



This Contract consists of \*\*\* pages.

1. PARTIES - The parties to this 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 \*\*\* (referred to here as "CONTRACTOR") whose address is \*\*\*.
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. Through this Carl Moyer Program-funded Contract, the parties desire to fund the incremental costs of certain cleaner-than-required equipment in order to generate cost-effective and surplus air emission reductions within the geographical boundaries of the South Coast Air Quality Management District. Accordingly, SCAQMD desires to contract with CONTRACTOR 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, electrification 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. 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 shall not engage, during the term of this Contract, in any performance of work that is in direct or indirect conflict with duties and responsibilities set forth in Attachment 1 - Statement of Work.
  - D. CONTRACTOR must ensure that the Equipment to be purchased or installed is 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.

- E. 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 date of execution by both parties**, which is the effective date of this Contract, to **\*\*\***, unless further extended by amendment of this Contract in writing. 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 and invoke the penalties under Clause 6.D. The SCAQMD reserves all rights under law and equity to enforce this Contract or to recover damages.
- B. Notwithstanding sub-Clause 6A, this Contract may be terminated without penalty prior to completion of the Contract term if the Equipment becomes inoperable 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. CONTRACTOR shall submit written documentation supporting any basis for early termination under this sub-Clause for the approval of SCAQMD.
- C. 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.

- D. Should CONTRACTOR desire to terminate this Contract in whole or in part prior to the completion of the Contract term for reasons other than those stated in sub-Clause 6B, CONTRACTOR shall return to SCAQMD a prorated share of the funds already paid under this Contract, in an amount determined by SCAQMD.
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. ALTERNATIVE FUEL USE – The purpose of this project is to reduce emissions from the Equipment through the use of alternative fuels. To achieve this purpose, CONTRACTOR agrees to utilize \*\*\* [identify fuel to be used] and the Equipment as specified in the Statement of Work, for the duration of this Contract and the life of the Equipment. CONTRACTOR shall use alternative fuel for at least 75% of the annual mileage or engine hours of operation within the geographical boundaries of the South Coast Air Quality Management District. In the case of a dual fuel vehicle, CONTRACTOR agrees to demonstrate use of alternative fuel over 75% of the vehicle's operating cycle, and 75% of the annual mileage or engine hours. Exceptions to these requirements are vehicle(s) out of service for an extended period because of accident or repair or unavailability of fuel. CONTRACTOR is required to provide data regarding vehicle mileage accumulation and fuel purchased as part of the quarterly and annual reports. (USE IF PROCURING ALT FUEL ENGINE/VEHICLE)
9. FUNDING FOR ALTERNATIVE FUEL – The SCAQMD shall fund the cost difference between conventional fuel and the alternative fuel used under this Contract. The fuel purchase is an integral part of the engine purchase, re-power, or retrofit. (OPTIONAL-USE IF REQUESTED ON CRAM)
10. 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 should be mailed to: SCAQMD Risk Management, 21865 Copley Drive, Diamond Bar, CA 91765-4182. **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.
11. 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 or alleged 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.
12. COMPLIANCE WITH CARL MOYER PROGRAM GUIDELINES – CONTRACTOR warrants that the project upon which this Contract is based complies with CARB's current Carl Moyer Program Guidelines ("CMP Guidelines"), incorporated herein by reference, which include, but are not limited to, the following:
- A. The project described in the Statement of Work **complies with the requirements of the Surplus Off-Road Opt-In for NOx (SOON) Program (13 CCR Part 2449 et seq.) and USE FOR SOON ONLY- REMOVE OTHERWISE** 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, engine(s) or equipment/vehicle is 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.
  - 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.
13. ELECTRONIC MONITORING UNIT - CONTRACTOR shall install an Electronic Monitoring Unit (EMU) for each new engine or engines that have been re-powered or retrofitted with funds under this Contract. CONTRACTOR shall complete all reporting required under this Contract through the electronic data system. **OPTIONAL-USE IF REQUESTED ON CRAM**
14. 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.
15. 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.
16. USE OF CARB-VERIFIED RETROFIT DEVICES - All retrofit projects must install CARB verified retrofit devices which provide the highest emission reductions that are currently available. If, upon inspection by the vendor, it is determined that the device approved under this contract is technologically infeasible, unsafe, or cost prohibitive, the vendor must provide written documentation to this effect. The vendor must be an Original Equipment Manufacturer (OEM) authorized local representative in order to provide the written documentation. Otherwise, the letter must be provided directly by the OEM. The written statement of reason provided by the OEM, or authorized local representative, must confirm that the currently available highest emission reduction VDECS retrofit device cannot feasibly accommodate the engine without major modifications, safety risks, or exorbitant costs. **(INCLUDE IF RETROFIT PROJECT)**

17. 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 SCAQMD to conduct on-site inspections and audits in any related subcontract.
- C. If an amount is found to be inappropriately expended, SCAQMD may withhold payment, or seek reimbursement, from CONTRACTOR 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.

18. 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 the 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 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.

19. 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.

20. 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.

21. SUCCESSORS-IN-INTEREST – This Contract shall be binding on and inure to the benefit of each party's heirs, executors, administrators, successors, and assigns.

22. EQUIPMENT USAGE

- A. 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.
- B. CONTRACTOR is prohibited from removing the Equipment from service in California during the term of this Contract, unless the Equipment become inoperable 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. CONTRACTOR shall promptly notify SCAQMD if any Equipment is removed from service in California.
- C. 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 contracted emissions reductions are realized, which may include, but are not limited to, recapturing funds in an amount proportional to the unrealized emissions reductions or extending the project life.

23. FUNDS FROM OTHER SOURCES

- A. In signing this Contract, CONTRACTOR certifies that it has disclosed all other public funds that it applied for or received for the project described in the Statement of Work. CONTRACTOR understands 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.
- B. CONTRACTOR is prohibited from applying for or receiving other public funds for the same project described in the Statement of Work, except CONTRACTOR may apply for and receive additional funding for the same project from federal programs to reduce greenhouse gas emissions (GHG) or funding provided by the Alternative and Renewable Fuel and Vehicle Technology Program to reduce GHG. Such funding is subject to the disclosure requirements of **Clause 23.A**.
- C. 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.

24. PAYMENT

- A. SCAQMD will reimburse CONTRACTOR an amount not-to-exceed \*\*\* Dollars (\$\*\*\*) in accordance with Attachment 2, Payment Schedule, attached here and incorporated herein by reference.
  - B. Payment may be made directly to the dealer or distributor upon submission of an itemized invoice from the CONTRACTOR requesting that such direct payment be made. If the purchase is being financed, CONTRACTOR may choose to have the payment sent directly to the financing company, or provide SCAQMD with proof of payment to the financing company in order for CONTRACTOR to be reimbursed. Payments made under this Contract must be used to reduce the principal owed for the Equipment.
  - C. Before any payment can be made, CONTRACTOR must submit itemized invoices from the engine supplier for repowers or paid invoices from the vehicle owner for replacement vehicles, and the Post-Inspection pursuant to **Clause 18.B.** must indicate that the project is operational. The itemized invoices must include enough detail to ensure that only eligible project costs are paid, in accordance with the CMP Guidelines. Each invoice must be prepared in duplicate, on company letterhead, and list SCAQMD's Contract number, period covered by invoice, and CONTRACTOR's Social Security Number or Employer Identification Number and submitted to: South Coast Air Quality Management District, Attn: Carl Moyer Contract Administrator, Technology Advancement, 21865 Copley Drive, Diamond Bar, CA 91765-4178.
  - D. SCAQMD will fund up to \*\*\* Dollars (\$\*\*\*) for the capital cost of an Auxiliary Power Unit (APU) and up to \*\*\* Dollars (\$\*\*\*) for the actual installation cost per diesel APU and a maximum of \*\*\* Dollars (\$\*\*\*) for the actual installation cost per alternative fuel APU, electric motor APU, or fuel cell APU. **(OPTIONAL)**
  - E. Payment under this Contract is contingent upon receipt of funds from CARB.
  - F. SCAQMD may de-obligate from the Contract funds that remain unexpended as required in the Contract upon thirty (30) days' written notice to CONTRACTOR. CONTRACTOR to initial here acknowledging consent to de-obligation of non-expended funding. \_\_\_\_\_
25. **SECURITY INTEREST** - CONTRACTOR hereby grants SCAQMD a security interest in any and all equipment, including vehicles and marine vessels, purchased in whole or in part with funding provided by SCAQMD pursuant to this Contract. CONTRACTOR acknowledges and agrees that SCAQMD shall have all lien rights as a secured creditor on any and all equipment and/or vehicles purchased in whole or in part by the CONTRACTOR, under this Contract or any amendments thereto. The SCAQMD shall have lien rights in effect until the CONTRACTOR satisfies all terms under the Contract, including but not limited to, the use and reporting requirements. **Accordingly, CONTRACTOR further agrees that SCAQMD is authorized to file a UCC filing statement or similar security instrument to secure its interests in the equipment and/or vehicles that are the subject of the Contract.** In the event CONTRACTOR files for bankruptcy protection, CONTRACTOR shall notify SCAQMD within 10 business days of such filing.
26. **MOBILE SOURCE EMISSION REDUCTION CREDITS** - No emission reductions generated by Carl Moyer Program-funded projects may be used as marketable emission reduction credits, or to offset any emission reduction obligation of any person or entity. All validated emission reductions shall be applied toward the State Implementation Plan (SIP) attainment demonstration. All emission reductions generated from the expenditure of Carl Moyer funds may not be converted into tradable credits, and shall be used for the sole purpose of meeting the attainment schedule contained in the applicable SIP.

27. INTELLECTUAL PROPERTY RIGHTS - Title and full ownership rights to any intellectual property developed under this Contract shall at all time remain with SCAQMD. Such material is agreed to be SCAQMD's proprietary information.
- A. Rights of Technical Data - SCAQMD shall have the unlimited right to use technical data, including material designated as a trade secret, resulting from the performance of services by CONTRACTOR under this Contract. CONTRACTOR shall have the right to use data for its own benefit.
  - 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.
28. NOTICES - Any notices from either party to the other shall be given in writing to the attention of the persons listed below, or to other such addresses or addressees as may hereafter be designated in writing for notices by either party to the other. Notice shall be given by certified, express, or registered mail, return receipt requested, and shall be effective as of the date of receipt indicated on the return receipt card.

SCAQMD: South Coast Air Quality Management District  
21865 Copley Drive  
Diamond Bar, CA 91765-4178  
Attn: Carl Moyer Contract Administrator, Technology Advancement

CONTRACTOR: \*\*\*  
\*\*\*  
\*\*\*  
Attn: \*\*\*

29. 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.
30. 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.

- i. "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."

31. NON-DISCRIMINATION - In the performance of this Contract, CONTRACTOR shall not discriminate in recruiting, hiring, promotion, demotion, or termination practices on the basis of race, religious creed, color, national origin, ancestry, sex, age, or physical or mental disability and 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.

32. 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.**

33. 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.

34. 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.

35. FORCE MAJEURE - Neither SCAQMD nor CONTRACTOR shall 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 reasonable control of SCAQMD or CONTRACTOR.

36. 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.
37. 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.
38. DUPLICATE EXECUTION - This Contract is executed in duplicate. Each signed copy shall have the force and effect of an original.
39. 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.
40. 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.
41. 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. 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.

42. 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.
43. 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.
44. 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.

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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

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By: \_\_\_\_\_  
Dr. William A. Burke, Chairman, Governing Board

By: \_\_\_\_\_  
Name:  
Title:

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

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

ATTEST:  
Saundra McDaniel, Clerk of the Board

By: \_\_\_\_\_

APPROVED AS TO FORM:  
Kurt R. Wiese, General Counsel

By: \_\_\_\_\_

//Moyer Template  
Last Updated: October 17, 2014