

**OHIO DIESEL MITIGATION TRUST FUND  
2019 GRANT AGREEMENT**

This Agreement is effective on the date when the last required signature is affixed hereto. This Agreement is entered into by and between the **Ohio Environmental Protection Agency**, hereinafter referred to as the "Ohio EPA", and **Norton City Schools**, hereinafter referred to as the "Grantee." This Agreement is made to administer the Diesel Mitigation Trust Fund (DMTF) grant award for the grant project submitted for funding by the Grantee assigned Ohio EPA grant number **V18F-016**.

**WHEREAS, Ohio Revised Code (ORC) 3745.45 creates in the state treasury the Volkswagen clean air act settlement fund;**

**WHEREAS, O.R.C. 3745.01(C) authorizes the director of environmental protection to enter into contracts with any other agencies of the state, the federal government, other states, and interstate agencies and with affected groups, political subdivisions and industries in furtherance of the purposes of that chapter and O.R.C. Chapters 3704, 3714, 3734, 3745, 3751, 3752, 6109, and 6111;**

**WHEREAS, the Director desires to award a Diesel Mitigation Trust Fund grant and/or to disburse Volkswagen clean air act settlement funding to the Grantee; and**

**WHEREAS, the Grantee desires to perform and complete such work, activities, and requirements as prescribed by this Agreement;**

**NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements set forth herein, the parties hereby agree as follows:**

**ARTICLE I: CONTACT AND COORDINATION AND NATURE OF RELATIONSHIP**

- 1.1 **(OEE's Chief)** On behalf of the Director of the Ohio Environmental Protection Agency, the Chief of the Office of Environmental Education ("OEE") shall be responsible for evaluation of the Grantee's performance, authorization of payment of the award to the Grantee, and authorization of modification(s) to this Agreement. The Ohio Environmental Protection Agency OEE Chief, or his/her designee, shall coordinate communications with the Grantee's Project Director of the Grant Project or Grantee's Authorizing Agent.
- 1.2 **(Grantee's Project Director)** The Grantee's Project Director of the Grant Project (Grantee's Project Director) shall, in accordance with the proposed budget, coordinate 1) the work, activities, and requirements set forth in the body of this Agreement; 2) the work, activities and requirements set forth in the Grant Application; and 3) the work, activities, and requirements set forth in any applicable

conditions established precedent to this Agreement. The Grantee's Project Director shall coordinate all work through the OEE Chief, or his/her designee.

- 1.3 **(Grantee's Authorizing Agent)** The Grantee's "Authorizing Agent" shall be the person who executes this Agreement on behalf of the Grantee. If the Grantee's Authorizing Agent wishes to communicate with the OEE, such communication must be with the OEE Chief or his/her designee.
- 1.4 **(Ohio EPA's Authorizing Agent)** The Ohio EPA's "Authorizing Agent" shall be the person who executes this Agreement on behalf of the Ohio EPA. The Ohio EPA's Authorizing Agent shall be the Director of the Ohio Environmental Protection Agency, or his/her delegated signatory.
- 1.5 **(Signatory Authority)** If the Grantee wishes to delegate signatory authority to a representative, written confirmation of the delegation shall be sent to the OEE Chief.
- 1.6 **(Reliance on Grantee's Representation)** The Ohio EPA, by and through the Director, enters into this Agreement in reliance upon Grantee's representations that it has the necessary expertise and experience to perform its obligations hereunder, and Grantee warrants that it does possess the necessary expertise and experience. Further, Grantee agrees and represents that all persons involved in Grantee's performance of work under this Agreement are properly qualified, trained and competent, and possess the required licenses, permits, certifications, and registrations necessary to lawfully provide the services.
- 1.7 **(Grantee Responsible)** Grantee shall be responsible for the performance of the requirements under this Agreement and the Ohio Environmental Protection Agency ("Ohio EPA") shall not hire, supervise, or pay any assistants to Grantee in Grantee's performance under this Agreement. The Ohio EPA shall not be required to provide any training to Grantee to enable it to perform services required hereunder. While Grantee shall be required to render services described hereunder for the Ohio EPA, nothing herein shall be construed to imply that the Ohio EPA shall have or may exercise any right of control over Grantee with regard to the manner or method of Grantee's performance of the services. The management of the work, including the exclusive right to control or direct the manner or means by which the work is performed, remains with Grantee. The Ohio EPA retains the right to ensure that Grantee's work is in conformity with the terms and conditions of this Agreement.
- 1.8 **(Grantee's Independence)** It is fully understood and agreed that the Grantee is an independent contractor and neither Grantee nor its personnel shall at any time, or for any purpose, be considered as agents, servants, or employees of the Ohio EPA, or the State of Ohio. Grantee acknowledges and agrees that any individual providing services under this Agreement is not a public employee for purposes of ORC Chapter 145.

- 1.9 **(Reimbursement)** In the event of a termination of this Agreement by the Ohio EPA, Grantee shall be compensated in accordance with the Termination of Grantee's Services Article of this Agreement.
- 1.10 **(Grantee Responsible for Business Expenses)** Grantee shall be responsible for all of Grantee's business expenses, including, but not limited to, computers, internet access, software, phone services, required licenses and permits, employee's wages, salaries, and benefits, insurance of every type and description, and all business and personal taxes, including income and Social Security taxes and contributions for Workers' Compensation and Unemployment Compensation coverage, if any.
- 1.11 **(Neither Party May Bind Other)** Except as expressly provided herein, neither party shall have the right to bind or obligate the other party in any manner without the other party's prior written consent.
- 1.12 **(Compliance with ORC)** It is expressly agreed by the parties that none of the rights, duties, and obligations herein shall be binding on either party if award of this Agreement would be contrary to Ohio law, including, but not limited to the terms of, ORC. 127.16, or ORC. Chapter 102

## **ARTICLE II: SCOPE OF WORK**

- 2.1 **(Scope of Work)** The Grantee shall successfully perform and complete: 1) the work, activities, and requirements set forth in the body of this Agreement; 2) the work, activities, and requirements set forth in the Grant Application, which is attached hereto and labeled "**Exhibit A**"; (Exhibit A is hereby made a part of this Agreement and incorporated herein by reference as if fully rewritten.)
- 2.2 **(Good Faith Efforts)** When seeking vendors under this Agreement, the Grantee shall make a good faith effort to identify Disadvantaged Business Enterprises (DBEs) that are a potential source for the good or service and make them aware of the opportunity to submit a proposal or bid for the work. DBE vendors can be found at: <https://eodreporting.oit.ohio.gov//searchMBE.aspx>; and [www.sam.gov](http://www.sam.gov).
- 2.3 **(Adherence to Budget)** The Grantee has submitted to the OEE Chief, as a condition precedent to this Agreement, a proposed Budget. The Grantee stipulates and agrees that the proposed Budget accurately reflects anticipated project resources and expenditures for the term of this Agreement. The Grantee shall complete the work, activities, and requirements set forth in the body of this Agreement and in "**Exhibit A**" (attached hereto and incorporated herein) in accordance with the proposed Budget. Said Budget is attached hereto, labeled "**Exhibit B**", is hereby made a part of this Agreement, and is incorporated herein by reference as if fully rewritten. If the Grantee desires to modify the Budget, the

Grantee may only do so in accordance with the terms of Article XIX of this Agreement.

- 2.4 **(Fiscal & Activity Reports)** The Grantee shall provide the OEE Chief with fiscal and activity reports in accordance with the terms set forth in Article VIII of this Agreement.
- 2.5 **(Publicity)** Grantee shall not do the following without prior, written consent from the State:
  - a. Advertise that the Grantee is doing business with the State; or
  - b. Use this Agreement as a marketing or sales tool.
- 2.6 **(Logos)** The Grantee agrees to use the appropriate logos provided by the OEE Chief to indicate state or federal funding sources on all publicity or educational materials developed, in whole or in part, under this Agreement.
- 2.7 **(Two Copies of Products)** The Grantee shall provide the OEE Chief with two copies of publicity or educational materials developed, in whole or in part, under this Agreement. The copies shall be provided to the OEE Chief with the closing activity report for the project.
- 2.8 **Contract Administration:** The Grantee shall certify both the quantity and quality of material used and the quality of the work performed, when applicable, incurred by the Grantee for the eligible work on the PROJECT. The Grantee shall certify that the PROJECT is in accordance with the scope and material specifications or approved amendments thereto.
  - A. The Diesel Mitigation Trust Fund operates on a reimbursement basis. The Grantee shall review and/or approve all invoices prior to payment and prior to requesting reimbursement from Ohio EPA for vehicle or equipment purchases or work performed on the PROJECT. The Grantee shall ensure the accuracy of any invoice in both amount and in relation to the progress made on the PROJECT. The Grantee must submit to Ohio EPA a written request for reimbursement of the DMTF share of the expenses involved, attaching copies of all source documentation associated with invoices or paid costs.
- 2.9 **Original Equipment Disposition:** The original diesel-powered vehicles or equipment associated with the PROJECT must be permanently destroyed or remanufactured to newer (higher tier) pollutant emission standards. This must be verified prior to payment or reimbursement on a form provided by Ohio EPA, which is available at the following link: <https://epa.ohio.gov/oeef/#1844010488-forms-for-use-by-ohio-dmtf-grant-recipients-after-grant-award>

### **ARTICLE III: TIME OF PERFORMANCE**

- 3.1 **(Term of Agreement)** The parties agree that this Agreement is effective on the date when the last required signature is affixed hereto and runs through the date the OEE issues a written letter of closure, except that the Grantee agrees to retain fiscal records according to Article VII.
- 3.2 **(Project Period)** The parties agree that the "Project Period" is from the date when the last required signature is affixed hereto, or the date suggested in the guidelines, whichever is later, and runs through **11/30/2020**. The Project Period may not be extended without the express agreement of the parties through a written request of the Grantee and the written approval of the Director or his/her delegated signatory.
- 3.3 **(Biennium limitation; renewal at discretion of Director)** As the current general assembly cannot commit a future General Assembly to expenditure, this Agreement may expire the last day of the current State of Ohio biennium. In the event that it is determined that the Director's expenditure authorization is subject to a biennium limitation, then at the Director's discretion, this Agreement may be renewed by the parties for the next biennium by executing a new Agreement based upon the same terms and conditions of this Agreement or this Agreement may be renewed by any other legally acceptable method.

### **ARTICLE IV: AWARD PAYMENTS AND EXPENDITURES**

- 4.1 **(Award Amount)** The Ohio EPA, by and through the Director, hereby awards a grant amount not to exceed **\$254,632.00** to the Grantee.
- 4.2 **(Cost Estimate Attached)** The total amount due was computed according to the cost estimate set forth in Exhibit B of this Agreement.
- 4.3 **(Funding)** The total cost for the PROJECT is estimated to be **\$509,264.00**. Ohio EPA shall provide to the Grantee **fifty percent (50%)** of the project costs, up to a maximum of **\$254,632.00** in DMTF funds. This Maximum amount reflects the funding limit for the PROJECT set by the Ohio EPA Director. Unless otherwise provided, funds through Ohio EPA shall be applied only to the eligible costs associated with the actual cost of the approved mitigation action.

The Grantee shall provide all other financial resources necessary to fully complete the PROJECT, including all cost overruns and contractor claims.

- 4.4 **(Invoices Required)** Grantee shall submit an invoice for the compensation incurred consistent with Article IV Paragraph 4.2 above and Exhibit A. Each invoice shall contain: (a) the Grantee's name and federal employer identification number (or other identification as appropriate); (b) the address to which payment

is to be sent; (c) the Purchase Order number, which authorizes the purchase of the services or supplies; and (d) a description of the equipment purchased, services performed and total hours worked. Upon receipt and approval of the invoice by Ohio EPA, a voucher for payment shall be processed.

- 4.5 **(Payments)** The Grantee certifies that the first payment shall not be made until all parties hereto have executed this Agreement, work has been completed and the Grantee has submitted a written payment request form with authorized signature to Ohio EPA. Each succeeding payment shall not be made until the OEE Chief determines that the Grantee has demonstrated satisfactory fiscal and technical performance in compliance with this Agreement, as demonstrated by the fiscal and activity progress reports required under this Agreement, and upon submittal of the payment request form with authorized signature. The last ten percent (10%) of the total grant award shall only be reimbursed to the Project Contractor upon satisfactory completion of the project and submission to Ohio EPA of approvable fiscal and activity closing reports and final payment request form, with authorized signature.
- a. The amount of any one payment request shall not exceed the sum of prior eligible expenditures to be paid on a reimbursement basis for costs incurred and invoiced. If, at the time a payment request is made, the Grantee has a cash balance from previous payments, the payment amount will be reduced by the amount of the cash balance.
- 4.6 **(Balance of Grant)** Provided the OEE Chief makes the determinations set forth in the immediately preceding paragraph, the OEE Chief shall forward the final payment to the Grantee.
- 4.7 **(Satisfactory Performance)** The parties understand and agree that all payments made under this grant award are based on actual costs and are made in consideration of the Grantee's promises and the Grantee's satisfactory performance as set forth in this Agreement.
- 4.8 **(Unspent Funds)** Within ninety (90) days of the date of the close of the Project Period, the Grantee shall return all unspent funds to the Ohio EPA. Checks shall be made payable to the Treasurer of the State of Ohio and mailed to the Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049.
- 4.9 **(Expenditures Incurred Prior to Effective Date of Agreement)** The Grantee may not utilize any funds granted under this Agreement for payment of expenses or debts incurred prior to the effective date of this Agreement as specified in Article III, Paragraph 3.1.
- 4.10 **(Ineligible Costs: Costs Incurred in Preparation of Application)** Costs incurred in the preparation of the grant application and any revision thereof are not allowable costs.

- 4.11 **(No Reimbursement for Expenses)** The Grantee shall not be reimbursed for travel, lodging, or other expenses incurred in the performance of this Agreement. Grantee's award shall be limited to the amount specified in Article IV, Paragraph 4.1.
- 4.12 **(Prohibited Expenditures)** The Grantee may not use any funds granted under this Agreement for payment of: a) real estate acquisitions; b) capital improvements of permanent structures; c) fund-raising or membership drives; d) political campaigning for elective office or political candidates; e) legislative lobbying before a legislative body or administrative agency; f) grants or scholarships; g) food or beverage; h) indirect or overhead charges ; and i) anything else listed in current DMTF grant application guidelines as being prohibited.
- 4.13 **(Payment of Debts)** The Grantee assumes full responsibility for the payment of all expenses or debts incurred in the performance of its obligations pursuant to this Agreement. The Ohio Environmental Protection Agency and its agents and employees assume no responsibility for the payment of any expense or debt incurred by the Grantee.
- 4.14 **(Liability)** The Director of the Ohio Environmental Protection Agency, and employees and representatives of the Ohio Environmental Protection Agency shall not be liable for any damages or claims made by any party that result from the expenditure of funds for the purposes of the Grant Award.

#### **ARTICLE V: AVAILABILITY OF FUNDS**

- 5.1 **(Funds Available)** It is expressly understood and agreed by the parties that none of the rights, duties, and obligations described in this Agreement shall be binding on either party until all relevant funding provisions of the ORC., including, but not limited to, ORC 126.07, have been complied with, and until such time as all necessary funds are available or encumbered and, when required, such expenditure of funds is approved by the Controlling Board of the State of Ohio, or in the event that grant funds are used, until such time that the OEE Chief gives Grantee written notice that such funds have been made available. If the OEE Chief should learn that funds are unavailable to meet the obligations set forth herein, the OEE Chief shall use best efforts to promptly notify Grantee and this Agreement shall be deemed void *ab initio*.

#### **ARTICLE VI: DISPUTES AND TERMINATION**

- 6.1 **(Dispute Regarding Duties Other than Payments)** Any controversy, claim or dispute regarding the duties of the Grantee or arising out of or relating to this Agreement, or breach thereof, shall be resolved by the Director, after the OEE

Chief has endeavored to resolve the dispute through discussions with the Grantee's Project Director.

- 6.2 **(Suspension/Termination)** As part of the resolution of any controversy, claim or dispute regarding the duties of the Grantee or arising out of or relating to this Agreement, or breach thereof, the Director may immediately, with written notice to the Grantee, suspend or terminate this Agreement and any obligations incidental thereto, in whole or in part, and/or require total or partial refund of payments made to the Grantee by Ohio EPA, if it appears to the Director that 1) the Grantee has not substantially performed according to the terms of this Agreement; 2) the Grantee has not shown the ability to perform in the future; 3) the Grantee has violated federal or state laws or regulations; or 4) the effective performance of this Agreement is substantially endangered.
- 6.3 **(Cessation of Activities)** The Grantee, upon receipt of notice to suspend or terminate project operations, shall cease all work under this Agreement, shall take all necessary and appropriate steps to cease the incurring of debts, and shall furnish a report concerning the work performed to that date, accomplishments, evaluation of project activities, and such other matters as may be required by the OEE Chief. In the event of suspension or termination, any payments made by the Ohio EPA for which Grantee has not performed work shall be refunded.
- 6.4 **(Delivery of Work Product)** In the event this Agreement is terminated prior to Grantee's completion of its obligations hereunder, Grantee shall deliver to the OEE Chief all work products and documents that have been prepared by Grantee during the course of this Agreement. All such materials shall become, and remain, the property of the Ohio EPA, to be used in such manner and for such purposes as the Ohio EPA may choose.
- 6.5 **(Grantee Waiver)** Grantee agrees to waive any right to, and shall make no claim for, additional funds against the Ohio EPA by reason of such suspension or termination.

## **ARTICLE VII: RECORD KEEPING**

- 7.1 **(Records Retention)** The Grantee agrees to keep full and complete documentation of all fiscal accounting on file for five years from the date the conditions of this Agreement are finalized. Documentation supporting fiscal accounting shall be filed in a manner allowing it to be readily located. Grantee shall maintain, in a manner consistent with generally accepted accounting procedures, auditable records of all financial records pertaining to this Agreement.
- 7.2 **(Separate Accounting)** The Grantee shall establish and maintain separate accounting records, including, but not limited to, separate records for all receipts



and disbursements of DMTF funding, for the management of funds pursuant to this Agreement consistent with generally accepted accounting practices.

- 7.3 **(Supporting Records)** The Grantee shall be responsible for the expenditure of funds and for maintaining adequate supporting records, including all invoices for goods and services that were paid with funds under this agreement, for such expenditures consistent with generally accepted accounting practices.
- 7.4 **(Access and Audit)** The Grantee shall provide the OEE, federal and state auditors, and/or inspectors general with access to any and all financial records necessary to document the utilization of funds provided under this Grant within two (2) weeks following the OEE's written request for such access. The OEE Chief, or his/her designee, shall have the right to conduct a compliance audit of the Grantee's financial records of the Grant Project and to take such other action as is necessary to verify the accuracy of the amounts of compensation claimed by the Grantee hereunder.

#### **ARTICLE VIII: GRANTEE PROJECT REPORTS**

- 8.1 **(Fiscal and Activity Progress Reports)** Fiscal and Activity Progress Reports shall describe the activities and accomplishments and account for the fiscal activity of the grant project for six-month periods. The Fiscal and Activity Progress Report must be signed by two individuals, unless the parties agree otherwise. The reports may be signed by the Project Director, Authorizing Agent, and/or Fiscal Agent. These Fiscal and Activity Progress Reports are due **30 days from the end of each six-month period and from the end of the project period**. The first Fiscal and Activity Progress Report is due to the OEE Chief on **7/30/2019**.
- 8.2 **(Closing Reports)** Closing Fiscal and Activity Report shall describe all fiscal activities and all project activities and accomplishments covering the entire project period. The Closing Report shall integrate and add to all previously submitted fiscal and activity reports. The Closing Report shall also include documentation of all support (cash, in-kind, and/or other contribution) received from sources other than Ohio EPA in support of the activities of the Grant Project. The Report must be signed by two individuals, unless the parties agree otherwise. The Report may be signed by the Project Director, Authorizing Agent, and/or Fiscal Agent. The Closing Report is due **60 days from the end of the Project Period**. This Report is due to the OEE Chief on **2/1/2020**.
- 8.3 **(Minority Business Enterprise/Woman Business Enterprise Reports)** Grantee agrees to submit a Minority Business Enterprise/Woman Business Enterprise (MBE/WBE) Reports utilization report, which is due to the OEE Chief on **1/2/2021 or within 30 days of the end of the project period**, whichever is sooner.

- 8.4 **(Report Information)** With respect to each and every fiscal and activity report, the Grantee agrees to submit information identified by OEE in the "Grants Administration Reference Folder" and, where coapplicable, on forms supplied by OEE.

#### **ARTICLE IX: RELATED AGREEMENTS**

- 9.1 **(Work to be Performed by Grantee)** The work contemplated in this Agreement is to be performed by Grantee, who may subcontract without the Ohio EPA's approval for the purchase of articles, supplies, components, or special mechanical services that do not involve the work or services contemplated in this Agreement, but which are required for its satisfactory completion. Grantee shall not enter into other subcontracts without prior written approval of the OEE Chief. All work subcontracted shall be at Grantee's expense.
- 9.2 **(Grantee Remains Responsible)** An agreement between the Grantee and a third party for contractual services related to the grant project shall not relieve the Grantee of any of its responsibility under the terms and conditions of this Agreement.
- 9.3 **(Grantee Shall Bind Subcontractors to Terms of This Agreement)** Grantee shall bind its subcontractors to the terms of this Agreement, so far as applicable to the work of the subcontractor, and shall not agree to any provision which seeks to bind the Ohio EPA to terms inconsistent with, or at variance from, this Agreement. In addition, the Grantee agrees not to allow the third party to spend money in a manner prohibited by this Agreement or the Grant Guidelines. For example, the Grantee agrees not to use DMTF grant dollars to pay the third party any indirect costs for contractual services above the amount allowed for indirect costs in the current DMTF grant application guidelines.

#### **ARTICLE X: CONFLICTS OF INTEREST AND ETHICS COMPLIANCE**

- 10.1 **(No Acquisition of Interest)** In the performance of this Agreement, Grantee agrees that neither Grantee nor any personnel of Grantee shall, prior to the completion of the duties and obligations of this Agreement, acquire any interest, direct or indirect, that is incompatible or in conflict with the discharge and fulfillment of Grantee's functions and responsibilities with respect to this Agreement.
- 10.2 **(Disclosure of Conflicting Interest)** Any person who has or acquires, whether voluntarily or involuntarily, an interest in contravention of paragraph 10.1 of this Article, shall immediately disclose such interest to the OEE Chief in writing. Thereafter, that person shall not participate in any action affecting the work under this Agreement, unless the Director or his/her designee shall determine that, in

light of the interest disclosed, the person's participation in any such action would not be contrary to the public interest.

- 10.3 **(Compliance with Other Ohio Ethics and Conflicts of Interest Laws)** Grantee represents, warrants, and certifies that Grantee and all personnel of Grantee engaged in the administration or performance of this Agreement are knowledgeable of and understand the Ohio Ethics and Conflicts of Interest laws. Grantee further represents, warrants, and certifies that neither Grantee nor any of its personnel will do anything that is inconsistent with such laws.

## **ARTICLE XI: NONDISCRIMINATION OF EMPLOYMENT**

- 11.1 **(Nondiscrimination in Hiring)** Pursuant to O.R.C. 125.111, Grantee agrees that Grantee, any subcontractor, and any person acting on behalf of Grantee or subcontractor, will not discriminate, by reason of race, color, religion, sex, age, disability or military status as defined in O.R.C. 4112.01, national origin, or ancestry, against any citizen of this state in hiring of any person qualified and available to perform the work under this Agreement.
- 11.2 **(Nondiscrimination in Employment)** Grantee further agrees that Grantee, any subcontractor, and any person acting on behalf of Grantee or subcontractor shall not, in any manner, discriminate against, intimidate, or retaliate against any employee hired for the performance of work under this Agreement on account of race, color, religion, sex, age, disability or military status as defined in O.R.C. 4112.01, national origin, or ancestry.
- 11.3 **(Affirmative Action)** If required by O.R.C. 125.111 to have an affirmative action program, Grantee represents that it has a written affirmative action program for the employment and effective utilization of economically disadvantaged persons and shall file an affirmative action verification form with the equal employment opportunity office of the Department of Administrative Services. (The form may be completed with an electronic filing through the Ohio Gateway, available at <http://www.business.ohio.gov/>.)
- 11.4 **(Compliance with Labor Laws)** Grantee represents, warrants, and certifies that Grantee, any subcontractor, and any person acting on behalf of Grantee or a subcontractor shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances governing fair labor and employment practices.

## **ARTICLE XII: PURCHASING REQUIREMENTS**

- 12.1 **(Advertising and Purchases)** The Grantee **shall not** advertise for bids prior to the receipt of the "Authorization to Advertise" notification from the OEE Chief. Should advertising or work commence prior to the receipt of the "Authorization to

Advertise” notification, Ohio EPA shall immediately terminate this Agreement and cease all DMTF funding commitments.

In accordance with the Volkswagen Mitigation Trust Agreement for State Beneficiaries Section 5.2.5, all purchases made by Grantee must comply with Ohio public contracting laws. ORC 127.06 requires purchases of more than \$50,000 from a particular supplier to be made by competitive selection, as defined in ORC 125.01. Procedures defined as competitive selection for making purchases include: 1) competitive sealed bidding; (2) competitive sealed proposals, or; (3) reverse auctions. Grantees with existing purchase agreements with vendors that were entered into using one of these processes will not be subject to additional advertising or bid requirements.

Any use of sole source or proprietary bid items must be approved by the OEE Chief. All sole source or proprietary bid items should be brought to the attention of the OEE Chief as soon as possible so as not to cause a delay in the plan package submission process. The OEE Chief may require additional documentation to justify sole source purchases.

Once the Grantee receives authorization to advertise, the Grantee may begin advertising activities. Advertisements shall be in accordance with local bidding requirements. The PROJECT shall be advertised for three (3) consecutive weeks. The period between the first legal advertising date and the bid opening date shall be a minimum of twenty-one (21) calendar days. The Grantee shall submit to the OEE Chief any addendum to be issued during the advertisement period. The OEE Chief shall approve in writing such addendum for project eligibility. The addendum shall be distributed to all potential bidders prior to opening bids and selling the contracts.

Purchases made pursuant to established state term contracts through the Ohio Department of Administrative Services, Ohio Schools Council School Bus Purchasing Program, local cooperative purchasing agreements, or other similar agreements where the purchase agreement was competitively bid in accordance with Ohio public procurement laws prior to their execution will not be subject to additional advertising or bid requirements.

- 12.3 **(Grantee Will Abide By Executive Order 2011-12K/Offshore Services Prohibited)** Grantee affirms to have read and understands Executive Order No. 2011-12K (issued by Ohio Governor John Kasich) and shall abide by those requirements in the performance of this Agreement, and shall perform no services required under the Agreement outside the United States. Notwithstanding any other terms of this Agreement, the State reserves the right to recover any funds paid for services the Grantee performs outside of the United States for which it did not receive a waiver. The State does not waive any other rights and remedies provided the State in this Agreement. The Executive Order is available at: <http://governor.ohio.gov/Portals/0/pdf/executiveOrders/EO%202011-12K.pdf>.

- 12.4 **(Grantee Will Abide by Executive Order 2011-12K and Make Certain Disclosures)** Grantee also affirms, understands, and agrees to immediately notify Ohio EPA of any changes or shift in the location(s) of services performed by Grantee or its subcontractors under this Agreement and no services shall be changed or shifted to a location(s) that is/are outside the United States.
- 12.5 **(Performance of Services Outside U.S. is Material Breach)** If Grantee or any of its subcontractors perform services under this Agreement outside of the United States, the performance of such services shall be treated as a material breach of this Agreement. The State is not obligated to pay and shall not pay for such services.
- A. If Grantee or any of its subcontractors perform any such services, Grantee shall immediately return to the State all funds paid for those services. The State may also recover from the Grantee all costs associated with any corrective action the State may undertake, including, but not limited to, an audit or a risk analysis, as a result of Grantee performing services outside the United States.
- B. The State, in its sole discretion, may provide written notice to Grantee of a breach and permit the Grantee to cure the breach. Such cure period shall be no longer than 21 calendar days. During the cure period, the State may buy substitute services from a third party and recover from Grantee any costs associated with acquiring those substitute services.
- C. Notwithstanding the State permitting a period of time to cure the breach or Grantee's cure of the breach, the State does not waive any of its rights and remedies provided the State in this Agreement, including, but not limited to, recovery of funds paid for services the Grantee performed outside of the United States.
- 12.6 **(Utilization of Small, Minority and Women's Business Enterprises)** Grantee agrees to make best efforts to comply with the Disadvantaged Business Enterprise (DBE) Program for procurement activities under assistance agreements, contained in 40 CFR, Part 33. Grantee further agrees to submit reports regarding DBE procurement activities as described in Section 8.4 of this Grant Agreement.
- 12.7 **(Six Good Faith Efforts)** The Grantee agrees and affirms that, whenever procuring construction, equipment, services, and supplies using funds provided under this Agreement, the Grantee will make the following good faith efforts, and require any subcontractors to also comply:
- A. Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.

- B. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
- C. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
- D. Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
- E. Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.
- F. If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

### **ARTICLE XIII: RIGHTS IN MATERIALS AND COPYRIGHTS/PUBLIC USE**

- 13.1 **(Public Record)** The parties hereto understand and agree that it is the intent of the OEE to make all materials submitted as a part of this project available to the public.

### **ARTICLE XIV: RESPONSIBILITY/DAMAGES**

- 14.1 **(Responsibility)** Each party will be responsible for its own acts and omissions and will be responsible for any and all damages, costs, and expenses that arise out of the performance of this Agreement and that are due to that party's own negligence, tortious acts, or other conduct or are due to the negligence, tortious acts, or other conduct of that party's respective agents, officers, or employees.
- 14.2 **(No Special Damages)** In no event shall either party be liable to the other party for indirect, consequential, incidental, special, or punitive damages, or lost profits.

## **ARTICLE XV: COMPLIANCE WITH LAWS**

- 15.1. **(Compliance with Other Laws.)** In addition to complying with the laws specifically referenced in this Grant Agreement, Grantee agrees to comply with all applicable federal, state, and local laws, not specifically referenced herein, in the performance of this Agreement. Grantee accepts full responsibility for payment of taxes, including without limitation, unemployment compensation insurance premiums, all income tax deductions, social security deductions, and any and all other taxes or payroll deductions required for all employees engaged by Grantee in the performance of the work required to fulfill its obligations under this Agreement.

## **ARTICLE XVI: DRUG FREE WORKPLACE**

- 16.1 **(Drug-Free Workplace)** Grantee agrees to comply with all applicable federal, state, and local laws regarding smoke-free and drug-free work places and shall make a good faith effort to ensure that none of its employees or permitted subcontractors engaged in the work being performed hereunder purchase, transfer, use, or possess alcohol, illegal drugs, or abuse prescription drugs in any way during the performance of this Agreement.

## **ARTICLE XVII: CAMPAIGN CONTRIBUTIONS**

- 17.1 **(Campaign Contributions)** Grantee hereby certifies that all applicable parties listed in O.R.C. 3517.13(I)(3) or (J)(3) are in full compliance with O.R.C. 3517.13(I)(1) and (J)(1). The Grantee agrees not to use any funds received under this Agreement to support any political campaign for elective office or to support attempts to lobby legislation before a legislative body or administrative agency.

## **ARTICLE XVIII: ENTIRE AGREEMENT/WAIVER**

- 18.1 **(Entire Agreement)** This Agreement contains the entire agreement between the parties hereto and shall not be modified, amended, or supplemented, or any rights herein waived, unless specifically agreed upon in writing by the parties hereto.
- 18.2 **(Supersedence)** This Agreement supersedes any and all previous agreements, whether written or oral, between the parties.
- 18.3 **(No Continuing Waiver)** A waiver by any party of any breach or default by the other party under this Agreement shall not constitute a continuing waiver by such party of any subsequent act in breach of or in default hereunder.

## **ARTICLE XIX: MODIFICATION OF PROJECT BUDGET AND PROJECT ACTIVITIES**

- 19.1 **(Project Budget Modifications)** The Grantee may NOT modify a budget line item, as contained in Exhibit B, without prior written approval of the OEE Chief. The Grantee shall provide the OEE Chief written notice of the requested changes and a revised budget in written form within thirty (30) days after the Grantee's determination that a revision to the budget is needed. The Grantee shall report the Project Budget modifications according to the guidelines set forth in the "Grants Administration Reference Folder". Further, the Grantee shall maintain in its fiscal records documentation of all budget line item modifications.
- 19.2 **(Project Activity Modifications)** The Grantee may NOT modify the Project Activities, as contained in Exhibit A, without prior written approval of the OEE Chief. The Grantee shall propose the requested Project Activity modifications according to the guidelines set forth in the "Grants Administration Reference Folder".

## **ARTICLE XX: HEADINGS**

- 20.1 **(Headings)** The paragraph and article titles and headings in this Agreement have been inserted for convenient reference only and shall not be considered in any questions of interpretation or construction of this Agreement.

## **ARTICLE XXI: SEVERABILITY**

- 21.1 **(Severability)** A determination that any part of this Agreement is invalid shall not invalidate or impair the force or effect of any other part hereof, except to the extent that such other part is wholly dependent for its operation on the part so declared invalid.

## **ARTICLE XXII: CONTROLLING LAW**

- 22.1 **(Governing Law)** This Agreement shall be interpreted and the rights of the parties determined in accordance with the laws of the State of Ohio and only Ohio courts shall have jurisdiction over any action or proceeding concerning the Agreement and/or performance thereunder.

## **ARTICLE XXIII: SUCCESSORS AND ASSIGNS**

- 23.1 **(Written Consent Required)** Neither this Agreement, nor any rights, duties, nor obligations hereunder, may be assigned or transferred in whole or in part by Grantee without the prior written consent of the Ohio Environmental Protection



Agency. Any attempted assignment or delegation not consented to may be deemed void by the Ohio EPA.

#### **ARTICLE XXIV: FINDINGS OF RECOVERY**

24.1 **(No Unresolved Findings of Recovery)** Grantee warrants that it is not subject to an “unresolved” finding for recovery under O.R.C. 9.24. Grantee agrees that if Grantee is subject to an “unresolved” finding for recovery under O.R.C. 9.24, this Agreement is void *ab initio* and Grantee shall immediately repay to the State any funds paid under this Agreement.

#### **ARTICLE XXV: DEBARMENT**

25.1 **(Debarment)** Grantee represents and warrants that it is not debarred from consideration for contract awards by the Director of the Department of Administrative Services, pursuant to either O.R.C. 153.02 or O.R.C. 125.25. If this representation and warranty is false, this Agreement is void *ab initio* and Grantee shall immediately repay to the State any funds paid under this Agreement.

25.2 **(Suspension and Debarment)** Grantee certifies that they are not on the Excluded Parties List as a result of debarment or suspension and when expending federal funds, agree to verify that prospective vendors who will be paid more than \$25,000 and all providers of auditing or similar financial services (regardless of amount paid) do not appear on the Excluded Parties List which is available at: [www.sam.gov](http://www.sam.gov).

#### **ARTICLE XXVI: CERTIFICATIONS**

26.2 **(Victim Protection Act)** The Grantee certifies that the grantee, the grantee’s employees, subrecipients under this award, and subrecipients’ employees will not: a) engage in any form of trafficking in persons during the period of time that this award is in effect; b) procure a commercial sex act during the period of time that this award is in effect; or c) use forced labor in the performance of the award or sub awards under the award.

26.3 **(False Claim)** The Grantee certifies that it will promptly forward to the U.S. Environmental Protection Agency’s Inspector General any credible evidence that any person has submitted a false claim under the False Claims Act or committed any other civil or criminal violation of law involving funds provided under this grant.

**ARTICLE XXVII: EXECUTION/EFFECTIVE DATE**

27.1 **(Full Execution Required)** This Agreement is not binding upon the parties unless executed in full.

27.2 **(Execution)** Two or more copies of this Agreement may be executed contemporaneously, each of which copy shall be deemed an original, but all of which together shall constitute one and the same instrument.

By signing the signature page, the Grantee assures and certifies that the specific information detailed in this Agreement, the Grant Application (Exhibit A) and the Project Budget (Exhibit B) are current, accurate and complete.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by officials thereunto duly authorized as of the date and year signed below.

\_\_\_\_\_  
Signature of Grantee's Authorizing Agent

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name and Title of Grantee's Authorizing Agent  
(Please type or print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of Grantee Organization  
(Please type or Print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Craig W. Butler, Director, or Authorized Agent  
Ohio Environmental Protection Agency

\_\_\_\_\_  
Date

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