



AB 2766/MSRC LOCAL GOVERNMENT PARTNERSHIP PROGRAM CONTRACT

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 the City of Costa Mesa (referred to here as "CONTRACTOR") whose address is 77 Fair Drive, Costa Mesa, California 92626.

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 (State). SCAQMD is authorized under State Health & Safety Code Section 44225 (AB 2766) to levy a fee on motor vehicles for the purpose of reducing air pollution from such vehicles and to implement the California Clean Air Act.
- B. Under AB 2766, SCAQMD's Governing Board has authorized the imposition of the statutorily set motor vehicle fee. By taking such action, the State's Department of Motor Vehicles (DMV) is required to collect such fee and remit it periodically to SCAQMD.
- C. AB 2766 further mandates that thirty (30) percent of such vehicle registration fees be placed by SCAQMD into a separate account for the sole purpose of implementing and monitoring programs to reduce air pollution from motor vehicles.
- D. AB 2766 creates a regional Mobile Source Air Pollution Reduction Review Committee (MSRC) to develop a work program to fund projects from the separate account. Pursuant to approval of the work program by SCAQMD's Governing Board, SCAQMD authorized this Contract with CONTRACTOR for equipment or services described in Attachment 1 - Statement of Work, expressly incorporated herein by this reference and made a part hereof of this Contract.
- E. CONTRACTOR has met the requirements for receipt of AB 2766 Discretionary Funds as set forth in CONTRACTOR's Local Government Partnership Program Application/Proposal dated August 1, 2018.
- F. 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.
- G. All parties to this Contract have had the opportunity to have this Contract reviewed by their attorney.

3. DMV FEES

CONTRACTOR acknowledges that SCAQMD cannot guarantee that the amount of fees to be collected under AB 2766 will be sufficient to fund this Contract. CONTRACTOR further acknowledges that payment under this Contract is contingent upon SCAQMD receiving sufficient funds from the DMV, and that SCAQMD assumes no responsibility for the collection and remittance of motor vehicle registration fees.

4. AUDIT AND RECORDS RETENTION

- A. CONTRACTOR shall, at least once every two years, or within two years of the termination of the Contract if the term is less than two years, be subject to an audit by SCAQMD or its authorized representative to determine if the revenues received by CONTRACTOR were spent for the reduction of pollution from motor vehicles pursuant to the Clean Air Act of 1988.
- B. CONTRACTOR agrees to maintain records related to this Contract during the Contract term and continue to retain these records for a period of two years beyond the Contract term, except that in no

case shall CONTRACTOR be required to retain more than the most recent five years' records. SCAQMD shall coordinate such audit through CONTRACTOR'S audit staff.

- C. If an amount is found to be inappropriately expended, SCAQMD may withhold funding, or seek reimbursement, from CONTRACTOR in the amount equal to the amount that was inappropriately expended. Such withholding 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.

5. TERM

The term of this Contract is for seventy eight (78) months from the date of execution by both parties, unless terminated earlier as provided for in the TERMINATION clause of this Contract, the EARLY TERMINATION clause, or the term is extended by amendment of this Contract in writing. No work shall commence prior to the Contract start date, except at CONTRACTOR's cost and risk, and no charges are authorized until this Contract is fully executed, subject to the provisions stated in the PRE-CONTRACT COSTS clause of this Contract.

6. SUCCESSORS-IN-INTEREST

This Contract, and the obligations arising under the Contract, shall be binding on and inure to the benefit of CONTRACTOR and their executors, administrators, successors, and assigns.

7. REPORTING

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.

8. TERMINATION

- A. In the event any party fails to comply with any term or condition of this Contract, or fails to provide services in the manner agreed upon by the parties, including, but not limited to, the requirements of Attachment 1 - Statement of Work, this failure shall constitute a breach of this Contract. The non-breaching party shall notify the breaching party that it must cure this breach or provide written notification of its intention to terminate this contract. Notification shall be provided in the manner set forth in the NOTICES clause of this Contract. The non-breaching party reserves all rights under law and equity to enforce this Contract and 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 and to the extent or directed otherwise by SCAQMD, discontinue any Work being performed under this Contract and cancel any of CONTRACTOR's orders for materials, facilities, and supplies in connection with such Work, and shall use its best efforts to procure termination of existing subcontracts upon terms satisfactory to 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.
- C. CONTRACTOR shall be paid in accordance with this Contract for all Work performed before the effective date of termination under section B of the TERMINATION clause of this Contract. Before expiration of the thirty (30) days' written notice, CONTRACTOR shall promptly deliver to SCAQMD all copies of documents and other information and data prepared or developed by CONTRACTOR under this Contract with the exception of a record copy of such materials, which may be retained by CONTRACTOR.

9. EARLY TERMINATION

This Contract may be terminated early due to the following circumstances: The infrastructure identified in Attachment 1, Statement of Work, becomes inoperable, and is either not technically able to be repaired, or is too costly to repair, and such failure is not caused by CONTRACTOR's negligence, misuse, or malfeasance.

10. STOP WORK

SCAQMD may, at any time, by written notice to CONTRACTOR, require CONTRACTOR to stop all or any part of the Statement of 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.

11. INSURANCE

CONTRACTOR represents that it is permissibly self-insured and will maintain such self-insurance in accordance with applicable provisions of California law throughout the term of this Contract. CONTRACTOR shall provide evidence of sufficient coverage during the term of this Contract and any extensions thereof that meet or exceed the minimum requirements set forth by the SCAQMD below. The certificate of self-insurance shall be mailed to: SCAQMD, 21865 Copley Drive, Diamond Bar, CA 91765-4178, Attention: Cynthia Ravenstein, MSRC Contracts Administrator. **The SCAQMD Contract Number must be included on the face of the certificate.** If CONTRACTOR fails to maintain the required insurance coverage, SCAQMD reserves the right to terminate the Contract or purchase such additional insurance and bill CONTRACTOR or deduct the cost thereof from any payments owed to CONTRACTOR. Minimum insurance coverages are as follows:

- A. Worker's compensation insurance in accordance with either California or other state's applicable statutory requirements.
- B. General Liability insurance with a limit of at least \$1,000,000 per occurrence, and \$2,000,000 in general aggregate.
- C. 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.

12. 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.

13. DISCLAIMER OF WARRANTY

The purchase or lease of funded vehicles/equipment is the CONTRACTOR's decision. The 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 product. Without limiting the foregoing, the SCAQMD will not be financially responsible, or otherwise liable, for the installation or performance of the vehicle/equipment.

14. PAYMENT

- A. SCAQMD shall reimburse CONTRACTOR up to a total amount of One Hundred Forty Eight Thousand Two Hundred Ten Dollars (\$148,210) in accordance with Attachment 2 - Payment Schedule expressly incorporated herein by this reference and made a part hereof of the Contract.
- B. A withhold amount or percentage (if any) shall be identified in the Payment Schedule, and such amount shall be withheld from each invoice. Upon satisfactory completion of project and final acceptance of work and the final report, CONTRACTOR's invoice for the withheld amount shall be released. Proof of project completion shall include a Final Report detailing the project goals and accomplishments, data collected during project performance, if any, documentation of significant results, and emissions reduction input data needed for calculation of emissions reductions.
- C. Any funds not expended upon early Contract termination or Contract completion shall revert to the AB 2766 Discretionary Fund. Payment of charges shall be made by SCAQMD to CONTRACTOR within thirty (30) days after approval by SCAQMD of an itemized invoice prepared and furnished by CONTRACTOR.
- D. An invoice submitted to SCAQMD for payment 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
21865 Copley Drive
Diamond Bar, CA 91765-4178
Attn: Cynthia Ravenstein, MSRC Contracts Administrator

- 1. Charges for equipment, material, and supply costs, travel expenses, subcontractors, and other charges, as applicable, must be itemized by CONTRACTOR. Reimbursement for equipment, material, supplies, subcontractors, and other charges, as applicable, shall be made at actual cost. Supporting documentation must be provided for all individual charges (with the exception of direct labor charges provided by CONTRACTOR).
- 2. SCAQMD shall pay CONTRACTOR for travel-related expenses only if such travel is expressly set forth in Attachment 2 - Payment Schedule of this Contract or pre-authorized by SCAQMD in writing.
- 3. CONTRACTOR's failure to provide receipts shall be grounds for SCAQMD's non-reimbursement of such charges. CONTRACTOR may reduce payments on invoices by those charges for which receipts were not provided.
- 4. CONTRACTOR must submit final invoice no later than ninety (90) days after the termination date of this Contract or invoice may not be paid.

15. 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.

16. MOBILE SOURCE EMISSION REDUCTION CREDITS (MSERCs)

- A. The MSRC has adopted a policy that no MSERCs resulting from AB 2766 Discretionary Funds may be generated and/or sold.
- B. CONTRACTOR has the opportunity to generate MSERCs as a by-product of the project if a portion of the air quality benefits attributable to the project resulted from funding sources other than AB2766. These MSERCs, which are issued by SCAQMD, are based upon the quantified vehicle miles traveled (VMT) by project vehicles or other activity data as appropriate. Therefore, a portion of prospective MSERCs, generated as a result of AB 2766 Funds, must be retired. The portion of prospective credits funded by the AB 2766 program, and which are subject to retirement, shall be referred to as "AB 2766-MSERCs."
- C. The determination of AB 2766-MSERC's is to be prorated based upon the AB 2766 program's contribution to the cost associated with the air quality benefits. In the case where AB 2766 Discretionary Funds are used to pay for the full differential cost of a new alternative fuel vehicle or for the retrofitting or repowering of an existing vehicle, all MSERCs attributable to AB 2766 Discretionary Funds must be retired. The determination of AB 2766-MSERCs for infrastructure and other ancillary items is to be prorated based upon the AB 2766 program's contribution to the associated air quality benefits. Determination of the project's overall cost will be on a case-by-case basis at the time an MSERC application is submitted. SCAQMD staff, at the time an MSERC application is submitted, will calculate total MSERCs and retire the AB 2766-MSERCs. CONTRACTOR would then receive the balance of the MSERCs not associated with AB 2766 funding.

17. 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: Cynthia Ravenstein, MSRC Contracts Administrator, email: cravenstein@aqmd.gov

CONTRACTOR:
City of Costa Mesa
77 Fair Dr.
Costa Mesa, CA 92626
Attn: Bobby Fouladi, email: Bobby.Fouladi@CostaMesaCA.gov

18. 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, 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.

19. 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.

20. OWNERSHIP

Title and full ownership rights to any equipment purchased under this Contract shall at all times remain with CONTRACTOR.

21. SECURITY INTEREST

CONTRACTOR hereby grants SCAQMD a security interest in any and all equipment 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 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 CONTRACTOR files for bankruptcy protection, CONTRACTOR shall notify SCAQMD within 10 business days of such filing.

22. 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, 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.

23. 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.

24. 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 Equipment, if any, 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.**

25. 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.

26. TAX IMPLICATIONS FROM RECEIPT OF MSRC FUNDS

CONTRACTOR is advised to consult a tax attorney regarding potential tax implications from receipt of MSRC funds.

27. ATTORNEYS' FEES

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

28. 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.

29. 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.

30. 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.

31. DUPLICATE EXECUTION

This Contract is executed in duplicate. Each signed copy shall have the force and effect of an original.

32. 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.

33. PRE-CONTRACT COSTS

Any costs incurred by CONTRACTOR prior to CONTRACTOR receipt of a fully executed Contract shall be incurred solely at the risk of the CONTRACTOR. In the event that this Contract is not executed, neither the MSRC nor the SCAQMD shall be liable for any amounts expended in anticipation of a fully executed Contract. If this Contract is fully executed, pre-contract cost expenditures authorized by the Contract will be reimbursed in accordance with the Payment Schedule and payment provision of the Contract.

34. CHANGE TERMS

Changes to any part of this Contract must be requested in writing by CONTRACTOR and approved by MSRC in accordance with MSRC policies and procedures. CONTRACTOR must make requests a minimum of 90 days prior to desired effective date of change. All modifications to this Contract shall be in writing and signed by the authorized representatives of the parties. Fueling station location changes shall not be approved under any circumstances.

35. PREVAILING WAGES

CONTRACTOR is alerted to the prevailing wage requirements of California Labor Code section 1770 et seq., and the compliance monitoring and enforcement of such requirements by the Department of Industrial Relations ("DIR"). CONTRACTOR and all of CONTRACTOR's subcontractors must comply with the California Public Works Contractor Registration Program and, where applicable, must be registered with the DIR to participate in public works projects. CONTRACTOR shall be responsible for determining the applicability of the provisions of California Labor Code and complying with the same, including, without limitation, obtaining from the Director of the Department of Industrial Relations the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work, making the same available to

any interested party upon request, paying any applicable prevailing rates, posting copies thereof at the job site and flowing all applicable prevailing wage rate requirements to its subcontractors. Proof of compliance with these requirements must be provided to SCAQMD upon request. CONTRACTOR shall indemnify, defend and hold harmless the South Coast Air Quality Management District against any and all claims, demands, damages, defense costs or liabilities based on failure to adhere to the above referenced statutes.

36. 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.

37. 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

CITY OF COSTA MESA

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

By: Raja SETHURAMAN
Name: RAJA SETHURAMAN
Title: PUBLIC SERVICES DIRECTOR

Date: 1/10/20

Date: 12-10-19

ATTEST:
~~Denise Garzaro~~, Clerk of the Board

By: Bayron T. Gilchrist



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

By: Meyor Jung

//MSRC Master Boilerplate
Revised April 24, 2018

CITY OF COSTA MESA

ATTEST:

By: Brenda Green
Brenda Green, City Clerk



APPROVED AS TO FORM:

By: Kimberly Hall Barlow
Kimberly Hall Barlow, City Attorney

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**Attachment 1
Statement of Work
City of Costa Mesa
Contract Number ML18162**

1. Project Elements

- A. The City of Costa Mesa (hereinafter referred to as "CONTRACTOR") is to procure three on-road, light-duty (possessing a gross vehicle weight rating less than 8,501 pounds) zero emission vehicles (battery electric or fuel cell). Hybrid vehicles do not qualify as zero emission.
- B. CONTRACTOR is also to install a total of four dual-port "Level II" type EV charging stations at their City Hall at 77 Fair Drive, Costa Mesa, California. These stations shall be accessible to the public 24 hours per day, 7 days per week. Installations must include signage with information on whom to contact in the event that users encounter malfunctions. Stations shall meet current Society of Automotive Engineers J1772 standards. This location is understood to be tentative; CONTRACTOR shall notify MSRC staff of any location changes.
- C. CONTRACTOR is also to install one "Level III/Fast Charge" type EV charging station at the location specified above. This station shall be accessible to the public 24 hours per day, 7 days per week. The installation must include signage with information on whom to contact in the event that users encounter malfunctions. This location is understood to be tentative; CONTRACTOR shall notify MSRC staff of any location changes.

CONTRACTOR shall be reimbursed according to Attachment 2 – Payment Schedule.

2. Operation Requirements and Reimbursement for Noncompliance: Light Duty Vehicles

Light-duty vehicles are required to operate for a minimum of three years. CONTRACTOR is obligated to comply with the geographical restriction requirements as follows:

- A. Each of the light-duty vehicles funded under this Contract must accrue at least 85% of its annual mileage or engine hours of operation within the geographical boundaries of the South Coast Air Quality Management District for a period of no less than three (3) years from the date the vehicle enters service (new vehicles). Should CONTRACTOR deviate from or fail to comply with this obligation, CONTRACTOR shall reimburse SCAQMD for a prorated share of the funds provided for the vehicle as indicated in the table below:

3 year Operational Availability Obligation Occurs	Termination	Percentage of MSRC Funds to be Reimbursed
Within Year 1		100%
Between Years 1-2		66%
Between Years 2-3		33%
After Year 3		0%

- B. The appropriate reimbursable amount shall be paid to SCAQMD within sixty (60) days from the date the vehicle ceases to operate in accordance with the geographical restriction.
- C. Should CONTRACTOR sell, lease, transfer, assign or otherwise divest itself of the vehicles during the three year period referred to above, notice shall be provided to SCAQMD no

**Attachment 1
Statement of Work
City of Costa Mesa
Contract Number ML18162**

less than 30 days preceding the day the sale, lease, transfer, or assignment is effectuated. The agreement effectuating the sale, lease, transfer or assignment shall state that the SCAQMD is an intended third-party beneficiary of the agreement and shall include the following requirement: the obligation to accrue mileage within the South Coast Air Quality Management District shall be a continuing obligation of the subsequent purchaser, lessee, transferee, successor in interest, heir or assign and shall remain in full force and effect until the expiration of the three year operation period. This obligation shall be passed down to any subsequent purchaser, lessee or transferee during this three year term and SCAQMD shall be an intended third-party beneficiary of any subsequent agreement. Upon receiving notice of any subsequent sale, lease, transfer, assignment or other divestiture, SCAQMD may elect to either require the reimbursement specified above, or require the subsequent purchaser, lessee, transferee or assignee to comply with the continuing obligation to operate the vehicle for a period of no less than three (3) years from the date the vehicle entered service (new vehicles). Notice of SCAQMD's election of remedies shall be provided to CONTRACTOR and any subsequent purchaser, lessee, transferee or assignee in a timely fashion.

3. Operation Requirements and Reimbursement for Noncompliance: Level II EV Charging Stations

CONTRACTOR is obligated to comply with the Operational Availability requirements set forth as follows:

- A. CONTRACTOR commits to ensuring Level II charging stations remain operational in the original location for a period of no less than three (3) years from the date the station begins operations in either its initial or expanded capacity. Should CONTRACTOR desire to deviate from this obligation, for reasons other than those stated in the EARLY TERMINATION clause of this Contract, CONTRACTOR shall reimburse SCAQMD for a prorated share of the funds provided for fueling/charging facilities as indicated in the table below:

3 year Operational Availability Obligation Termination Occurs	Percentage of MSRC Funds to be Reimbursed
Within Year 1	100%
Between Years 1-2	66%
Between Years 2-3	33%
After Year 3	0%

- B. The appropriate reimbursable amount shall be paid to SCAQMD within sixty (60) days from the date the station ceases operation. CONTRACTOR shall not be responsible for any reimbursement to SCAQMD if the obligation is terminated as a result of one or more reasons set forth in the EARLY TERMINATION clause of this Contract.

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City of Costa Mesa
Contract Number ML18162**

- C. The obligations of this section shall survive the expiration of the Contract and continue in full force and effect until the applicable operational availability period set forth above has been satisfied.

4. Operation Requirements and Reimbursement for Noncompliance: Level III/Fast Charge EV Charging Stations

CONTRACTOR is obligated to comply with the Operational Availability requirements set forth as follows:

- A. CONTRACTOR commits to ensuring Level III/Fast Charge charging stations remain operational in the original location for a period of no less than five (5) years from the date the station begins operations in either its initial or expanded capacity. Should CONTRACTOR desire to deviate from this obligation, for reasons other than those stated in the EARLY TERMINATION clause of this Contract, CONTRACTOR shall reimburse SCAQMD for a prorated share of the funds provided for fueling/charging facilities as indicated in the table below:

5 year Operational Availability Obligation Occurs	Termination	Percentage of MSRC Funds to be Reimbursed
Within Year 1		100%
Between Years 1-2		80%
Between Years 2-3		60%
Between Years 3-4		40%
Between Years 4-5		20%
After Year 5		0%

- B. The appropriate reimbursable amount shall be paid to SCAQMD within sixty (60) days from the date the station ceases operation. CONTRACTOR shall not be responsible for any reimbursement to SCAQMD if the obligation is terminated as a result of one or more reasons set forth in the EARLY TERMINATION clause of this Contract.

5. Display of MSRC Logo

CONTRACTOR agrees to permanently display one MSRC decal in a prominent location on each vehicle purchased pursuant to this Contract. Decals will be provided by SCAQMD upon notification that each subject vehicle becomes operational. Decals are approximately twelve (12) inches in height and eighteen (18) inches in width (Note: a smaller decal may be provided if CONTRACTOR demonstrates that application of the standard decal is not feasible). CONTRACTOR shall maintain the decal for the life of the equipment subject to this Contract. Should any decal become damaged, faded, or otherwise unreadable, CONTRACTOR shall request a replacement decal from SCAQMD and apply the new decal in the same or other prominent location. SCAQMD shall not be responsible for damage to paint or other surfaces arising from application or removal of decals.

**Attachment 1
Statement of Work
City of Costa Mesa
Contract Number ML18162**

6. Promotion

CONTRACTOR shall prepare and submit a proposed Public Outreach Plan to promote the MSRC's co-funding of the vehicles and EV charging stations. Acceptable outreach may include, but is not limited to, notices in CONTRACTOR mailings to residents, newspaper notices, flyers, and information items at CONTRACTOR Board meetings and community events. The Public Outreach Plan shall automatically be deemed approved 30 days following receipt by SCAQMD staff, unless SCAQMD staff notify CONTRACTOR in writing of a Public Outreach Plan deficiency. CONTRACTOR shall implement the approved Public Outreach Plan in accordance with the Project Schedule below.

7. Reports

Quarterly Reports: Until the vehicles are placed into service and the EV charging stations commence operation, CONTRACTOR shall provide quarterly progress reports that summarize the project results to date including, but not limited to: tasks completed, issues or problems encountered, resolutions implemented, and progress to date. Progress reports that do not comply will be returned to the CONTRACTOR as inadequate.

Final Report: A Final Report shall be submitted by the CONTRACTOR in the format provided by SCAQMD staff. The Final Report shall include, at a minimum: a) an executive summary; and b) a detailed discussion of the results and conclusions about this project. CONTRACTOR will identify any barriers encountered and the solutions developed to overcome the barriers, and the impact of the project on future electric vehicle projects.

8. Project Schedule

CONTRACTOR shall comply with the increments of progress identified in the following chart. The completion month for each task is based on the date of Contract execution.

Task	Completion
Submit Public Outreach Plan	Month 7
Complete EV station installations and enter into service	Month 15
Place light-duty zero emission vehicles into service	Month 15
Implement Public Outreach Plan	Month 17
Quarterly report	Quarterly beginning with Month 4
Final Report	Month 18

**Attachment 2
Payment Schedule
City of Costa Mesa
Contract Number ML18162**

Cost Breakdown

Purchase Category	Maximum AB2766 Discretionary Funds payable under this Contract	CONTRACTOR AB2766 Subvention Funds Applied	Other Funds Applied to Match	Total Cost
On-road light-duty zero emission vehicles	\$25,670	\$0	\$49,330	\$75,000
Level II EV Charging Stations – Public Access	\$68,464	\$13,968	\$8,853	\$91,285
Level III EV Charging Station – Public Access	\$54,076	\$11,032	\$6,993	\$72,101
Totals	\$148,210	\$25,000	\$65,176	<u>\$238,386</u>

No funds shall be paid out to CONTRACTOR pursuant to this Contract, until the project described in Attachment 1 is completed and proof of completion is provided to SCAQMD. If the project described in Attachment 1 is not completed and satisfactory proof of completion is not provided to SCAQMD, no monies shall be due and payable to CONTRACTOR. However, reimbursement may be made for vehicles even if charging stations are not yet complete, or vice versa. Proof of completion shall include:

- For vehicles:
 - Proof of vehicle delivery, vehicle acceptance, and placement of vehicle into service; and
 - Documentation of the specific vehicle purchased, including the year, manufacturer, engine (if applicable) and model.
- For EV charging stations:
 - Representative photos of completed stations;
 - A report signed by a responsible official certifying that the station has been completed as described in Attachment 1; and
 - Receipts for equipment and/or invoice(s) from subcontractor(s) performing the installations, if any.

If, at the completion of the Project, the expenditures are less than the Total Cost amount above, the actual amount of AB 2766 Discretionary Funds reimbursed to CONTRACTOR shall be adjusted on a prorated basis, as follows:

**Attachment 2
Payment Schedule
City of Costa Mesa
Contract Number ML18162**

- For vehicles, the amount reimbursed to CONTRACTOR shall not exceed the actual amount of AB 2766 Subvention and other funds applied after any manufacturer, federal or state rebates and incentives, up to a maximum of \$10,000 per light-duty zero emission vehicle; and
- For the EV charging stations, the amount reimbursed to CONTRACTOR shall not exceed thrice the actual amount of AB 2766 Subvention and other funds applied.

Additional AB 2766 Discretionary Match Funds will not be available to fund project cost overruns. Any project cost overruns must be funded from other than AB 2766 Discretionary Funds.