

**GRANT AGREEMENT
BETWEEN
THE MARYLAND DEPARTMENT OF THE ENVIRONMENT
AND
CITY OF HYATTSVILLE
FOR FUNDING FROM
THE VOLKSWAGEN ENVIRONMENTAL
MITIGATION TRUST**

This GRANT AGREEMENT (“Grant”) is made between the Maryland Department of the Environment (“Department”) and City of Hyattsville (“Grantee”).

WHEREAS, the Environmental Mitigation Trust (“Trust”) was established through, and funded by, the Environmental Mitigation Trust Agreement (“Trust Agreement”) between Volkswagen AG, Audi AG, Volkswagen Group of America, Inc., and Volkswagen Group of America Chattanooga Operations, LLC and Dr. Ing. h.c. F. Porsche AG and Porsche Cars North America, Inc. (collectively “Defendants), the Environmental Protection Agency, and the California Air Resources Board as the result of two consent decrees, dated October 25, 2016 (“First Partial Consent Decree”) and May 17, 2017 (“Second Partial Consent Decree”)(collectively “Consent Decree”), to provide states, as beneficiaries of the Trust, with funds for Projects to offset the excess emissions resulting from the sale of non-compliant diesel vehicles; and

WHEREAS, the Trust is administered by a trustee, Wilmington Trust (“Trustee”), selected by the parties to the Consent Decree to implement the Trust for the benefit of the states, including the State of Maryland (“State”); and

WHEREAS, pursuant to Appendix D-3 of the Certification for Beneficiary Status (“Appendix D-3”) the State is the beneficiary of, and bound by, the Trust Agreement, and is therefore required to implement the Trust pursuant to the terms of the Trust Agreement; and

WHEREAS, pursuant to Appendix D-3 the Department has been certified as the Lead Agency for purposes of the State’s participation in, and implementation of, the State’s allocation of Trust funds, as established by the Trust Agreement, and the Department, thereby, has the delegated authority to act on behalf of, and to legally bind the State; and

WHEREAS, the Grantee has applied to the Department for Trust funds in order to replace one diesel powered shuttle bus with one new electric powered shuttle bus and install the required infrastructure. The Department is providing these reimbursable funds to achieve greater reductions in emissions from diesel vehicles in Maryland; and

WHEREAS, based on the Grantee’s application, the Department will request from the Trustee, disbursement of funds from the Trust in an amount not to exceed \$228,712 using funds available from the Trust. This disbursement is based on the Grantee's original request of \$207,920 in their proposal submitted to the Department. However, due to the elapsed time since the submission of the original proposal, the Department has recognized that this cost may have

increased. Therefore, the Department will request up to an additional 10% from the Trustee for disbursement to reflect the potential cost increase. If the total requested funds are expected to exceed \$228,712, the Grantee must timely notify the Department in writing and, upon final approval, the Department will request disbursement of the additional funds. Moreover, if there is an increase in the total amount of the requested funds, compared to the approved funding level from the Department review process, the Grantee is still required to provide the agreed upon percentage in matching funds.

WHEREAS, the Department shall request to distribute Trust funds to Grantee in accordance with this Grant and subject to Section V of the Trust Agreement. Project eligibility and funding requests are subject to the Trustee's final approval.

WHEREAS, the financial assistance provided herein originates solely with the Trust and not the Department.

NOW THEREFORE, in consideration of the foregoing, as well as the mutual promises and covenants contained herein, the Department and the Grantee hereby agree as follows:

I. RECITALS

The RECITALS are hereby made a part of this Grant.

II. TERM OF AGREEMENT

Performance under this Grant commences at the time the Trustee approves the Project and continues until agreed-upon services are completed, and no later than October 10, 2022.

III. LEVEL OF FUNDING

The Department shall provide Trust funds in accordance with Section V of this Grant and Section V of the Trust Agreement, but the total amount paid under this Grant shall not exceed \$207,920 (the "Award"). However, should the total cost of the requested funds exceed, or is expected to exceed, \$207,920 by more than 10%, Grantee must notify the Department in writing and any additional funds will be disbursed only upon Trustee's final approval.

IV. OBLIGATIONS OF GRANTEE FOR THE PROJECT

The Grantee agrees to comply with all of the following requirements:

- a) The Grantee shall develop a Spending Plan for the Trust funds which shall include a listing of all program costs associated with the tasks outlined in the Grant. In preparing the spending plan, Grantee should not include administrative costs associated with the Grant as they are not reimbursable costs. Grantee shall submit the Spending Plan to the Department for approval within 30 days of the execution of this Grant. If the Department does not approve the Spending Plan, the Department may terminate this Grant pursuant to Section XV below.

- b) The Grantee shall provide the information required by Appendix A (VW Mitigation Trust Program Grantee Quarterly Report) and Appendix B (Beneficiary Eligible Mitigation Action Certification-Trust Appendix D-4) on a quarterly basis. Appendices A and B are attached for reference and incorporated herein. Grantee's failure to submit the necessary information in Appendices A and B shall result in the Department withholding Grantee's funds for the quarter in which the information was required to be submitted.
- c) Upon request, the Grantee shall provide the Department with any information the Department needs to meet the Trust's reporting requirements.
- d) The Grantee shall coordinate with the Department any publicity or public outreach events, in which it participates as a result of the Award. No portion of the Trust funds shall be used by the Grantee for publicity, outreach events, or any other type of promotional projects, events, or materials.
- e) The Grantee shall use the Trust funds only for those Project costs as agreed to by the Grantee and the Department pursuant to this Grant.
- f) The Grantee shall ensure that the replacement vehicles/equipment whose purchase was reimbursed with this funding will be used on a regular basis for the useful life of the vehicle.
- g) Grantee shall be the sole owner of any equipment, including but not limited to motor vehicles, purchased with funds Grantee receives from the Trust.
- h) In accordance with Appendix D-2 of the VW Settlement, any replacement equipment, including but not limited to motor vehicles, shall be scrapped. The term "Scrapped" means to render equipment inoperable and made available for recycle. Grantee shall, at a minimum, cut a 3-inch hole in the engine block of all engines, and shall disable the chassis of the scrapped engine by cutting the vehicle's frame rails completely in half.

V. REIMBURSEMENT

The funds provided under this Grant are subject to availability of Trust funds. During the term of this Grant, the Department shall request disbursement of Trust funds from the Trustee for any invoices submitted by the Grantee to the Department for services performed by Grantee as follows:

- a) Grantee shall send the Department an invoice addressed to the Trust, with all relevant receipts, reports and documentation attached detailing the work performed and the compensation due to the Grantee. Grantee's Federal Tax Identification Number and invoice number must appear on all invoices submitted by the Grantee to the Department for payment. The Department will not request reimbursement on behalf of the Grantee for administrative costs associated with this Grant.

- b) The Department shall submit the approved invoices to the Trustee for reimbursement according to Appendix B attached for reference and incorporated herein. In the event the Department disputes an invoice, or any portion therein, the Department may withhold the disputed portion until the dispute is resolved in accordance with Section X below.
- c) Except as provided in Section III, Level of Funding, invoices will not exceed the agreed-upon amount of two hundred and seven thousand nine hundred and twenty dollars (\$207,920). Expenses greater than this amount are the responsibility of the Grantee and no Trust funds shall be disbursed to Grantee to cover any invoices, costs, expenses or otherwise that exceed \$207,920.
- d) All invoices are to be submitted electronically to an MDE established secure FTP site. Information on the secure FTP site and directions on how to access it will be provided after the agreement is executed.
- e) The Department will submit payment requests to the Trustee in accordance with the terms of this Grant only after the Department's approval. Charges for late payment are prohibited. The Department reserves the right to withhold payment for any invoice containing a discrepancy or inconsistency in the billing amount. Any disputes will be resolved in accordance with paragraph X below.

VI. DEPARTMENT RESPONSIBILITIES

- a) The Department shall seek reimbursement from the Grantee as described in Section V.
- b) The Department shall maintain and make publicly available all documentation and records submitted in support of each funding request and in support of all expenditures.

VII. RETENTION OF RECORDS - AUDITS

The Department shall have the right, during normal business hours, to examine and audit all Grantee records that the Department deems necessary or advisable in order to verify compliance with the terms and conditions of this Grant and expenditures for which reimbursement is requested. The Grantee shall retain and maintain all records and documents relating to this Grant for a period of three (3) years following payment by the Department of the final invoice or any applicable statute of limitations, whichever is longer. All records relating to this Contract must be made available for inspection by the Department upon request and are subject to audit by the Department. Grantee shall require all Grantee's contractor(s) and subcontractor(s) to promptly grant access to its facility(s) to authorized state agency representative(s) for review of documents, information, and to conduct interviews of company personnel. The Grantee shall require Grantee's contractor(s), and any subcontractor(s), to provide upon request by the Department copies of any invoices, records, timesheets, work logs, contracts, or any other documents or information needed in order for the Department to comply with all applicable Trust, state or federal reporting and audit requirements.

VIII. ANTI-DISCRIMINATION PROVISION

Grantee agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, sexual orientation, gender identity, disability, or genetic information unrelated in nature and extent so as reasonably to preclude the performance of such employment; (b) to include a provision similar to that contained in subsection (a) above in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post, and to require subcontractors to post, notices setting forth the substance of this clause in conspicuous places available to employees and applicants for employment.

IX. NOTICE OF COOPERATION

Grantee will immediately give notice to the Department's Representative any claim made, or filed against, Grantee or its subcontractors, agents or representatives, regarding any matter resulting from, or relating to, Grantee's obligations under this Grant, and will cooperate, assist, and consult with the Department in defense or investigation of any claim, suit, or action made or filed against the Department as a result of, or relating to, the Grantee's obligations under the Grant.

- a) The Department is under no obligation to provide legal counsel or legal defense to Grantee or its employees, agents, consultants or contractors in the event that a suit, claim or action of any character is brought by any person not party to this Grant against Grantee or its employees, agents, consultants or contractors, as a result of, or relating to, Grantee's obligations under this Grant.
- b) The Department is under no obligation to pay judgments or claims made against Grantee or its employees, agents, contractors or consultants, as a result of, or relating to, Grantee's obligations under this Grant.

X. APPLICABLE LAW

The laws of the State of Maryland shall govern this Grant, and the parties hereby expressly agree that the courts of the State of Maryland shall have exclusive jurisdiction to decide any disputes arising hereunder.

This Grant embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations referring to the subject matter, other than those contained herein or incorporated herein by reference.

XI. NO THIRD-PARTY BENEFICIARIES

Nothing in this Grant shall be construed to: (1) provide a benefit to any third party, (2) operate in any way as promise, covenant, warranty or other assurance to any third party, or (3) create any obligation to any third party.

XII. WAIVER

The failure of the parties to enforce any of the provisions of this Grant, or to exercise any option which is provided in this Grant, or to perform any of the provisions of this Grant shall not be construed as a waiver of such provisions, nor in any way affect the validity of this Grant or any part of it, or the right of the Department to enforce each and every such provision.

XIII. SEVERABILITY

The Department and Grantee agree that if any of these provisions contravene, or are held to be invalid under any applicable law, such provisions shall not invalidate this Grant in its entirety. Rather, the Grant shall be construed as if not containing those particular provisions, and all remaining obligations of the parties shall remain in full effect to the maximum extent reasonable.

XIV. TERMINATION

This Grant may be terminated at any time by mutual agreement or by either party giving sixty (60) days written notice to the other party. If necessary, termination of this Grant by Grantee prior to the completion of the Project shall result in the immediate remittance of any funds paid to Grantee by the Department for any uncompleted portion of the Project.

The performance of work under this Grant may be terminated by the Department upon 30 days prior written notice to the Grantee in accordance with this clause in whole, or in part, whenever the Department determines that termination is in the best interest of the Department.. The Grantee shall not be reimbursed for anticipatory costs that have not been incurred up to the date of termination.

Notwithstanding Section XVII of this Grant, the Grantee shall not be relieved of liability to the Department for damages sustained by the Department by virtue of any breach of this Grant.

XV. COMPLIANCE WITH LAWS

In providing services hereunder, Grantee shall at all times abide by all federal, state and local laws, statutes, ordinances, rules and regulations.

XVI. MODIFICATION

This Grant contains all of the terms and conditions made between the parties to this Grant and may only be modified by written amendment signed by both parties.

XVII. SURVIVAL CLAUSE

The parties' rights and obligations under Sections IV through XVII shall survive the any expiration or termination of this Grant for the useful life of all vehicles purchased pursuant to this Grant.

XVIII. AGREEMENT CONTACTS

any questions regarding the substance of this Grant shall be made to the following Grant contacts:

Department:

Marcia Ways, Program Manager
Mobile Sources Control Program
Air and Radiation Administration
Maryland Department of the Environment
1800 Washington Boulevard
Baltimore, Maryland 21230
(410) 537-3270
marcia.ways@maryland.gov

Grantee:

Name
Title
Company/Agency
Address
Phone
Email address

The Grant Contacts for any questions regarding the financial terms of this Grant are:

Department:

Marcia Ways, Program Manager
Mobile Sources Control Program
Air and Radiation Administration
Maryland Department of the Environment
1800 Washington Boulevard
Baltimore, Maryland 21230
(410) 537-3270
marcia.ways@maryland.gov

Grantee:

Name
Title
Company/Agency
Address
Phone
Email address

XIX. NOTICES

Where notice or approval is required in this Grant, it shall be given in writing, sent by certified or registered mail in the United States, postage prepaid, return receipt requested. The address of each party is provided below:

As to Department:

Marcia Ways, Program Manager
Mobile Sources Control Program
Air and Radiation Administration
Maryland Department of the Environment
1800 Washington Boulevard
Baltimore, Maryland 21230
(410) 537-3270
marcia.ways@maryland.gov

As to Grantee:

Name
Title
Company/Agency
Address
Phone
Email address

IN WITNESS WHEREOF, this Grant represents the full intent and interest of the parties hereto as evidenced by their respective signatures affixed below as of the day and year written.

ATTEST: GRANTEE

By: _____
Name, Title _____
Company/Agency _____ Date _____

Approved for form and legal sufficiency this
_____th day of _____ 2020

Name, Title

ATTEST: THE STATE OF MARYLAND

By: _____
Thomas J. French, Director
Operational Services Administration _____ Date _____

Approved for form and legal sufficiency this
_____th day of _____ 2020

Cynthia M. Weisz, Assistant Attorney General
Office of the Attorney General