



South Coast Air Quality Management District

Agreement No. **C24283**
Carl Moyer Program

This Agreement consists of 21 pages.

1. PARTIES

The parties to this Agreement ("Agreement") are the South Coast Air Quality Management District (referred to here as "SCAQMD") whose address is 21865 Copley Drive, Diamond Bar, California 91765-4178, and Mission Springs Water District (referred to here as "RECIPIENT") whose address is 66575 Second Street, Desert Hot Springs, California 92240.

2. RECITALS

- A. SCAQMD is the local agency with primary responsibility for regulating stationary source air pollution within the geographical boundaries of the South Coast Air Quality Management District in the State of California. SCAQMD is authorized to enter into this Agreement under California Health and Safety Code Section 40489. This Carl Moyer Program-funded Agreement will provide funding for eligible Equipment in order to generate cost-effective (if applicable) and surplus air emission reductions within the geographical boundaries of the South Coast Air Quality Management District. Accordingly, the parties desire to enter into this Agreement for the project described in Attachment 1 - Statement of Work, attached here and made a part here by reference.
- B. RECIPIENT is authorized to do business in the State of California and attests that it is in good tax standing with the California Franchise Tax Board.
- C. All parties to this Agreement have had the opportunity to have this Agreement reviewed by their attorney.
- D. "Equipment," as used in this Agreement, means the equipment described in Attachment 1 - Statement of Work and funded in whole or in part by the Carl Moyer Program, which may include, but is not limited to, trucks, engines, marine vessels, retrofit devices, infrastructure, cargo handling equipment and/or locomotives, as applicable.

3. PERFORMANCE REQUIREMENTS

- A. RECIPIENT agrees to obtain and maintain the required licenses, permits, and all other appropriate legal authorizations from all applicable federal, state and local jurisdictions and pay all applicable fees. RECIPIENT further agrees to immediately notify SCAQMD in writing of any change in its licensing status which has a material impact on the RECIPIENT's performance under this Agreement.
- B. RECIPIENT shall submit reports to SCAQMD as outlined in Attachment 1 - Statement of Work. Unless otherwise stated herein, all reports shall be submitted in an environmentally friendly format: recycled paper; stapled, not bound; black and white, double-sided print; and no three-ring, spiral, or plastic binders or cardstock covers. SCAQMD reserves the right to review, comment, and request changes to any report produced as a result of this Agreement.
- C. RECIPIENT shall perform all tasks set forth in Attachment 1 - Statement of Work, and RECIPIENT represents and warrants that it has no business, professional, personal or other interest that would conflict in any manner or degree with the performance of its obligations under this Agreement. If any such actual or potential conflict of interest arises during the term of this Agreement, RECIPIENT shall immediately inform SCAQMD in writing, and SCAQMD may, in its sole judgment, terminate this Agreement immediately upon written notice to RECIPIENT.

D. RECIPIENT shall require its subcontractors to abide by the requirements set forth in this Agreement.

4. TERM

The term of this Agreement is from the last date of execution by the parties, which is the effective date of this Agreement, to April 30, 2028, unless further extended by amendment of this Agreement in writing. Except as otherwise provided herein, no work shall commence until this Agreement is fully executed by all parties. RECIPIENT assumes all financial risk and is in no way guaranteed Carl Moyer Program funds for work done prior to the effective date of this Agreement. The Agreement term above encompasses both the project completion and project implementation periods, as described below, to ensure that the SCAQMD and the California Air Resources Board ("CARB") can fully enforce the terms of this Agreement during the life of this Carl Moyer Program-funded project.

- A. Project Completion - Project completion is the time frame starting with the date of Agreement execution by both parties to the date the project post-inspection confirms that the project has become operational. This includes the time period when the Equipment described in Attachment 1 - Statement of Work is ordered, delivered and installed.
- B. Project Implementation - The project implementation time frame is the second part of the Agreement term and equals the project life, which is the number of years that the Equipment must operate as specified in the Attachment 1 - Statement of Work to obtain surplus emissions reductions that are cost-effective. RECIPIENT is required to operate and maintain the Carl Moyer Program-funded Equipment according to the terms of this Agreement for the full project implementation period.

5. TIME PERIOD FOR AGREEMENT EXECUTION

This Agreement must be signed by the RECIPIENT and received by SCAQMD within sixty (60) days from the receipt of the Agreement by the RECIPIENT. Failure to timely sign and return the Agreement to SCAQMD may result in the withdrawal of the award. Time is of the essence in executing this Agreement.

6. TERMINATION

- A. RECIPIENT's failure to comply with any term or condition of this Agreement shall constitute a material breach of this Agreement. The SCAQMD will either notify the RECIPIENT that it must timely cure this breach, or provide ten (10) days' written notification of SCAQMD's intention to terminate this Agreement. The SCAQMD reserves all rights under law and equity to enforce this Agreement or to recover damages.
- B. SCAQMD reserves the right to terminate this Agreement, in whole or in part without cause upon thirty (30) days' written notice. Once such notice has been given, RECIPIENT shall, except as otherwise directed by SCAQMD, discontinue any work being performed under this Agreement and cancel all of RECIPIENT's orders in connection with such work, and shall use its best efforts to terminate existing subcontracts upon terms satisfactory to the SCAQMD. Thereafter, RECIPIENT shall perform only such services as may be necessary to preserve and protect any work already in progress and to dispose of any property as requested by SCAQMD. RECIPIENT shall also promptly deliver to SCAQMD all copies of documentation and other information and data prepared or developed by RECIPIENT under this Agreement. RECIPIENT will be paid in accordance with this Agreement for work performed before the effective date of termination.
- C. Should RECIPIENT terminate this Agreement in whole or in part prior to the completion of the Agreement term, such as in the event of an accident resulting in total loss of the Equipment or where

the Equipment has been stolen, RECIPIENT shall notify the SCAQMD within 10 business days and must submit written documentation to SCAQMD, such as police and/or insurance reports as well as any other information requested by SCAQMD. RECIPIENT will, at the discretion of SCAQMD, be responsible either for returning to SCAQMD a pro-rated share of the funds already paid under the Agreement, in an amount to be determined by SCAQMD, or for providing a substitute equipment that meets the specifications of the replacement or repowered Equipment as described in the Attachment 1 - Statement of Work.

7. STOP WORK

SCAQMD may, at any time, by written notice to RECIPIENT, require RECIPIENT to stop all or any part of the work tasks in this Agreement. A stop work order may be issued for reasons including, but not limited to, the project exceeding the budget, out of scope work, delay in project schedule, or misrepresentations. Upon receipt of the stop work order, RECIPIENT shall immediately take all necessary steps to comply with the order. RECIPIENT shall resume the work only upon receipt of written instructions from SCAQMD cancelling the stop work order. RECIPIENT agrees and understands that RECIPIENT will not be paid for performing work while the stop work order is in effect, unless SCAQMD agrees to do so in its written cancellation of the stop work order.

8. INSURANCE

- A. RECIPIENT shall furnish evidence to SCAQMD of workers' compensation insurance for each of its employees, in accordance with either California or other states' applicable statutory requirements prior to commencement of any work on this Agreement.
- B. RECIPIENT shall furnish evidence to SCAQMD of general liability insurance with a limit of at least \$1,000,000 per occurrence, and \$2,000,000 in a general aggregate prior to commencement of any work on this Agreement. SCAQMD must be named as an additional insured on any such liability policy, and thirty (30) days written notice prior to cancellation of any such insurance shall be given by RECIPIENT to SCAQMD.
- C. RECIPIENT shall furnish evidence to SCAQMD of automobile liability insurance with limits of at least \$100,000 per person and \$300,000 per accident for bodily injuries, and \$50,000 in property damage, or \$1,000,000 combined single limit for bodily injury or property damage, prior to commencement of any work on this Agreement. SCAQMD must be named as an additional insured on any such liability policy, and thirty (30) days written notice prior to cancellation of any such insurance shall be given by RECIPIENT to SCAQMD.
- D. If RECIPIENT fails to maintain the required insurance coverage set forth above, SCAQMD reserves the right either to purchase such additional insurance and to deduct the cost thereof from any payments owed to RECIPIENT or terminate this Agreement for breach.
- E. All insurance certificates must be sent to SCAQMD Risk Management, by email (insurancecertificate@aqmd.gov) or by fax (909-396-3979). **The SCAQMD Agreement Number must be included on the face of the certificate.**
- F. RECIPIENT agrees to maintain the above required insurance as well as property insurance with sufficient limits to cover the loss of the Equipment. RECIPIENT must provide updates on the insurance coverage throughout the term of the Agreement to ensure that there is no break in coverage during the period of Agreement performance. Failure to provide evidence of current coverage is grounds for termination for breach of Agreement.

G. If RECIPIENT subcontracts all or part of the work under this Agreement, RECIPIENT shall require its subcontractors to comply with the above-mentioned insurance requirements and to name SCAQMD as an additional insured in the above-mentioned insurance policies.

9. INDEMNIFICATION

RECIPIENT agrees to hold harmless, defend and indemnify SCAQMD, its officers, employees, agents, representatives, and successors-in-interest against any and all loss, damage, costs, lawsuits, claims, demands, causes of action, judgments, attorney's fees, or any other expenses arising from or related to any third party claim against SCAQMD, its officers, employees, agents, representatives, or successors in interest that arise or result in whole or in part, from any actual or alleged act or omission of RECIPIENT, its employees, subcontractors, agents or representatives in the performance of this Agreement. This Indemnification Clause shall survive the expiration or termination (for any reason) of the Agreement and shall remain in full force and effect.

10. COMPLIANCE WITH CARL MOYER PROGRAM GUIDELINES

RECIPIENT warrants that the project upon which this Agreement is based complies, as applicable, with CARB's current Carl Moyer Program Guidelines, Advisories and Mail-Outs (collectively, "CMP Guidelines"), which are incorporated herein by reference, and which include, but are not limited to, the following:

- A. The project described in the Statement of Work is not required by any local, state and/or federal rule or regulation, memorandum of understanding/agreement, settlement agreement, mitigation requirement, or other legal mandate.
- B. The low emissions technology used in the project has been certified or verified by CARB and meets the applicable NOx, PM and/or ROG requirements, or if it has not been certified/verified by CARB, the low emissions technology has been approved by CARB on a case-by-case basis.
- C. Rights to the emission reductions generated by the project must not be claimed by any participant as emission reduction credits or be used under any emission averaging banking and trading program. In addition, rights to the emission reductions may not be claimed by the engine or equipment manufacturer in any flexibility or "early introduction" incentive program.
- D. The Equipment must not have been ordered or purchased prior to the date of the SCAQMD Governing Board approval of the Agreement award.
- E. For repowers and replacement projects, the existing (old) engine must be destroyed and rendered permanently unusable and irreparable. There must be no cannibalization of parts from the old engine. Destruction methods and requirements are specified in the Statement of Work and the CMP Guidelines.
- F. For repower projects, the installation of the engine must be completed in a manner such that it does not void the engine warranty provided by the manufacturer and any remaining warranty provided by the equipment manufacturer.
- G. In signing this Agreement, RECIPIENT certifies that its fleet and Equipment are in compliance with all applicable federal state, and local air quality rules and regulations at the time of Agreement execution, and that it will maintain compliance for the full Agreement term. RECIPIENT shall ensure that the provisions of this clause are included in all subcontracts.
- H. The project must be included when defining the size of the RECIPIENT's fleet for determining regulatory requirements.

- I. Throughout the Agreement term, the project must not be used to generate credits or compliance extensions, and must be excluded when determining regulatory compliance.

11. NO LEASE-TO-OWN AGREEMENTS

RECIPIENT may not enter into any lease-to-own agreements for any Equipment funded in whole or in part under this Agreement. Failure to comply with this provision shall result in RECIPIENT returning some or all of the Agreement funds, as determined by SCAQMD at its sole discretion. RECIPIENT shall ensure that the provisions of this clause are included in all subcontracts.

12. COMPLIANCE WITH APPLICABLE LAWS

RECIPIENT agrees to comply with all federal, state, and local laws, ordinances, codes and regulations and orders of public authorities in the performance of this Agreement. RECIPIENT must also ensure that the vehicles and/or equipment to be purchased, leased or installed in the performance of this Agreement are in compliance with all applicable federal, state, and local air quality rules and regulations, and that it will maintain compliance for the full Agreement term. RECIPIENT shall ensure that the provisions of this clause are included in all subcontracts.

13. EXECUTIVE ORDER N-6-22 – RUSSIA SANCTIONS

On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under state law. RECIPIENT represents and warrants that it is not a target of Economic Sanctions, and that it shall refrain from conducting prohibited transactions with sanctioned individuals or entities. RECIPIENT shall comply with all applicable reporting requirements regarding compliance with economic sanctions, including, but not limited to, those reporting requirements set forth in the EO if this Agreement has a total value of \$5,000,000 or more. Failure to comply with this clause and the EO may result in immediate termination of this Agreement at the sole discretion of SCAQMD.

14. INCORPORATION OF CARL MOYER PROGRAM APPLICATION

RECIPIENT'S application for the project funded under this Agreement is hereby incorporated by reference and made a part of this Agreement. In the event of a conflict between the terms and conditions of this Agreement and RECIPIENT's application, this Agreement shall govern.

15. MAINTENANCE

RECIPIENT shall maintain the Equipment in accordance with the manufacturer's specifications for the project life. Tampering with the engine is strictly prohibited. RECIPIENT is responsible for maintaining a working hour meter or other SCAQMD-approved measuring device to track Equipment usage for projects that use hours of operation as a means of calculating emission reductions and cost-effectiveness. If the hour meter/usage device fails, RECIPIENT must immediately notify SCAQMD, and RECIPIENT remains responsible for validating any hours not recorded by the hour meter/usage device. The RECIPIENT must either repair or replace the non-operating meter/device or provide other documentation of Equipment operating hours acceptable to SCAQMD.

16. RECORDS RETENTION, ON-SITE INSPECTIONS AND AUDIT

- A. RECIPIENT agrees to the following Records Retention Period: maintain records related to this Agreement during the Agreement term and continue to retain these records for a period of three years beyond the Agreement term.
- B. SCAQMD, CARB, or its designee(s), shall have the right to conduct on-site inspections of the project and to audit records related to this Agreement during the Records Retention Period. RECIPIENT agrees to include a similar right for these agencies to conduct on-site inspections and audits in any related subcontract.
- C. If an amount is found to be inappropriately expended, RECIPIENT shall reimburse SCAQMD, or SCAQMD may withhold payment from RECIPIENT, as applicable, in the amount equal to the amount which was inappropriately expended. Such withholding or reimbursement shall not be construed as SCAQMD's sole remedy and shall not relieve RECIPIENT of its obligation to perform under the terms of this Agreement.

17. INSPECTIONS

- A. A Pre-Inspection shall be conducted by the SCAQMD on **all** existing (old) equipment (including engines and vehicles) prior to any work commencing under this Agreement. SCAQMD must verify that RECIPIENT has met all requirements of the Carl Moyer Program regarding eligibility of the existing equipment. This includes documentation of the type of equipment, operational condition, mileage, vehicle and engine identification. This Agreement may be modified or terminated based upon the results of the Pre-Inspection should the SCAQMD determine that: the existing equipment is non-operational; does not match the information submitted for analysis (i.e. vehicle make, model, model-year, engine type, horsepower, model year, etc.); or other factors exist that would not result in calculated real, quantifiable, and surplus emission reductions. For fleets owned or operated by public agencies, SCAQMD may conduct the Pre-Inspection by requiring the public agency to provide documentation to verify that all requirements of the Carl Moyer Program regarding eligibility of existing equipment/vehicles/engines are met. It is the responsibility of the RECIPIENT to contact SCAQMD and arrange a Pre-Inspection of the existing equipment, and to confirm with SCAQMD that the equipment has been pre-inspected and is eligible to participate in the Carl Moyer Program.
- B. A Post-Inspection shall be conducted by the SCAQMD after receipt of the invoice from the RECIPIENT. SCAQMD must verify that RECIPIENT has met all requirements of the Carl Moyer Program. Final payment will not be made unless the SCAQMD verifies that: the Equipment, retrofit device or engine listed in the Statement of Work has/have been installed; that the Equipment is operational; and, where applicable, that the replaced engine(s) or vehicle(s) has/have been destroyed and rendered useless and there is no evidence of cannibalization of parts from the old engine(s). For fleets owned or operated by public agencies, SCAQMD may conduct the Post-Inspection through a statistically significant random sample of the vehicles, where the project under this Agreement consists of more than twenty (20) vehicles.

18. MONITORING AND ENFORCEMENT

RECIPIENT agrees to operate the Equipment according to the terms of this Agreement, including the CMP Guidelines, and to cooperate with SCAQMD and CARB in implementation, monitoring, enforcement, and other efforts to assure the emission benefits are real, quantifiable, surplus, and enforceable. RECIPIENT also understands and agrees that in addition to SCAQMD, CARB, as an intended third-party beneficiary of this Agreement, also has the right to enforce the terms of this Agreement to ensure emission reductions are generated. SCAQMD and CARB will seek whatever legal,

equitable and other remedies are available for RECIPIENT's failure to comply with the terms of this Agreement, including the CMP Guidelines.

19. REPORTING REQUIREMENTS

RECIPIENT shall submit reports in accordance with Attachments 1, 1A and 1B, attached here and incorporated herein by reference. Non-compliance with the reporting requirements of this Agreement may result in the implementation of on-site monitoring by the SCAQMD, in addition to any other remedies available to the SCAQMD.

20. SUCCESSORS-IN-INTEREST

This Agreement shall be binding on and inure to the benefit of each party's heirs, executors, administrators, successors, and assigns.

21. EQUIPMENT USAGE

- A. At least 24 months of documented and verified historic usage is required for the baseline engine, such as miles traveled, hours operated, or fuel consumed, and in this case usage is not required to be in the Agreement. If this information is not available, SCAQMD may estimate the usage for the old engine and the estimated usage must be included in the Agreement.
- B. The percentage of each Equipment's annual mileage or engine hours of operation that must be accrued within the geographical boundaries of the South Coast Air Quality Management District, shall be in accordance with Attachment 1 - Statement of Work. Information included in the annual reports required under this Agreement will be used to verify this usage.
- C. RECIPIENT is prohibited from removing the Equipment from service in California during the term of this Agreement, unless the Equipment becomes inoperable through mechanical failure of components or systems, and cannot be repaired or replaced, and such failure is not caused by RECIPIENT's negligence, misuse, or malfeasance. RECIPIENT shall notify SCAQMD within 10 business days if the Equipment is removed from service in California.
- D. If the Equipment usage reported in the annual report does not meet the usage specified in Attachment 1 - Statement of Work, the SCAQMD will flag the project. SCAQMD will take appropriate action to ensure the usage requirement is met, which may include, but is not limited to, recapturing funds in an amount proportional to the unmet usage or extending the project life.

22. FUNDS FROM OTHER SOURCES

- A. In signing this Agreement, RECIPIENT certifies that it has disclosed all other funding sources that it applied for or received for the project described in the Statement of Work. RECIPIENT must notify SCAQMD of additional sources of funding received for the total cost of the project, including any sources that become available after Agreement execution.
- B. RECIPIENT agrees that failure to disclose shall, at a minimum, result in disqualification from receiving funding for that project, the recapture of funds, and may result in RECIPIENT being banned from submitting future applications to any and all Carl Moyer Program solicitations.
- C. RECIPIENT shall return any grant funds it has received in excess of the total project cost.
- D. RECIPIENT certifies that no emission reductions generated by this project shall be used as marketable emission reduction credits, or to offset any emission reduction obligation of any person or entity.
- E. The total amount of public funds received by RECIPIENT for the same project during the term of this Agreement must not exceed eighty-five (85) percent of the project cost. If the total amount of public

funds exceeds eighty-five percent, RECIPIENT shall return sufficient amounts to SCAQMD to decrease the total amount of public funds funding the same project to eighty-five percent.

23. PAYMENT

- A. SCAQMD will reimburse RECIPIENT an amount not-to-exceed Fifty-Four Thousand Six Hundred Dollars (\$54,600) in accordance with Attachment 2, Payment Schedule, attached here and incorporated herein by reference.
- B. Payment may be made directly to the vendor upon submission of an itemized invoice from the RECIPIENT requesting that such direct payment be made. If the purchase is being financed, RECIPIENT may choose to have the payment sent directly to the financing company, or provide SCAQMD with proof of payment to the financing company in order for RECIPIENT to be reimbursed. Payments made under this Agreement must be used to reduce the principal owed for the Equipment.
- C. Before any payment can be made, RECIPIENT must submit itemized invoices and the Post-Inspection pursuant to Clause 17.B. must indicate that the project is operational. The itemized invoices must include enough detail to ensure that only eligible project costs are paid, in accordance with the CMP Guidelines. Each invoice must be prepared in duplicate, on company letterhead, and list SCAQMD's Agreement number, period covered by invoice, and RECIPIENT's Social Security Number or Employer Identification Number and submitted to: South Coast Air Quality Management District, Attn: Carl Moyer Agreement Administrator, Technology Advancement, 21865 Copley Drive, Diamond Bar, CA 91765-4178.
- D. Payment under this Agreement is contingent upon receipt of funds from CARB.
- E. SCAQMD may de-obligate from the Agreement, funds that remain unexpended as required in the Agreement, upon thirty (30) days' written notice to RECIPIENT. By signing this Agreement, RECIPIENT acknowledges consent to de-obligation of non-expended funding.

24. SECURITY INTEREST

RECIPIENT hereby grants SCAQMD a security interest in any and all Equipment purchased in whole or in part with funding provided by SCAQMD pursuant to this Agreement. RECIPIENT acknowledges and agrees that SCAQMD shall have all lien rights as a secured creditor on any and all equipment purchased in whole or in part by the RECIPIENT under this Agreement or any amendments thereto. The SCAQMD shall have lien rights in effect until the RECIPIENT satisfies all terms under the Agreement, including but not limited to, the use and reporting requirements. **Accordingly, RECIPIENT further agrees that SCAQMD is authorized to file a UCC filing statement or similar security instrument to secure its interests in the Equipment that is the subject of the Agreement.** In the event RECIPIENT files for bankruptcy protection, RECIPIENT shall notify SCAQMD within 10 business days of such filing.

25. MOBILE SOURCE EMISSION REDUCTION CREDITS

No emission reductions generated by Carl Moyer Program-funded projects may be used as marketable emission reduction credits, or to offset any emission reduction obligation of any person or entity. All validated emission reductions shall be applied toward the State Implementation Plan (SIP) attainment demonstration. All emission reductions generated from the expenditure of Carl Moyer funds may not be converted into tradable credits, and shall be used for the sole purpose of meeting the attainment schedule contained in the applicable SIP. This provision does not apply to infrastructure projects that generate credits in the Low Carbon Fuel Standard program.

26. INTELLECTUAL PROPERTY RIGHTS

Title and full ownership rights to any intellectual property developed under this Agreement shall at all time remain with SCAQMD. Such material is agreed to be SCAQMD's proprietary information.

- A. Rights of Technical Data - SCAQMD shall have the unlimited right to use technical data, including material designated as a trade secret, resulting from the performance of services by RECIPIENT under this Agreement. RECIPIENT shall have the right to use data for its own benefit.
- B. Copyright - RECIPIENT agrees to grant SCAQMD a royalty free, nonexclusive, irrevocable license to produce, translate, publish, use, and dispose of all copyrightable material first produced or composed in the performance of this Agreement.

27. NOTICES

All notices that are required under this Agreement shall be provided in the manner set forth herein, unless specified otherwise. Notice to a party shall be delivered to the attention of the person listed below, or to such other person or persons as may hereafter be designated by that party in writing. Notice shall be in writing sent by email, U.S. Mail, express, certified, return receipt requested, or a nationally recognized overnight courier service. In the case of email communications, valid notice shall be deemed to have been delivered upon sending, provided the sender obtained an electronic confirmation of delivery. Email communications shall be deemed to have been received on the date of such transmission, provided such date was a business day (Tuesday-Friday) and delivered prior to 5:30pm Pacific Standard Time. Otherwise, receipt of email communications shall be deemed to have occurred on the following business day. In the case of U.S. Mail notice, notice shall be deemed to be received when delivered or five (5) business days after deposit in the U. S. Mail. In the case of a nationally recognized overnight courier service, notice shall be deemed received when delivered (written receipt of delivery).

SCAQMD: South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765-4178
Attn: Kevin Perozo, email: kperozo@aqmd.gov

RECIPIENT: Mission Springs Water District
66575 Second Street
Desert Hot Springs, CA 92240
Attn: Michael Nusser, email: mnusser@mswd.org

28. INDEPENDENT CONTRACTOR

RECIPIENT is an independent contractor. RECIPIENT, its officers, employees, agents, representatives, or subcontractors shall in no sense be considered employees or agents of SCAQMD or CARB, nor shall RECIPIENT, its officers, employees, agents, representatives, or subcontractors be entitled to or eligible to participate in any benefits, privileges, or plans, given or extended by SCAQMD to its employees. SCAQMD will not supervise, direct, or have control over, or be responsible for, RECIPIENT's or subcontractor's means, methods, techniques, work sequences or procedures or for the safety precautions and programs incident thereto, or for any failure by them to comply with any local, state, or federal laws, or rules or regulations, including state minimum wage laws and OSHA requirements. RECIPIENT shall promptly notify SCAQMD of any material changes to subcontracts that affect the Agreement's scope of work, deliverable schedule, and/or payment/cost schedule.

29. PUBLICATION

- A. SCAQMD shall have the right of prior written approval of any document which shall be disseminated to the public by RECIPIENT in which RECIPIENT utilized information obtained from SCAQMD in connection with performance under this Agreement.
- B. Information, data, documents, photographs or reports developed by RECIPIENT for SCAQMD, pursuant to this Agreement, shall be part of SCAQMD's public record unless otherwise indicated. RECIPIENT may use or publish, at its own expense, such information provided to SCAQMD. The following acknowledgment of support and disclaimer must appear in each publication of materials, whether copyrighted or not, based upon or developed under this Agreement.

"This report was prepared as a result of work sponsored, paid for, in whole or in part, by the South Coast Air Quality Management District (SCAQMD). The opinions, findings, conclusions, and recommendations are those of the author and do not necessarily represent the views of SCAQMD. SCAQMD, its officers, employees, recipients, and subcontractors make no warranty, expressed or implied, and assume no legal liability for the information in this report. SCAQMD has not approved or disapproved this report, nor has SCAQMD passed upon the accuracy or adequacy of the information contained herein."

30. NON-DISCRIMINATION

In the performance of this Agreement, RECIPIENT shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment on the basis of race, religious creed, color, national origin, ancestry, sex, sexual orientation, age, mental status, medical condition, physical or mental disability, or allow unlawful denial of family and medical care leave, denial of pregnancy disability leave, or reasonable accommodations. RECIPIENT 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.

31. ASSIGNMENT AND TRANSFER OF EQUIPMENT

- A. The rights and responsibilities granted hereby may not be assigned, sold, licensed, or otherwise transferred by RECIPIENT without the prior written consent of SCAQMD, and any attempt by RECIPIENT to do so shall be void upon inception.
- B. RECIPIENT agrees to obtain SCAQMD's written consent to any assignment, sale, license or transfer of the Equipment, prior to completing the transaction. RECIPIENT shall inform the proposed assignee, buyer, licensee or transferee (collectively referred to here as "Buyer") of the terms of this Agreement. RECIPIENT is responsible for establishing contact between SCAQMD and the Buyer and shall assist SCAQMD in facilitating the transfer of this Agreement's terms and conditions to the Buyer. **RECIPIENT will not be relieved of the legal obligation to fulfill the terms and conditions of this Agreement until and unless the Buyer has assumed responsibility of this Agreement's terms and conditions through an executed agreement with SCAQMD.**

32. NON-EFFECT OF WAIVER

The failure of RECIPIENT or SCAQMD to insist upon the performance of any or all of the terms, covenants, or conditions of this Agreement, 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.

33. ATTORNEYS' FEES

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

34. FORCE MAJEURE

A party shall not be liable or deemed to be in default for any delay or failure in performance under this Agreement or interruption of services resulting, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, strikes, labor disputes, shortages of suitable parts, materials, labor or transportation, or any similar cause beyond the party's reasonable control.

35. SEVERABILITY

In the event that any one or more of the provisions contained in this Agreement 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 Agreement, and the Agreement shall then be construed as if such unenforceable provisions are not a part hereof.

36. HEADINGS

Headings on the Clauses of this Agreement 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 Agreement.

37. SIGNATURES

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute together one and the same instrument. Further, the parties agree that this Agreement or any counterpart may be executed and delivered by DocuSign, or by transmitting a manual signature by fax or .pdf, which shall have the same force and effect as copies executed and delivered with original manual signatures.

38. GOVERNING LAW

This Agreement shall be construed and interpreted and the legal relations created thereby shall be determined in accordance with the laws of the State of California. Venue for resolution of any disputes under this Agreement shall be Los Angeles County, California.

39. CITIZENSHIP AND ALIEN STATUS

A. RECIPIENT warrants that it fully complies with all laws regarding the employment of aliens and others, and that its employees performing services hereunder meet the citizenship or alien status requirements contained in federal and state statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986 (P.L. 99-603). RECIPIENT shall obtain from all covered employees performing services hereunder all verification and other documentation of employees' eligibility status required by federal statutes and regulations as they currently exist and as they may be hereafter amended. RECIPIENT shall have a continuing obligation to verify and document the continuing employment authorization and authorized alien status of employees performing services under this Agreement to ensure continued compliance with all federal statutes and regulations.

Notwithstanding the above, RECIPIENT, in the performance of this Agreement, shall not discriminate against any person in violation of 8 USC Section 1324b.

- B. RECIPIENT shall retain such documentation for all covered employees for the period described by law. RECIPIENT shall indemnify, defend, and hold harmless SCAQMD, its officers and employees from employer sanctions and other liability which may be assessed against RECIPIENT or SCAQMD, or both in connection with any alleged violation of federal statutes or regulations pertaining to the eligibility for employment of persons performing services under this Agreement.

40. SUBCONTRACTOR APPROVAL

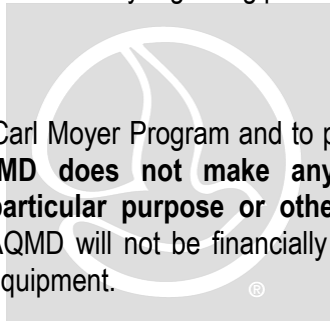
If RECIPIENT intends to subcontract all or a portion of the work under this Agreement, then RECIPIENT must first obtain written approval from SCAQMD's Executive Officer or designee prior to subcontracting any work. Such prior approval applies only to subcontractors not already included in Attachment 1, Statement of Work. Any material changes to the subcontract(s) that affect the scope of work, deliverable schedule, and/or payment/cost schedule shall also require the prior written approval of the Executive Officer or designee. No subcontract charges will be reimbursed unless the required approvals have been obtained from SCAQMD.

41. TAX IMPLICATIONS FROM RECEIPT OF CARL MOYER PROGRAM FUNDS

RECIPIENT is advised to consult a tax attorney regarding potential tax implications from receipt of funds under the Carl Moyer Program.

42. DISCLAIMER OF WARRANTY

The decision to participate in the Carl Moyer Program and to purchase Program-eligible Equipment is RECIPIENT's decision. **SCAQMD does not make any express or implied warranty of merchantability, fitness for a particular purpose or otherwise, quality or usefulness of the technology or Equipment.** SCAQMD will not be financially responsible or otherwise liable for the installation or performance of the Equipment.



43. ENTIRE AGREEMENT

This Agreement represents the entire agreement between RECIPIENT and SCAQMD. There are no understandings, representations, or warranties of any kind except as expressly set forth herein. No waiver, alteration, or modification of any of the provisions herein shall be binding on any party unless in writing and signed by the authorized representative of the party against whom enforcement of such waiver, alteration, or modification is sought. No waiver by either party of any breach of, or of compliance with, any condition or provision of this Agreement by the other party shall be considered a waiver of any other condition or provision or of the same condition or provision at another time.

44. AUTHORITY

The signator hereto represents and warrants that he or she is authorized and empowered and has the legal capacity to execute this Agreement and to legally bind RECIPIENT both in an operational and financial capacity and that the requirements and obligations under this Agreement are legally enforceable and binding on RECIPIENT.

[THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties to this Agreement have caused this Agreement to be duly executed on their behalf by their authorized representatives.

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

MISSION SPRINGS WATER DISTRICT

DocuSigned by:
Vanessa Delgado
By: 80DA596BAE294BD...
Vanessa Delgado, Chair, Governing Board

Signed by:
BRIAN E MACY
By: 91776DB173334D1...
Name: BRIAN E MACY
Title: General Manager

8/16/2024
Date: _____

8/16/2024
Date: _____

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

By: *Bayron T. Gilchrist*



//Moyer Boilerplate
Updated: January 9, 2024

ATTACHMENT 1

**STATEMENT OF WORK
MISSION SPRINGS WATER DISTRICT
FY 2022-2023 CARL MOYER PROGRAM**

The purpose of this Agreement is to reduce emissions from the replacement or repower of an older off-road, heavy-duty engine/equipment with a lower- or zero- emission engine/equipment, as specified in Table 1.

Table 1: Project Information

Project Type	Old Equipment			Specifications for Replacement Equipment	
	Equipment Description (Type, Make, Model)	Unit ID	Old Engine Emissions Tier*	Replacement Engine Emissions Tier*	% Operation in SCAQMD Jurisdiction
Replacement	Case 570MXT Loader/Backhoe	367	1	4	100

*Based on CARB Executive Order and 2017 Carl Moyer Guidelines.

Task 1: Inspections

- 1.1 RECIPIENT shall make each old engine/equipment identified in Table 1 available to SCAQMD staff for a pre-inspection prior to any work commencing to implement this Agreement. All equipment must be in operational condition. RECIPIENT shall provide access to equipment identification numbers, engine serial numbers and other equipment specifications to verify eligibility of the engine(s) and equipment.
- 1.2 RECIPIENT shall make each replacement or repowered engine(s), or equipment identified in Table 1 available to SCAQMD staff for a post-inspection to verify that it meets all requirements of the Carl Moyer Program.
- 1.3 RECIPIENT shall ensure that a salvage inspection of each old engine/equipment in Table 1 is performed by SCAQMD staff or by an SCAQMD-approved dismantler to verify the engine/equipment has been dismantled in accordance with the Carl Moyer Program Guidelines. Destruction of the old engine/equipment may occur at an SCAQMD-approved dismantling facility or another facility in conjunction with an SCAQMD salvage inspection.

- 1.4 RECIPIENT shall notify the SCAQMD in writing upon delivery of the old engine/equipment in Table 1 to an SCAQMD-approved dismantler or other facility for dismantling. This notification shall include date of delivery/date of receipt by the dismantler, address of the dismantling site, and the scheduled date for dismantling. If RECIPIENT delivers the old engine/equipment to a dealer, RECIPIENT shall ensure the dealer delivers the old engine/equipment to an SCAQMD-approved dismantler within 30 calendar days of the date that the engine/equipment was turned in to the dealer by the RECIPIENT.

Task 2: Procurement of Replacement or Repowered Engine(s) or Equipment

- 2.1 RECIPIENT shall provide documentation of procurement of replacement or repowered engine(s) or equipment that meet the emission standards specified in Table 1. This documentation shall include, at a minimum, an itemized invoice, including identification of any taxes, delivery fees and other costs, with sufficient details to ensure that only completed and eligible projects costs are reimbursed, identification of other sources and amounts of funding (if any), and engine/equipment information including but not limited to engine/equipment make, model, model year, warranty coverage and a copy of the CARB Executive Order for each procured engine. This documentation shall be submitted to SCAQMD at the time of invoice submittal.
- 2.2 Notwithstanding the above requirement, RECIPIENT is responsible for determining that the replacement or repowered engine(s) or equipment to be purchased complies with all applicable federal, state, and local air quality rules and regulations. The replacement or repowered engine(s) must be certified by CARB to meet the emissions level specified in Table 1, as documented by the CARB Executive Order required under Task 2.1.
- 2.3 If RECIPIENT determines that it will be unable to procure or install the replacement or repowered engine(s) or equipment identified in Table 1, RECIPIENT shall notify SCAQMD in writing as soon as possible so that SCAQMD may re-evaluate the project and determine if an amendment to the Agreement is needed.

Task 3: Operation of Equipment

- 3.1 RECIPIENT shall place the repowered or replacement equipment meeting the emissions level specified in Table 1 into regular operating service and shall inform the SCAQMD where the equipment is domiciled within the geographical boundaries of the SCAQMD.
- 3.2 RECIPIENT agrees to operate the repowered or replacement equipment within the geographical boundaries of the SCAQMD for the percentage of time specified in Table 1 based on annual usage.

- 33 RECIPIENT agrees to make operational information for the replacement or repowered equipment identified in Table 1 available, upon reasonable notice, to SCAQMD or CARB staff during the life of the project. This information may include, but is not limited to, operational records documenting the hours of operation, hour-meter readings and annual reports.
- 34 The expected annual usage of the new engine/equipment are specified in Table 2 below.

Table 2: Annual Usage

Old Equipment/Engine Unit#	Replacement Equipment Annual Usage (hours/year) *	Project Life (years)
367	600	3

*If the average annual usage of the engine/equipment over a 3-year period falls below 70% of the annual usage specified in Table 2, the SCAQMD may, at its discretion, consider taking action to address the underutilization. RECIPIENT shall coordinate with SCAQMD staff to develop actions to ensure that the contracted emission reductions are realized.

Task 4: Destruction of Existing Equipment/Engine(s)

- 4.1 RECIPIENT shall ensure that SCAQMD is notified within 10 days after destruction so that a salvage inspection can be performed by SCAQMD. The purpose of the salvage inspection is to verify the old engine/equipment was dismantled in accordance with the Carl Moyer Program Guidelines.
- 4.2 RECIPIENT shall ensure that no funding under this Agreement is used to cover costs associated with transporting the engine/equipment to a dismantler or the dismantling of the engine/equipment.
- 4.3 RECIPIENT shall ensure that the old (existing) engine/equipment identified in Table 1 is destroyed within 60 calendar days of being replaced.
- 4.4 RECIPIENT shall ensure that the old engine/equipment identified in Table 1 is destroyed and rendered useless, by cutting a 3-inch minimum, irregularly shaped hole in the engine block at the narrowest point and a section of the oil pan flange must be removed as part of the hole or have a line cut through it that connects the hole. For replacement projects, the RECIPIENT shall also ensure the main body of the old equipment is rendered inoperable and unrepairable as specified in the Carl Moyer Program Guidelines.
- 4.5 RECIPIENT shall obtain a certificate of destruction for each old engine/equipment identified in Table 1, or other similarly approved documentation from the dismantler, for submittal to the SCAQMD within 10 days of destruction.

Task 5: Reporting

- 5.1 RECIPIENT shall provide annual reports, as described under Deliverables in Attachment 1B.

- 5.2 RECIPIENT shall notify SCAQMD in writing in advance of the sale of the replacement or repower engine(s) or equipment identified in Table 1 in accordance with the ASSIGNMENT AND TRANSFER OF EQUIPMENT clause of this Agreement.

ATTACHMENT 1A
PROJECT MILESTONES
MISSION SPRINGS WATER DISTRICT
FY 2022-2023 CARL MOYER PROGRAM

<u>Milestone</u>	<u>Due Date</u>
All Equipment In-Service	December 31, 2024
All Invoices Due No Later Than	January 31, 2025
Annual Project Progress Reports Due	January 31, 2026 January 31, 2027 and January 31, 2028

ATTACHMENT 1B

DELIVERABLES MISSION SPRINGS WATER DISTRICT FY 2022-2023 CARL MOYER PROGRAM

RECIPIENT shall complete and submit to SCAQMD annual reports (using Attachment 3 Annual Report Form) for the term of the project life identified in Table 2. Each submitted report shall be stapled, not bound, printed in black ink, double-sided type, on an 8-1/2 by 11 inch page, and shall include camera-ready originals.

1. Two stapled copies of each annual report. This document shall be considered in the public domain, in conformance with the California Public Records Act (Government Code Section 6250 et seq.). The annual report shall include, but not be limited to, the following:
 - a. Reference to SCAQMD agreement number and title of project.
 - b. A description of the funded equipment, including:
 - Unit ID#
 - Equipment make and model
 - Engine make, model, horsepower, and serial number.
 - c. A description of the operation of the equipment, including:
 - Estimated percentage of time the equipment has been operated within the SCAQMD geographical boundaries during the reporting period.
 - Engine hours operated during the report period (including the date of each hour meter reading).
 - Discussion of equipment performance, including operational performance and any major repairs and maintenance performed.
 - d. Problems - a discussion of significant problems encountered during the year and how they were resolved.

ATTACHMENT 2

**PAYMENT SCHEDULE
MISSION SPRINGS WATER DISTRICT
FY 2022-2023 CARL MOYER PROGRAM**

RECIPIENT shall be reimbursed up to the amount outlined in Table 3 below for each replacement or repowered engine(s) or equipment. For each old engine/equipment, the SCAQMD payment shall not exceed 80% of the eligible costs of each replacement or exceed 85% of the eligible cost of each repowered engine(s) or the amounts identified in Table 3 below, whichever is less. RECIPIENT will be reimbursed after passing a post-inspection, submitting all the required documents for payment, including invoices, proof of payment and destruction, and verification of delivery, acceptance and placement into service. Payment will not be made if RECIPIENT has any outstanding CARB violations associated with the owner’s entire fleet(s) or not in compliance with all applicable federal, state, and local air quality rules and regulations.

Table 3: Maximum Reimbursement Amount

Unit ID	Old Equipment Description	Maximum Award Amount Per Equipment to be Reimbursed by SCAQMD	Funding Source
367	Case 570MXT Loader/Backhoe	\$54,600	Carl Moyer Program

Total Not-To-Exceed: \$54,600

Payments will be disbursed after evidence of old engine/equipment destruction is submitted and a satisfactory post-inspection is conducted by SCAQMD staff.

ATTACHMENT 3



**SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT
CARL MOYER PROGRAM
ANNUAL REPORT FORM**

RECIPIENT NAME: MISSION SPRINGS WATER DISTRICT **SCAQMD AGREEMENT #:** _____
ADDRESS: _____ **EMAIL:** _____
PHONE: _____
REPORTING PERIOD (MM/DD/YYYY TO MM/DD/YYYY): _____

Equipment ID#	Location of Equipment (City & Zip)	% of Time in SCAQMD Boundaries	INITIAL Engine Hour Meter Reading		FINAL Engine Hour Meter Reading		Engine Hours of Operation (FINAL Hour Meter Reading minus INITIAL Hour Meter Reading)
			Date of Reading	Hour Meter Reading	Date of Reading	Hour Meter Reading	

Please describe any major repairs, maintenance, unforeseen circumstances or problems that significantly affected the operation of the equipment:

I, the undersigned, certify that the above information is true and correct.

PRINT NAME: _____ **SIGNATURE:** _____

TITLE: _____ **DATE:** _____