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 375 Beale Street, Suite 600, San Francisco, CA 94105, and **[Vendor Name]** ("VENDOR") whose address is [Vendor Address].

2. RECITALS
   A. DISTRICT implements a grant program to incentivize the replacement of old, highly polluting trucks with new zero-emission trucks sooner than would have been expected through normal attrition or required by regulation, to reduce the emission of air pollutants ("Program").
   B. The Program follows the California Air Resources Board's ("CARB") Carl Moyer Program Guidelines, including Volume II Voucher Incentive Program (together, "Guidelines"). The Guidelines and any accompanying advisories are periodically updated by CARB and implemented by DISTRICT.
   C. The Program is funded by multiple sources, which include but are not limited to: Carl Moyer Program funding; Carl Moyer State Reserve funding; Community Air Protection Incentives funding; Goods Movement funding; and Transportation for Clean Air ("TFCA") funding.
   D. Under the Program, an equipment owner (Program Participant) applies to DISTRICT for funding of a vehicle replacement and names an authorized vendor that will sell the equipment. If the application is approved, DISTRICT provides a notice of project and funding approval to the Program Participant and authorized vendor and pays the vendor or Program Participant upon receipt of a completed request for reimbursement verifying delivery of the approved new equipment.
   E. VENDOR has been identified as one of multiple entities authorized to sell eligible equipment in the Bay Area under the Program.
   F. VENDOR has represented to DISTRICT that it is aware of the Program's and Guidelines' goals, and agrees to abide by CARB's Guidelines and accompanying advisories, as periodically updated by CARB. Based solely on VENDOR's representations, the District has identified VENDOR as authorized to sell and install eligible equipment in the Bay Area under the Program. DISTRICT has not reviewed VENDOR's operations or reached any conclusion on the quality of the VENDOR's operations.
   G. DISTRICT and VENDOR desire to enter into this Contract under which DISTRICT will provide VENDOR with potential business opportunities to sell and install equipment under the Program and VENDOR will provide services as described in the Scope of Work, attached hereto as Attachment B and made a part hereof by this reference, which will assist DISTRICT in implementing the Program.
   H. 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 all terms of this Contract.
G. VENDOR must ensure compliance with any federal, State and local material disposal requirements, regulations, permits or requirements.
H. VENDOR affirms that it understands and agrees to abide by the Guidelines and the terms of this Contract, including all additional CARB requirements, which are included at Attachment A and incorporated herein by this reference.
I. VENDOR shall have a valid California business license, be licensed by the California Department of Motor Vehicles (DMV), and, if required, have a valid California Environmental Protection Agency (Cal/EPA) Hazardous Materials Generators Permit. In addition, VENDOR must ensure compliance with any federal, State and local material disposal requirements, regulations, permits or requirements.

4. <u>TERM</u> – The term of this Contract shall begin upon the date of full execution and shall continue in full force and effect until it is terminated in accordance with section 5, unless it is terminated otherwise in accordance with section 5

5. <u>TERMINATION</u>
   A. 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 thirty (30) calendar days from the date of delivery of the notice of termination, and shall be delivered in accordance with the provisions of section 11 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.
   B. Either party may terminate this Contract for breach by the other party.
      i) Failure to perform any agreement or obligation contained in this Contract or the Guidelines or failure to perform the services in a satisfactory manner shall constitute a breach of the Contract.
      ii) 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.
      iii) If VENDOR fails to perform any obligation under this Contract, DISTRICT at its sole discretion, may perform, or cause the performance, of the obligation itself. In that event, DISTRICT shall deduct the costs to perform such obligation and any other costs to cure the breach

from the payment otherwise due to VENDOR for work performed under this Contract. DISTRICT's performance hereunder shall not be deemed a waiver or release of any obligation of, or default by, VENDOR under this Contract.

iv) The notice of breach shall be provided in accordance with the notice requirements set forth in section 11.

v) The non-breaching party reserves all rights under law and equity to enforce this Contract and recover any damages.

vi) DISTRICT's remedies for VENDOR's breach also include, but are not limited to, cancelling the Contract, recapturing voucher or grant funds, disqualifying VENDOR from Program participation, or any other remedy available under the law.

C. DISTRICT and VENDOR agree that if the California Budget Act of the current year and/or any subsequent years covered under this Contract does not appropriate sufficient funds for the Program, this Contract shall be of no further force and effect. In this event the State shall have no liability to pay any funds whatsoever to the DISTRICT and VENDOR or to furnish any other considerations under this Contract. Should such event occur, DISTRICT shall notify VENDOR and may elect to terminate this Contract pursuant to the provisions in section 5.A. Should DISTRICT elect to terminate the Contract under these circumstances, VENDOR will not dispute the termination.

6. INSURANCE

A. VENDOR shall maintain the following insurance:

i) Workers' compensation and employers' liability insurance as required by California law or other applicable statutory requirements.

ii) 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.

iii) 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. If VENDOR is a sole proprietor, VENDOR may meet this insurance requirement with personal automobile liability insurance carrying a business use endorsement or by demonstrating to the satisfaction of DISTRICT that business use is covered under the VENDOR's personal automobile liability insurance. 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 cancellation or 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 - VENDOR agrees to indemnify, defend, and hold harmless DISTRICT, CARB, and its/their officers, employees, agents, representatives, and successors-in-interest against any and all liability, demands, claims, costs, losses, damages, recoveries, settlements, and expenses (including reasonable attorney fees) that DISTRICT, CARB, and/or their officers, employees, agents, representatives, and successors-in-interest may incur or be required to pay arising from the death or injury of any person or persons (including employees of VENDOR), or from destruction of or damage to any property or properties, caused by or connected with the performance of this Contract by VENDOR, its employees, subcontractors, or agents.

8. RIGHT TO BIND - Neither 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, which includes the corresponding opportunity for VENDOR to profit from the sale of on-road equipment to Program Participants.
   B. DISTRICT does not promise that any Program participant will select VENDOR for purchase and installation of replacement equipment.
   C. VENDOR or Program Participant will be reimbursed by DISTRICT for the voucher or grant amount once VENDOR or Program Participant submits a complete reimbursement to DISTRICT as outlined in this Contract and Guidelines.
   D. IRS Form 1099: VENDOR is aware that DISTRICT will issue an IRS Form 1099 for all grant 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 375 Beale 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.

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 will be in writing sent by e-mail OR delivered in person. Notices will 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/PDT. Otherwise, receipt of notices will be deemed to have occurred on the following business day.

DISTRICT:	Bay Area Air Quality Management District 375 Beale Street, Suite 600 San Francisco, CA 94105 Attn: Director of Strategic Incentives grants@baaqmd.gov
VENDOR:	[Vendor Company Name] [Vendor Street Address] [Vendor City, CA, Vendor Zip] Attn: [Vendor Contact] [Vendor Email]

12. ADDITIONAL PROVISIONS – All attachments 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 or CARB, 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 or CARB to its/their employees.

14. CONFIDENTIALITY – In order to carry out the purposes of this Contract, VENDOR may require access to certain of DISTRICT's or CARB'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 or CARB may designate in a conspicuous manner Confidential Information that VENDOR obtains from DISTRICT or CARB, 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. If VENDOR 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.
H. Identify any information VENDOR provides DISTRICT and/or CARB that it asserts is confidential in accordance with California Code of Regulations, title 17, sections 91011 and 91022. VENDOR 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. VENDOR further acknowledges that DISTRICT and/or CARB may anonymize and aggregate confidential information received and make such information public.
G. Establish specific procedures in order to fulfill the obligations of this section.

15. <u>AUDIT / INSPECTION OF RECORDS</u> - All records, documents, conditions and activities of VENDOR, and its subcontractors, related to the services provided hereunder, shall be subject to the examination and audit of the DISTRICT, CARB, the California Department of General Services, the California Department of Finance, the California State Auditor and other duly authorized agents of the State of California for a period of (5) years after termination, expiration, or cancellation of this Contract, or five (5) years after final payment under this Contract or conclusion of activities funded under this Contract, whichever is later. VENDOR hereby agrees to make such records available during normal business hours for inspection, audit, and reproduction by any duly authorized agents of the State of California or DISTRICT. VENDOR further agrees to allow interviews of any of its employees who might reasonably have information related to such records by any duly authorized agents of the State of California or DISTRICT. All examinations and audits conducted under this section shall be strictly confined to those matters connected with the performance of this Contract, including, but not limited to, the costs of administering this Contract. VENDOR will cooperate fully, without delay, in all audits, inquiries, and investigations initiated by or on behalf of the DISTRICT and/or the State of California concerning or relating to compliance with local, state, or federal air quality laws, and with this Contract, including but not limited to timely submission of any and all records requested and full cooperation with any on-site inspections.

16. <u>NON-DISCRIMINATION</u> – In the performance of this Contract, VENDOR 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. VENDOR shall not unlawfully deny family-care leave, medical-care leave, pregnancy-disability leave or other legally protected leave. VENDOR 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. VENDOR 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. VENDOR shall give notice of this section to labor organizations with which they may have a collective bargaining or other agreement. VENDOR 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. VENDOR acknowledges that CARB will submit a complaint to the California Civil Rights Department for investigation if it has information that VENDOR has violated this clause, and that VENDOR may be subject to remedial action and termination of this Contract. The CARB Civil Rights Policy applies to this Contract. VENDOR shall also require each subcontractor performing services 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.

17. 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.

18. 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. Any assignment may be subject to approval by CARB.

19. 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.

20. 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.

21. FORCE MAJEURE – Neither DISTRICT nor VENDOR nor CARB 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 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 party's own action or inaction, then such cause shall not excuse that party from performance under this Contract. DISTRICT may terminate this Contract immediately in writing without penalty to either party in the event that VENDOR invokes this clause. If the Contract is not terminated by DISTRICT, upon completion of the event of force majeure, VENDOR must, as soon as reasonably practicable, recommence performance of its obligations under this Contract.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. SURVIVAL OF TERMS – The following provisions shall survive the expiration or termination of this Contract: Sections 7 (Indemnification), 13 (Employees of Vendor), 14 (Confidentiality), 15 (Audit / Inspection of Records), 16 (Non-Discrimination) (with regard to Vendor's acknowledgment that CARB will file a complaint if it has information that Vendor has violated the clause), 22 (Severability), and Attachment A, Paragraph 2 (Payment (Recapture) On Demand), Attachment A, Paragraph 3 (Third Party Beneficiary), Attachment A, Paragraph 5 (Non-Exclusive Remedies), Attachment A, Paragraph 8 (Vendor's Responsibility for Work), Attachment A, Paragraph 10 (Personally Identifiable Information (PII), Attachment A, Paragraph 13 (Greenhouse Gas Reduction Fund Acknowledgement), Attachment A, Paragraph 15 (Generative Artificial Intelligence), Attachment A, Paragraph 16 (Computer Software And Project Data) and Attachment A, Paragraph 17 (Incorporated Documents).

28. AUTHORIZED SIGNATURE – VENDOR agrees, under penalty of perjury, that is has signed or authorized the signing of this Contract by a person with full power and legal authority to sign this Contract, and that all statements, responses and information provided to the DISTRICT in pursuit of

the Contract are true and correct. VENDOR agrees that all statements, responses and information are subject to investigation by the DISTRICT and CARB, or their representatives, and that any false statements, responses or information may be in violation of the California False Claims Act, is in breach of this Contract, and may disqualify VENDOR from receiving any existing or further funding. By signing this Contract, VENDOR is bound to and will comply with all terms and conditions of this Contract, including those in any Attachments.

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

By: ___________________________________
Philip M. Fine
Executive Officer/Air Pollution Control Officer

Date: ___________________________________

[VENDOR NAME]

By: ___________________________________
[Vendor Authorized Signer]
[Title]

Date: ___________________________________

Approved as to form:
General Counsel

By: ___________________________________
Alexander Crockett
General Counsel

Attachment A
California Air Resources Board (CARB) Requirements

VENDOR and its subcontractors, employees and agents shall comply with the following requirements of the California Air Resources Board (CARB).

1. CONFLICT OF INTEREST
   A. VENDOR 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 the Term of this Contract.
   B. VENDOR 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 described in this Contract.
   C. VENDOR agrees that it must disclose any direct or indirect financial interest which may pose an actual, apparent, or potential conflict of interest. VENDOR 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. VENDOR will immediately advise the DISTRICT in writing of any potential new conflicts of interest as they arise.

2. PAYMENT (RECAPTURE) ON DEMAND
   A. VENDOR 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 this Contract, remit to the DISTRICT or its authorized representative the requested amount within sixty (60) days from the date of issuance of said notice.
   B. VENDOR agrees that the DISTRICT or CARB, or their designee, may require VENDOR to return funds it received due to termination for cause of this Contract, or for VENDOR's misinformation, misrepresentation, misuse of funds, or fraud. DISTRICT and CARB also reserve the right to prohibit VENDOR from participating in current or future funding programs.

3. THIRD-PARTY BENEFICIARY
   A. VENDOR agrees that the State of California, acting by and through CARB, is an intended third-party beneficiary to this Contract. VENDOR will name CARB and the State of California as third-party beneficiaries in all subcontracts entered into using funds from this Contract, and provide copies of these agreements upon request.

4. COMPLIANCE WITH AIR QUALITY LAWS
   A. VENDOR certifies that it is in compliance with all applicable federal, state, and local air quality rules and regulations ("air quality laws"), and will remain in compliance with all air quality laws throughout the Term of this Contract.
   B. VENDOR agrees that compliance with air quality laws is a precondition to participation in the Program and this Contract.
   C. VENDOR agrees that the DISTRICT may, at its discretion, terminate this Contract without any obligation to pay VENDOR if VENDOR is in continuing violation of applicable air quality laws.
   D. VENDOR agrees that, if DISTRICT has made payments to VENDOR under this Contract, and VENDOR is in continuing violation of applicable air quality laws, the DISTRICT may, at its discretion, require VENDOR to return some or all of the funding. VENDOR will promptly return funding to the DISTRICT within the time specified by the DISTRICT.

5. NON-EXCLUSIVE REMEDIES
   A. The remedies set forth in this Contract are contractual in nature. VENDOR agrees that nothing in this Contract 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 VENDOR, its employees, officers, agents, assigns, representatives, VENDORs, subcontractors, affiliates or any third parties.
   B. VENDOR agrees that it will promptly notify the DISTRICT of any and all suspected or known breaches of this Contract, misinformation, misrepresentation, fraud, or misuse of funds provided under this Contract.

6. 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. VENDOR 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 through the Contract Term.

7. FUNDING PROHIBITIONS FOR SECTARIAN PURPOSES AND NON-PUBLIC SCHOOLS
   A. VENDOR may only use or authorize the use of funding provided under this Contract 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. VENDOR agrees to provide any information requested by DISTRICT and/or CARB to ensure compliance with this provision.

8. VENDOR'S RESPONSIBILITY FOR WORK
   A. DISTRICT and/or CARB are not responsible for disputes arising out of VENDOR's contracts for work on a project funded by this Contract, including but not limited to payment disputes with recipients of funding.
   B. DISTRICT and/or CARB will not mediate disputes between VENDOR and any other entity.

9. 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. VENDOR agrees that is not in violation of any federal law pertaining to any entity or individual listed on any of the OFAC lists.

10. PERSONALLY IDENTIFIABLE INFORMATION (PII)
   A. Information or data that personally identifies an individual is confidential in accordance with relevant State or federal law.
   B. VENDOR agrees to comply with all applicable PII law, and safeguard all PII which comes into their possession under this Contract. VENDOR will not release PII, except as required by law, court order, or legal process.

11. PREVAILING WAGES
    A. VENDOR 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.

12. PROFESSIONALS
    A. VENDOR agrees that only licensed professionals will be used to perform services under this Contract where such services are required to be performed by licensed professionals under State law.

13. GREENHOUSE GAS REDUCTION FUND ACKNOWLEDGEMENT
    A. Prior to publication of any outreach and public facing materials related to this Contract or the Program (in any news media, websites, brochures, publications, audiovisuals, or other types of promotional material), VENDOR agrees to submit the proposed materials to DISTRICT for review and approval. VENDOR will not publish any materials prior to DISTRICT's review and approval. If requested by DISTRICT, VENDOR agrees to include the California Climate Investments (CCI) funding boilerplate and logo (see Figure 1) on outreach and public facing materials projects funded in whole or in part by this Contract. 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, VENDOR 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

14. AMERICANS WITH DISABILITIES ACT
    A. VENDOR will ensure that work products submitted to CARB, uploaded, or otherwise provided to CARB by VENDOR and/or its subcontractors under this Contract, 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, VENDOR must also provide an electronic version in the original electronic format (for example, Microsoft Word or Adobe InDesign).

15. 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. VENDOR must notify DISTRICT and CARB within 15 days if it (i) intends to provide GenAI as a deliverable to the DISTRICT or CARB; and/or (ii) intends to utilize GenAI to complete all or a portion of its work under this Contract.

C. At the direction of the DISTRICT or CARB, VENDOR agrees to discontinue use of GenAI.

D. Failure to disclose or discontinue the use of GenAI may be deemed a material breach of this Contract.

16. COMPUTER SOFTWARE AND PROJECT DATA:

A. "Project Information Resources" means data, database, information, personally identifiable information (PII), documentation, materials, computer software, website, and any intellectual property (IP) that is developed, substantially modified, licensed, or acquired by VENDOR in performance of this Contract. Project Information Resources may be in hard copy form, such as computer printouts, or may be retained in machine form, such as computer memory or storage media.

B. Computer software developed or substantially modified pursuant to this Contract may be required to include a copyleft license comparable to GNU General Public License v3.0 (GPLv3) (available at https://www.gnu.org/licenses/gpl-3.0.html) or later version if the software source code is intended to be licensed or otherwise released to the public. Other copyrightable Project Information Resources developed or substantially modified pursuant to this Contract that are intended to be shared forward by the public may also be required to include a copyleft license comparable to Creative Commons Attribution Share Alike license version 4.0 or later (available at https://creativecommons.org/licenses/by-sa/4.0/legalcode.en). If VENDOR develops or substantially modifies software or other Project Information Resources pursuant to this Contract, VENDOR must confirm with the DISTRICT whether a copyleft license is required to be included before finalizing such Project Information Resources, and include the required copyleft license in the Project Information Resources if instructed to do so by the DISTRICT.

C. CARB disclaims title and ownership rights to Project Information Resources. 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. If the Parties agree in writing to afford VENDOR ownership rights to any intellectual property developed under this Contract, VENDOR, to the extent it has the right to do so, grants to the DISTRICT and CARB a no-cost, royalty-free, non-exclusive, transferable, irrevocable, worldwide, perpetual license to use, reproduce, share, publish, translate, and make collective works of the Project Information Resources, including computer software executable files but excluding for this license to CARB any computer source code, subject to applicable law on privacy and confidentiality.

D. VENDOR certifies that it has appropriate systems and controls in place to ensure that, in the performance of this Contract, it will not acquire, operate, develop, or maintain computer software or other intellectual property in violation of copyright or any other intellectual property laws.

17. LABOR COMPLIANCE FOR DRAYAGE AND SHORT-HAUL TRUCKS

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

18. INCORPORATED DOCUMENTS

A. DISTRICT will provide VENDOR the following documents, which are incorporated by reference into this Contract. VENDOR agrees to follow the requirements described in these documents.

1. CARB's Carl Moyer Program 2024 Guidelines, including Volume II Voucher Incentive Programs, and any future approved Guidelines, current Program Advisories and Mail-outs that DISTRICT provides to VENDOR;

2. CARB's Community Air Protection Funds Supplement to the Carl Moyer Program Guidelines;

3. CARB's Cap-and-Trade Auction Proceeds Funding Guidelines for Agencies that Administer California Climate Investments.

ATTACHMENT B
SCOPE OF WORK

1. **Project Description**
   A. VENDOR shall sell new or used vehicles with a motor or powertrain that is certified to the ZE standard (no oxides of nitrogen (Nox), reactive organic gas (ROG), and particulate matter (PM) emissions). in accordance with the CARB Executive Order, Guidelines, and the requirements of the VENDOR Contract, including this Scope of Work. The intent of selling the vehicles is to replace older in-use vehicles from service to be scrapped thereby reducing the emissions associated with the Program Participants' vehicles.

2. **VENDOR Qualifications**
   VENDOR warrants that it meets the following minimum qualifications for participation in the Program, and will maintain these qualifications throughout its participation in the Program.
   A. VENDOR currently has a valid business license issued in California and has had the license for a minimum of the last two years.
   B. VENDOR currently has a valid dealership license with DMV and has had the DMV license for a minimum of the last two years.
   C. VENDOR will maintain a minimum of one (1) employee who has successfully completed the training by DISTRICT regarding the terms, conditions and requirements of the Program for each location listed in Attachment B, Paragraph 9. VENDOR with more than one location must have at least one employee trained at each location listed. All VENDOR staff that perform the work described in this Contract must complete training provided by the DISTRICT.
   D. VENDOR agrees to incorporate any changes to guidance issued by the DISTRICT or CARB into their processes, and participate in any additional training provided by the DISTRICT or CARB.
   E. VENDOR agrees to allow DISTRICT or CARB to conduct audits of Program records maintained pursuant to this Contract, and review of VENDOR processes associated with the Scope of Work during normal business hours.

3. **VENDOR Requirements**
   A. VENDOR agrees to provide accurate Program information to potential Program participants.
   B. VENDOR agrees to assist Program participants to correctly complete and submit a project Application to DISTRICT. This includes the verification of the documentation to ensure all requested information is filled out correctly and that the Program participant understands the details of the Program, Program requirements, and funding process and are in accordance with the Guidelines and this Contract.
   C. Reduction in Vehicle Purchase Price: VENDOR shall show the approved funding amount on the replacement vehicle invoice. The approved voucher amount should not reduce the sales price of the vehicle, but should reduce the purchase price the Program participant will pay for the vehicle. The receipt of grant funds does not lower the base price of the vehicle, nor does it reduce the tax basis of the vehicle.
   D. Before DISTRICT may approve a project, an application must be completed and submitted to the DISTRICT by the Program Participant. The application must include all required documentation as outlined in the Guidelines and in this Contract. Incomplete applications will be rejected and returned to the applicant. The dealer will also be notified of the reasons for rejection. A completed application must include the following:

i. Signed and submitted application
ii. A copy of the current existing vehicle DMV title or alternative ownership documentation
iii. Documentation verifying usage for the previous thirty (30) months for the existing vehicle.
iv. California DMV registration and insurance documentation for the past twenty-four (24) months for the existing vehicle
v. Inspection form and photos for the existing vehicle signed by VENDOR or DISTRICT
vi. Quote for replacement vehicle, with an engine that meets the emissions standards corresponding to the project funding level as specified in Appendix O of the Guidelines for VIP projects
vii. CARB Executive Order for existing and replacement vehicle engine
viii. CARB On-road Truck & Bus Regulation TRUCRS certificate, report, and compliance summary showing regulatory compliance and fleet information.

E. After DISTRICT notifies Program Participant and VENDOR of project approval, VENDOR will order the replacement vehicle approved by DISTRICT, as specified in the Guidelines and the requirements of this Contract.
F. VENDOR must ensure the title for the replacement vehicle is registered to the Program Participant in California. If the replacement vehicle is not registered in California, the project will be invalid and not paid.
G. VENDOR will provide DISTRICT documentation of replacement vehicle warranty.
H. VENDOR must provide DISTRICT proof of project financing to DISTRICT to determine the reimbursement costs that may be accrued if the Program Participant defaults on their contracted performance requirements, unless the grantee paid in cash. Proof of financing may include documentation showing the lender and the amount loaned or at a minimum a copy of the check given to VENDOR equal to the portion of the project cost that was not funded by DISTRICT.
I. VENDOR agrees to have the replacement vehicle delivered in California.
J. The existing vehicle must be delivered to VENDOR by the approved Program Participant prior to VENDOR releasing the replacement vehicle to the approved Program Participant.
K. VENDOR must retain inspection documentation of existing and replacement equipment prior to releasing the replacement equipment to the Program Participant. Inspections require DISTRICT approval before releasing the replacement equipment.
L. VENDOR agrees to ensure the existing vehicle is in similar condition as found in the pre-inspection. The VENDOR should reject the condition of the existing vehicle if it is deemed unroadworthy or parts were stripped. Reimbursement of grant funds will be withheld until the VENDOR and DISTRICT approves the condition of the existing vehicle and it has been delivered to the dealership.
M. Within sixty (60) calendar days of the VENDOR taking possession of the existing vehicle, VENDOR must ensure the existing vehicle and its original, signed DMV title remains in dealership custody and is sent to a participating dismantler yard for destruction. VENDOR will immediately notify the DISTRICT of the location and date of delivery of the existing vehicle to the dismantler. DISTRICT will provide a list of participating dismantlers to VENDOR.
N. Destruction of the existing engine and/or vehicle may be delayed for up to six months for zero emission technology, with reasonable justification and air district approval in accordance with the VIP Guidelines.
O. VENDOR may not use or permit the use of the existing equipment or engine pending destruction, except if necessary to move equipment for destruction or storage.

P. VENDOR will ensure that the locations selected for project inspections and audits are safe for DISTRICT staff to visit, and meet all requirements of the California Division of Occupational Safety and Health (Cal/OSHA) that are applicable to the relevant industry. If an inspection is being scheduled for a location that has potential safety hazards or specific safety procedures, the VENDOR must inform the DISTRICT staff of these conditions and safety procedures in advance of the inspection. The VENDOR shall have a contact on-site who will review any potential safety hazards with DISTRICT staff prior to the site visit and who will escort the inspector throughout their time on-site. Unsafe conditions for project inspections can be caused by: Physical hazards, Chemical hazards, Mechanical hazards, Utility hazards, and Workplace and environmental conditions.
Q. VENDOR will, at all times, comply with all applicable federal and State laws, rules, guidelines, regulations, and requirements.

4. Inspections

Program inspections require completed inspection forms and photographs documenting vehicle and engine information. Specific requirements are outlined in the Guidelines, Program forms/documents, and in this Contract. VENDORS can submit digital photographs electronically by e-mail or through a photo or file sharing website. Photographs must be a minimum capture resolution of 640x480 and all vehicle identification numbers (VIN) and engine serial numbers (ESN) must be legible.

A. **Pre-Inspection:** VENDOR conduct pre-inspections in accordance with the Guidelines, and shall submit completed inspection forms and photos with application to DISTRICT.
B. **Pre-Dismantle**: VENDOR shall conduct pre-dismantle inspections in accordance with the Guidelines, and submit completed inspection forms and photos with the request for reimbursement to DISTRICT after the existing vehicle is delivered to VENDOR.
C. **Post-Inspection:** VENDOR shall conduct post-inspections in accordance with the Guidelines, and submit completed inspection forms and photos with the request reimbursement to DISTRICT after replacement vehicle is delivered to VENDOR and prior to payment being issued.

5. Reimbursement

VENDOR or Program Participant must submit a reimbursement request to DISTRICT. A description of documents in the reimbursement request is listed in the Guidelines and in this Contract. VIP project reimbursements are submitted by the VENDOR. DISTRICT will clarify at the time of approval whether the project falls under the VIP or CMP on-road program. The request for reimbursement must include:

A. The original VENDOR Reimbursement Invoice, which should be signed and returned to DISTRICT upon receipt
B. Final VENDOR invoice signed by the Program Participant that shows the final purchase price less the voucher award
C. The original Receipt of the Voucher signed by the Program Participant (VIP only) (original signature required).
D. The original Voucher signed by the Program Participant (VIP only).
E. Copy of DMV registration paperwork showing vehicle registered to Program Participant in California
F. Copy of finance documentation (if applicable)

G. Copy of replacement vehicle warranty information
H. Copy of existing vehicle title signed and dated by Program Participant.
I. .
J. Inspection forms and pictures of the existing vehicle after it is turned into VENDOR.
K. Inspection forms and pictures of the replacement vehicle at the time of delivery.
L. Location of the dismantler yard where the existing vehicle will be destroyed.
M. Date the existing vehicle is delivered to or picked up by a participating dismantler.
N. Air District approval of existing truck destruction delay up to six months, if applicable.

6. DISTRICT Requirements

A. DISTRICT will provide training to VENDOR staff.
B. DISTRICT will provide VENDOR with application materials, inspection forms, and any other applicable Program materials.
C. DISTRICT must approve or reject applications within fifteen (15) business days of receipt of a complete application by DISTRICT.
D. DISTRICT shall begin processing invoices for payment upon receipt of a completed and approved request for reimbursement.

7. Program Outreach

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

8. Recordkeeping, Monitoring, Auditing and Enforcement

A. VENDOR shall assist in completing, providing, and maintaining the following required items to DISTRICT:
   i. Signed and dated application,
   ii. A copy of existing DMV vehicle title or alternative ownership documentation,
   iii. Documentation verifying usage for a minimum of the previous twenty-four (24) months for the existing vehicle,
   iv. California DMV vehicle registration and insurance documentation for the past twenty-for (24) months for the existing vehicle,
   v. Signed inspection forms and electronically submitted inspection photos of the equipment pre-inspection, pre-dismantle inspection, and post inspection,
   vi. Signed and dated quote for the replacement vehicle,
   vii. CARB Executive Order for the existing and replacement vehicle engine that meets the requirements of the Guidelines and this Contract,
   viii. TRUCRS certificate, report, and compliance summary showing regulatory compliance and fleet information,
   ix. All other applicant required documentation as listed in the Guidelines and in this Contract, and
   x. Copy of VENDOR request for reimbursement submitted to DISTRICT.

B. VENDOR shall maintain copies of the project materials and items specified in Attachment B, Paragraph 8.A above for a minimum of five (5) years after the sale of the replacement vehicle and shall make those records available to DISTRICT upon request.

C. DISTRICT or CARB may conduct announced and unannounced audits and on-site inspections of VENDOR and its subcontractors' operations. VENDOR shall cooperate fully in such situations to ensure operations are being conducted according to all applicable rules and regulations in the Guidelines and outlined in this Contract. VENDOR agrees to allow DISTRICT or CARB to inspect vehicles or audit program records during normal business hours. DISTRICT shall notify any noncompliant VENDOR of the nature of the violation and shall initiate any enforcement or remedial action necessary.

9. VENDOR Locations

VENDOR agrees that the locations listed herein, will provide services described in the Scope of Work, which will assist DISTRICT in implementing the Program.

(Vendor Name)
(Vendor Street Address)
(Vendor City), CA (Vendor Zip)
Attn: (Vendor Contact)

(Vendor Name)
(Vendor Street Address)
(Vendor City), CA (Vendor Zip)
Attn: (Vendor Contact)

10. Project Forms

A. VENDOR shall use the project forms and materials identified in the Guidelines and in this Contract.

B. DISTRICT will provide VENDOR application materials, inspection forms, request for reimbursement forms, and any other applicable Program materials.