



Engine Re-Power Incentives for Off-Road Heavy Duty Vehicles & Equipment

Program Announcement

PA2011-15

April 1, 2011

SECTION 1 - INTRODUCTION

The Mobile Source Air Pollution Reduction Review Committee (MSRC) is pleased to announce a new **Clean Transportation Funding™** program to encourage owners of existing off-road heavy-duty vehicles and equipment to re-power their vehicles with new, lower-emitting engines.

This Program Announcement offers incentives to equipment owners in the South Coast Air Quality Management District (SCAQMD) who re-power their existing vehicles with new diesel or alternative fuel engines that are certified at US EPA **Tier 4 Interim** or cleaner emission standards. The following Sections describe eligibility requirements to participate in this incentive program, as well as guidelines for application preparation. Also, MSRC staff members are available to answer questions and provide technical guidance as appropriate during the entire application preparation period. Please refer to Section 6 of this document for a list of MSRC Staff contacts.

SECTION 2 – ELIGIBLE ENGINES & INCENTIVE LEVELS

1. **Eligible Engines** - The MSRC's Off-road Heavy-duty Engine Re-Power Program offers eligible participants incentives for the re-power of existing heavy-duty vehicles and equipment with new engines that meet US EPA Tier 4 Interim or cleaner emission standards. Both diesel and alternative fuel engines that meet Tier 4 Interim or cleaner emission levels qualify under this Program Announcement.
2. **Incentive Level** - The total amount of 2011 MSRC **Clean Transportation Funding™** allocated for this Program is \$3.5M. The incentive level for the re-power of existing off-road vehicles and equipment with a qualifying Tier 4 Interim or cleaner engine has been set at the actual incremental cost of the new engine and installation, not to exceed a maximum of \$50,000 per qualifying vehicle. For the purpose of this Program Announcement, "Incremental Cost" is defined as the cost to purchase the new engine and perform the re-power, minus any funding contributions from other Federal, State, or Local public agencies. This includes, but is not limited to, funding from the South Coast AQMD, State of California Prop 1B or Prop 118, and Federal CMAQ, stimulus funding, DERA funding, etc.

Funding is available on a first-come, first-served basis to applicants proposing qualifying projects. For the purpose of this Program, all qualified project applications received on or before 5:00 p.m. on the first day of the Application Acceptance Period, May 3, 2011, will be deemed received at the same time. In the event the Program is oversubscribed following receipt of first-day applications, MSRC funds will be distributed on a pro rata share basis to qualified project applications. Please note that the Geographic Funding Minimums discussed below will take precedence in the event funding must be pro-rated. Qualifying applications received after 5:00 p.m. on May 3, 2011 will be funded in the order of receipt.

In the event meritorious project applications be received totaling greater than the current funding allocation of \$3.5M, the MSRC reserves the right to increase the amount of total funding available. Please note that as MSRC funding is limited, the availability of funding cannot be guaranteed. In contrast, if total requests are less than the amount currently allocated, or if applications are deemed non-meritorious, the MSRC reserves the right to reduce the total funding available and reallocate funds to other Work Program categories.

Please note that the source of MSRC **Clean Transportation Funding™** for projects submitted in response to this solicitation is motor vehicle registration fees collected by the California Department of Motor Vehicles (DMV) in accordance with the California Health and Safety Code. Thus, the availability of MSRC **Clean Transportation Funding™** is contingent upon the timely receipt of funds from the DMV. Neither the MSRC nor South Coast AQMD can guarantee the collection or remittance of registration fees by the DMV.

SECTION 3 – PARTICIPATION REQUIREMENTS & PROGRAM GUIDELINES

1. **Eligible Vehicles & Equipment for Re-Power** – Vehicles and equipment proposed for re-power must meet the following eligibility requirements. The existing vehicle must be equipped with a model year 2005 or older engine with a horsepower rating of 150 or greater.

Off-road motor vehicles include a wide variety of self-propelled construction and material handling equipment that include, but are not limited to, the following:

- Off-Highway Trucks
- Road Graders
- Earth Movers
- Bull Dozers
- Tractors
- Large, Diesel-Fueled Forklifts

Not all off-road equipment qualifies as an off-road motor vehicle as defined by the California Vehicle Code. The following heavy-duty equipment is *not* classified as motor vehicles and therefore not eligible to receive MSRC funding:

- Locomotives
- Aircraft
- Refrigeration Units
- Auxiliary Generators
- Marine Vessels
- Cranes

2. **In-District Vehicle Operations Requirement** – Each vehicle must accrue at least 85% of its annual mileage or engine hours of operation within the geographical boundaries of the South Coast AQMD. If the proposed vehicle does not satisfy this requirement, the maximum incentive amount available from the MSRC will be discounted. The discounted value shall equal the percentage of annual vehicle miles or vehicle hours of operation accrued in the SCAQMD jurisdiction multiplied by the maximum award amount the vehicle would have been eligible for had 100% of operations accrued within the SCAQMD;
3. **Eligible Applicants** – Entities that own and operate heavy-duty off-road vehicles within the geographical jurisdiction of the South Coast AQMD are eligible to participate in the Program. Although applications may be prepared and submitted by a third party on behalf of an eligible vehicle owner, the contract signatory and MSRC funding recipient must be the owner of the vehicle utilizing the Tier 4 Interim or cleaner engine;
5. **Geographic Funding Minimum** – The MSRC has established a Geographical Funding Minimum for each county within the AQMD. The geographical funding minimum amount has been set at \$437,500 per county. This funding set-aside guarantees a minimum level of funding for each county to participate in this program. At the end of the application submittal period, June 30, 2011, if any county has funds remaining in its geographical minimum, these funds will be made available to qualifying projects from any other county in order of receipt;
6. **Maximum Funding** – To ensure broad-based participation, the maximum total funding award to any entity under this solicitation shall not exceed 30% of the total Available Funding. This maximum funding

restriction can be waived by the MSRC in the event the MSRC does not receive meritorious Applications from other bidders that meet or exceed 70% of the total available funds or if the MSRC allocates additional funds to the program. The MSRC reserves the right to determine which projects, if any, are deemed meritorious and warrant a **Clean Transportation Funding™** award.

7. **Funding Restrictions** – The following funding restrictions have been imposed by the MSRC:

- Incentives received from the South Coast AQMD Carl Moyer Program may not be comingled with Clean Transportation Funding from the MSRC for the purpose of re-powering a vehicle;
- MSRC funds must be applied towards the capital purchase and installation costs of a qualifying engine only. Under no circumstances shall MSRC funds be applied towards the purchase of fuel, or used to offset vehicle operations or maintenance costs.

8. **Earliest Date for an MSRC-Funded Project to Commence** – The release date of this Program Announcement, April 1, 2011, is the earliest date work on a project can commence and be potentially eligible for MSRC funding. Any expenditures made in anticipation of an award and prior to execution of a contract are solely at the proposer's risk. If no contract is executed, neither the MSRC nor South Coast AQMD are liable for payment of any funds expended in anticipation of a contract. Please note that in the event a contract is executed, reimbursement for any costs incurred by the proposer in anticipation of the contract is at the discretion of the MSRC and South Coast AQMD.

9. **Additional Conditions on MSRC Funding**

- The existing vehicle engine must be scrapped following the re-power;
- MSRC funds will be distributed on a reimbursement basis only upon completion of approved project tasks and submission of all required reports and invoices;
- Recipients of MSRC **Clean Transportation Funding™** must guarantee that projects implemented under this Program will remain operational and in the geographical jurisdiction of the South Coast AQMD for a period of no less than five (5) years from the date an MSRC co-funded vehicle enters service;
- MSRC funds are not intended to fund staff salaries or administrative costs;
- The purchase of engines under this Program Announcement must not be required by, or in fulfillment of, any local or state law, rule, or regulation. Please note that entities are eligible to participate and receive MSRC incentives if the proposed engine(s) are certified by CARB to an emission standard stricter than that required by any applicable local or state law, rule, or regulation and thus go "above and beyond" mandated requirements;
- Finally, in accordance with state law, all projects awarded MSRC **Clean Transportation Funding™** are subject to audit. The provisions of the audit are discussed in the Sample Contract, included as Section 9 of this document. It is highly recommended that bidders employ standard accounting practices when administering their MSRC co-funded project.

SECTION 4 - SCHEDULE OF EVENTS

The Heavy-Duty Off-road Engine Re-Power Program will be conducted in accordance with the timeline illustrated in Table 4-1, below. Applications may be submitted during the approximately seven-week period commencing May 3, 2011 and ending June 30, 2011. *Please note that applications must be received no later than 5:00 p.m. on June 30, 2011. Late applications will not be evaluated and will not be eligible for MSRC funding.*

Table 4-1 - Key Off-road Engine Re-Power Program Dates

Program Event	Date
Program Announcement Release	April 1, 2011
First Date to Submit Application	May 3, 2011
Latest Date/Time for Application Submission	June 30, 2011 @ 5:00 p.m.

SECTION 5 - APPLICATION PREPARATION & SUBMITTAL INSTRUCTIONS

An application must be submitted in order to participate in the Off-road Engine Re-Power Program. The following instructions are intended to assist the applicant in preparing an application for funding consideration.

A. APPLICATION PREPARATION INSTRUCTIONS

- Cover Letter** - Transmittal of the application must specify the subject of the application, the Program Announcement number, and applicant's name, address, and telephone/fax number. The letter shall specify contact person(s) for technical and contractual matters, and be signed by the person(s) authorized to contractually bind the bidding entity. For joint applications (from more than one entity) the bidder must include a statement confirming authorization to act on behalf of other co-bidders. The bidder must include a letter of support or memorandum of understanding, including project contact name, telephone and fax number, from all proposing entities of a joint application.
- Application Attachments** - In an effort to reduce the paperwork burden on applicants, a template based application format has been provided for the Off-road Engine Re-Power Program applications. The template forms are designed to be self-explanatory and should prove straightforward to complete. The Forms are included as **Attachment A** to this Program Announcement. Questions should be directed to the appropriate MSRC staff representative listed in Section 6.
- Conflict of Interest** - Address possible conflicts of interest with other clients affected by actions performed by the firm on behalf of the MSRC. Although the bidder will not be automatically disqualified by reason of work performed for such firms, the MSRC reserves the right to consider the nature and extent of such work in evaluating the application. AS PART OF YOUR APPLICATION, CERTIFY THAT YOU ARE A LEGAL ENTITY CAPABLE OF ENTERING INTO CONTRACTS WITHIN THE STATE OF CALIFORNIA.
- Certifications** – All applicants must complete and submit the following forms, located in Section 9, as an element of their Application (unless specifically exempted below):
 - Internal Revenue Service Form W-9 – Request for Taxpayer Identification Number and Certification. If you are selected for an award, you cannot be established as a vendor without this information.
 - Disadvantaged Business Certification. The AQMD needs this information for their vendor database. IT WILL NOT BE CONSIDERED IN THE DETERMINATION OF YOUR MSRC AWARD. Governmental entities do not need to complete this form.
- Certificates of Insurance** - Bidders are required to provide a statement that upon notification of award, a certificate(s) of insurance naming the SCAQMD as an additional insured will be provided within forty-five

(45) days. Entities that are self-insured are required to provide a statement to that effect in their application.

B. APPLICATION SUBMITTAL INSTRUCTIONS

1. **Signature** - Application Cover Letters must be signed by an authorized representative of the bidder.
2. **Due Date** - Applicants must submit one (1) original Application and three (3) copies (total of four) in a sealed envelope, marked in the upper left-hand corner with the name and address of the applicant and the words "PA2011-15, Off-road Engine Re-Power Program". The original Application should be submitted on white, 8 ½" x 11" recycled paper. When possible, any plans, diagrams, etc. should be affixed to standard size paper to facilitate reproduction. The last date and time to submit is **June 30, 2011 at 5:00 p.m.** All Applications should be directed to:

Procurement Unit
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

In addition to the paper Application, applicants must also submit an electronic copy of their Application in either PDF format or Microsoft Word. This may be provided via e-mail or CD-ROM. E-mailed electronic Application copies should be sent to either cynthia@cleantransportationfunding.org or ray@cleantransportationfunding.org; CD-ROM disks should be sent in care of the Procurement Unit at the street address listed above.

Please note that the Application is only deemed "received" when the four (4) complete paper copies are submitted in accordance with the above instructions - submittal of an electronic Application only does not constitute receipt by the AQMD. In addition, please note that faxed Applications will not be accepted.

3. **Addenda** - The MSRC may issue supplementary information or guidelines relative to this RFP during the application preparation period of April 1, 2011 to June 30, 2011.
4. **Grounds for Rejection** - An application may be immediately rejected if:
 - It is received at any time after the exact date and time set for receipt of applications;
 - It is not prepared in the format described; or
 - It is not signed by an individual authorized to represent the proposing entity.
5. **Disposition of Applications** - The MSRC reserves the right to reject any or all applications. All responses become the property of MSRC. One copy of the application shall be retained for AQMD files. Additional copies and materials will be returned only if requested and at the applicant's expense.
6. **Modification or Withdrawal** - Once submitted, applications cannot be altered without the prior written consent of MSRC. All applications shall constitute firm offers and may not be withdrawn for a period of ninety (90) days following the last day to accept applications.

SECTION 6 - IF YOU NEED HELP...

This Program Announcement can be obtained by accessing the MSRC web site at www.cleantransportationfunding.org. MSRC staff members are available to answer questions during the Application acceptance period. In order to help expedite assistance, please direct your inquiries to the applicable staff person, as follows:

- For **General and Administrative Assistance**, please contact:
Cynthia Ravenstein
MSRC Program Administrator
Phone: 909-396-3269
Fax: 909-396-3682
E-mail: cynthia@cleantransportationfunding.org
- For **Technical Assistance**, please contact:
Ray Gorski
MSRC Technical Advisor
Phone: 909-396-2479
Fax: 909-396-3682
E-mail: ray@cleantransportationfunding.org
- For **Contractual Assistance**, please contact:
Dean Hughbanks
AQMD Procurement Manager
Phone: 909-396-2808
E-mail: dhughbanks@aqmd.gov

SECTION 7 - APPLICATION EVALUATION & APPROVAL PROCESS

Applications will be evaluated in order of receipt. An Application is deemed “received” when it has been screened by members of the MSRC staff or MSRC-TAC and deemed complete. Only complete Applications will receive further evaluation and consideration of a potential MSRC **Clean Transportation Funding™** award.

Applications deemed complete will be forwarded to an Evaluation Subcommittee comprised of members of the MSRC Technical Advisory Committee (MSRC-TAC). Candidate vehicles will be evaluated individually against the requirements established by the MSRC and discussed in Sections 2 and 3, above. Applications that, in the opinion of the MSRC and their Technical Advisory Committee, adequately satisfy the objectives delineated in this Program Announcement will be considered for a funding award. Upon receipt of final MSRC and AQMD Governing Board approval, the MSRC Staff will prepare a contract for execution by the applicant. The time period from AQMD Governing Board approval to contract execution is anticipated to be approximately one-hundred twenty (120) days.

Applications deemed unsatisfactory or insufficient during either initial screening or MSRC-TAC Subcommittee evaluation will be returned to the Applicant with an explanation of corrective actions required. Any returned Applications will lose their original submittal date and, if resubmitted, will be issued a new date. The MSRC retains sole discretion as to which Applications, if any, are deemed meritorious and deserving of an award of **Clean Transportation Funding™**. In addition, the MSRC reserves the right to award funding in an amount less than the Applicant’s requested amount. Applications deemed incomplete, or complete but non-meritorious, will not be funded under any circumstances.

SECTION 8 - APPLICATION ATTACHMENTS

ATTACHMENT A: APPLICATION FORMS

FORM 1: APPLICATION SUMMARY INFORMATION

A. Please provide the following applicant information in the space provided:

Business Name	
Division of:	
Subsidiary of:	
Website Address	
Type of Business	

Address			
City/Town			
State/Province		Zip	
Phone	() - Ext	Fax	() -
Contact		Title	
E-mail Address			
Payment Name if Different			

B. Funding Request Summary:

MSRC Clean Transportation Funding™ Requested: \$_____

Existing or Anticipated AQMD Funding Applied to Project: \$_____

Other Co-Funding Applied to Project: \$_____

Total Project Cost: \$_____

FORM 2: VEHICLE INFORMATION

RE-POWER OF EXISTING HEAVY-DUTY OFF-ROAD VEHICLES: Please provide the requested information for each EXISTING VEHICLE/EQUIPMENT proposed for re-power with a qualifying TIER 4 INTERIM or cleaner heavy-duty engine:

Quantity of this Type of Vehicle to be Re-powered	
Vehicle Manufacturer & Model	
Model Year	
Existing Engine Manufacturer & Model	
Existing Engine Model Year	
Existing Engine Horsepower	
Existing Engine Certification Level	
Replacement Engine Manufacturer & Model	
Replacement Engine Model Year	
Replacement Engine Fuel Type (Diesel, CNG, etc.)	
Replacement Engine Certification Level (Tier 4 interim, Tier 4)	
Estimated Annual Hours of Operation	
Estimated Annual Fuel Consumption	
Percent of Vehicle Operation within SCAQMD	
Estimated Vehicle Life	
Estimated Cost to Purchase and Install Replacement Engine	
Estimated Cost to Rebuild Existing Vehicle Engine	
Funding from Other Public Agencies (FTA, CMAQ, SCAQMD, etc.)	
Funding Requested Per Vehicle (\$50,000 per vehicle maximum)	

FORM 3: PROJECT IMPLEMENTATION SCHEDULE

Please provide, either in the space outlined below or separate attached sheet, a Milestone Schedule for your proposed heavy-duty vehicle project. Milestones may include, but are not limited to, project kickoff meetings, procurement timelines, projected vehicle delivery dates, acceptance testing, progress reports, interim reports, final reports, and project review meetings.

PROJECT MILESTONE	START DATE	COMPLETION
<i>Example: Task 1 – Order Vehicles</i>	<i>Authority to Proceed (ATP) + one month</i>	<i>ATP + 6 months</i>

SECTION 9 – CERTIFICATIONS

Form W-9 (Rev. January 2005) Department of the Treasury Internal Revenue Service	Request for Taxpayer Identification Number and Certification	Give form to the requester. Do not send to the IRS.
Print or type see Specific Instructions on page 2.	Name (as shown on your income tax return)	
	Business name, if different from above	
	Check appropriate box: <input type="checkbox"/> Individual/ Sole proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Other ▶ _____	
	<input type="checkbox"/> Exempt from backup withholding	
	Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
	City, state, and ZIP code	
List account number(s) here (optional)		

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number
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Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. person (including a U.S. resident alien).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the instructions on page 4.)

Sign Here	Signature of U.S. person ▶	Date ▶
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Purpose of Form

A person who is required to file an information return with the IRS, must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

U.S. person. Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

For federal tax purposes you are considered a person if you are:

- An individual who is a citizen or resident of the United States,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States, or

- Any estate (other than a foreign estate) or trust. See Regulations sections 301.7701-6(a) and 7(a) for additional information.

Foreign person. If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the recipient has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

- The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
- The treaty article addressing the income.
- The article number (or location) in the tax treaty that contains the saving clause and its exceptions.

4. The type and amount of income that qualifies for the exemption from tax.

5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments (after December 31, 2002). This is called "backup withholding." Payments that may be subject to backup withholding include interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester, or
2. You do not certify your TIN when required (see the Part II instructions on page 4 for details), or
3. The IRS tells the requester that you furnished an incorrect TIN, or
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate Instructions for the Requester of Form W-9.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Name

If you are an individual, you must generally enter the name shown on your social security card. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

Sole proprietor. Enter your individual name as shown on your social security card on the "Name" line. You may enter your business, trade, or "doing business as (DBA)" name on the "Business name" line.

Limited liability company (LLC). If you are a single-member LLC (including a foreign LLC with a domestic owner) that is disregarded as an entity separate from its owner under Treasury regulations section 301.7701-3, enter the owner's name on the "Name" line. Enter the LLC's name on the "Business name" line. Check the appropriate box for your filing status (sole proprietor, corporation, etc.), then check the box for "Other" and enter "LLC" in the space provided.

Other entities. Enter your business name as shown on required Federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name" line.

Note. You are requested to check the appropriate box for your status (individual/sole proprietor, corporation, etc.).

Exempt From Backup Withholding

If you are exempt, enter your name as described above and check the appropriate box for your status, then check the "Exempt from backup withholding" box in the line following the business name, sign and date the form.

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

Note. If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

Exempt payees. Backup withholding is not required on any payments made to the following payees:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2),
2. The United States or any of its agencies or instrumentalities,
3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities,
4. A foreign government or any of its political subdivisions, agencies, or instrumentalities, or
5. An international organization or any of its agencies or instrumentalities.

Other payees that may be exempt from backup withholding include:

6. A corporation,

7. A foreign central bank of issue,
8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States,
9. A futures commission merchant registered with the Commodity Futures Trading Commission,
10. A real estate investment trust,
11. An entity registered at all times during the tax year under the Investment Company Act of 1940,
12. A common trust fund operated by a bank under section 584(a),
13. A financial institution,
14. A middleman known in the investment community as a nominee or custodian, or
15. A trust exempt from tax under section 664 or described in section 4947.

The chart below shows types of payments that may be exempt from backup withholding. The chart applies to the exempt recipients listed above, 1 through 15.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt recipients except for 9
Broker transactions	Exempt recipients 1 through 13. Also, a person registered under the Investment Advisers Act of 1940 who regularly acts as a broker
Barter exchange transactions and patronage dividends	Exempt recipients 1 through 5
Payments over \$600 required to be reported and direct sales over \$5,000 ¹	Generally, exempt recipients 1 through 7 ²

¹See Form 1099-MISC, Miscellaneous Income, and its instructions.

²However, the following payments made to a corporation (including gross proceeds paid to an attorney under section 6045(f), even if the attorney is a corporation) and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees; and payments for services paid by a Federal executive agency.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-owner LLC that is disregarded as an entity separate from its owner (see *Limited liability company (LLC)* on page 2), enter your SSN (or EIN, if you have one). If the LLC is a corporation, partnership, etc., enter the entity's EIN.

Note. See the chart on page 4 for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form online at www.socialsecurity.gov/online/ss-5.pdf. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at www.irs.gov/businesses/ and clicking on Employer ID Numbers under Related Topics. You can get Forms W-7 and SS-4 from the IRS by visiting www.irs.gov or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note. Writing "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 4, and 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). Exempt recipients, see *Exempt From Backup Withholding* on page 2.

Signature requirements. Complete the certification as indicated in 1 through 5 below.

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983. You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions. You must sign the certification. You may cross out item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account ¹
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor ²
4. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee ¹
b. So-called trust account that is not a legal or valid trust under state law	The actual owner ¹
5. Sole proprietorship or single-owner LLC	The owner ³
For this type of account:	Give name and EIN of:
6. Sole proprietorship or single-owner LLC	The owner ³
7. A valid trust, estate, or pension trust	Legal entity ⁴
8. Corporate or LLC electing corporate status on Form 8832	The corporation
9. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
10. Partnership or multi-member LLC	The partnership
11. A broker or registered nominee	The broker or nominee
12. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity

¹ List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

² Circle the minor's name and furnish the minor's SSN.

³ You must show your individual name and you may also enter your business or "DBA" name on the second name line. You may use either your SSN or EIN (if you have one). If you are a sole proprietor, IRS encourages you to use your SSN.

⁴ List first and circle the name of the legal trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.)

Note. If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons who must file information returns with the IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA, or Archer MSA or HSA. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. The IRS may also provide this information to the Department of Justice for civil and criminal litigation, and to cities, states, and the District of Columbia to carry out their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

You must provide your TIN whether or not you are required to file a tax return. Payers must generally withhold 28% of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to a payer. Certain penalties may also apply.

DISADVANTAGED BUSINESS CERTIFICATION

Federal guidance for utilization of disadvantaged business enterprises allows a vendor to be deemed a small business enterprise (SBE), minority business enterprise (MBE) or women business enterprise (WBE) if it meets the criteria below.

- is certified by the Small Business Administration or
- is certified by a state or federal agency or
- is an independent MBE(s) or WBE(s) business concern which is at least 51 percent owned and controlled by minority group member(s) who are citizens of the United States.

Following state guidance, a vendor may be deemed a disabled veteran business enterprise (DVBE) if it meets the following:

- is an independent business concern which is at least 51 percent owned and controlled by disabled veteran(s), and the home office is located in the U.S.

Statements of certification:

As a prime contractor to the SCAQMD, _____ (name of business) will engage in good faith efforts to achieve the fair share in accordance with 40 CFR Section 31.36(e), and will follow the six affirmative steps listed below **for contracts or purchase orders funded in whole or in part by federal grants and contracts.**

1. Place qualified SBEs, MBEs, and WBEs on solicitation lists.
2. Assure that SBEs, MBEs, and WBEs are solicited whenever possible.
3. When economically feasible, divide total requirements into small tasks or quantities to permit greater participation by SBEs, MBEs, and WBEs.
4. Establish delivery schedules, if possible, to encourage participation by SBEs, MBEs, and WBEs.
5. Use services of Small Business Administration, Minority Business Development Agency of the Department of Commerce, and/or any agency authorized as a clearinghouse for SBEs, MBEs, and WBEs.
6. If subcontracts are to be let, take the above affirmative steps.

(a) Self-Certification Verification:

Check all that apply:

- | | |
|---|---|
| <input type="checkbox"/> Small business enterprise | <input type="checkbox"/> Women-owned business enterprise |
| <input type="checkbox"/> Local business | <input type="checkbox"/> Disabled veteran-owned business enterprise |
| <input type="checkbox"/> Minority-owned business enterprise | |

Percent of ownership: _____ %

Name of Qualifying Owner(s): _____

I, the undersigned, hereby declare that to the best of my knowledge the above information is accurate. Upon penalty of perjury, I certify information submitted is factual.

_____	_____
B. NAME	TITLE
_____	_____
C. TELEPHONE NUMBER	DATE

(a) *Definitions*

Disabled Veteran-Owned Business Enterprise means a business that meets all of the following criteria:

- is a sole proprietorship or partnership of which is at least 51 percent owned by one or more disabled veterans, or in the case of any business whose stock is publicly held, at least 51 percent of the stock is owned by one or more disabled veterans; a subsidiary which is wholly owned by a parent corporation but only if at least 51 percent of the voting stock of the parent corporation is owned by one or more disabled veterans; or a joint venture in which at least 51 percent of the joint venture's management and control and earnings are held by one or more disabled veterans.
- the management and control of the daily business operations are by one or more disabled veterans. The disabled veterans who exercise management and control are not required to be the same disabled veterans as the owners of the business.
- is a sole proprietorship, corporation, partnership, or joint venture with its primary headquarters office located in the United States and which is not a branch or subsidiary of a foreign corporation, firm, or other foreign-based business.

Joint Venture means that one party to the joint venture is a MBE/WBE/DVBE and owns at least 51 percent of the joint venture. In the case of a joint venture formed for a single project this means that MBE/WBE/DVBE will receive at least 51 percent of the project dollars.

Local Business means a business that meets all of the following criteria:

- has an ongoing business within the boundary of the SCAQMD at the time of bid proposal.
- performs 90 percent of the work within SCAQMD's jurisdiction.

Minority-Owned Business Enterprise means a business that meets all of the following criteria:

- is at least 51 percent owned by one or more minority persons or in the case of any business whose stock is publicly held, at least 51 percent of the stock is owned by one or more minority persons.
- is a business whose management and daily business operations are controlled or owned by one or more minority person.
- is a business which is a sole proprietorship, corporation, partnership, joint venture, an association, or a cooperative with its primary headquarters office located in the United States, which is not a branch or subsidiary of a foreign corporation, foreign firm, or other foreign business.

"Minority" person means a Black American, Hispanic American, Native American (including American Indian, Eskimo, Aleut, and Native Hawaiian), Asian-Indian American (including a person whose origins are from India, Pakistan, or Bangladesh), Asian-Pacific American (including a person whose origins are from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the United States Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, or Taiwan).

Small Business Enterprise means a business that meets all of the following criteria:

- is any business enterprise including its affiliates located inside the United States that is organized for profit, pays U.S. taxes, and/or uses American products, materials, and/or labor, etc.
- is independently owned and operated
- is not dominant in the field of operation
- is qualified as a small business under the criteria and size standards set forth in 13 CFR 121

Women-Owned Business Enterprise means a business that meets all of the following criteria:

- is at least 51 percent owned by one or more women or in the case of any business whose stock is publicly held, at least 51 percent of the stock is owned by one or more women.
- is a business whose management and daily business operations are controlled or owned by one or more women.

is a business which is a sole proprietorship, corporation, partnership, or a joint venture, with its primary headquarters office located in the United States, which is not a branch or subsidiary of a foreign corporation, foreign firm, or other foreign business.

SECTION 10 – SAMPLE CONTRACT



South Coast Air Quality Management District



AB 2766/MSRC OFF-ROAD ENGINE REPOWER PROGRAM CONTRACT

1. **PARTIES** - The parties to this Contract are the South Coast Air Quality Management District (hereinafter referred to as "AQMD") whose address is 21865 Copley Drive, Diamond Bar, California 91765-4178, and *** (hereinafter referred to as "CONTRACTOR") whose address is ***.
2. **RECITALS**
 - A. AQMD is the local agency with primary responsibility for regulating stationary source air pollution in the South Coast Air Basin in the State of California (State). AQMD is authorized under State Health & Safety Code Section 44225 (Assembly Bill (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 the AQMD'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 AQMD.
 - C. AB 2766 further mandates that thirty (30) percent of such vehicle registration fees be placed by AQMD 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 AQMD'S Governing Board, AQMD Board authorized a contract with CONTRACTOR for services described in Attachment 1 - Statement of Work, expressly incorporated herein by this reference and made a part hereof of this Contract. CONTRACTOR warrants that it is well qualified, experienced, and has the expertise to provide such services on the terms set forth here.
3. **DMV FEES** - CONTRACTOR acknowledges that AQMD cannot guarantee the amount of fees to be collected under AB 2766 will be sufficient to fund this Contract. CONTRACTOR further acknowledges that AQMD'S receipt of funds is contingent on the timely remittance by State's DMV. AQMD assumes no responsibility for the collection and remittance of motor vehicle registration fees by DMV to AQMD in a timely manner.
4. **AUDIT** - Additionally, 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 AQMD 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. AQMD shall coordinate such audit through CONTRACTOR'S audit staff. If an amount is found to be inappropriately expended, AQMD may withhold revenue from CONTRACTOR in the amount equal to the amount

which was inappropriately expended. Such withholding shall not be construed as AQMD'S sole remedy and shall not relieve CONTRACTOR of its obligation to perform under the terms of this Contract.

5. REPORTING - CONTRACTOR shall submit reports to AQMD as outlined in Attachment 1 - Statement of Work. AQMD reserves the right to review, comment, and request changes to any report produced as a result of this Contract.
6. TERM - The term of this Contract is from the date of execution by both parties to ***, unless terminated earlier as provided for in Clause 7 below entitled Termination, or extended by modification 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. Upon written request and with adequate justification from CONTRACTOR, the MSRC Contracts Administrator may extend the Contract up to an additional twelve months at no additional cost. Term extensions greater than twelve months must be reviewed and approved by the MSRC.
7. TERMINATION - In the event any party fails to comply with any term or condition of this Contract, or fails to provide the services in the manner agreed upon by the parties, including, but not limited to, the requirements of Attachments 1 and 3, this shall constitute a material breach of the Contract. The non-breaching party shall have the sole and exclusive option either to notify the breaching party that it must cure this breach within fifteen (15) days or provide written notification of its intention to terminate this Contract with thirty (30) day's written notice. Notification shall be provided in the manner set forth in Clause 16 below, entitled - "Notices." Termination shall not be the exclusive remedy of the non-breaching party. The non-breaching party reserves the right to seek any and all remedies provided by law. AQMD reserves the right to terminate this Contract at any time for non-breach, and for the convenience of AQMD for any reason judged sufficient by AQMD. AQMD will reimburse CONTRACTOR for actual costs incurred (not to exceed the total Contract value), including all noncancellable commitments incurred in performance of this Contract through the effective date of termination for any reason other than breach.
8. EARLY TERMINATION – This Contract may be terminated early if the vehicle(s) become inoperable through mechanical failure of components or systems directly related to the lower-emission engine being utilized, and such failure is not caused by CONTRACTOR'S negligence, misuse, or malfeasance.
9. INSURANCE
 - A. CONTRACTOR shall furnish evidence to AQMD 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 AQMD 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. AQMD shall 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 AQMD.

- C. CONTRACTOR shall furnish evidence to AQMD 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. AQMD shall 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 AQMD.
- D. If CONTRACTOR fails to maintain the required insurance coverage set forth above, AQMD 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: AQMD Risk Management, 21865 Copley Drive, Diamond Bar, CA 91765-4178. **The AQMD Contract Number must be included on the face of the certificate.**
- F. 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 shall be grounds for termination for breach of Contract.

(Use above clause or Self Insurance clause below)-Remove before printing

Self Insurance Clause:

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 South Coast AQMD below. CONTRACTOR shall furnish certificate of self-insurance to: South Coast Air Quality Management District, Attn: Risk Management Office. **The AQMD Contract Number shall be included on the face of the certificate.** If CONTRACTOR fails to maintain the required insurance coverage, AQMD 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.
10. INDEMNIFICATION - CONTRACTOR agrees to hold harmless, defend, and indemnify, AQMD, its officers, employees, agents, representatives, and successors-in-interest against any and all loss, damage, cost, or expenses which AQMD, its officers, employees, agents, representatives, and successors-in-interest may incur or be required to pay by reason of any injury or property damage caused or incurred by CONTRACTOR, its employees, subcontractors, or agents in the performance of this Contract.

11. PAYMENT

- A. AQMD shall reimburse CONTRACTOR up to a total amount of *** Dollars (\$***) in accordance with Attachment 2 - Payment Schedule, expressly incorporated herein by this reference and made a part hereof of this Contract. 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 AQMD to CONTRACTOR within thirty (30) days after approval by AQMD of an itemized invoice prepared and furnished by CONTRACTOR, referencing the task completed or a percent of work accomplished and detailing line item expenditures as listed in Attachment 2 - Payment Schedule, and the amount of charge claimed.
- B. An invoice submitted to AQMD for payment must be prepared in duplicate, on company letterhead, and list AQMD'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 Contract Administrator
- C. AQMD'S payment of invoices shall be subject to the following limitations and requirements:
 - 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 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. CONTRACTOR'S failure to provide receipts shall be grounds for AQMD'S non-reimbursement of such charges. AQMD may reduce payments on invoices by those charges for which receipts were not provided.
- D. AQMD 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 AQMD in writing.
- E. CONTRACTOR must submit final invoice no later than ninety (90) days after the termination date of this Contract or invoice may not be paid.
- F. An amount equal to ten percent (10%) shall be withheld from each invoice paid. Upon satisfactory completion and final acceptance of work and the final report by AQMD, CONTRACTOR'S invoice for the 10% withheld will be released. [OPTIONAL]

12. 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 other funding sources. These MSERCs, which are issued by AQMD, 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. AQMD 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.
13. 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 MSRC upon notification that subject vehicles are placed into service. 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 practicable). CONTRACTOR shall maintain decal for life of vehicle or equipment subject to this Contract. Should any decal become damaged, faded, or otherwise unreadable, CONTRACTOR shall request replacement decal from MSRC and apply new decal in the same or other prominent location. MSRC shall not be responsible for damage to paint or other vehicle surfaces arising from application or removal of decals. In addition, all promotional materials related to the project, including, but not limited to, press kits, brochures and signs shall include the MSRC logo. Press releases shall acknowledge MSRC financial support for the project.
14. SCRAPPING OF OLD ENGINES - Any AB 2766 Discretionary Fund project for the replacement of an existing engine (i.e. repower) shall be required to scrap the existing engine.
15. ACCRUAL OF MILEAGE WITHIN SOUTH COAST AIR QUALITY DISTRICT – CONTRACTOR is obligated to comply with the geographical restriction requirements as follows:
- A. Each of the 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 five (5) years from the date the vehicle enters service (new vehicles) or returns to service (repowered vehicles). Should CONTRACTOR deviate from or fail to comply with this obligation, for reasons other than those stated in Clause 8, CONTRACTOR shall reimburse AQMD for a prorated share of the funds provided for the vehicle as indicated in the table below:

5 year Operations Obligation Termination Occurs	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 AQMD within sixty (60) days from the date the vehicle ceases to operate in accordance with the geographical restriction. CONTRACTOR shall not be responsible for any reimbursement to AQMD if the obligation is terminated as a result from one or more reasons set forth in Clause 8.
- C. Should CONTRACTOR sell, lease, transfer, assign or otherwise divest itself of the vehicles during the five year period referred to in clause 15.A, notice shall be provided to AQMD no less than 30 days preceding the sale, lease, transfer, or assignment is effectuated. The agreement effectuating the sale, lease, transfer or assignment shall state that the AQMD 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 five year operation period. This obligation shall be passed down to any subsequent purchaser, lessee or transferee during this five year term and AQMD shall be an intended third-party beneficiary of any subsequent agreement. Upon receiving notice of any subsequent sale, lease, transfer, assignment or other divestiture, AQMD may elect to either require the reimbursement specified in Clause 15.A and 15.B, 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 five (5) years from the date the vehicle entered service (new vehicles) or re-service (re-powered vehicles). Notice of AQMD's election of remedies shall be provided to CONTRACTOR and any subsequent purchaser, lessee, transferee or assignee in a timely fashion.
16. 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. A notice shall be deemed received when delivered or three days after deposit in the U.S. Mail, postage prepaid, whichever is earlier.

AQMD: South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765-4178
Attn: Cynthia Ravenstein, MSRC Contract Administrator

CONTRACTOR: ***

Attn: ***

17. EMPLOYEES OF CONTRACTOR

- A. CONTRACTOR warrants that it will employ no subcontractor without written approval from AQMD. CONTRACTOR shall be responsible for the cost of regular pay to its employees, as well as cost of vacation, vacation replacements, sick leave, severance pay and pay for legal holidays.
- B. CONTRACTOR shall also pay all federal and state payroll taxes for its employees and shall maintain workers' compensation and liability insurance for each of its employees.
- C. CONTRACTOR, its officers, employees, agents, or representatives shall in no sense be considered employees or agents of AQMD, nor shall CONTRACTOR, its officers, employees, agents, or representatives be entitled to or eligible to participate in any benefits, privileges, or plans, given or extended by AQMD to its employees.
- D. CONTRACTOR warrants that it has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract. CONTRACTOR further represents that in performance of this Contract, no person having any such interest shall be employed by CONTRACTOR or any subcontractor.

18. OWNERSHIP - Title and full ownership rights to any products purchased or developed under this Contract shall at all time remain with CONTRACTOR.

19. AQMD LIEN RIGHTS - CONTRACTOR agrees AQMD shall have lien rights 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 AQMD 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 AQMD is authorized to file a UCC filing statement 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 AQMD within 10 business days of such filing.

20. 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 handicap 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. CONTRACTOR shall likewise require each subcontractor to comply with this clause and shall include in each such subcontract language similar to this clause.

19. 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 and to ensure that the provisions of this clause are included in all subcontracts.

20. ASSIGNMENT - The rights granted hereby may not be assigned, sold, licensed, or otherwise transferred by either party without the prior written consent of the other, and any attempt by either party to do so shall be void upon inception.

21. NON-EFFECT OF WAIVER – CONTRACTOR'S or AQMD'S failure 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.
22. ATTORNEYS' FEES - In the event any action (including arbitration) 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.
23. FORCE MAJEURE - Neither AQMD 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 AQMD or CONTRACTOR.
24. 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.
25. 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.
26. DUPLICATE EXECUTION - This Contract is executed in duplicate. Each signed copy shall have the force and effect of an original.
27. 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 dispute shall be Los Angeles County, California.
28. PRECONTRACT 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 a formal Contract is not executed, neither the MSRC nor the AQMD shall be liable for any amounts expended in anticipation of a formal Contract. If a formal Contract does result, precontract cost expenditures authorized by the Contract will be reimbursed in accordance with the cost schedule and payment provision of the Contract.
29. CHANGE TERMS - Changes to any part of this Contract must be requested in writing by CONTRACTOR, submitted to AQMD and approved by MSRC in accordance with MSRC policies and procedures. CONTRACTOR must make such request a minimum of 90 days prior to desired effective date of change. All modifications to this Contract shall be in writing and signed by both parties.

30. ENTIRE CONTRACT - This Contract represents the entire agreement between the parties hereto related to CONTRACTOR providing services to AQMD and 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 party against whom enforcement of such waiver, alteration, or modification is sought.
31. 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.

[The Remainder of this Page is Intentionally Left Blank]

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

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

By: _____

Date: _____

Date: _____

ATTEST:
Saundra McDaniel, Clerk of the Board

By: _____

APPROVED AS TO FORM:
Kurt Wiese, District Counsel

By: _____

//MSRC11On&OffRoadHD