

## MEMORANDUM OF UNDERSTANDING

**THIS MEMORANDUM OF UNDERSTANDING** (this “MOU”) is dated for reference purposes as of \_\_\_\_\_ between the SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT (“SCAQMD”), on behalf of the MOBILE SOURCE AIR POLLUTION REDUCTION REVIEW COMMITTEE (“MSRC”), and the CITY OF LOS ANGELES, a municipal corporation, acting by and through its Board of Harbor Commissioners (“POLA” or “Port”). The aforementioned parties to this MOU shall be referred to individually herein as a “Party” and collectively herein as “Parties.”

### RECITALS

- A. In September 2020, Executive Order N-79-20 was issued to establish a goal that, in pertinent part, 100 percent of medium-and heavy-duty vehicles in the state be zero-emission (ZE) by 2045 for all operations where feasible, and that 100 percent of drayage trucks to be ZE by 2035. In April 2023, the California Air Resources Board (CARB) adopted the Advanced Clean Fleets (ACF) regulation<sup>1</sup> which, in pertinent part, requires all new drayage trucks to be ZE by 2024, and all existing drayage trucks to be ZE by 2035. This state transition to ZE is consistent with the Port’s Clean Truck Program goal of 100% ZE drayage trucks serving at the Port by 2035.
- B. Under California Health & Safety Code Sections 44225, et seq. (AB 2766), the legislature has authorized the State’s Department of Motor Vehicles (DMV) to collect a statutorily set Motor Vehicle Registration fee surcharge, which is subvned to SCAQMD for disbursement in programs<sup>2</sup> for the purpose of reducing air pollution from motor vehicles under the California Clean Air Act.
- 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 created the MSRC to develop a Work Program to fund projects from the separate account. Once SCAQMD's Governing Board approves the Work Program developed by the MSRC, SCAQMD administers the elements of the Work Program on behalf of the MSRC.
- E. As part of their Work Program development process, the MSRC is committed to funding up to \$50 million to develop zero-emission vehicle refueling infrastructure for use by the goods movement industry. In September 2022, the MSRC initiated a Request for

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<sup>1</sup> See CARB, Advance Clean Fleets, available at <https://ww2.arb.ca.gov/our-work/programs/advanced-clean-fleets>. In addition to Drayage Trucks, the ACF regulation also transitions Government Fleets and High Priority Fleets to ZE.

<sup>2</sup> See South Coast AQMD, AB 2766 Subvention Fund Program Resource Guide (July 2023), available at <https://www.aqmd.gov/docs/default-source/transportation/ab2766-motor-vehicle-subvention-fund-program/ab2766-resource-guide.pdf?sfvrsn=18>.

Information solicitation process whereby the MSRC sought submission of projects to construct zero-emission refueling infrastructure within the geographical jurisdiction of the South Coast Air Quality Management District. A total of nine (9) PROJECTS were identified through this solicitation as listed in Exhibit A.

- F. The City of Los Angeles Harbor Department manages the Port of Los Angeles as a landlord port leasing Port property to tenants that operate the facilities, including cargo terminals, which may receive and process maritime cargo transported by drayage trucks. POLA is committed to the goods movement industry's deployment of zero-emission drayage trucks servicing the Port. To achieve POLA's Clean Truck Program goals, accessible zero-emission refueling infrastructure is required.
- F. The Parties are entering into this MOU in order to set forth the obligations of the Parties.

In consideration of the foregoing, and the mutual undertakings contained herein, the Parties hereby agree as follows:

**1. DEFINITIONS**

As used herein, the following terms have the meanings as set forth below:

"Drayage truck" has the meaning set forth in the CARB Advanced Clean Fleets regulation.

"EVSE" is Electric Vehicle Supply Equipment, which supplies electricity to an electric vehicle (EV). Commonly called charging stations or charging docks, they provide electric power to a Zero Emission Vehicle and use that to recharge the vehicle's batteries.

"MSRC" is the Mobile Source Air Pollution Reduction Review Committee as defined in California Health & Safety Code Section 44244.

"Zero Emission Drayage Truck" is a Drayage Truck that is a Zero Emission Vehicle.

"Zero Emission Vehicle" or "ZEV" has the meaning set forth in the CARB Advanced Clean Fleets regulation.

**2. POLA PROJECT FUNDS**

Under the terms of this MOU, POLA will contribute funding towards nine (9) zero-emission infrastructure PROJECTS that will refuel Zero-Emission Drayage Trucks servicing the San Pedro Bay Ports. POLA is committing funding to the PROJECTS which SCAQMD will administer to recipients ("RECIPIENTS") as shown below and included in Exhibit A of this MOU:

| RECIPIENT                     | PROJECT   | POLA FUNDING  |
|-------------------------------|---|---------------|
| Clean Energy                  | At least 3 EVSE at Existing LNG Station in Wilmington | \$ 1,582,577  |
| WattEV                        | Four (4) 1,200 kW EVSE at Port of Long Beach (POLB)   | \$ 1,742,295  |
| TeraWatt                      | EVSE Located in Rancho Dominguez - 40 Stalls          | \$ 1,000,000  |
| TeraWatt                      | EVSE Located in Rialto - 63 Charging Stalls           | \$ 1,000,000  |
| TeraWatt                      | EVSE Located in Fontana - 14 Charging Stalls          | \$ 1,000,000  |
| TeraWatt                      | EVSE Located in Commerce - 11 Charging Stalls         | \$ 1,000,000  |
| Forum Mobility                | 30 EVSE at POLB                                       | \$ 3,000,000  |
| Electrify America             | Thirty (30) EVSE + Battery Storage at POLB            | \$ 2,547,202  |
| Electrify America             | Sixteen (16) EVSE + Battery Storage at Rialto         | \$ 1,390,882  |
| Total POLA Funding Commitment |   | \$ 14,262,956 |

### 3. PROGRAM ADMINISTRATION

- a. RECIPIENT AGREEMENTS. After the effective date of this MOU, SCAQMD on behalf of the MSRC intends to enter into an AGREEMENT for each PROJECT with its respective RECIPIENT. POLA will be provided an opportunity to review and comment on the AGREEMENT template prior to finalization, and a draft copy of each RECIPIENT AGREEMENT with a 30-day window, and an executed copy of each shall be provided to POLA. RECIPIENTS are responsible for execution of the PROJECT. Except as discussed below, any revisions that would require modifications to Exhibit A shall require written notice by SCAQMD to POLA and shall require an amendment. The Parties acknowledge that in the event modifications to Exhibit A are not made as set forth herein, POLA's ability to make payments to SCAQMD on behalf of MSRC may be prohibited.

If RECIPIENT requests to complete only part of the proposed PROJECT, MSRC has the authority to approve any such requests (with SCAQMD Governing Board approval, if required) and reduce the amount of POLA funding the RECIPIENT receives, provided such reduction is proportional.

- b. SCAQMD as Administrator. SCAQMD on behalf of the MSRC shall administer the AGREEMENTs that fund the PROJECTs, on the terms and conditions set forth in its AGREEMENTs with the RECIPIENTS and under the terms and conditions of this MOU.
- c. Reporting. On a quarterly basis and until the PROJECT is complete, SCAQMD shall provide a written report with data, or access to data, containing (i) an accounting of funds received under this MOU, (ii) an accounting of any funds disbursed to RECIPIENTS by SCAQMD on behalf of MSRC, and (iii) a breakdown of PROJECT costs and disbursements pursuant to each Milestone/task completion specified in PROJECTs AGREEMENTs. Upon reasonable request of the POLA, SCAQMD shall provide copies

of, or access to review, PROJECT-related records. SCAQMD shall provide a final comprehensive report that summarizes the completion of the Projects, final costs, and disbursements within 60 days after the end of the MOU term.

- d. Record Retention. SCAQMD agrees to maintain data, information, records and documents related to the PROJECTs for a minimum of three (3) years after the completion of the PROJECTs.
- e. No Administrative Fees/Additional Costs. Except for POLA's contribution towards funding the PROJECTs in the amounts set forth in Exhibit A, POLA shall have no responsibility for payment or reimbursement of any other costs, including costs related to administration of the PROJECTs.

#### **4. PAYMENT OF CONTRIBUTIONS**

- a. POLA shall pay an amount for each PROJECT under this MOU in the amounts shown in Exhibit A. Payments will be contingent upon receipt of the following:
  - i) An invoice from SCAQMD;
  - ii) A copy of executed AGREEMENT between the SCAQMD and RECIPIENT for which payment is requested. The AGREEMENT will include a Statement of Work, Implementation Schedule, Milestone Payment Schedule and POLA-specific requirements as shown in Exhibit B of this MOU.
  - iii) Copy of land use or other required permits and/or CEQA clearance for PROJECT.
- b. Details of how payments shall be made from POLA to SCAQMD shall be agreed upon by the Parties within 180 days of the execution of this MOU.
- c. POLA shall make payments of their contributions within 45 days of receipt of documents listed in Section 4.a. above.

#### **5. REFUNDS OF UNCOMMITTED OR RETURNED PORT FUNDS**

Any funds paid by POLA to SCAQMD that have not been distributed to RECIPIENT after expiration or termination of this MOU shall be refunded by SCAQMD to POLA within 60 days after termination or expiration of this MOU. Any funds paid by POLA to SCAQMD for the PROJECTs that were returned by RECIPIENTS shall be refunded to POLA within 60 days after SCAQMD received the returned funds, but no later than 60 days after termination or expiration of this MOU. Any interest accrued on funds paid by POLA shall be returned to POLA no later than 60 days after termination or expiration of this

MOU. Clause 5 shall survive the termination or expiration of this MOU.

## **6. TERM AND TERMINATION**

- a. Term. This MOU shall become effective on the date of last signature by one of the Parties. This MOU shall terminate when all required actions hereunder have been performed, but no later than eight (8) years from its effective date (Term). The Term of this MOU may be extended by mutual written agreement of the Parties.
- b. Termination. Any Party may terminate this MOU by giving not less than thirty (30) days' prior written notice to the other Parties if any of the following occur: (i) there is a change in any law or regulation or any other event (including non-appropriation of funds for this MOU by POLA for any fiscal year budget) that would prohibit or restrict a Party's performance of its obligations under this MOU; (ii) in the event of a default of this MOU by any Party after an attempt to resolve or cure has been made by the Parties pursuant to the terms of this MOU; or (iii) the termination of the AGREEMENT between SCAQMD and RECIPIENT prior to completion of the PROJECT. SCAQMD is not required to return POLA funds already requested by or paid to and not returned by RECIPIENT after RECIPIENT's completion of the AGREEMENT's Milestone/task earning such payment. Except for breach or default by a Party, the Parties agree that early termination or expiration of this MOU shall not affect the rights and obligations of the Parties occurring when the MOU was in effect.
- c. Default. The occurrence of any of the following shall constitute a default by a Party under this MOU: (1) failure to pay when due any amount required to be paid hereunder, or (2) failure to perform any other obligation when due under this MOU. In the event of a claim of default, the non-defaulting Party or Parties shall give the defaulting Party or Parties written notice of the nature of the default and shall give the defaulting Party or Parties a 14-day period in which to cure the default specified in the notice. In the event that the Parties have any disagreement with respect to their obligations under this MOU, each Party shall designate a duly authorized representative to work in good faith with the other Party's designated representative in an attempt to resolve such disagreement.

## **7. MISCELLANEOUS PROVISIONS**

- a. Amendments. No amendment, modification, consent or waiver to any provision of this MOU shall be effective unless the same shall be in writing signed by a duly authorized representative of each Party.
- b. Indemnification. SCAQMD shall have the RECIPIENT execute an AGREEMENT with an indemnification provision indemnifying POLA and SCAQMD. As provided in

Section 3.a., POLA will be provided an opportunity to review and comment on the AGREEMENT template prior to finalization.

- c. Counterparts. This MOU 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.
- d. Entire Agreement. This MOU contains the entire understanding and agreement between the Parties hereto with respect to the matters referred to herein. No other representations, covenants, undertakings, or prior or contemporaneous agreements, oral or written, regarding such matters which are not specifically contained, referenced, and/or incorporated into this MOU by reference shall be deemed in any way to exist or bind any of the Parties. Each Party acknowledges that it has not been induced to enter into the MOU and has not executed the MOU in reliance upon any promises, representations, warranties or statements not contained, referenced, and/or incorporated into the MOU. THE PARTIES ACKNOWLEDGE THAT THIS MOU IS INTENDED TO BE, AND IS, AN INTEGRATED MOU.
- e. Expenses and Costs. Unless specifically provided for elsewhere in this MOU, each Party will bear all costs and expenses incurred by it in connection with this MOU and transactions contemplated herein, including travel, entertainment, marketing promotions, legal fees, consulting fees, accounting fees and taxes which are or may be imposed upon that Party based upon its activities hereunder.
- f. No Third-Party Beneficiaries. Except as otherwise provided herein, nothing under this MOU is intended or shall be construed to create any rights in, or confer any benefits upon, any person or entity other than the Parties hereto.
- g. Notices. All notices, demands and other communications hereunder, shall be deemed given and received: (i) if sent by registered or certified mail, on the third Business Day after deposit in the United States Mail, properly addressed, postage prepaid, return receipt requested; or (ii) if sent by any other means of physical delivery (e.g., hand delivery or courier service), one Business Day after delivery to the appropriate address. A courtesy copy of communications shall also be emailed.

SCAQMD

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

City of Los Angeles  
Amber Coluso, Environmental Management Division  
[acoluso@portla.org](mailto:acoluso@portla.org)  
Port of Los Angeles  
425 S. Palos Verdes Street,  
San Pedro, CA 90731

- h. Severability. The provisions of this MOU are severable, and if any clause or provision of this MOU shall be held invalid or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause provisions and shall not affect any other covenant, agreement, or condition.
- i. Force Majeure. Neither Party shall be liable for any failure to perform its obligations in connection with any action described in this MOU if such failure results from any act of God, riot, war, civil unrest, flood, earthquake, or other cause beyond such Party's reasonable control (including any mechanical, electronic, or communications failure, but excluding failure caused by a Party's financial condition or negligence), for only so long as any such event shall be continuing.

**IN WITNESS WHEREOF**, the parties hereto have caused this Memorandum of Understanding to be executed by their authorized representatives and delivered as of the date first above written.

**South Coast Air Quality  
Management District**

By: \_\_\_\_\_  
Name:  
Title:  
Date: \_\_\_\_\_

The foregoing document is hereby  
approved as to form.

By: \_\_\_\_\_  
Name: Barbara Baird, South Coast  
AQMD Chief Deputy Counsel  
Date: \_\_\_\_\_

**City of Los Angeles, a municipal  
corporation, acting by and through  
its Board of Harbor Commissioners**

By signing below, I attest that I have no  
personal, financial, beneficial, or familial  
interest in this Agreement.

By: \_\_\_\_\_  
Name: Eugene Seroka  
Title: Executive Director  
Date: \_\_\_\_\_

Attest: \_\_\_\_\_  
Name: Amber M. Klesges  
Board Secretary

**APPROVED AS TO FORM AND LEGALITY:**

DATE: May 17, 2024  
HYDEE FELDSTEIN SOTO, City Attorney  
Steven Y. Otera, General Counsel

By: Joy M. Crose  
Name: Joy M. Crose,  
Assistant General Counsel



MEMORANDUM OF UNDERSTANDING  
 BETWEEN THE  
 SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT  
 AND THE CITY OF LOS ANGELES  
 FOR THE ZERO-EMISSION TRUCK  
 PUBLIC INFRASTRUCTURE PROJECTS

FUNDS AVAILABLE STAMP

|                                      |   |           |              |
|--------------------------------------|---|-----------|--------------|
| Account#                             | 59966   | W.O. #    | 78307        |
| Ctr/Div#                             | 0330  | Job Fac.# | 637-00       |
| Proj/Prog#                           | 000   |           |              |
| Budget FY:                           |   | Amount:   |              |
|                                      | FY 23/24  | \$        | 0            |
|                                      | FY 24/25  | \$        | 7,450,000    |
|                                      | FY 25/26  | \$        | 6,812,956    |
|                                      | TOTAL   |           | \$14,262,956 |
| <u>For Acct/Budget Div. Use Only</u> |   |           |              |
| Verified by:                         | Erin O'Malley <small>Digitally signed by Erin O'Malley<br/>Date: 2024.04.25 08:29:40 -0700'</small> |           |              |
| Verified Funds Available:            | <small>Digitally signed by Frank Liu<br/>Date: 2024.04.25 11:07:58 -0700'</small>                   |           |              |
| Date Approved:                       | 4/25/24   |           |              |

**EXHIBIT A**  
**EVSE PROJECTS TO BE FUNDED BY POLA**

| RECIPIENT            | PROJECT   | TOTAL<br>COST* | POLA<br>FUNDING |
|----------------------|---|----------------|-----------------|
| Clean Energy         | At least 3 EVSE at Existing LNG Station in Wilmington | \$4,604,968    | \$1,582,577     |
| WattEV               | Four (4) 1,200 kW EVSE at Port of Long Beach (POLB)   | \$5,366,475    | \$1,742,295     |
| TeraWatt             | EVSE Located in Rancho Dominguez - 40 Stalls          | \$16,750,000   | \$1,000,000     |
| TeraWatt             | EVSE Located in Rialto - 63 Charging Stalls           | \$39,500,000   | \$1,000,000     |
| TeraWatt             | EVSE Located in Fontana - 14 Charging Stalls          | \$21,500,000   | \$1,000,000     |
| TeraWatt             | EVSE Located in Commerce - 11 Charging Stalls         | \$18,500,000   | \$1,000,000     |
| Forum Mobility       | 30 EVSE at POLB                                       | \$19,300,000   | \$3,000,000     |
| Electrify<br>America | Thirty (30) EVSE + Battery Storage at POLB            | \$9,666,801    | \$2,547,202     |
| Electrify<br>America | Sixteen (16) EVSE + Battery Storage at Rialto         | \$5,278,489    | \$1,390,882     |

\* Excludes land acquisition costs

**EXHIBIT B**  
**POLA REQUIREMENTS FOR RECIPIENT AGREEMENTS**

1. PROJECT must provide EVSE to zero-emission drayage trucks servicing the San Pedro Bay Ports.
  - a) Requires submission of analysis behind reasonable expectation of use by drayage trucks to MSRC
2. Minimum of 30% cost share of the total project cost from project applicant
  - a) Of the 30% cost share, a minimum of 10% must be of cash (not “in-kind”) contribution to the project
3. The following are examples of eligible costs for port funding:
  - a) Design & engineering
  - b) Materials and equipment
  - c) Construction
  - d) Fueling infrastructure
  - e) Project management not to exceed 10% of total project cost
  - f) Equipment delivery fees
  - g) Applicable equipment sales taxes
4. The following are examples of those that are NOT eligible costs for port funding:
  - a) Permitting fees
  - b) Environmental review
  - c) Fuel and other consumables
  - d) Labor to operate the equipment or vehicle during normal business operations
  - e) Administrative overhead, including office spaces, utilities, insurance, personnel not directly related to project implementation
  - f) Travel
  - g) Marketing or promotional costs
  - h) Property taxes
  - i) Legal or financial consulting costs
5. RECIPIENT must provide the following information in a report submitted to MSRC biannually (that is, every six months) for five years after successful completion of infrastructure commissioning:
  - a) Number of total trucks serviced
  - b) Number of drayage trucks serviced, including license plate or VIN numbers if available
  - c) Average time charging/refueling per truck
  - d) If available, list of trucking companies utilizing the facility

- e) Cost of charging (electricity utility tariff, EVSP service contract, public charging price) in \$/kWh, OR cost of hydrogen fuel delivered, generated onsite, or sold at a public fueling station (in \$/kg)
- f) Total kWh or kg of energy or hydrogen delivered per month for the reporting period
- g) Percent uptime per charger/dispenser, and overall for entire facility
- h) Any issues during the reporting period including, but not limited to:
  - o Equipment malfunction
  - o Equipment breakdown
  - o Length of downtime if any
  - o Incompatibility with any trucks trying to utilize the infrastructure

**Additional Conditions - as Applicable to Individual Projects**

1. RECIPIENTS must agree to full responsibility for project management, installation, construction, operation, and maintenance of charging infrastructure. RECIPIENTS are responsible for the total duration of the AGREEMENT.
2. First funding disbursement conditioned on the provider obtaining CEQA clearance and necessary permits
3. Placement of Port logo on charging stations funded by the Port.
4. RECIPIENTS must agree to indemnify the PORT for claims, costs, litigation, etc. arising from RECIPIENTS' construction or operation of the PROJECT.