achieving verified or certified reduction in diesel emissions after the closeout of this assistance agreement until the equipment is no longer capable of achieving the verified or certified reduction in diesel emissions.

These disposition instructions are applicable to assistance agreement Recipients, Subrecipients, and any other third-party beneficiaries acquiring equipment under this award. State agencies may use, manage and dispose of equipment acquired under assistance agreements by the State in accordance with State laws and procedures.

##### END OF DOCUMENT #####

