



**SOLID WASTE  
DEPARTMENT  
COUNTY OF TULARE  
AGENDA ITEM**

**BOARD OF SUPERVISORS**

KUYLER CROCKER  
District One

PETE VANDER POEL  
District Two

AMY SHUKLIAN  
District Three

J. STEVEN WORTHLEY  
District Four

MIKE ENNIS  
District Five

**AGENDA DATE:** September 25, 2018

Public Hearing Required	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Scheduled Public Hearing w/Clerk	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Published Notice Required	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Advertised Published Notice	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
County Counsel Sign-Off	Yes	<input checked="" type="checkbox"/>	N/A	<input type="checkbox"/>
Meet & Confer Required	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Electronic file(s) has been sent	Yes	<input checked="" type="checkbox"/>	N/A	<input type="checkbox"/>
Budget Transfer (Aud 308) attached	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Personnel Resolution attached	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>
Agreements are attached and signature line for Chairman is marked with tab(s)/flag(s)	Yes	<input type="checkbox"/>	N/A	<input checked="" type="checkbox"/>

CONTACT PERSON: Parveen Sandhu    PHONE: 624-7195

**SUBJECT:** Ratify and approve grant award agreement from the San Joaquin Valley Air Pollution Control District for the Heavy-Duty Engine Program.

**REQUEST(S):**  
That the Board of Supervisors:

1. Ratify and approve a grant award agreement from the San Joaquin Valley Air Pollution Control District in the amount of \$151,187.84, retroactive from February 28, 2018 to June 30, 2018. The approval is retroactive because staff inadvertently signed the grant agreement prior to obtaining approval.
2. Find that the Board had authority to enter into the proposed agreement as of February 28, 2018, and that it was in the County's best interest to enter into the agreement on that date.
3. Ratify the Solid Waste Manager's signature on the agreement.

**SUMMARY:**  
On February 28, 2018, the Tulare County Solid Waste Department received Agreement No. C-57984-A from the San Joaquin Valley Air Pollution Control District for the Heavy-Duty Engine Program. The program provides incentives to Participants for the retirement of Tier 1 and Tier 2 diesel engines, which will assist the District in attaining federal and state air quality standards. Under this program, the District provides reimbursements to be used towards the purchase of new, reduced-emissions diesel engines to replace high-polluting engines currently in use.

Staff applied for and received the grant from the San Joaquin Valley Air Pollution

**SUBJECT:** Ratify and approve grant award agreement from the San Joaquin Valley  
**DATE:** Air Pollution Control District for the Heavy-Duty Engine Program  
September 11, 2018

Control District prior to obtaining Board Authorization. Equipment Number 09412 was destroyed by SA Recycling on April 6, 2018. Upon verification from the San Joaquin Valley Air Pollution Control District of the destroyed asset, funding was approved. Reimbursement was received by the Department in Fiscal Year 2018.

The Solid Waste Department requests that your Board approve the grant award application retroactive to February 28, 2018 and authorize the acceptance of the grant from the San Joaquin Valley Air Pollution Control District in the amount of \$151,187.84.

**FISCAL IMPACT/FINANCING:**

The award amount of \$151,187.84 was not included in the Fiscal Year 2018 Budget and would be used to offset the cost of a Caterpillar D7E Track Type Tractor previously purchased on March 26, 2018. There is Zero Net County Cost to the General Fund or the Solid Waste Enterprise Fund associated with this action.

**LINKAGE TO THE COUNTY OF TULARE STRATEGIC BUSINESS PLAN:**

The County's five-year strategic plan includes the Quality of Life Initiative to promote natural resource management strategies that ensure environmental preservation. The approval of funding helps fulfill this initiative by ensuring that the County is able assist the San Joaquin Valley Air Pollution Control District in attaining federal and state air quality standards.

**ADMINISTRATIVE SIGN-OFF:**

  
\_\_\_\_\_  
Guillermo Hermoso  
Administrative Services Officer

cc: County Administrative Office  
County Counsel  
County Administrative Office (2)

Attachment(s) A – Grant Award Agreement with San Joaquin Valley Air Pollution Control District

**BEFORE THE BOARD OF SUPERVISORS  
COUNTY OF TULARE, STATE OF CALIFORNIA**

IN THE MATTER OF RATIFY AND )  
APPROVE GRANT AWARD AGREEMENT ) Resolution No. \_\_\_\_\_  
FROM THE SAN JOAQUIN VALLEY AIR ) Agreement No. \_\_\_\_\_  
POLLUTION CONTROL DISTRICT FOR )  
THE HEAVY -DUTY ENGINE PROGRAM )

UPON MOTION OF SUPERVISOR \_\_\_\_\_, SECONDED BY  
SUPERVISOR \_\_\_\_\_, THE FOLLOWING WAS ADOPTED BY THE  
BOARD OF SUPERVISORS, AT AN OFFICIAL MEETING HELD \_\_\_\_\_  
\_\_\_\_\_, BY THE FOLLOWING VOTE:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

ATTEST: MICHAEL C. SPATA  
COUNTY ADMINISTRATIVE OFFICER/  
CLERK, BOARD OF SUPERVISORS

BY: \_\_\_\_\_  
Deputy Clerk

\* \* \* \* \*

1. Ratified and approved a grant award agreement from the San Joaquin Valley Air Pollution Control District in the amount of \$151,187.84, retroactive from February 28, 2018 to June 30, 2018. The approval is retroactive because staff inadvertently signed the grant agreement prior to obtaining approval.
2. Found that the Board had authority to enter into the proposed agreement as of February 28, 2018 and that it was in the County's best interest to enter into the agreement on that date.
3. Ratified the Solid Waste Manager's signature on the agreement.



March 11, 2018

Ronald Moore  
County of Tulare, Solid Waste Department  
5955 S. Mooney Blvd.  
Visalia, CA 93277

See: Obligation of the Participant for:  
Project Implementation and Length of  
Contract

RE: Heavy-Duty Program Contract: C-57984-A

Dear Ronald Moore:

Please find enclosed one (1) copy of the final executed contract with the San Joaquin Valley Air Pollution Control District (SJVAPCD).

**Applicants must not have paid for, or taken delivery of any equipment in funding agreement prior to the contract execution date on the enclosed contract.** Additionally, it is important that you follow all reimbursement and destruction procedures in the enclosed guidance document. Failure to follow the - procedures will delay reimbursement.

To receive reimbursement, the SJVAPCD requires that you submit a complete Claim for Payment. The enclosed Payment Procedures Packet provides you with step-by-step guidance for requesting your reimbursement as well as the proper procedures for disposing of your old (existing) unit(s). Upon submission of a claim for payment, an inspection will be arranged with District staff for both the old and new equipment.

If you have any questions regarding reimbursement procedures please contact District staff at (559) 230-5800.

Sincerely,

Strategies & Incentives Staff

Enclosures

**Seyed Sadradin**  
Executive Director/Air Pollution Control Officer

**Northern Region**  
4800 Enterprise Way  
Modesto, CA 95356-8718  
Tel: (209) 557-6400 FAX: (209) 557-6475

**Central Region (Main Office)**  
1990 E. Gettysburg Avenue  
Fresno, CA 93726-0244  
Tel: (559) 230-6000 FAX: (559) 230-6061

**Southern Region**  
34946 Flyover Court  
Bakersfield, CA 93308-9725  
Tel: 661-392-5500 FAX: 661-392-5585

## Agreement C-57984-A

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### SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT HEAVY-DUTY ENGINE PROGRAM FUNDING AGREEMENT (OFF-ROAD EQUIPMENT REPLACEMENT)

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This Agreement, made this 28<sup>th</sup> day of February, 2018 between San Joaquin Valley Unified Air Pollution Control District ("District") and **County of Tulare, Solid Waste Department** ("Participant").

This Agreement is not effective until all signatures and dates are placed on the signature page.

In consideration of their mutual promises, covenants, conditions, and the funds awarded under this Agreement and in compliance with the Carl Moyer Program Guidelines and criteria, this project shall meet all program requirements for the full term of the Agreement, therefore the parties agree as follows:

#### 1. PROGRAM

The purpose of this Agreement is to provide incentives to Participants in the District's Heavy-Duty Engine Program, which will assist the District in attaining federal and state air quality standards. Under this program, the District provides cash incentives to be used towards the purchase of new, reduced-emissions diesel engines to replace high-polluting engines in existing in-use, mobile, self-propelled off-road compression-ignition (CI) equipment for use within the District; a map of which is attached hereto and incorporated herein as **Exhibit A**. Participant has agreed to undertake such participation.

#### 2. DESCRIPTION OF CURRENT EQUIPMENT

Funding under this Agreement shall be utilized by Participant to replace the following equipment; hereinafter the "current equipment"; installed with the following engine(s); hereinafter the "current engine(s)". See **Exhibit B** attached hereto and incorporated herein.

#### 3. DESCRIPTION OF NEW ENGINE

A. Funding under this Agreement shall be utilized by Participant towards the purchase of the new engine(s) listed in **Exhibit B**; hereinafter the "new engine(s)" to replace the current equipment listed in **Exhibit B**. If, after the execution of this

Agreement, Participant purchases new engine(s) other than as listed in **Exhibit B**, the alternative replacement engine(s) must meet the following requirements:

1. Be verified or certified to achieve at least equivalent or greater reductions than the new engine(s) listed in **Exhibit B**.
2. Meet all program eligibility requirements as the replacement engine(s).

Participant must receive prior approval by the District before purchasing the alternative replacement engine(s). If Participant does not receive prior approval from the District for the purchase of the alternative replacement engine(s), the District may deny the disbursement of project incentive funds.

#### **4. OBLIGATIONS OF DISTRICT**

A. District shall provide up to **\$151,187.84** dollars to Participant to be used towards the purchase of eligible new engine(s) meeting the most recent Model Year emission standard for the purpose of replacing existing off-road equipment owned by the Participant.

B. District shall make payment to Participant upon receipt and verification of a properly supported claim for payment request. Payment will be issued to Participant within **sixty (60) working days** of a completed project post-inspection which includes verification that the new engine(s) is/are operational and the current engine(s) has/have been properly destroyed in accordance with program requirements specified in **Exhibit C**; attached hereto and incorporated herein.

C. Funding shall only be allowed towards the purchase of the new engine(s) described in Paragraph 3(A).

D. Payment(s) shall be made directly to Participant.

#### **5. AGREEMENT TERMS**

A. Project Completion Terms (Milestones):

1. **New Engine(s) Purchased (Installed):** The new engine(s) shall be purchased and installed in the Participant's existing equipment **within one (1) year from the execution date on this agreement.**
2. **Claim for Payment Request for Reimbursement:** Participant shall submit a complete claim for payment request to be reimbursed for the purchase of the new engine(s) within **sixty (60) calendar days** from the purchase date(s) of the new engine(s), based on the invoice date(s) of the new engine(s).

If the Participant cannot meet the Project Completion Terms, the Participant must notify the District in writing with justification explaining why the Project Completion Terms cannot be met. Participant agrees to amend the Agreement as necessary, if requested by the District, to ensure the project is completed in a timely manner. Participant understands that even with written justification; the District does not guarantee an amendment will be made to the Agreement to adjust Project Completion Terms. Participant may be subject to conditions in Paragraph 9 for noncompliance with Project Completion Terms.

B. Project Implementation Phase – Participant shall own, operate, and maintain the new engine(s) listed in **Exhibit B** according to the terms of this Agreement for a period of not less than **4** year(s), designated in **Exhibit B** as the Project Implementation Phase, from the date in which the new engine(s) is/are first placed into service. The new engine(s) purchased through this Agreement must remain and operate in the equipment verified during the project monitoring for the duration of the Project Implementation Phase.

## **6. ANNUAL REPORTING**

A. Participant is required to submit annual reports to the District. Participant shall submit annual reports on new engine(s) operation, hours of operation, maintenance, and any other pertinent information requested by District on a form to be provided to Participant by District for the duration of the Project Implementation Phase specified in Paragraph 5(B).

B. The first year annual report is due no later than eighteen (18) months after the project post-inspection and annually thereafter for the full term of the Agreement.

C. Noncompliance with the annual reporting requirements shall require on-site monitoring by the District and/or the California Air Resources Board (ARB) and will impact the Participant's ability to receive funding from the District and/or ARB for future projects. Participants with reports that are more than six (6) months late will not be granted any additional grant funds from the District until all reports are satisfactorily submitted.

D. In the event Participant does not meet the minimum annual hours of operation of **1500** hours specified in **Exhibit B**, as determined by a minimum three-year average, the Participant shall refund to District a pro-rated amount or agree to amend the Agreement if requested by the District.

E. If the Participant's reported annual usage is below the minimum annual hours specified in **Exhibit B**, Participant must describe on the annual report any conditions (such as weather, permits, major maintenance, etc.) that significantly impacted project usage. In instances where annual usage is significantly lower than the contracted level due to unforeseen circumstances beyond the control of the Participant, the Participant may request in writing a waiver from the District. A request for a waiver does not

guarantee the waiver will be granted. Participant may be subject to conditions in Paragraph 9 for noncompliance with the annual reporting and/or annual usage requirements in this Agreement.

## **7. OBLIGATIONS OF PARTICIPANT**

A. Participant shall purchase the new engine(s) specified in Paragraph 3(A) to replace the current engine(s) specified in Paragraph 2. It is the responsibility of the Participant to ensure the new engine(s) purchased through this Agreement meet all program eligibility requirements. Participant must ensure the new engine(s) purchased through this Agreement adheres to all the requirements set forth in Paragraph 3(A). If the Participant purchases new engine(s) that is/are not eligible or does not meet program requirements, the District may deny the disbursement of project incentive funds.

B. The Participant must ensure a working hour meter is in place and functional at all times to record the operational hours of the new engine(s). If the hour meter should fail, the Participant shall immediately notify the District, and remains responsible for validating any hours not recorded. The Participant must either repair or replace the non-operating hour meter, at the Participant's expense, or provide other documentation of new engine(s) operating hours acceptable to the District.

C. In the event the Participant does not operate the new engine(s) in the current equipment for the duration of the Project Implementation Phase as specified in Paragraph 5(B), Participant shall refund to District a pro-rated amount or agree to amend the Agreement if requested by the District.

D. Participant must operate the new engine(s) for the minimum annual hours of operation of **1500** hours as specified in **Exhibit B**. Annual hours of operation will be documented by Participant on an annual report form as described in Paragraph 6.

E. The Participant takes sole responsibility for ensuring that the new engine(s) is/are in operational condition throughout the Project Implementation Phase. The Participant shall maintain the new engine(s) according to the manufacturer's specifications for the full term of the Agreement. Tampering or any attempt to modify the new engine(s) is not allowed. Removal or transfer of the new engine(s) from the current equipment listed in **Exhibit B** to power any other existing equipment is not allowed. Maintenance or repair costs related to the operation of the new engine(s) are not eligible for funding.

F. If necessary, Participant shall obtain through other sources sufficient additional funds to purchase and install the new engine(s) specified herein.

G. In the event Participant cannot obtain sufficient funds to complete the purchase, District reserves the right to terminate this Agreement. In that event, if requested by District, Participant shall return any District funds received.



H. Prior to reimbursement and within **60 calendar days** of the purchase of the new engine(s), Participant agrees to permanently disable and dispose of the current engine(s) listed in **Exhibit B** of this Agreement in accordance to the requirements specified in **Exhibit C** of this Agreement.

## **8. GENERAL CONDITIONS**

A. Participant agrees that at the date of execution of this Agreement, Participant has not yet purchased, made payment(s) toward, taken possession of, or ordered the new engine(s).

B. Participant agrees that, for the full term of this Agreement, District, ARB, or their designee(s) shall be allowed to inspect the new engine(s) and all records relating to the new engine(s).

C. District and ARB reserve the right to monitor and enforce the terms of this Agreement at any time during the Project Implementation Phase specified in Paragraph 5(B).

D. Participant agrees that the engine(s) purchased shall be new, verified and certified by ARB for sale in California, and complies with all applicable durability and warranty requirements. The installation of the new engine(s) must be completed in a manner such that it does not void the engine warranty provided by the manufacturer and any remaining warranty provided by the equipment manufacturer.

E. Participant agrees and represents that the current equipment is/are home based within the geographic boundaries of the District and shall remain so for the duration of the Project Implementation Phase as specified in Paragraph 5(B). (See **Exhibit A** for District map.)

F. Participant certifies by signature on this Agreement that the current equipment was registered in ARB's Diesel Off-road On-line Reporting System (DOORS) at time of application submittal if it is subject to the Regulation for In-Use Off-Road Diesel Vehicles (Off-Road Regulation). Participant is responsible for updating fleet information in DOORS as necessary after the replacement of the current equipment.

G. Participant agrees to meet the percentage usage within the geographic boundaries of the District and California as specified in **Exhibit B**, with at least 50% of the hours of operation of the replaced current equipment within the geographic boundaries of the District and 75% within California, whichever is greater, for the duration of the Project Implementation Phase as specified in Paragraph 5(B).

H. Participant agrees and represents that purchase of the new engine(s) subject of this Agreement is/are not required by or to be used for compliance with any local, state, federal rule, regulation, settlement agreement, mitigation agreement, memorandum of

understanding (MOU), memorandum of agreement (MOA), or other legal mandate currently in effect.

I. Participant waives all rights to any emission reduction credits that may accrue as a result of purchase of the new engine(s). Any such potential credits shall be the sole property of District.

J. If the Participant intends to sell or transfer ownership of the new engine(s) or the replaced current equipment during the Project Implementation Phase specified in Paragraph 5(B), the District must be notified by the Participant in writing of the intent and the District must approve the sale or transfer of ownership prior to the transaction. In the event Participant sells or transfers ownership of said new engine(s) or replaced current equipment during the Project Implementation Phase, Participant shall return, if requested by District, pro-rated funds to the District specified in Paragraph 4(A).

K. The District reserves the right to reduce the incentive amount if it is determined that the actual costs paid by Participant are less than the costs indicated on the application. Additionally, District reserves the right to disallow certain ineligible costs submitted on the claim for payment request and thereby reduce the incentive amount. A determination of cost eligibility will be at the sole discretion of the District.

L. The incentive amount provided to Participant for the purchase of the new engine(s) in this Agreement is based on the cost-effectiveness of the project. Should the cost-effectiveness of the project be affected after the completion of the project, the incentive amount may be reduced.

M. An itemized invoice for a project must be received by the District before payment shall be made. A project invoice shall include enough detail to ensure only eligible project costs are being reimbursed, yet clear and concise enough to be understandable. The District shall review the itemized invoice and only pay for eligible expenses. The District will not reimburse the Participant for any costs on the invoice which exceeds the project incentive amount indicated in this Agreement in Paragraph 4(A). The District will pay the Participant the lower of the contract amount or the final invoice amount of eligible costs.

N. Payment will be issued to Participant upon the following:

1. All required documents for a complete claim for payment request have been submitted to the District for approval.
2. Verification that the current engine(s) is/are disabled and disposed of in a manner consistent with the District's approved disposal methods specified in **Exhibit C** of this Agreement.
3. Verification that the new engine(s) is eligible and is/are operational in the current equipment listed on **Exhibit B**.

O. Participant is responsible for purchasing certified new engine(s) eligible for funding following current ARB Carl Moyer Program guidelines, policies and procedures. The new engine(s) purchased through this Agreement must meet the most recent Model Year emissions standards, and shall meet the minimum following requirements:

1. Engines participating in the averaging, banking and trading program that are certified to Family Emission Limits (FELs) higher than the applicable emission standards, as designated on the ARB Executive Order, are ineligible to participate in the program as the replacement engine.
2. Engines that are participating in the "Tier 4 Early Introduction Incentive for Engines Manufacturers" program, as detailed in the California Code of Regulations, Title 13, Section 2423(b)(6), are eligible as replacement engines provided that they are certified to the final Tier 4 emission standards. The ARB Executive Order for these engines indicates that the engines are certified under this provision.
3. Interim Tier 4 compression-ignition (CI) engines between 75 and 750 horsepower, certified to the Phase-In, Phase-Out, and Alt NOx standards as detailed in California Code of Regulations, Title 13, Section 2423(b)(1)(B), are eligible to participate in the program.
4. Equipment manufactured under the "Flexibility Provisions for Equipment Manufacturers" as detailed in California Code of Regulations, title 13, section 2423(d), are ineligible for funding as a replacement engine.

P. Participant attests by signature on this Agreement that the Participant (or designee) shall not submit another application or sign another agreement for the same specific equipment and/or engine in this Agreement with any other grant funding source, including but not limited to, other Air Districts or to ARB for a multi-district solicitation, or any local, state or federal agency with the following exception:

1. Starting July 1, 2011, participant may apply for and receive additional funding for the new engine(s) purchased through this Agreement from federal programs to reduce greenhouse gas emissions (GHG), or funding provided by the Alternative and Renewable Fuel and Vehicle Technology Program to reduce GHG. Should Participant apply for or receive this additional funding, Participant must disclose the funding source and total funding amount applied for or received to the District. The total public funds, Carl Moyer Program funds and federal funds, received by the Participant during the term of this Agreement cannot exceed 85 percent of the project cost. Participant shall refund a portion of or all incentive funds provided by the District, as determined and requested by the District, should the Participant receive total public funds greater than 85 percent of the project cost.

Q. Participant certifies by signature on this Agreement that the Participant has disclosed all other public funds that Participant has applied for or received for the purchase of the new engine(s) in this Agreement. Participant also agrees to disclose to District the receipt of any public funds after the execution of this Agreement for the purchase of the new engine(s).

R. Participant certifies by signature on this Agreement that the Participant's fleet, engine(s), or equipment/vehicle(s) is/are in compliance with all applicable federal, state, and local air quality rules and regulations at time of Agreement execution.

S. Participant agrees to maintain compliance with all applicable federal, state, and local air quality rules and regulations for the full term of the Agreement as specified in Paragraph 5(B).

T. Participant agrees that the new engine(s) purchased through this Agreement must be included when defining the size of the Participant's fleet for determining all applicable regulatory requirements.

U. Participant agrees that throughout the Agreement term, the new engine(s) purchased through this Agreement must not be used in any way to generate credits or compliance extensions, and must be excluded when determining regulatory compliance.

#### **9. REPERCUSSIONS FOR NONPERFORMANCE**

A. The Participant must operate the new engine(s) purchased through this Agreement according to the terms of the Agreement and cooperate with the District and ARB in implementation, monitoring, enforcement, and other efforts to assure the emission benefits are real, quantifiable, surplus, and enforceable.

B. Repercussions for noncompliance with the requirements, terms, and conditions set forth in this Agreement shall result in, including but not limited to, the District cancelling the Agreement with Participant and recapturing project funds in proportion to any loss of emissions reductions as agreed to in this Agreement.

C. District and ARB have authority to seek any remedies available under the law for noncompliance with Carl Moyer Program requirements and nonperformance with the Agreement. District may consider unforeseen circumstances beyond the Participant's control in determining repercussions for nonperformance.

D. ARB, as an intended third party beneficiary, reserves the right to enforce the terms of this Agreement at any time during the contract term to ensure emission reductions are obtained.

**10. INSURANCE**

Participant shall provide District with proof of insurance for the new engine(s) in types and amounts approved by the District prior to any payment of funds under this Agreement.

**11. FUNDING OUT**

The terms of this Agreement and the services to be provided herein are contingent on the approval and receipt of funds by the appropriating government agency. Should sufficient funds not be allocated, the services provided may be modified or this Agreement terminated at any time by giving Participant 30 days' prior written notice.

**12. 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.

**13. TERMINATION**

District may immediately suspend or terminate this Agreement, in whole or in part, where in the determination of District there is:

- A. An illegal or improper use of funds;
- B. A failure to comply with any term of this Agreement; or
- C. A substantially incorrect or incomplete report submitted to District.

In no event shall any payment by District constitute a waiver by District of any breach of this Agreement or any default, which may then exist on the part of Participant. Neither shall such payment impair or prejudice any remedy available to District with respect to the breach or default. District shall have the right to demand of Participant the repayment to District of any funds disbursed to Participant under this Agreement, which, in the judgment of District, 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, District and ARB have the authority to fine the Participant or seek any other remedies under law, in equity, or otherwise specified in this Agreement.

**14. INDEMNIFICATION**

Participant agrees to indemnify, save, hold harmless, and at District's request, defend District, 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 agreement, tort, or strict liability, including, but not limited to, personal injury, death, and property damage)

occurring or resulting to District which arises from any negligent or wrongful acts or omissions of Participant, its officers, agents, subcontractors, or employees in their performance of this Agreement.

**15. RECORD KEEPING**

Participant shall maintain records sufficient to provide, on an annual basis for the term of this Agreement, information regarding annual hours of operation, fuel usage, general maintenance details, and any other available information, which may be deemed pertinent to the evaluation of the program. Participant shall maintain and retain records for at least two (2) years after Agreement expiration or three (3) years after the final project payment, whichever is later.

**16. NOTICES**

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

**PARTICIPANT**

Ronald Moore  
County of Tulare, Solid Waste  
Department  
5955 S. Mooney Blvd.  
Visalia, CA 93277  
(559) 288-9995

**DISTRICT**

Seyed Sadredin  
Executive Director/APCO  
1990 E. Gettysburg Avenue  
Fresno, California 93726  
(559) 230-6000

Any and all notices between District 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 prepaid, addressed to such party.

**17. 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 Fresno County, California.

**18. 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 District, complete all activities provided herein within the time schedule outlined in this Agreement, provided that Participant is not caused unreasonable delay in such performance due to circumstances beyond the Participant's control.

**19. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between Participant and District 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.

**20. 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.

**21. NO FINANCIAL THIRD-PARTY BENEFICIARIES**

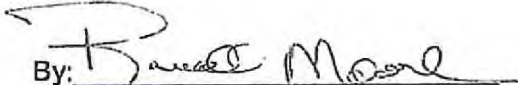
Notwithstanding anything else stated to the contrary herein, it is understood that Participant's services and activities under this Agreement are being rendered only for the benefit of District, and no other person, firm, corporation, or entity shall be deemed an intended financial third-party beneficiary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

**22. AUDIT**

In addition to enforcement by the District and auditing of the new engine(s) as the District deems necessary, the ARB, as an intended third party beneficiary, reserves the right to conduct a fiscal audit of the project and/or to inspect the project engine or equipment and associated records during the full term of the Agreement [see Paragraph 5(B)]. The Participant must maintain and retain the project records for at least two (2) years after Agreement expiration or three (3) years after final project payment, whichever is later.

**PARTICIPANT**

**County of Tulare, Solid Waste  
Department**

By:   
Ronald Moore

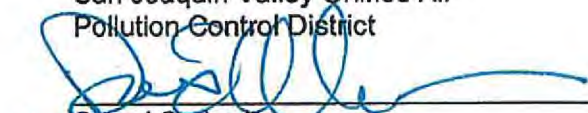
\_\_\_\_\_  
Date

**DISTRICT**

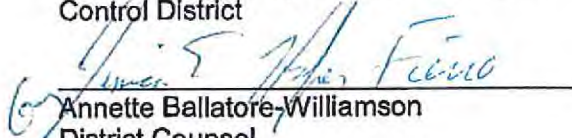
**San Joaquin Valley Unified Air Pollution  
Control District**

  
Ernest Buddy Mendes  
Governing Board Chair

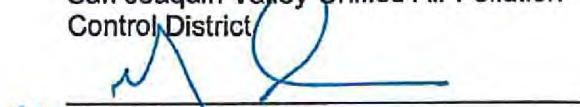
**Recommended for approval:**  
San Joaquin Valley Unified Air  
Pollution Control District

  
for Seyed Sadredin  
Executive Director/APCO

**Approved as to legal form:**  
San Joaquin Valley Unified Air Pollution  
Control District

  
Annette Ballatore-Williamson  
District Counsel

**Approved as to accounting form:**  
San Joaquin Valley Unified Air Pollution  
Control District

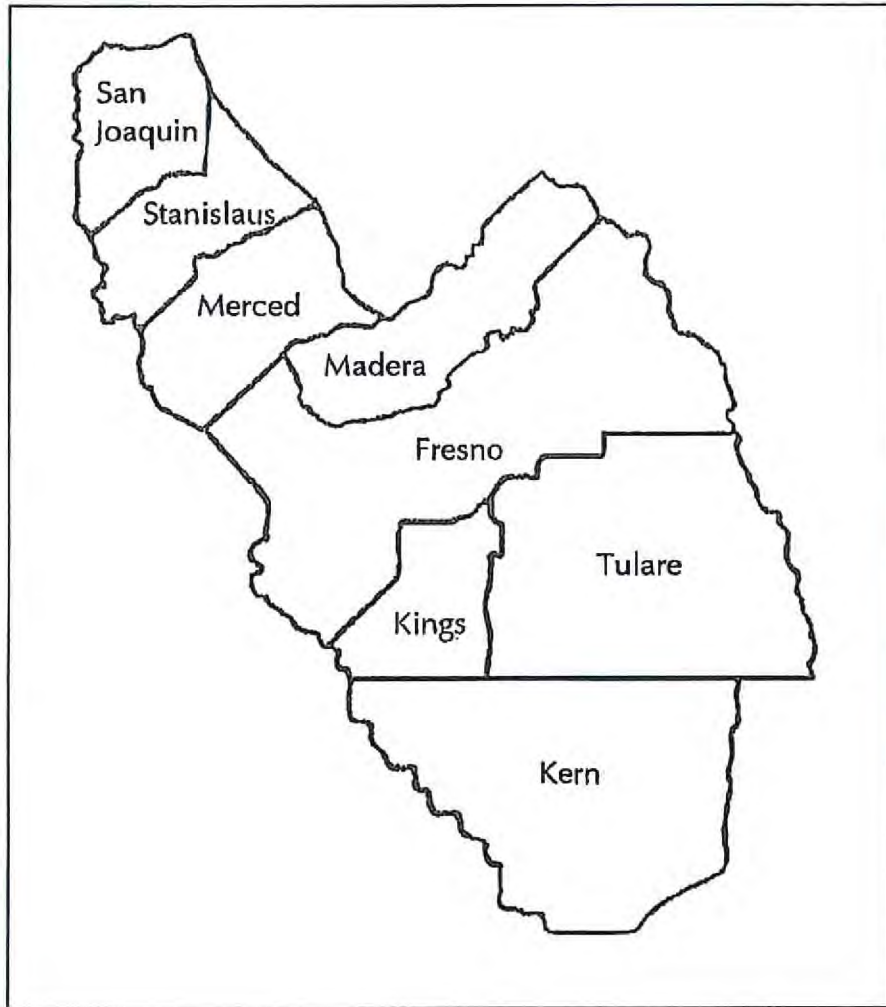
  
for Mehri Baraji, C.P.A.  
Director of Administrative Services

**For accounting use only:**  
San Joaquin Valley Unified Air Pollution  
Control District

Program: # 282  
Account No.: \_\_\_\_\_



**SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT  
GEOGRAPHIC LOCATION**



**Exhibit A**

## SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT OFF ROAD ENGINE REPLACEMENT

Replacement	Fuel Type	Fuel Usage	Geographic Area	Annual Hrs and %	Existing Engine Serial Number	Cost of New	Eligible Amount
Unit Number: 1 Make: Model: Year: HP: 238      Tier: Tier	Diesel		Tulare	1,500 within CA  100% within District	7ZR11175		\$151,187.84
<b>Existing Engine Information:</b> Year 2004      Make Caterpillar      Model 3176 Horsepower 240      Fuel Type Diesel      Project Implementation Phase: 4 Years							
Engine/Replacement to be Installed In Current Vehicle: Caterpillar      Make: Caterpillar      Model: D7R					Vehicle ID: ACS00668		
<b>Number of engines and replacements to be purchased:</b>						<b>Total:</b>	<b>\$151,187.84</b>

**EXHIBIT B**

**SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT**  
**Current (Old) Engine Disposal Requirements for Engine Replacement Projects**

Participant is required to dispose of the current engine(s) listed in **Exhibit B** of this Agreement in the following manner:

1. The Participant must permanently disable the current engine(s) by puncturing a minimum six-inch diameter hole in the engine block. The hole must have serrated and uneven edges rendering it irreparable, and should include a portion of the oil pan rail. When puncturing the hole in the engine block, the Participant must avoid destroying any identifying engine number, including the District project number which, when feasible, will be stamped or marked on the engine block by District staff during the pre-monitoring inspection phase.
2. The submittal of a complete District Claim for Payment Packet to request reimbursement will trigger an on-site post-monitoring inspection of the current engine(s) with the hole in the engine block. Participant must ensure the destroyed current engine(s) is/are made available for District staff to inspect. Incentive funds will not be disbursed to the Participant until District staff has performed the site visit and has visually verified that the hole in the current engine(s) sufficiently meets program requirements. In addition, District staff must be able to verify that the destroyed engine(s) is/are the same engine(s) from the pre-monitoring inspection, as determined by the identifying engine number.
3. Once District staff has verified the proper destruction of the current engine(s), the Participant must submit the current engine(s) to a licensed scrapping facility or dismantler to be crushed or recycled for scrap metal. **The Participant must not submit the destroyed engine(s) to a dismantler until District staff has visually verified the hole in the engine block.** The Participant must obtain an official receipt or legitimate documentation from the dismantler that clearly indicates, at a minimum: the Participant's name or organization name, the dismantler's name and address, and the current engine(s) make, model, and serial number. The Participant is required to submit the receipt or documentation with his/her claim for payment request for reimbursement. The verification of the receipt and documentation is at the sole discretion of the District. If the Participant does not submit a sufficient receipt, or other documentation deemed appropriate by the District, the District may deny the disbursement of project incentive funds.

Funding is not available for the salvage of the current engine(s). The current engine(s) salvage value will be negotiated between the Participant and the dismantler.

The District holds the Participant responsible for ensuring the current engine(s) in this Agreement are permanently destroyed and do not return to service. The Participant is responsible for ensuring his/her chosen dismantler properly and adequately disposes the current engine(s) to make certain the current engine(s) is/are not returned to service. If the current engine(s) is/are found to be operational at any time after the post-monitoring inspection, the Participant will be subject to enforcement action by the District, including repayment of incentive funds, civil penalties, and any other legal action deemed appropriate.

## Exhibit C