



Incentives for the Purchase of Heavy Duty Alternative Fuel Engines for On-Road Vehicles

Program Announcement

PA2008-04

December 7, 2007

SECTION 1 - INTRODUCTION

The Mobile Source Air Pollution Reduction Review Committee (MSRC) is pleased to announce a new **Clean Transportation Funding™** program to encourage on-road heavy-duty vehicle owners within the South Coast Air Quality Management District to purchase the lowest emitting heavy-duty engines commercially available.

Dramatic reductions in NO_x and particulate matter emissions from heavy-duty engines will be realized by the year 2010. However, heavy-duty engines operating on alternative fuel are currently certified that meet the 2010 NO_x emission standard of 0.2 g/bhp-hr.

This Program Announcement offers incentives to owners of on-road heavy-duty vehicle fleets who purchase vehicles equipped with alternative fuel engines certified at the 2010 0.2 g/bhp-hr NO_x standard or re-power their existing vehicles with new "0.2 gram" engines. 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 and programmatic 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 On-Road Heavy-duty Alternative Fuel Engine Program offers eligible participants incentives for the purchase and/or re-power of heavy-duty trucks and buses equipped with dedicated alternative fuel engines certified by the California Air Resources Board (CARB) at or below a NO_x standard of 0.2 g/bhp-hr.
2. **FEL Engines** – Engines certified by CARB under a Family Emissions Level (FEL) and used in emissions banking and trading programs are not eligible to receive MSRC Incentives. Only non-FEL engines are eligible to receive MSRC **Clean Transportation Funding™**.
3. **Incentive Level** - The total amount of FY 2007-'08 MSRC **Clean Transportation Funding™** allocated for this Program is \$1.5M. The incentive level for new heavy-duty vehicle purchases equipped with a qualifying 0.2 gram or cleaner alternative fuel engine or the re-power of existing vehicles with a qualifying 0.2 gram or cleaner alternative fuel engine has been set at the actual incremental cost of the alternative fuel engine option, not to exceed a maximum of \$30,000 per qualifying vehicle. For the purpose of this Program Announcement, "Incremental Cost" is defined as the difference in purchase cost between the alternative fuel engine-equipped truck and a comparably-equipped diesel fuel truck, minus any funding contributions from other public agencies including, but not limited to, the South Coast AQMD, Federal Transit Administration (FTA), CMAQ, 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, January 3, 2008, 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 January 3, 2008 will be funded in the order of receipt.

Should meritorious project applications be received totaling greater than the current funding allocation of \$1.5M, 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, should the MSRC receive applications with total requests less than the amount 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.

SECTION 3 – PARTICIPATION REQUIREMENTS & PROGRAM GUIDELINES

1. **Qualifying Vehicles** – Vehicles proposed for purchase or re-power must be on-road heavy-duty vehicles;
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 SCAQMD. 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. **New Vehicle Purchase & Re-powering of Existing Vehicles with Qualifying Alternative Fuel Engines** – Both new heavy-duty vehicle purchases and the re-powering of an existing vehicles are allowable under this Program, subject to the maximum per vehicle incentive levels described in the preceding Section;
4. **Eligible Applicants** – Entities that own and operate heavy-duty trucks and buses within the geographical jurisdiction of the South Coast AQMD are encouraged 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 low emission alternative fuel 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 \$200,000 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, February 15, 2008, 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 40% 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 60% 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:
 - Vehicles and/or engines receiving funding under the South Coast AQMD Carl Moyer Program may not receive Clean Transportation Funding from the MSRC;
 - MSRC funds must be applied towards the capital purchase and installation costs of a qualifying alternative fuel 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. **Additional Conditions on MSRC Funding**
 - 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;
- All projects must include a media and community outreach component. Acceptable outreach strategies may include, but are not limited to, a Grand Opening/project kickoff event, press releases, or press conference to highlight the project's accomplishments;
- The purchase of advanced technology alternative fuel 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 On-Road Alternative Fuel Engine Program will be conducted in accordance with the timeline illustrated in Table 4-1, below. Applications may be submitted during the approximately six-week period commencing January 3, 2008 and ending February 15, 2008. *Please note that applications must be received no later than 5:00 p.m. on February 15, 2008. Late applications will not be evaluated and will not be eligible for MSRC funding.*

Table 4-1 - Key On-Road Heavy-Duty Alternative Fuel Engine Program Dates

| Program Event | Date |
|---|-------------------------------|
| Program Announcement Release | December 7, 2007 |
| First Date to Submit Application | January 3, 2008 |
| Latest Date/Time for Application Submission | February 15, 2008 @ 5:00 p.m. |

SECTION 5 - APPLICATION PREPARATION & SUBMITTAL INSTRUCTIONS

An application must be submitted in order to participate in the On-Road Heavy-Duty Vehicle Alternative Fuel Engine Program. The following instructions are intended to assist the applicant in preparing an application for funding consideration.

A. APPLICATION PREPARATION INSTRUCTIONS

1. **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.

2. **Application Attachments** - In an effort to reduce the paperwork burden on applicants, a template based application format has been provided for the On-Road Alternative Fuel Engine 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.
3. **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.**
4. **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.
5. **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 "PA2008-04, On-Road Alternative Fuel Engine Program". The original Application should be submitted unbound 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 **February 15, 2007 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 December 7, 2007 to February 15, 2008.
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 Contracts 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.

Form 2: Vehicle Information

A. **HEAVY-DUTY VEHICLE PURCHASES:** Please provide the requested information for each NEW VEHICLE proposed for purchase. The new vehicle must be equipped with a qualifying 0.2 g/bhp-hr NO_x or cleaner certified heavy-duty alternative fuel engine:

| | |
|---|--|
| Quantity of this Type of Vehicle to be Purchased | |
| Vehicle Manufacturer & Model | |
| Model Year | |
| Engine Manufacturer & Model | |
| Engine Year | |
| Fuel Type | |
| Horsepower | |
| CARB Executive Order Number | |
| CARB Engine Certification Standard | |
| Estimated Annual Mileage per Vehicle | |
| Estimated Annual Fuel Consumption (Diesel Equivalent Gallons) | |
| Percent of Vehicle Operation within SCAQMD | |
| Estimated Vehicle Life | |
| Purchase Cost of Conventional Diesel Vehicle | |
| Purchase cost of Low-Emission Alternative Fuel Vehicle | |
| Incremental cost for Low-Emission Engine/Fuel System Option | |
| Funding from Other Public Agencies (FTA, CMAQ, SCAQMD, etc.) | |
| Funding Requested Per Vehicle (\$30,000 per vehicle maximum) | |

B. RE-POWER OF EXISTING HEAVY-DUTY VEHICLES: Please provide the requested information for each EXISTING VEHICLE proposed for re-power with a qualifying 0.2 g/bhp-hr NO_x or cleaner certified alternative fuel 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 Fuel Type (CNG or LNG) | |
| Existing Engine Horsepower | |
| Existing Engine Certification Level | |
| Replacement Engine Manufacturer & Model | |
| Replacement Engine Model Year | |
| Replacement Engine Fuel Type (CNG or LNG) | |
| Replacement Engine Certification Level | |
| Estimated Annual Mileage | |
| Estimated Annual Fuel Consumption | |
| Percent of Vehicle Operation within SCAQMD | |
| Estimated Vehicle Life | |
| Estimated Cost to Rebuild Existing Vehicle Engine | |
| Funding from Other Public Agencies (FTA, CMAQ, SCAQMD, etc.) | |
| Funding Requested Per Vehicle (\$30,000 per vehicle maximum) | |

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 |

¹List 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.

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

³You 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.

⁴List 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 ADVANCED TECHNOLOGY HEAVY-DUTY ALTERNATIVE FUEL ENGINE 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

A. PROGRESS REPORTS - CONTRACTOR shall submit progress reports to AQMD within fifteen (15) days of the end of the reporting period which shall be on a quarterly basis beginning three months after the date this Contract is signed by both parties. Such reports shall detail: 1) work performed during the current reporting period; 2) work planned for the next reporting period; 3) problems identified, solved, and/or unresolved; 4) the percentage of each task completed; 5) delays in meeting the project schedule with an explanation including a description of what steps will be taken to complete the project on time; and 6) a cost breakdown by cost category for each task showing both the amount of AB 2766 funds expended and co-funding expended for the reporting period and the cumulative period to date. Progress reports that do not comply will be returned to CONTRACTOR as inadequate. Under this policy, failure to submit progress reports within the allotted time may be considered a material breach and subject the Contract to termination.

1. If CONTRACTOR fails to submit progress reports as required by the Contract, the following shall occur: If after seven (7) days past the progress report due date CONTRACTOR fails to submit progress reports, MSRC Contract staff will notify CONTRACTOR in writing of the delinquency and request that the progress report be submitted within seven (7) days of the written notice.
2. For Monthly Reports: If CONTRACTOR fails to submit a progress report for the second consecutive month, the MSRC Contract Administrator shall send a second written notice indicating that two previous progress reports are due and that they must be submitted within fifteen (15) days. If CONTRACTOR fails to provide a report for a third consecutive month, AQMD's Procurement Manager shall provide written notice to CONTRACTOR to cure the delinquency within fifteen (15) days of the notice or be subject to termination within thirty (30) days.
3. For Quarterly Reports: If CONTRACTOR fails to submit a progress report, the MSRC Contract Administrator shall send a written notice indicating that the progress report is due and that it must be submitted within fifteen (15) days. If CONTRACTOR does not respond within the allotted time, AQMD's Procurement Manager shall provide written notice to CONTRACTOR to cure the delinquency within fifteen (15) days of the notice or be subject to termination within thirty (30) days.
4. If CONTRACTOR has a history of non-consecutive (three or more occasions) delinquent progress reports, this may be considered a material breach of the Contract and be grounds for immediate termination of the Contract. For example, if progress reports are submitted in such an inconsistent and sporadic fashion as to indicate a lack of compliance with this Contract provision (e.g., progress report submitted one month, skipping several months thereafter).
5. If a contract is terminated as a result of this policy, the direct contractor involved will not be eligible to apply for AB 2766 Discretionary Funds for two program years.

B. FINAL REPORT - CONTRACTOR shall provide AQMD with a comprehensive final report in accordance with the project schedule specified in Attachment 1 – Statement of Work. The final report shall be subject to review by the MSRC and approval by AQMD, and shall be provided in the format and manner directed by AQMD staff. The final report shall be complete and include

illustrations and graphs, as appropriate, to document the work performed and the results thereof under this Contract. The final report will also contain, in detail, the reduction of mobile source air pollution emissions resulting from the project's implementation.

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 six months at no additional cost. Term extensions greater than six months must be reviewed and approved by the MSRC.
7. 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 Clause 16. The non-breaching party reserves all rights under law and equity to enforce this contract and recover damages.
 - B. AQMD 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 AQMD, 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 AQMD. 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 AQMD.
 - C. CONTRACTOR shall be paid in accordance with this Contract for all Work performed before the effective date of termination under Clause 7.B. Before expiration of the thirty (30) days' written notice, CONTRACTOR shall promptly deliver to AQMD 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.
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 alternative fuel technology 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. CONTRACTOR shall furnish evidence to AQMD of Professional Liability Insurance with an aggregate limit of not less than \$5,000,000. [OPTIONAL FOR PROFESSIONAL SERVICES]
- E. 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.
- F. 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.**
- G. 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.

(This statement is used when not self-insurance) (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, Costs by Category, 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 - Cost 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. REMOVE IF NOT NEEDED: 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 - **[USE FOR VEHICLE PROJECTS]** CONTRACTOR agrees to permanently display one MSRC decal in a prominent location on each vehicle purchased pursuant to this Contract. CONTRACTOR also agrees to permanently display one MSRC decal in a prominent location on each fueling or charging station constructed pursuant to this Contract. Decals will be provided by MSRC upon notification that subject fueling station equipment and/or 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 - **[USE FOR REPOWER PROJECTS]** 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. 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: _____

//MSRC08On&OffRoadHD&AltFuelTransitBus