



City Council Staff Report

Date: January 13, 2016

CONSENT CALENDAR

Subject: APPROVAL OF AB 2766 / MSRC LOCAL GOVERNMENT MATCH PROGRAM CONTRACT NO. ML16005 IN THE AMOUNT OF \$80,000 WITH THE SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT FOR BICYCLE INFRASTRUCTURE AND IMPLEMENTATION OF A BICYCLE OUTREACH PROGRAM.

From: David H. Ready, City Manager

Initiated by: Office of Sustainability

SUMMARY

On December 3, 2016, the Office of Sustainability received a grant for \$40,000 for installation of bicycle racks and implementation of a bicycle outreach and education program from the South Coast Air Quality Management District (AQMD) through its Assembly Bill 2766¹ / Mobile Source Air Pollution Reduction Review Committee (AB 2766 / MSRC) Local Government Match Program.

The Local Government Match Program requires a match of local funds, and with this grant the City's will provide matching funds of \$20,000 from the City's Sustainability Fund and \$20,000 from AB 2766 Subvention Funds allocated to the City from AQMD. The total amount of the grant contract is \$80,000; approval of the AQMD Contract No. ML16005 will facilitate reimbursement of \$60,000 from AQMD towards the \$80,000 project cost.

RECOMMENDATION:

1. Approve AB 2766 / MSRC Local Government Match Program Contract No. ML16005 with South Coast Air Quality Management District, in the amount of \$80,000 (40,000 AQMD Grant / \$20,000 AB2766 Subvention Funds / \$20,000 Local

¹ In September 1990, Assembly Bill 2766 (AB 2766) was signed into law initially authorizing a \$2 motor vehicle registration fee surcharge. Section 44223 of the Health & Safety (H&S) Code, enacted by AB 2766, specifies that this motor vehicle registration fee be used "...for the reduction of air pollution from motor vehicles pursuant to, and for related planning, monitoring, enforcement, and technical studies necessary for the implementation of the California Clean Air Act of 1988."

Funding) for installation of bicycle racks and implementation of a bicycle outreach and education program; and

2. Authorize the City Manager to execute all necessary documents.

STAFF ANALYSIS:

The City of Palm Springs adopted a Non-Motorized Transportation Plan (NMTP) in October 2011. Since that time, the Office of Sustainability has worked with the Sustainability Commission and Active Transportation Committee (ATC) to implement elements of the NMTP, and to expand bicycle infrastructure City-wide.

Many improvements have been made to bicycle lanes and other infrastructure such as bicycle parking facilities, including bicycle corrals and racks. A new bicycle rack hosting program was established in 2014 and resulted in the addition of over 60 racks at businesses and parks throughout the City, including in the three bicycle friendly business districts. In addition, the City now has three fix-it stations and six bicycle corrals in both private and public locations. Examples of these bicycle facilities supporting the City's NMTP are provided in Figures 1 and 2 below.



Figure 1: Bicycle Fix-it station at the City of Palm Springs Public Library. The project was funded by MSRC grant.



Figure 2: One of six bicycle corrals used to park up to 12 bicycles. Project was funded by MSRC grant.

Addition of the bicycle corrals provides safer parking options for cyclists. Adding bicycle parking encourages alternative transportation, and helps reach the City's goal of reduced greenhouse gas emissions. In addition, education and outreach has increased with the creation of new programs and materials promoting "open streets" events,

bicycle route maps, bicycle helmet fitting for adults and children, and bicycle safety demonstrations aimed at nighttime bicycle rider safety.

The Office of Sustainability has successfully applied for several grants to foster improvement of the bicycle culture within the City. These grants have also help fund costs associated with implementation of these various bicycle programs in the past.

In May 2015, the Office of Sustainability submitted a grant application to AQMD for funding towards installation of more bicycle racks, and to implement bicycle outreach and education programs. On December 3, 2015, AQMD notified the City of its award of funding through the AB 2766 / MSRC Local Government Match Program, and provided AQMD Contract No. ML16005 to facilitate the City's award of \$40,000 and the obligation to match with \$20,000 from the City's own local funds, and \$20,000 from AB 2766 Subvention Funds allocated to the City by AQMD².

Staff recommends that City Council accept AB2766/MSRC Local Government Match Program Contract No.ML16005 to allow for the purchase of additional racks and to continue educational outreach programs. Contract No. ML16005 is included as **Attachment 1**.

ENVIRONMENTAL IMPACT:

The requested City Council action is not a "Project" as defined by the California Environmental Quality Act (CEQA). Pursuant to Section 15378(a), a "Project" means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. According to Section 15378(b), a Project does not include: (5) Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

FISCAL IMPACT:

The AB 2766 /MSRC Local Government Match Program Contract No. ML16005 provides the City with up to \$40,000 in funding towards bicycle improvements and programs, requiring the City's commitment of similar funds. The 2014/15 Fiscal Year budget previously appropriated \$65,000 in the Sustainability Fund (Fund 138) for anticipated local match funds associated with AQMD grants awarded to the City for bicycle projects and related programs; this funded was continued into the 2015/16 Fiscal Year budget.

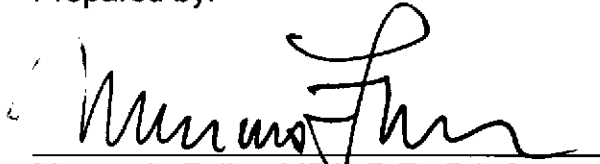
² Since 1991, local governments have received AB 2766 funds to implement programs that reduce air pollution from motor vehicles. The motor vehicle registration fee surcharge is collected by the Department of Motor Vehicles and subvned to AQMD for disbursement whereby a portion of these funds are allocated to local governments (the "subvention" portion); AQMD is applying \$20,000 of the City's allocation of Subvention Funds towards this grant contract.

Sufficient funding to provide the \$20,000 local matching funds is available in Account No. 138-1270-58039.

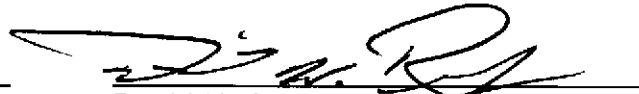
SUBMITTED

Prepared by:

Approved by:



Marcus L. Fuller, MPA, P.E., P.L.S.
Assistant City Manager/City Engineer



David H. Ready, Esq., Ph.D.
City Manager

Attachments:

1. AQMD Contract No. ML16005

ATTACHMENT 1

AB 2766/MSRC LOCAL GOVERNMENT MATCH PROGRAM CONTRACT

1. **PARTIES** - The parties to this Contract are the South Coast Air Quality Management District (hereinafter referred to as "SCAQMD") whose address is 21865 Copley Drive, Diamond Bar, California 91765-4178, and the City of Palm Springs (hereinafter referred to as "CONTRACTOR") whose address is 3200 East Tahquitz Canyon Way, Palm Springs, California 92262.

2. **RECITALS**
 - A. SCAQMD is the local agency with primary responsibility for regulating stationary source air pollution within the geographical boundaries of the South Coast Air Quality Management District in the State of California (State). SCAQMD is authorized under State Health & Safety Code Section 44225 (AB 2766) to levy a fee on motor vehicles for the purpose of reducing air pollution from such vehicles and to implement the California Clean Air Act.
 - B. Under AB 2766, SCAQMD's Governing Board has authorized the imposition of the statutorily set motor vehicle fee. By taking such action, the State's Department of Motor Vehicles (DMV) is required to collect such fee and remit it periodically to SCAQMD.
 - C. AB 2766 further mandates that thirty (30) percent of such vehicle registration fees be placed by SCAQMD into a separate account for the sole purpose of implementing and monitoring programs to reduce air pollution from motor vehicles.
 - D. AB 2766 creates a regional Mobile Source Air Pollution Reduction Review Committee (MSRC) to develop a work program to fund projects from the separate account. Pursuant to approval of the work program by SCAQMD's Governing Board, SCAQMD authorized this Contract with CONTRACTOR for equipment or services described in Attachment 1 - Statement of Work, expressly incorporated herein by this reference and made a part hereof of this Contract.
 - E. CONTRACTOR has met the requirements for receipt of AB 2766 Discretionary Funds as set forth in CONTRACTOR's Local Government Match Program Application dated June 1, 2015.
 - F. CONTRACTOR is authorized to do business in the State of California and attests that it is in good tax standing with the California Franchise Tax Board.
 - G. All parties to this Contract have had the opportunity to have this Contract reviewed by their attorney.

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

4. **AUDIT AND RECORDS RETENTION**
 - A. CONTRACTOR shall, at least once every two years, or within two years of the termination of the Contract if the term is less than two years, be subject to an audit by SCAQMD or its authorized representative to determine if the revenues received by CONTRACTOR were spent for the reduction of pollution from motor vehicles pursuant to the Clean Air Act of 1988.
 - B. CONTRACTOR agrees to maintain records related to this Contract during the Contract term and continue to retain these records for a period of two years beyond the Contract term, except that in no case shall CONTRACTOR be required to retain more than the most recent five years' records. SCAQMD shall coordinate such audit through CONTRACTOR'S audit staff.

- C. If an amount is found to be inappropriately expended, SCAQMD may withhold funding, or seek reimbursement, from CONTRACTOR in the amount equal to the amount that was inappropriately expended. Such withholding shall not be construed as SCAQMD's sole remedy and shall not relieve CONTRACTOR of its obligation to perform under the terms of this Contract.
5. TERM - The term of this Contract is for nineteen (19) months from the date of execution by both parties, unless terminated earlier as provided for in the TERMINATION clause of this Contract, or the term is extended by amendment of this Contract in writing. No work shall commence prior to the Contract start date, except at CONTRACTOR's cost and risk, and no charges are authorized until this Contract is fully executed, subject to the provisions stated in the PRE-CONTRACT COSTS clause of this Contract.
6. SUCCESSORS-IN-INTEREST - This Contract, and the obligations arising under the Contract, shall be binding on and inure to the benefit of CONTRACTOR and their executors, administrators, successors, and assigns.
7. REPORTING - CONTRACTOR shall submit reports to SCAQMD as outlined in Attachment 1 - Statement of Work. SCAQMD reserves the right to review, comment, and request changes to any report produced as a result of this Contract.
8. TERMINATION
- A. In the event any party fails to comply with any term or condition of this Contract, or fails to provide services in the manner agreed upon by the parties, including, but not limited to, the requirements of Attachment 1 – Statement of Work, this failure shall constitute a breach of this Contract. The non-breaching party shall notify the breaching party that it must cure this breach or provide written notification of its intention to terminate this contract. Notification shall be provided in the manner set forth in the NOTICES clause of this Contract. The non-breaching party reserves all rights under law and equity to enforce this Contract and recover damages.
- B. SCAQMD reserves the right to terminate this Contract, in whole or in part, without cause, upon thirty (30) days' written notice. Once such notice has been given, CONTRACTOR shall, except as and to the extent or directed otherwise by SCAQMD, discontinue any Work being performed under this Contract and cancel any of CONTRACTOR's orders for materials, facilities, and supplies in connection with such Work, and shall use its best efforts to procure termination of existing subcontracts upon terms satisfactory to SCAQMD. Thereafter, CONTRACTOR shall perform only such services as may be necessary to preserve and protect any Work already in progress and to dispose of any property as requested by SCAQMD.
- C. CONTRACTOR shall be paid in accordance with this Contract for all Work performed before the effective date of termination under section B of the TERMINATION clause of this Contract. Before expiration of the thirty (30) days' written notice, CONTRACTOR shall promptly deliver to SCAQMD all copies of documents and other information and data prepared or developed by CONTRACTOR under this Contract with the exception of a record copy of such materials, which may be retained by CONTRACTOR.
9. STOP WORK - SCAQMD may, at any time, by written notice to CONTRACTOR, require CONTRACTOR to stop all or any part of the Statement of Work tasks in this Contract. A stop work order may be issued for reasons including, but not limited to, the project exceeding the budget, out of scope work, delay in project schedule, or misrepresentations. Upon receipt of the stop work order, CONTRACTOR shall immediately take all necessary steps to comply with the order. CONTRACTOR shall resume the work only upon receipt of written instructions from SCAQMD cancelling the stop work order. CONTRACTOR agrees and understands that CONTRACTOR will not be paid for performing work while the stop work order is in effect, unless SCAQMD agrees to do so in its written cancellation of the stop work order.

10. **INSURANCE** - CONTRACTOR represents that it is permissibly self-insured and will maintain such self-insurance in accordance with applicable provisions of California law throughout the term of this Contract. CONTRACTOR shall provide evidence of sufficient coverage during the term of this Contract and any extensions thereof that meet or exceed the minimum requirements set forth by the SCAQMD below. The certificate of self-insurance shall be mailed to: SCAQMD, 21865 Copley Drive, Diamond Bar, CA 91765-4178, Attention: Cynthia Ravenstein, MSRC Contracts Administrator. **The SCAQMD Contract Number must be included on the face of the certificate.** If CONTRACTOR fails to maintain the required insurance coverage, SCAQMD reserves the right to terminate the Contract or purchase such additional insurance and bill CONTRACTOR or deduct the cost thereof from any payments owed to CONTRACTOR. Minimum insurance coverages are as follows:
- A. Worker's compensation insurance in accordance with either California or other state's applicable statutory requirements.
 - B. General Liability insurance with a limit of at least \$1,000,000 per occurrence, and \$2,000,000 in general aggregate.
 - C. Automobile Liability insurance with limits of at least \$100,000 per person and \$300,000 per accident for bodily injuries and \$50,000 in property damage, or \$1,000,000 combined single limit for bodily injury or property damage.
11. **INDEMNIFICATION** - CONTRACTOR agrees to hold harmless, defend and indemnify SCAQMD, its officers, employees, agents, representatives, and successors-in-interest against any and all loss, damage, costs, lawsuits, claims, demands, causes of action, judgments, attorney's fees, or any other expenses arising from or related to any third party claim against SCAQMD, its officers, employees, agents, representatives, or successors in interest that arise or result in whole or in part, from any actual or alleged act or omission of CONTRACTOR, its employees, subcontractors, agents or representatives in the performance of this Contract. This Indemnification Clause shall survive the expiration or termination (for any reason) of the Contract and shall remain in full force and effect.
12. **DISCLAIMER OF WARRANTY** - The purchase or lease of funded vehicles/equipment is the CONTRACTOR's decision. The SCAQMD does not make any express or implied warranty of merchantability, fitness for a particular purpose or otherwise, quality or usefulness of the technology or product. Without limiting the foregoing, the SCAQMD will not be financially responsible, or otherwise liable, for the installation or performance of the vehicle/equipment.
13. **PAYMENT**
- A. SCAQMD shall reimburse CONTRACTOR up to a total amount of Forty Thousand Dollars (\$40,000) in accordance with Attachment 2 – Payment Schedule expressly incorporated herein by this reference and made a part hereof of the Contract.
 - B. A withhold amount or percentage (if any) shall be identified in the Payment Schedule, and such amount shall be withheld from each invoice. Upon satisfactory completion of project and final acceptance of work and the final report, CONTRACTOR's invoice for the withheld amount shall be released. Proof of project completion shall include a Final Report detailing the project goals and accomplishments, data collected during project performance, if any, documentation of significant results, and emissions reduction input data needed for calculation of emissions reductions.

- C. Any funds not expended upon early Contract termination or Contract completion shall revert to the AB 2766 Discretionary Fund. Payment of charges shall be made by SCAQMD to CONTRACTOR within thirty (30) days after approval by SCAQMD of an itemized invoice prepared and furnished by CONTRACTOR.
- D. An invoice submitted to SCAQMD for payment must be prepared in duplicate, on company letterhead, and list SCAQMD's contract number, period covered by invoice, and CONTRACTOR's social security number or Employer Identification Number and submitted to:

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

- 1. Charges for equipment, material, and supply costs, travel expenses, subcontractors, and other charges, as applicable, must be itemized by CONTRACTOR. Reimbursement for equipment, material, supplies, subcontractors, and other charges, as applicable, shall be made at actual cost. Supporting documentation must be provided for all individual charges (with the exception of direct labor charges provided by CONTRACTOR).
 - 2. SCAQMD shall pay CONTRACTOR for travel-related expenses only if such travel is expressly set forth in Attachment 2 – Payment Schedule of this Contract or pre-authorized by SCAQMD in writing.
 - 3. CONTRACTOR's failure to provide receipts shall be grounds for SCAQMD's non-reimbursement of such charges. CONTRACTOR may reduce payments on invoices by those charges for which receipts were not provided.
 - 4. CONTRACTOR must submit final invoice no later than ninety (90) days after the termination date of this Contract or invoice may not be paid.
14. COMPLIANCE WITH APPLICABLE LAWS - CONTRACTOR agrees to comply with all federal, state, and local laws, ordinances, codes and regulations and orders of public authorities in the performance of this Contract. CONTRACTOR must also ensure that the vehicles and/or equipment to be purchased, leased or installed is in compliance with all applicable federal, state, and local air quality rules and regulations, and that it will maintain compliance for the full Contract term. CONTRACTOR shall ensure that the provisions of this clause are included in all subcontracts.
15. MOBILE SOURCE EMISSION REDUCTION CREDITS (MSERCs)
- A. The MSRC has adopted a policy that no MSERCs resulting from AB 2766 Discretionary Funds may be generated and/or sold.
 - B. CONTRACTOR has the opportunity to generate MSERCs as a by-product of the project if a portion of the air quality benefits attributable to the project resulted from funding sources other than AB2766. These MSERCs, which are issued by SCAQMD, are based upon the quantified vehicle miles traveled (VMT) by project vehicles or other activity data as appropriate. Therefore, a portion of prospective MSERCs, generated as a result of AB 2766 Funds, must be retired. The portion of prospective credits funded by the AB 2766 program, and which are subject to retirement, shall be referred to as "AB 2766-MSERCs."
 - C. The determination of AB 2766-MSERC's is to be prorated based upon the AB 2766 program's contribution to the cost associated with the air quality benefits. In the case where AB 2766 Discretionary Funds are used to pay for the full differential cost of a new alternative fuel vehicle or for the retrofitting or repowering of an existing vehicle, all MSERCs attributable to AB 2766 Discretionary Funds must be retired. The determination of AB 2766-MSERCs for infrastructure and other ancillary items is to be prorated based upon the AB 2766 program's contribution to the associated air quality benefits. Determination of the project's overall cost will be on a case-by-case basis at the time an MSERC application is submitted.

SCAQMD staff, at the time an MSERC application is submitted, will calculate total MSERCs and retire the AB 2766-MSERCs. CONTRACTOR would then receive the balance of the MSERCs not associated with AB 2766 funding.

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

SCAQMD:
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765-4178
Attn: Cynthia Ravenstein, MSRC Contracts Administrator, email: cravenstein@aqmd.gov

CONTRACTOR:
City of Palm Springs
3200 East Tahquitz Canyon Way
Palm Springs, California 92262
Attn: Marcus Fuller, email: Marcus.Fuller@palmsspringsca.gov

17. **INDEPENDENT CONTRACTOR** - CONTRACTOR is an independent contractor. CONTRACTOR, its officers, employees, agents, representatives, or subcontractors shall in no sense be considered employees or agents of SCAQMD, nor shall CONTRACTOR, its officers, employees, agents, representatives, or subcontractors be entitled to or eligible to participate in any benefits, privileges, or plans, given or extended by SCAQMD to its employees. SCAQMD will not supervise, direct, or have control over, or be responsible for, CONTRACTOR's or subcontractor's means, methods, techniques, work sequences or procedures, or for the safety precautions and programs incident thereto, or for any failure by them to comply with any local, state, or federal laws, or rules or regulations, including state minimum wage laws and OSHA requirements.
18. **SUBCONTRACTOR APPROVAL** - If CONTRACTOR intends to subcontract all or a portion of the work under this Contract, then CONTRACTOR must first obtain written approval from SCAQMD's Executive Officer or designee prior to subcontracting any work. Any material changes to the subcontract(s) that affect the scope of work, deliverable schedule, and/or payment/cost schedule shall also require the prior written approval of the SCAQMD Executive Officer or designee. No subcontract charges will be reimbursed unless the required approvals have been obtained from SCAQMD.
19. **OWNERSHIP** - Title and full ownership rights to any equipment purchased under this Contract shall at all times remain with CONTRACTOR.

20. **SECURITY INTEREST** - CONTRACTOR hereby grants SCAQMD a security interest in any and all equipment purchased, in whole or in part, with funding provided by SCAQMD pursuant to this Contract. CONTRACTOR acknowledges and agrees that SCAQMD shall have all lien rights as a secured creditor on any and all equipment purchased in whole or in part by the CONTRACTOR, under this Contract or any amendments thereto. The SCAQMD shall have lien rights in effect until the CONTRACTOR satisfies all terms under the Contract, including but not limited to, the use and reporting requirements. **Accordingly, CONTRACTOR further agrees that SCAQMD is authorized to file a UCC filing statement or similar security instrument to secure its interests in the equipment that is the subject of the Contract.** In the event CONTRACTOR files for bankruptcy protection, CONTRACTOR shall notify SCAQMD within 10 business days of such filing.
21. **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.
22. **CITIZENSHIP AND ALIEN STATUS**
- A. CONTRACTOR warrants that it fully complies with all laws regarding the employment of aliens and others, and that its employees performing services hereunder meet the citizenship or alien status requirements contained in federal and state statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986 (P.L. 99-603). CONTRACTOR shall obtain from all covered employees performing services hereunder all verification and other documentation of employees' eligibility status required by federal statutes and regulations as they currently exist and as they may be hereafter amended. CONTRACTOR shall have a continuing obligation to verify and document the continuing employment authorization and authorized alien status of employees performing services under this Contract to insure continued compliance with all federal statutes and regulations. Notwithstanding the above, CONTRACTOR, in the performance of this Contract, shall not discriminate against any person in violation of 8 USC Section 1324b.
- B. CONTRACTOR shall retain such documentation for all covered employees for the period described by law. CONTRACTOR shall indemnify, defend, and hold harmless SCAQMD, its officers and employees from employer sanctions and other liability which may be assessed against CONTRACTOR or SCAQMD, or both in connection with any alleged violation of federal statutes or regulations pertaining to the eligibility for employment of persons performing services under this Contract.
23. **ASSIGNMENT AND TRANSFER OF EQUIPMENT**
- A. The rights and responsibilities granted hereby may not be assigned, sold, licensed, or otherwise transferred by CONTRACTOR without the prior written consent of SCAQMD, and any attempt by CONTRACTOR to do so shall be void upon inception.
- B. CONTRACTOR agrees to obtain SCAQMD's written consent to any assignment, sale, license or transfer of Equipment, if any, prior to completing the transaction. CONTRACTOR shall inform the proposed assignee, buyer, licensee or transferee (collectively referred to here as "Buyer") of the terms of this Contract. CONTRACTOR is responsible for establishing contact between SCAQMD and the Buyer and shall assist SCAQMD in facilitating the transfer of this Contract's terms and conditions to the Buyer. **CONTRACTOR will not be relieved of the legal obligation to fulfill the terms and conditions of this**

Contract until and unless the Buyer has assumed responsibility of this Contract's terms and conditions through an executed contract with SCAQMD.

24. **NON-EFFECT OF WAIVER** - The failure of CONTRACTOR or SCAQMD to insist upon the performance of any or all of the terms, covenants, or conditions of this Contract, or failure to exercise any rights or remedies hereunder, shall not be construed as a waiver or relinquishment of the future performance of any such terms, covenants, or conditions, or of the future exercise of such rights or remedies, unless otherwise provided for herein.
25. **TAX IMPLICATIONS FROM RECEIPT OF MSRC FUNDS** - CONTRACTOR is advised to consult a tax attorney regarding potential tax implications from receipt of MSRC funds.
26. **ATTORNEYS' FEES** - In the event any action is filed in connection with the enforcement or interpretation of this Contract, each party in said action shall pay its own attorneys' fees and costs.
27. **FORCE MAJEURE** - Neither SCAQMD 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 SCAQMD or CONTRACTOR.
28. **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.
29. **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.
30. **DUPLICATE EXECUTION** - This Contract is executed in duplicate. Each signed copy shall have the force and effect of an original.
31. **GOVERNING LAW** - This Contract shall be construed and interpreted and the legal relations created thereby shall be determined in accordance with the laws of the State of California. Venue for resolution of any disputes under this Contract shall be Los Angeles County, California.
32. **PRE-CONTRACT COSTS** - Any costs incurred by CONTRACTOR prior to CONTRACTOR receipt of a fully executed Contract shall be incurred solely at the risk of the CONTRACTOR. In the event that a formal Contract is not executed, neither the MSRC nor the SCAQMD shall be liable for any amounts expended in anticipation of a formal Contract. If a formal Contract does result, pre-contract cost expenditures authorized by the Contract will be reimbursed in accordance with the Payment Schedule and payment provision of the Contract.
33. **CHANGE TERMS** - Changes to any part of this Contract must be requested in writing by CONTRACTOR and approved by MSRC in accordance with MSRC policies and procedures. CONTRACTOR must make requests a minimum of 90 days prior to desired effective date of change. All modifications to this Contract shall be in writing and signed by the authorized representatives of the parties. Fueling station location changes shall not be approved under any circumstances.

34. **PREVAILING WAGES** – CONTRACTOR is alerted to the prevailing wage requirements of California Labor Code section 1770 et seq., and the compliance monitoring and enforcement of such requirements by the Department of Industrial Relations ("DIR"). CONTRACTOR and all of CONTRACTOR's subcontractors must comply with the California Public Works Contractor Registration Program and must be registered with the DIR to participate in public works projects. CONTRACTOR shall be responsible for determining the applicability of the provisions of California Labor Code and complying with the same, including, without limitation, obtaining from the Director of the Department of Industrial Relations the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work, making the same available to any interested party upon request, paying any applicable prevailing rates, posting copies thereof at the job site and flowing all applicable prevailing wage rate requirements to its subcontractors. Proof of compliance with these requirements must be provided to SCAQMD upon request. CONTRACTOR shall indemnify, defend and hold harmless the South Coast Air Quality Management District against any and all claims, demands, damages, defense costs or liabilities based on failure to adhere to the above referenced statutes.
35. **ENTIRE CONTRACT** - This Contract represents the entire agreement between CONTRACTOR and SCAQMD. There are no understandings, representations, or warranties of any kind except as expressly set forth herein. No waiver, alteration, or modification of any of the provisions herein shall be binding on any party unless in writing and signed by the authorized representative of the party against whom enforcement of such waiver, alteration, or modification is sought.
36. **AUTHORITY** - The signator hereto represents and warrants that he or she is authorized and empowered and has the legal capacity to execute this Contract and to legally bind CONTRACTOR both in an operational and financial capacity and that the requirements and obligations under this Contract are legally enforceable and binding on CONTRACTOR.

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

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

CITY OF PALM SPRINGS

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

By: _____
Name:
Title:

Date: _____

Date: _____

ATTEST:
Saundra McDaniel, Clerk of the Board

By: _____

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

By: Valeria Tyson

//MSRC Master Boilerplate
Revised December 16, 2014

**Attachment 1
Statement of Work
City of Palm Springs
Contract Number ML16005**

1. Project Elements

- A. The City of Palm Springs (hereinafter referred to as "CONTRACTOR") is to install 20 sidewalk "bike-shaped" racks (each of which accommodates 2 bicycles). CONTRACTOR shall notify SCAQMD staff of specific locations selected.
- B. CONTRACTOR shall also develop and implement a bicycle outreach and education program. At a minimum, program shall include, but is not necessarily limited to, producing and distributing, installing, or implementing as appropriate:
 - i. At least 10,000 bilingual bike safety brochures;
 - ii. One Open Streets event (an event temporarily closing one or more streets to motor vehicle traffic in order to encourage the active transportation modes of bicycling and walking as means of transportation) in October 2016;
 - iii. Banner promoting Open Streets event;
 - iv. At least three bike safety demonstrations; and
 - v. Create mobile application for Walk and Roll biking and walking website.

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

2. Promotion

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

3. Reports

Quarterly Reports: Until bike racks are installed and bicycle outreach program is complete, CONTRACTOR shall provide quarterly progress reports that summarize the project results to date including, but not limited to: tasks completed, issues or problems encountered, resolutions implemented, and progress to date. Progress reports that do not comply will be returned to the CONTRACTOR as inadequate.

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

**Attachment 1
Statement of Work
City of Palm Springs
Contract Number ML16005**

4. Project Schedule

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

Task	Completion
Finalize list of bicycle outreach activities and order promotional materials	Month 6
Determine locations and order bike racks	Month 7
Submit Public Outreach Plan	Month 7
Install bike racks	Month 9
Complete bicycle outreach	Month 14
Implement Public Outreach Plan	Month 16
Quarterly reports	Months 4, 7, 10, and 13
Final Report	Month 17

**Attachment 2
Payment Schedule
City of Palm Springs
Contract Number ML16005**

Cost Breakdown

Purchase Category	Maximum AB2766 Discretionary Funds payable under this Contract	CONTRACTOR AB2766 Subvention Funds Applied	Other Funds Applied to Match	Additional Project Co-Funding (not matched)	Total Cost
Install bike racks	\$15,000	\$7,500	\$7,500	\$0	\$30,000
Implement bicycle outreach	\$25,000	\$12,500	\$12,500	\$0	\$50,000
Totals	\$40,000	\$20,000	\$20,000	\$0	\$80,000

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

Bicycle Infrastructure

- Representative photos;
- a report signed by a responsible official certifying that the bicycle racks have been installed as described in Attachment 1; and
- invoice(s) from any subcontractor(s) performing the installations.

Outreach Program

- Sample of bike safety brochure;
- Representative photo of installed banner(s);
- Demonstrable ability to install and operate Walk and Roll mobile application; and
- Invoice(s) from any subcontractor(s) performing banner installations, distributing materials, creating mobile application, conducting bike safety demonstrations and implementing Open Streets event.

If, at the completion of the Project, the expenditures are less than the Total Cost amount above, the actual amount of AB 2766 Discretionary Funds reimbursed to CONTRACTOR shall be adjusted on a prorated basis, so that the amount reimbursed to CONTRACTOR shall not exceed the actual amount of AB 2766 Subvention Funds plus other funds applied.

**Attachment 2
Payment Schedule
City of Palm Springs
Contract Number ML16005**

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