

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

PROFESSIONAL SERVICES CONTRACT

CONTRACT NO. [year]-[number of contract]

1. PARTIES – The parties to this Contract (“Contract”) are the Bay Area Air Quality Management District (“DISTRICT”) whose address is 939 Ellis Street, San Francisco, CA 94109, and [name of company or individual] (“VENDOR”) whose address is [address, city, state, zip].

2. RECITALS

- A. DISTRICT is the local agency with primary responsibility for regulating stationary source air pollution in the Bay Area Air Quality Management District in the State of California. DISTRICT is authorized to enter into this Contract under California Health and Safety Code Section 40701. DISTRICT desires to contract with VENDOR for services described in the Scope of Work, attached hereto as Attachment A and made a part hereof by this reference. DISTRICT is entering into this Contract based on VENDOR’s stated qualifications to perform the services.
- B. The Bay Area is currently in nonattainment of the State and Federal ambient air quality standards for ground-level ozone and particulate matter. In the Bay Area, the transportation sector accounts for more than 50% of “criteria” pollutants, including reactive organic gases (ROG) and oxides of nitrogen (NOX), both of which are ozone precursors, and particulate matter (PM), and for more than 40% of greenhouse gas (GHG) emissions.
- C. Bicycles can reduce reliance on motor vehicles thereby reducing congestion and motor vehicle emissions including GHG emissions.
- D. On June 2, 2010, the DISTRICT’s Board of Directors authorized the allocation of \$600,000 for the Bicycle Rack Voucher Program (“Program”) to support the agency’s effort to meet air pollution and GHG emissions reduction targets. The Program will provide funding for vouchers to help public agencies acquire bicycle parking racks.
- E. On June 28, 2012, the DISTRICT’s Board of Directors approved the results of evaluation of prospective vendors’ proposals, and authorized the Executive Director/APCO execute all necessary contracts for the Program.
- F. VENDOR has been selected as one of the vendors authorized to participate in the DISTRICT’s Program.
- G. All parties to this Contract have had the opportunity to have this contract reviewed by their attorney.

3. PERFORMANCE REQUIREMENTS

- A. VENDOR is authorized to do business in the State of California. VENDOR attests that it is in good tax standing with federal and state tax authorities.
- B. VENDOR agrees to obtain any and all required licenses, permits, and all other appropriate legal authorizations from all applicable federal, state and local jurisdictions and pay all applicable fees.
- C. VENDOR shall comply with all laws and regulations that apply to its performance under this Contract, including any requirements to disclose potential conflicts of interest under DISTRICT’s Conflict of Interest Code.

- D. VENDOR shall not engage in any performance of work during the term of this contract that is in direct or indirect conflict with duties and responsibilities set forth in the Scope of Work.
 - E. VENDOR shall exercise the degree of skill and care customarily required by accepted professional practices and procedures.
 - F. VENDOR shall ensure that any subcontractors, employees and agents performing under this Contract comply with the performance standards set forth in paragraph D above.
4. TERM – The term of this Contract is from date of full execution to June 30, 2014 unless further extended by amendment of this Contract in writing, or terminated earlier. VENDOR shall not submit any invoice for services performed under this Contract until the Contract is fully executed.
5. TERMINATION
- A. The DISTRICT may terminate this Contract at any time, at will, and without specifying any reason, by notifying VENDOR in writing. The notice of termination shall specify the effective date of termination, which shall be no less than five (5) calendar days from the date of delivery of the notice of termination, and shall be delivered in accordance with the provisions of section 10 below. Immediately upon receipt of the notice of termination, VENDOR shall cease all work under this Contract, except such work as is specified in the notice of termination. VENDOR shall deliver a final invoice for all remaining work performed but not billed, including any work specified in the termination notice, on or before ten (10) business days following the termination date.
 - B. Either party may terminate this Contract for breach by the other party.
 - 1. Failure to perform any agreement or obligation contained in this Contract or failure to perform the services in a satisfactory manner shall constitute a breach of the Contract.
 - 2. The non-breaching party may terminate the Contract by delivery of a written notice of breach. The notice of breach shall specify the date of termination, which shall be no earlier than ten (10) business days from delivery of the notice of breach. In the alternative, at its sole discretion, the non-breaching party may require the breaching party to cure the breach. The notice of breach shall specify the nature of the breach and the date by which such breach must be cured.
 - 3. The notice of breach shall be provided in accordance with the notice requirements set forth in section 10.
 - 4. The non-breaching party reserves all rights under law and equity to enforce this Contract and recover any damages.
6. INSURANCE
- A. VENDOR shall maintain the following insurance:
 - 1. Workers' compensation and employers' liability insurance as required by California law or other applicable statutory requirements.
 - 2. Occurrence-based commercial general liability insurance or equivalent form with a limit of not less than one million dollars (\$1,000,000) each occurrence. Such insurance shall include DISTRICT and its officers, agents, and employees as additional insureds and shall be primary with respect to any insurance maintained by DISTRICT.
 - 3. Business automobile liability insurance or equivalent form with a limit of not less than one million dollars (\$1,000,000) each accident. Such insurance shall include coverage for owned, hired, and non-owned vehicles. A VENDOR using only rental vehicles in performing work under this Contract may meet this insurance requirement by purchasing automobile liability insurance in the required coverage amount from the rental agency.

- B. All insurance shall be placed with insurers acceptable to DISTRICT.
- C. Prior to commencement of work under this Contract, VENDOR shall furnish properly-executed certificates of insurance for all required insurance. Upon request by DISTRICT, VENDOR shall provide a complete copy of any required insurance policy. VENDOR shall notify DISTRICT in writing thirty (30) days prior to modification of any required insurance policy. Any such modifications are subject to pre-approval by DISTRICT.
- D. If VENDOR fails to maintain the required insurance coverage set forth above, DISTRICT reserves the right either to purchase such additional insurance and to deduct the cost thereof from any payments owed to VENDOR or to terminate this Contract for breach.

7. INDEMNIFICATION

- A. VENDOR shall indemnify and hold DISTRICT, its officers, employees and agents harmless from and against any and all liability, loss, expense, including reasonable attorneys' fees, or claims for injury or damages arising out of the performance of this Contract but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of VENDOR, its officers, agents, or employees.
- B. DISTRICT shall indemnify and hold VENDOR, its officers, employees and agents harmless from and against any and all liability, loss, expense, including reasonable attorneys' fee, or claims for injury or damages arising out of the performance of this Contract but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of DISTRICT, its officers, agents, or employees.

8. RIGHT TO BIND – Neither the VENDOR nor its employees, subcontractors or consultants have the right to act on behalf of DISTRICT in any capacity, or to bind DISTRICT to any obligation.

9. PAYMENT AND REPORTING

- A. DISTRICT will not pay or otherwise directly reimburse or compensate in any way VENDOR for its services rendered in keeping with this Contract, but the benefit received by VENDOR under this Contract is the opportunity to participate in the Program and to profit from the sale of bicycle racks to Program Participants.
- B. VENDOR will be reimbursed by DISTRICT for approved expenses outlined in this Contract.
- C. Through this Contract, DISTRICT is providing VENDOR with potential bicycle rack business.
- D. IRS Form 1099: VENDOR is aware that DISTRICT will issue an IRS Form 1099 for all voucher funds to VENDOR. Upon approval as a participating VENDOR, VENDOR shall submit a completed IRS Form W-9 to DISTRICT.
- E. VENDOR shall submit reports to DISTRICT for services performed. Each report shall specify the services for which the report is submitted, shall reference tasks shown in the Scope of Work, and shall report any subcontractors' services used.

10. DISPUTE RESOLUTION – A party that disputes a notice of breach must first seek mediation to resolve the dispute in accordance with the provisions set forth below.

- A. Upon receipt of a notice of breach of contract, the party may submit a demand for mediation to resolve whether or not a breach occurred. The party must state the basis of the dispute and deliver the demand within ten (10) business days of the date of receipt of the notice of breach.

- B. The mediation shall take place at DISTRICT’s office at 939 Ellis Street, San Francisco, or at such other place as may be mutually agreed upon by the parties and the mediator.
- C. The parties shall make good faith efforts to hold the mediation within thirty (30) days after receipt of the demand for mediation.
- D. Each party shall bear its own mediation costs.
- E. In the event the parties are unable to resolve the dispute, either party may file an action in a court of competent jurisdiction to enforce the Contract.
- F. Maximum recovery under this section shall be limited to up to the amount of voucher funds approved for VENDOR not to exceed \$600,000. The mediation costs shall not reduce the maximum amount recoverable under this section.

11. 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 e-mail, facsimile, or regular first class mail. In the case of e-mail and facsimile communications, valid notice shall be deemed to have been delivered upon sending, provided the sender obtained an electronic confirmation of delivery. E-mail and facsimile communications shall be deemed to have been received on the date of such transmission, provided such date was a business day and delivered prior to 4:00 p.m. PST. Otherwise, receipt of e-mail and facsimile communications shall be deemed to have occurred on the following business day. In the case of regular mail notice, notice shall be deemed to have been delivered on the mailing date and received five (5) business days after the date of mailing.

DISTRICT: Bay Area Air Quality Management District
 939 Ellis Street
 San Francisco, CA 94109
 Attn: Damian Breen; Strategic Incentives Director

VENDOR: [company or individual name]
 [street address]
 [city, state, zip]
 Attn: [company contact]

12. ADDITIONAL PROVISIONS – All attachment(s) to this Contract are expressly incorporated herein by this reference and made a part hereof as though fully set forth.

13. EMPLOYEES OF VENDOR

- A. VENDOR shall be responsible for the cost of regular pay to its employees, as well as cost of vacation, vacation replacements, sick leave, severance pay, and pay for legal holidays.
- B. VENDOR, its officers, employees, agents, or representatives shall not be considered employees or agents of DISTRICT, nor shall VENDOR, its officers, employees, agents, or representatives be entitled to or eligible to participate in any benefits, privileges, or plans, given or extended by DISTRICT to its employees.

14. CONFIDENTIALITY – In order to carry out the purposes of this Contract, VENDOR may require access to certain of DISTRICT’s confidential information (including trade secrets, inventions, confidential know-how, confidential business information, and other information that DISTRICT considers confidential) (collectively, “Confidential Information”). It is expressly understood and

agreed that DISTRICT may designate in a conspicuous manner Confidential Information that VENDOR obtains from DISTRICT, and VENDOR agrees to:

- A. Observe complete confidentiality with respect to such information, including without limitation, agreeing not to disclose or otherwise permit access to such information by any other person or entity in any manner whatsoever, except that such disclosure or access shall be permitted to employees of VENDOR requiring access in fulfillment of the services provided under this Contract.
- B. Ensure that VENDOR's officers, employees, agents, representatives, and independent contractors are informed of the confidential nature of such information and to assure by agreement or otherwise that they are prohibited from copying or revealing, for any purpose whatsoever, the contents of such information or any part thereof, or from taking any action otherwise prohibited under this section.
- C. Not use such information or any part thereof in the performance of services to others or for the benefit of others in any form whatsoever whether gratuitously or for valuable consideration, except as permitted under this Contract.
- D. Notify DISTRICT promptly and in writing of the circumstances surrounding any possession, use, or knowledge of such information or any part thereof by any person or entity other than those authorized by this section. Take at VENDOR's expense, but at DISTRICT's option and in any event under DISTRICT's control, any legal action necessary to prevent unauthorized use of such information by any third party or entity which has gained access to such information at least in part due to the fault of VENDOR.
- E. Take any and all other actions necessary or desirable to assure such continued confidentiality and protection of such information during the term of this Contract and following expiration or termination of the Contract.
- F. Prevent access to such materials by a person or entity not authorized under this Contract.
- G. Establish specific procedures in order to fulfill the obligations of this section.

15. INTELLECTUAL PROPERTY RIGHTS – Title and full ownership rights to all intellectual property developed under this Contract shall at all times remain with DISTRICT, unless otherwise agreed to in writing.

16. PUBLICATION

- A. DISTRICT shall approve in writing any report or other document prepared by VENDOR in connection with performance under this Contract prior to dissemination or publication of such report or document to a third party. DISTRICT may waive in writing its requirement for prior approval.
- B. Until approved by DISTRICT, any report or other document prepared by VENDOR shall include on each page a conspicuous header, footer, or watermark stating "DRAFT – Not Reviewed or Approved by BAAQMD," unless DISTRICT has waived its requirement for prior approval pursuant to paragraph A of this section.
- C. Information, data, documents, or reports developed by VENDOR for DISTRICT, pursuant to this Contract, shall be part of DISTRICT's public record, unless otherwise indicated. VENDOR may use or publish, at its own expense, such information, provided DISTRICT approves use of such information in advance. The following acknowledgment of support and disclaimer must appear in each publication of materials, whether copyrighted or not, based upon or developed under this Contract.

“This report was prepared as a result of work sponsored, paid for, in whole or in part, by the Bay Area Air Quality Management District (District). The opinions, findings, conclusions, and recommendations are those of the author and do not necessarily represent the views of the District. The District, its officers, employees, contractors, and subcontractors make no warranty, expressed or implied, and assume no legal liability for the information in this report.”

D. **VENDOR** shall inform its officers, employees, and subcontractors involved in the performance of this Contract of the restrictions contained herein and shall require compliance with the above.

17. **NON-DISCRIMINATION** – In the performance of this Contract, **VENDOR** shall not discriminate in its recruitment, hiring, promotion, demotion, and termination practices on the basis of race, religious creed, color, national origin, ancestry, sex, age, marital status, sexual orientation, medical condition, or physical or mental disability 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, and all administrative rules and regulations issued pursuant to said Acts. **VENDOR** shall also require each subcontractor performing work in connection with this Contract to comply with this section and shall include in each contract with such subcontractor provisions to accomplish the requirements of this section.
18. **PROPERTY AND SECURITY** – Without limiting **VENDOR**'S obligations with regard to security, **VENDOR** shall comply with all the rules and regulations established by **DISTRICT** for access to and activity in and around **DISTRICT**'s premises.
19. **ASSIGNMENT** – No party shall assign, sell, license, or otherwise transfer any rights or obligations under this Contract to a third party without the prior written consent of the other party, and any attempt to do so shall be void upon inception.
20. **WAIVER** – No waiver of a breach, of failure of any condition, or of any right or remedy contained in or granted by the provisions of this Contract shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies. Further, the failure of a party to enforce performance by the other party of any term, covenant, or condition of this Contract, and the failure of a party to exercise any rights or remedies hereunder, shall not be deemed a waiver or relinquishment by that party to enforce future performance of any such terms, covenants, or conditions, or to exercise any future rights or remedies.
21. **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.
22. **FORCE MAJEURE** – Neither **DISTRICT** nor **VENDOR** shall be liable for 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, enemy or hostile governmental action, civil commotion, strikes, lockouts, labor disputes, fire or other casualty, judicial orders, governmental controls, regulations or restrictions, inability to obtain labor or materials or reasonable substitutes for labor or materials necessary for performance of the services, or other causes, except financial, that are beyond the reasonable control of **DISTRICT** or **VENDOR**, for a period of time equal to the period of such force majeure event, provided that the party failing to perform notifies the other party within fifteen calendar days of discovery of the force majeure event, and provided further that that party takes all reasonable action to mitigate the damages resulting from the failure to perform. Notwithstanding the above, if the cause of the force majeure event is due to party's own action or inaction, then such cause shall not excuse that party from performance under this Contract.

23. **SEVERABILITY** – If a court of competent jurisdiction holds any provision of this Contract to be illegal, unenforceable or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them will not be affected.
24. **HEADINGS** – Headings on the sections and paragraphs 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.
25. **COUNTERPARTS/FACSIMILES/SCANS** – This Contract may be executed and delivered in any number of counterparts, each of which, when executed and delivered, shall be deemed an original, and all of which together shall constitute the same contract. The parties may rely upon a facsimile copy or scanned copy of any party’s signature as an original for all purposes.
26. **GOVERNING LAW** – Any dispute that arises under or relates to this Contract shall be governed by California law, excluding any laws that direct the application of another jurisdiction’s laws. Venue for resolution of any dispute that arises under or relates to this Contract, including mediation, shall be San Francisco, California.
27. **ENTIRE CONTRACT AND MODIFICATION** – This Contract represents the final, complete, and exclusive statement of the agreement between the parties related to VENDOR providing services to DISTRICT and supersedes all prior and contemporaneous understandings and agreements of the parties. No party has been induced to enter into this Contract by, nor is any party relying upon, any representation or warranty outside those expressly set forth herein. This Contract may only be amended by mutual agreement of the parties in writing and signed by both parties.
28. **SURVIVAL OF TERMS** – The provisions of sections 7 (Indemnification), 13 (Confidentiality), 14 (Intellectual Property Rights), and 15 (Publication) shall survive the expiration or termination of this Contract.

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

BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

[company name]

By: _____
Jack P. Broadbent
Executive Officer/APCO

By: _____
[name]
[title]

Date: _____

Date: _____

Approved as to form:
District Counsel

VENDOR Counsel (Optional)

By: _____
Brian C. Bunger
District Counsel

By: _____
[name]
[title]

ATTACHMENT A

SCOPE OF WORK

1. Project Description

The DISTRICT has developed the Bicycle Rack Voucher Project (BRVP) to facilitate the process for public agencies to purchase bicycle racks and to provide them with low (bulk rate) pricing.

Under this program, the DISTRICT will provide eligible applicants with a voucher in the amount of up to \$60 for each bicycle parking space provided (a typical two space bicycle rack would qualify for a \$120 voucher). During the first four months of this program, a public agency may apply for up to \$12,000 in voucher funds. If the funds have not been fully expended during the first four months, the DISTRICT may at its sole discretion raise the maximum voucher amount to \$60,000 per agency.

The DISTRICT will contract directly with the VENDOR and other approved vendors to administer this program. VENDOR was selected as a result of a Request for Proposals (RFP) that was issued on May 22, 2012.

2. Definitions

- A. "Participant" shall mean a public agency, located within the DISTRICT's jurisdiction, who has received a voucher issued by the District.
- B. "Voucher" shall mean the DISTRICT generated document providing proof of funding to a Participant for a set quantity of bicycle parking racks and a set price not to exceed \$60 for each bicycle parking space.

3. VENDOR Requirements

- A. CUSTOMER SERVICE - The VENDOR shall assign a customer service liaison to the Program to serve as the day-to-day contact to the Participants and to provide customer service and sales assistance to Participants. Within 45 days from the execution of this agreement, the VENDOR shall notify the DISTRICT of the VENDOR customer service liaison's contact information including address, telephone number fax number, and email address. The VENDOR shall notify the DISTRICT of any change regarding the customer service liaison within 45 days of any change.
- B. FIXED PRICES - The VENDOR shall offer equipment at a price that does not exceed the amount listed in Attachment B. In addition, VENDOR represents, warrants and covenants that the prices set forth in Attachment B are at least as favorable as the prices, charges and fees VENDOR charges to other of its customers or clients for the same or substantially similar services provided under the same or substantially similar circumstances, terms, and conditions. If VENDOR agrees or contracts with other clients or customers similarly situated before June 30, 2014, and offers or agrees to financial terms more favorable than those set forth herein, VENDOR hereby agrees that it will, from that point forward, reduce the prices, charges and/or fees charged in respect of the services hereunder to the most favorable rates received by those other clients or customers.
- C. VOUCHER VALIDATION AND ORDERING - The VENDOR shall validate the Participant's Voucher by signing the Voucher, shall place each order within three (3) business days, and shall return a signed copy of the Voucher to the DISTRICT to confirm that the order has been accepted and is being processed.

D. **ORDER FULFILLMENT, DELIVERY AND BILL OF SALE** - Within 90 days from the date an order is validated, the **VENDOR** shall deliver the equipment to the Participants and submit a copy of the Bill of Sale to both the **DISTRICT** and Participant. Delivery shall be included at no cost for orders of equipment that include 25 or more units. For orders of 24 or fewer units, **VENDOR** may charge for delivery and shall be paid by the Participant at the agreed-to price between the Participant and **VENDOR**.

At a minimum, each Bill of Sale shall contain the following information:

1. Voucher number;
2. Name and address of the Participant Shipping address;
3. Date equipment was sold and delivered;
4. Name of receiving party and copy of signed voucher acknowledging receipt of delivery; and
5. Itemized listing of equipment sold, cost per unit, quantities, additional fees or discounts provided, credit for the amount of the **DISTRICT**'s Voucher and credit for the additional costs that were paid by the Participant.

E. **INSTALLATION** - The **VENDOR** shall provide installation of equipment if requested by the Participant and shall be paid by the Participant at the agreed-to price between the Participant and **VENDOR**.

F. **EXCHANGES AND RETURNS** - The **VENDOR** shall provide its "equipment returns and exchanges" policy to the **DISTRICT**. The **VENDOR** shall accept returns and exchanges from Participants in accordance with the "equipment returns and exchanges" policy.

G. **MONTHLY INVOICE REPORTS** – The Vendor shall provide Monthly Invoice Reports as described in section 4 (Reimbursement) below.

H. **FINAL REPORT** – The **VENDOR** shall submit a Final Report within 60 days of the conclusion of the Program. At a minimum, this report shall include:

1. The total number of units sold, by equipment type make and model;
2. The total amount billed to the **DISTRICT** and Program Participants (if applicable); and
3. A narrative summary of any issues related to the Program.

4. Vendor Reimbursement

On a monthly basis, **VENDOR** must submit invoices in order to be reimbursed for equipment delivered in the previous month. **VENDOR** may only charge the **DISTRICT** the amount equal to the amount of the Voucher that is actually incurred to a maximum of \$60 for each bicycle parking spot provided, whichever amount is less. Invoices must be submitted using the **DISTRICT** approved format that contain:

- A. A Summary Invoice listing the total amount being requested for reimbursement and sales completed (total number of units sold by equipment type, make and model) for that period and year to date,
- B. A copy of each individual Bill of Sale for that period Voucher and remaining costs that are authorized by the Participant (to be billed to the Participant);
- C. A table listing all orders placed that are pending that have not been fulfilled and the date the order was placed; and

5. DISTRICT Requirements

- A. **DISTRICT** shall endeavor to pay invoices within thirty days of receipt of an approved monthly invoice and report.

6. Program Outreach and Acknowledgement of Funding

- A. VENDOR will use DISTRICT approved logo on any printed promotional material for public distribution.
- B. VENDOR will credit DISTRICT as the funding source for the Program in any related articles, news releases, or other publicity materials. All advertising materials, information packages, and any other materials provided to media, or public require prior approval by DISTRICT.

7. Recordkeeping

- A. VENDOR shall retain all Program records and make the records available to the DISTRICT within 2 business days upon request for a period of at least 3 years. The provisions of this Paragraph 7 shall survive the termination or expiration of this Task Order or of this Contract.

8. Audits and On-Site Inspections

- A. VENDOR will allow DISTRICT to conduct unannounced audits and on-site inspections of the VENDOR'S operations to ensure operations comply with all Contract requirements. VENDOR and their subcontractors shall allow the Air District to conduct unannounced audits and inspections and shall cooperate fully in such situations.

BICYCLE RACK PRICES

The VENDOR shall provide the bicycle parking equipment listed below at prices no higher than those listed below.