



BAY AREA AIR QUALITY MANAGEMENT DISTRICT VOUCHER INCENTIVE PROGRAM
ADDITIONAL TERMS AND CONDITIONS

1. TERMINATION

- B. The Air District may terminate applications or an awarded VOUCHER at any time if funding is exhausted, VOUCHER RECIPIENT does not meet eligibility, Program requirements, VOUCHER requirements or Additional Terms and Conditions, or VOUCHER RECIPIENT has communicated they do not wish to move forward with the Program.

2. INDEMNIFICATION

- A. VOUCHER RECIPIENT shall indemnify and hold harmless DISTRICT, the State of California, CARB, and its/their officers, employees, agents, representatives and successors-in-interest from and against any and all liability, loss, expense, including reasonable attorneys' fees, or claims for injury or damages arising out of participation in the Program and operation of the vehicles funded by the Program, except for losses arising out of the gross negligence or willful misconduct of DISTRICT or CARB.

3. EMPLOYEES OF VOUCHER RECIPIENT

- A. VOUCHER RECIPIENT shall act in an independent capacity and shall not be considered an employee or agent of DISTRICT or CARB.

4. CONFIDENTIALITY – T

- A. Except as required by law, no record which has been designated as confidential by DISTRICT or CARB shall be disclosed by VOUCHER RECIPIENT.

If VOUCHER RECIPIENT believes disclosure of Confidential Information may be required by law, first give DISTRICT and/or CARB at least ten (10) calendar days' written notice prior to any planned disclosure of Confidential Information so that DISTRICT and/or CARB can seek an order preventing disclosure from a court of competent jurisdiction.

- B. Identify any information VOUCHER RECIPIENT provides DISTRICT and/or CARB that it asserts is confidential in accordance with California Code of Regulations, title 17, sections 91011 and 91022. VOUCHER RECIPIENT acknowledges that any information provided to DISTRICT and/or CARB may be released (1) to the DISTRICT or CARB, (2) to the public upon request, except information exempt from disclosure or the disclosure of which is prohibited by law, and (3) to the federal Environmental Protection Agency. VOUCHER RECIPIENT further acknowledges that DISTRICT and/or CARB may anonymize and aggregate confidential information received and make such information public.

5. NON-DISCRIMINATION – VOUCHER RECIPIENT shall not discriminate in its recruitment, hiring, promotion, demotion, and termination practices, or harass or allow harassment of any employee, on the basis of race, religious creed, color, national origin, ancestry, sex, age, marital status, sexual orientation, medical condition, reproductive health decision making, genetic information, gender, gender identity, gender expression, age (over 40), veteran or military status, physical or mental disability, or any other characteristic protection by law. VOUCHER RECIPIENT shall not unlawfully deny family-care leave, medical-care leave, pregnancy-disability leave or other legally protected leave. VOUCHER RECIPIENT 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, which are incorporated herein by reference. VOUCHER RECIPIENT shall comply with California Government Code section 11135; Title VI of the U.S. Civil Rights Act of 1964; Section 504 of the federal Rehabilitation Act of 1973; the federal Age Discrimination Act of 1975; Section 13 of the Federal Water Pollution Control Act of 1972; and U.S. Environmental Protection Agency's implementing regulations at 40 C.F.R. Parts 5 and 7. VOUCHER RECIPIENT shall give notice of this section to labor organizations with which they may have a collective bargaining or other agreement. VOUCHER RECIPIENT shall permit access by representatives of DISTRICT, CARB, California Civil Rights Department, or U.S. EPA to all information required to ensure compliance with this clause. VOUCHER RECIPIENT acknowledges that CARB will submit a complaint to the California Civil Rights Department for investigation if it has information that VOUCHER RECIPIENT has violated this condition, and that VOUCHER RECIPIENT may be subject to remedial action and disqualification from participation in the Program and/or termination of an awarded VOUCHER. The CARB Civil Rights Policy applies to participation in the Program. VOUCHER RECIPIENT shall also require each subcontractor performing services in connection with the Program to comply with this section and shall include in each contract with such subcontractor provisions to accomplish the requirements of this section.

6. ASSIGNMENT – VOUCHER RECIPIENT agrees not to assign, sell, license, or otherwise transfer any rights or obligations under this Program or an awarded VOUCHER to a third party without the prior written consent of DISTRICT, and any attempt to do so shall be void upon inception. Any assignment may be subject to approval by CARB.
7. FORCE MAJEURE – Neither DISTRICT nor VOUCHER RECIPIENT nor CARB shall be liable for or deemed to be in default for any delay or failure in performance or interruption of services resulting, directly or indirectly, from acts of God, enemy or hostile governmental action, civil commotion, strikes, lockouts, labor disputes, fire, flood, earthquake or other physical natural disasters, 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, government declaration of emergency, national or State declared pandemics, or other causes, except financial, that are beyond the reasonable control of DISTRICT or VOUCHER RECIPIENT or CARB, 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 a party's own action or inaction, then such cause shall not excuse that party from performance under the requirements of the Program. DISTRICT may terminate an awarded VOUCHER immediately in writing without penalty to either party in the event VOUCHER RECIPIENT invokes this clause. If the VOUCHER is not terminated by DISTRICT, upon completion of the event of force majeure, VOUCHER RECIPIENT must, as soon as reasonably practicable, recommence performance of its obligations under the VOUCHER Program.
8. CONFLICT OF INTEREST
 - A. VOUCHER RECIPIENT certifies that it is in compliance with all applicable state and federal conflict of interest laws and will remain in compliance with all such laws during participation in the Program.
 - B. VOUCHER RECIPIENT certifies that it has no interest, and will not acquire any interest, direct or indirect, which will conflict with its ability to impartially perform the tasks required for participation in the Program.

- C. VOUCHER RECIPIENT agrees that it must disclose any direct or indirect financial interest which may pose an actual, apparent, or potential conflict of interest. VOUCHER RECIPIENT agrees that the nature and extent of any actual, apparent, or potential conflict of interest may be a basis for disqualification from receiving any funds from the DISTRICT.
- D. VOUCHER RECIPIENT will immediately advise the DISTRICT in writing of any potential new conflicts of interest as they arise.

9. PAYMENT (RECAPTURE) ON DEMAND

- A. VOUCHER RECIPIENT will, upon notification by the DISTRICT and/or CARB or their authorized representative(s) of an overpayment, wrongful payment, or a violation of or failure to comply with any term or condition of the VOUCHER or the Program, remit to the DISTRICT or its authorized representative the requested amount within sixty (60) days from the date of issuance of said notice.
- B. VOUCHER RECIPIENT agrees that the DISTRICT or CARB, or their designee, may require VOUCHER RECIPIENT to return funds it received due to termination for cause of an awarded VOUCHER, or for VOUCHER RECIPIENT's misinformation, misrepresentation, misuse of funds, or fraud. DISTRICT and CARB also reserve the right to prohibit VOUCHER RECIPIENT from participating in current or future funding programs.

10. NON-EXCLUSIVE REMEDIES

- A. The remedies set forth in these Additional Terms and Conditions are contractual in nature. VOUCHER RECIPIENT agrees that nothing in the Program Additional Terms and Conditions limits or precludes the State of California or the DISTRICT from taking any enforcement action, exercising any police power, or prosecuting any violation of law against VOUCHER RECIPIENT, its employees, officers, agents, assigns, representatives, subcontractors, affiliates or any third parties.
- B. VOUCHER RECIPIENT agrees that it will promptly notify the DISTRICT of any and all suspected or known breaches of the Program Additional Terms and Conditions, conditions of an awarded VOUCHER, or conditions of the Program, misinformation, misrepresentation, fraud, or misuse of funds provided under the Program.

11. RUSSIAN SANCTIONS

- A. On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 regarding Economic Sanctions against Russia and Russian entities and individuals imposed by the federal or state government in response to Russia's actions in Ukraine.
- B. VOUCHER RECIPIENT represents and warrants that it is not a target of Economic Sanctions, and that it will refrain from conducting prohibited transactions with sanctioned individuals or entities while participating in in the Program.

12. FUNDING PROHIBITIONS FOR SECTARIAN PURPOSES AND NON-PUBLIC SCHOOLS

- A. VOUCHER RECIPIENT may only use or authorize the use of funding provided under the Program in a manner consistent with the California Constitution, article XVI, section 5 and article IX, section 8 (prohibiting grant fund awards to non-public schools), and federal law.
- B. VOUCHER RECIPIENT agrees to provide any information requested by DISTRICT and/or CARB to ensure compliance with this provision.

13. VOUCHER RECIPIENT'S RESPONSIBILITY FOR WORK

- A. DISTRICT and/or CARB are not responsible for disputes arising out of VOUCHER RECIPIENT'S agreements related to an awarded VOUCHER or the Program in general, including but not limited to disputes with vehicle manufacturers or dealers.
- B. DISTRICT and/or CARB will not mediate disputes between VOUCHER RECIPIENT and any other entity.

14. OFFICE OF FOREIGN ASSET CONTROL

- A. Transactions are prohibited if they involve the property or interests in property of an entity or individual listed on the Office of Foreign Asset Control (OFAC) targeted lists. The property and interests in property of an entity that is 50 percent or more owned by one or more persons whose property and interests in property are blocked pursuant to any part of 31 C.F.R. chapter V are also blocked.
- B. VOUCHER RECIPIENT agrees that is not in violation of any federal law pertaining to any entity or individual listed on any of the OFAC lists.

15. PERSONALLY IDENTIFIABLE INFORMATION (PII)

- A. Information or data that personally identifies an individual is confidential in accordance with relevant State or federal law.
- B. VOUCHER RECIPIENT agrees to comply with all applicable PII law, and safeguard all PII which comes into their possession under the Program. VOUCHER RECIPIENT will not release PII, except as required by law, court order, or legal process.

16. PREVAILING WAGES

- A. VOUCHER RECIPIENT agrees to be bound by and comply with all applicable provisions of the California Labor Code Section 1720-1861 regarding prevailing wages and labor compliance.

17. PROFESSIONALS

- A. VOUCHER RECIPIENT agrees that only licensed professionals will be used to perform services under this Program where such services are required to be performed by licensed professionals under State law.

18. GREENHOUSE GAS REDUCTION FUND ACKNOWLEDGEMENT

- A. The VOUCHER may be funded by the State's Greenhouse Gas Reductions Fund. If notified by the DISTRICT that Greenhouse Gas Reductions Fund has funded the VOUCHER, VOUCHER RECIPIENT agrees to include the California Climate Investments (CCI) funding boilerplate and logo (see Figure 1) on all outreach and public facing materials whenever it publicizes (in any news media, websites, brochures, publications, audiovisuals, or other types of promotional material) projects funded in whole or in part by the Program. The acknowledgment must read as follows: "Community Air Protection Program is part of the California Climate Investments, a statewide initiative that puts billions of Cap-and-Trade dollars to work reducing greenhouse gas emissions, strengthening the economy, and improving public health and the environment – particularly in disadvantaged communities." Whenever applicable, VOUCHER RECIPIENT agrees to use the Spanish translation: "de Protección del Aire en la Comunidad forma parte de las Inversiones del Clima de California, un iniciativa estatal que destina miles de millones de dólares de Cap-and-Trade para la reducción de gases de efecto invernadero, fortalecimiento de la economía y mejoramiento de la salud pública y el medio ambiente – especialmente en comunidades en desventaja."

Figure 1: CCI logo



19. AMERICANS WITH DISABILITIES ACT

- A. VOUCHER RECIPIENT will ensure that work products submitted to CARB, uploaded, or otherwise provided to CARB by VOUCHER RECIPIENT and/or its subcontractors, which are intended to be publicly posted or otherwise distributed to the public, comply with Web Content Accessibility Guidelines 2.0, levels A and AA, and otherwise meet the accessibility requirements set forth in California Government Code Sections 7405 and 11135, Section 202 of the federal Americans with Disabilities Act (42 U.S.C. § 12132), and Section 508 of the federal Rehabilitation Act (29 U.S.C. § 794d) and the regulations promulgated thereunder (36 C.F.R. Parts 1193 and 1194). For any work product provided to CARB in PDF format, VOUCHER RECIPIENT must also provide an electronic version in the original electronic format (for example, Microsoft Word or Adobe InDesign).

20. GENERATIVE ARTIFICIAL INTELLIGENCE

- A. Generative Artificial Intelligence (GenAI) is an artificial intelligence system that can generate derived synthetic content, including text, images, video, and audio that emulates the structure and characteristics of the system's training data. (Gov. Code section 11549.64)
- B. VOUCHER RECIPIENT must notify DISTRICT and CARB within 15 days if it (i) intends to provide GenAI as a deliverable to the DISTRICT or CARB; (ii) intends to utilize GenAI to complete all or a portion of its work under the Program.
- C. At the direction of the DISTRICT or CARB, VOUCHER RECIPIENT agrees to discontinue use of GenAI.
- D. Failure to disclose or discontinue the use of GenAI may be deemed a material breach of the Program Additional Terms and Conditions.

21. LABOR COMPLIANCE FOR DRAYAGE AND SHORT-HAUL TRUCKS

- A. VOUCHER RECIPIENT agrees to comply with the applicable provisions of California Health and Safety Code sections 39680 through 39693.

22. SURVIVAL OF TERMS – The following provisions shall survive the expiration or termination of an awarded VOUCHER and participation in the Program: Sections 2 (Indemnification), 3 (Employees of VOUCHER RECIPIENT), 4 (Confidentiality), 5 (Non-Discrimination) (with regard to VOUCHER RECIPIENT's acknowledgment that CARB will file a complaint if it has information that VOUCHER RECIPIENT has violated the clause), 9 (Payment (Recapture) On Demand), 10 (Non-Exclusive Remedies), 13 (VOUCHER RECIPIENT's Responsibility for Work), 15 (Personally Identifiable Information (PII)), 18 (Greenhouse Gas Reduction Fund Acknowledgement), 20 (Generative Artificial Intelligence), and 24 (Incorporated Documents).

23. INCORPORATED DOCUMENTS

- A. The following documents are incorporated by reference into the Program Additional Terms and Conditions.
1. CARB Carl Moyer Program Guidelines, and the Community Air Protection Funds Supplement to the Carl Moyer Program Guidelines
 2. CARB Community Air Protection Incentives Guidelines

3. CARB Voucher Incentive Program Guidelines