

Agreement No. **G-122897-A1**

**SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT**  
**PUBLIC BENEFIT GRANTS PROGRAM**  
**FUNDING AGREEMENT**  
**(New Alternative Fuel Vehicle Purchase)**

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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;

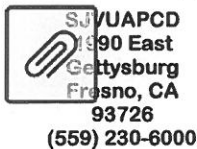
**WHEREAS**, AB 2766, AB 923, SB 709, and AB 2522 authorize districts to impose fees upon certain registered motor vehicles within the district, and the governing board of the District has imposed said fees;

**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 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 <b>PARTICIPANT</b>	<b>DISTRICT</b>
5 6 <b>Stephanie Dietz</b> 7 <b>City Manager</b> 8 <b>611 W 22nd St.</b> 9 <b>Merced, CA 95340</b>	<b>Samir Sheikh</b> <b>Executive Director/APCO</b> <b>1990 East Gettysburg Ave.</b> <b>Fresno, CA 93726</b>

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.

1 **16. LOBBYING PROHIBITED**

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

6 **17. CONFLICT OF INTEREST**

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

13 **18. GOVERNING LAW**

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

17 **19. COMPLIANCE WITH LAWS**

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

21 **20. BINDING ON SUCCESSORS**

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

25 **21. TIME IS OF THE ESSENCE**

26 It is understood that for Participant's performance under this Agreement,  
27 time is of the essence. The parties reasonably anticipate that Participant will, to the  
28 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**

**DISTRICT**

**City of Merced**

**San Joaquin Valley Air Pollution Control District**

DocuSigned by:  
*Stephanie Dietz*  
Stephanie Dietz

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

**APPROVED AS TO FORM:**

*Shuu Araki* 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-122897

Vehicle Make: Recon

Vehicle Model: Interceptor

Vehicle Model Year: 2021

Vehicle Type: Electric

Maximum Eligible Amount: \$5,020.20