

**Sierra County  
Board of Supervisors'  
Agenda Transmittal &  
Record of Proceedings**

<b>MEETING DATE:</b> October 6, 2020	<b>TYPE OF AGENDA ITEM:</b> <input checked="" type="checkbox"/> Regular <input type="checkbox"/> Timed <input type="checkbox"/> Consent
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<b>DEPARTMENT:</b> Public Works and Transportation
<b>APPROVING PARTY:</b> Tim H. Beals, Director
<b>PHONE NUMBER:</b> 530-289-3201

**AGENDA ITEM:** Resolution approving Grant Agreement between the Northern Sierra Air Quality Management District and Sierra County Department of Public Works for funding to replace an existing Hough H65C wheel loader with a new Cat 92 14A wheel loader.

**SUPPORTIVE DOCUMENTS ATTACHED:** Memo Resolution Agreement Other  
2013-030

**BACKGROUND INFORMATION:** The NSAQMD promotes voluntary diesel engine emission reduction programs under cooperative agreements with eligible applicants to reduce public exposure to ozone precursors and toxic diesel particulate matter. The objective of this Grant Agreement is to reduce these air pollution emissions from this off-road piece of equipment in the Participant's fleet by replacing the existing equipment with newer equipment. This grant award is in the amount of \$108,108.00. Costs for the new wheel loader in excess of this award will need to be matched by Road Funds.

**FUNDING SOURCE:** Road  
**GENERAL FUND IMPACT:** No General Fund Impact  
**OTHER FUND:**  
**AMOUNT:** \$108,108 Revenue/Expenditure N/A

<b>ARE ADDITIONAL PERSONNEL REQUIRED?</b>  <input type="checkbox"/> Yes, -- -- <input checked="" type="checkbox"/> No	<b>IS THIS ITEM ALLOCATED IN THE BUDGET?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No  <b>IS A BUDGET TRANSFER REQUIRED?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
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**SPACE BELOW FOR CLERK'S USE**

<b>BOARD ACTION:</b> <input type="checkbox"/> Approved <input type="checkbox"/> Approved as amended <input type="checkbox"/> Adopted <input type="checkbox"/> Adopted as amended <input type="checkbox"/> Denied <input type="checkbox"/> Other <input type="checkbox"/> No Action Taken	<input type="checkbox"/> Set public hearing For: _____ <input type="checkbox"/> Direction to: _____ <input type="checkbox"/> Referred to: _____ <input type="checkbox"/> Continued to: _____ <input type="checkbox"/> Authorization given to: _____	Resolution 2020- _____ Agreement 2020- _____ Ordinance _____ Vote: Ayes: Noes: Abstain: Absent: <input type="checkbox"/> By Consensus
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**COMMENTS:**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

_____ CLERK TO THE BOARD	_____ DATE
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**BOARD OF SUPERVISORS, COUNTY OF SIERRA, STATE OF CALIFORNIA**

**IN THE MATTER OF APPROVING AGREEMENT  
WITH NORTHERN SIERRA AIR QUALITY MANAGEMENT DISTRICT  
FOR CARL MOYER GRANT FUNDING  
TOWARD REPLACEMENT OF HEAVY EQUIPMENT**

**RESOLUTION 2020-\_\_\_\_\_**

1. The grant agreement between the Northern Sierra Air Quality Management District and Sierra County Department of Public Works in the amount of \$108,108.00 for replacement of a Hough H65C Wheel Loader is hereby approved.
2. Tim H. Beals, Director of Transportation, is hereby authorized to execute the grant agreement on behalf of the County, and take any actions necessary for the purpose of administering referenced grant.

**ADOPTED** by the Board of Supervisors of the County of Sierra on the 6<sup>th</sup> day of October, 2020, by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

COUNTY OF SIERRA

\_\_\_\_\_  
JAMES BEARD  
CHAIRMAN, BOARD OF SUPERVISORS

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
HEATHER FOSTER  
CLERK OF THE BOARD

\_\_\_\_\_  
DAVID PRENTICE  
COUNTY COUNSEL

**GRANT AGREEMENT**

**between**

**The Northern Sierra Air Quality Management District**

**and**

**Tim H. Beals of Sierra County Public Works**

This Agreement is made and entered into this \_\_\_\_\_ day of, \_\_\_\_\_  
*day month year*

by and between the NORTHERN SIERRA AIR QUALITY MANAGEMENT DISTRICT (NSAQMD), an air quality management district formed pursuant to the laws of the State of California, and Participant.

**WITNESSETH**

This Agreement (“Agreement”) between the Northern Sierra Air Quality Management District, a public agency of the State of California, hereinafter referred to as “District” and **Tim H. Beals of Sierra County Public Works**, hereinafter referred to as “Participant”:

WHEREAS, pursuant to Health and Safety Code §41082, the District may undertake programs that include financial assistance or other incentives to fleet operators for the purchase, conversion, replacement or operation of low-emission motor vehicles; and

WHEREAS, only public or private fleets that permanently reside within Nevada, Sierra, or Plumas Counties qualify for funding; and

WHEREAS, under Resolution No. **2019-01** on **January 28, 2019**, NSAQMD’s Board of Directors authorized the NSAQMD to participate in Year **21** of the “Carl Moyer Memorial Air Quality Standards Attainment Program (Heavy-Duty Low-Emission Vehicle Incentive Program)”; and

WHEREAS, pursuant to Northern Sierra Air Quality Management District Board Resolution No. 2004-03, the Air Pollution Control Officer is authorized to execute incentive agreements for the “Carl Moyer Memorial Air Quality Standards Attainment Program (Heavy-Duty Low-Emission Vehicle Incentive Program)”; and

WHEREAS, “Participant” represents that the purchase is NOT required by any local, state, and/or federal rule or regulation. For public agencies, controlling board policy does NOT require the purchase.

NOW, THEREFORE, based on their mutual promises, covenants, and conditions, the parties hereby agree as follows:

## 1. PROJECT

Participant shall perform all activities and work necessary to implement and complete the project set forth in the proposal which is incorporated herein as Exhibit A. Participant agrees to furnish all labor, materials, equipment, licenses, permits, fees, and other incidentals necessary to perform and complete, per schedule, in a professional manner, the services described herein. Participant represents that the Participant has the expertise necessary to adequately perform the project specified in Exhibit A.

In the event of any conflict between or among the terms and conditions of this Agreement, the exhibits incorporated herein, and the documents referred to and incorporated herein, such conflict shall be resolved by giving precedence in the following order of priority:

1. The text of this Agreement;
2. Exhibits A, B, Exhibit B-1a to this Agreement;
3. The NSAQMD Year 21 Carl Moyer Incentive Program Policy and Procedures prepared by the NSAQMD; and,
4. The Carl Moyer Program Guidelines (April 27, 2017) and applicable Carl Moyer Program Advisories.

In addition, unless stricter compliance requirements are defined by Items 1 to 3 in the list above, then the project shall comply with the requirements established in Item 4.

## 2. PERIOD OF PERFORMANCE/TIMETABLE

Participant shall commence performance of work and produce all work products in accordance with the work schedule and deadlines for performance identified in Exhibit A (Statement of Grant Obligations) unless this Agreement is terminated sooner as provided for elsewhere in this Agreement.

## 3. EQUIPMENT REPLACEMENT REQUIREMENTS

**A. Replacement:** The Participant shall provide the NSAQMD with a copy of the final invoice from the dealer from whom the replacement equipment will be purchased. Purchase of any equipment/engine other than the one specified on the submitted final invoice shall constitute a breach of this Agreement.

**B. Maintenance:** The Participant shall maintain the new grant-funded engine(s)/equipment pursuant to the manufacturer's written specifications. Prior to operating the engine(s)/equipment, the Participant will provide the NSAQMD with a copy of the manufacturer's written maintenance specifications. The Participant will keep a maintenance log containing records of all maintenance performed on the engine(s)/equipment.

The Participant shall make these maintenance logs available for NSAQMD review upon request by the NSAQMD. To ensure accurate engine(s)/equipment reporting, Participant is required to maintain equipment (hour meters, odometers) necessary to determine usage. The Participant must document usage during a failure of such

equipment and provide the NSAQMD with that documentation with the Annual Usage Report. Failure to comply with these conditions will constitute a breach of this Agreement. Failure to maintain the engine(s)/equipment to the manufacturer's specifications will constitute a breach of this Agreement.

**C. Operation:** The Participant shall operate the new grant-funded engine(s)/equipment pursuant to the manufacturer's written specifications. Prior to operating the engine(s)/equipment, the Participant will provide the NSAQMD with a copy of the manufacturer's written operating specifications. Failure to operate the engine(s)/equipment within the manufacturer's specifications will constitute a breach of this Agreement.

**D. Modification:** The Participant is prohibited from modifying the engine(s)/equipment configuration. This includes but is not limited to modifications to the engine(s)/equipment, electronic control unit, cooling, exhaust, crank-case ventilation and lubrication systems, power take-offs, and the transmission/gear reduction as applicable. The Participant is required to conduct routine maintenance and repair as needed. All components replaced as part of routine maintenance and/or repair must comply with the original installed engine(s)/equipment configuration and manufacturer's specification. Any modifications to the engine(s)/equipment configuration without written consent from an agent authorized by the manufacturer and the NSAQMD will constitute a breach of this Agreement.

#### **4. PERFORMANCE**

This project will result in emission reductions because the replacement engine(s)/equipment has (have) lower emissions than the original engine(s)/equipment. The required emission reductions over the Agreement term are specified in Exhibit A. The performance measure to ensure that the required emission reductions are achieved for this project shall be derived from the total engine operation since it (they) was (were) purchased, based on either fuel usage or engine(s)/equipment hours as Specified in Exhibit A. As required by the Carl Moyer Program Guidelines (April 28, 2011), a minimum of 75 percent of the project's operation must be within California.

Annually, through the term of this Agreement or any amendments to it and starting one year from the day of the NSAQMD post-inspection, Participant shall provide the NSAQMD with Annual Engine/Equipment Usage Reports as outlined in Exhibit B using the report form in (Exhibit B-1a). Prior to this Agreement being deemed complete, the NSAQMD shall assess whether the engine(s)/equipment was (were) sufficiently operated to achieve the required emission reductions. Engine(s)/equipment operation over the Agreement term, must result in the contracted usage as stated in Exhibit A being achieved. In the case where the actual usage is between plus or minus 30% of the contracted usage, then the NSAQMD shall declare the Agreement complete. In the case where the actual usage is 30% above the contracted usage, the Participant will provide the NSAQMD with the reason for the extra usage and if the NSAQMD, the ARB or their designee(s) deem the reasoning acceptable, the NSAQMD shall declare the Agreement complete. In the case where the actual usage is 30% below the contracted usage or excessive usage is not acceptable to the NSAQMD, the ARB or their designee(s), then one of the following performance compliance options for the project shall be selected by the NSAQMD:

1. The Participant shall repay a portion of the grant amount to the NSAQMD where the repayment portion is determined using the following formula:

$$R = G \times \left( 1 - \frac{O_{act}}{O_{con}} \right)$$

Where:

*R* is the repayment amount;

*G* is the total grant amount as stated in Paragraph 6;

*O<sub>act</sub>* is the total actual engine(s) operation amount since the equipment purchase;

*O<sub>con</sub>* is the total required engine(s) operation amount over the term of this Agreement defined in Exhibit A;

or,

2. The APCO may, at his or her sole discretion, relieve this obligation to return the funds after considering the circumstances leading to the failure to fulfill the minimum performance requirements. Additionally, the APCO may, at his or her sole discretion, require full reimbursement of all funds paid to the Participant.

## 5. RECORD KEEPING AND REPORTING

**A. Records:** Participant shall keep, and provide to NSAQMD or its agents, upon request, accurate financial records (including invoices and published price lists on which Agreement was based) necessary to enable NSAQMD to review Participant's performance of this Agreement. These records shall demonstrate the grant funding has been used for the purchase of engine(s)/equipment and/or provision of services as described in Exhibit A to this Grant Agreement, Statement of Grant Obligations. Participant shall maintain all such records for at least five years after the date on which the engine(s)/ equipment and or/services was (were) purchased.

**B. Reports:** The Participant shall submit report(s) to the NSAQMD in accordance with the schedule and format specified in Exhibit B (Annual Grant Status Report Format) and Exhibit B-1a (Annual Engine Usage Report). Failure to comply with reporting requirements will trigger District Auditing as specified in the Carl Moyer Program Guidelines.

## 6. COMPENSATION

NSAQMD may reimburse Participant for up to **One hundred and eight thousand, one hundred and eight dollars and zero cents (\$108,108.00)** ("Total Grant Award") if and when such funds become available to NSAQMD and are budgeted for this purpose by NSAQMD.

**A. Payments:** Only expenditures incurred by Participant in the direct performance of this Agreement can be reimbursed by NSAQMD. Participant shall invoice the NSAQMD in accordance with the schedule specified in Exhibit A. Payments by NSAQMD to Participant for any services detailed in Exhibit A shall be permitted only after said services have been satisfactorily rendered, and

after a written request and claim from Participant for such payment has been received by NSAQMD. Said written request shall set forth the work completed in the claim period and shall include copies of any and all invoices or financial records needed to verify that stated costs have been incurred by Participant. Invoices and supporting records shall be submitted to NSAQMD no more often than once every five months, unless prior approval for a greater frequency has been given by NSAQMD. Claims and all supporting documentation shall be submitted to the Northern Sierra Air Quality Management District (NSAQMD), 200 Litton Dr., Suite 320, Grass Valley, California 95945, Attention: Joe Fish.

NSAQMD shall pay Participant the amount of the Total Grant Award within thirty (30) calendar days after receiving a request for payment and verifying that services have been satisfactorily completed as cited in the invoice.

NSAQMD shall review and pay Participant additional sums toward the Total Grant Award if and when (a) NSAQMD receives additional Carl Moyer grant funds for the next funding cycle, and (b) NSAQMD budgets and allocates such funds for the purpose of funding this Agreement.

Participant expressly understands, acknowledges and agrees that NSAQMD will use reasonable efforts to budget and allocate funds to support this Agreement, however NSAQMD cannot make any guarantees as to the availability or amount of any future reimbursement pursuant to this Agreement except for the Total Grant Award expressly set forth above. Any and all future decisions to budget for or expend monies to support this reimbursement agreement are subject to the sole discretion of the NSAQMD Board and, therefore, this Agreement creates no right or entitlement to any future reimbursement whatsoever. NSAQMD shall have no obligation whatsoever to budget or expend monies for the purpose of fully funding this reimbursement agreement nor to use any funds other than Carl Moyer grant funds for the purpose of funding this Agreement.

Any and all obligations or commitments to reimburse Participant under this Agreement shall expire as of the earlier of (a) **December 31, 2020** or (b) termination of the Agreement pursuant to Paragraph 9, below; and that this Agreement may be terminated whether or not Participant has received its full reimbursement for the Total Grant Award. Therefore, Participant further understands, acknowledges, and agrees that this Agreement may terminate before full reimbursement for the Total Grant Award may be made.

The amount to be paid to Participant under this Agreement shall include all sales and use taxes incurred pursuant to this Agreement, if any, including any such taxes due on equipment purchased by Participant.

**B. Surplus Funds:** Any part or all of a payment by NSAQMD to Participant, which is not utilized for any reason by Participant to pay costs pursuant to the terms and conditions of this Agreement or as detailed in a claim by Participant, shall be refunded to NSAQMD within 30 days after the end of the project term defined in Paragraph 2 above.

**C. Close-out Period:** All final claims for repayment shall be submitted by Participant to NSAQMD within sixty (60) days following the final month of activities for which payment is claimed. No action will be taken by NSAQMD on claims submitted beyond the 60-day close-out period.

**D. Repossession:** If for any reason the lien holder of the new equipment is required to repossess said equipment, the Participant shall be liable for the repayment of the Total Grant Award to the NSAQMD and agrees to reimburse the NSAQMD the full amount of the Total Grant Award as specified herein within 30 days of such repossession of said equipment.

## **7. NON-ALLOCATION OF FUNDS**

The terms of this Agreement and the services to be provided there under are contingent on the approval and appropriation of funds by the NSAQMD, the State of California and the federal government. NSAQMD upon giving **seven (7) calendar days written notice** to Participant, shall have the right to terminate its obligations under this Agreement if the NSAQMD, the Federal Government or the State of California, as the case may be, does not appropriate funds sufficient to discharge NSAQMD's obligations coming due under this Agreement.

## **8. INDEPENDENT PARTICIPANT**

In performance of the work, duties, and obligations assumed by Participant under this Agreement, it is mutually understood and agreed that Participant, including any and all of Participant's officers, agents, and employees, will at all times be acting and performing as an independent Participant and shall act in an independent capacity and not as an officer, agent, servant, employee, joint venturer, partner, or associate of NSAQMD. Furthermore, except for requirements specifically stated in this Agreement, NSAQMD shall have no right to control, supervise or direct the manner or method by which Participant shall perform its work and function. However, NSAQMD shall retain the right to administer this Agreement so as to verify that Participant is performing its obligations in accordance with the terms and conditions thereof. Participant and NSAQMD shall comply with all applicable provisions of law and the rules and regulations, if any, of governmental authorities having jurisdiction over matters the subject thereof.

Because of its status as an independent Participant, Participant shall have absolutely no right to employment rights and benefits available to NSAQMD employees. Participant shall be solely liable and responsible for providing to, or on behalf of, itself all legally required employee benefits. In addition, Participant shall be solely responsible and hold NSAQMD harmless from all matters relating to payment of Participant's employees, including compliance with social security, withholding, and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, Participant may be providing services to others unrelated to NSAQMD or to this Agreement.

## 9. TERMINATION

**A. Breach of Agreement:** NSAQMD may immediately suspend or terminate this Agreement, in whole or in part, for any of the following reasons:

1. An illegal or improper use of funds;
2. A failure to comply with any term of this Agreement;
3. A substantially incorrect or incomplete report submitted to NSAQMD;
4. Improperly performed services; or
5. Participant breaches any requirements of the Carl Moyer Program Guidelines (April 27, 2017) and applicable Carl Moyer Program Advisories.

In no event shall any payment by NSAQMD constitute a waiver by NSAQMD, the ARB or their designee(s) of any breach of this Agreement or any default which may then exist on the part of Participant, nor shall such payment impair or prejudice any remedy available to NSAQMD, the ARB or their designee(s) with respect to the breach or default. NSAQMD, the ARB or their designee(s) shall have the right to demand of Participant the repayment to NSAQMD of any funds disbursed to Participant under this Agreement which in the judgment of NSAQMD, the ARB or their designee(s) were not expended in accordance with the terms of this Agreement. Participant shall promptly refund any such funds upon demand.

In addition to immediate suspension or termination, NSAQMD, the ARB or their designee(s) may impose any other remedies available at law, in equity, or otherwise specified in this Agreement.

**B. Without Cause:** Either party may terminate this Agreement at any time after giving the other party at least thirty (30) days advance written notice of intention to terminate. Upon such termination, all the work, if any, produced by Participant shall be promptly delivered to NSAQMD. Additional terms and conditions may apply in the event of termination by the Participant, as identified in Paragraph 27.C of this Agreement.

## 10. MODIFICATION

Any matters of this Agreement may be modified from time to time by the written consent of all the parties without in any way affecting the remainder.

## 11. NON-ASSIGNMENT

Neither party shall assign, transfer, or subcontract this Agreement, nor their rights or duties under this Agreement, without the prior express, written consent of the other party.

## 12. INDEMNIFICATION

Participant agrees to indemnify, save, hold harmless, and at NSAQMD's request, defend NSAQMD, its boards, committees, representatives, officers, agents, and employees from and against any and all costs and expenses (including reasonable

attorneys' fees and litigation costs), damages, liabilities, claims, and losses (whether in contract, tort, or strict liability, including, but not limited to, personal injury, death, and property damage) occurring or resulting to NSAQMD which arises from any negligent or wrongful acts or omissions of Participant, its officers, agents, subcontractors, or employees in their performance of this Agreement.

In addition, by signing this agreement, Participant affirms that the project proposed in Exhibit A to this Grant Agreement has not been funded and is not being considered for funding by another air district, ARB, or any other public agency. Any applicant who is found to have submitted multiple applications for the same project may be banned by the ARB from submitting future applications to Carl Moyer Program solicitations and may be subject to criminal sanctions. A project funded cooperatively by multiple air districts is eligible for funding if the project parameters are coordinated amongst the participating districts and the project meets all applicable Carl Moyer Program criteria. Applicants are allowed to re-apply for project funding if a previous application has been rejected and is no longer being considered for funding or if the applicant withdraws the previous application from the other funding source.

### **13. INSURANCE**

**A.** Without limiting NSAQMD's right to obtain indemnification from Participant or any third parties, Participant, at its sole expense, shall maintain in full force and effect the following insurance policies throughout the term of this Agreement:

Commercial general liability insurance with minimum limits of coverage in the amount of one million dollars (\$1,000,000) per occurrence;

Commercial automobile liability insurance which covers bodily injury and property damage with a combined single limit with minimum limits of coverage in the amount of one million dollars (\$1,000,000) per occurrence; and,

Workers' compensation insurance in accordance with California law. In the event Participant is exempt from the requirement of maintaining workers compensation insurance, Participant shall provide to the District satisfactory evidence of such exemption.

**B.** Prior to finalizing this Agreement, Participant shall provide certifications of insurance on the foregoing policies, as required herein, to NSAQMD, stating that such insurance coverages have been obtained and are in full force. The Participant's general commercial liability insurance policy, worker's compensation policy, and automotive general liability shall endorse/name the NSAQMD, its officers, agents, employees, individually and collectively, as additional insured, but only insofar as the engine(s)/equipment provided under this Agreement. Such coverage for additional insured shall apply as primary insurance, and any other insurance maintained by NSAQMD, its officers, agents, and employees, shall be excess only and not contributing with insurance provided under Participant's policies herein. This insurance shall not be canceled or changed without a minimum of thirty (30) days advance, written notice given to NSAQMD.

C. In the event Participant fails to keep in effect at all times insurance coverage as herein provided, NSAQMD may, in addition to other remedies it may have, suspend or terminate this Agreement upon the occurrence of such event.

#### **14. AUDITS AND INSPECTIONS**

Participant shall at any time during regular business hours, and as often as NSAQMD, the ARB or their designee(s) may deem necessary, make available to and permit NSAQMD, the ARB or their designee(s) to inspect and audit all of the Participant's engine(s)/equipment and/or records necessary to determine Participant's compliance with the terms of this Agreement.

Participant shall be subject to an audit by NSAQMD, the ARB or their designee(s) to determine if the revenues received by Participant were spent for the reduction of pollution as provided in this Agreement and to determine whether said funds were utilized as provided by law and this Agreement. If, after audit, NSAQMD, the ARB or their designee(s) makes a determination that funds provided to the Participant pursuant to this Agreement were not spent in conformance with this Agreement or any other applicable provisions of law, Participant agrees to immediately reimburse NSAQMD all funds determined to have been expended not in conformance with this Agreement.

Participant shall retain all records and data for activities performed under this Agreement for at least five (5) years from the date of final payment under this Agreement or until all state and federal audits are completed for that fiscal year, whichever is later.

The Participant understands and agrees that the ARB has the authority and reserves the right to monitor and enforce the terms of the contract at any time during the project life to ensure emission reductions are obtained for a minimum of 75 percent operation within California. The NSAQMD, the ARB or their designee(s) may seek whatever legal, equitable and other remedies are available under State law for the owner's failure to comply with the Carl Moyer Program requirements and failure to fully perform under the grant agreement.

#### **15. NOTICES**

The persons and their addresses having authority to give and receive notices under this Agreement are as follows:

**PARTICIPANT**

Tim H. Beals  
Sierra County Public Works  
P.O. Box 98  
Downieville, CA 95936-

**NSAQMD**

Gretchen Bennitt  
Air Pollution Control Officer  
Northern Sierra Air Quality Management District  
200 Litton Drive, Suite 320  
Grass Valley, CA 95945

Any and all notices between NSAQMD and Participant provided for or permitted under this Agreement or by law shall be in writing and shall be deemed duly served when

personally delivered to one of the parties, or in lieu of such personal service, when deposited in the United States mail, postage prepared, addressed to such party.

#### **16. POLITICAL ACTIVITY PROHIBITED**

None of the funds, materials, property, or services provided under this Agreement shall be used for any political activity, or to further the election or defeat of any candidate for public office.

#### **17. LOBBYING PROHIBITED**

None of the funds provided under this Agreement shall be used for publicity, lobbying, or propaganda purposes designed to support or defeat legislation before the Congress of the United States of America or the Legislature of the State of California.

#### **18. CONFLICT OF INTEREST**

No officer, employee, or agent of NSAQMD who exercises any function or responsibility for planning and carrying out the services provided under this Agreement shall have any direct or indirect personal financial interest in this Agreement. Participant shall comply with all federal and state conflict of interest laws, statutes, and regulations, which shall be applicable to all parties and beneficiaries under this Agreement and any officer, agent, or employee of NSAQMD.

#### **19. GOVERNING LAW**

This Agreement shall be governed in all respects by the laws of the State of California. Venue for any action arising out of this Agreement shall only be in Nevada County, California.

#### **20. BINDING ON SUCCESSORS**

This Agreement, including all covenants and conditions contained herein, shall be binding upon and inure to the benefit of the parties, including their respective successors-in-interest, assigns, and legal representatives.

#### **21. TIME IS OF THE ESSENCE**

It is understood that for Participant's performance under this Agreement, time is of the essence. The parties reasonably anticipate that Participant will, to the reasonable satisfaction of NSAQMD, complete all activities provided herein within the time schedule outlined in the attachments to this Agreement, provided that Participant is not caused unreasonable delay in such performance.

#### **22. DATA OWNERSHIP**

Upon termination or expiration of this Agreement, all data which is received, collected, produced, or developed by Participant under this Agreement shall become the exclusive property of NSAQMD, provided, however, Participant shall be allowed to retain a copy of any non-confidential data received, collected, produced, or developed by Participant

under this Agreement, subject to NSAQMD's exclusive ownership rights stated herein. Accordingly, Participant shall, if requested, surrender to NSAQMD all such data which is in its possession (including its subcontractors or agents), without any reservation of right or title, not otherwise enumerated herein. NSAQMD shall have the right at reasonable times during the term of this Agreement to inspect and reproduce any data received, collected, produced, or developed by Participant under this Agreement. No reports, professional papers, information, inventions, improvements, discoveries, or data obtained, prepared, assembled, or developed by Participant, pursuant to this Agreement, shall be released or made available (except to NSAQMD) without prior, express written approval of NSAQMD while this Agreement is in force.

### **23. NO THIRD-PARTY BENEFICIARIES**

Notwithstanding anything else stated to the contrary herein, it is understood that Participant's services and activities under this Agreement are being rendered only for the benefit of NSAQMD, and no other person, firm, corporation, or entity shall be deemed an intended third-party beneficiary of this Agreement.

### **24. SEVERABILITY**

In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be unenforceable in any respect by a court of competent jurisdiction, such holding shall not affect any other provisions of this Agreement, and the Agreement shall then be construed as if such unenforceable provisions are not a part hereof.

### **25. TITLE TO EQUIPMENT**

Title to and risk of loss of equipment purchased with funds received through this Agreement shall, at all times, vest in and with Participant. Participant acknowledges that NSAQMD did not supply, design or manufacture the equipment or any of its components. This equipment is commercially manufactured and sold by a manufacturer to be determined by Participant. NSAQMD specifically disclaims all warranties, express and implied, including the implied warranties of merchantability and fitness for the intended purpose, as to the purchased equipment, any test equipment or field tests. In no event shall NSAQMD be liable to Participant 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 purchased equipment under any theory, including but not limited to, tort, contract, breach of warranty, or strict liability.

### **26. RIGHTS TO EMISSION REDUCTIONS**

With the exception of early compliance credits authorized by State statute or regulations written by the California Air Resources Board, Participant transfers and conveys to NSAQMD all rights and claim to ownership of the emission reductions achieved through the project funded by this Agreement. Participant shall not use or attempt to use the emission reductions achieved by the project as emission reduction credits. Participant hereby fully and completely relinquishes such rights for the useful life of the project as specified in Exhibit A.

## 27. SPECIAL CONDITIONS

**A. Agreement Completion:** The entire proposed project must be completed according to the schedule presented in Exhibit A, Statement of Grant Obligations. The NSAQMD, at its discretion, may instead elect to modify the said schedule unless such an extension is not possible as a result of regulatory requirements.

**B. Disposal of Replaced Equipment:** Participant will be removing from service the existing engine(s)/equipment as outlined in Exhibit A.

**C. Termination:** Participant may terminate its obligation to operate the low emissions equipment funded under this Agreement for good cause provided that Participant shall reimburse the NSAQMD based on the repayment equation specified in Paragraph 4 (“Performance”) of this Agreement. Notice of termination shall be provided in writing and shall be effective upon completion of the terms of this Paragraph. Such notice shall terminate Participant’s obligation under Paragraphs 1 (Project) and 2 (Period of Performance / Timetable) of this Agreement.

### **D. Replacement, Sale, Relocation or Damage to Engine(s)/Equipment:**

**1. Replacement:** If for any reason, the new engine(s)/equipment is (are) rendered inoperable during the life of this Agreement, the Participant shall notify the NSAQMD of this fact in writing within 15 days and begin working with the NSAQMD to promptly complete one of the two options listed below:

(a) Participant shall replace the engine(s)/equipment with an engine(s)/equipment that has (have) equal or lesser air emissions, as determined by the NSAQMD. Once the replacement engine(s)/equipment is (are) determined, the NSAQMD will amend the Agreement to specify the replacement engine(s)/equipment. The amendment will also extend the life of the Agreement to account for the time that the engine(s)/equipment was (were) out of service and unable to meet the original Agreement performance obligations. In the event that such an amendment is not possible as a result of regulatory requirements, this Agreement’s performance requirements shall be addressed by the Participant repaying the NSAQMD a portion of the grant amount based on the repayment equation specified in Paragraph 4 (“Performance”) of this Agreement.

(b) If the Participant elects not to replace the inoperable engine(s)/equipment with an engine(s)/equipment that has (have) greater air emissions, as determined by the NSAQMD, then the Participant shall repay the NSAQMD based on the repayment equation specified in Paragraph 4 (“Performance”) of this Agreement.

**2. Sale:** If for any reason, the new engine(s)/equipment is (are) to be sold by the Participant during the life of this Agreement, the Participant shall notify the NSAQMD of this fact in writing 15 days prior to listing or otherwise preparing for the sale of the engine(s)/equipment and begin working with the NSAQMD to promptly complete one of the following two available options:

(a) Participant shall make compliance with this Agreement a written condition of the sale and a new Agreement between the NSAQMD and the new owner must be finalized as part of the final sale. Sale of the engine(s)/equipment can only occur within Nevada, Sierra or Plumas counties. Copies of all forms pertaining to the sale of the engine(s)/equipment shall be provided to the NSAQMD within 30 days of the sale and the forms shall refer to the existence of this Agreement and the new Agreement in the space provided for Warranties / Appurtenances / Limitations / Exceptions.

(b) If the Participant elects to sell the engine(s)/equipment without the completion of the grant Agreement obligations or the engine(s)/equipment is sold outside of Nevada, Sierra or Plumas counties, the Participant shall repay the NSAQMD based on the repayment equation specified in Paragraph 4 ("Performance") of this Agreement.

**3. Relocation:** If for any reason during the life of this Agreement the Participant wants to relocate outside of Nevada, Sierra or Plumas counties and continue to use the new engine(s)/equipment inside California, Participant shall notify the NSAQMD of the specifics of the relocation in writing 15 days prior to the relocation and begin working with the NSAQMD to determine the possibility of modifying the Grant Agreement. If relocation occurs outside of California, Participant shall repay the NSAQMD based on the repayment equation specified in Paragraph 4 ("Performance") of this Agreement.

**4. Damage:** If for any reason, the new engine(s)/equipment is (are) damaged but repairable during the life of this Agreement, the Participant shall notify the NSAQMD of this fact in writing within 15 days and begin working with the NSAQMD to promptly complete one of the two options listed below:

(a) Participant shall have the damaged engine(s)/equipment repaired by an agent that is authorized by the manufacturer to complete the repairs. Use of an unauthorized agent for the engine(s)/equipment repair shall constitute a breach of this Agreement. Depending on the needed repair time, the NSAQMD will determine if an amendment to the Agreement is needed to extend the life of the Agreement to account for the time that the engine(s)/equipment will be out of service and unable to meet the original Agreement performance obligations. In the event that such an amendment is not possible as a result of regulatory requirements, this Agreement's performance requirements shall be addressed by the Participant repaying the NSAQMD a portion of the grant amount based on the repayment equation specified in Paragraph 4 ("Performance") of this Agreement.

(b) If the Participant elects not to have the damaged engine(s)/equipment repaired, then the Participant shall repay the NSAQMD based on the repayment equation specified in Paragraph 4 ("Performance") of this Agreement.

**28. ENTIRE AGREEMENT**

This Agreement constitutes the entire Agreement between Participant and NSAQMD with respect to the subject matter hereof and supersedes all previous negotiations, proposals, commitments, writings, advertisements, publications, and understandings of any nature whatsoever unless expressly included in this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as of the day and year first hereinabove written. Electronic signatures are acceptable. Contract will be finalized upon receipt of wet signature of Participant in District office.

Approved: \_\_\_\_\_ Date: \_\_\_\_\_  
Tim H. Beals, Dir. Of Transportation  
Grantee

Approved: \_\_\_\_\_ Date: \_\_\_\_\_  
Northern Sierra Air Quality Management District  
Peter Huebner, Chair

Approved: \_\_\_\_\_ Date: \_\_\_\_\_  
Northern Sierra Air Quality Management District  
Gretchen Bennitt  
Air Pollution Control Officer

## EXHIBIT A

### STATEMENT OF GRANT OBLIGATIONS

#### **General**

The NSAQMD promotes voluntary diesel engine emission reduction programs under cooperative agreements with eligible applicants to reduce public exposure to ozone precursors and toxic diesel particulate matter. The objective of this Grant Agreement is to reduce these air pollution emissions from this off-road piece of equipment in the Participant's fleet by replacing the existing equipment with newer equipment. The equipment is based in Sierra County. This project's cost effectiveness is less than the Carl Moyer Program cost effectiveness limit as defined in the most current version of the Carl Moyer Guidelines (Moyer Guidelines).

#### **Project Description**

	<b>Existing Equipment</b>	<b>New or Replacement Equipment</b>
Type	Wheel Loader	Wheel Loader
Make / Model	Hough / H65C	Caterpillar / 920 14A
VIN / Year	03688 / 1974	/ 2020
	<b>Existing Engine</b>	<b>New or Replacement Engine</b>
Make / Model	International Hough, DT 414	Perkins, C3.6
Serial # / Year	R11612 / 1988	/ 2020
Fuel / HP	Diesel / 158 hp	Diesel / 123 hp
Hours of Op.	550 hrs/yr	550 hrs/yr (+/- 30%)
Family		LPKXL03.6FX1
Eng. Cert.	Uncontrolled	Tier 4 Final

#### **Final Disposition of Existing Equipment**

The State of California intends that the existing engine(s)/equipment shall be permanently prevented from polluting the air in any location in any manner. Therefore, the engine(s)/equipment shall be rendered permanently inoperable before the Total Grant Award is disbursed by the Air District. The Air District shall do a Final Post Inspection on the existing equipment to ensure that it has been properly rendered permanently inoperable. Typically, that would entail, at a minimum, a hole punched in the engine block and a section of the equipment frame (or some other equivalent structure) permanently removed from the existing equipment.

#### **Total Grant Award**

The Total Grant Award for this project shall not exceed **\$108,108.00**.

#### **Matching Funds**

Costs incurred in excess of the Total Grant Award for the project will be the responsibility of the Participant and shall constitute their matching and/or in-kind contribution for the project.

#### **Term of Agreement**

1. For the purposes of this Agreement, the term of the Grant Agreement life is defined herein to be **Five (5)** years from the date of the final post inspection (To be filled in once final post inspection occurs. **Date:** ).
2. Installation Deadline: Project shall be completed as soon as possible but must be completed before **December 31, 2020**.
3. No work may begin until contract is fully executed.

**EXHIBIT B**  
**ANNUAL GRANT STATUS REPORT FORMAT**

Participant shall submit the “Annual Engine/Equipment Usage Report” form below to the NSAQMD for each new low emission engine/equipment funded under this Agreement. The first report is due one year from the day of the NSAQMD post-inspection. The report form will be provided to the NSAQMD annually for the life of the Grant Agreement. The purpose of this report form is to provide the NSAQMD with feedback as to Participant’s experience with the new low emissions equipment and to provide a record of the actual usage versus the usage identified in the Participant’s grant application. The report shall include the following items:

1. Name and address of Participant;
2. Project Agreement number;
3. Make and model of equipment purchased;
4. Usage information for the new equipment:
  - Hours of use of the new equipment over the past 12 months; or
  - Estimated fuel use with the new equipment over the past 12 months;
5. Discussion of any repairs, problems, or benefits with the equipment.

**Northern Sierra Air Quality Management District**  
**Exhibit B-1a: Annual Engine Usage Report**  
**(Agreement#: CARL MOYER 2020-07)**

**INSTRUCTIONS:** Complete this Annual Engine Usage Report every year on the anniversary date of the project's post inspection for the life of the Grant Agreement. The report shall be sent to the NSAQMD within 2 weeks of the post inspection anniversary date.

**SECTION 1: GRANTEE INFORMATION**

Company/Grantee Name: Sierra County Public Works / Tim H. Beals

Company/Grantee Address: Sierra County Public Works / P.O. Box 98, Downieville, CA 95936-

Company/Grantee Phone Number: (530) 289-3201

Date: \_\_\_\_\_

**SECTION 2: ENGINE INFORMATION:** Please verify the information below and complete any missing Information. **Failure to complete information may lead to an immediate engine inspection and audit.**

1. Location of Equipment /Engine Identified Below: \_\_\_\_\_

New Equipment: Caterpillar 920 14A; VIN: \_\_\_\_\_

2. Model Year, Make, Model and Family Number of new equipment engine:

New Engine: 2020 Perkins C3.6 Family: LPKXL03.6FX1

Grant Agreement Usage: 550 hours/yr (+/- 30%)

3. Engine Serial #: \_\_\_\_\_.

4. Power Rating: : 123 HP

5. Fuel Type: Diesel

**SECTION 3: ANNUAL USAGE INFORMATION:** Provide the following Engine Usage Information:

1. Report Start Date: \_\_\_\_\_ (MM/DD/YY)

2. Report End Date: \_\_\_\_\_ (MM/DD/YY)

3. Percent of Time Operated in California: \_\_\_\_\_

4. Engine Use within the period stated above (complete all that apply):

\_\_\_\_\_ hours

\_\_\_\_\_ gallons

\_\_\_\_\_ N/A \_\_\_\_\_ miles

5. Has the fleet mod functioned effectively over this period \_\_\_\_\_

(Yes/No; if No, please attach description of issue(s) & steps taken to resolve issue(s).

Signature \_\_\_\_\_

Date \_\_\_\_\_

**Mail to:** NSAQMD, 200 Litton Dr., Suite 320, Grass Valley, CA 95945 **Email to:** office@myairdistrict.com