

**SACRAMENTO METROPOLITAN AIR QUALITY MANAGEMENT DISTRICT
SACRAMENTO AREA COUNCIL OF GOVERNMENTS
MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding (MOU) made between the Sacramento Metropolitan Air Quality Management District, a public agency of the State of California (SMAQMD) and Sacramento Area Council of Governments (SACOG).

1.0 Recitals

- 1.1 The District is part of the six-county federal Sacramento Ozone Nonattainment Area (Nonattainment Area). Ozone is formed by the interaction of precursor pollutants, including Nitrogen Oxide (NOx). The majority of NOx in the Sacramento Nonattainment Area is generated by vehicles, including heavy-duty vehicles and engines.
- 1.2 The state legislature established the Sacramento Emergency Air Quality and Transportation Program (SECAT Program) to help the air districts within the Nonattainment Area comply with the federal standards. The SECAT Program is administered by SACOG, but recognizes the importance of coordinating among the air districts to implement the Program. (Health Safe. Code § 44299.50, 44299.75.)
- 1.3 The District approved Resolution No. 200-053, authorizing its Air Pollution Control Officer (APCO) to execute agreements implementing the plan.
- 1.4 In the past the SMAQMD has covered the staff costs associated with operating its diesel emission reduction programs from other funds such as DMV, Measure A, fund balances and a portion of the Moyer Program. Funds.
- 1.5 SMAQMD is being required to provide an increased level of monitoring and documenting of projects and subject to an increased level of auditing which increases the staffing level required.
- 1.6 Since 2005 the Air Resources Board has adopted regulations that require districts to hold mobile source projects to greater standards that increase the requirements that participants and districts must adhere to.
- 1.7 Staff costs for technical assistance and outreach associated with operating diesel emission reductions programs may be billed to Congestion Mitigation/Air Quality (CMAQ) grants.
- 1.8 In order to support technical assistance and outreach required to implement the SECAT Program, SACOG has agreed to allow up to 15% of the annual CMAQ funding allocation to go towards these SECAT costs.

NOW, THEREFORE, in consideration of the mutual promises hereafter set forth, the SMAQMD and SACOG agree as follows:

2.0 Terms and Conditions

2.1 **Purpose of MOU**

The purpose of this MOU is to accept funds from SACOG in support of the Sacramento Emergency Clean Air Transportation (SECAT) Program.

2.2 **Term of MOU**

The term of this MOU will commence upon execution by all parties and terminate December 31, 2018.

2.3 **MOU Funding Agreement**

SMAQMD will invoice SACOG up to the amount of 15% of the annual CMAQ funding allocation used for the SECAT program for costs associated with technical assistance and outreach. All invoices for work paid up to the date of term and will be paid within reasonable period.

2.4 **Indemnification**

- a. SMAQMD will indemnify and defend SACOG, its officers, agents and employees from and against all claims, demands, losses, damages, liability, costs, and expenses of whatever nature including court costs and Counsel fees, accruing or resulting to any person, firm, or corporation who may be injured by the negligence of SMAQMD in the performance of its obligations under this Contract.
- b. SACOG will indemnify and defend SMAQMD, its officers, agents and employees from and against all claims, demands, losses, damages, liability, costs, and expenses of whatever nature including court costs and Counsel fees, accruing or resulting to any person, firm, or corporation who may be injured by the negligence of SACOG in the performance of its obligations under this MOU.

2.5 **Alteration**

No alteration or variation of the terms of this MOU will be valid unless made in writing and signed by both parties.

2.6 **Termination**

Either party may terminate this MOU without cause upon thirty (30) days written notice served upon the other party. Any unspent funds will be returned to SACOG less SACOG's proportionate share of costs incurred as of the date of the notice.

2.7 **Notices**

Any notice, demand, request, consent, or approval that either may be or is required to give the other must be in writing and be either personally delivered or sent by prepaid, certified first class mail, return receipt requested, addressed as follows:

| To SACOG | To SMAQMD |
|--|---|
| Mike McKeever, Executive Director SACOG 1415 L Street, Suite 300 Sacramento, CA 95814 Phone (916) 321-9000 Fax (916) 321-9551 | Larry Greene, Air Pollution Control Officer SMAQMD 777 12 th Street, Suite 300 Sacramento, CA 95814 Phone (916) 874-4802 Fax (916) 874-4805 |

- A. **Change of Address:** Either party may change the address for service by giving 15 days advance written notice to the other party.
- B. **Effective Date:** All notices will be effective upon receipt and will be deemed received (i) upon delivery if personally delivered, (ii) on the 5th day following deposit in the mail, if sent by certified mail, or (iii) upon the date stated in the facsimile delivery confirmation, if sent by facsimile.

2.8 **Audit of SMAQMD Records**

With regard to this MOU, SMAQMD will maintain appropriate financial records, and SACOG may demand access to these financial records to perform an audit. SMAQMD must make these records available to SACOG thirty (30) days after receiving a request for the records from SACOG, and SMAQMD will retain the records until December 31, 2009.

2.9 **Severability**

If any provision of this MOU is held invalid or unenforceable, its invalidity or unenforceability will not affect any other provisions of this MOU, and this MOU will be construed and enforced as if the invalid or unenforceable provision had not been included.

2.10 **Statutory Limitations**

This MOU and any payments for compensation and expenses are subject to the provisions and limitations imposed by federal and State law. SACOG has no liability for payment of any compensation and expenses that are found to be in contravention of federal or State law. SMAQMD will reimburse SACOG for any funds paid by it under this MOU that are later determined to be in contravention of any federal and State law.

- 2.11 **Contract Manager:** Tim Taylor is the SMAQMD's named Contract Manager for this MOU. It is the responsibility of the Contract Manager to: 1) verify compliance with the terms and conditions of the MOU, 2) determine that the work has been completed, 3) ensure that funding is available to pay approved invoices, and 4) approve all invoices under the MOU.

2.12 **Authority to Bind:** The persons signing on behalf of the parties to this MOU warrant that they have the legal authority to execute this MOU.

Executed by:

Sacramento Metropolitan Air
Quality Management District

Sacramento Area Council of
Governments

By _____
Larry Greene
Air Pollution Control Officer/
Executive Director

By _____
Mike McKeever
Executive Director

Approved as to form

Approved as to form:

By _____
Kathrine Pittard
District Counsel

By _____
Karen Wilcox
Director of Finance

Exhibit A Scope of Services

The SECAT Program is a regional program established to help air districts within the Nonattainment Area comply with the federal standards. The SECAT Program is administered by SACOG and recognizes the importance of coordination among the air districts to implement the Program. SMAQMD is the primary agency implementing the Program.

The SMAQMD will provide technical assistance and outreach activities in order to achieve mobile source emission reductions by funding the following projects:

- Replacing older, higher polluting vehicles with newer, lower-emission vehicles (Fleet Modernization);
- Purchasing new, low or zero-emitting vehicles;
- Retrofitting existing heavy-duty vehicles with after-treatment systems to reduce Oxides of Nitrogen (NO_x); and
- Implementing any other verifiable, enforceable, and cost-effective technology for reducing NO_x emissions from heavy-duty on-road vehicles.

**Exhibit B
Compensation**

SACOG will remit payment to the SMAQMD for all invoices for work paid up to the date of term will be paid within a reasonable period of time for the tasks described in Exhibit A of this MOU and receipt an invoice from SMAQMD.

SMAQMD will invoice SACOG on a quarterly basis. The invoice will provide a description of work performed in the previous quarter.

SACOG will remit payment within forty five days of receipt of invoice

