

**GREENHOUSE GAS REDUCTION GRANT PROGRAM (GGRGP) FUNDING AGREEMENT**  
**BETWEEN**  
**THE BAY AREA AIR QUALITY MANAGEMENT DISTRICT**  
**AND**  
**WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT**

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**PROJECT NUMBER(S):**

**09GHG19**

This funding agreement (“Agreement”) is made and entered into between the West Contra Costa Unified School District (hereinafter referred to as “Project Sponsor”) and the Bay Area Air Quality Management District (hereinafter referred to as the “Air District” and hereinafter referred to jointly as the “Parties”).

**SECTION I**

**RECITALS**

1. On November 24, 2008, the Air District entered into a Memorandum of Understanding (the “MOU”) with the Attorney General of the State of California (the “Attorney General”) to establish and administer the Greenhouse Gas Reduction Grant Program (GGRGP) to fund grants for certain categories of projects undertaken in the San Francisco Bay Area to achieve verifiable, quantifiable reductions in Greenhouse Gas (GHG) emissions, with priority given to projects near the Rodeo Refinery.
2. On or about June 1, 2009, the Air District received a payment in the amount of \$4,443,025 to fund the GGRGP, in accordance with a settlement agreement between the Attorney General and the ConocoPhillips Company (“Conoco”), entered into on September 10, 2007, to resolve a dispute regarding the environmental impact of GHG emissions from the Clean Fuels Expansion Project at the Refinery in Rodeo, California.
3. On June 2, 2010, the Air District’s Board of Directors approved the allocation of \$4 million to project components that qualify for funding under the GGRGP.
4. On March 20, 2013, the Air District’s Board of Directors approved an award to Project Sponsor to implement project component(s) (“Component(s)”) at the Stewart Elementary School (“Project”) based on the Program’s eligibility criteria and on information provided in Project Sponsor’s application(s).
5. The Air District and Project Sponsor desire to enter into this Agreement to implement the Project in accordance with the terms and conditions of this Agreement, including all attachments thereto.

NOW, THEREFORE, pursuant to the MOU, the Parties hereby agree as follows:

SECTION II

PROJECT SPONSOR OBLIGATIONS

- 1) The Project Sponsor hereby agrees to implement the Project, as described more fully in Attachment A, "Reporting Requirements," and in Attachment B, "Component Information." Failure to implement the Project in accordance with the terms and conditions set forth in this Agreement and all attachments thereto shall be deemed a breach of this Agreement and may result in termination of the Agreement or a reduction of the award.
- 2) The Project Sponsor shall complete each Component within the applicable Total Component Cost. Allowable Component costs are listed in the GRRGP Line Item Component Budget. Only those allowable Project costs incurred during the Term of this Agreement are eligible to receive GRRGP funds. No costs incurred following the end of the Term of this Agreement or, if this Agreement is terminated, after the effective date of the termination of this Agreement, are eligible to receive GRRGP funds. Any Project cost overruns are the sole responsibility of the Project Sponsor.
- 3) The Air District's funding obligation under this Agreement is limited to the GRRGP Funds Awarded. The Project Sponsor shall contribute or expend the total amount of Matching Funds prior to submission of each Component Invoice. If the actual total cost of the Component listed in the Component Invoice is less than the Total Component Cost, the Air District reserves the right to reduce the amount of GRRGP Funds Awarded at its sole discretion. The Project Sponsor is responsible for assuring that use of the Matching Funds does not conflict with any federal, state or local requirements for their use.
- 4) The Project Sponsor shall submit invoices on the Air District's General Invoice Form for reimbursement of eligible Component costs and expenses consistent with the GRRGP Funds Awarded, Component Invoice and Payment Schedule, and Component Schedule. Invoices shall include the Project number, an itemized list of all expenses incurred, and the total funds being requested. The invoice shall also include supporting documentation such as copies of invoices from vendors, consultants, or contractors with an explanation of the goods or services provided for the Component(s) and copies of time sheets documenting hourly labor costs incurred.

The Air District may withhold funds pending receipt of any report.

The Air District will retain fifteen percent (15%) of the GRRGP Funds Awarded against each invoice paid until the Final Report is received and approved by the Air District. The 15% may be requested by the Project Sponsor in the Final Invoice.

- 5) The Project Sponsor must submit the Final Invoice for payment no later than thirty (30) days after the deadline to submit the Final Report, the requirements and deadline for which are set forth in Attachment A. The Air District will not process the Final Invoice submitted by the Project Sponsor until the Air District accepts the Final Report.
- 6) The Project Sponsor shall allow the Air District or its authorized representatives, for the duration of the Project and for three (3) years following the later of a) the Air District's payment of the approved Final Invoice or b) the end of the Project Useful Life to audit the Project. During audits, the Project Sponsor shall make available to the Air District all records relating to Project performance and expenses incurred in the implementation of the Project.

The Project Sponsor shall allow the Air District or its authorized representatives to inspect the Component(s) at all times during the Component Useful Life. The Project Sponsor shall cooperate with such inspections; the Air District makes reasonable efforts to conduct such inspections during normal business hours of the Project Sponsor.

- 7) The Project Sponsor shall prepare and maintain all Project records necessary to document Project activities and performance, including documentation to support the Project reporting requirements, set forth in Attachment A. The Project Sponsor shall keep Project records in one central location for a period of three (3) years after the later of a) the Air District's payment of the approved Final Invoice after submission and acceptance of the Final Report, or b) the end of the Project Useful Life. The Project Sponsor shall make available to the Air District, on request, for public distribution, all records showing the activities that were conducted in any part with the grant funds, the cost of the activities, and all records relevant to evaluating the GHG reductions achieved. The Project Sponsor shall submit the following reports to the Air District by the due dates specified in Attachment A:
- A. Semi-annual Reports,
  - B. Certification of Component Completion,
  - C. Final Report; and
  - D. Annual Operating Reports for three years following the completion of the Project.
- 8) The Project Sponsor shall monitor and maintain the operational status of the Component(s) for the duration of the Component Useful Life. The Project Sponsor shall notify the Air District in writing of any change in operational status of any portion of the Project within thirty (30) calendar days of its occurrence. For purposes of this Agreement, a "change in operational status" occurs whenever any portion of the Project is removed from active service, relocated outside the boundaries of the Air District, inoperable, sold, or transferred to another entity, before full completion of the Component Useful Life. Failure to provide the required written notice of a change in operational status is a breach of this Agreement.

If the Project Sponsor seeks to transfer any Component equipment to a location other than that specified in the relevant Attachment B, "Component Information," the Project Sponsor must first seek to amend this Agreement pursuant to Section IV, "General Provisions," Paragraph 4, "Amendment" of this Agreement, to allow for such transfer. The Air District may, at its sole discretion, withhold approval of such amendment. The Project Sponsor may not transfer the equipment without the prior approval of the Air District in the form of a fully-executed amendment to this Agreement allowing for such transfer, and failure to obtain prior approval is a breach of this Agreement.

A. Reserved.

- 9) The Project Sponsor shall acknowledge the Air District as a Project funding source at all times during the Project Useful Life. The Project Sponsor shall use, and require third parties who implement any portion of the Project to use, the Air District's approved logo, as specified below:
- A. The logo shall be displayed on a plaque to be created by the Project Sponsor, and approved by the Air District, acknowledging the energy efficiency and/or renewable energy measures implemented at the Project site(s) funded under this Agreement. The plaque shall be displayed in a central spot at the Project location(s);

- B. The logo shall be used on any public information materials relating to the Project, such as websites and printed materials, including press releases, plaques, brochures, handbooks, maps, and other promotional materials; and
  - C. The Project Sponsor shall demonstrate to the Air District, through evidence such as photographs of equipment and copies of press releases, that Air District logos are used and displayed as required.
- 10) The Project Sponsor shall use GGRGP Funds Awarded only for the implementation of a ~~Component that results in surplus emission reductions. Surplus emission reductions are those (1)~~ that exceed the requirements of applicable regulations or other legal obligations (including contracts) as of the Effective Date of this Agreement; (2) that exceed the reductions that would have occurred in the absence of the grant; and (3) for which the grant is needed for the activity to occur in a timely and successful manner (taking into account any available rebates, incentives or tax credits). The Project Sponsor warrants that the Project is not in any part a mitigation measure undertaken pursuant to the California Environmental Quality Act, California Public Resources Code Section 21000, et seq., and will not be used to achieve greenhouse gas emission reductions that are required by any law, regulation, permit, court order, order issued by an administrative agency, memorandum of understanding, or any other legal obligation. The Project Sponsor's obligations under this Section II.11 shall survive expiration or termination of this Agreement.
- 12) The Project Sponsor shall not seek credit towards any obligations imposed pursuant to the California Global Warming Solutions Act of 2006, California Health and Safety Code Section 38500, et seq., for early voluntary reductions of GHG emissions based on GHG emission reductions that result from the Project, or from any work funded in any part by a grant of GGRGP funds. Further, the Project Sponsor shall not use any GHG emission reductions that result from the Project, or from any work funded in any part by a grant of GGRGP funds, for credit under any state or federal emissions averaging, banking, or trading program or use any such emission reduction as marketable emission reduction credits or offsets of any type or to offset any emission reduction obligation of any entity. The Project Sponsor's obligations under this Section II.12 shall survive expiration or termination of this Agreement.
- 13) The Project Sponsor shall comply with all Program requirements set forth in the Air District's "GGRGP Project Requirements," which are incorporated therein, and made a part of the "Greenhouse Gas Reduction Grant Program Guidance," dated September 2009, and which are incorporated herein and made a part hereof by this reference as if fully set forth herein.

### SECTION III

#### AIR DISTRICT OBLIGATIONS

- 1) The Air District will provide eligible GGRGP funds for this Project in an amount not to exceed the GGRGP Funds Awarded.
- 2) The Air District will endeavor to pay the undisputed amount of an approved invoice within thirty (30) calendar days of the Air District's receipt of such invoice.
- 3) The Air District will provide timely notice to the Project Sponsor prior to conducting an audit.
- 4) The Air District will provide the Project Sponsor a copy of any fiscal and performance audits of the Project the Air District undertakes.

- 5) The Air District will provide the Project Sponsor all Air District-approved reporting and invoice forms.
- 6) The Air District will make its logo available to the Project Sponsor solely for use to fulfill the Project Sponsor's obligations under Section II.10 of this Agreement.
- 7) Reserved.

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#### SECTION IV

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#### GENERAL PROVISIONS

- 1) **Effective Date:** The effective date of this Agreement is the date the Air District Executive Officer/Air Pollution Control Officer executes this Agreement.
- 2) **Term:** The term of this Agreement shall be from the Effective Date of this Agreement until the end of three (3) years from the later of either 1) the date of the Air District's payment after approval of the Final Report, or 2) the last day of the Project Useful Life, unless this Agreement is terminated or amended as provided below, or the Term is extended pursuant to Special Conditions, Attachment B.
- 3) **Insurance:** Project Sponsor shall provide the Air District certificates and/or other evidence of the insurance coverage required below. The Air District reserves the right to require Project Sponsor to provide complete, certified copies of any insurance offered in compliance with these specifications. Certificates, policies and other evidence provided shall specify that the Air District shall receive 30 days advanced notice of cancellation from the insurers.
  - D. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII. The Air District may, at its sole discretion, waive or alter this requirement or accept self-insurance in lieu of any required policy of insurance.
  - E. **Minimum Scope of Insurance.** Throughout the Term of the Agreement, Project Sponsor shall obtain and maintain in full force and effect the insurance as set forth below or equivalent:
    1. **Liability Insurance.** A limit of not less than \$1,000,000 per occurrence. Such insurance shall be of the type usual and customary to the business of the Project Sponsor, and to the operation of the equipment operated by the Project Sponsor.
    2. **Property Insurance.** In an amount of not less than the insurable value of Project Sponsor's equipment funded under the Agreement, and covering all risks of loss, damage or destruction of such equipment.
- 4) **Amendment:** This Agreement may not be modified except in writing, signed by both Parties hereto, and any attempt at oral modification of this Agreement shall be void and of no effect. Any change in Project scope shall constitute an Amendment under this Agreement.
- 5) **Project Liaison:** Within thirty (30) days from the Effective Date of this Agreement, the Project Sponsor shall notify the Air District of the Project Sponsor's Project Liaison and of the Liaison's address, telephone number, and email address. The Project Liaison shall be the liaison to the Air District pertaining to implementation of this Agreement and shall be the day-to-day contact about the Project. All correspondence shall be addressed to the Project Liaison. The Project Liaison shall notify the Air District of a change of Project Liaison or of the Liaison's contact information in writing no later than thirty (30) days from the date of the change.

- 6) Notices: Any notice that may be required under this Agreement shall be in writing, shall be effective when received, and shall be given by personal service, by U.S. Postal Service first class mail, or by certified mail (return receipt requested). Within thirty (30) days from the Effective Date of this Agreement, the Parties shall inform the other Party of the addressee for notice. Each Party shall promptly inform the other of any changes for notice. All correspondence shall reference the Project Number.
- 7) Survival of Terms: Any terms of this Agreement that by their nature extend beyond the term (or termination) of this Agreement shall remain in effect until fulfilled, and shall apply to both Parties' respective successors and assigns. Such terms include, without limitation, the requirements set forth in Sections II.6, II.7, II.8, II.10, II.11, II.12, II.13, and IV.9.
- 8) Termination:
- A. Voluntary. Either Party may terminate this Agreement by giving written notice to the other Party. The notice of termination shall specify the effective date of termination, which shall be no less than thirty (30) calendar days from the date of receipt of such notice. Notice shall be delivered as provided for in Section IV.6 above. If the Project Sponsor terminates this Agreement, the Project Sponsor shall not be entitled to the full amount of the GGRGP Funds Awarded. The Project Sponsor may retain or receive payment for that portion of the GGRGP Funds to which they are entitled.

The Air District will calculate the amount of funds to which the Project Sponsor is eligible, for each component, by a) dividing the amount of the GGRGP Funds Awarded by the number of months of the Component Useful Life, and then, b) multiplying that amount by the number of full months of operation completed at the time the Agreement is terminated. If the Air District has paid the Project Sponsor more than the amount of funds to which the Project Sponsor is eligible, the Project Sponsor shall pay the funds owed to the Air District within thirty (30) days from the effective date of termination.

If the Air District terminates this Agreement pursuant to this provision, any costs incurred on the Project following the effective date of termination shall be ineligible for reimbursement of GGRGP funds, except costs for any work that the Air District has permitted to continue in the notice of termination. The Air District will reimburse Project Sponsor for eligible costs on the Project expended up to the effective date of the termination.

- B. Breach. The Air District may terminate this Agreement for breach of any term of this Agreement. The Air District will deliver a written notice of breach that specifies the date of termination, which will be no less than ten (10) business days from the date of delivery of such notice. The notice will direct the Project Sponsor to cease all work immediately upon receipt of the notice, except as specifically provided for in the notice. In the alternative, or as provision of the notice of termination, the Air District may allow the Project Sponsor to cure the breach; in that instance, the notice shall specify the nature of the breach and the date by which such breach must be cured (the "Cure Period"). The notice of termination will specify the amount of the GGRGP Funds Awarded that the Air District has paid and the amount owed, if any, by the Project Sponsor to the Air District. The Project Sponsor shall reimburse any funds owed to the Air District within thirty (30) days of the effective date of termination.

The Air District will calculate the amount of funds owed based on each month of each Component Useful Life that Project Sponsor operated the Component prior to the breach. For

example, if the Air District determines that the Project Sponsor breached this Agreement during the 16<sup>th</sup> month of operation of a Component that has a two-year Component Useful Life, the Project Sponsor will repay the Air District for the eight months that occurred after the breach.

C. Reserved.

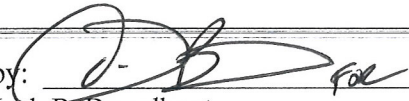
- 9) Additional Provisions and Additional Acts and Documents: Each Party agrees to do all such things and take all such actions, and to make, execute and deliver such other documents that are ~~reasonably required to carry out the provisions, intent and purpose of this Agreement.~~ All attachments to this Agreement are expressly incorporated herein by this reference and made a part hereof as though fully set forth.
- 10) Indemnification: The Project Sponsor shall indemnify and hold harmless the Air District, its employees, agents, representatives, and successors-in-interest against any and all liability, loss, expense, including reasonable attorneys' fees, or claims for injury or damages arising out of the performance by the Project Sponsor of its duties under this Agreement, and shall require any third party who owns, operates, controls or implements any portion of the Project to indemnify and hold harmless the Air District, its employees, agents, representatives, and successors-in-interest against any and all liability, loss, expense, including reasonable attorneys' fees, or claims for injury or damages arising out of their performance of the Project or operation or use of any portion of the Project. The Project Sponsor's indemnification and its obligation to have applicable third parties indemnify the Air District shall survive expiration or termination of this Agreement.
- 11) Independent Contractor: Neither the Project Sponsor nor its officers, employees, agents, or representatives shall be considered employees or agents of the Air District. This Section does not apply to elected officials serving concurrently on the governing boards of both the Project Sponsor and the Air District.
- 12) Assignment: Neither Party shall assign, sell, license, or otherwise transfer any rights or obligations under this Agreement to a third party without the prior written consent of the other Party. All of the terms, provisions and conditions of this Agreement will be binding upon and inure to the benefit of the Parties and their respective successors, assigns and legal representatives.
- 13) Waiver: No waiver of a breach, of failure of any condition, or of any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the Party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies. Further, the failure of a Party to enforce performance by the other Party of any term, covenant, or condition of this Agreement, and the failure of a Party to exercise any rights or remedies hereunder, shall not be deemed a waiver or relinquishment by that Party to enforce future performance of any such terms, covenants, or conditions, or to exercise any future rights or remedies.
- 14) Severability: If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected.


- 15) Force Majeure: Neither the Air District nor the Project Sponsor shall be liable for, or deemed to be in default for, any delay or failure in performance under this Agreement or interruption of services resulting, directly or indirectly, from acts of God, enemy or hostile governmental action, civil commotion, strikes, lockouts, labor disputes, fire or other casualty, judicial orders, governmental controls, regulations or restrictions, inability to obtain labor or materials or reasonable substitutes for labor or materials necessary for performance of the Project, or other causes, except financial, that are beyond the reasonable control of the Air District or the Project Sponsor, for a period of time equal to the period of such force majeure event, provided that the ~~Party failing to perform notifies the other Party within fifteen (15) calendar days of discovery of~~ the force majeure event, and provided further that that Party takes all reasonable action to mitigate the damages resulting from the failure to perform. Notwithstanding the above, if the cause of the force majeure event is due to a Party's own action or inaction, then such cause shall not excuse that Party from performance under this Agreement.
- 16) Governing Law: Any dispute that arises under or relates to this Agreement shall be governed by California law, excluding any laws that direct the application of another jurisdiction's laws. Venue for resolution of any dispute that arises under or relates to this Agreement, including mediation, shall be San Francisco, California.
- 17) Public Entities - Conflict of Interest: The Project Sponsor warrants and represents that its public officials, including its officers and employees in their official capacity, presently have no interest and agrees that its public officials, including its officers and employees in their official capacity, will not acquire any interest which would represent a conflict of interest under California Government Code sections 1090 et seq. and 87100 et seq. during the performance of this Agreement.
- 18) Integration: This Agreement, including all attachments hereto, represents the final, complete, and exclusive statement of the agreement between the Air District and the Project Sponsor related to the Parties' rights and obligations and subject matter described in this Agreement, and supersedes all prior and other contemporaneous understandings and agreements of the parties. No Party has been induced to enter into this Agreement by, nor is any Party relying upon, any representation or warranty outside those expressly set forth herein.



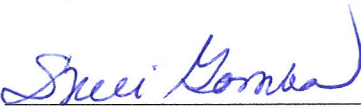
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their duly authorized officers.

SIGNATURES:

by:   
Jack P. Broadbent  
Executive Officer/APCO  
Bay Area Air Quality Management District

by:   
Luis Freese  
Executive Director  
West Contra Costa Unified School District

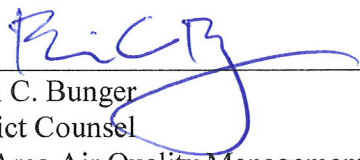
Date: 12/28/14

by:   
Sheri Gamba  
Associate Superintendent  
West Contra Costa Unified School District

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

Approved as to legal form:

Approved as to legal form (optional):

by:   
Brian C. Bunger  
District Counsel  
Bay Area Air Quality Management District

by: \_\_\_\_\_  
Legal Counsel  
West Contra Costa Unified School District

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**ATTACHMENT A  
REPORTING REQUIREMENTS**

1. **Semi-annual Reports (Section II.7):** The Project Sponsor shall submit Semi-annual Reports to the Air District summarizing Project progress. Semi-annual Reports shall be prepared on the Air District's Semi-annual Report form.

**Due Dates:** Beginning 60 days after the Effective Date, every April 15, and October 15, until the Final Report has been submitted.

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2. **Certification of Component Completion (Section II.7):** The Project Sponsor shall submit a Certification of Component Completion after each Component is installed and placed into service. The Certifications of Component Completion shall be prepared on the Air District's Certification of Component Completion form.

**Due Dates:** 30 days after each Component is installed and placed into service.

3. **Final Report (Section II.7):** The Project Sponsor shall submit a Final Report to the Air District on the Air District's Final Report form which shall include the following information:

- A. A brief description of each project component implemented under this Funding Agreement.
- B. A brief description of any problems encountered in the implementation of the Components.
- C. Documentation that the Project Sponsor has acknowledged the Air District as a Project funding source during the Project Useful Life (Section II.10).
- D. Copies of promotional materials, press releases, newsletter articles, or other media coverage related to the Project (Section II.10).
- E. Documentation demonstrating that Special Conditions have been met (Attachment B).

**Due Date:** Three (3) months following the completion of all Components.

4. **Annual Operating Reports (Section II.7):** The Project Sponsor shall submit Operating Reports for three (3) years following submittal of the Final Report. Operating Reports must be submitted on the Air District's Operating Report form and shall include the following information:

- A. A summary of the status of each Component implemented under this Agreement.
- B. Copies of gas and electric bills for each month from January to December of the prior year.
- C. A description of any challenges experienced in the operation and maintenance of the Components funded under this Agreement and any plans to implement additional energy efficiency or renewable energy measures.
- D. A brief description of how the Components implemented under this Agreement have affected your organization.

**Due Dates:** Every February 25, following submittal of the Final Report to the Air District.

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**ATTACHMENT B – 09GHG19.1  
COMPONENT INFORMATION**

(Note: The section numbers shown in parentheses below refer to sections in the Funding Agreement.)

Project Description

1. **Project Component Number:** 09GHG19.1
2. **Project Useful Life:** 10 years
3. **Project Goal:** To achieve permanent, quantifiable, verifiable reductions in greenhouse gas emissions.

Component Description

4. **Component Location:** Stewart Elementary School
5. **Component Useful Life:** 10 years
6. **Component Description:** Replace dark, bitumous roofing material with a white coating material, achieving an estimated annual electricity reduction of 38,971 kWh.

Component Fiscal Information

7. **Total Component Cost** (Section II.2): \$196,000
8. **Matching Funds** (Section II.3): 74,243
9. **GGRGP Funds Awarded** (Sections II.3, II.4, II.5, II.11, III.1, IV.7): The maximum award for this Component will be \$121,757. If the actual cost of the Component is less than the Total Component Cost, the Air District will fund up to 62.1209% of the actual total component cost.
10. **Line Item Component Budget** (Section II.2): Eligible expenditures for GGRGP Funds Awarded include the listed line item(s), as follows:

<b>Line Item</b>	<b>Amount</b>
Replace roof coating material	\$121,757

11. **Component Invoice and Payment Schedule** (Sections II.4, III.2): The Project Sponsor may submit one invoice for reimbursement after the Component identified in the Component Description has been purchased and installed. The Invoice must be submitted using the Air District Invoice Form and accompanied by the Certification of Component Completion.
12. **Final Invoice** (Section II.5): The Final Invoice for reimbursement and for fifteen percent (15%) of the GGRGP Funds Awarded is to be submitted no later than thirty (30) days after the deadline to submit the Final Report.
13. **Special Conditions** (Section IV.2): None.

Component Schedule

**14. Milestone**

Component start

Component complete

Certification of Component Completion due

**Completion Date**

Effective Date of Agreement

March 31, 2015

30 days after each Component is installed and placed into service.

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