



South Coast Air Quality Management District

Contract No. 20358
Carl Moyer Program

This Contract consists of 21 pages.

1. PARTIES

The parties to this contract ("Contract") are the South Coast Air Quality Management District (referred to here as "SCAQMD") whose address is 21865 Copley Drive, Diamond Bar, California 91765-4178, and County Sanitation Districts No. 2 of Los Angeles County (referred to here as "CONTRACTOR") whose address is 1955 Workman Mill Road, Whittier, California 90601.

2. RECITALS

- A. SCAQMD is the local agency with primary responsibility for regulating stationary source air pollution within the geographical boundaries of the South Coast Air Quality Management District in the State of California. SCAQMD is authorized to enter into this Contract under California Health and Safety Code Section 40489. This Carl Moyer Program-funded Contract will provide funding for eligible Equipment in order to generate cost-effective (if applicable) and surplus air emission reductions within the geographical boundaries of the South Coast Air Quality Management District. Accordingly, the parties desire to enter into this Contract for the project described in Attachment 1 - Statement of Work, attached here and made a part here by reference.
- B. CONTRACTOR is authorized to do business in the State of California and attests that it is in good tax standing with the California Franchise Tax Board.
- C. All parties to this Contract have had the opportunity to have this Contract reviewed by their attorney.
- D. "Equipment," as used in this Contract, means the equipment described in Attachment 1 - Statement of Work and funded in whole or in part by the Carl Moyer Program, which may include, but is not limited to, trucks, engines, marine vessels, retrofit devices, infrastructure, cargo handling equipment and/or locomotives, as applicable.

3. PERFORMANCE REQUIREMENTS

- A. CONTRACTOR agrees to obtain and maintain the required licenses, permits, and all other appropriate legal authorizations from all applicable federal, state and local jurisdictions and pay all applicable fees. CONTRACTOR further agrees to immediately notify SCAQMD in writing of any change in its licensing status which has a material impact on the CONTRACTOR's performance under this Contract.
- B. CONTRACTOR shall submit reports to SCAQMD as outlined in Attachment 1 - Statement of Work. Unless otherwise stated herein, all reports shall be submitted in an environmentally friendly format: recycled paper; stapled, not bound; black and white, double-sided print; and no three-ring, spiral, or plastic binders or cardstock covers. SCAQMD reserves the right to review, comment, and request changes to any report produced as a result of this Contract.
- C. CONTRACTOR shall perform all tasks set forth in Attachment 1 - Statement of Work, and CONTRACTOR represents and warrants that it has no business, professional, personal or other interest that would conflict in any manner or degree with the performance of its obligations under this Contract. If any such actual or potential conflict of interest arises during the term of this Contract, CONTRACTOR shall immediately inform SCAQMD in writing, and SCAQMD may, in its sole judgment, terminate this Contract immediately upon written notice to CONTRACTOR.

D. CONTRACTOR shall require its subcontractors to abide by the requirements set forth in this Contract.

4. TERM

The term of this Contract is from the last date of execution by the parties, which is the effective date of this Contract, to January 31, 2028 herein, no work shall commence until this Contract is fully executed by all parties. CONTRACTOR assumes all financial risk and is in no way guaranteed Carl Moyer Program funds for work done prior to the effective date of this Contract. The Contract term above encompasses both the project completion and project implementation periods, as described below, to ensure that the SCAQMD and the California Air Resources Board ("CARB") can fully enforce the terms of this Contract during the life of this Carl Moyer Program-funded project.

- A. Project Completion - Project completion is the time frame starting with the date of Contract execution by both parties to the date the project post-inspection confirms that the project has become operational. This includes the time period when the Equipment described in Attachment 1 - Statement of Work is ordered, delivered and installed.
- B. Project Implementation - The project implementation time frame is the second part of the Contract term and equals the project life, which is the number of years that the Equipment must operate as specified in the Attachment 1 - Statement of Work to obtain surplus emissions reductions that are cost-effective. CONTRACTOR is required to operate and maintain the Carl Moyer Program-funded Equipment according to the terms of this Contract for the full project implementation period.

5. TIME PERIOD FOR CONTRACT EXECUTION

This Contract must be signed by the CONTRACTOR and received by SCAQMD within sixty (60) days from the receipt of the Contract by the CONTRACTOR. Failure to timely sign and return the Contract to SCAQMD may result in the withdrawal of the award. Time is of the essence in executing this Contract.

6. TERMINATION

- A. CONTRACTOR's failure to comply with any term or condition of this Contract shall constitute a material breach of this Contract. The SCAQMD will either notify the CONTRACTOR that it must timely cure this breach, or provide ten (10) days' written notification of SCAQMD's intention to terminate this Contract. The SCAQMD reserves all rights under law and equity to enforce this Contract or to recover damages.
- B. SCAQMD reserves the right to terminate this Contract, in whole or in part without cause upon thirty (30) days' written notice. Once such notice has been given, CONTRACTOR shall, except as otherwise directed by SCAQMD, discontinue any work being performed under this Contract and cancel all of CONTRACTOR'S orders in connection with such work, and shall use its best efforts to terminate existing subcontracts upon terms satisfactory to the SCAQMD. Thereafter, CONTRACTOR shall perform only such services as may be necessary to preserve and protect any work already in progress and to dispose of any property as requested by SCAQMD. CONTRACTOR shall also promptly deliver to SCAQMD all copies of documentation and other information and data prepared or developed by CONTRACTOR under this Contract. CONTRACTOR will be paid in accordance with this Contract for work performed before the effective date of termination.
- C. Should CONTRACTOR terminate this Contract in whole or in part prior to the completion of the Contract term, such as in the event of an accident resulting in total loss of the Equipment or where the Equipment has been stolen, CONTRACTOR shall notify the SCAQMD within 10 business days

and must submit written documentation to SCAQMD, such as police and/or insurance reports as well as any other information requested by SCAQMD. CONTRACTOR will, at the discretion of SCAQMD, be responsible either for returning to SCAQMD a pro-rated share of the funds already paid under the Contract, in an amount to be determined by SCAQMD, or for providing a substitute equipment that meets the specifications of the replacement or repowered Equipment as described in the Attachment 1 - Statement of Work.

7. STOP WORK

SCAQMD may, at any time, by written notice to CONTRACTOR, require CONTRACTOR to stop all or any part of the work tasks in this Contract. A stop work order may be issued for reasons including, but not limited to, the project exceeding the budget, out of scope work, delay in project schedule, or misrepresentations. Upon receipt of the stop work order, CONTRACTOR shall immediately take all necessary steps to comply with the order. CONTRACTOR shall resume the work only upon receipt of written instructions from SCAQMD cancelling the stop work order. CONTRACTOR agrees and understands that CONTRACTOR will not be paid for performing work while the stop work order is in effect, unless SCAQMD agrees to do so in its written cancellation of the stop work order.

8. INSURANCE

- A. CONTRACTOR shall furnish evidence to SCAQMD of workers' compensation insurance for each of its employees, in accordance with either California or other states' applicable statutory requirements prior to commencement of any work on this Contract.
- B. CONTRACTOR shall furnish evidence to SCAQMD of general liability insurance with a limit of at least \$1,000,000 per occurrence, and \$2,000,000 in a general aggregate prior to commencement of any work on this Contract. SCAQMD must be named as an additional insured on any such liability policy, and thirty (30) days written notice prior to cancellation of any such insurance shall be given by CONTRACTOR to SCAQMD.
- C. CONTRACTOR shall furnish evidence to SCAQMD of automobile liability insurance with limits of at least \$100,000 per person and \$300,000 per accident for bodily injuries, and \$50,000 in property damage, or \$1,000,000 combined single limit for bodily injury or property damage, prior to commencement of any work on this Contract. SCAQMD must be named as an additional insured on any such liability policy, and thirty (30) days written notice prior to cancellation of any such insurance shall be given by CONTRACTOR to SCAQMD.
- D. If CONTRACTOR fails to maintain the required insurance coverage set forth above, SCAQMD reserves the right either to purchase such additional insurance and to deduct the cost thereof from any payments owed to CONTRACTOR or terminate this Contract for breach.
- E. All insurance certificates must be sent to SCAQMD Risk Management, by email (insurancecertificate@aqmd.gov) or by fax (909-396-3979). **The SCAQMD Contract Number must be included on the face of the certificate.**
- F. CONTRACTOR agrees to maintain the above required insurance as well as property insurance with sufficient limits to cover the loss of the Equipment. CONTRACTOR must provide updates on the insurance coverage throughout the term of the Contract to ensure that there is no break in coverage during the period of Contract performance. Failure to provide evidence of current coverage is grounds for termination for breach of Contract.
- G. If CONTRACTOR subcontracts all or part of the work under this Contract, CONTRACTOR shall require its subcontractors to comply with the above-mentioned insurance requirements and to name SCAQMD as an additional insured in the above-mentioned insurance policies.

9. INDEMNIFICATION

CONTRACTOR agrees to hold harmless, defend and indemnify SCAQMD, its officers, employees, agents, representatives, and successors-in-interest against any and all loss, damage, costs, lawsuits, claims, demands, causes of action, judgments, attorney's fees, or any other expenses arising from or related to any third party claim against SCAQMD, its officers, employees, agents, representatives, or successors in interest that arise or result in whole or in part, from any actual act or omission of CONTRACTOR, its employees, subcontractors, agents or representatives in the performance of this Contract. This Indemnification Clause shall survive the expiration or termination (for any reason) of the Contract and shall remain in full force and effect.

10. COMPLIANCE WITH CARL MOYER PROGRAM GUIDELINES

CONTRACTOR warrants that the project upon which this Contract is based complies, as applicable, with CARB's current Carl Moyer Program Guidelines, Advisories and Mail-Outs (collectively, "CMP Guidelines"), which are incorporated herein by reference, and which include, but are not limited to, the following:

- A. The project described in the Statement of Work is not required by any local, state and/or federal rule or regulation, memorandum of understanding/agreement, settlement agreement, mitigation requirement, or other legal mandate.
- B. The low emissions technology used in the project has been certified or verified by CARB and meets the applicable NOx, PM and/or ROG requirements, or if it has not been certified/verified by CARB, the low emissions technology has been approved by CARB on a case-by-case basis.
- C. Rights to the emission reductions generated by the project must not be claimed by any participant as emission reduction credits or be used under any emission averaging banking and trading program. In addition, rights to the emission reductions may not be claimed by the engine or equipment manufacturer in any flexibility or "early introduction" incentive program.
- D. The Equipment must not have been ordered or purchased prior to the date of the SCAQMD Governing Board approval of the Contract award.
- E. For repowers and replacement projects, the existing (old) engine must be destroyed and rendered permanently unusable and irreparable. There must be no cannibalization of parts from the old engine. Destruction methods and requirements are specified in the Statement of Work and the CMP Guidelines.
- F. For repower projects, the installation of the engine must be completed in a manner such that it does not void the engine warranty provided by the manufacturer and any remaining warranty provided by the equipment manufacturer.
- G. In signing this Contract, CONTRACTOR certifies that its fleet and Equipment are in compliance with all applicable federal state, and local air quality rules and regulations at the time of Contract execution, and that it will maintain compliance for the full Contract term. CONTRACTOR shall ensure that the provisions of this clause are included in all subcontracts.
- H. The project must be included when defining the size of the CONTRACTOR's fleet for determining regulatory requirements.
- I. Throughout the Contract term, the project must not be used to generate credits or compliance extensions, and must be excluded when determining regulatory compliance.

11. NO LEASE-TO-OWN AGREEMENTS

CONTRACTOR may not enter into any lease-to-own agreements for any Equipment funded in whole or in part under this Contract. Failure to comply with this provision shall result in CONTRACTOR returning some or all of the Contract funds, as determined by SCAQMD at its sole discretion. CONTRACTOR shall ensure that the provisions of this clause are included in all subcontracts.

12. COMPLIANCE WITH APPLICABLE LAWS

CONTRACTOR agrees to comply with all federal, state, and local laws, ordinances, codes and regulations and orders of public authorities in the performance of this Contract. CONTRACTOR must also ensure that the vehicles and/or equipment to be purchased, leased or installed in the performance of this Contract are in compliance with all applicable federal, state, and local air quality rules and regulations, and that it will maintain compliance for the full Contract term. CONTRACTOR shall ensure that the provisions of this clause are included in all subcontracts.

13. INCORPORATION OF CARL MOYER PROGRAM APPLICATION

CONTRACTOR'S application for the project funded under this Contract is hereby incorporated by reference and made a part of this Contract. In the event of a conflict between the terms and conditions of this Contract and CONTRACTOR's application, this Contract shall govern.

14. MAINTENANCE

CONTRACTOR shall maintain the Equipment in accordance with the manufacturer's specifications for the project life. Tampering with the engine is strictly prohibited. CONTRACTOR is responsible for maintaining a working hour meter or other SCAQMD-approved measuring device to track Equipment usage for projects that use hours of operation as a means of calculating emission reductions and cost-effectiveness. If the hour meter/usage device fails, CONTRACTOR must immediately notify SCAQMD, and CONTRACTOR remains responsible for validating any hours not recorded by the hour meter/usage device. The CONTRACTOR must either repair or replace the non-operating meter/device or provide other documentation of Equipment operating hours acceptable to SCAQMD.

15. RECORDS RETENTION, ON-SITE INSPECTIONS AND AUDIT

- A. CONTRACTOR agrees to the following Records Retention Period: maintain records related to this Contract during the Contract term and continue to retain these records for a period of three years beyond the Contract term.
- B. SCAQMD, CARB, or its designee(s), shall have the right to conduct on-site inspections of the project and to audit records related to this Contract during the Records Retention Period. CONTRACTOR agrees to include a similar right for these agencies to conduct on-site inspections and audits in any related subcontract.
- C. If an amount is found to be inappropriately expended, CONTRACTOR shall reimburse SCAQMD, or SCAQMD may withhold payment from CONTRACTOR, as applicable, in the amount equal to the amount which was inappropriately expended. Such withholding or reimbursement shall not be construed as SCAQMD's sole remedy and shall not relieve CONTRACTOR of its obligation to perform under the terms of this Contract.

16. INSPECTIONS

- A. A Pre-Inspection shall be conducted by the SCAQMD on **all** existing (old) equipment (including engines and vehicles) prior to any work commencing under this Contract. SCAQMD must verify that CONTRACTOR has met all requirements of the Carl Moyer Program regarding eligibility of the existing equipment. This includes documentation of the type of equipment, operational condition, mileage, vehicle and engine identification. This Contract may be modified or terminated based upon the results of the Pre-Inspection should the SCAQMD determine that: the existing equipment is non-operational; does not match the information submitted for analysis (i.e. vehicle make, model, model-year, engine type, horsepower, model year, etc.); or other factors exist that would not result in calculated real, quantifiable, and surplus emission reductions. For fleets owned or operated by public agencies, SCAQMD may conduct the Pre-Inspection by requiring the public agency to provide documentation to verify that all requirements of the Carl Moyer Program regarding eligibility of existing equipment/vehicles/engines are met. It is the responsibility of the CONTRACTOR to contact SCAQMD and arrange a Pre-Inspection of the existing equipment, and to confirm with SCAQMD that the equipment has been pre-inspected and is eligible to participate in the Carl Moyer Program.
- B. A Post-Inspection shall be conducted by the SCAQMD after receipt of the invoice from the CONTRACTOR. SCAQMD must verify that CONTRACTOR has met all requirements of the Carl Moyer Program. Final payment will not be made unless the SCAQMD verifies that: the Equipment, retrofit device or engine listed in the Statement of Work has/have been installed; that the Equipment is operational; and, where applicable, that the replaced engine(s) or vehicle(s) has/have been destroyed and rendered useless and there is no evidence of cannibalization of parts from the old engine(s). For fleets owned or operated by public agencies, SCAQMD may conduct the Post-Inspection through a statistically significant random sample of the vehicles, where the project under this Contract consists of more than twenty (20) vehicles.

17. MONITORING AND ENFORCEMENT

CONTRACTOR agrees to operate the Equipment according to the terms of this Contract, including the CMP Guidelines, and to cooperate with SCAQMD and CARB in implementation, monitoring, enforcement, and other efforts to assure the emission benefits are real, quantifiable, surplus, and enforceable. CONTRACTOR also understands and agrees that in addition to SCAQMD, CARB, as an intended third-party beneficiary of this Contract, also has the right to enforce the terms of this Contract to ensure emission reductions are generated. SCAQMD and CARB will seek whatever legal, equitable and other remedies are available for CONTRACTOR's failure to comply with the terms of this Contract, including the CMP Guidelines.

18. REPORTING REQUIREMENTS

CONTRACTOR shall submit reports in accordance with Attachments 1, 1A and 1B, attached here and incorporated herein by reference. Non-compliance with the reporting requirements of this Contract may result in the implementation of on-site monitoring by the SCAQMD, in addition to any other remedies available to the SCAQMD.

19. SUCCESSORS-IN-INTEREST

This Contract shall be binding on and inure to the benefit of each party's heirs, executors, administrators, successors, and assigns.

20. EQUIPMENT USAGE

- A. At least 24 months of documented and verified historic usage is required for the baseline engine, such as miles traveled, hours operated, or fuel consumed, and in this case usage is not required to be in the contract. If this information is not available, SCAQMD may estimate the usage for the old engine and the estimated usage must be included in the Contract.
- B. The percentage of each Equipment's annual mileage or engine hours of operation that must be accrued within the geographical boundaries of the South Coast Air Quality Management District, shall be in accordance with Attachment 1 - Statement of Work. Information included in the annual reports required under this Contract will be used to verify this usage.
- C. CONTRACTOR is prohibited from removing the Equipment from service in California during the term of this Contract, unless the Equipment becomes inoperable, is rendered a total loss in an accident, or is stolen, in accordance with the requirements set forth in sub-Clause 6.C. through mechanical failure of components or systems, and cannot be repaired or replaced, and such failure is not caused by CONTRACTOR'S negligence, misuse, or malfeasance; or if the Equipment is stolen, or is damaged beyond repair or replacement due to accident, theft or vandalism, also in accordance with the requirements set forth in sub-Clause 6.C. and as confirmed by a police report and/or an insurance determination of loss due to accident, theft or vandalism. CONTRACTOR shall notify SCAQMD within 10 business days if the Equipment is removed from service in California.
- D. If the Equipment usage reported in the annual report does not meet the usage specified in Attachment 1 - Statement of Work, the SCAQMD will flag the project. SCAQMD will take appropriate action to ensure the usage requirement is met, which may include, but is not limited to, recapturing funds in an amount proportional to the unmet usage or extending the project life.

21. FUNDS FROM OTHER SOURCES

- A. In signing this Contract, CONTRACTOR certifies that it has disclosed all other funding sources that it applied for or received for the project described in the Statement of Work. CONTRACTOR must notify SCAQMD of additional sources of funding received for the total cost of the project, including any sources that become available after contract execution.
- B. CONTRACTOR agrees that failure to disclose shall, at a minimum, result in disqualification from receiving funding for that project, the recapture of funds, and may result in CONTRACTOR being banned from submitting future applications to any and all Carl Moyer Program solicitations.
- C. CONTRACTOR shall return any grant funds it has received in excess of the total project cost.
- D. CONTRACTOR certifies that no emission reductions generated by this project shall be used as marketable emission reduction credits, or to offset any emission reduction obligation of any person or entity.
- E. The total amount of public funds received by CONTRACTOR for the same project during the term of this Contract must not exceed eighty-five (85) percent of the project cost. If the total amount of public funds exceeds eighty-five percent, CONTRACTOR shall return sufficient amounts to SCAQMD to decrease the total amount of public funds funding the same project to eighty-five percent.

22. PAYMENT

- A. SCAQMD will reimburse CONTRACTOR an amount not-to-exceed Three Hundred Ninety Two Thousand Eight Hundred Seventy Seven Dollars (\$392,877) in accordance with Attachment 2, Payment Schedule, attached here and incorporated herein by reference.

- B. Copyright - CONTRACTOR agrees to grant SCAQMD a royalty free, nonexclusive, irrevocable license to produce, translate, publish, use, and dispose of all copyrightable material first produced or composed in the performance of this Contract.

26. NOTICES

All notices that are required under this Contract shall be provided in the manner set forth herein, unless specified otherwise. Notice to a party shall be delivered to the attention of the person listed below, or to such other person or persons as may hereafter be designated by that party in writing. Notice shall be in writing sent by email, U.S. Mail, express, certified, return receipt requested, or a nationally recognized overnight courier service. In the case of email communications, valid notice shall be deemed to have been delivered upon sending, provided the sender obtained an electronic confirmation of delivery. Email communications shall be deemed to have been received on the date of such transmission, provided such date was a business day (Tuesday-Friday) and delivered prior to 5:30pm Pacific Standard Time. Otherwise, receipt of email communications shall be deemed to have occurred on the following business day. In the case of U.S. Mail notice, notice shall be deemed to be received when delivered or five (5) business days after deposit in the U. S. Mail. In the case of a nationally recognized overnight courier service, notice shall be deemed received when delivered (written receipt of delivery).

SCAQMD: South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765-4178
Attn: Yuh Jiun Tan, email: ytan@aqmd.gov

CONTRACTOR: County Sanitation Districts No. 2 of Los Angeles County
1955 Workman Mill Road
Whittier, CA 90601
Attn: Diane Engler, email: dianeengler@lacsdsd.org

27. INDEPENDENT CONTRACTOR

CONTRACTOR is an independent contractor. CONTRACTOR, its officers, employees, agents, representatives, or subcontractors shall in no sense be considered employees or agents of SCAQMD or CARB, nor shall CONTRACTOR, its officers, employees, agents, representatives, or subcontractors be entitled to or eligible to participate in any benefits, privileges, or plans, given or extended by SCAQMD to its employees. SCAQMD will not supervise, direct, or have control over, or be responsible for, CONTRACTOR's or subcontractor's means, methods, techniques, work sequences or procedures or for the safety precautions and programs incident thereto, or for any failure by them to comply with any local, state, or federal laws, or rules or regulations, including state minimum wage laws and OSHA requirements. CONTRACTOR shall promptly notify SCAQMD of any material changes to subcontracts that affect the Contract's scope of work, deliverable schedule, and/or payment/cost schedule.

28. PUBLICATION

- A. SCAQMD shall have the right of prior written approval of any document which shall be disseminated to the public by CONTRACTOR in which CONTRACTOR utilized information obtained from SCAQMD in connection with performance under this Contract.
- B. Information, data, documents, photographs or reports developed by CONTRACTOR for SCAQMD, pursuant to this Contract, shall be part of SCAQMD's public record unless otherwise indicated.

CONTRACTOR may use or publish, at its own expense, such information provided to SCAQMD. The following acknowledgment of support and disclaimer must appear in each publication of materials, whether copyrighted or not, based upon or developed under this Contract.

"This report was prepared as a result of work sponsored, paid for, in whole or in part, by the South Coast Air Quality Management District (SCAQMD). The opinions, findings, conclusions, and recommendations are those of the author and do not necessarily represent the views of SCAQMD. SCAQMD, its officers, employees, contractors, and subcontractors make no warranty, expressed or implied, and assume no legal liability for the information in this report. SCAQMD has not approved or disapproved this report, nor has SCAQMD passed upon the accuracy or adequacy of the information contained herein."

29. NON-DISCRIMINATION

In the performance of this Contract, CONTRACTOR shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment on the basis of race, religious creed, color, national origin, ancestry, sex, sexual orientation, age, mental status, medical condition, physical or mental disability, or allow unlawful denial of family and medical care leave, denial of pregnancy disability leave, or reasonable accommodations. CONTRACTOR shall comply with the provisions of the California Fair Employment & Housing Act (Government Code Section 12900 et seq.), the Federal Civil Rights Act of 1964 (P.L. 88-352) and all amendments thereto, Executive Order No. 11246 (30 Federal Register 12319), and all administrative rules and regulations issued pursuant to said Acts and Order.

30. ASSIGNMENT AND TRANSFER OF EQUIPMENT

- A. The rights and responsibilities granted hereby may not be assigned, sold, licensed, or otherwise transferred by CONTRACTOR without the prior written consent of SCAQMD, and any attempt by CONTRACTOR to do so shall be void upon inception.
- B. CONTRACTOR agrees to obtain SCAQMD's written consent to any assignment, sale, license or transfer of the Equipment, prior to completing the transaction. CONTRACTOR shall inform the proposed assignee, buyer, licensee or transferee (collectively referred to here as "Buyer") of the terms of this Contract. CONTRACTOR is responsible for establishing contact between SCAQMD and the Buyer and shall assist SCAQMD in facilitating the transfer of this Contract's terms and conditions to the Buyer. **CONTRACTOR will not be relieved of the legal obligation to fulfill the terms and conditions of this Contract until and unless the Buyer has assumed responsibility of this Contract's terms and conditions through an executed contract with SCAQMD.**

31. NON-EFFECT OF WAIVER

The failure of CONTRACTOR or SCAQMD to insist upon the performance of any or all of the terms, covenants, or conditions of this Contract, or failure to exercise any rights or remedies hereunder, shall not be construed as a waiver or relinquishment of the future performance of any such terms, covenants, or conditions, or of the future exercise of such rights or remedies, unless otherwise provided for herein.

32. ATTORNEYS' FEES

In the event any action is filed in connection with the enforcement or interpretation of this Contract, each party shall bear its own attorneys' fees and costs.

33. FORCE MAJEURE

A party shall not be liable or deemed to be in default for any delay or failure in performance under this Contract or interruption of services resulting, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, strikes, labor disputes, shortages of suitable parts, materials, labor or transportation, or any similar cause beyond the party's reasonable control.

34. SEVERABILITY

In the event that any one or more of the provisions contained in this Contract shall for any reason be held to be unenforceable in any respect by a court of competent jurisdiction, such holding shall not affect any other provisions of this Contract, and the Contract shall then be construed as if such unenforceable provisions are not a part hereof.

35. HEADINGS

Headings on the Clauses of this Contract are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Contract.

36. COUNTERPARTS

This Contract may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute together one and the same instrument.

37. GOVERNING LAW

This Contract shall be construed and interpreted and the legal relations created thereby shall be determined in accordance with the laws of the State of California. Venue for resolution of any disputes under this Contract shall be Los Angeles County, California.

38. CITIZENSHIP AND ALIEN STATUS

- A. CONTRACTOR warrants that it fully complies with all laws regarding the employment of aliens and others, and that its employees performing services hereunder meet the citizenship or alien status requirements contained in federal and state statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986 (P.L. 99-603). CONTRACTOR shall obtain from all covered employees performing services hereunder all verification and other documentation of employees' eligibility status required by federal statutes and regulations as they currently exist and as they may be hereafter amended. CONTRACTOR shall have a continuing obligation to verify and document the continuing employment authorization and authorized alien status of employees performing services under this Contract to insure continued compliance with all federal statutes and regulations. Notwithstanding the above, CONTRACTOR, in the performance of this Contract, shall not discriminate against any person in violation of 8 USC Section 1324b.
- B. CONTRACTOR shall retain such documentation for all covered employees for the period described by law. CONTRACTOR shall indemnify, defend, and hold harmless SCAQMD, its officers and employees from employer sanctions and other liability which may be assessed against CONTRACTOR or SCAQMD, or both in connection with any alleged violation of federal statutes or regulations pertaining to the eligibility for employment of persons performing services under this Contract.

39. SUBCONTRACTOR APPROVAL

If CONTRACTOR intends to subcontract all or a portion of the work under this Contract, then CONTRACTOR must first obtain written approval from SCAQMD's Executive Officer or designee prior to subcontracting any work. Such prior approval applies only to subcontractors not already included in Attachment 1, Statement of Work. Any material changes to the subcontract(s) that affect the scope of work, deliverable schedule, and/or payment/cost schedule shall also require the prior written approval of the Executive Officer or designee. No subcontract charges will be reimbursed unless the required approvals have been obtained from SCAQMD.

40. TAX IMPLICATIONS FROM RECEIPT OF CARL MOYER PROGRAM FUNDS

CONTRACTOR is advised to consult a tax attorney regarding potential tax implications from receipt of funds under the Carl Moyer Program.

41. DISCLAIMER OF WARRANTY

The decision to participate in the Carl Moyer Program and to purchase Program-eligible Equipment is CONTRACTOR's decision. **SCAQMD does not make any express or implied warranty of merchantability, fitness for a particular purpose or otherwise, quality or usefulness of the technology or Equipment.** SCAQMD will not be financially responsible or otherwise liable for the installation or performance of the Equipment.

42. ENTIRE CONTRACT

This Contract represents the entire agreement between CONTRACTOR and SCAQMD. There are no understandings, representations, or warranties of any kind except as expressly set forth herein. No waiver, alteration, or modification of any of the provisions herein shall be binding on any party unless in writing and signed by the authorized representative of the party against whom enforcement of such waiver, alteration, or modification is sought.

43. AUTHORITY


The signator hereto represents and warrants that he or she is authorized and empowered and has the legal capacity to execute this Contract and to legally bind CONTRACTOR both in an operational and financial capacity and that the requirements and obligations under this Contract are legally enforceable and binding on CONTRACTOR.

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IN WITNESS WHEREOF, the parties to this Contract have caused this Contract to be duly executed on their behalf by their authorized representatives.

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

COUNTY SANITATION DISTRICTS NO. 2 OF
LOS ANGELES COUNTY

By: 

~~Dr. William A. Burke, Chairman, Governing Board~~
Ben J. Benoit, Chairman, Governing Board

By: 

Name:
Title:

Date: 5/27/2021

Date: OCT 14 2020

ATTEST:
Faye Thomas, Clerk of the Board

ATTEST:


By: 


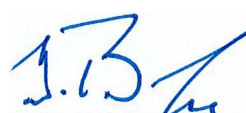
By: 

Secretary

APPROVED AS TO FORM:
Bayron T. Gilchrist, General Counsel

APPROVED AS TO FORM:
Lewis, Brisbois, Bisgaard & Smith LLP

By: 

By:  

District Counsel

ATTACHMENT 1

**STATEMENT OF WORK
COUNTY SANITATION DISTRICTS NO. 2 OF LOS ANGELES COUNTY
FISCAL YEAR 2019-2020 CARL MOYER PROGRAM
COMMUNITY AIR PROTECTION SB 856 FUND (77)**

The purpose of this Contract is to enable the deployment of alternative, advanced, and cleaner technologies with funding support for the installation of fueling or energy infrastructure to fuel or power covered sources.

CONTRACTOR shall construct a new and expand an existing compressed renewable natural gas (RNG) fueling infrastructure in accordance with the project information summarized in Table 1 below.

Table 1: Infrastructure Project Information

Project Type	Project ID	Public or Private Access	New, Expansion or Conversion of Infrastructure	Project Location	Project Overview
Renewable Natural Gas Filling	21CMP212	Private Access	Expansion	1927 W. San Bernardino Road, West Covina, 91790	Expansion of existing CNG station that includes two (2) single-hose dispensers, storage and additional supporting equipment to provide annual throughput capability per Table 2.
	21CMP217	Private Access	New	920 S Alameda St, East Compton, 90221	Construct new RNG station that includes five (5) single-hose dispensers, storage, compressor, dryer and additional supporting equipment to provide annual throughput capability per Table 2.

CONTRACTOR shall perform the following tasks to implement this project:

Task 1: Project Design, Schedule and Approvals

- 1.1 CONTRACTOR shall provide to SCAQMD a project schedule with milestone dates for final infrastructure design including construction contract execution, placement of equipment order, acquisition and delivery of equipment, construction, installation, system testing and commissioning (initial operation date).
- 1.2 CONTRACTOR shall provide a schedule to SCAQMD with milestone dates for acquisition of permits and other outside public agency approvals required for this project. A schedule for completion and certification of required California Environmental Quality Act documents shall be included.

- 1.3 CONTRACTOR shall provide a copy of all permits/permit approvals and certifications, including California Environmental Quality Act documentation, to SCAQMD prior to construction.
- 1.4 CONTRACTOR shall adhere to the Project Milestones in Attachment 1A.
- 1.5 CONTRACTOR shall demonstrate that the infrastructure is fully operational by no later than the Due Date listed in Attachment 1A, unless an extension has been requested by the CONTRACTOR and approved in writing by SCAQMD. The project shall be considered fully operational after completing and passing a post-inspection by SCAQMD (See Task 3).

Task 2: Equipment Procurement and Installation

- 2.1 CONTRACTOR shall provide proof of three-year equipment warranties to SCAQMD at the time of invoice submittal for the Contract-funded equipment.
- 2.2 CONTRACTOR shall ensure work is performed by a licensed contractor.
- 2.3 If CONTRACTOR determines that it will be unable to procure or install the equipment for the infrastructure project(s) identified in Table 1, CONTRACTOR shall inform SCAQMD in writing as soon as possible so that SCAQMD may re-evaluate the project to determine if an amendment to, or termination of, the Contract is appropriate.
- 2.4 All equipment and parts must be new. Remanufactured or refurbished equipment and parts are not eligible.
- 2.5 CONTRACTOR shall demonstrate that they either own the land on which the project will be located, or control it through a long-term lease, easement or other legal arrangement, for the duration of the project life. For a project where the land is not owned by the CONTRACTOR, an executed lease agreement or letters of commitment lasting for the duration of the project life shall be provided and signed by the property owner/authorized representatives.
- 2.6 For a publicly accessible station, CONTRACTOR shall provide a description of the geographic location, including an aerial map (i.e. satellite view from an internet based map or city/county map) and specific street address of the project station.
- 2.7 CONTRACTOR shall provide documentation that power or fuel is being provided to the project site (e.g. application, payment to the local utility company for power installation, or contract).

Task 3: Inspections

- 3.1 CONTRACTOR shall make all infrastructure equipment available to SCAQMD staff for a post-inspection in accordance with the Inspection Clause of this Contract. During the post-inspection, CONTRACTOR shall demonstrate to the SCAQMD inspector that the infrastructure is fully operational and in proper working order by connecting a vehicle to the fueling infrastructure.

- 3.2 Once the station is commissioned by the date specified in Attachment 1A, CONTRACTOR shall, within 30 days of commissioning, make a written request for SCAQMD to conduct a post-inspection. Reimbursement of eligible costs will not be issued until satisfactory completion of this post-inspection.
- 3.3 CONTRACTOR shall provide to SCAQMD the annual operation data collection procedure and a copy of the executed RNG Supply and Purchase agreement at the time of post-inspection.

Task 4: Infrastructure Operation

- 4.1 CONTRACTOR agrees that the infrastructure equipment shall remain operational within the geographical boundaries of the SCAQMD for the Contract term.
- 4.2 Publicly accessible station must at a minimum be accessible to the public daily during regular business hours.
- 4.3 For publicly accessible infrastructure project(s), CONTRACTOR is responsible for ensuring that repairs are made and station is operational within 48 hours if equipment is not functional.
- 4.4 For non-public accessible infrastructure project(s), CONTRACTOR has 15 business days to report the problem to SCAQMD and shall work with SCAQMD promptly to ensure infrastructure equipment is operational.
- 4.5 CONTRACTOR shall repair or replace the fuel/energy meter as soon as possible if during the project life the fuel/energy meter fails for any reason.
- 4.6 CONTRACTOR agrees to make operational information for the infrastructure identified in Table 1 available, upon reasonable notice, to SCAQMD or CARB staff during the life of the project. This information should include annual usage, or the amount of fuel/energy consumed.
- 4.7 CONTRACTOR agrees to operate the infrastructure equipment based on annual usage during the project life. The expected usage is specified in Table 2 below.

Table 2 –Annual Usage

Project ID	Estimated Annual Usage *	Project Life (yr)
21CMP212	2,500,000 standard cubic feet (scf) per year	7
21CMP217	4,400,000 standard cubic feet (scf) per year	4

*The anticipated annual usage for the term of the contract is based on the projected throughput provided in the CONTRACTOR’S application.

Task 5: Reporting

- 5.1 CONTRACTOR shall provide annual reports for the entire project life, as described in the Deliverables, Attachment 1B. Annual reporting shall include annual usage as well as the duration and causes of unscheduled downtime.
- 5.2 CONTRACTOR shall provide a final commissioning report upon station commissioning, as described in Deliverables, Attachment 1B.

ATTACHMENT 1A

**PROJECT MILESTONES
COUNTY SANITATION DISTRICTS NO. 2 OF LOS ANGELES COUNTY
FISCAL YEAR 2018-2019 CARL MOYER PROGRAM**

<u>Deliverable</u>	<u>Milestone Due Date</u>
Execution of Contract by CONTRACTOR	October 30, 2020
Final Design and Schedule	January 30, 2021
Permits and Other Applicable Approvals	March 29, 2021
Infrastructure Construction, Installation and Commissioning:	July 30, 2021
Invoices Due No Later Than	August 30, 2021
Annual Project Progress Reports Due (21CMP217)	November 15, 2022 November 15, 2023 November 15, 2024
Annual Project Progress Reports Due (21CMP212)	November 15, 2022 November 15, 2023 November 15, 2024 November 15, 2025 November 15, 2026 November 15, 2027

ATTACHMENT 1B

DELIVERABLES

COUNTY SANITATION DISTRICTS NO. 2 OF LOS ANGELES COUNTY FISCAL YEAR 2019-2020 CARL MOYER PROGRAM

In addition to the deliverables set forth in the above-referenced Statement of Work, CONTRACTOR shall supply the following reports (using Attachment 3 Annual Report Form) to the SCAQMD under this Contract. Each submitted report shall be stapled, not bound, printed in black ink, double-sided type, on an 8-1/2 by 11 inch page, and shall include camera-ready originals.

1. Two stapled copies of an annual report, to be submitted annually for the term of the Contract, per Attachment 1A. Annual Reports shall be considered in the public domain, in conformance with the California Public Records Act (Government Code Section 6250 et seq.). Each annual report shall include, but not be limited to, the following:
 - a. Reference to SCAQMD Contract number
 - b. A description of the funded infrastructure, including:
 - Project ID
 - Project Type (renewable natural gas)
 - Project Sub Type (private access)
 - Infrastructure Address
 - c. A description of the operation of the infrastructure, including:
 - Number of dispensers and hoses per dispenser
 - Annual usage during the report period
 - d. Problems - a discussion of any unscheduled downtime encountered during the year and the causes of downtime.
 - e. If the annual usage is below the projected usage for that year, then provide an explanation for the low usage and submit a plan for meeting the projected usage the following year.
 - f. Proof of property insurance.

ATTACHMENT 2

PAYMENT SCHEDULE COUNTY SANITATION DISTRICTS NO. 2 OF LOS ANGELES COUNTY FISCAL YEAR 2019-2020 CARL MOYER PROGRAM COMMUNITY AIR PROTECTION SB 856 FUND (77)

CONTRACTOR shall be reimbursed up to the amount outlined in Table 3 below for the infrastructure project(s) after the submission of itemized invoices and supporting documentation, and the satisfactory completion of the post-inspection by SCAQMD indicating that the infrastructure project(s) is/are fully operational. CONTRACTOR shall provide documentation of installation and procurement of equipment for the infrastructure project(s) specified in Table 1. This documentation shall include, at a minimum, all supporting documentation as described in Attachment 1 as well as an itemized invoice that includes: (1) equipment information such as equipment manufacturer, price of the equipment, make, model number, model year, serial number and warranty coverage; (2) installation labor contractor, scope and cost; (3) design and engineering cost; (4) identification of any taxes, and other costs, with sufficient details to ensure that only completed and eligible projects costs are reimbursed; and (5) identification of other sources and amounts of funding (if any). For each infrastructure project, SCAQMD payment shall not exceed the eligible costs of each project or the maximum award amount identified in Table 3 below, whichever is less.

All invoices must be accompanied by a copy of the equipment vendor invoice, evidence of payment to the vendor by the CONTRACTOR, and a written certification by the CONTRACTOR stating that the equipment delivered and installed meets the approved design criteria and specifications for this project.

Table 3 – Maximum Reimbursement Amount

Project ID	Estimated Total Project Cost	Allowable Percentage of Eligible Costs*	Maximum Award Amount
21CMP212	\$155,515	50%	\$77,757
21CMP217	\$630,240	50%	\$315,120

Total Contract Not-To-Exceed: Up to the allowable percentage of the eligible costs, and not exceeding the maximum award amount.

* Eligible costs include cost of design and engineering, cost of equipment, cost of installation directly related to the construction of the station, meter or data loggers, permit fees, onsite required safety equipment, sales and other taxes.

Ineligible costs include but are not limited to: existing station enhancement/upgrade, fuel and energy costs, non-essential equipment hardware, operation cost (e.g., operational fees, maintenance, repairs, improvements, spare parts), extended warranty beyond the three-year warranty required by this contract, insurance, data collection and reporting, administrative costs, travel/lodging, employee training and salaries, legal fees, real estate property purchases/leases, performance bond costs, construction management, storm water plan costs, security costs, testing and soil sampling and costs associated with hazardous materials, including permitting, handling and disposal.

ATTACHMENT 3

Carl Moyer Program Infrastructure Project Annual Report Form

SCAQMD Contract Number:	Reporting Period: Start Date:	End Date:
Title of Project:		
Contractor / Company Name:		Contact Name:
Business Phone:	Cell Phone:	Email Address:

Address:

Infrastructure Information

Project ID#	Project Type (NG filling or RNG filling)	Public or Private Access?	No. of Fill Dispensers and No. of Hoses per Dispenser	Infrastructure Address

Infrastructure Operational Information

Project ID#	Dispenser Meter Reading & Units	Date of Dispenser Meter Reading	Annual Usage/Throughput (Standard Cubic Feet)	Brief description of vehicle types that fuel at the natural gas infrastructure (i.e., port trucks, bus, delivery, etc.)

1. For renewable natural gas (RNG) infrastructure, please indicate the percentage of renewable feedstock and provide documentation of the year's renewable gas usage:

2. Please indicate any unscheduled downtime, including duration and causes of downtime:

3. If the annual usage is below the projected usage for that year, please provide an explanation for the lower actual usage and submit a plan for meeting the projected usage the following year.

4. Please provide proof of property insurance (attach).

I certify to the best of my knowledge that the information provided is true and correct.

Name / Title of Person Completing Report Form (Print) _____

Signature _____ Date _____