

Agreement No. **G-122895-A1**

SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT
PUBLIC BENEFIT GRANTS PROGRAM
FUNDING AGREEMENT

(New Alternative Fuel Vehicle Purchase)

This Agreement is made and entered into this 22nd day of December, 2022, by and between the SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT, a unified air pollution control district formed pursuant to California Health and Safety Code section 40150 et seq. (District), and **City of Merced** (Participant).

WITNESSETH:

WHEREAS, the California Clean Air Act (CCAA) requires local air pollution control districts to reduce emissions from motor vehicles;

WHEREAS, AB 2766, AB 923, SB 709, and AB 2522 authorize districts to impose fees upon certain registered motor vehicles within the district, and the governing board of the District has imposed said fees;

WHEREAS, said legislation requires District to use said funds for activities related to reduce air pollution from motor vehicles and for related planning, monitoring, enforcement, and technical studies necessary for the implementation of the California Clean Air Act of 1988; and

WHEREAS, the District has developed other funding mechanisms in order to provide grant monies for its incentive programs; and

WHEREAS, on August 11, 2011, the District began accepting applications to approve for funding those projects deemed to be most suitable for vehicle license fees and other funding; and

WHEREAS, Participant has proposed a project that meets the eligibility criteria of the Public Benefit Grants Program, New Alternative Fuel Vehicle Purchase Component and has been approved by the District for funding; and

1 **WHEREAS**, Participant represents that it is willing and able to perform the
2 activities set forth herein.

3 **NOW, THEREFORE**, based on their mutual promises, covenants, and
4 conditions, the parties hereby agree as follows:

5 **1. PROJECT**

6 The Participant agrees to purchase and place into service the type and
7 number of new alternative fuel vehicle(s) as set forth in the application attached hereto
8 and incorporated herein as Exhibit A. Participant agrees, that at the date of execution
9 of this Agreement, Participant has not yet purchased or taken possession of said
10 vehicle(s) and agrees to furnish all labor, materials, equipment, licenses, permits, fees,
11 and other incidentals necessary to perform and complete, per schedule, in a
12 professional manner, the requirements described herein. Participant agrees and
13 represents that purchase of the specified vehicle(s) subject of this Agreement is/are not
14 required by or to be used for compliance with any local, state, or federal rule or
15 regulation, settlement agreement, mitigation agreement, memorandum of
16 understanding (MOU), memorandum of agreement (MOA), or other legal mandate
17 currently in effect. Participant waives all rights to any emission reduction credits that
18 may accrue as a result of purchase of the specified vehicle(s).

19 In the event of any conflict between or among the terms and conditions of
20 this Agreement and the exhibit incorporated herein, such conflict shall be resolved by
21 giving precedence in the following order of priority:

- 22 1. To the text of this Agreement
23 2. Exhibit to this Agreement

24 **2. TIMETABLE/PERIOD OF PERFORMANCE**

25 Participant shall purchase and place the new alternative fuel vehicle(s)
26 into service, and submit all final claims as outlined in Paragraph 3, **no later than one**
27 **(1) year from the execution date of this Agreement.** If the Participant cannot meet
28 the project timetable as set forth herein, the Participant must notify the District in writing

1 and request to amend the Agreement to provide the Participant additional time to meet
2 all performance requirements under the Agreement. Such request is subject to review
3 and approval by the District. Participant agrees to amend the Agreement as necessary,
4 if requested by the District, to ensure the project is completed within the timetable
5 approved by the District.

6 A. **Agreement Period:** The Participant shall own and operate the new
7 alternative fuel vehicle(s) purchased under this Agreement according to the terms of
8 this Agreement for no less than three (3) years from the date in which the vehicle(s)
9 is/are first placed into service.

10 **3. COMPENSATION**

11 The total obligation of the District under this Agreement shall not exceed
12 **Five Thousand Twenty And 20/100 dollars (\$5,020.20)** for the purchase of the new
13 alternative fuel vehicle(s) identified in Exhibit A. The maximum funding provided per
14 vehicle is limited to the corresponding Eligible Amount identified in Exhibit A.

15 Participant shall obtain through other sources sufficient additional monies
16 to fund the total cost of the vehicle(s) as outlined in Exhibit A. In the event funding from
17 other sources for the total cost of the vehicle(s) is not received by Participant, District
18 reserves the right to terminate or re-negotiate this Agreement.

19 A. **Payments:** Advance payments shall not be permitted. The District
20 shall issue payment to Participant upon receipt of a properly supported and verified
21 claim for payment as specified in the Public Benefit Grants Program, New Alternative
22 Fuel Vehicle Purchase Component payment procedures document. The payment
23 procedures document shall be provided to Participant by the District. Payment is for
24 reimbursement to the Participant for the purchase of new alternative fuel vehicle(s) and
25 funding shall only be allowed toward the purchase of the specific vehicle(s) described
26 in Exhibit A. The District reserves the right to reduce the funding paid to the Participant
27 if it is determined that the actual invoiced costs paid by the Participant for the purchase
28 of the new vehicle(s) is/are less than the Total Eligible Amount specified in Exhibit A.

1 The District also reserves the right to reduce the funding if the Participant receives or
2 will receive co-funding from a third party that, in addition to the District's funding,
3 exceeds the total invoiced cost(s) of the new alternative fuel vehicle(s) purchased under
4 this Agreement. Participant is required to disclose all such information to the District
5 prior to the execution date of this Agreement. The Participant will not be reimbursed by
6 the District for the purchase of the new alternative fuel vehicle(s) if the Participant has
7 purchased or taken possession of the said new vehicle(s) prior to the execution date of
8 this Agreement.

9 Concurrently with the submission of any claim for payment, Participant
10 shall certify (through copies of invoices issued, checks, receipts, and the like) that
11 complete payment has been made or invoiced. Participant understands that any
12 payment received from the District to fund the vehicle(s) in this Agreement may be
13 subject to taxation and the District will issue a form 1099 to the Participant. Any tax
14 liability on the funds provided by the District shall be the sole responsibility of the
15 Participant.

16 B. **Surplus Funds:** Any compensation, which is not expended by
17 Participant pursuant to the terms and conditions of this Agreement by the project
18 completion date, shall automatically revert to District. Only expenditures incurred by
19 Participant in the direct performance of this Agreement will be reimbursed by District.

20 4. **NON-ALLOCATION OF FUNDS**

21 The terms of this Agreement are contingent on the approval and receipt
22 of funds by the appropriating government agency. Should sufficient funds not be
23 allocated, the services provided may be modified or this Agreement terminated at any
24 time by giving Participant thirty (30) days' prior written notice.

25 5. **ANNUAL REPORTING**

26 Participant shall submit annual reports on the vehicle(s) that include the
27 following information:

- 28 1. Participant contact information;

- 1 2. Proof of current California registration for the new alternative
- 2 fuel vehicle(s);
- 3 3. Proof of insurance as required by paragraph 11.
- 4 4. Annual miles or hours traveled (including mileage/activity or
- 5 hour/activity logs for documentation);
- 6 5. Summary of maintenance performed;
- 7 6. Any other pertinent information requested by the District on a
- 8 form to be provided to the Participant by the District.

9 Annual reporting will be required for three (3) subsequent years following
10 the purchase of the new alternative fuel vehicle(s). The first year annual report is due
11 on the anniversary date of when the new alternative fuel vehicle(s) was/were first placed
12 into service and for each ensuing year thereafter. Noncompliance with the reporting
13 requirements shall result in on-site monitoring by District personnel and will impact the
14 Participant's ability to receive funding from the District for future projects. Participants
15 with annual reports more than six (6) months late will not be granted any additional grant
16 funds from the District until all reports are satisfactorily submitted.

17 The District or representative designated by the District reserves the right
18 to monitor the vehicle(s), enforce the terms of this Agreement at any time during the
19 Agreement Period specified in subparagraph 2.A, and pursue repayment of funds for
20 non-compliance within the terms and conditions of this Agreement or applicable state
21 laws or regulations.

22 **6. TERMINATION**

23 A. **Breach of Agreement:** District may immediately suspend or
24 terminate this Agreement, in whole or in part, where in the determination of District there
25 is:

- 26 1. An illegal or improper use of funds;
- 27 2. A failure to comply with any term of this Agreement;
- 28 3. A substantially incorrect or incomplete annual report submitted

1 to the District;

2 In no event shall any payment by District constitute a waiver by District of
3 any breach of this Agreement or any default, which may then exist on the part of
4 Participant. Neither shall such payment impair or prejudice any remedy available to the
5 District with respect to the breach or default. District shall have the right to demand of
6 Participant the repayment to the District of any funds disbursed to Participant under this
7 Agreement which in the judgment of District were not expended in accordance with the
8 terms of this Agreement. Participant shall promptly refund any such funds upon
9 demand.

10 In addition to immediate suspension or termination, District may impose
11 any other remedies available at law, in equity, or otherwise specified in this Agreement.
12 The District may prohibit Participant from participating in all other District and State grant
13 programs in the future.

14 B. **Without Cause:** Either party may terminate this Agreement at any
15 time upon giving the other party at least thirty (30) days' advance written notice of
16 intention to terminate. The District shall have the right to demand prompt repayment of
17 a portion or all monies expended under this Agreement as provided in paragraph 3 if
18 the Participant does not meet all obligations under this Agreement upon such
19 termination.

20 7. **MODIFICATION**

21 Any matters of this Agreement may be modified from time to time by the
22 written consent of all the parties without in any way affecting the remainder.

23 8. **INDEPENDENT CONTRACTOR**

24 In performance of the work, duties, and obligations assumed by
25 Participant (also referred to in this section as 'Contractor') under this Agreement, it is
26 mutually understood and agreed that Contractor, including any and all of Contractor's
27 officers, agents, and employees, will at all times be acting and performing as an
28 independent contractor and shall act in an independent capacity and not as an officer,

1 agent, servant, employee, joint venture, partner, or associate of District or ARB.
2 Furthermore, District shall have no right to control or supervise or direct the manner or
3 method by which Contractor shall perform its work and function. However, District shall
4 retain the right to administer this Agreement so as to verify that Contractor is performing
5 its obligations in accordance to the terms and conditions thereof. Contractor and District
6 shall comply with all applicable provisions of law and the rules and regulations, if any,
7 of governmental authorities having jurisdiction over matters the subject thereof.

8 Because of its status as an independent contractor, Contractor shall have
9 absolutely no right to employment rights and benefits available to District employees.
10 Contractor shall be solely liable and responsible for providing to, or on behalf of, itself
11 all legally required employee benefits. In addition, Contractor shall be solely responsible
12 and save District harmless from all matters relating to payment of Contractor's
13 employees, including compliance with social security, withholding, and all other
14 regulations governing such matters. It is acknowledged that during the term of this
15 Agreement, Contractor may be providing services to others unrelated to District or to
16 this Agreement.

17 **9. NON-ASSIGNMENT**

18 Participant may not assign, sell, transfer, license, or subcontract any rights
19 or obligations to a third party within or outside of the District's boundaries without the
20 express prior consent of the District for the duration of the Agreement Period specified
21 in subparagraph 2.A. If the Participant sells or transfers ownership of the vehicle(s) or
22 any portion thereof for any reason, or is required to replace the vehicle(s) with cleaner
23 vehicle(s) prior to the end of the Agreement Period, the Participant must request and
24 receive written consent from the District prior to selling or transferring ownership of the
25 vehicle(s) or any portion thereof.

26 Prior to completing the transaction, the Participant understands that it is
27 responsible to inform the party purchasing the vehicle(s) of the Agreement provisions
28 and disclose the remaining Agreement term. The Participant shall be responsible for

1 establishing an agreement between the new owner and District in order to facilitate the
2 transfer of the Agreement provisions and terms. The Participant shall provide the
3 prospective new owner with valid contact information for the District so the new owner
4 can assume legal responsibility under the original Agreement or enter into a new
5 Agreement with the District, for the remainder of the Agreement Period. Participant
6 understands that they shall not be relieved of their legal obligation to fulfill the conditions
7 of this Agreement unless the new owner has assumed responsibility through an
8 executed agreement with the District.

9 **10. INDEMNIFICATION**

10 Participant agrees to indemnify, save, hold harmless, and at District's
11 request, defend the District, its boards, committees, representatives, officers, agents,
12 and employees from and against any and all costs and expenses (including reasonable
13 attorneys' fees and litigation costs), damages, liabilities, claims, and losses (whether in
14 contract, tort, or strict liability, including, but not limited to, personal injury, death, and
15 property damage) which arise or are alleged to arise directly or indirectly from any act
16 or omission of Participant, its officers, agents, sub participants, or employees in their
17 performance of this Agreement, or out of the operations of the Participant.

18 **11. INSURANCE AND VEHICLE WARRANTY**

19 Participant is responsible for securing warranty and maintaining
20 replacement value insurance on the new alternative fuel vehicle(s) for the duration of
21 the Agreement Period specified in subparagraph 2.A. The new alternative fuel
22 vehicle(s) purchased through this Agreement must not be tampered with or modified in
23 any such manner than would void the warranty of the vehicle(s). Insurance coverage
24 must be sufficient to repay the District's investment in case major damage to the new
25 alternative fuel vehicle(s) occurs during the Agreement Period. A copy of the current
26 insurance for each vehicle purchased under this Agreement is required to be submitted
27 annually with the Participant's annual report.

28 In the event that the new alternative fuel vehicle(s) purchased under this

1 Agreement is/are in an accident, stolen, destroyed, or otherwise rendered temporarily
2 or permanently inoperable, the Participant must immediately inform the District of such
3 damage(s) and repair or replace the vehicles(s) within three (3) months from the date
4 of the occurrence at the Participant's expense and to the standards which meet all
5 program requirements for the remainder of the Participant's obligation under this
6 Agreement.

7 If the Participant repairs a vehicle rendered temporarily inoperable, said
8 repairs shall include any and all repairs necessary to restore the vehicle and any
9 optional equipment purchased under this Agreement to a reasonable condition. If the
10 Participant replaces a vehicle rendered permanently inoperable; said replacement shall
11 include an equivalent vehicle(s) that, at a minimum, meets all program eligibility
12 requirements, including emission level, Gross Vehicle Weight Rating (GVWR), etcetera.
13 As the replacement of a vehicle may require an amendment to the existing Agreement,
14 the Participant must receive prior authorization from the District in advance of any
15 purchases, and must provide any and all replacement vehicle information to the District.

16 In the event the Participant does not repair or replace vehicle(s) that
17 become inoperable to fulfill the Agreement Period specified in subparagraph 2.A, the
18 District may undertake actions pursuant to this Agreement, including recouping a
19 portion or all incentive funds provided for the vehicle(s) in question.

20 **12. RECORD KEEPING**

21 Participant shall maintain records sufficient to provide, on an annual basis,
22 information regarding annual mileage, fuel usage, invoices, general maintenance
23 details, correspondence associated with the application, award, agreement, monitoring,
24 enforcement, and reporting requirements and any other available information that may
25 be deemed pertinent to the evaluation of the program for at least two (2) years after the
26 equipment project term or three (3) years after final payment, whichever is later.
27 Records shall be readily available and accessible to the District, or District designated
28 representative, upon request for the purposes of ongoing evaluations or auditing.

1 **13. NOTICES**

2 The persons and their addresses having authority to give and receive
3 notices under this Agreement are as follows:

4 **PARTICIPANT**

DISTRICT

5
6 **Stephanie Dietz**
7 **City Manager**
8 **611 W 22nd St.**
9 **Merced, CA 95340**

Samir Sheikh
Executive Director/APCO
1990 East Gettysburg Ave.
Fresno, CA 93726

10 Any and all notices between District and Participant provided for or
11 permitted under this Agreement or by law shall be in writing and shall be deemed duly
12 served when personally delivered to one of the parties, or in lieu of such personal
13 service, when deposited in the United States mail, postage prepared, addressed to such
14 party.

14 **14. AUDITS AND INSPECTIONS**

15 In addition to enforcement by the District or designated representative(s)
16 of the District, the District reserves the right to perform audits of vehicle(s) and
17 documentation and enforce the terms of this Agreement at any time during the
18 Agreement term.

19 If, after audit, the District makes a determination that funds provided to the
20 Participant pursuant to this Agreement were not spent in conformance with this
21 Agreement or any other applicable provisions of law, the Participant agrees to
22 immediately reimburse District all funds determined to have been expended not in
23 conformance with said provisions.

24 **15. POLITICAL ACTIVITY PROHIBITED**

25 None of the funds, materials, property, or services provided under this
26 Agreement shall be used for any political activity, or to further the election or defeat of
27 any candidate for public office contrary to federal or state laws, statutes, regulations,
28 rules, or guidelines.

16. LOBBYING PROHIBITED

None of the funds provided under this Agreement shall be used for publicity, lobbying, or propaganda purposes designed to support or defeat legislation before the Congress of the United States of America or the Legislature of the State of California.

17. CONFLICT OF INTEREST

No officer, employee, or agent of District who exercises any function or responsibility for planning and carrying out the services provided under this Agreement shall have any direct or indirect personal financial interest in this Agreement. Participant shall comply with all federal and state conflict of interest laws, statutes, and regulations, which shall be applicable to all parties and beneficiaries under this Agreement and any officer, agent, or employee of District.

18. GOVERNING LAW

This Agreement shall be governed in all respects by the laws of the State of California. Venue for any action arising out of this Agreement shall only be in Fresno County, California.

19. COMPLIANCE WITH LAWS

The Participant shall comply with all federal and state laws, statutes, regulations, rules, and guidelines which apply to its performance under this Agreement, including California driving eligibility and financial liability laws.

20. BINDING ON SUCCESSORS

This Agreement, including all covenants and conditions contained herein, shall be binding upon and inure to the benefit of the parties, including their respective successors-in-interest, assigns, and legal representatives.

21. TIME IS OF THE ESSENCE

It is understood that for Participant's performance under this Agreement, time is of the essence. The parties reasonably anticipate that Participant will, to the reasonable satisfaction of District, complete all activities provided herein within the time

1 schedule outlined in this Agreement, provided that Participant is not caused
2 unreasonable delay in such performance.

3 **22. DATA OWNERSHIP**

4 Upon termination or expiration of this Agreement, all data which is
5 received, collected, produced, or developed by Participant under this Agreement shall
6 become the exclusive property of District, provided, however, Participant shall be
7 allowed to retain a copy of any non-confidential data received, collected, produced, or
8 developed by Participant under this Agreement subject to District's exclusive ownership
9 rights stated herein. Accordingly, Participant shall, if requested, surrender to District all
10 such data which is in its possession (including its sub participants or agents), without
11 any reservation of right or title, not otherwise enumerated herein.

12 District shall have the right at reasonable times during the term of this
13 Agreement to inspect and reproduce any data received, collected, produced, or
14 developed by Participant under this Agreement. No reports, professional papers,
15 information, inventions, improvements, discoveries, or data obtained, prepared,
16 assembled, or developed by Participant, pursuant to this Agreement, shall be released
17 or made available (except to District) without prior, express written approval of District
18 while this Agreement is in force, and except as otherwise required under the California
19 Public Records Act.

20 **23. NO THIRD-PARTY BENEFICIARIES**

21 Notwithstanding anything else stated to the contrary herein, it is
22 understood that Participant's services and activities under this Agreement are being
23 rendered only for the benefit of District, and no other person, firm, corporation, or entity
24 shall be deemed an intended third-party beneficiary of this Agreement.

25 **24. SEVERABILITY**

26 In the event that any one or more of the provisions contained in this
27 Agreement shall for any reason be held to be unenforceable in any respect by a court
28 of competent jurisdiction, such holding shall not affect any other provisions of this

1 Agreement, and the Agreement shall then be construed as if such unenforceable
2 provisions are not a part hereof.

3 **25. ENTIRE AGREEMENT**

4 This Agreement constitutes the entire agreement between Participant and
5 District with respect to the subject matter hereof and supersedes all previous
6 negotiations, proposals, commitments, writings, advertisements, publications, and
7 understandings of any nature whatsoever unless expressly included in this Agreement.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first hereinabove written.

PARTICIPANT

City of Merced

DocuSigned by:
Stephanie Dietz
Stephanie Dietz

DISTRICT

San Joaquin Valley Air Pollution Control District

DocuSigned by:
Ryan Hayashi for
Samir Sheikh
Executive Director/APCO

APPROVED AS TO FORM:

Shirley Dietz 1/24/23
City Attorney Date

Approved as to legal form:
San Joaquin Valley Unified Air Pollution Control District

DocuSigned by:
Annette Ballatore
Annette A. Ballatore
District Counsel

Approved as to accounting form:
San Joaquin Valley Unified Air Pollution Control District

DocuSigned by:
Ryan Buchanan
Ryan Buchanan
Director of Administrative Services

For accounting use only:
Program: 282
Account No.: _____

City of Merced

SAN JOAQUIN VALLEY AIR POLLUTION CONTROL DISTRICT

Public Benefit Grants Program

New Alternative Fuel Vehicle Purchase Component

Application Number: G-122895

Vehicle Make: Recon

Vehicle Model: Interceptor

Vehicle Model Year: 2021

Vehicle Type: Electric

Maximum Eligible Amount: \$5,020.20