



South Coast Air Quality Management District

Contract No. C23207

BOARD MEMBER CONSULTANT CONTRACT

This Contract consists of 7 pages.

1. PARTIES

The parties to this contract ("Contract") 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 San Bernardino County (Michael Miller) (referred to here as "CONTRACTOR") whose address is 385 North Arrowhead Avenue, 5th Floor, San Bernardino, California 92415.

2. RECITALS

- A. SCAQMD is the local agency with primary responsibility for regulating stationary source air pollution in the South Coast Air Basin in the State of California. SCAQMD is governed by a 13-member Board of Directors (the "Governing Board"), and the Governing Board member to whom CONTRACTOR reports to is referred to herein as "BOARD MEMBER." The parties desire to enter into this contract for the services described in Attachment 1 - Statement of Work, attached here and made a part here by this reference. CONTRACTOR warrants that it is well-qualified and has the experience to provide such services on the terms set forth here.
- B. Either the Governing Board or the BOARD MEMBER may at any time suspend or reduce the services of the CONTRACTOR and may reduce the amount of funds allocated to the CONTRACTOR at the BOARD MEMBER's sole discretion.
- C. All parties to this Contract have had the opportunity to have this contract reviewed by their attorney.

3. PERFORMANCE REQUIREMENTS

- A. CONTRACTOR shall perform all tasks set forth in Attachment 1 - Statement of Work, and CONTRACTOR 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 Contract. If any such actual or potential conflict of interest arises during the term of this Contract, CONTRACTOR shall immediately inform SCAQMD in writing, and SCAQMD may, in its sole judgment, terminate this Contract immediately upon written notice to CONTRACTOR.
- B. CONTRACTOR shall be responsible for exercising the degree of skill and care customarily required by accepted professional practices and procedures subject to SCAQMD's final approval which SCAQMD will not unreasonably withhold. Any costs incurred due to the failure to meet the foregoing standards, or otherwise defective services, which require re-performance, as directed by SCAQMD, shall be the responsibility of CONTRACTOR. If CONTRACTOR is deemed by SCAQMD to have failed the foregoing standards of performance, SCAQMD may require re-performance.
- C. CONTRACTOR shall ensure, through its contracts with any subcontractor(s) that employees and agents performing under this Contract shall abide by paragraph B above.

4. TERM

The term of this Contract is from February 17, 2023 to June 30, 2023 or the date on which the BOARD MEMBER ceases to be a member of the Governing Board, whichever shall occur first, unless further extended by amendment of this Contract in writing.

5. TERMINATION

In the event any party fails to comply with any term or condition of this Contract, or fails to provide the services in the manner agreed upon by the parties, including, but not limited to, the requirements of Attachment 1 - Statement of Work, this failure shall constitute a breach of the Contract. The nonbreaching party shall either notify the breaching party that it must cure this breach or provide written notification of its intention to terminate this Contract. Notification shall be provided in the manner set forth in Clause 8. The nonbreaching party reserves all rights under law and equity to enforce this Contract and recover any damages. The Governing Board and the Board Members to whom CONTRACTOR reports reserve the right to terminate this Contract at any time without cause, upon three (3) days' written notice. If SCAQMD terminates this Contract without cause, SCAQMD will reimburse CONTRACTOR for actual costs incurred (not to exceed the total Contract value), including all noncancellable commitments incurred in performance of this Contract through the effective date of termination. CONTRACTOR reserves the right to terminate this Contract at any time without cause, upon thirty (30) days' written notice.

6. INDEMNIFICATION AND INSURANCE

CONTRACTOR agrees to indemnify, defend (with counsel approved by SCAQMD) and hold harmless SCAQMD and its officers, employees, agents, volunteers from any and all claims, actions or losses, damages, and/or liability resulting from the CONTRACTOR's negligent acts or omissions which arise from the CONTRACTOR's performance of its obligations under this Contract.

SCAQMD agrees to indemnify, defend (with counsel approved by CONTRACTOR) and hold harmless the CONTRACTOR and its officers, employees, agents and volunteers from any and all claims, actions, losses, damages and/or liability resulting from SCAQMD's negligent acts or omissions which arise from the SCAQMD's performance of its obligations under this Contract.

In the event the CONTRACTOR and/or SCAQMD is found to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under the Contract, the CONTRACTOR and/or SCAQMD shall indemnify the other to the extent of its comparative fault. Furthermore, if the CONTRACTOR or SCAQMD attempts to seek recovery from the other for Workers' Compensation benefits paid to an employee, the CONTRACTOR and SCAQMD agree that any alleged negligence of the employee shall not be construed against the employer of that employee.

This Indemnification Clause shall survive the expiration or termination (for any reason) of the Contract and shall remain in full force and effect.

CONTRACTOR and SCAQMD are authorized self-insured public entities for purposes of Professional Liability, General Liability, Automobile Liability, Worker's Compensation and Property Damage and warrant that through their respective programs of self-insurance, they have adequate coverage or resources to protect against liabilities arising out of the performance of the terms, conditions or obligations of this Contract.

7. PAYMENT

A. CONTRACTOR rate of pay shall be One Thousand Seven Hundred Forty Two Dollars and Ninety Five Cents (\$1,742.95) per month for February 17, 2023 through February 28, 2023, and Two Thousand Fifty Seven Dollars and Thirty Cents (\$2,057.30) per month for March 1, 2023 through

June 30, 2023 and shall not exceed Nine Thousand Nine Hundred Seventy Two Dollars and Fifteen Cents (\$9,972.15). Said pay rate shall be payable monthly, commencing the first applicable pay period following the commencement of this Contract, if the BOARD MEMBER-approved monthly invoice is received by Finance by the submittal deadline.

- B. Payment of such compensation shall be made by SCAQMD to CONTRACTOR within thirty (30) days after approval by BOARD MEMBER and SCAQMD of an invoice prepared and furnished by CONTRACTOR showing services performed and referencing tasks and deliverables as shown in Attachment 1 - Statement of Work and the amount of charge claimed. Each invoice must be prepared in duplicate and list SCAQMD's Contract number, period covered by invoice, and CONTRACTOR's social security number or Employer Identification Number and be submitted to: South Coast Air Quality Management District, Attn: Cindy Bustillos.
- C. SCAQMD shall not pay interest, fees, handling charges, or cost of money on Contract.
- D. SCAQMD reserves the right to disallow charges when the invoiced services are not performed satisfactorily in BOARD MEMBER's sole judgment.

8. 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: Cindy Bustillos, email: cbustillos@aqmd.gov

CONTRACTOR: San Bernardino County
385 North Arrowhead Avenue, 5th Floor
San Bernardino, CA 92415
Attn: Michael Miller, email: michael.miller@bos.sbcounty.gov

9. 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. CONTRACTOR shall promptly notify SCAQMD of any material changes to subcontracts that affect the Contract's scope of work, deliverable schedule, and/or payment/cost schedule.

10. NON-DISCRIMINATION

In the performance of this Contract, CONTRACTOR 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. CONTRACTOR 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.

11. INTENTIONALLY OMITTED

12. PROPERTY AND SECURITY

Without limiting CONTRACTOR's obligations with regard to security, CONTRACTOR shall comply with all the rules and regulations established by SCAQMD for access to and activity in and around SCAQMD's premises.

13. ASSIGNMENT

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

14. 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.

15. ATTORNEYS' FEES

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

16. FORCE MAJEURE

A party shall not 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 party's reasonable control.

17. 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.

18. 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.

19. SIGNATURES

This Contract 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 Contract or any counterpart may be executed and delivered 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.

20. 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 San Bernardino County, California.

21. REQUIREMENT FOR FILING STATEMENT OF ECONOMIC INTERESTS

In accordance with the Political Reform Act of 1974 (Government Code Sec. 81000 et seq.) ("Act") and regulations issued by the Fair Political Practices Commission (FPPC), SCAQMD has determined that the nature of the work to be performed under this Contract requires CONTRACTOR's employee Michael Miller to submit a Form 700, Statement of Economic Interests for Designated Officials and Employees, for each of its employees assigned to work on this Contract. These forms may be obtained from SCAQMD's General Counsel's Office.

In addition, pursuant to the Act, CONTRACTOR's employee Michael Miller shall disqualify himself or herself from participating in, making or influencing a decision, which would have a foreseeable material effect on his or her financial interests.

22. ENTIRE CONTRACT

This Contract represents the entire agreement between the parties hereto related to CONTRACTOR providing services to BOARD MEMBER in BOARD MEMBER's position on the Governing Board and there are no understandings, representations, or warranties of any kind except as expressly set forth herein. No waiver, alteration, or modification of any of the provisions herein shall be binding on any party unless in writing and signed by the party against whom enforcement of such waiver, alteration, or modification is sought. No waiver by either party of any breach of, or of compliance with, any condition or provision of this Contract 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.

23. INCORPORATION OF BOARD POLICY

SCAQMD's Board Member Assistant and Board Member Consultant Policy, as approved by the Governing Board, is hereby incorporated by reference and made a part of this Contract/Agreement.

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

SAN BERNARDINO COUNTY

By: _____
Wayne Nastri, Executive Officer

By: _____
Dawn Rowe, Chair, Board of Supervisors

Date: _____

Date: _____

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

By: Barbara Baird

//BoardMemberConsultant
Updated: June 15, 2021

ATTACHMENT 1

STATEMENT OF WORK FOR SAN BERNARDINO COUNTY (MICHAEL MILLER)

Introduction:

Supervisor Curt Hagman (BOARD MEMBER) is a member of the San Bernardino County Board of Supervisors, and is a member of SCAQMD's Governing Board. SCAQMD is entering into a contract with CONTRACTOR to act as a Board Member Consultant to BOARD MEMBER to enable BOARD MEMBER to efficiently perform duties as they relate to the membership of the Governing Board.

CONTRACTOR shall coordinate and monitor administrative duties and assist BOARD MEMBER in the administration of member duties of the Governing Board. CONTRACTOR'S tasks shall include, but not be limited to, the following:

Performs for BOARD MEMBER a variety of professional-level assignments and strategies for SCAQMD programs; provides advice and recommendations to the BOARD MEMBER regarding matters subject to the BOARD MEMBER'S decision-making authority, may provide liaison with the public on behalf of the BOARD MEMBER. Typical functions may include planning, organizing, and developing a wide variety of programs on the BOARD MEMBER'S behalf and evaluating the effectiveness of various approaches.

Deliverable:

CONTRACTOR will submit monthly invoices for activities performed.