



**South Coast
Air Quality Management District**

Contract No. «Contract_No»
Proposition 1B: Goods Movement
Emission Reduction Program

This Contract consists of «Contract_Pages» pages.

1. **PARTIES** - The parties to this Contract are the South Coast Air Quality Management District ("SCAQMD") whose address is 21865 Copley Drive, Diamond Bar, California 91765-4178, and «Contractor» (referred to here as "CONTRACTOR") whose address is «Address_Line_1», «City», «State» «ZIP_Code».
2. **RECITALS**
 - A. In November 2006, California voters approved the Highway Safety, Traffic Reduction, Air Quality and The Port Security Bond Act of 2006, also known as Proposition 1B that, among other things, provided \$1 billion to reduce emissions associated with the movement of freight along California's trade corridors. To establish standards and procedures for the expenditure of these funds, the Legislature adopted and the Governor signed Senate Bill 88 (Stats. 2007, ch. 181) creating the Proposition 1B: Goods Movement Emission Reduction Program ("Program"). Under the Program, the California Air Resources Board ("CARB") is authorized to appropriate \$1 billion to quickly reduce air pollution emissions and health risk from freight movement along California's priority trade corridors. CARB has adopted guidelines and criteria for the Program's implementation as well as resolutions and executive orders for specific equipment categories (collectively referred to here as "Program Guidelines"), each of which are incorporated herein by reference. Copies of the current Program Guidelines may be obtained from SCAQMD or at CARB's website at: <http://www.arb.ca.gov/bonds/gmbond/gmbond.htm>.
 - B. 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. Through this Program-funded Contract, CONTRACTOR agrees to participate in the Program, and SCAQMD and CARB agree to partially fund the project described in Attachment 1 – Statement of Work ("Project"), attached hereto and made a part hereof, to generate cost-effective and early or extra emission reductions within the State of California.
 - 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 Program, which may include, but is not limited to, trucks, engines, marine vessels, retrofit devices, electrification infrastructure, Transport Refrigeration Units(TRU), cargo handling equipment and 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. 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 the 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 last date of execution by the parties, which shall be considered the effective date, to «Contract_Term_End_Date», unless it terminates earlier as provided in Clause 7 – Termination. CONTRACTOR assumes all financial risk and is in no way guaranteed Program funds for this project prior to the effective date of this Contract. The Contract term shall encompass both the project completion and project

implementation/life periods, as referenced in Attachment 1 – Statement of Work, whichever is longer, to ensure that the SCAQMD and CARB can fully enforce this Contract during the life of this Goods Movement Emission Reduction Program-funded Project.

- A. Project Completion – Project completion is the time frame starting with the effective date of this Contract to the date of project completion, i.e., the date the Project becomes operational as set forth in Attachment 1-Statement of Work. This includes the time period when the Equipment described in Attachment 1 – Statement of Work is ordered, delivered and/or installed, as applicable.
 - B. Project Implementation/Life – The project implementation time frame is the second part of the Contract term and equals the project life, which is the number of years or miles, whichever comes first that the Equipment must operate as specified in Attachment 1 – Statement of Work to obtain early or extra emission reductions that are cost-effective. CONTRACTOR is required to operate and maintain the 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 CONTRACTOR and received by SCAQMD no later than the deadline set forth in Attachment 1A. Failure to timely sign and return the Contract to SCAQMD may result in the withdrawal of the award.
 6. TIME IS OF THE ESSENCE – Time is of the essence with respect to all provisions of this Contract that specify a time for performance.
 7. 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 18. The SCAQMD reserves all rights under law and equity to enforce this Contract or to recover damages.
 - B. Notwithstanding sub-Clause 7A, this Contract may be terminated 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, or if the Equipment has been stolen or totaled in an accident, as confirmed by a police report and/or an insurance determination of loss due to theft or accident. CONTRACTOR shall provide supporting documentation (e.g. salvage title, policy report, insurance company determination, copy of insurance company reimbursement quote/check, and/or other) to SCAQMD exhibiting that the equipment was accidentally rendered inoperable or stolen. CONTRACTOR shall submit written documentation supporting any basis for early termination under this sub-Clause for the approval of SCAQMD. Should CONTRACTOR desire to terminate this Contract under this sub-Clause, CONTRACTOR shall return to SCAQMD a prorated share of the funds already paid under this Contract using the formula established in Clause 9.B. below.
 - 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 7B, CONTRACTOR shall return to SCAQMD a prorated share of the funds already paid under this Contract using the formula in Clause 9.A. below.

- E. CONTRACTOR may request to withdraw or cancel this equipment project contract without any obligation, prior to the payment of Program funds. CONTRACTOR shall submit the request to the SCAQMD in writing. Reinstatement of a withdrawn or cancelled project is at SCAQMD's discretion subject to the availability of Program funds.
8. 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.

9. RETURN OF FUNDS FOR FAILURE TO OPERATE EQUIPMENT OR SUBMIT REPORTS

- A. If CONTRACTOR fails to operate Equipment or submit the annual reports as required by the Contract, CONTRACTOR shall reimburse the SCAQMD in accordance with the reimbursement formula provided below, plus an administrative fee_(\$5,000 for each truck and TRU project, \$10,000 for each locomotive, commercial harbor craft or cargo handling equipment project, and \$250,000 for each ship at berth project):

Reimbursement Amount = Contract Value – (Elapsed Equipment Project Life x Contract Value / Equipment Project Life) + Administrative Fee

- B. Equipment Accidentally Rendered Inoperable or Stolen – CONTRACTOR may replace the inoperable or stolen Equipment with equipment certified to equal or lower emission levels, and continue with the term of the original Contract, upon the prior written consent of SCAQMD. Alternatively, CONTRACTOR may request to terminate the Contract pursuant to Clause 7.B. and remit the following amount to the SCAQMD:

Insurance reimbursement amount (minus any lien amount), or Reimbursement Amount in accordance with the reimbursement formula provided above in Clause 9.A.

- C. Contract Buy-Out – Pursuant to Clause 7.D., CONTRACTOR may request to buy out the remaining time on the Contract prior to the end of the Contract term. The Contract buy-out amount shall be the amount due to SCAQMD as calculated in Clause 9.A.

10. EQUIPMENT TRANSFER/SALE/REPLACEMENT REQUIREMENTS

- A. The rights 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. Upon SCAQMD's written consent to the assignment, sale, license or transfer of the Equipment, and 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 his or her 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.
 - C. If CONTRACTOR chooses to replace the equipment for any reason prior to the end of the equipment project life, CONTRACTOR shall notify SCAQMD in writing and receive prior consent for the transaction from SCAQMD. Prior to completing the replacement transaction, CONTRACTOR shall make the replacement truck available for inspection by SCAQMD to verify it meets Program requirements.
11. INSURANCE AND WARRANTY – CONTRACTOR must demonstrate proof of warranty and insurance as specified in the Attachment 1 for the Equipment. CONTRACTOR shall:
- A. 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. Furnish evidence to SCAQMD of automobile liability insurance with minimum coverage limits of at least equal to the replacement value of the vehicle prior to commencement of any work on this Contract. SCAQMD and CARB must be named as 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. For truck stop electrification infrastructure, electric charging or hydrogen fueling units, TRU electric infrastructure, and cryogenic infrastructure projects, provide and maintain sufficient insurance against fire, vandalism and other loss, damage, or destruction of the facilities or structures constructed pursuant to this Contract, if any. This insurance shall be issued by a company or companies admitted to transact business in the State of California. For other project categories that are not listed here, refer to Attachment 1.
 - D. 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 shall be grounds for termination for breach of Contract.
 - E. Require its subcontractors to comply with the above-mentioned insurance requirements and, except for workers compensation, to name SCAQMD and CARB as additional insureds for the above-mentioned insurance policies.
 - F. 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.
 - G. 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.**
12. INDEMNIFICATION - CONTRACTOR agrees to hold harmless, defend and indemnify SCAQMD, CARB, and their respective 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, CARB, and their 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.
13. COMPLIANCE WITH PROGRAM GUIDELINES – CONTRACTOR shall comply with the Program Guidelines, which include, but are not limited to, the following:
- A. The Program shall only fund emission reductions not otherwise 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 Equipment is certified and/or verified in accordance with Attachment 1 – Statement of Work. No payment will be made under this Contract until and unless CONTRACTOR submits the required certifications and/or verifications to SCAQMD.
 - C. No emission reductions generated by Program-funded projects may be used as marketable emission reduction credits, or to offset any emission reduction obligation of any person or entity. All emission reductions generated from the expenditure of Program funds may be used for meeting the attainment schedule contained in the applicable State Implementation Plan or California greenhouse gas reduction targets.
 - D. Any vehicle funded under this Contract may not be included in the vehicle owner's fleet compliance strategy until CARB-specified dates allow. These dates vary based on vehicle option as well as fleet size and can be found on the Goods Movement website: <http://www.arb.ca.gov/bonds/gmbond/gmbond.htm>. The retired truck(s) or the replacement truck to be purchased by the Program funds cannot be used to demonstrate compliance with the 2016 requirements.
 - E. Locomotive and trucks funded by this Program may be pre-order prior to contract execution at the equipment owner's risk, but can only be purchased once the existing equipment has been pre-inspected and the contract is signed between the equipment owner and SCAQMD.
 - F. Cargo handling equipment, TRU, and harbor craft funding categories that new equipment funded by this Program can only be purchased or ordered once the existing equipment has been pre-inspected and the contract is signed between the equipment and SCAQMD.
 - G. Ship at berth grid-based power cost may be eligible for reimbursement if ordered, installed, or paid prior to contract executions.
 - H. For heavy-duty diesel repower, replacement projects, 2-for-1 replacement projects, and 3-way transactions, the existing (old) engine(s) or replaced vehicle(s) (including frame and engine) must be physically destroyed in such a manner to eliminate the possibility of future operation in accordance with the Program Guidelines and Attachment 1 – Statement of Work. There must be no cannibalization of parts from the old engine.
 - I. In signing this Contract, CONTRACTOR certifies that the Equipment 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. CONTRACTOR also 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 shall ensure that the provisions of this clause are included in all subcontracts.
14. PROGRAM APPLICATION INCORPORATION – CONTRACTOR's Goods Movement Emission Reduction Program application in response to Solicitation #PA2016-02 issued by SCAQMD on September 8, 2015, including any additional information submitted by CONTRACTOR during the application evaluation period, is hereby incorporated by reference and made part of this Contract.
15. MAINTENANCE OF EQUIPMENT – CONTRACTOR shall ensure that the Equipment is maintained in good operating condition and in accordance with the manufacturer's specifications for the Project life, in accordance with the Program Guidelines and Attachment 1 – Statement of Work. No tampering with the Equipment is permitted.
16. INSPECTIONS
- A. A pre-Inspection must be conducted by the SCAQMD on **all** existing (old) equipment (including engines and vehicles) to verify that CONTRACTOR has met all requirements of the Program regarding eligibility of the existing equipment. This includes documentation of the following, at a minimum: 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, including, but not limited to, an SCAQMD determination that: the existing equipment is non-operational; does not match the information submitted as part of the application (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 early or extra emission reductions. 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 existing equipment has been pre-inspected and is eligible to participate in the Program.

- B. A post-Inspection shall be conducted by the SCAQMD after receipt of the invoice from the CONTRACTOR or dealer. SCAQMD must verify that CONTRACTOR has met all applicable requirements of the Program and this Contract prior to payment under this Contract. SCAQMD must, at minimum, verify that: the Project specified in the Statement of Work has/have been installed; that the Equipment is operational; and, where applicable, that the existing (old) equipment has/have been destroyed and rendered useless and there is no evidence of cannibalization of parts from the old equipment. For truck replacement projects, the post-inspection shall occur no later than 60 days after the old equipment is delivered to a certified dismantler and replacement equipment is fully operational. For truck stop and electric charging/hydrogen fueling, locomotive, cargo handling equipment, TRU, and TRU infrastructure projects, the post-inspection shall occur no later than 60 days after the equipment is fully operational.

17. RECORDS RETENTION, ON-SITE INSPECTIONS AND AUDIT

- A. CONTRACTOR agrees to the following Records Retention Period: retain all records pertaining to the Program e.g., invoices, contracts, and correspondence, for at least 2 years after equipment project life ends or 3 years after final payment, whichever is later.
- 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. REMEDIES AND ENFORCEMENT OF CONTRACT TERMS

- A. The parties agree that in addition to SCAQMD, CARB also has the authority, jointly and severally, to enforce the terms of this Contract, and that CARB is a third-party beneficiary of this Contract. 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 Program criteria and requirements as listed in the Program Guidelines.
- B. Nonperformance under this Contract includes, but is not limited to: failure to meet Contract terms and conditions; non-operational, damaged or malfunctioning Equipment; failure to operate or maintain Equipment in accordance with manufacturer's recommendations, intentional destruction of Equipment, failure to meet Project completion deadlines; failure to allow electronic monitoring device, or tampering with device or its data; misuse of direct payments to vendors; insufficient, incomplete, or faulty documentation; failure to complete a satisfactory pre-inspection; and failure to provide documentation or reports in a timely manner
- C. SCAQMD and CARB may seek any and all remedies available at law and equity for non-performance, which may include but is not limited to: recovery of all or a portion of the Program funds; other fiscal penalties based on severity of non-performance; Contract termination; a ban on participation in SCAQMD incentive programs.

19. REPORTING REQUIREMENTS - CONTRACTOR shall submit reports in accordance with Attachments 1, 1A and 1B, attached here to and made a part hereof. Non-compliance with the reporting requirements of this Contract may result in the implementation of on-site monitoring by the SCAQMD.

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

21. OTHER FUNDS - CONTRACTOR shall disclose all sources of funding and/or financial incentives, including tax credits or deductions that will be used for the Project. The disclosure shall identify the source of funds, amount of funding or value of the financial incentive, and what the funding will be used for. Failure to disclose all sources of funding and/or financial incentives for the Project may result in CONTRACTOR being disqualified from receiving any funding from the Program.

22. PAYMENT

- A. SCAQMD shall reimburse CONTRACTOR an amount not to exceed «Contract_Amount_Words» (\$«Contract_Amount») as provided in Attachment 2, Payment Schedule to this Contract, attached hereto and made a part hereof, for work performed as specified in Attachment 1 – Statement of Work. “Reimbursement” means payment of money actually spent by CONTRACTOR for the purchase and/or installation of eligible services, materials and equipment for the Project in accordance with the Program Guidelines.
- B. For truck projects, the CONTRACTOR may choose to have the payment sent directly to vendor, including vehicle or equipment dealers or manufacturers, or third party financing entities (i.e. banks or financing companies), or provide SCAQMD with proof of payment to equipment dealers or manufacturers, or third party financing entities in order to be reimbursed.
- C. For truck stop electrification projects, locomotive emission capture and control system, and ship emission capture and control system, the reimbursement of eligible cost will be based on the demonstrated use of the Program-funded equipment over the first year of operation. If the actual usage for the first year of operation is less than the projected usage, the maximum allowable reimbursement payment shall be pro-rated based on the following formula:

$$\text{Maximum Reimbursement (\$)} = \text{Original Maximum Reimbursement (\$)} \times \frac{\text{Actual usage (\# of hour)}}{\text{Projected usage (\# of Hours)}}$$

- D. The early reimbursement option is available to seaport equipment owners for ships at berth grid-based shore power projects only.
- E. Payment under this Contract will be made within thirty (30) business days after CONTRACTOR submits, and SCAQMD approves (which approval SCAQMD will not unreasonably withhold), the required itemized invoice(s) and after SCAQMD verifies that the Project has been completed according to the terms of this Contract and is fully operational as determined by the SCAQMD’s Post-Inspection, unless otherwise specified in Attachment 2. The itemized invoices must include enough detail to ensure that only eligible project costs are paid, in accordance with the Program Guidelines and Attachment 2 – Payment Schedule. 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 any other specific information required as set forth in Attachment 2 – Payment Schedule. Each invoice shall be submitted to: South Coast Air Quality Management District, Attn: Goods Movement Emission Reduction Contract Administrator, Technology Advancement, 21865 Copley Drive, Diamond Bar, CA 91765-4178.
- F. Any payments required under this Contract are contingent upon SCAQMD’s receipt of funds from CARB in the amount of the required payments.
- G. SCAQMD may de-obligate from the Contract funds that remain unexpended pursuant to the Contract upon thirty (30) days’ written notice to CONTRACTOR.

23. 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: Goods Movement Contract Administrator, Technology Advancement

CONTRACTOR: «Contractor»
«Address_Line_1»
«City», «State» «ZIP_Code»
Attn: «Contractor_Contact», «Contractor_Contact_Phone»

24. 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, contractors 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 Project's scope of work, deliverable schedule, and/or payment/cost schedule.
25. 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.
26. SECURITY INTEREST - CONTRACTOR hereby grants SCAQMD a security interest in the Equipment, which is 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 the Equipment 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 that is the subject of the Contract.** In the event the Equipment is repossessed or CONTRACTOR files for dissolution or bankruptcy protection, CONTRACTOR shall notify SCAQMD within 10 business days of such repossession or filing.
27. INTELLECTUAL PROPERTY RIGHTS - Title and full ownership rights to any intellectual property developed under this Contract shall at all times 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. 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.
1. "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 and its employees 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."
- C. CONTRACTOR shall ensure that the Program is clearly identified as a sponsor or source of funding in all of its documents, reports, brochures, advertising and other material relating to this Project.
29. 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.
30. 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.
31. 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.
32. FORCE MAJEURE - SCAQMD, CARB or CONTRACTOR 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 reasonable control of SCAQMD, CARB or CONTRACTOR.
33. 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.
34. 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.
35. DUPLICATE EXECUTION - This Contract is executed in duplicate. Each signed copy shall have the force and effect of an original.
36. 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.

37. 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 and CARB, 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.

38. TAX IMPLICATIONS FROM RECEIPT OF PROGRAM FUNDS – CONTRACTOR is advised to consult a tax attorney regarding potential tax implications from receipt of funds under the Goods Movement Emission Reduction Program, which may include receipt of a “1099G” form.

39. AMENDMENTS TO CONTRACT – This Contract shall only be amended by mutual agreement, in writing and signed by the authorized representatives of all parties.

40. DISCLAIMER OF WARRANTY – The decision to participate in the Proposition 1B Goods Movement Emission Reduction 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.

41. ENTIRE CONTRACT

- A. This Contract represents the entire Contract between the Parties. A Spanish-translated version of this Contract and its Attachments may be provided to CONTRACTOR for information purposes only. The English-language Contract and Attachments shall govern at all times, and shall be the only documents which constitute the Contract between the Parties.
- B. By executing this Contract, CONTRACTOR understands and agrees to implement the Project according to the terms of the Contract and to cooperate with the SCAQMD and CARB implementation, monitoring, enforcement and other efforts to assure the emissions benefits are real, quantifiable, excess and enforceable. 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 representatives of all the parties.

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

«CONTRACTOR»

By: _____
Barry R. Wallerstein, D.Env., Executive Officer

By: _____
Name:
Title:

Date: _____

Date: _____

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

By: _____

Prop 1B – Master Boilerplate
Updated March 1, 2016