

<b>REGION 5 CLEAN DIESEL PROJECT AGREEMENT</b>		<b>Agreement Number</b>
American Lung Association 55 W. Wacker Drive, Suite 1150 Chicago, IL 60601		2021DERA501
<b>PART I GENERAL INFORMATION</b>		
<b>1 ADMINISTRATION DATA</b>		
<b>2 ORGANIZATION</b>		
<b>NAME/ADDRESS/COUNTY</b> City of Ann Arbor 301 E. Huron Street Ann Arbor, MI 48104 Washtenaw County		<b>COMPANY CONTACT (Name &amp; Title)</b> Missy Stults Sustainability and Innovations Director
		<b>TELEPHONE NUMBER/EMAIL</b> 734-794-6430 <a href="mailto:mstults@a2gov.org">mstults@a2gov.org</a>
<b>PART II PROJECT DESCRIPTION</b>		
<p>Replace one (1) refuse hauler with one (1) model year (MY) 2021 or newer electric refuse hauler owned and operated by City of Ann Arbor. The refuse hauler operates exclusively within Washtenaw County, MI.</p> <p><b>Attachments:</b> Project Fleet Spreadsheet Quarterly Report Template (ALA Form 1Q) U.S. EPA Certificate of Destruction Form</p>		
<b>PART III OFFER AND ACCEPTANCE</b>		
<p>I, the undersigned, having the authority to take such action, certify that all information in this document is true and correct; that the funds awarded will be used solely for the purposes described in this Agreement, and that the award of funds is conditioned upon this certification. Further, I, the undersigned, hereby accept this offer and agree to all terms and conditions contained herein, whether directly stated or incorporated herein by reference.</p>		
SIGNATURE OF REPRESENTATIVE		DATE
NAME AND TITLE OF AUTHORIZED REPRESENTATIVE (Type or Print)		
<b>FOR THE AMERICAN LUNG ASSOCIATION</b>		
Authorized Representative for American Lung Association, having the authority to take such action, agrees to the terms and conditions of this Agreement.		
Authorized Representative, American Lung Association	SIGNATURE	Date

## **American Lung Association Region 5 Clean Diesel Project Agreement**

**Parties.** This Agreement is entered by and between, AMERICAN LUNG ASSOCIATION (hereinafter the "ALA"), an Illinois not-for-profit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code (26 U.S. Code § 501(c)(3)) and City of Ann Arbor (hereinafter "City of Ann Arbor."), a Michigan municipal corporation located in Ann Arbor, Michigan.

1. **Period of Performance.** The project period shall commence on the date the Project Agreement is fully executed and shall expire on September 30, 2023. City of Ann Arbor must complete the project scope of work within the defined project period. The ALA, with the approval from the U.S. Environmental Protection Agency (U.S. EPA), has the right to provide an extension of the project completion date.
2. **Project Scope of Work.** City of Ann Arbor agrees to perform the following scope of work tasks to fulfill the obligations set forth in this Agreement. Specifically, City of Ann Arbor shall:
  - a. Replace one (1) refuse hauler with one (1) electric refuse hauler owned and operated by City of Ann Arbor.
  - b. Provide the required match portion of fifty-five percent (55%) per vehicle replacement for one (1) MY2021 or newer electric refuse hauler totaling \$313,151
  - c. Provide evidence of or develop a publicly available baseline mobile source emission inventory for PM2.5 and/or NO<sub>x</sub>
  - d. Provide evidence of or develop a publicly available long-term air quality plan with specific PM2.5 and/or NO<sub>x</sub> emission reduction goals
  - e. Provide evidence of or develop idle reduction policies, contract specifications requiring the use of cleaner, more efficient vehicles and equipment, completing an up-to-date mobile source equipment inventory, or other strategies to promote and continue efforts to reduce diesel emissions.
  - f. Establish a clear point of contact in a public forum for community issues and complaints and a publicly documented policy or process for getting community input on operations and projects that impact air quality
3. **Deviation & Waiver.** City of Ann Arbor shall not deviate from this Agreement, including but not limited to changes to the diesel emission reduction equipment, vehicles, or engines involved in the project, or change in the Agreement or match amount without prior written approval from the ALA. Further, the failure of ALA in any instance to insist upon a strict performance of the terms of this Agreement, or to exercise any option hereunder, shall not be construed as a waiver or relinquishment for the future of such term or option. No provision of this Agreement may be waived or amended, except that ALA may by written instrument and reasonable notice to City of Ann Arbor, waive, amend, or modify this Agreement consistent with applicable Federal, State, and local law.
4. **Reimbursement.** The ALA shall reimburse City of Ann Arbor for the one (1) replacement electric refuse hauler with a maximum project reimbursement of \$256,214 not to exceed forty-five percent (45%) for completing the Project Scope of Work in Section 2 of this Agreement. To receive reimbursement, City of Ann Arbor shall submit accurate technology and/or equipment invoices to the ALA. In addition, the following documents must be provided to the ALA for each technology and/or equipment purchase prior to any reimbursement is processed:
  - a. engine certification data (specifically the U.S. EPA Engine Family Certificate of Conformity for the new electric refuse hauler).

- b. evidence of appropriate disposal shall be submitted to ALA and includes a signed U.S. EPA Certificate of Destruction form and digital photos of the engine tag (showing serial number, engine family number, and engine model year) and the destroyed engine block. If scrapped or salvaged engines are to be sold, program income requirements apply. The engine being replaced must be scrapped or rendered permanently disabled within ninety (90) days of the replacement.

**5. Use of Reimbursement Funds.** All funding awarded to City of Ann Arbor shall be used solely for the purchase and/or installation of the technology and/or diesel emission reduction equipment on vehicles or engines agreed upon and described in "Part II Project Description." Any changes to the technologies, diesel emission reduction equipment, vehicles, or engines by City of Ann Arbor must comply with Section 4 of this Agreement.

**6. Items to be Provided with Signed Agreement.** City of Ann Arbor shall provide with this signed Agreement the following:

- a. An accurate fleet spreadsheet of all vehicles to be replaced must be included with the signed Agreement. The fleet spreadsheet must include the specific vehicles that will be replaced and all appropriate information as designated in the fleet spreadsheet categories.
- b. Proper documentation that verifies each refuse hauler to be purchased has a U.S. EPA Certificate of Conformity meeting the MY2021 or newer model year standard. A copy of the vendor work plan that includes all parts, costs, and timeline for the equipment and installation is also required before the project may begin.

**7. Reporting Requirements.** City of Ann Arbor shall comply with all reporting obligations required by the ALA.

- a. City of Ann Arbor shall provide the ALA all project related information in quarterly reports (ALA Form 1Q) to be submitted within 15 calendar days after the completion of each quarter as defined below. If the start date of this project falls within a quarter identified below, City of Ann Arbor must report for that quarter by the due date indicated. City of Ann Arbor shall comply with this reporting schedule for the duration of the Agreement.

January 1 – March 31 Reporting Period: report due date April 15  
April 1 – June 30 Reporting Period: report due date July 15  
July 1 – September 30 Reporting Period: report due date October 15  
October 1 – December 31 Reporting Period: report due date January 15

- b. During the quarter identified in Subsection a of this Section, in which the final vehicle included in the attached vehicle spread sheet has been completed, City of Ann Arbor shall provide a report on ALA Form 1Q that is marked "Final."

**8. Other Project Conditions**

- a. City of Ann Arbor represents and warrants that equipment purchased, produced or used under this Agreement does not and will not infringe upon any intellectual property rights of another, including but not limited to patents, copyrights, trade secrets, trade names, and service marks and names. City of Ann Arbor shall indemnify and defend both ALA at City of Ann Arbor's expense from any action or claim brought against ALA to the extent that it is based on a claim that all or part of the equipment infringe upon the intellectual property rights of another or for any failure to pay subcontractors for the equipment or for any claims related to the installation, operation or use of the equipment. City of Ann Arbor shall be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages including, but not limited to, reasonable attorney fees arising out of

this Agreement, amendments and supplements thereto, which are attributable to such claims or actions.

- b. The ALA makes no representation or warranty, express or implied, regarding any equipment, technology, project, or contractor used by City of Ann Arbor, and/or any products bought by City of Ann Arbor through this Agreement.
- c. City of Ann Arbor shall ensure that all technology and/or diesel emission reduction equipment is installed correctly and shall ensure that all vehicles and/or engines with the associated technology and/or diesel emission reduction equipment meet all local and national EPA air quality and emissions standards and regulations. City of Ann Arbor shall also be responsible for the proper maintenance and care of the associated technology and/or diesel emission reduction equipment for the life of the vehicle and/or engine with which it is associated.
- d. City of Ann Arbor will have title to equipment, operate and maintain each new vehicle purchase.
- e. Upon request by the ALA, City of Ann Arbor shall submit to inspections of the technology and/or diesel emission reduction equipment on vehicles or engines agreed upon and described in "Part II Project Description" by the ALA or the ALA's agent or designee.
- f. City of Ann Arbor shall maintain all documentation of records, receipts, invoices, reports, etc. for a period of 5 years at the completion of the project. These records shall be made available to the ALA upon written request.
- g. In the event that ALA initiates legal action to recapture unspent, unallocated, or misallocated funds, City of Ann Arbor shall be liable to and indemnify ALA and shall pay ALA'S reasonable attorney's fees and costs resulting from disputes related to this Agreement incurred by ALA.
- h. City of Ann Arbor shall indemnify ALA and shall hold ALA harmless from all debts, claims, actions, losses, damages, and attorneys' fees and costs, existing or that may arise from or be related to this Agreement. Further, ALA shall not be liable for special, indirect, or consequential damages existing or that may arise from or be related to this Agreement.
- i. This Agreement represents the full agreement of the parties, and supersedes all prior and contemporaneous agreements and understandings, if any, relating to the substance hereof between or among them. This is a fully integrated document.
- j. In the event any of the provisions of this Agreement are deemed to be invalid, illegal or unenforceable, those provisions shall be severable from the remainder of this Agreement, which shall continue, in full force and effect.
- k. City of Ann Arbor shall not publish any marketing, advertising, or academic materials (published research, case studies.) related to this Agreement without prior written authorization from ALA
- l. City of Ann Arbor agrees to allow ALA to publicly announce the award of funds to City of Ann Arbor, including the name of the City of Ann Arbor, any partnering organizations, the award amount, the project location, and a general description of the project and its benefits. With reasonable advance notification and approval by City of Ann Arbor, City of Ann Arbor also agrees to allow ALA to publicly share images of the project location, completed project photos, and media event photos on the website, social media sites, and e-newsletters.
- m. City of Ann Arbor further agrees, covenants and represents that he, she or it will not take any action or make any comments that actually or potentially disparage, disrupt, damage, impair, or otherwise interfere with ALA's business interests or reputation.

- n. This Agreement shall be considered to have been entered into in the City of Springfield, County of Sangamon, State of Illinois, and this Agreement shall be enforced, interpreted, and construed in accordance with the laws of the State of Illinois. Any action seeking or requiring interpretation, construction, or enforcement of this Agreement shall be brought in the Circuit Court of the Seventh Judicial Circuit, Sangamon County, Illinois, or, to the extent required by law, the United States District Court for the Central District of Illinois, to the exclusion of all other venues.