

# GFO-19-602

# Addendum 4

# May 15, 2020

## Hydrogen Refueling Infrastructure

The purpose of this addendum is to add a new attachment: Attachment 10B, Supplemental Special Terms and Conditions. This addendum also renumbers the Special Terms and Conditions from Attachment 10 to Attachment 10A. The Supplemental Special Terms and Conditions will apply to projects that are proposed for funding and augmented with funds from the Volkswagen Mitigation Trust. Besides adding Attachment 10B, this addendum makes related changes to the Solicitation Manual, the Application Form (Attachment 1A), and the Special Terms and Conditions (renumbered from Attachment 10 to Attachment 10A).

For more information on the Volkswagen Mitigation Trust funding, the California Energy Commission (CEC) is posting the Terms and Conditions of the existing contract between the CEC and the Bay Area Air Quality Management District (BAAQMD), CEC contract 600-19-010, BAAQMD contract no. 2019.332, on the [GFO-19-602 Hydrogen Refueling Infrastructure Web page](https://www.energy.ca.gov/solicitations/2019-12/gfo-19-602-hydrogen-refueling-infrastructure) at https://www.energy.ca.gov/solicitations/2019-12/gfo-19-602-hydrogen-refueling-infrastructure. The [Scope of Work](https://ww2.energy.ca.gov/business_meetings/2020_packets/2020-02-20/Item_10_RMB600-19-010_Bay_Area_Air_Quality_Manangement_District_ADA.pdf) for this agreement is available on the CEC website at https://ww2.energy.ca.gov/business\_meetings/2020\_packets/2020-02-20/Item\_10\_RMB600-19-010\_Bay\_Area\_Air\_Quality\_Manangement\_District\_ADA.pdf.

### NEW DOCUMENT: Supplemental Special Terms and Conditions (Attachment 10B).

All of the content of this attachment is new.

1. **Existing Contract Between the CEC and BAAQMD**

**The California Energy Commission (CEC) has an existing contract with the Bay Area Air Quality Management District (BAAQMD), CEC contract 600-19-010, BAAQMD contract no. 2019.332 (hereinafter, CEC-BAAQMD Contract). Under the CEC-BAAQMD Contract, the CEC will obtain Volkswagen Mitigation Trust funds from BAAQMD. The CEC intends to use these funds from BAAQMD to fund this Agreement. The CEC-BAAQMD Contract requires the CEC to include certain terms in its grant agreements. The Recipient of this Agreement must comply with all applicable terms contained in the CEC-BAAQMD Contract.**

1. **Incorporation by Reference**

**The Recipient shall comply with the following terms, which are also found the CEC-BAAQMD Contract. The Recipient shall comply with any other requirement contained in the CEC-BAAQMD Contract which is applicable to this Agreement or the Recipient, even if not expressly listed below.**

**• *CEC-BAAQMD Contract Exhibit D, section 3, Performance Requirements, subsection C*. The Recipient must comply with all laws, rules, guidelines, regulations, and requirements that apply to performance under the CEC-BAAQMD Contract, including that the Recipient must disclose potential conflicts of interest under BAAQMD’s Conflict of Interest Code.**

**• *CEC-BAAQMD Contract Exhibit D, section 3, Performance Requirements, subsections D and F*. The Recipient shall not engage in any performance of work during the term of the CEC-BAAQMD Contract or the term of this Agreement that is in direct or indirect conflict with duties and responsibilities set forth in the Scope of Work of the CEC-BAAQMD Contract.**

**• *CEC-BAAQMD Contract Exhibit D, section 11, Additional Provisions, Acknowledgement*. The Recipient shall acknowledge the Mitigation Trust fund program as a funding source whenever projects funded, in whole or in part by the CEC-BAAQMD Contract, are publicized in any news media, websites, brochures, publications, audiovisuals, or other types of promotional material. The acknowledgement shall read as follows: “The publication (or project) was supported by the VW Mitigation Trust Fund Program.” Guidelines for the usage of the VW Mitigation Trust Fund name will be provided by BAAQMD.**

**• *CEC-BAAQMD Contract Exhibit D, section 11, Additional Provisions, Audit*. BAAQMD or its designee reserves the right to audit the CEC and the Recipient at any time during the duration, and up to three years past, the term of the CEC-BAAQMD contract or the term of this Agreement, whichever is later.**

**The Recipient agrees that BAAQMD, the California Air Resources Board, the United States District Court for the Northern District of California, the Department of General Services, Department of Finance, the Bureau of State Audits, or their designated representative will have the right to review and copy any records and supporting documentation pertaining to the performance of the CEC-BAAQMD Contract and all Mitigation Trust funds received, including the right to review and copy any records and supporting documentation pertaining to the performance of this Agreement.**

**The Recipient shall allow the auditor(s) access to such records during normal business hours and allow interviews of employees who might reasonably have information related to such records.**

**• *CEC-BAAQMD Contract Exhibit D, section 11, Additional Provisions, Equipment Ownership*. The Recipient shall own, operate, and report on equipment funded by this Agreement for three years from the date of equipment purchase. The Recipient shall self-certify that it owns the equipment for this period of time.**

**• *CEC-BAAQMD Contract Exhibit D, section 11, Additional Provisions, Ownership*. All information or data received by the CEC or generated by the Recipient under this Agreement will become the property of BAAQMD or its designee.**

**• *CEC-BAAQMD Contract Exhibit D, section 11, Additional Provisions, Prevailing Wage and Labor Compliance*. The Recipient agrees to be bound by all the provisions of State Labor Code section 1771 regarding prevailing wages.**

**• *CEC-BAAQMD Contract Exhibit D, section 11, Additional Provisions, Professionals*. The Recipient agrees that only licensed professionals will be used to perform services under this Agreement where such services are called for and licensed professionals are required for those services under State law.**

**• *CEC-BAAQMD Contract Exhibit D, section 11, Additional Provisions, Site Visits*. BAAQMD or its designee reserve the right to conduct site visits for program reviews, fiscal audits, or other purposes during, and for up to three years past, the term of the CEC-BAAQMD Contract or the term of this Agreement, whichever is later.**

**• *CEC-BAAQMD Contract Exhibit D, section 14, Intellectual Property Rights*. Title and full ownership of rights to all intellectual property developed under this Agreement shall at all times remain with the California Air Resources Board (CARB), unless otherwise agreed to in writing. The CEC will maintain ownership of any pre-existing webpage(s), software, database, or other intellectual property used to administer the Mitigation Trust funds including but not limited to changes or modifications to its existing programs or databases. Should BAAQMD or CARB select a different contractor than the CEC to manage the Mitigation Trust funds, the Recipient shall comply with any request to turn over CARB’s intellectual property and information to CARB and the new contractor and provide all reasonable and necessary assistance needed to ensure a smooth transfer.**

**• *CEC-BAAQMD Contract Exhibit D, section 15, Publication*. BAAQMD must approve in writing any report or other document prepared by the Recipient in connection with performance under this Agreement prior to dissemination or publication of such report or document to a third party. BAAQMD may waive this requirement in writing.**

**Until approved by BAAQMD, any report or other document prepared by the Recipient shall include on each page a conspicuous header, footer, or watermark stating “DRAFT – Not Reviewed or Approved by BAAQMD,” unless BAAQMD has in writing waived its requirement for prior approval.**

**Information, data, documents, or reports developed by the Recipient under this Agreement shall be part of BAAQMD’s public record, unless otherwise indicated. The CEC may use or publish such information, provided BAAQMD approves use of such information in advance. The following acknowledgement of support and disclaimer must appear in each publication of materials, whether copyrighted or not, based upon or developed under this Agreement.**

**“This publication (or project) was supported by the VW Mitigation Trust Fund program.”**

**• *CEC-BAAQMD Contract Exhibit D, section 16, Non-Discrimination*. During the performance of this Agreement, the Recipient will not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. The Recipient will ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Recipient will comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. The Recipient will give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.**

1. **Flow Down**

**The Recipient shall flow down the requirements specified in Section 2 of these Supplemental Special Terms and Conditions to its subcontractors.**

1. **Precedence**

**In the event of any conflict or inconsistency between these Supplemental Special Terms & Conditions and the Clean Transportation Program Terms and Conditions (Attachment 9), these Supplemental Special Terms & Conditions shall control.**

### Solicitation Manual (Grant Funding Opportunity)

#### Page 4 – List of Attachments –

| **Attachments** | |
| --- | --- |
| 1A | Application Form |
| 1B | Station Information |
| 2 | Scope of Work Template |
| 3 | Scope of Work Instructions |
| 4 | Schedule of Products and Due Dates |
| 5 | Budget Forms |
| 6 | Contact List |
| 7 | California Environmental Quality Act (CEQA) Worksheet |
| 8 | Localized Health Impacts Information |
| 9 | Clean Transportation Program Terms and Conditions |
| 10**A** | Special Terms and Conditions |
| **10B** | **Supplemental Special Terms and Conditions** |
| 11 | NREL Data Collection Tool |
| 12 | Open Retail Station Checklist |

#### Page 5 – Section I.A. Purpose of Solicitation –

This is a competitive grant solicitation. The California Energy Commission’s Clean Transportation Program (formerly known as the Alternative and Renewable Fuel and Vehicle Technology Program) announces the availability of **up to $115.7 million** in grant funds, **which includes up to $5 million in Volkswagen Mitigation Trust funds,** subject to future appropriations and Clean Transportation Program Investment Plan funding allocations, **and subject to availability and approval of the Bay Area Air Quality Management District for the Volkswagen Mitigation Trust funds,** for hydrogen refueling infrastructure projects that will expand California’s early commercial light duty hydrogen refueling and fuel cell electric vehicle (FCEV) markets and to accommodate the projected FCEV roll-out in 2021-2024. Of the up-to amount, **$45.7 million is currently available**.

#### Page 7 – Section I.F. Availability of Funds –

Up to $115.7 million, subject to future appropriations and Clean Transportation Program Investment Plan funding allocations, may be available for the agreements resulting from this solicitation. **This amount includes up to $5 million in Volkswagen Mitigation Trust funds.** Of this amount, $45.7 million is currently available. Without limitation to any other rights, the CEC, at its sole discretion, reserves the right to increase or decrease the amount of funds available under this solicitation.

#### Page 8 – Section I.H. Grant Award Amount –

Any expenses for which funds have not yet been allocated are incurred at the Recipient’s risk, as described in Section 4 of Attachment 10**A**, Special Terms and Conditions.

#### Page 12 – Section I.K. Staged Reimbursement of CEC Funds –

The CEC will reimburse actual, allowable, and allocable equipment costs pursuant to the Terms and Conditions (Attachment 9) and the Special Terms and Conditions (Attachment 10**A**) of the grant agreement in stages for each station, as follows:

#### Page 13 – Section I.N. Critical Milestones –

Time is of the essence in project completion. Therefore, to incentivize and ensure timely project completion, in addition to meeting other agreement requirements, the Recipient must complete certain activities by certain dates to receive payment by the CEC under any agreement resulting from this solicitation (as described in Attachment 10**A**, Special Terms and Conditions).

#### Page 20 – Section I.U. Relevant Laws, Regulations, Reports and Other Documents –

Applicants are encouraged to use the following tools, programs, codes, and handbooks when applying for funding under this solicitation:

* [**California Volkswagen Mitigation Trust**](https://www.californiavwtrust.org/)

#### Page 23 – Section II.A.2. Terms and Conditions –

The standard terms and conditions are located in Attachment 9. Special terms and conditions are located in Attachment 10**A and supplemental special terms and conditions are located in Attachment 10B**.

#### Pages 35 & 36 – Section II.G.1. Total Match Share Requirement –

h. Match share expenditures **allocable to Clean Transportation Program funds** are allowable under an agreement only if they are incurred after the CEC notifies the Applicant that its project has been proposed for an award through the release of a NOPA. Match expenditures incurred prior to the approval and execution of an agreement are made at the Applicant’s own risk. The CEC is not liable for Applicant’s match share costs if the grant is not approved, if approval is delayed, or if the match share expenditure is not allowable under the terms and conditions of the grant or this solicitation. **Match share expenditures allocable to Volkswagen Mitigation Trust funds are allowable under an agreement only if they are incurred after the agreement is executed by both parties. The CEC will allocate match expenses proportionately to the amount of Clean Transportation Program funds and Volkswagen Mitigation Trust funds in the agreement. The funding sources and match amount allocated to each funding source will be specified in the NOPA.** Please note that non-match expenditures incurred prior to agreement execution are not reimbursable from CEC **or Volkswagen Mitigation Trust** funds.

#### Page 54 – Section III.D.6. - Budget Forms for the Initial Batch of Stations –

1. All reimbursable expenditures must be expended within the approved term of the funding agreement. Expenditures **allocable to Clean Transportation Program funds** may be counted as match share only after the CEC notifies the Applicant that its project has been proposed for an award through the release of a NOPA. However, match expenditures incurred prior to the full execution of a funding agreement are made at the Applicant’s own risk. **Expenditures allocable to Volkswagen Mitigation Trust funds may be counted as match share only if they are incurred after the full execution of a funding agreement. The CEC will allocate match expenses proportionately to the amount of Clean Transportation Program funds and Volkswagen Mitigation Trust funds in the agreement. The funding sources and match amount allocated to each funding source will be specified in the NOPA.** These reimbursable and match expenditures include expenditures for the entire tranche.

h. ***IMPORTANT - Payment of Prevailing Wage:*** Applicants must read and pay particular attention to the Terms and Conditions (Attachment 9) and the section related to Public Works and Payment of Prevailing Wages**, and the Supplemental Special Terms and Conditions (Attachment 10B) section related to Prevailing Wage and Labor Compliance**. Prevailing wage rates can be significantly higher than non-prevailing wage rates. Failure to pay legally-required prevailing wage rates can result in substantial damages and financial penalties, termination of the agreement, disruption of projects, and other complications.

#### Page 68 – Section V.J. Agreement Requirements –

The CEC must formally approve all proposed grant awards. ~~Clean Transportation Program agreements for over $75,000 must be scheduled and considered at a CEC Business Meeting for approval by the CEC.~~

### Application Form (Attachment 1A)

#### Page 8 – Certifications and Authorizations –

I hereby certify to the best of my knowledge and belief that I have read, understand, and do hereby accept the terms and conditions contained within the solicitation, including the provisions of the Agreement Terms and Conditions (Attachment 9)**,** ~~and~~ Special Terms and Conditions (Attachment 10**A**), **and Supplemental Special Terms and Conditions (Attachment 10B),** and, further, I am willing to enter into an agreement with the CEC to conduct the proposed project according to the terms and conditions without negotiation.

### Special Terms & Conditions (Attachment 10A)

#### This attachment is renumbered from 10 to 10A.

**Phil Dyer,**

**Commission Agreement Officer**