



BAY AREA  
AIR QUALITY  
MANAGEMENT  
DISTRICT

BOARD OF DIRECTORS  
MEETING

October 4, 2023

**MEETING LOCATION(S) FOR IN-PERSON ATTENDANCE BY  
BOARD MEMBERS AND MEMBERS OF THE PUBLIC**

**Bay Area Metro Center  
1st Floor Board Room  
375 Beale Street  
San Francisco, CA 94105**

**Office of Contra Costa County  
Supervisor John Gioia  
Conference Room  
11780 San Pablo Ave., Suite D  
El Cerrito, CA 94530**

**City of Palo Alto City Hall  
250 Hamilton Ave.  
Palo Alto, CA 94301**

**Office of Alameda County Supervisor  
David Haubert  
4501 Pleasanton Avenue  
Pleasanton, CA 94566**

**San Ramon City Hall  
Community Conference Room, 2nd Floor  
7000 Bollinger Canyon Road  
San Ramon, CA 94583**

**Santa Rosa Junior College Campus  
Doyle Library, Room 148  
1501 Mendocino Ave.  
Santa Rosa, CA, 95401**

**THE FOLLOWING STREAMING OPTIONS WILL ALSO BE PROVIDED**

**These streaming options are provided for convenience only. In the event that streaming connections malfunction for any reason, the Board of Directors reserves the right to conduct the meeting without remote webcast and/or Zoom access.**

**The public may observe this meeting through the webcast by clicking the link available on the air district's agenda webpage at [www.baaqmd.gov/bodagendas](http://www.baaqmd.gov/bodagendas).**

**Members of the public may participate remotely via Zoom at <https://bayareametro.zoom.us/j/83646803962>, or may join Zoom by phone by dialing (669) 900-6833 or (408) 638-0968. The Webinar ID for this meeting is: 836 4680 3962**

**Public Comment on Agenda Items: The public may comment on each item on the agenda as the item is taken up. Members of the public who wish to speak on a matter on the agenda will have two minutes each to address the Board on that agenda item, unless a different time limit is established by the Chair. No speaker who has already spoken on an item will be entitled to speak to that item again.**

**The Board welcomes comments, including criticism, about the policies, procedures, programs, or services of the District, or of the acts or omissions of the Board. Speakers shall not use threatening, profane, or abusive language which disrupts, disturbs, or otherwise impedes the orderly conduct of a Board meeting. The District is committed to maintaining a workplace free of unlawful harassment and is mindful that District staff regularly attend Board meetings.**

**Discriminatory statements or conduct that would potentially violate the Fair Employment and Housing Act – i.e., statements or conduct that is hostile, intimidating, oppressive, or abusive – is *per se* disruptive to a meeting and will not be tolerated.**

# BOARD OF DIRECTORS MEETING AGENDA

**WEDNESDAY, OCTOBER 4, 2023**

**9:30 AM**

**Chairperson, John J. Bauters**

**1. Call to Order - Roll Call**

*The Board Chair shall call the meeting to order and the Clerk of the Boards shall take roll of the Board members.*

**2. Pledge of Allegiance**

**3. Special Orders of the Day**

**CONSENT CALENDAR (Items 4 - 16)**

**4. Approval of the Draft Minutes of the Board of Directors Meeting of September 20, 2023**

*The Board of Directors will consider approving the Draft Minutes of the Board of Directors meeting of September 20, 2023.*

**5. Board Communications Received from September 20, 2023 through October 3, 2023**

*A copy of communications directed to the Board of Directors received by the Air District from September 20, 2023 through October 3, 2023, if any, will be distributed to the Board Members by way of email.*

**6. Notices of Violations Issued and Settlements in Excess of \$10,000 in the Month of August 2023**

*In accordance with Resolution No. 2012-08 the Board of Directors will receive a list of all Notices of Violations issued, and all settlements for amounts in excess of \$10,000, during the month of August 2023.*

7. Authorization to Amend Legal Services Agreement with Shute Mihaly & Weinberger

*The Board of Directors will consider authorizing the Executive Officer/APCO to execute an amendment to the existing Legal Services Agreement with Shute Mihaly & Weinberger LLP to increase the current contract limit by \$75,000, from \$810,000 to \$855,000, for continued representation in the litigation regarding District Regulation 6, Rule 5; and will consider authorizing the transfer of \$75,000 from the Outside Counsel Litigation Support General Fund Reserves to amend the Fiscal Year 2024 Legal Office's Litigation program budget.*

8. Authorization to Purchase Equipment from Thermo Electron North America LLC

*The Board of Directors will consider authorizing the Executive Officer/APCO to procure an Ion Chromatograph from Thermo Electron North America LLC for an amount not to exceed \$115,000.*

9. Appointment of Hearing Board Members for the Professional Engineer, Professional Engineer Alternate and Medical Alternate Hearing Board Positions

*The Board of Directors will consider appointing Hearing Board members for the Professional Engineer, Professional Engineer Alternate and Medical Alternate Hearing Board Positions, as recommended by the Finance and Administration Committee.*

10. Authorization to Execute a Contract Amendment with Renne Public Law Group

*The Board of Directors will consider authorizing the Executive Officer/APCO to amend the contract with Renne Public Law Group increasing the maximum dollar amount of the contract from \$550,000 to \$800,000 for legal services related to labor and employment matters, including recently-filed litigation; and authorizing the transfer of \$250,000 from the designated reserve funds to Program 104 – Executive.*

11. Authorization to Transfer of \$925,000 of General Reserve Funds for the FYE 2024 Spare the Air Summer Advertising and Messaging Campaign

*The Board of Directors will consider authorizing the Executive Officer/APCO to transfer \$925,000 from the designated reserve funds to Program 305 for the FYE 2024 Spare the Air summer program.*

12. Authorization to Execute a Contract Amendment with Oppenheimer Investigations Group, LLP

*The Board of Directors will consider authorizing the Executive Officer/APCO to execute a contract amendment for Oppenheimer Investigation Group, LLP to increase the maximum contract amount from \$150,000 to \$350,000 for workplace investigations services.*

13. Authorization to Execute a Contract with ICF Incorporated, LLC

*The Board of Directors will consider authorizing the Executive Officer/APCO to enter into a contract with ICF Incorporated, LLC for \$199,934 to provide technical support for the Air District's USEPA Climate Pollution Reduction Grant.*

14. Authorization to Continue Using and to Expend Monies Under the Existing Agreements with Enterprise Fleet Management, Inc. (EFM) and EAN Services, LLC (EAN) for Fleet Management Services and Rental Vehicle Services.

*The Board of Directors will consider authorizing the Executive Director/APCO to continue using and expend monies under the existing agreements in an amount not to exceed \$2,500,000 with Enterprise Fleet Management, Inc. (EFM) and EAN Services, LLC (EAN) for Fleet Management Services and Rental Vehicle Services, respectively.*

15. Report of the Community Advisory Council Retreat/Special Meeting of September 14 - 15, 2023

*The Board of Directors will receive a report of the Community Advisory Council Retreat/Special Meeting of September 14 - 15, 2023.*

16. Report of the Community Equity, Health and Justice Committee Meeting of September 20, 2023

*The Board of Directors will receive a report of the Community Equity, Health and Justice Committee Meeting of September 20, 2023.*

## **OTHER BUSINESS**

17. Board Member Comments

*Any member of the Board, or its staff, on his or her own initiative or in response to questions posed by the public, may: ask a question for clarification, make a brief announcement or report on his or her own activities, provide a reference to staff regarding factual information, request staff to report back at a subsequent meeting concerning any matter or take action to direct staff to place a matter of business on a future agenda. (Gov't Code § 54954.2)*

18. Report of the Executive Officer/APCO
19. Chairperson's Report
20. Time and Place of Next Meeting

*November 1, 2023, at 9:00 a.m. at 375 Beale Street, San Francisco, CA 94105. The meeting will be in-person for the Board members and members of the public will be able to either join in-person or via webcast.*

### **CLOSED SESSION**

21. Conference With Legal Counsel re Existing Litigation (Government Code Section 54956.9(a))

*Pursuant to Government Code Section 54956.9(a), the Board will meet in closed session with legal counsel to discuss the following cases:*

*Chevron U.S.A Inc. v. Bay Area Air Quality Management District, Contra Costa Superior Court Case No. MSN21-1739;*

*Martinez Refining Co. LLC v. Bay Area Air Quality Management District, Contra Costa Superior Court Case No. MSN21-1568.*

22. Conference with Labor Negotiators Pursuant to Government Code Section 54957.6

*Conference with Labor Negotiators*

*Pursuant to Government Code Section 54957.6*

*Agency Designated Representatives:*

*Laura A. Izon, Atkinson, Andelson, Loya, Ruud & Romo*

*John Chiladakis, Chief Technology Officer*

*Employee organization: BAAQMD Employees' Association*

## **OPEN SESSION**

### 23. Public Comment on Non-Agenda Matters

*Pursuant to Government Code Section 54954.3, members of the public who wish to speak on matters not on the agenda will be given an opportunity to address the Board of Directors. Members of the public will have two minutes each to address the Board, unless a different time limit is established by the Chair. The Board welcomes comments, including criticism, about the policies, procedures, programs, or services of the District, or of the acts or omissions of the Board. Speakers shall not use threatening, profane, or abusive language which disrupts, disturbs, or otherwise impedes the orderly conduct of a Board meeting. The District is committed to maintaining a workplace free of unlawful harassment and is mindful that District staff regularly attend Board meetings. Discriminatory statements or conduct that would potentially violate the Fair Employment and Housing Act – i.e., statements or conduct that is hostile, intimidating, oppressive, or abusive – is per se disruptive to a meeting and will not be tolerated.*

### 24. Adjournment

*The Board meeting shall be adjourned by the Board Chair.*

**CONTACT:**

**MANAGER, EXECUTIVE OPERATIONS**  
**375 BEALE STREET, SAN FRANCISCO, CA 94105**  
[vjohnson@baaqmd.gov](mailto:vjohnson@baaqmd.gov)

**(415) 749-4941**  
**FAX: (415) 928-8560**  
**BAAQMD homepage:**  
[www.baaqmd.gov](http://www.baaqmd.gov)

- Any writing relating to an open session item on this Agenda that is distributed to all, or a majority of all, members of the body to which this Agenda relates shall be made available at the Air District's offices at 375 Beale Street, Suite 600, San Francisco, CA 94105, at the time such writing is made available to all, or a majority of all, members of that body.

**Accessibility and Non-Discrimination Policy**

The Bay Area Air Quality Management District (Air District) does not discriminate on the basis of race, national origin, ethnic group identification, ancestry, religion, age, sex, sexual orientation, gender identity, gender expression, color, genetic information, medical condition, or mental or physical disability, or any other attribute or belief protected by law.

It is the Air District's policy to provide fair and equal access to the benefits of a program or activity administered by Air District. The Air District will not tolerate discrimination against any person(s) seeking to participate in, or receive the benefits of, any program or activity offered or conducted by the Air District. Members of the public who believe they or others were unlawfully denied full and equal access to an Air District program or activity may file a discrimination complaint under this policy. This non-discrimination policy also applies to other people or entities affiliated with Air District, including contractors or grantees that the Air District utilizes to provide benefits and services to members of the public.

Auxiliary aids and services including, for example, qualified interpreters and/or listening devices, to individuals who are deaf or hard of hearing, and to other individuals as necessary to ensure effective communication or an equal opportunity to participate fully in the benefits, activities, programs, and services will be provided by the Air District in a timely manner and in such a way as to protect the privacy and independence of the individual. Please contact the Non-Discrimination Coordinator identified below at least three days in advance of a meeting so that arrangements can be made accordingly.

If you believe discrimination has occurred with respect to an Air District program or activity, you may contact the Non-Discrimination Coordinator identified below or visit our website at [www.baaqmd.gov/accessibility](http://www.baaqmd.gov/accessibility) to learn how and where to file a complaint of discrimination.

Questions regarding this Policy should be directed to the Air District's Non-Discrimination Coordinator, Suma Peesapati, at (415) 749-4967 or by email at [spesapati@baaqmd.gov](mailto:spesapati@baaqmd.gov).



**BAY AREA AIR QUALITY MANAGEMENT DISTRICT  
 375 BEALE STREET, SAN FRANCISCO, CA 94105  
 FOR QUESTIONS PLEASE CALL (415) 749-4941**

**EXECUTIVE OFFICE:  
 MONTHLY CALENDAR OF AIR DISTRICT MEETINGS**

**OCTOBER 2023**

<u>TYPE OF MEETING</u>	<u>DAY</u>	<u>DATE</u>	<u>TIME</u>	<u>ROOM</u>
Board of Directors Meeting	Wednesday	4	9:30 a.m.	1 <sup>st</sup> Floor Board Room
Board of Directors Legislative Committee	Wednesday	4	10:30 a.m.	1 <sup>st</sup> Floor Board Room
Board of Directors Finance and Administration Committee	Wednesday	4	1:00 p.m.	1 <sup>st</sup> Floor Board Room
Board of Directors Stationary Source and Climate Impacts Committee	Wednesday	11	10:00 a.m.	1 <sup>st</sup> Floor, Yerba Buena Room
Board of Directors Mobile Source and Climate Impacts Committee	Wednesday	11	1:00 p.m.	1 <sup>st</sup> Floor, Yerba Buena Room
Board of Directors Meeting - CANCELLED	Wednesday	18	9:00 a.m.	1 <sup>st</sup> Floor Board Room
Board of Directors Special Finance and Administration Committee	Wednesday	18	10:00 a.m.	1 <sup>st</sup> Floor Board Room
Board of Directors Community Equity, Health and Justice Committee	Wednesday	18	1:00 p.m.	1 <sup>st</sup> Floor Board Room

HL 9/27/2023 – 3:45 p.m.  
 G/Board/Executive Office/Moncal

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

Memorandum

To: Chairperson John J. Bauters and Members  
of the Board of Directors

From: Philip M. Fine  
Executive Officer/APCO

Date: October 4, 2023

Re: Approval of the Draft Minutes of the Board of Directors Meeting of September 20,  
2023

RECOMMENDED ACTION

Approve the Draft Minutes of the Board of Directors meeting of September 20, 2023.

BACKGROUND

None.

DISCUSSION

Attached for your review and approval are the Draft Minutes of the Board of Directors meeting of September 20, 2023.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Philip M. Fine  
Executive Officer/APCO

Prepared by: Marcy Hiratzka  
Reviewed by: Vanessa Johnson

ATTACHMENTS:

1. Draft Minutes of the Board of Directors meeting of September 20, 2023

Bay Area Air Quality Management District  
375 Beale Street, Suite 600  
San Francisco, CA 94105  
(415) 749-5073

Board of Directors Regular Meeting  
Wednesday, September 20, 2023

## **DRAFT MINUTES**

*This meeting was webcast, and a video recording is available on the website of the Bay Area Air Quality Management District at [www.baaqmd.gov/bodagendas](http://www.baaqmd.gov/bodagendas)*

### **CALL TO ORDER**

1. **Opening Comments:** Board of Directors (Board) Vice Chairperson, Davina Hurt, called the meeting to order at 9:02 a.m.

#### **Roll Call:**

Present, In-Person (Bay Area Metro Center, 375 Beale Street, 1<sup>st</sup> Floor Board Room, San Francisco, California, 94105): Vice Chairperson Davina Hurt; and Directors Ken Carlson, John Gioia, Sergio Lopez, Katie Rice, and Shamann Walton.

Present, In-Person Satellite Location: (Office of Contra Costa County Supervisor John Gioia, Conference Room, 11780 San Pablo Avenue, Suite D, El Cerrito, California, 94530): Directors Joelle Gallagher, Erin Hannigan, Mark Ross, and Steve Young.

Present, In-Person Satellite Location: (City of Palo Alto City Hall, 250 Hamilton Avenue, 7<sup>th</sup> Floor, Palo Alto, California, 94301): Directors Noelia Corzo and Ray Mueller.

Present, In-Person Satellite Location: (Office of Alameda County Supervisor David Haubert, 4501 Pleasanton Ave., Pleasanton, California, 94566): Directors Juan Gonzalez and David Haubert.

Present, In-Person Satellite Location: (Santa Rose Junior College, Doyle Library, 1501 Mendocino Ave., Room 148 Santa Rosa, California, 95401): Secretary Lynda Hopkins; and Director Brian Barnacle.

Present, In-Person Satellite Location: (Hyatt House Sacramento/Midtown, 2719 K Street, Sacramento, California, 95816): Director Vicki Veenker.

Present, In-Person Satellite Location: (Office of Santa Clara County Supervisor Otto Lee, 70 W Hedding St., East Wing, 10<sup>th</sup> Floor, San Jose, California, 95110): Director Otto Lee.

Present, In-Person Satellite Location: (San Ramon City Hall, 7000 Bollinger Canyon Rd., 2<sup>nd</sup> Floor Community Conference Room, San Ramon, California, 94583): Director David Hudson.

Absent: Chairperson John J. Bauters; and Directors Margaret Abe-Koga, Tyrone Jue, Myrna Melgar, and Nate Miley.

2. **PLEDGE OF ALLEGIANCE**

3. **SPECIAL ORDERS OF THE DAY**

Vice Chair Hurt introduced Joe Dobosz, a new Radio Telephone Operator in the Air District's Compliance & Enforcement Division, and Madeline Shiber, Assistant Staff Specialist II in the Air District's Communications Division. She also announced the promotion of John Chiladakis, who is now Chief Technology Officer, as well as the departure of Veronica Eady, Deputy Executive Officer of Equity & Community Programs.

NOTED PRESENT: Director Hannigan was noted present at 9:08 a.m.; Director Ross was noted present at 9:09 a.m.; Director Corzo was noted present at 9:16 a.m.; and Director Lopez was noted present at 9:18 a.m.

**CONSENT CALENDAR (ITEMS 4 – 16)**

4. Approval of the Draft Minutes of the Board of Directors Regular Meeting of September 6, 2023
  5. Board Communications Received from September 6, 2023, through September 19, 2023
  6. Personnel Out-of-State Business Travel Report for August 2023
  7. Projects and Contracts with Proposed Grant Awards Over \$500,000
  8. Authorization to Execute Lease Extensions for Air Monitoring Stations in Redwood City and Sebastopol
  9. Authorization to Execute Purchases for Meteorology and Measurement Division Operations
  10. Authorization to Accept Grant Program Revenues from the U.S. Environmental Protection Agency for Clean Air Act Section 105 Activities  
[Link to signed Board Resolution No. 2023–18 will be available here](#)
  11. Authorization to Execute the Renewal of the Three-Year Microsoft Enterprise Agreement with Dell Marketing LP for the Continued Licensing of all Microsoft Software and Cloud Products.
  12. Authorization to Execute a Four-Year Lease Extension for a Compliance & Enforcement Field Office in Novato
  13. Authorization for Board Members to Attend the Air District's Washington D.C. Advocacy Trip
  14. Report of the Finance and Administration Committee Meeting of September 6, 2023
  15. Report of the Advisory Council Meeting of September 11, 2023
  16. Report of the Stationary Source and Climate Impacts Committee Meeting of September 13, 2023
- A. United States Environmental Protection Agency (US EPA) Climate Pollution Reduction Grant

*Action Item: The Board of Directors will consider authorizing the Executive Officer/ Air Pollution Control Officer (APCO) to accept, obligate, and expend up to \$1,000,000 from*

*the US EPA for a Climate Pollution Reduction Grant, and authorize the Executive Officer/APCO to enter into all necessary agreements to accept, obligate, and expend program funds.*

Public Comments

Public comments were given by “Call-In User\_1” and Tony Fisher, Clean Air Coalition.

Board Comments

None.

Board Action

Director Hudson made a motion, seconded by Director Carlson, to **approve** Consent Calendar Items 4 – 16, inclusive; and the motion **carried** by the following vote of the Board:

AYES: Barnacle, Carlson, Corzo, Gallagher, Gioia, Gonzalez, Hannigan, Haubert, Hopkins, Hudson, Hurt, Lee, Lopez, Rice, Ross, Veenker, Walton, Young.  
NOES: None.  
ABSTAIN: None.  
ABSENT: Abe-Koga, Bauters, Jue, Melgar, Miley, Mueller.

**INFORMATIONAL ITEM**

**17. ADVISORY COUNCIL PRESENTATION ON THE WORK OF THE COUNCIL AND FINE PARTICULATE LOCAL RISK METHODOLOGY**

Greg Nudd, Deputy Executive Officer of Science and Policy, introduced Dr. Gina Solomon, Co-Chair of the Air District’s Advisory Council, who gave the presentation *2021-2023 Work of the Advisor Council and Letter of Endorsement*, including: 2019-2020 Particulate Matter (PM) Symposium Series; 2021-2023 work of the Advisory Council; what does the methodology do and how can it support the Air District’s work; and acknowledgements.

Advisory Council Vice Chair, Dr. Michael Kleinman, also gave remarks.

Public Comments

Public comments were given by “Call-In User\_1”.

Board Comments

The Board thanked the Advisory Council members for their work over the years to develop the Advisory Council’s position on health risks from local sources of fine PM.

Board Action

None; receive and file.

**OTHER BUSINESS**

**18. PUBLIC COMMENT ON NON-AGENDA MATTERS**

Public comments were given by “Call-In User\_1” and Amber Wittner.

**19. BOARD MEMBER COMMENTS**

Multiple Board members thanked Ms. Eady for her service.

**20. REPORT OF THE EXECUTIVE OFFICER/APCO**

Dr. Philip M. Fine, Executive Officer/APCO, thanked Ms. Eady for her service, and explained the wildfire smoke event that began impacting the Bay Area on September 19, 2023, and was expected to continue impacting the Bay area until September 21, 2023. Smoke from fires in Northern California and Oregon was expected to impact air quality throughout the Bay Area, causing air quality to reach high-moderate on the U.S. EPA’s Air Quality Index. Smoky, hazy skies, and the smell of smoke were already present. Dr. Fine explained that, because pollutant levels were expected to exceed the national 24-hour health standard, a Spare the Air Alert was in effect as of September 20, 2023.

Public Comments

Public comments were given by “Call-In User\_1”.

NOTED PRESENT: Director Mueller was noted present at 9:57 a.m.

Board Comments

The Board and staff discussed contributing factors of wildfires; whether the Air District still distributes N95 respirators (masks) during wildfire smoke events; and whether wildfire smoke advisories issued by the Air District are San Francisco Bay Air Basin-wide.

**21. CHAIRPERSON’S REPORT**

Vice Chair Hurt announced that the Board’s Community Equity, Health, and Justice Committee will meet following this meeting (on September 20, 2023), no earlier than 1:00 p.m.

She also announced that the Air District’s Community Advisory Council held its first retreat in Petaluma, California, on September 14 and 15, 2023.

**22. TIME AND PLACE OF NEXT MEETING**

Wednesday, October 4, 2023, at 9:00 a.m. at 375 Beale Street, San Francisco, CA 94105. The meeting will be in-person for the Board members and members of the public will be able to either join in-person or via webcast.

**CLOSED SESSION** (10:01 a.m.)

**Public Comments**

Public comments were given by “Call-In User\_1”.

23. **CONFERENCE WITH LEGAL COUNSEL REGARDING EXISTING LITIGATION (GOVERNMENT CODE SECTION 54956.9(a))**

*Pursuant to Government Code Section 54956.9(a), the Board met in closed session with Legal Counsel to discuss the following cases:*

*Chevron U.S.A Inc. v. Bay Area Air Quality Management District, Contra Costa Superior Court Case No. MSN21-1739;*

*Martinez Refining Co. LLC v. Bay Area Air Quality Management District, Contra Costa Superior Court Case No. MSN21-1568;*

**REPORTABLE ACTION:** Alexander Crockett, District Counsel, had nothing to report.

24. **CONFERENCE WITH LABOR NEGOTIATORS PURSUANT TO GOVERNMENT CODE SECTION 54957.6**

*Conference with Labor Negotiators*

*Pursuant to Government Code Section 54957.6*

*Agency Designated Representatives:*

*Laura A. Izon , Atkinson, Andelson, Loya, Ruud & Romo*

*John Chiladakis, Acting Deputy Executive Officer of Finance and Administration*

*Employee organization: BAAQMD Employees' Association*

**REPORTABLE ACTION:** Mr. Crockett had nothing to report.

**OPEN SESSION** (11:28 a.m.)

25. **ADJOURNMENT**

The meeting was adjourned at 11:29 a.m.

Marcy Hiratzka  
Clerk of the Boards

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

Memorandum

To: Chairperson John J. Bauters and Members  
of the Board of Directors

From: Philip M. Fine  
Executive Officer/APCO

Date: October 4, 2023

Re: Board Communications Received from September 20, 2023 through October 3, 2023

RECOMMENDED ACTION

None; receive and file.

BACKGROUND

None.

DISCUSSION

Copies of communications directed to the Board of Directors received by the Air District from September 20, 2023 through October 3, 2023, if any, will be distributed to the Board Members by way of email.

BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Philip M. Fine  
Executive Officer/APCO

Prepared by: Marjorie Villanueva

Reviewed by: Vanessa Johnson

ATTACHMENTS:

None



**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

Memorandum

To: Chairperson John J. Bauters and Members  
of the Board of Directors

From: Philip M. Fine  
Executive Officer/APCO

Date: October 4, 2023

Re: Notices of Violations Issued and Settlements in Excess of \$10,000 in the Month of  
August 2023

RECOMMENDED ACTION

None; receive and file.

BACKGROUND

None.

DISCUSSION

In accordance with Resolution No. 2012-08, attached to this Memorandum is a listing of all Notices of Violations issued, and all settlements for amounts in excess of \$10,000 during the calendar months prior to this report.

BUDGET CONSIDERATION/FINANCIAL IMPACT

The amounts of civil penalties are collected and recorded in the Air District's General Fund.

Respectfully submitted,

Philip M. Fine  
Executive Officer/APCO

Prepared by: Alexander G. Crockett

ATTACHMENTS:

1. Notices of Violations for the Month of August 2023

**NOTICES OF VIOLATIONS ISSUED**

The following Notice(s) of Violation(s) were issued in August 2023:

<b>Alameda</b>						
<b>Site Name</b>	<b>Site #</b>	<b>City</b>	<b>NOV #</b>	<b>Issuance Date</b>	<b>Regulation</b>	<b>Comment</b>
City of Berkeley/Engr Div/Public Works	A3590	Berkeley	A62745A	8/24/2023	8-34-301.1	Landfill Violation
City of Berkeley/Engr Div/Public Works	A3590	Berkeley	A62745B	8/24/2023	10	Code of Federal Regulation Violation
City of Berkeley/Engr Div/Public Works	A3590	Berkeley	A62746A	8/24/2023	8-34-301.1	Landfill Violation
City of Berkeley/Engr Div/Public Works	A3590	Berkeley	A62746B	8/24/2023	10	Code of Federal Regulation Violation
City of Berkeley/Engr Div/Public Works	A3590	Berkeley	A62747A	8/24/2023	8-34-301.1	Landfill Violation
City of Berkeley/Engr Div/Public Works	A3590	Berkeley	A62747B	8/24/2023	10	Code of Federal Regulation Violation
City of Berkeley/Engr Div/Public Works	A3590	Berkeley	A62748A	8/24/2023	2-1-307	Permit Requirement/Condition Violation
City of Berkeley/Engr Div/Public Works	A3590	Berkeley	A62749A	8/24/2023	8-34-301.1	Landfill Violation
City of Berkeley/Engr Div/Public Works	A3590	Berkeley	A62749B	8/24/2023	10	Code of Federal Regulation Violation
City of Berkeley/Engr Div/Public Works	A3590	Berkeley	A62750A	8/31/2023	2-1-307	Permit Requirement/Condition Violation
City of Berkeley/Engr Div/Public Works	A3590	Berkeley	A62750B	8/31/2023	8-34-505	Landfill Violation
Quikrete Northern California	B2001	Fremont	A62149A	8/4/2023	2-1-307	Permit Requirement/Condition Violation

Schnitzer Steel Products Company	A0208	Oakland	A61931A	8/10/2023	1-301	Public Nuisance Violation
Schnitzer Steel Products Company	A0208	Oakland	A61932A	8/10/2023	5-301	Open Burn Violation
Schnitzer Steel Products Company	A0208	Oakland	A61932B	8/10/2023	6-1-301	Visible Emissions Violation
Sila Nanotechnologies Inc.	E3904	Alameda	A62741A	8/30/2023	2-1-307	Permit Requirement/Condition Violation
Sila Nanotechnologies Inc.	E3904	Alameda	A62742A	8/30/2023	2-1-307	Permit Requirement/Condition Violation
Sila Nanotechnologies Inc.	E3904	Alameda	A62743A	8/30/2023	2-1-307	Permit Requirement/Condition Violation
Sila Nanotechnologies Inc.	E3904	Alameda	A62744A	8/30/2023	2-1-307	Permit Requirement/Condition Violation
Tesla, Inc.	A1438	Fremont	A62145A	8/4/2023	2-6-307	Title V Requirement/Condition Violation
Tesla, Inc.	A1438	Fremont	A62146A	8/4/2023	2-6-307	Title V Requirement/Condition Violation
Tesla, Inc.	A1438	Fremont	A62147A	8/4/2023	2-6-307	Title V Requirement/Condition Violation
Tesla, Inc.	A1438	Fremont	A62148A	8/4/2023	2-6-307	Title V Requirement/Condition Violation
Tesla, Inc.	A1438	Fremont	A62150A	8/21/2023	2-6-307	Title V Requirement/Condition Violation
Tesla, Inc.	A1438	Fremont	A62151A	8/21/2023	2-6-307	Title V Requirement/Condition Violation
Tesla, Inc.	A1438	Fremont	A62832A	8/29/2023	2-1-320	Misrepresentation in Permit Application
Tesla, Inc.	A1438	Fremont	A62834A	8/31/2023	1-441.3	Denied Access to Information Violation

Tesla, Inc.	A1438	Fremont	A62152A	8/21/2023	2-6-307	Title V Requirement/Condition Violation
Tesla, Inc.	A1438	Fremont	A62828A	8/21/2023	2-6-307	Title V Requirement/Condition Violation
Tesla, Inc.	A1438	Fremont	A62829A	8/21/2023	2-6-307	Title V Requirement/Condition Violation
Tesla, Inc.	A1438	Fremont	A62830A	8/21/2023	2-6-307	Title V Requirement/Condition Violation
Tesla, Inc.	A1438	Fremont	A62831A	8/23/2023	2-6-307	Title V Requirement/Condition Violation
Tesla, Inc.	A1438	Fremont	A62831B	8/23/2023	CCR	California Code of Regulation Violation
Thermo Fisher Scientific	B4976	Pleasanton	A59761A	8/8/2023	2-1-307	Permit Requirement/Condition Violation
United States Pipe & Foundry Company, LLC	A0083	Union City	A62833A	8/31/2023	2-1-307	Permit Requirement/Condition Violation

<b>Contra Costa</b>						
<b>Site Name</b>	<b>Site #</b>	<b>City</b>	<b>NOV #</b>	<b>Issuance Date</b>	<b>Regulation</b>	<b>Comment</b>
C & H Sugar Company, Inc.	B1911	Crockett	A62072A	8/8/2023	1-441	Denied Access to Information Violation
Chevron Products Company	A0010	Richmond	A52410A	8/24/2023	1-522	Continuous Emissions Monitor Violation
Chevron Products Company	A0010	Richmond	A52411A	8/24/2023	1-522	Continuous Emissions Monitor Violation
Chevron Products Company	A0010	Richmond	A52412A	8/24/2023	1-522	Continuous Emissions Monitor Violation
Chevron Products Company	A0010	Richmond	A52413A	8/24/2023	1-522	Continuous Emissions Monitor Violation
Chevron Products Company	A0010	Richmond	A52414A	8/24/2023	1-522	Continuous Emissions Monitor Violation

Chevron Products Company	A0010	Richmond	A52415A	8/24/2023	1-522	Continuous Emissions Monitor Violation
Clinton White	FC185	El Sobrante	A62610A	8/30/2023	11-2-401.3	Asbestos Violation
Clinton White	FC185	El Sobrante	A62610B	8/30/2023	11-2-303.8	Asbestos Violation
Keller Canyon Landfill Company	A4618	Pittsburg	A62205A	8/10/2023	8-34-303	Landfill Violation
Martinez Refining Company LLC	A0011	Martinez	A58110A	8/9/2023	2-6-307	Title V Requirement/Condition Violation
Phillips 66 Company - San Francisco Refinery	A0016	Rodeo	A62203A	8/18/2023	1-523.1	Parametric Monitor Violation
Phillips 66 Company - San Francisco Refinery	A0016	Rodeo	A62204A	8/18/2023	9-9-301.1.3	Turbine NOx or CO Violation
Tesoro Refining & Marketing Company, LLC	B2758	Martinez	A61954A	8/18/2023	8-5-304.4	Storage Tank Violation
Unocal #2705704	FC147	Pittsburg	A62103A	8/15/2023	2-1-301	No Authority to Construct

<b>Napa</b>						
Site Name	Site #	City	NOV #	Issuance Date	Regulation	Comment
Clover Flat Resource & Recovery Park	B1247	Calistoga	A61527A	8/10/2023	10	Code of Federal Regulation Violation

<b>San Francisco</b>						
Site Name	Site #	City	NOV #	Issuance Date	Regulation	Comment
Anschutz Printing Company	A6166	San Francisco	A62878A	8/14/2023	2-1-307	Permit Requirement/Condition Violation
Anschutz Printing Company	A6166	San Francisco	A62878B	8/14/2023	8-20-309	Graphic Arts Printing and Coating Violation

Lawton 76	Z9097	San Francisco	A62262A	8/3/2023	2-1-307	Permit Requirement/Condition Violation
Lawton 76	Z9097	San Francisco	A62262B	8/3/2023	8-7-302.3	Gas Dispensing Facility Violation
Lawton 76	Z9097	San Francisco	A62262C	8/3/2023	8-7-302.5	Gas Dispensing Facility Violation
Romkon Inc.	FC184	San Francisco	A62609A	8/30/2023	11-2-401.3	Asbestos Violation
San Francisco International Airport	A1784	San Francisco	A62403A	8/29/2023	8-7-301.5	Gas Dispensing Facility Violation
San Francisco International Airport	A1784	San Francisco	A62879A	8/23/2023	2-6-307	Title V Requirement/Condition Violation
San Francisco International Airport	A1784	San Francisco	A62880A	8/23/2023	2-6-307	Title V Requirement/Condition Violation
San Francisco International Airport	A1784	San Francisco	A62881A	8/23/2023	2-1-301	No Authority to Construct and No Permit to Operate
San Francisco International Airport	A1784	San Francisco	A62881B	8/23/2023	2-1-302	No Authority to Construct and No Permit to Operate

<b>San Mateo</b>						
<b>Site Name</b>	<b>Site #</b>	<b>City</b>	<b>NOV #</b>	<b>Issuance Date</b>	<b>Regulation</b>	<b>Comment</b>
Browning-Ferris Industries of CA Inc.	A2266	Half Moon Bay	A60955A	8/8/2023	10	Code of Federal Regulation Violation
Browning-Ferris Industries of CA Inc.	A2266	Half Moon Bay	A60955B	8/8/2023	10	Code of Federal Regulation Violation
Browning-Ferris Industries of CA Inc.	A2266	Half Moon Bay	A60958A	8/30/2023	8-34-301.2	Landfill Violation
Browning-Ferris Industries of CA Inc.	A2266	Half Moon Bay	A60958B	8/30/2023	8-34-303	Landfill Violation

DNS Construction	FC146	Daly City	A60147A	8/10/2023	11-2-303	Asbestos Violation
DNS Construction	FC146	Daly City	A60147B	8/10/2023	11-2-304	Asbestos Violation
DNS Construction	FC146	Daly City	A60148A	8/10/2023	11-2-401.3	Asbestos Violation
Graphic Sportswear	E3626	South San Francisco	A60957A	8/21/2023	2-1-301	No Authority to Construct and No Permit to Operate
Graphic Sportswear	E3626	South San Francisco	A60957B	8/21/2023	2-1-302	No Authority to Construct and No Permit to Operate
KN Stations, LLC	FA539	Half Moon Bay	A62351A	8/22/2023	8-7-302.5	Gas Dispensing Facility Violation
Roaring Kitten Inc. Tanforan Shell	FC164	San Bruno	A62352A	8/23/2023	8-7-308	Gas Dispensing Facility Violation
Skyline Colleges	B5348	San Bruno	A60956A	8/10/2023	2-1-301	No Authority to Construct and No Permit to Operate
Skyline Colleges	B5348	San Bruno	A60956B	8/10/2023	2-1-302	No Authority to Construct and No Permit to Operate

<b>Santa Clara</b>						
<b>Site Name</b>	<b>Site #</b>	<b>City</b>	<b>NOV #</b>	<b>Issuance Date</b>	<b>Regulation</b>	<b>Comment</b>
Cyxtera Communications, LLC	B8665	Santa Clara	A61645A	8/16/2023	2-1-307	Permit Requirement/Condition Violation
Meridian Chevron Auto Service	FC197	San Jose	A62298A	8/8/2023	8-7-301.1	Gas Dispensing Facility Violation
Westwood Chevron	V5938	Gilroy	A62299A	8/17/2023	8-7-302.5	Gas Dispensing Facility Violation

<b>Solano</b>						
<b>Site Name</b>	<b>Site #</b>	<b>City</b>	<b>NOV #</b>	<b>Issuance Date</b>	<b>Regulation</b>	<b>Comment</b>
Valero Refining Company - California	B2626	Benicia	A62154A	8/8/2023	8-18-306.1	Equipment Leak Violation

<b>Company Address Outside of the Bay Area</b>						
<b>Site Name</b>	<b>Site #</b>	<b>City</b>	<b>NOV #</b>	<b>Issuance Date</b>	<b>Regulation</b>	<b>Comment</b>
Platinum Energy; Sue Sommers	Y4152	Agoura Hills	A62350A	8/10/2023	8-7-301.5	Gas Dispensing Facility Violation
W.M. Lyles Co.	FC095	Rocklin	A62144A	8/1/2023	2-1-301	No Authority to Construct and No Permit to Operate
W.M. Lyles Co.	FC095	Rocklin	A62144B	8/1/2023	2-1-302	No Authority to Construct and No Permit to Operate
W.M. Lyles Co.	FC095	Rocklin	A62144C	8/1/2023	10	Code of Federal Regulation Violation

**SETTLEMENTS FOR \$10,000 OR MORE REACHED**

There were 0 settlement(s) for \$10,000 or more completed in August 2023.



**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

## Memorandum

To: Chairperson John J. Bauters and Members  
of the Board of Directors

From: Philip M. Fine  
Executive Officer/APCO

Date: October 4, 2023

Re: Authorization to Amend Legal Services Agreement with Shute Mihaly & Weinberger

RECOMMENDED ACTION

Authorize the Executive Officer/APCO to execute an amendment to the existing Legal Services Agreement with Shute Mihaly & Weinberger LLP to increase the current contract limit by \$75,000, from \$810,000 to \$885,000, for continued representation in the litigation regarding District Regulation 6, Rule 5; and authorize the transfer of \$75,000 of designated reserve funds to Program 205 – Litigation.

BACKGROUND

In July of 2021, the Board of Directors adopted amendments to Air District Regulation 6, Rule 5 – Particulate Emissions From Petroleum Refinery Fluidized Catalytic Cracking Units (Regulation 6-5). These amendments were a very high-profile and important regulatory effort by the Air District. The amendments will achieve significant public health benefits by reducing the amount of fine particulate matter emitted from Bay Area petroleum refineries. The amendments also fulfilled a commitment the Board of Directors made in its 2018 AB 617 Expedited BARCT Implementation Schedule to update this regulation.

In September of 2021, two affected petroleum refineries filed Petitions for Writ of Mandate in Contra Costa County Superior Court challenging the Board's adoption of the Regulation 6-5 amendments. The two cases are *Martinez Refining Co. LLC v. BAAQMD* (Case No. N-21-1568) and *Chevron U.S.A., Inc. v. BAAQMD* (Case No. N21-1739). The cases allege that the Air District violated requirements of the California Environmental Quality Act (CEQA) and the California Health & Safety Code in adopting these amendments to Regulation 6-5. The *Chevron U.S.A., Inc.* case also alleges violations of the California Public Records Act. The Air District strongly denies that it violated any legal requirements in connection with these amendments.

The cases have been fully briefed, and the court has scheduled a hearing on the merits of the refineries' claims for October 26, 2023. The court will then render a decision within 90 days thereafter.

## DISCUSSION

This proposed amendment to the Legal Services Agreement is necessary to support Shute Mihaly's anticipated work in the weeks leading up to the hearing. There are a variety of tasks that Shute Mihaly will need to undertake during this time period, which require additional resources not covered by the current contract limit. Shute Mihaly estimates that up to an additional \$75,000 may be needed for this work. Although this amount represents Shute Mihaly's best estimate, it is only an estimate, and it is possible that actual defense costs could be different, as litigation costs cannot be predicted with certainty. Shute Mihaly will provide the Air District with advance notice if it expects the total litigation costs to exceed \$885,000. In the event that it looks like costs could exceed this amount, staff will come back to the Board to seek a supplemental authorization before exceeding the authorized limit of \$885,000.

This legal services agreement is one of two that the Air District has with Shute Mihaly. The other is a framework agreement entered into on March 7, 2022, for representation on an as-requested basis regarding matters within the District's mission for which the District desires the Firm's expertise or needs additional assistance. That agreement is contract no. 2022.259, with a not-to-exceed contract limit of \$30,000.

## BUDGET CONSIDERATION/FINANCIAL IMPACT

The Fiscal Year 2024 budget included \$6.88 million in designated reserves for outside counsel litigation support. This budget allocation is sufficient to cover the additional \$75,000 in anticipated costs of this litigation. If approved, this action will transfer \$75,000 from these designated reserves to amend the Fiscal Year 2024 Legal Office's Litigation program budget. This additional \$75,000 transfer would be in addition to an earlier transfer of \$185,000 from the FY 2024 designated reserves that the Board approved on July 19, 2023.

Respectfully submitted,

Philip M. Fine  
Executive Officer/APCO

Prepared by: Alexander G. Crockett

## ATTACHMENTS:

1. Legal Services Agreement - Shute Mihaly - 2022.198 - Final executed 8-2-2022
2. Contract 2022.198 - Shute Mihaly Legal Services Agreement - Amendment 1
3. Contract 2022.198 - Shute Mihaly Legal Services Agreement - Amendment 2
4. Draft Amendment No. 3 to Shute Mihaly Legal Services Agreement 2022.198 - September 2023

SHUTE MIHALY  
& WEINBERGER LLP

396 HAYES STREET, SAN FRANCISCO, CA 94102  
T: (415) 552-7272 F: (415) 552-5816  
www.smwlaw.com

ROBERT "PERL" PERLMUTTER  
Attorney  
Perlmutter@smwlaw.com

June 29, 2022

**Via Electronic Mail Only**

Alexander Crockett  
District Counsel  
Bay Area Air Quality Management District  
375 Beale Street, Suite 600  
San Francisco, CA 94105  
Email: ACrockett@baaqmd.gov

Re: Supplemental Legal Retainer Agreement Regarding Regulation 6-5  
Litigation

Dear Sandy:

As we discussed, and pursuant to the March 7, 2022, "Framework Agreement" between Shute, Mihaly & Weinberger LLP ("Firm") and the Bay Area Air Quality Management District ("District"), this supplemental legal retainer agreement provides for the Firm's continued representation of the District in the two lawsuits that have been filed challenging the District's July 21, 2021 adoption of amendments to Regulation 6-5.

**1. Legal Services to Be Provided**

The Firm shall defend the District in *Chevron U.S.A., Inc. v. Bay Area Air Quality Management District* (Contra Costa Superior Court Case No. N21-1739) and *Martinez Refining Company LLC. v. Bay Area Air Quality Management District* (Contra Costa Superior Court Case No. N21-1568) ("Litigation"), subject to and at the direction of the District's General Counsel.

**2. Legal Fees and Costs**

Fees and costs shall be billed as set forth in the Framework Agreement.

Alexander Crockett  
June 29, 2022  
Page 2

### **3. Budget Estimate and Anticipated Timeline**

At present, we estimate that the cost to represent the District in the Litigation through conclusion of the trial court proceedings will not exceed \$425,000. This estimate is based on our experience in defending public agencies in comparable litigation and assumes that this case will not involve unusual or unforeseen circumstances. However, and even absent such circumstances, litigation costs sometimes exceed expectations and accordingly this estimate is not a cap. That said, we will not exceed this estimate without prior written approval from the District.

At present, we anticipate that the trial court will issue a decision in this matter no later than the spring of 2023.

### **4. Additional Terms Governed by Framework Agreement**

The additional terms governing the Firm's representation of the District shall be as set forth in the Framework Agreement, except that Alexander Crockett shall be the District's authorized representative to direct the Firm and to be the primary person to communicate with the Firm regarding the Litigation.

If this supplemental agreement ("Agreement") is satisfactory, please execute a copy and return it to me. This Agreement will be effective when it is signed by you.

We look forward to continue working with you to defend the District in this matter.

Alexander Crockett  
June 29, 2022  
Page 3

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

Robert "Perl" Perlmutter

ACCEPTED AND AGREED:

Bay Area Air Quality Management District

Approved as to Form:

DocuSigned by:  
  
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Veronica Eady  
District Interim Executive Officer/APCO

DocuSigned by:  
  
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Alexander Crockett  
District Counsel

Date: 8/2/2022

Date: 8/2/2022

1528021.3

February 17, 2023

**Via Electronic Mail Only**

Alexander Crockett  
General Counsel  
Bay Area Air Quality Management  
District  
375 Beale St Ste 600  
San Francisco, CA 94105-2097  
E-Mail: ACrockett@baaqmd.gov

Re: Budget Augmentation for Defending Regulation 6.5 Litigation

Dear Sandy:

As we discussed, I am writing to request an amendment to the June 29, 2022, Retainer Agreement (“Agreement”) governing this Firm’s defense of the Bay Area Air Quality Management District (“District”) in the two lawsuits challenging the District’s July 21, 2021 adoption of amendments to Regulation 6-5, in order to increase the estimated budget for this representation.

Paragraph 3 of the Agreement contained our initial estimate that the costs of defending the District through conclusion of the trial court proceedings would not exceed \$425,000. The Agreement also noted that the actual costs of defending the litigation could exceed this amount and provided that the Firm would require the District’s written approval to exceed that amount. We now estimate that it will cost an additional \$200,000 to defend the District in the litigation through the conclusion of the trial court proceedings. Accordingly, we request that the District agree to amend paragraph 3 of the Agreement to authorize that \$200,000 increase.

All other terms of the Agreement—including its incorporation of terms in the Firm’s March 7, 2022, Framework Agreement with the District—will remain the same. If this amendment is satisfactory to the District, please execute a copy and return it to me.

Alexander Crockett  
February 17, 2023  
Page 2

We look forward to continue working with you to defend the District in this matter.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Robert "Perl" Perlmutter

ACCEPTED AND AGREED:

Bay Area Air Quality Management District

\_\_\_\_\_  
Sharon Landers  
District Interim Executive Officer/APCO

\_\_\_\_\_  
Alexander Crockett  
District Counsel

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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SHUTE MIHALY  
& WEINBERGER LLP

396 HAYES STREET, SAN FRANCISCO, CA 94102  
T: (415) 552-7272 F: (415) 552-5816  
www.smwlaw.com

ROBERT "PERL" PERLMUTTER  
Attorney  
Perlmutter@smwlaw.com

July 10, 2023

**Via Electronic Mail Only**

Alexander Crockett  
General Counsel  
Bay Area Air Quality Management District  
375 Beale St Ste 600  
San Francisco, CA 94105-2097  
E-Mail: ACrockett@baaqmd.gov

Re: Budget Augmentation for Defending Regulation 6-5 Litigation

Dear Sandy:

As we discussed, I am writing to request a further amendment to the June 29, 2022, Retainer Agreement (“Agreement”) governing this Firm’s defense of the Bay Area Air Quality Management District (“District”) in the two lawsuits challenging the District’s July 21, 2021 adoption of amendments to Regulation 6-5, in order to increase the estimated budget for this representation.

Paragraph 3 of the Agreement contained our initial estimate that the costs of defending the District through conclusion of the trial court proceedings would not exceed \$425,000. The Agreement also noted that the actual costs of defending the litigation could exceed this amount and provided that the Firm would require the District’s written approval to exceed that amount. On February 17, 2023, we requested, and the District subsequently approved, an additional \$200,000 to defend the District in the litigation through the conclusion of the trial court proceedings.

We are now requesting a second augmentation, of \$185,000, in light of the significant additional work that these cases have entailed.

All other terms of the Agreement—including its incorporation of terms in the Firm’s March 7, 2022, Framework Agreement with the District—will remain the same. If this amendment is satisfactory to the District, please execute a copy and return it to me.



Alexander Crockett  
Bay Area Air Quality Management District  
July 10, 2023  
Page 2

We look forward to continuing to work with you to defend the District in this matter.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

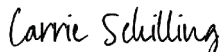


Robert "Perl" Perlmutter

ACCEPTED AND AGREED:

Bay Area Air Quality Management District

DocuSigned by:  
  
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Philip M. Fine  
Executive Officer/APCO

DocuSigned by:  
  
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Alexander Crockett (Carrie Schilling for)  
District Counsel

Date: 7/31/2023

Date: 7/31/2023

1664851.1

September 25, 2023

**Via Electronic Mail Only**

Alexander Crockett  
General Counsel  
Bay Area Air Quality Management District  
375 Beale St Ste 600  
San Francisco, CA 94105-2097  
E-Mail: ACrockett@baaqmd.gov

Re: Budget Augmentation for Defending Regulation 6-5 Litigation

Dear Sandy:

As we discussed, I am writing to request a further amendment to the June 29, 2022, Retainer Agreement (“Agreement”) governing this Firm’s defense of the Bay Area Air Quality Management District (“District”) in the two lawsuits challenging the District’s July 21, 2021 adoption of amendments to Regulation 6-5, in order to increase the estimated budget for this representation.

Paragraph 3 of the Agreement contained our initial estimate that the costs of defending the District through conclusion of the trial court proceedings would not exceed \$425,000. The Agreement also noted that the actual costs of defending the litigation could exceed this amount and provided that the Firm would require the District’s written approval to exceed that amount. On February 17, 2023, we requested, and the District subsequently approved, an additional \$200,000 to defend the District in the litigation through the conclusion of the trial court proceedings; and on July 10, 2023, we requested and the District approved a further augmentation of \$185,000.

We are now requesting a third augmentation, of \$75,000, in light of the significant additional work that these cases have entailed.

All other terms of the Agreement—including its incorporation of terms in the Firm’s March 7, 2022, Framework Agreement with the District—will remain the

Alexander Crockett  
September 25, 2023  
Page 2

same. If this amendment is satisfactory to the District, please execute a copy and return it to me.

We look forward to continuing to work with you to defend the District in this matter.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Robert "Perl" Perlmutter

ACCEPTED AND AGREED:

Bay Area Air Quality Management District

\_\_\_\_\_  
Phillip M. Fine  
Executive Officer/APCO

\_\_\_\_\_  
Alexander Crockett  
District Counsel

Date: \_\_\_\_\_

Date: \_\_\_\_\_

1694925.1

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

## Memorandum

To: Chairperson John J. Bauters and Members  
of the Board of Directors

From: Philip M. Fine  
Executive Officer/APCO

Date: October 4, 2023

Re: Authorization to Purchase Equipment from Thermo Electron North America LLC

RECOMMENDED ACTION

Recommend the Board of Directors authorize the Executive Officer/APCO to purchase an ICS-6000 Ion Chromatograph from Thermo Electron North America LLC for an amount not to exceed \$115,000.

BACKGROUND

The Air District laboratory uses the ion chromatograph to analyze both routine samples for speciation and source-oriented samples for ammonia content. The current instrument has met the end of its useful life and most of its components will no longer be eligible for guaranteed service at the end of the current service contract. There is currently an analysis backlog associated with the frequent downtime of this instrument. The instrument should be replaced with one that has comparable technical features.

DISCUSSION

The laboratory evaluated ion chromatograph instruments using the following criteria:

- Availability of required components and capabilities including: ability to analyze for all required compounds of interest, ability to meet minimum detection requirements, autosampler, workstation and analytical software, detector for anion analysis, detector for cation analysis, a dual pump system
- Availability of preferred components and capabilities including: eluent generator, ability to perform simultaneous anion and cation analysis, compatibility with previous analytical data, compatibility with existing autosampler (replaced in 2019)
- Onsite installation and training
- Availability, length, and projected cost of continuing service after initial warranty period
- Future ability to bundle continuing service contracts with service contracts on other existing instruments for a discount
- Recycling and disposal of previous instrument

- Instrument trade-in value applied to purchase
- Type, projected frequency, and projected cost of consumables
- Laboratory chemist's familiarity with software and equipment and ease of transition between instruments

The laboratory team actively sought out and evaluated the options to replace the IC including inquiring with the vendor of the current instrument, two other vendors as well as resellers of the instrument proposed.

The investigation into third party resellers of the ICS-6000 yielded used models, models without an option for an ongoing service contract, or referenced back to Thermo Electron for purchase.

The Thermo Electron ICS-6000 was the only vendor and instrument that met all of the laboratory's current needs and the above criteria and should, therefore, also be considered a sole source purchase.

#### BUDGET CONSIDERATION/FINANCIAL IMPACT

The funds for this purchase are in the Board-approved Laboratory capital equipment budget (Program Code 803) for Fiscal Year Ending 2024.

Respectfully submitted,

Philip M. Fine  
Executive Officer/APCO

Prepared by: Mairi Beacon  
Reviewed by: Ranyee Chiang

#### ATTACHMENTS:

None

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

Memorandum

To: Chairperson John J. Bauters and Members  
of the Board of Directors

From: Philip M. Fine  
Executive Officer/APCO

Date: October 4, 2023

Re: Appointment of Hearing Board Members for the Professional Engineer, Professional  
Engineer Alternate and Medical Alternate Hearing Board Positions

RECOMMENDED ACTION

Appoint to the Hearing Board: Rajiv Dabir as Principal Member in the Professional Engineer category; Jeffrey Maddox as Alternate Member in the Professional Engineer category; and Dr. Sumeet Batra as Alternate Member in the Medical category. If approved, these appointments will go into effect on October 7, 2023 (This is the date upon which the incumbents' current terms expire.)

BACKGROUND

Pursuant to Section 40800 of the California Health and Safety Code, the Air District is required to maintain a Hearing Board consisting of five members including, one member who is a professional engineer registered as such pursuant to the Professional Engineers Act (Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code), one member from the medical profession whose specialized skills, training, or interests are in the fields of environmental medicine, community medicine, or occupational/toxicologic medicine, one member admitted to the practice of law in this state, and two public members. The Air District Board of Directors may also appoint one alternate for each member. The alternate shall have the same qualifications, specified in Section 40801, as the member for whom such person is the alternate. The alternate may serve only in the absence of the member, and for the same term as the member. It has been the Air District's practice to fill all ten seats of the Hearing Board.

Pursuant to Division I, Section 8.6 of the Air District's Administrative Code, Hearing Board Member terms are limited to fifteen (15) consecutive years, with reappointment possible after a three-year absence.

## DISCUSSION

There are currently two vacancies: 1) Principal Member in the Professional Engineer category and 2) Alternate Member in the Professional Engineer category. The following three Hearing Board Member terms will expire October 7, 2023 and become vacant on that date: 1) Principal Member B in the Public category, 2) Alternate Member B in the Public category, and 3) Alternate Member in the Medical category.

Due to the high volume of Public category candidates, the Committee designated an Ad Hoc Committee to choose five Public category candidates to interview at their meeting on October 4, 2023.

Interviews for the Professional Engineer and Medical category vacancies were conducted at the September 6, 2023 Finance and Administration Committee meeting. The Committee recommends the following candidates for the Hearing Board:

Principal Member in the Professional Engineer category: Rajiv Dabir

Alternate Member in the Professional Engineer category: Jeffrey Maddox

Alternate Member in the Medical category: Dr. Sumeet Batra

## BUDGET CONSIDERATION/FINANCIAL IMPACT

None.

Respectfully submitted,

Philip M. Fine  
Executive Officer/APCO

Prepared by: Erica Trask  
Reviewed by: John Chiladakis

## ATTACHMENTS:

None

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

Memorandum

To: Chairperson John J. Bauters and Members  
of the Board of Directors

From: Philip M. Fine  
Executive Officer/APCO

Date: October 4, 2023

Re: Authorization to Execute a Contract Amendment with Renne Public Law Group

RECOMMENDED ACTION

Recommend the Board of Directors authorize the Executive Officer/APCO to amend the contract with Renne Public Law Group (RPLG) increasing the maximum dollar amount of the contract by \$250,000 – from \$550,000 to \$800,000 – for legal services related to labor and employment issues, including two recently filed lawsuits; and authorize the transfer of \$250,000 from Outside Counsel Litigation Support Designated Reserves to Program 104 – Executive.

BACKGROUND

The Air District was recently served with two lawsuits by former employees related to their employment with the District. The Air District currently has a legal services agreement with Renne Public Law Group (RPLG) to provide legal services related to labor and employment issues. RPLG is ideally situated to defend these lawsuits, and the APCO and District Counsel have conferred and determined that RPLG should handle these cases.

The current agreement with RPLG (Contract No. 2022.154) has a contract limit of \$550,000, however, and RPLG is close to that limit based on labor and employment work that the firm has already undertaken. The Air District therefore needs to increase the contract limit to allow RPLG to represent the District in this litigation.

RPLG expects that its work will likely cost up to \$250,000 to defend the cases through the initial stages of discovery and pre-trial motion practice. The parties need to amend their engagement letter again to allow RPLG to undertake this work.

It is also important to note that the Air District's insurance carrier has agreed to cover approximately 3/4 of the Air District's defense costs in this litigation, subject to a reservation of rights. It is therefore unlikely that the District will ultimately have to pay the full \$250,000 in work that RPLG will undertake under this amendment. However, given the reservation of rights, there is a possibility that the insurance carrier could change its position and deny coverage. If the Air District were ultimately unable to obtain insurance coverage, it would be required to pay for the full amount of RPLG's work under the contract. Therefore, out of an abundance of caution



and to provide full visibility by the Board into this contract, staff are requesting approval of this \$250,000 contract amendment.

## DISCUSSION

The Air District initially retrained RPLG shortly after former Interim Executive Officer/ACPO Sharon Landers took over on May 23, 2022. At that time, there was a need for independent outside counsel to provide legal advice on labor and employment issues in areas where the Air District's normal labor and employment firm was unable to handle the work. The Interim Executive Officer/ACPO therefore consulted with the District Counsel's office regarding finding an appropriate firm to provide these services. The Interim Executive Officer/ACPO and District Counsel made inquiries and reached out to several firms, as outlined below, and ultimately concluded that RPLG and its partner Arthur Hartinger were the best choice. The Air District therefore entered into the current agreement on June 3, 2022 (which has been amended several times since then).

As there was a need to retain counsel within a short timeframe to provide legal advice, and there are only a relatively small number of law firms that have the expertise, experience, and ability to provide the services needed, the Air District did not undertake a formal bid process. Instead, the District Counsel's office contacted qualified firms informally to determine what outside counsel would be best to provide these services. The District Counsel's office contacted firms that its attorneys already had relationships with, reached out to our sibling air districts to inquire about firms that these agencies have used for similar work, and pursued other inquiries to identify suitable candidate firms. The District Counsel's office ultimately approached three firms, including RPLG. RPLG and Mr. Hartinger seemed best suited to advise on these issues given their background and experience, availability to handle the work, and the very strong recommendations from two other public agencies that Mr. Hartinger has worked with in the past.

RPLG has been highly effective thus far in providing legal services to the Air District, and the decision to retain this firm appears to have been a good one. It is therefore recommended that RPLG handle representation of the Air District in the current litigation, and that the current agreement with RPLG be amended to increase the limit on fees to allow RPLG to perform this work.

This legal services agreement is one of two contracts that the Air District has with RPLG. The other is Contract No. 2023.106, entered into June 12, 2023, to provide professional consulting services with respect to the Air District's Administrative Code Update project. That agreement has a not-to-exceed contract limit of \$75,000.

## BUDGET CONSIDERATION/FINANCIAL IMPACT

The Fiscal Year 2024 budget included \$6.88 million in designated reserves for outside counsel litigation support. If approved, the funds to support this \$250,000 contract amendment will be transferred from these designated reserves to amend the Fiscal Year 2024 Executive Office's program budget.

Respectfully submitted,

Philip M. Fine  
Executive Officer/APCO

Prepared by: Alexander Crockett

ATTACHMENTS:

1. Renne Public Law Group Executed Legal Services Agreement - Signed Jun. 3, 2022
2. Renne Public Law Group Legal Services Agreement Amendment 4 - Signed April 17 2023
3. Renne Public Law Group Legal Services Agreement Amendment 5 - Signed June 28, 2023
4. Renee Public Law Group Legal Services Agreement Amendment 6 - DRAFT

**RPLG** Renne Public Law Group®  
350 Sansome Street | Suite 300  
San Francisco, CA 94104

Arthur A. Hartinger  
[ahartinger@publiclawgroup.com](mailto:ahartinger@publiclawgroup.com)  
(415) 848-72400

June 3, 2022

*Via Email* – [ACrockett@baaqmd.gov](mailto:ACrockett@baaqmd.gov)>

Alexander Crockett  
Chief Attorney  
Bay Area Air Quality Management District  
375 Beale Street, Suite 600  
San Francisco, CA 94105

**Re: Legal Services Agreement (General Advice in Labor and Employment)**

Dear Mr. Crockett:

Thank you for retaining Renne Public Law Group, LLP (“RPLG”) to provide legal services on behalf of Bay Area Air Quality Management District. We appreciate the opportunity to serve as your lawyers and look forward to working with you on this matter.

This Legal Services Agreement (“Agreement”) sets forth our agreement concerning the legal services we will provide and our fee and expense reimbursement arrangements for those services. Please read the entire Agreement before signing and returning it to us.

**1. Scope of Engagement.** We will provide general advice, representation in administrative proceedings, and other legal work in the area of labor and employment. Our work is limited to such services. When we agree to provide legal services in discrete matters, we will confirm the engagement and bill separately for such services.

**2. Fees and Personnel.** As compensation for our services, my hourly fee will be \$450.00, and our overall current public sector rates are attached as Attachment A.

I will be the attorney in charge of your matter[s]. However, this agreement retains the legal services of our law firm and not of a particular attorney. If other attorneys and/or paralegals are assigned to work on your matter, then current hourly rates of those individuals will be utilized. (See Attachment A.).

Rates will generally be increased annually on January 1 by the greater of 3% or the relevant local CPI increase over the prior 12-month period, rounded to the nearest \$5.

In the unlikely event of a dispute over fees, the parties agree that the dispute will be submitted to arbitration pursuant to the State Bar’s Mandatory Fee Arbitration Program.

**3. Billing and Payment Responsibilities.** We will send monthly statements which are due within 30 days of receipt. If you have any questions about an invoice, please promptly



Legal Services Agreement  
Page 2

telephone or write me so that we may discuss these matters. Billing is done in 1/10ths of an hour increments. Total billed amounts are not to exceed \$30,000.00.

Our Statement of Fee and Billing Information, which sets forth the details of our disbursement and expense policy, is attached as ATTACHMENT B.

**4. Termination of Services.** You may terminate RPLG's services at any time by written notice. After receiving such notice, we will cease providing services. We will cooperate with you in the orderly transfer of all related files and records to your new counsel.

RPLG may terminate its services for any reason upon reasonable written notice, consistent with the Rules of Professional Responsibility. If we terminate our services, you agree to execute a substitution of attorneys promptly and otherwise cooperate in effecting that termination.

Termination of our services, whether by you or by us, will not relieve the obligation to pay for services rendered and costs incurred before our services formally ceased.

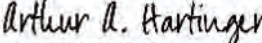
**5. No Guarantee of Outcome.** Any comments made by us about the potential outcome of this matter are expressions of opinion only and are not guarantees or promises about any outcome or results.

**6. Government Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California as applicable.

**7. Entire Agreement; Full Understanding; Modifications in Writing.** This letter contains our entire agreement about our representation. Any modifications or additions to this Agreement must be made in writing.

**8. Joint Representation.** Our firm maintains Of Counsel agreements with certain legal specialists. Because these individuals are deemed independent contractors under the applicable provisions of the tax laws and not employees of the firm, it is necessary that you consent to dual representation by the firm and the specialist in the event the matter which you have engaged us to handle requires the use of that specialist. This arrangement has no effect whatsoever on the cost of your legal services, rather it is an ethical requirement that we disclose this fact and that you consent. You are consenting by signing this letter.

Very truly yours,

DocuSigned by:  
  
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Arthur A. Hartinger

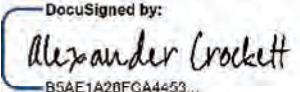


Legal Services Agreement  
Page 3

Attachments: **Public Sector Fee Schedule**  
Statement of Fee and Billing Information

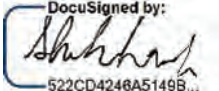
cc: RPLG Billing Department

These terms are accepted and agreed to as of the date of this letter.

By:  \_\_\_\_\_  
DocuSigned by:  
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Print Name: Alexander Crockett

Title: District Counsel

By:  \_\_\_\_\_  
DocuSigned by:  
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Print Name: Sharon Landers

Title: Interim Executive Officer

## ATTACHMENT A

### **PUBLIC SECTOR FEE SCHEDULE EFFECTIVE JANUARY 1, 2022 TO DECEMBER 31, 2022**

Partners:	\$395- \$500
Of Counsel:	\$350 - \$450
Associates:	\$295 - \$350
Law Clerks:	\$195 - \$295
Paralegals:	\$145 - \$225
Analysts:	\$125 - \$275
Consultants:	\$195 - \$475

Our rates adjust every January by the greater of 3% or the relevant local CPI increase over the prior 12-month period, rounded to the nearest \$5.



## ATTACHMENT B

### STATEMENT OF FEE AND BILLING INFORMATION

The following is a general description of our fee and billing policies. These general policies may be modified by the specific engagement letter or agreement to which this summary is attached.

**Professional Fees.** Our fees for professional services are based on the fair value of the services rendered. To help us determine the value of our services, our attorneys and paralegals maintain time records for each client and matter. Our attorneys and paralegals are assigned hourly rates which are based on years of experience, specialization, training and level of professional attainment. We adjust our rates periodically (usually at the beginning of each year) to take into account inflation and the increased experience of our professional personnel.

To keep professional fees at a minimum, legal work that does not require more experienced attorneys will be performed, where feasible, by attorneys with lower billing rates. Of course, the quality of the work is paramount, and we do not sacrifice quality to economy.

Before undertaking a particular assignment, we will, if requested, provide you with a fee estimate to the extent possible. Estimates are not possible for some matters, however, and cannot be relied on in many others because the scope of our work will not be clear at the outset. When a fee estimate is given, it is only an estimate; it is not a maximum or minimum fee quotation. The actual fee may be more or less than the quoted estimate.

**Billing and Payment Procedures.** Unless other arrangements are made at the time of the engagement, invoices will be sent monthly. Invoices for outside services exceeding \$100 may be billed separately. Occasionally, however, we may defer billing for a given month or months if the accrued fees and costs do not warrant current billing or if other circumstances would make it appropriate to defer billing.

Our invoices contain a brief narrative description of the work performed; if requested, the initials of the attorney who performed the work will appear on the statement. The invoice will include a line item reflecting in-house administrative costs. The firm's in-house administrative costs include duplicating, facsimile charges, telephone charges, e-mail, postage, mileage and other administrative expenses.

In addition, RPLG charges separately for certain costs incurred in the representation, as well as for any disbursements to third parties made on a client's behalf. Such costs and disbursements include, for example, the following: travel (at the IRS rate in effect at the time the travel occurs), computer-assisted research, transcription, overnight delivery and messenger services. For major disbursements to third parties, invoices may be sent directly to you for payment. RPLG also bills for time spent traveling on a client's behalf at our normal hourly rates.



If you have any questions regarding an invoice, the Operations Manager is available to answer your questions. For any unresolved matters, the Bar Association has an arbitration mechanism that can be used to resolve such matters.





Arthur A. Hartinger  
[ahartinger@publiclawgroup.com](mailto:ahartinger@publiclawgroup.com)  
(415) 848-72400

March 22, 2023

Via Email – [ACrockett@baaqmd.gov](mailto:ACrockett@baaqmd.gov)>

Philip M. Fine  
Executive Officer/APCO  
Alexander Crockett  
District Counsel  
Bay Area Air Quality Management District  
375 Beale Street, Suite 600  
San Francisco, CA 94105

**Re: Legal Services Agreement (General Advice in Labor and Employment)**

Dear Dr. Fine and Mr. Crockett:

On behalf of Renne Public Law Group, LLP (“RPLG”), we appreciate the opportunity to provide legal services to the Bay Area Air Quality Management District in the area of labor and employment. Per our recent discussions, this letter is to amend our existing Legal Services Agreement dated (for identification purposes only) June 2, 2022, as amended by our subsequent Amendments dated (for identification purposes only) August 29, 2022, September 23, 2022, and February 3, 2023, to increase the cap on fees from \$300,000 to \$400,000.

By this amendment, the sentence in Section 3 of the Legal Services Agreement that (per the August 29 and September 23, 2022, and February 3, 2023, amendments) that reads “Total billed amounts are not to exceed \$300,000.00” shall be and is replaced by the following sentence: “Total billed amounts are not to exceed \$400,000.00”. All other provisions of the Legal Services Agreement shall remain the same.

Very truly yours,

Arthur A. Hartinger

cc: RPLG Billing Department

These terms are accepted and agreed to as of the date of this letter.

DocuSigned by:  
  
Philip M. Fine  
Executive Officer/APCO

DocuSigned by:  
  
Alexander Crockett  
District Counsel

Date: 4/17/2023

Date: 4/17/2023



Arthur A. Hartinger  
Partner  
[ahartinger@publiclawgroup.com](mailto:ahartinger@publiclawgroup.com)  
(415) 848-7200

May 30, 2023

Via Email – [ACrockett@baaqmd.gov](mailto:ACrockett@baaqmd.gov)

Philip M. Fine  
Executive Officer/APCO  
Alexander Crockett  
District Counsel  
Bay Area Air Quality Management District  
375 Beale Street, Suite 600  
San Francisco, CA 94105

**Re: Legal Services Agreement (General Advice in Labor and Employment)**

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By this amendment, the sentence in Section 3 of the Legal Services Agreement that (per the August 29 and September 23, 2022, February 3, 2023, and April 5, 2023, amendments) that reads “Total billed amounts are not to exceed \$400,000.00” shall be and is replaced by the following sentence: “Total billed amounts are not to exceed \$550,000.00”. All other provisions of the Legal Services Agreement shall remain the same.

Very truly yours,

Arthur A. Hartinger

cc: RPLG Billing Department

These terms are accepted and agreed to as of the date of this letter.

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Philip M. Fine  
Executive Officer/APCO

DocuSigned by:  
  
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Alexander Crockett  
District Counsel

Date: 6/27/2023

Date: 6/26/2023

Arthur A. Hartinger  
Partner  
[ahartinger@publiclawgroup.com](mailto:ahartinger@publiclawgroup.com)  
(415) 848-7200

September 25, 2023

Via Email – [ACrockett@baaqmd.gov](mailto:ACrockett@baaqmd.gov)

Philip M. Fine  
Executive Officer/APCO  
Alexander Crockett  
District Counsel  
Bay Area Air Quality Management District  
375 Beale Street, Suite 600  
San Francisco, CA 94105

**Re: Legal Services Agreement (General Advice in Labor and Employment)**

Dear Dr. Fine and Mr. Crockett:

On behalf of Renne Public Law Group, LLP (“RPLG”), we appreciate the opportunity to provide legal services to the Bay Area Air Quality Management District in the area of labor and employment. Per our recent discussions, this letter is to amend our existing Legal Services Agreement dated (for identification purposes only) June 2, 2022, as amended by our subsequent Amendments dated (for identification purposes only) August 29, 2022, September 23, 2022, February 3, 2023, April 5, 2023, and June 7, 2023, to increase the cap on fees from \$550,000 to \$800,000.

By this amendment, the sentence in Section 3 of the Legal Services Agreement that (per the August 29 and September 23, 2022, and February 3, April 5, and June 7, 2023, amendments) that reads “Total billed amounts are not to exceed \$550,000.00” shall be and is replaced by the following sentence: “Total billed amounts are not to exceed \$800,000.00”. All other provisions of the Legal Services Agreement shall remain the same.

Very truly yours,



Arthur A. Hartinger

cc: RPLG Billing Department

These terms are accepted and agreed to as of the date of this letter.

\_\_\_\_\_  
Philip M. Fine  
Executive Officer/APCO

\_\_\_\_\_  
Alexander Crockett  
District Counsel

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

Memorandum

To: Chairperson John J. Bauters and Members  
of the Board of Directors

From: Philip M. Fine  
Executive Officer/APCO

Date: October 4, 2023

Re: Authorization to Transfer of \$925,000 of General Reserve Funds for the FYE 2024  
Spare the Air Summer Advertising and Messaging Campaign

RECOMMENDED ACTION

Recommend the Board of Directors authorize the Executive Officer/APCO to transfer \$925,000 from designated reserve funds to Program 305 for the FYE 2024 Spare the Air summer program.

BACKGROUND

The Communications Office has a contract for Allison+Partners (A+P) for advertising and messaging for the Spare the Air program. The contract is in its third of three years, with \$2,019,000 in funding approved by the Board for FYE 2024.

The Air District's Spare the Air summer program promotes transit and active transportation through advertising, media outreach, social media, and conducts public opinion surveys to evaluate the effectiveness of the Spare the Air program. Spare the Air Alerts are issued to notify the public of unhealthy air quality and actions they can take to protect their health and reduce pollution levels.

DISCUSSION

The Spare the Air summer program has consistently utilized federal CMAQ funding. Air District staff has worked to acquire continued CMAQ funding for the Spare the Air program through CalTrans and the Metropolitan Transportation Commission. However, CMAQ funding is no longer available. Staff is therefore recommending authorization to transfer \$925,000 from the designated reserve funds to Program 305 for the FYE 2024 Spare the Air summer program.

This transfer will not increase the amount authorized for this program under the existing contract with A+P. It will simply allocate general reserve funds to support the current contract to replace the CMAQ funding that is no longer available.

BUDGET CONSIDERATION/FINANCIAL IMPACT

The Fiscal Year 2024 budget included \$2.0 million in designated reserves for Spare the Air program. If approved, \$925,000 will be transferred from these designated reserves to amend the Fiscal Year 2024 Communication Office for the Spare the Air program.

Respectfully submitted,

Philip M. Fine  
Executive Officer/APCO

Prepared by: Kristina Chu  
Reviewed by: Kristine Roselius

ATTACHMENTS:

1. Executed Amendment 2 Contract No. 2021.031 - Allison & Partners, LLC

**AMENDMENT NO. 2 TO**  
**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**  
**CONTRACT NO. 2021.031**

This amendment to the above-entitled contract ("Contract Amendment") is dated, for reference purposes only, April 4, 2023, and consists of 3 pages.

**RECITALS:**

1. The Bay Area Air Quality Management District ("DISTRICT") and **Allison & Partners, LLC** ("CONTRACTOR") (hereinafter referred to as the "PARTIES") entered into the above-entitled contract for advertising, communications, and public outreach services for DISTRICT's Spare the Air Campaigns (the "Contract"), which Contract was executed on behalf of CONTRACTOR on April 19, 2021, and on behalf of DISTRICT on April 26, 2021.
2. The PARTIES entered into Amendment No. 1 to the Contract, dated May 4, 2022, for reference purposes only, to amend the term and total cost of the Contract.
3. The PARTIES seek to further amend the term and the total cost of the Contract because DISTRICT seeks to have CONTRACTOR continue to provide the services prescribed in the Contract, and CONTRACTOR desires to continue to provide those services, up to the new total maximum cost and new term end date.
4. The PARTIES also seek to amend the Federal Funding Requirements of the Contract to add additional terms and conditions required for federally funded projects.
5. In accordance with Section 29 of the Contract, DISTRICT and CONTRACTOR desire to amend the above-entitled Contract as follows:

**TERMS AND CONDITIONS OF CONTRACT AMENDMENT:**

1. By this Contract Amendment, DISTRICT and CONTRACTOR amend Section 5, "Term." The term of the Contract shall be extended so that the termination date of the Contract is now June 30, 2024.
2. By this Contract Amendment, DISTRICT and CONTRACTOR amend Paragraph C of Section 9, "Agreement to Provide Services," of the Contract to replace "\$1,950,000 from July 1, 2021 – June 30, 2022 and \$1,950,000 from July 1, 2022 to June 30, 2023" with "\$1,950,000 from July 1, 2021 to June 30, 2022; \$1,950,000 from July 1, 2022 to June 30, 2023; and \$2,019,000 from July 1, 2023 to June 30, 2024."

3. By this Contract Amendment, DISTRICT and CONTRACTOR amend Section 31, "Federal Funding Requirements," of the Contract to add the following new paragraph L to the end of the section:
  - L. Clean Air Act and the Federal Water Pollution Control Act
    - i.) CONTRACTOR and subcontractor agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). CONTRACTOR and subcontractor agree to report violations of applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387) to the DISTRICT, the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). CONTRACTOR and subcontractor agree and understand that DISTRICT may report violations of applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387) by CONTRACTOR or subcontractor to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
4. DISTRICT and CONTRACTOR agree that all other terms and conditions of the Contract shall remain in full force and effect.

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

BAY AREA AIR QUALITY  
MANAGEMENT DISTRICT

ALLISON & PARTNERS LLC

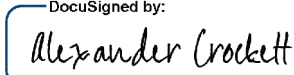
By:  \_\_\_\_\_  
DocuSigned by:  
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Philip M. Fine  
Executive Officer/APCO

By:  \_\_\_\_\_  
DocuSigned by:  
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Meghan Curtis  
General Manager

Date: 6/13/2023

Date: 5/5/2023

Approved as to form:  
District Counsel

By:  \_\_\_\_\_  
DocuSigned by:  
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Alexander G. Crockett  
District Counsel



**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

Memorandum

To: Chairperson John J. Bauters and Members  
of the Board of Directors

From: Philip M. Fine  
Executive Officer/APCO

Date: October 4, 2023

Re: Authorization to Execute a Contract Amendment with Oppenheimer Investigations  
Group, LLP

RECOMMENDED ACTION

Recommend the Board of Directors authorize the Executive Officer/APCO to execute a contract amendment for Oppenheimer Investigation Group, LLP for an amount not to exceed from \$150,000 to \$350,000.

BACKGROUND

Periodically, the Air District has the need to engage an outside law firm for the purpose of conducting workplace investigations. Outside law firms are utilized for this type of work due to the specialization required in personnel matters.

DISCUSSION

Oppenheimer Investigation Group, LLP currently works with the Air District and is familiar with the Air District's organizational structure, operations, and policies. Oppenheimer Investigation Group, LLP specializes in workplace investigation, has experience working with public sector employers, and has performed work in a timely and efficient manner. Given the firm's experience, this amendment is requested as a no-bid contract amendment. The amendment will allow the Air District to engage with the firm on any current and future matters.

BUDGET CONSIDERATION/FINANCIAL IMPACT

Funding for the amended contract amount is included in the Human Resources Office Budget for Fiscal Year Ending (FYE) 2024.

Respectfully submitted,

Philip M. Fine  
Executive Officer/APCO

Prepared by: Judy Yu  
Reviewed by: Hyacinth Hinojosa

ATTACHMENTS:

1. Original Executed Contract and Amendments #1 - 5 for Contract No. 2020.195 - Oppenheimer Investigations Group
2. Draft Amendment #6 for Contract No. 2020.195 - Oppenheimer Investigations Group

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

**PROFESSIONAL SERVICES CONTRACT**

**CONTRACT NO. 2020.195**

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 **Law Offices of Amy Oppenheimer** (“CONTRACTOR”) whose address is 1442A Walnut Street #234, Berkeley, CA 94709.
  
2. RECITALS
  - A. DISTRICT is the local agency with primary responsibility for regulating stationary source air pollution in the Bay Area Air Quality Management District in the State of California. DISTRICT is authorized to enter into this Contract under California Health and Safety Code Section 40701. DISTRICT desires to contract with CONTRACTOR for services described in the Scope of Work, attached hereto as Attachment A and made a part hereof by this reference. DISTRICT is entering into this Contract based on CONTRACTOR’s stated qualifications to perform the services.
  - B. All parties to this Contract have had the opportunity to have this contract reviewed by their attorney.
  
3. PERFORMANCE REQUIREMENTS
  - A. CONTRACTOR is authorized to do business in the State of California. CONTRACTOR attests that it is in good tax standing with federal and state tax authorities.
  - B. CONTRACTOR 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. CONTRACTOR 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. CONTRACTOR 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. CONTRACTOR shall exercise the degree of skill and care customarily required by accepted professional practices and procedures.
  - F. CONTRACTOR shall ensure that any subcontractors, employees and agents performing under this Contract comply with the performance standards set forth in paragraph D above.
  
4. TERM – The term of this Contract is from date of Contract execution to December 31, 2021, unless further extended by amendment of this Contract in writing, or terminated earlier. CONTRACTOR shall not submit any invoice for services performed under this Contract until the Contract is fully executed.
  
5. TERMINATION

- A. The DISTRICT may terminate this Contract at any time, at will, and without specifying any reason, by notifying CONTRACTOR 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 10 below. Immediately upon receipt of the notice of termination, CONTRACTOR shall cease all work under this Contract, except such work as is specified in the notice of termination. CONTRACTOR shall deliver a final invoice for all remaining work performed but not billed, including any work specified in the termination notice, on or before ten (10) business days following the termination date.
- B. Either party may terminate this Contract for breach by the other party.
  - i) Failure to perform any agreement or obligation contained in this Contract or failure to perform the services in a satisfactory manner shall constitute a breach of the Contract.
  - 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 CONTRACTOR 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 CONTRACTOR 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, CONTRACTOR under this Contract.
  - iv) The notice of breach shall be provided in accordance with the notice requirements set forth in section 10.
  - v) The non-breaching party reserves all rights under law and equity to enforce this Contract and recover any damages.

6. INSURANCE

- A. CONTRACTOR 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 CONTRACTOR is a sole proprietor, CONTRACTOR 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 CONTRACTOR's personal automobile liability insurance. A CONTRACTOR 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.

- iv) Professional liability insurance with limits not less than \$1,000,000 each claim.
- B. All insurance shall be placed with insurers acceptable to DISTRICT.
- C. Prior to commencement of work under this Contract, CONTRACTOR shall furnish properly-executed certificates of insurance for all required insurance. Upon request by DISTRICT, CONTRACTOR shall provide a complete copy of any required insurance policy. CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR or to terminate this Contract for breach.

7. INDEMNIFICATION

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

8. PAYMENT

- A. DISTRICT shall pay CONTRACTOR for services in accordance with the terms set forth in the Cost Schedule, which is attached hereto as Attachment B and incorporated herein by this reference.
- B. CONTRACTOR shall submit invoice(s) to DISTRICT for services performed. Each invoice shall specify the total cost of the services for which the invoice is submitted, shall reference tasks shown in the Scope of Work, the hours associated with same, or percentage completion thereof, and the amount of charge claimed, and, as appropriate, shall list any charges for equipment, material, supplies, travel, and subcontractors' services.
- C. DISTRICT's payment of invoices shall be subject to the following limitations and requirements:
  - i) Each invoice, including supporting documentation, shall be prepared in duplicate on CONTRACTOR's letterhead; shall list DISTRICT's contract number, the period covered by the invoice, and the CONTRACTOR's Social Security Number or Federal Employer Identification Number; and shall be submitted to: Bay Area Air Quality Management District, 375 Beale Street, Suite 600, San Francisco, CA 94105, Attn: Contracts Manager.
  - ii) DISTRICT shall not pay interest, fees, handling charges, or the cost of money on the Contract.

- iii) DISTRICT shall pay CONTRACTOR within thirty (30) calendar days after approval by DISTRICT of an itemized invoice.
  - D. The total amount for which DISTRICT may be held liable for the performance of services specified in this Contract shall not exceed \$20,000.
9. 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, Suite 600, San Francisco, or at such other place as may be mutually agreed upon by the parties and the mediator.
  - C. The parties shall make good faith efforts to hold the mediation within thirty (30) days after receipt of the demand for mediation.
  - D. Each party shall bear its own mediation costs.
  - E. In the event the parties are unable to resolve the dispute, either party may file an action in a court of competent jurisdiction to enforce the Contract.
  - F. Maximum recovery under this section shall be limited to \$20,000. The mediation costs shall not reduce the maximum amount recoverable under this section.
10. NOTICES – All notices that are required under this Contract shall be provided in the manner set forth herein, unless specified otherwise. Notice to a party shall be delivered to the attention of the person listed below, or to such other person or persons as may hereafter be designated by that party in writing. Notice shall be in writing sent by e-mail, facsimile, or regular first class mail. In the case of e-mail and facsimile communications, valid notice shall be deemed to have been delivered upon sending, provided the sender obtained an electronic confirmation of delivery. E-mail and facsimile communications shall be deemed to have been received on the date of such transmission, provided such date was a business day and delivered prior to 4:00 p.m. PST. Otherwise, receipt of e-mail and facsimile communications shall be deemed to have occurred on the following business day. In the case of regular mail notice, notice shall be deemed to have been delivered on the mailing date and received five (5) business days after the date of mailing.

DISTRICT: Bay Area Air Quality Management District  
375 Beale Street, Suite 600  
San Francisco, CA 94105  
Attn: Judy Yu

CONTRACTOR: Law Offices of Amy Oppenheimer  
1442A Walnut Street, #234  
Berkeley, CA 94709  
Attn: Cody Holtz

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

12. EMPLOYEES OF CONTRACTOR

- A. CONTRACTOR 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. CONTRACTOR, its officers, employees, agents, or representatives shall not be considered employees or agents of DISTRICT, nor shall CONTRACTOR, its officers, employees, agents, or representatives be entitled to or eligible to participate in any benefits, privileges, or plans, given or extended by DISTRICT to its employees.
- C. CONTRACTOR shall assign those employees listed in the Cost Schedule to perform work under this Contract. CONTRACTOR shall not assign different employees to perform this work without the express written permission of DISTRICT, which DISTRICT will not unreasonably withhold.
- D. DISTRICT reserves the right to review the credentials to perform the work of any of CONTRACTOR's employees assigned herein and to disapprove CONTRACTOR's assignments. CONTRACTOR warrants that it will not employ any subcontractor(s) without prior written approval from DISTRICT.

13. CONFIDENTIALITY – In order to carry out the purposes of this Contract, CONTRACTOR may require access to certain of DISTRICT's confidential information (including trade secrets, inventions, confidential know-how, confidential business information, and other information that DISTRICT considers confidential) (collectively, "Confidential Information"). It is expressly understood and agreed that DISTRICT may designate in a conspicuous manner Confidential Information that CONTRACTOR obtains from DISTRICT, and CONTRACTOR 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 CONTRACTOR requiring access in fulfillment of the services provided under this Contract.
- B. Ensure that CONTRACTOR'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 CONTRACTOR'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 CONTRACTOR.
- E. Take any and all other actions necessary or desirable to assure such continued confidentiality and protection of such information during the term of this Contract and following expiration or termination of the Contract.
- F. Prevent access to such materials by a person or entity not authorized under this Contract.



- G. Establish specific procedures in order to fulfill the obligations of this section.
14. INTELLECTUAL PROPERTY RIGHTS – Title and full ownership rights to all intellectual property developed under this Contract shall at all times remain with DISTRICT, unless otherwise agreed to in writing.
15. PUBLICATION
- A. DISTRICT shall approve in writing any report or other document prepared by CONTRACTOR in connection with performance under this Contract prior to dissemination or publication of such report or document to a third party. DISTRICT may waive in writing its requirement for prior approval.
  - B. Until approved by DISTRICT, any report or other document prepared by CONTRACTOR shall include on each page a conspicuous header, footer, or watermark stating “DRAFT – Not Reviewed or Approved by BAAQMD,” unless DISTRICT has waived its requirement for prior approval pursuant to paragraph A of this section.
  - C. Information, data, documents, or reports developed by CONTRACTOR for DISTRICT, pursuant to this Contract, shall be part of DISTRICT’s public record, unless otherwise indicated. CONTRACTOR may use or publish, at its own expense, such information, provided DISTRICT approves use of such information in advance. The following acknowledgment of support and disclaimer must appear in each publication of materials, whether copyrighted or not, based upon or developed under this Contract.

“This report was prepared as a result of work sponsored, paid for, in whole or in part, by the Bay Area Air Quality Management District (District). The opinions, findings, conclusions, and recommendations are those of the author and do not necessarily represent the views of the District. The District, its officers, employees, contractors, and subcontractors make no warranty, expressed or implied, and assume no legal liability for the information in this report.”
  - D. CONTRACTOR shall inform its officers, employees, and subcontractors involved in the performance of this Contract of the restrictions contained herein and shall require compliance with the above.
16. NON-DISCRIMINATION – In the performance of this Contract, CONTRACTOR shall not discriminate in its recruitment, hiring, promotion, demotion, and termination practices on the basis of race, religious creed, color, national origin, ancestry, sex, age, marital status, sexual orientation, medical condition, or physical or mental disability and shall comply with the provisions of the California Fair Employment & Housing Act (Government Code Section 12900 et seq.), the Federal Civil Rights Act of 1964 (P.L. 88-352) and all amendments thereto, and all administrative rules and regulations issued pursuant to said Acts. CONTRACTOR shall also require each subcontractor performing work in connection with this Contract to comply with this section and shall include in each contract with such subcontractor provisions to accomplish the requirements of this section.
17. PROPERTY AND SECURITY – Without limiting CONTRACTOR’S obligations with regard to security, CONTRACTOR 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.
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 CONTRACTOR 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 CONTRACTOR, 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.
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 CONTRACTOR 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 provisions of sections 7 (Indemnification), 13 (Confidentiality), 14 (Intellectual Property Rights), and 15 (Publication) shall survive the expiration or termination of this Contract.

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

BAY AREA AIR QUALITY  
MANAGEMENT DISTRICT

LAW OFFICES OF AMY OPPENHEIMER

By: DocuSigned by:  
Jeff McKay  
382C71570CFB4F8...  
Jack P. Broadbent  
Executive Officer/APCO

By: Cody Holtz  
Cody Holtz  
Office Manager

Date: 9/1/2020

Date: 8/28/2020

Approved as to form:  
District Counsel

By: DocuSigned by:  
Brian Bunger 9/1/2020  
2C11BC0B537B4A2...  
Brian C. Bunger  
District Counsel

## **ATTACHMENT A**

### **SCOPE OF WORK**

DISTRICT seeks investigative services to aid its Human Resources division. CONTRACTOR has over 25 years of experience and CONTRACTOR will provide investigative services which include reviewing documents, interviewing witnesses, and writing a report that includes factual findings without making ultimate legal conclusions.

To accomplish these services CONTRACTOR will begin investigations by meeting with DISTRICT representatives to discuss particular concerns with respect to the investigation at hand. CONTRACTOR will explore various options in resolving the issue as part of the investigation. CONTRACTOR standard practice is to record interviews of witnesses and to provide the DISTRICT with a detailed report outlining CONTRACTOR findings at the conclusion of the investigation. CONTRACTOR determines whether the facts occurred as alleged by the complainant. CONTRACTOR can make ultimate determinations and/or recommendations if DISTRICT specifically requests that CONTRACTOR does so. Otherwise, CONTRACTOR leaves the analysis whether the facts found constitute a violation of the rules and/or law, to DISTRICT and/or any other attorneys DISTRICT may delegate. CONTRACTOR will make certain to remain neutral and unbiased in conducting investigation so that CONTRACTOR's investigators can be credible witnesses, if called to testify.

**ATTACHMENT B****COST SCHEDULE**

DISTRICT will pay CONTRACTOR on a time-and-material basis for completion of the tasks outlined in Attachment A, Scope of Work. CONTRACTOR will submit invoices for its actual time and material costs in accordance with Section 8, "Payment", of this Contract. The tasks and services will be performed by the following at the specified rates:

**Labor Rates**

<b>Name(s)</b>	<b>Rate</b>
Amy Oppenheimer	\$445 per hour
Tina Ro-Connolly & Vida Thomas	\$395 per hour
Zaneta Seidel, Alezah Trigueros, Fernando Flores, Ilona Turner, Anna Gehriger, Sandy Fu, Julie Matlof Kennedy	\$345 per hour
Kim DaSilva, Madeline Buitelaar, Renee Jansen, Garrett Smith	\$295 per hour
Writer/Editor/Interns	\$195 per hour

**Materials, Travel and Other Rates**

Copying is charged at \$0.25 per page. Additional prints, postage and special deliveries (i.e Fed-Ex, PS, DHL, messenger service), and other hired deliveries completed at the request of DISTRICT or necessary to comply with court or other deadline will also be billed to the DISTRICT.

DISTRICT will reimburse CONTRACTOR for travel time at the usual hourly rate of the individual providing the service. DISTRICT will reimburse CONTRACTOR for travel costs only to the extent that they comply with DISTRICT policy, which is attached as Attachment C, "Contractor Travel Policy".

**Total cost of Contract not to exceed: \$20,000**



*Committed to Achieving Clean Air to Protect  
the Public's Health and the Environment*

# Attachment C

## Contractor Travel Policy

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Contractors who are under agreement with the District and who plan to bill the District for travel expenses per the terms of their Contract must adhere to this Contractor Travel Policy.

### **GUIDELINES**

#### **Making Travel Arrangements**

When making travel arrangements, Contractor should take reasonable measures to secure the lowest fares and prices for transportation, lodging, and food. Documentation of this research will be required to receive reimbursement. **Please note that booking travel and hotel arrangements at the same time can result in significant savings to the District and therefore is encouraged.**

1. The Bay Area Air Quality Management District shall reimburse travel-related expenses to cover lodging, meals, other incidental expenses and costs of transportation subject to the following limitations:
  - **Air Transportation** - Coach class rate for all flights. If coach is not available, business class rate is permissible only with prior written client approval.
  - **Car Rental** – A compact car rental. Mid-size cars rentals are permissible if the rental is shared by three or more individuals.
  - **Lodging** – Holiday Inn will be used up to the [federal GSA FTR rates](#) for San Francisco, California. If Holiday Inn is not used then reimbursement will be at the [current rate for a standard room at Holiday Inn](#).
  - **Meals** – Up to the [federal GSA FTR rates](#) for San Francisco, California.
  - **Incidentals** – Up to the [federal GSA FTR rates](#) for San Francisco, California.
  - **Mileage** – Reimbursement will be provided at the [current reimbursement rate](#) for each mile, or the equivalent of the IRS Mileage rate, whichever is greater.
  - **Parking** - Travelers will be reimbursed for airport parking or nearby lots for overnight or day trips. For trips ranging from 2-7 days, outlying or long-term lots are recommended. For trips of longer duration, the cost of shuttle service in lieu of parking charges shall be considered. Travelers will be reimbursed for parking near the BAAQMD office for meetings.
  - **Ground Transportation** – The least expensive means of transportation shall be used within the Bay Area, considering time and other constraints. Travelers not affiliated with the San Francisco or Oakland office will be reimbursed for public transportation and taxis, provided they do not have a rental car

2. Supporting documentation shall be provided for travel-related expenses in accordance with the following requirements:
  - **Airfare, Car Rentals, Lodging** – Bills for actual expenses incurred.
  - **Meals** – Meals billed in excess of \$25.00 each day require receipts or other supporting documentation for the total amount of the bill to be approved by the DISTRICT.
  - **Other Travel Related Expenses** – Receipts are required for all individual items in excess of twenty five dollars (\$25.00).
3. Travel Time Charging
  - Contractor employees (and subcontractors) are to record hours actually worked (those in which a benefit to the DISTRICT was provided during travel) when traveling on business for the firm. This normally will not include all hours during travel, except when all travel is within the normal business day (8:00 AM – 5:00 PM). If travel is on a normal business day, then travel will be arranged for morning or evening so as to minimize travel during working hours (8:00 AM – 5:00 PM) and maximize on-site time on the day of travel. Time that is incurred because of personal preference or combining personal travel with business is not to be charged.

**AMENDMENT NO. 1 TO**  
**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**  
**CONTRACT NO. 2020.195**

This amendment to the above-entitled contract (“Contract Amendment”) is dated, for reference purposes only, April 8, 2021.

**RECITALS:**

1. The Bay Area Air Quality Management District (“DISTRICT”) and **Law Offices of Amy Oppenheimer** (“CONTRACTOR”) (hereinafter referred to as the “PARTIES”) entered into the above-entitled contract for investigative services to aid DISTRICT’s Human resource division (the “Contract”), which Contract was executed on behalf of CONTRACTOR on August 28, 2020, and on behalf of DISTRICT on September 1, 2020.
2. The PARTIES seek to amend the total cost to the Contract because the DISTRICT seeks to continue receiving services from CONTRACTOR prescribed in the Contract and CONTRACTOR desires to provide those services.
3. The PARTIES seek to amend the name of the CONTRACTOR because CONTRACTOR has a new business name.
4. In accordance with Section 26 of the Contract, DISTRICT and CONTRACTOR desire to amend the above-entitled Contract as follows:

**TERMS AND CONDITIONS OF CONTRACT AMENDMENT:**

1. By this Contract Amendment, DISTRICT and CONTRACTOR amend Paragraph D of Section 8, “Payment,” of the Contract to replace “\$20,000” with “\$25,689.”
2. By this Contract Amendment, DISTRICT and CONTRACTOR amend Paragraph F of Section 9, “Dispute Resolution,” of the Contract to replace “\$20,000” with “\$25,689.”
3. By this Contract Amendment, DISTRICT and CONTRACTOR amend Attachment B COST SCHEDULE to replace “**Total cost of Contract not to exceed: \$20,000**” with “**Total cost of Contract not to exceed: \$25,689**”.
4. By this Contract Amendment, DISTRICT and CONTRACTOR amend all references to “Law Offices of Amy Oppenheimer” with “Oppenheimer Investigations Group, LLP” in the Contract.



5. DISTRICT and CONTRACTOR agree that all other terms and conditions of the Contract shall remain in full force and effect.

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

BAY AREA AIR QUALITY  
MANAGEMENT DISTRICT

OPPENHEIMER INVESTIGATIONS GROUP,  
LLP

DocuSigned by:  
*Jeff McKay*  
By: \_\_\_\_\_  
Jack P. Broadbent  
Executive Officer/APCO

*Cody Holtz*  
By: \_\_\_\_\_  
Cody Holtz  
Office Manager

Date: 4/16/2021

Date: April 15, 2021

Approved as to form:  
District Counsel

DocuSigned by:  
*Brian Bunger*  
By: \_\_\_\_\_  
Brian C. Bunger  
District Counsel



**AMENDMENT NO. 2 TO**  
**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**  
**CONTRACT NO. 2020.195**

This amendment to the above-entitled contract (“Contract Amendment”) is dated, for reference purposes only, October 1, 2021.

**RECITALS:**

1. The Bay Area Air Quality Management District (“DISTRICT”) and **Oppenheimer Investigations Group, LLP** (“CONTRACTOR”) (hereinafter referred to as the “PARTIES”) entered into the above-entitled contract for investigative services to aid DISTRICT’s Human resource division (the “Contract”), which Contract was executed on behalf of CONTRACTOR on August 28, 2020, and on behalf of DISTRICT on September 1, 2020.
2. The PARTIES entered into Amendment No. 1 to the Contract, dated April 8, 2021, for reference purposes only, to amend the business name of the CONTRACTOR and the total cost of the Contract.
3. The PARTIES seek to amend the term and total cost to the Contract because the DISTRICT seeks to continue receiving services from CONTRACTOR prescribed in the Contract and CONTRACTOR desires to provide those services.
4. In accordance with Section 26 of the Contract, DISTRICT and CONTRACTOR desire to amend the above-entitled Contract as follows:

**TERMS AND CONDITIONS OF CONTRACT AMENDMENT:**

1. By this Contract Amendment, DISTRICT and CONTRACTOR amend Section 4, “Term.” The term of the Contract shall be extended so that the termination date of the Contract is now December 31, 2022.
2. By this Contract Amendment, DISTRICT and CONTRACTOR amend Paragraph D of Section 8, “Payment,” of the Contract to replace “\$25,689” with “\$35,689.”
3. By this Contract Amendment, DISTRICT and CONTRACTOR amend Paragraph F of Section 9, “Dispute Resolution,” of the Contract to replace “\$25,689” with “\$35,689.”
4. By this Contract Amendment, DISTRICT and CONTRACTOR replace Attachment B, Cost Schedule, with the attached “Attachment B-1, Cost Schedule” and agree that all

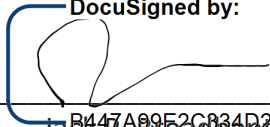
references in the Contract to Attachment B shall be deemed to refer to Attachment B-1, Cost Schedule.

- 5. DISTRICT and CONTRACTOR agree that all other terms and conditions of the Contract shall remain in full force and effect.

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

BAY AREA AIR QUALITY  
MANAGEMENT DISTRICT

OPPENHEIMER INVESTIGATIONS GROUP,  
LLP

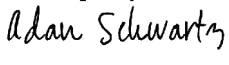
DocuSigned by:  
  
 By: \_\_\_\_\_  
 B447A89F52C834D2...  
 Jack P. Broadbent  
 Executive Officer/APCO

  
 By: \_\_\_\_\_  
 Cody Holtz  
 Office Manager

Date: 11/9/2021

Date: October 6, 2021

Approved as to form:  
District Counsel

DocuSigned by:  
  
 By: \_\_\_\_\_ 11/3/2021  
 150A910F987E4D3...  
 Adam Schwartz  
 Acting District Counsel

**ATTACHMENT B-1****COST SCHEDULE**

DISTRICT will pay CONTRACTOR on a time-and-material basis for completion of the tasks outlined in Attachment A, Scope of Work. CONTRACTOR will submit invoices for its actual time and material costs in accordance with Section 8, "Payment", of this Contract. The tasks and services will be performed by the following at the specified rates:

**Labor Rates**

<b>Name(s)</b>	<b>Rate</b>
Amy Oppenheimer	\$445 per hour
Tina Ro-Connolly & Vida Thomas	\$395 per hour
Zaneta Seidel, Alezah Trigueros, Fernando Flores, Ilona Turner, Anna Gehriger, Sandy Fu, Julie Matlof Kennedy	\$345 per hour
Kim DaSilva, Madeline Buitelaar, Renee Jansen, Garrett Smith	\$295 per hour
Writer/Editor/Interns	\$195 per hour

**Labor Rates: Effective January 1, 2022**

<b>Attorney Name(s)</b>	<b>Rate</b>
Amy Oppenheimer	\$480 per hour
Tina Ro-Connolly, Vida Thomas, and Julie Matlof Kennedy	\$420 per hour
Zaneta Seidel, Alezah Trigueros, Danielle Drossel, Ilona Turner, Anna Gehriger, Sandy Fu	\$360 per hour
Madeline Buitelaar, Gorev Ahuja, Julia Olivier, Ashlyn Clark, Renee Jansen, Garrett Smith	\$300 per hour
Writers/Editors	\$180 per hour
Interns	\$120 per hour

\*The rate for supervision/substantive report review, regardless of attorney, is \$420 per hour.

**Materials, Travel and Other Rates**

Copying is charged at \$0.25 per page. Additional prints, postage and special deliveries (i.e Fed-Ex, PS, DHL, messenger service), and other hired deliveries completed at the request of DISTRICT or necessary to comply with court or other deadline will also be billed to the DISTRICT.

DISTRICT will reimburse CONTRACTOR for travel time at the usual hourly rate of the individual providing the service. DISTRICT will reimburse CONTRACTOR for travel costs only to the extent that they comply with DISTRICT policy, which is attached as Attachment C, "Contractor Travel Policy".

**Total cost of Contract not to exceed: \$35,689.**

**AMENDMENT NO. 3 TO**  
**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**  
**CONTRACT NO. 2020.195**

This amendment to the above-entitled contract (“Contract Amendment”) is dated, for reference purposes only, May 11, 2022.

**RECITALS:**

1. The Bay Area Air Quality Management District (“DISTRICT”) and **Oppenheimer Investigations Group, LLP** (“CONTRACTOR”) (hereinafter referred to as the “PARTIES”) entered into the above-entitled contract for investigative services to aid DISTRICT’s Human resource division (the “Contract”), which Contract was executed on behalf of CONTRACTOR on August 28, 2020, and on behalf of DISTRICT on September 1, 2020.
2. The PARTIES entered into Amendment No. 1 to the Contract, dated April 8, 2021, for reference purposes only, to amend the business name of the CONTRACTOR and the total cost of the Contract.
3. The PARTIES entered into Amendment No. 2 to the Contract, dated October 1, 2021, for reference purposes only, to amend the term, total cost, and Attachment B, Cost Schedule, with “Attachment B-1, Cost Schedule” of the Contract.
4. The PARTIES seek to amend Attachment B-1, Cost Schedule, with “Attachment B-2, Cost Schedule” of the Contract because the DISTRICT seeks to continue receiving services from CONTRACTOR prescribed in the Contract and CONTRACTOR desires to provide those services.
5. In accordance with Section 26 of the Contract, DISTRICT and CONTRACTOR desire to amend the above-entitled Contract as follows:

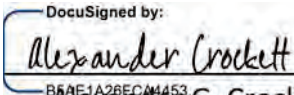
**TERMS AND CONDITIONS OF CONTRACT AMENDMENT:**

1. By this Contract Amendment, DISTRICT and CONTRACTOR replace Attachment B-1, Cost Schedule, with the attached “Attachment B-2, Cost Schedule” and agree that all references in the Contract to Attachment B-1 shall be deemed to refer to Attachment B-2, Cost Schedule.
2. DISTRICT and CONTRACTOR agree that all other terms and conditions of the Contract shall remain in full force and effect.

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

BAY AREA AIR QUALITY  
MANAGEMENT DISTRICT

OPPENHEIMER INVESTIGATIONS GROUP,  
LLP

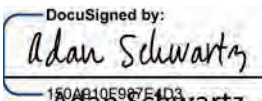
By:   
Alexander G. Crockett  
Interim Executive Officer/APCO

By:   
Cody Holtz  
Office Manager

Date: 5/17/2022

Date: May 13, 2022

Approved as to form:  
District Counsel

By:   
Adan Schwartz  
Acting District Counsel

**ATTACHMENT B-2****COST SCHEDULE**

DISTRICT will pay CONTRACTOR on a time-and-material basis for completion of the tasks outlined in Attachment A, Scope of Work. CONTRACTOR will submit invoices for its actual time and material costs in accordance with Section 8, "Payment", of this Contract. The tasks and services will be performed by the following at the specified rates:

**Labor Rates: Effective January 1, 2022**

<b>Attorney Name(s)</b>	<b>Rate</b>
Amy Oppenheimer	\$480 per hour
Tina Ro-Connolly, Vida Thomas, and Tracey Merwise	\$420 per hour
Zaneta Seidel, Alezah Trigueros, Danielle Drossel, Ilona Turner, Sandy Fu, Renee Jansen	\$360 per hour
Madeline Buitelaar, Gorev Ahuja, Julia Olivier, Ashlyn Clark, , Alice Donahue , Alfredo Diaz, Maria Walker, Roxanne Hill	\$300 per hour
Writers/Editors Garrett Smith and Justina Yassa	\$180 per hour
Interns	\$120 per hour

\*The rate for supervision/substantive report review, regardless of attorney, is \$420 per hour.

**Materials, Travel and Other Rates**

Copying is charged at \$0.25 per page. Additional prints, postage and special deliveries (i.e Fed-Ex, PS, DHL, messenger service), and other hired deliveries completed at the request of DISTRICT or necessary to comply with court or other deadline will also be billed to the DISTRICT.

DISTRICT will reimburse CONTRACTOR for travel time at the usual hourly rate of the individual providing the service. DISTRICT will reimburse CONTRACTOR for travel costs only to the extent that they comply with DISTRICT policy, which is attached as Attachment C, "Contractor Travel Policy".

**Total cost of Contract not to exceed: \$35,689.**

**AMENDMENT NO. 4 TO**  
**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**  
**CONTRACT NO. 2020.195**

This amendment to the above-entitled contract (“Contract Amendment”) is dated, for reference purposes only, August 1, 2022.

**RECITALS:**

1. The Bay Area Air Quality Management District (“DISTRICT”) and **Oppenheimer Investigations Group, LLP** (“CONTRACTOR”) (hereinafter referred to as the “PARTIES”) entered into the above-entitled contract for investigative services to aid DISTRICT’s Human resource division (the “Contract”), which Contract was executed on behalf of CONTRACTOR on August 28, 2020, and on behalf of DISTRICT on September 1, 2020.
2. The PARTIES entered into Amendment No. 1 to the Contract, dated April 8, 2021, for reference purposes only, to amend the business name of the CONTRACTOR and the total cost of the Contract.
3. The PARTIES entered into Amendment No. 2 to the Contract, dated October 1, 2021, for reference purposes only, to amend the term, total cost, and Attachment B, Cost Schedule, with “Attachment B-1, Cost Schedule” of the Contract.
4. The PARTIES entered into Amendment No. 3 to the Contract, dated May 11, 2022, for reference purposes only, to amend the Cost Schedule with “Attachment B-2, Cost Schedule” of the Contract.
5. The PARTIES seek to amend the total cost to the Contract because the DISTRICT seeks to continue receiving services from CONTRACTOR prescribed in the Contract and CONTRACTOR desires to provide those services.
6. In accordance with Section 26 of the Contract, DISTRICT and CONTRACTOR desire to amend the above-entitled Contract as follows:

**TERMS AND CONDITIONS OF CONTRACT AMENDMENT:**

1. By this Contract Amendment, DISTRICT and CONTRACTOR amend Paragraph D of Section 8, “Payment,” of the Contract to replace “\$35,689” with “\$65,689.”
2. By this Contract Amendment, DISTRICT and CONTRACTOR amend Paragraph F of Section 9, “Dispute Resolution,” of the Contract to replace “\$35,689” with “\$65,689.”

- 3. By this Contract Amendment, DISTRICT and CONTRACTOR replace Attachment B-2, Cost Schedule, with the attached "Attachment B-3, Cost Schedule" and agree that all references in the Contract to Attachment B shall be deemed to refer to Attachment B-3, Cost Schedule.
- 4. DISTRICT and CONTRACTOR agree that all other terms and conditions of the Contract shall remain in full force and effect.

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

BAY AREA AIR QUALITY  
MANAGEMENT DISTRICT

OPPENHEIMER INVESTIGATIONS GROUP,  
LLP

By: DocuSigned by:  
*Veronica Eady*  
D03B3B4BDCD74FD...  
VERONICA Eady \_\_\_\_\_  
Acting Executive Officer/APCO

By: *Cody Holtz* \_\_\_\_\_  
Cody Holtz  
Office Manager

Date: 8/15/2022

Date: August 4, 2022

Approved as to form:  
District Counsel

By: DocuSigned by:  
*Alexander Crockett*  
B5AE1A26FCA4453... 8/15/2022  
Alexander G. Crockett  
District Counsel



**ATTACHMENT B-3****COST SCHEDULE**

DISTRICT will pay CONTRACTOR on a time-and-material basis for completion of the tasks outlined in Attachment A, Scope of Work. CONTRACTOR will submit invoices for its actual time and material costs in accordance with Section 8, "Payment", of this Contract. The tasks and services will be performed by the following at the specified rates:

**Labor Rates: Effective January 1, 2022**

<b>Attorney Name(s)</b>	<b>Rate</b>
Amy Oppenheimer	\$480 per hour
Tina Ro-Connolly, Vida Thomas, and Tracey Merwise	\$420 per hour
Zaneta Seidel, Alezah Trigueros, Danielle Drossel, Ilona Turner, Sandy Fu, Renee Jansen	\$360 per hour
Madeline Buitelaar, Gorev Ahuja, Julia Olivier, Ashlyn Clark, , Alice Donahue , Alfredo Diaz, Maria Walker, Roxanne Hill	\$300 per hour
Writers/Editors Garrett Smith and Justina Yassa	\$180 per hour
Interns	\$120 per hour

\*The rate for supervision/substantive report review, regardless of attorney, is \$420 per hour.

**Materials, Travel and Other Rates**

Copying is charged at \$0.25 per page. Additional prints, postage and special deliveries (i.e Fed-Ex, PS, DHL, messenger service), and other hired deliveries completed at the request of DISTRICT or necessary to comply with court or other deadline will also be billed to the DISTRICT.

DISTRICT will reimburse CONTRACTOR for travel time at the usual hourly rate of the individual providing the service. DISTRICT will reimburse CONTRACTOR for travel costs only to the extent that they comply with DISTRICT policy, which is attached as Attachment C, "Contractor Travel Policy".

**Total cost of Contract not to exceed: \$65,689.**

**AMENDMENT NO. 5 TO**  
**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**  
**CONTRACT NO. 2020.195**

This amendment to the above-entitled contract (“Contract Amendment”) is dated, for reference purposes only, March 27, 2023.

**RECITALS:**

1. The Bay Area Air Quality Management District (“DISTRICT”) and **Oppenheimer Investigations Group, LLP** (“CONTRACTOR”) (hereinafter referred to as the “PARTIES”) entered into the above-entitled contract for investigative services to aid DISTRICT’s Human resource division (the “Contract”), which Contract was executed on behalf of CONTRACTOR on August 28, 2020, and on behalf of DISTRICT on September 1, 2020.
2. The PARTIES entered into Amendment No. 1 to the Contract, dated April 8, 2021, for reference purposes only, to amend the business name of the CONTRACTOR and the total cost of the Contract.
3. The PARTIES entered into Amendment No. 2 to the Contract, dated October 1, 2021, for reference purposes only, to amend the term, total cost, and Attachment B, Cost Schedule, with “Attachment B-1, Cost Schedule” of the Contract.
4. The PARTIES entered into Amendment No. 3 to the Contract, dated May 11, 2022, for references purposes only, to amend the Cost Schedule with “Attachment B-2, Cost Schedule” of the Contract.
5. The PARTIES entered into Amendment No. 4 to the Contract, dated August 1, 2022, for references purposes only, to amend the total cost and amend the Cost Schedule with “Attachment B-3, Cost Schedule” of the Contract.
6. The PARTIES inadvertently failed to extend the termination date of the Contract, however, it was and is the intent of the PARTIES to continue the Contract beyond the December 31, 2022 termination date. CONTRACTOR has since continued to provide services to DISTRICT, and the PARTIES have maintained and continued their relationship, in accordance with all the terms and conditions of the Contract. Based on their shared intent to continue the Contract beyond the expiration date, the PARTIES hereby ratify actions taken by either party during the expired period that were substantially compliant with the Contract, and agree any actions taken during the expired period in furtherance of the contractual relationship will be treated as subject to the Contract as if it were in effect at the time.

7. The PARTIES seek to amend the term and total cost to the Contract because the DISTRICT seeks to continue receiving services from CONTRACTOR prescribed in the Contract and CONTRACTOR desires to provide those services.
8. In accordance with Section 26 of the Contract, DISTRICT and CONTRACTOR desire to amend the above-entitled Contract as follows:

**TERMS AND CONDITIONS OF CONTRACT AMENDMENT:**

1. By this Contract Amendment, DISTRICT and CONTRACTOR amend Section 4, "Term." The term of the Contract shall be extended so that the termination date of the Contract is now December 31, 2023.
2. By this Contract Amendment, DISTRICT and CONTRACTOR amend Paragraph D of Section 8, "Payment," of the Contract to replace "\$65,689" with "\$150,000."
3. By this Contract Amendment, DISTRICT and CONTRACTOR amend Paragraph F of Section 9, "Dispute Resolution," of the Contract to replace "\$65,689" with "\$150,000."
4. By this Contract Amendment, DISTRICT and CONTRACTOR amend the final line of Appendix B-3 of the Contract, "Cost Schedule," to replace the sentence "Total cost of Contract not to exceed: \$65,689" with "Total cost of Contract not to exceed: \$150,000."
5. DISTRICT and CONTRACTOR agree that all other terms and conditions of the Contract shall remain in full force and effect.

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

BAY AREA AIR QUALITY  
MANAGEMENT DISTRICT

OPPENHEIMER INVESTIGATIONS GROUP,  
LLP

By: DocuSigned by:  
*Philip Fine*  
7314B577922A46A...  
Philip M. Fine  
Executive Officer/APCO

By: *Cody Holtz*  
Cody Holtz  
Office Manager

Date: 4/19/2023

Date: March 30, 2023

Approved as to form:  
District Counsel

By: DocuSigned by:  
*Alexander Crockett* 4/19/2023  
B5AE1A26FCA4453...  
Alexander G. Crockett  
District Counsel

**AMENDMENT NO. 6 TO**  
**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**  
**CONTRACT NO. 2020.195**

This amendment to the above-entitled contract (“Contract Amendment”) is dated, for reference purposes only, September 15, 2023.

**RECITALS:**

1. The Bay Area Air Quality Management District (“DISTRICT”) and **Oppenheimer Investigations Group, LLP** (“CONTRACTOR”) (hereinafter referred to as the “PARTIES”) entered into the above-entitled contract for investigative services to aid DISTRICT’s Human resource division (the “Contract”), which Contract was executed on behalf of CONTRACTOR on August 28, 2020, and on behalf of DISTRICT on September 1, 2020.
2. The PARTIES entered into Amendment No. 1 to the Contract, dated April 8, 2021, for reference purposes only, to amend the business name of the CONTRACTOR and the total cost of the Contract.
3. The PARTIES entered into Amendment No. 2 to the Contract, dated October 1, 2021, for reference purposes only, to amend the term, total cost, and Attachment B, Cost Schedule, with “Attachment B-1, Cost Schedule” of the Contract.
4. The PARTIES entered into Amendment No. 3 to the Contract, dated May 11, 2022, for reference purposes only, to amend the Cost Schedule with “Attachment B-2, Cost Schedule” of the Contract.
5. The PARTIES entered into Amendment No. 4 to the Contract, dated August 1, 2022, for reference purposes only, to amend the total cost and amend the Cost Schedule with “Attachment B-3, Cost Schedule” of the Contract.
6. The PARTIES entered into Amendment No. 5 to the Contract, dated March 27, 2023, for reference purposes only, to amend the term, total cost of the Contract.
7. The PARTIES seek to amend the term, total cost, and Cost Schedule to the Contract because the DISTRICT seeks to continue receiving services from CONTRACTOR prescribed in the Contract and CONTRACTOR desires to provide those services.
8. In accordance with Section 26 of the Contract, DISTRICT and CONTRACTOR desire to amend the above-entitled Contract as follows:

**TERMS AND CONDITIONS OF CONTRACT AMENDMENT:**

1. By this Contract Amendment, DISTRICT and CONTRACTOR amend Section 4, "Term." The term of the Contract shall be extended so that the termination date of the Contract is now December 31, 2024.
2. By this Contract Amendment, DISTRICT and CONTRACTOR amend Paragraph D of Section 8, "Payment," of the Contract to replace "\$150,000" with "\$350,000."
3. By this Contract Amendment, DISTRICT and CONTRACTOR amend Paragraph F of Section 9, "Dispute Resolution," of the Contract to replace "\$150,000" with "\$350,000."
4. By this Contract Amendment, DISTRICT and CONTRACTOR replace Attachment B-3, Cost Schedule, with the attached "Attachment B-4, Cost Schedule" and agree that all references in the Contract to Attachment B shall be deemed to refer to Attachment B-4, Cost Schedule.
5. DISTRICT and CONTRACTOR agree that all other terms and conditions of the Contract shall remain in full force and effect.

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

BAY AREA AIR QUALITY  
MANAGEMENT DISTRICT

OPPENHEIMER INVESTIGATIONS GROUP,  
LLP

By: \_\_\_\_\_  
Philip M. Fine  
Executive Officer/APCO

By: \_\_\_\_\_  
Cody Holtz  
Office Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form:  
District Counsel

By: \_\_\_\_\_  
Alexander G. Crockett  
District Counsel

DRAFT

**ATTACHMENT B-4**

**COST SCHEDULE**

DISTRICT will pay CONTRACTOR on a time-and-material basis for completion of the tasks outlined in Attachment A, Scope of Work. CONTRACTOR will submit invoices for its actual time and material costs in accordance with Section 8, "Payment", of this Contract. The tasks and services will be performed by the following at the specified rates:

**Labor Rates: Effective January 1, 2022**

<b>Attorney Name(s)</b>	<b>Rate</b>
Amy Oppenheimer	\$480 per hour
Tina Ro-Connolly, Vida Thomas, and Tracey Merwise	\$420 per hour
Zaneta Seidel, Alezah Trigueros, Danielle Drossel, Ilona Turner, Sandy Fu, Renee Jansen	\$360 per hour
Madeline Buitelaar, Gorev Ahuja, Julia Olivier, Ashlyn Clark, , Alice Donahue , Alfredo Diaz, Maria Walker, Roxanne Hill	\$300 per hour
Writers/Editors Garrett Smith and Justina Yassa	\$180 per hour
Interns	\$120 per hour

**Labor Rates: Effective January 1, 2023**

<b>Attorney</b>	<b>Public Sector/Non-Profit Rate</b>
Amy Oppenheimer, Partner	\$645/hour
Vida Thomas, Managing Partner	\$495/hour
Tina Ro-Connolly, Partner Zaneta Seidel, Partner Tracey Merwise, Senior Attorney Danielle Drossel, Senior Attorney Ilona Turner, Senior AForney	\$445/hour
Supervision/Substantive Edit	\$445/hour
Alezah Trigueros, Partner Jack Morse, Attorney Erik Roper, Attorney Rachel Reddick, Attorney Sandy Fu, Of Counsel Renee Jansen, Of Counsel	\$395/hour



Madeline Buitelaar, Attorney Gorev Ahuja, Attorney Ashlyn Clark, Attorney	\$355/hour
Maria Walker, Attorney Garrett Smith, Attorney Jeanette Boykins, Attorney Neil Bautista, Attorney	\$315/hour
Writers/Editors Jacob, Cindy, Garrett Smith (when functioning as a writer)	\$195/hour
Interns	\$125/hour

\*The rate for supervision/substantive report review, regardless of attorney, is \$420 per hour.

**Materials, Travel and Other Rates**

Copying is charged at \$0.25 per page. Additional prints, postage and special deliveries (i.e Fed-Ex, PS, DHL, messenger service), and other hired deliveries completed at the request of DISTRICT or necessary to comply with court or other deadline will also be billed to the DISTRICT.

DISTRICT will reimburse CONTRACTOR for travel time at the usual hourly rate of the individual providing the service. DISTRICT will reimburse CONTRACTOR for travel costs only to the extent that they comply with DISTRICT policy, which is attached as Attachment C, "Contractor Travel Policy".

**Total cost of Contract not to exceed: \$350,000.**

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

Memorandum

To: Chairperson John J. Bauters and Members  
of the Board of Directors

From: Philip M. Fine  
Executive Officer/APCO

Date: October 4, 2023

Re: Authorization to Execute a Contract with ICF Incorporated, LLC

RECOMMENDED ACTION

Recommend Board of Directors Authorize the Executive Officer/APCO to enter into a contract with ICF Consulting, LLC for \$199,934 to provide technical services in support of the Bay Area Regional Climate Action Planning initiative.

BACKGROUND

On July 31, 2023, the Air District received an award notice from the United States Environmental Protection Agency (USEPA) awarding a \$1 million planning grant to lead the development of the Bay Area Regional Climate Action Plan (BARCAP). Two key deliverables for this award project include:

1. A targeted regional Priority Climate Action Plan (PCAP), due March 1, 2024; and
2. A regional Comprehensive Climate Action Plan (CCAP), due September 2025.

On August 7, 2023, the Air District opened the Request for Proposals (RFP) #2023-033 for Technical Support for the Bay Area Climate Action Planning initiative. Specific expertise and experience sought in the RFP included:

- Solid understanding of the GHG emissions inventory development process;
- Expertise in interpreting existing and proposed GHG rules, policy measures, technological improvements, rule- and policy-driven changes in activity data and consumption behavior, and rule and technology adoption rates;
- Ability to develop quantifiable metrics based on factors that would be applied in estimation of GHG and co-pollutant emissions changes;
- Prior experience estimating costs to implement climate action measures and projects; and
- Prior experience working with regional and local agencies to develop climate action plans.

Out of ten organizations that submitted full responses, the proposal from ICF Consulting, LLC (ICF) was deemed the best fit for the desired technical work and budget.

DISCUSSION

The RFP 2023-033 was posted for three weeks. A total of ten firms responded by submitting proposals. The bidders included, in alphabetical order:

- Ascent
- ClimeCo, LLC
- Community Planning Collaborative
- Crosswalk
- Environmental Science Associates
- ICF Consulting
- nZero
- PlaceWorks
- Rincon Consultants
- Sustainable Solutions Group

Air District staff from the Planning and Climate Protection Division and Assessment, Inventory and Modeling Division reviewed and scored the proposals according to the following criteria:

Criteria	Description	Points
Expertise	Technical expertise, size and structure of the firm and personnel assigned to RFP tasks; firm’s ability to perform and complete the work in a professional and timely manner.	25
Skill; and Experience	Relevant experience and qualifications of the firm and, in particular, past experience of the team working on projects of similar scope for other governmental agencies.	25
Approach	Responsiveness of the proposal, based upon a clear understanding of the work to be performed.	25
Cost	Cost or cost effectiveness and resource allocation strategy.	25
	TOTAL	100

In the evaluation process, ICF was found to have a deep breadth of relevant experience in California and in the Bay Area. ICF provided the best balance of senior level staff and entry-level staff that would execute the contract within the proposed hours and costs breakdown. The emissions inventory and scenario modeling tools that ICF have built in-house and which they will apply to this project will streamline their process to gather and analyze the information needed to quantify the emission reductions from and calculate costs associated with the measures selected for inclusion in the priority and comprehensive climate action plans.

BUDGET CONSIDERATION/FINANCIAL IMPACT

Funding for this contract is included in the \$1,000,000 grant award from the USEPA, and will be spent over FYE2024 and FYE2025.

Respectfully submitted,

Philip M. Fine  
Executive Officer/APCO

Prepared by: Abby Young

ATTACHMENTS:

1. Draft Professional Services Contract No. 2023.192 - ICF Incorporated, LLC

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

**PROFESSIONAL SERVICES CONTRACT**

**CONTRACT NO. 2023.192**

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 **ICF Incorporated, L.L.C.** (“CONTRACTOR”) whose address is 1902 Reston Metro Plaza, Reston, VA 20190.
  
2. RECITALS
  - A. DISTRICT is the local agency with primary responsibility for regulating stationary source air pollution in the Bay Area Air Quality Management District in the State of California. DISTRICT is authorized to enter into this Contract under California Health and Safety Code Section 40701. DISTRICT desires to contract with CONTRACTOR for services described in the Scope of Work, attached hereto as Attachment A and made a part hereof by this reference. DISTRICT is entering into this Contract based on CONTRACTOR’s stated qualifications to perform the services.
  - B. All parties to this Contract have had the opportunity to have this contract reviewed by their attorney.
  
3. PERFORMANCE REQUIREMENTS
  - A. CONTRACTOR is authorized to do business in the State of California. CONTRACTOR attests that it is in good tax standing with federal and state tax authorities.
  - B. CONTRACTOR 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. CONTRACTOR 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. CONTRACTOR 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. CONTRACTOR shall exercise the degree of skill and care customarily required by accepted professional practices and procedures.
  - F. CONTRACTOR shall ensure that any subcontractors, employees and agents performing under this Contract comply with the performance standards set forth in paragraph D above.
  
4. TERM – The term of this Contract is from October 1, 2023 to June 30, 2025, unless further extended by amendment of this Contract in writing, or terminated earlier. CONTRACTOR shall not submit any invoice for services performed under this Contract until the Contract is fully executed.

5. TERMINATION

- A. The DISTRICT may terminate this Contract at any time, at will, and without specifying any reason, by notifying CONTRACTOR 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 10 below. Immediately upon receipt of the notice of termination, CONTRACTOR shall cease all work under this Contract, except such work as is specified in the notice of termination. CONTRACTOR shall deliver a final invoice for all remaining work performed but not billed, including any work specified in the termination notice, on or before ten (10) business days following the termination date.
- B. Either party may terminate this Contract for breach by the other party.
- i) Failure to perform any agreement or obligation contained in this Contract or failure to perform the services in a satisfactory manner shall constitute a breach of the Contract.
  - 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 CONTRACTOR fails to perform any material 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 CONTRACTOR 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, CONTRACTOR under this Contract.
  - iv) The notice of breach shall be provided in accordance with the notice requirements set forth in section 10.
  - v) The non-breaching party reserves all rights under law and equity to enforce this Contract and recover any damages.

6. INSURANCE

- A. CONTRACTOR 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 CONTRACTOR is a sole proprietor, CONTRACTOR 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 CONTRACTOR's personal automobile liability insurance. A CONTRACTOR 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.

iv) Professional liability insurance with limits not less than one million dollars (\$1,000,000) each claim.

B. All insurance shall be placed with insurers acceptable to DISTRICT.

C. Prior to commencement of work under this Contract, CONTRACTOR shall furnish properly-executed certificates of insurance for all required insurance. Upon request by DISTRICT, CONTRACTOR shall provide a complete copy of any required insurance policy. CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR or to terminate this Contract for breach.

7. INDEMNIFICATION; LIMITATION OF LIABILITY

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

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

C. In no event shall either party be liable for any indirect, incidental, special or consequential damages whatsoever (including but not limited to lost profits or interruption of business) arising out of or related to the services provided under this Contract, even if advised of the possibility of such damages. In no event shall CONTRACTOR'S aggregate liability in connection with this Contract exceed the greater of (a) the amounts paid to CONTRACTOR hereunder in the twelve (12) months preceding the event giving rise to such liability, or (b) two-million dollars (\$2,000,000).

8. PAYMENT; ACCEPTANCE

A. DISTRICT shall pay CONTRACTOR for services in accordance with the terms set forth in the Cost Schedule, which is attached hereto as Attachment B and incorporated herein by this reference.

B. CONTRACTOR shall submit invoice(s) to DISTRICT for services performed. Each invoice shall specify the total cost of the services for which the invoice is submitted, shall reference tasks shown in the Scope of Work, the hours associated with same, or percentage completion thereof, and the amount of charge claimed, and, as appropriate, shall list any charges for equipment, material, supplies, travel, and subcontractors' services.

C. DISTRICT's payment of invoices shall be subject to the following limitations and



requirements:

- i) Each invoice, including supporting documentation, shall be prepared in duplicate on CONTRACTOR's letterhead; shall list DISTRICT's contract number, the period covered by the invoice, and the CONTRACTOR's Social Security Number or Federal Employer Identification Number; and shall be submitted to: Bay Area Air Quality Management District, 375 Beale Street, Suite 600, San Francisco, CA 94105, Attn: Contracts Manager.
  - ii) DISTRICT shall not pay interest, additional fees, handling charges, or the cost of money on the Contract.
  - iii) DISTRICT shall pay CONTRACTOR within thirty (30) calendar days after approval by DISTRICT of an itemized invoice, which shall not be unreasonably withheld or delayed.
- D. The total amount for which DISTRICT may be held liable for the performance of services specified in this Contract shall not exceed \$199,934.
- E. DISTRICT shall have thirty (30) days from delivery of the services to either (i) accept the services, or (ii) reject the services as deficient, and shall advise CONTRACTOR how the services does not comply with this Agreement. CONTRACTOR shall correct all deficiencies within ten (10) days of receipt of DISTRICTS's deficiency notice, at CONTRACTOR's own cost and no additional charge to DISTRICT.
9. 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, Suite 600, San Francisco, or at such other place as may be mutually agreed upon by the parties and the mediator.
  - C. The parties shall make good faith efforts to hold the mediation within thirty (30) days after receipt of the demand for mediation.
  - D. Each party shall bear its own mediation costs.
  - E. In the event the parties are unable to resolve the dispute, either party may file an action in a court of competent jurisdiction to enforce the Contract.
  - F. Maximum recovery under this section shall be limited to \$199,934. The mediation costs shall not reduce the maximum amount recoverable under this section.
10. NOTICES – All notices that are required under this Contract shall be provided in the manner set forth herein, unless specified otherwise. Notice to a party shall be delivered to the attention of the person listed below, or to such other person or persons as may hereafter be designated by that party in writing. Notice shall be in writing sent by e-mail, facsimile, or regular first class mail. In the case of e-mail and facsimile communications, valid notice shall be deemed to have been delivered upon sending, provided the sender obtained an electronic confirmation of delivery. E-mail and facsimile communications shall be deemed to have been received on the date of such transmission, provided such date was a business day and delivered prior to 4:00 p.m. PST. Otherwise, receipt of e-mail and facsimile communications shall be deemed to have occurred on the following business day. In the case of regular mail notice, notice shall be deemed to have been delivered on the mailing date and received five (5) business days after



the date of mailing.

DISTRICT: Bay Area Air Quality Management District  
375 Beale Street, Suite 600  
San Francisco, CA 94105  
Attn: Abby Young  
Copy to: ayoung@baaqmd.gov

CONTRACTOR: ICF Incorporated, LLC  
1902 Reston Metro Plaza  
Reston, VA 20190  
Attn: Matt Sylvester  
Copy to: notices@icf.com

11. ADDITIONAL PROVISIONS – All attachment(s) to this Contract are expressly incorporated herein by this reference and made a part hereof as though fully set forth.
12. EMPLOYEES OF CONTRACTOR
  - A. CONTRACTOR 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. CONTRACTOR, its officers, employees, agents, or representatives shall not be considered employees or agents of DISTRICT, nor shall CONTRACTOR, its officers, employees, agents, or representatives be entitled to or eligible to participate in any benefits, privileges, or plans, given or extended by DISTRICT to its employees.
  - C. DISTRICT reserves the right to review the credentials to perform the work of any of CONTRACTOR's employees assigned herein and to disapprove CONTRACTOR's assignments. CONTRACTOR warrants that it will not employ any subcontractor(s) without prior written approval from DISTRICT.
13. CONFIDENTIALITY – In order to carry out the purposes of this Contract, CONTRACTOR may require access to certain of DISTRICT's confidential information (including trade secrets, inventions, confidential know-how, confidential business information, and other information that DISTRICT considers confidential) (collectively, "Confidential Information"). It is expressly understood and agreed that DISTRICT may designate in a conspicuous manner Confidential Information that CONTRACTOR obtains from DISTRICT, and CONTRACTOR 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 CONTRACTOR requiring access in fulfillment of the services provided under this Contract.
  - B. Ensure that CONTRACTOR'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 CONTRACTOR'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 CONTRACTOR.
  - E. Take any and all other actions necessary or desirable to assure such continued confidentiality and protection of such information during the term of this Contract and following expiration or termination of the Contract.
  - F. Prevent access to such materials by a person or entity not authorized under this Contract.
  - G. Establish specific procedures in order to fulfill the obligations of this section.
14. INTELLECTUAL PROPERTY RIGHTS – Title and full ownership rights to all intellectual property developed under this Contract shall at all times remain with DISTRICT unless otherwise agreed to in writing.
15. PUBLICATION
- A. DISTRICT shall approve in writing any report or other document prepared by CONTRACTOR in connection with performance under this Contract prior to dissemination or publication of such report or document to a third party. DISTRICT may waive in writing its requirement for prior approval.
  - B. Until approved by DISTRICT, any report or other document prepared by CONTRACTOR shall include on each page a conspicuous header, footer, or watermark stating "DRAFT – Not Reviewed or Approved by BAAQMD," unless DISTRICT has waived its requirement for prior approval pursuant to paragraph A of this section.
  - C. Information, data, documents, or reports developed by CONTRACTOR for DISTRICT, pursuant to this Contract, shall be part of DISTRICT's public record, unless otherwise indicated. CONTRACTOR may use or publish, at its own expense, such information, provided DISTRICT approves use of such information in advance. The following acknowledgment of support and disclaimer must appear in each publication of materials, whether copyrighted or not, based upon or developed under this Contract.

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

- D. CONTRACTOR shall inform its officers, employees, and subcontractors involved in the performance of this Contract of the restrictions contained herein and shall require compliance with the above.
- E. Should DISTRICT publish any information contained in the Deliverables, DISTRICT shall not attribute such information to CONTRACTOR unless such information is provided in full with the rest of the Deliverable.

16. NON-DISCRIMINATION – In the performance of this Contract, CONTRACTOR shall not discriminate in its recruitment, hiring, promotion, demotion, and termination practices on the basis of race, religious creed, color, national origin, ancestry, sex, age, marital status, sexual orientation, medical condition, or physical or mental disability and shall comply with the provisions of the California Fair Employment & Housing Act (Government Code Section 12900 et seq.), the Federal Civil Rights Act of 1964 (P.L. 88-352) and all amendments thereto, and all administrative rules and regulations issued pursuant to said Acts. CONTRACTOR shall also require each subcontractor performing work in connection with this Contract to comply with this section and shall include in each contract with such subcontractor provisions to accomplish the requirements of this section.
17. PROPERTY AND SECURITY – Without limiting CONTRACTOR’S obligations with regard to security, CONTRACTOR 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.
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 CONTRACTOR 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 CONTRACTOR, 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.

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 CONTRACTOR 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. WARRANTY – CONTRACTOR shall perform the services, as defined in this Contract, utilizing the standard of care normally exercised by professional consulting firms in performing comparable services under similar conditions. Notwithstanding DISTRICT’s acceptance, if the services provided does not meet the warranties specified herein or otherwise applicable, DISTRICT may, at its option require CONTRACTOR to correct any deficiencies or nonconformance at no cost to DISTRICT. These warranties are in addition to all other warranties or remedies available to DISTRICT, express or implied, and shall survive inspection, acceptance and/or payment by DISTRICT.
28. SURVIVAL OF TERMS – The provisions of sections 7 (Indemnification; Limitation of Liability), 13 (Confidentiality), 14 (Intellectual Property Rights), and 15 (Publication) shall survive the expiration or termination of this Contract.
29. SUPERSEDING FEDERAL FUNDING REQUIREMENTS
- A. DEFINITIONS
- i) Government means the United States of America and any executive department or agency thereof.
  - ii) EPA means United States Environmental Protection Agency.
  - iii) Third Party Subcontract means a subcontract at any tier entered into by Contractor or

subcontractor, financed in whole or in part with Federal assistance originally derived from EPA.

**B. FEDERAL COMPLIANCE**

- i) This is an acknowledgement that EPA financial assistance will be sought and if available used to fund all or a portion of the Contract. CONTRACTOR shall at all times comply with all applicable regulations, policies, procedures, and EPA Directives as they may be amended or promulgated from time to time during the term of this Contract, including but not limited to those requirements of 2 CFR 200.317 through 200.326 and more fully set forth in Appendix II to Part 200 – Contract Provisions for non-Federal Entity Contracts Under Federal Awards, which is included herein for reference. CONTRACTOR’S failure to so comply shall constitute a material breach of the Contract.
- ii) CONTRACTOR agrees to include the above clause in each third-party subcontract financed in whole or in part with Federal assistance provided by EPA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**C. CLEAN AIR ACT**

- i) CONTRACTOR agrees to comply with all applicable standards, orders, or regulations pursuant to the Clean Air Act, as amended, 42 U.S.C. Section 7401 et seq.
- ii) CONTRACTOR agrees to report each violation to the DISTRICT and understands and agrees that the DISTRICT will, in turn, report each violation to the EPA, and the appropriate EPA Regional Office.
- iii) CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by EPA.

**D. FEDERAL WATER POLLUTION CONTROL ACT**

- i) CONTRACTOR agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- ii) CONTRACTOR agrees to report each violation to the DISTRICT and understands that DISTRICT will, in turn, report each violation to EPA, and the appropriate EPA Regional Office.
- iii) CONTRACTOR agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provide by EPA.

**E. BYRD ANTI-LOBBYING AMENDMENT 31 U.S.C. §1352 (as amended)**

- i) CONTRACTOR shall not use or pay any funds received under this Contract to influence or attempt to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- ii) CONTRACTOR’S signature affixed herein this Contract shall constitute a certification under penalty of perjury under the laws of the State of California, that CONTRACTOR certifies, to the best of its knowledge and belief, that:
  - a. No State, Federal, or Customer appropriated funds have been paid or will be paid, by or on behalf of CONTRACTOR, to any person for influencing or attempting to influence an officer or employee of any local, State, or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the

Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding or making of this Contract, or with the extension, continuation, renewal, amendment, or modification of this Contract.

- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Contract, CONTRACTOR shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- iii) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.
- iv) CONTRACTOR agrees to include the certification language above in each third-party subcontract financed in whole or in part with Federal assistance provided by EPA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

#### F. PROCUREMENT OF RECOVERED MATERIALS

- i) In the performance of the Contract, CONTRACTOR shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired-
  - a. Competitively within a timeframe providing for compliance with the contract performance schedule;
  - b. Meeting contract performance requirements;
  - c. At a reasonable price.
- ii) Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines website. <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>
- iii) CONTRACTOR also agrees to comply with all other applicable requirements of Section 6002 of the "Solid Waste Disposal Act".

#### G. DEBARMENT AND SUSPENSION CERTIFICATION

- i) The Contract and this Section 29 are a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, CONTRACTOR is required to verify that none of Contractor's principals (defined at 2 C.F.R. §180.995) or its affiliates (defined at 2 C.F.R. §180.905) are excluded or disqualified (defined at 2 C.F.R. §180.935).
- ii) CONTRACTOR must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transactions it enters into.
- iii) CONTRACTOR's signature affixed herein this Contract shall constitute a certification under penalty of perjury under the laws of the State of California, that CONTRACTOR or any person associated therewith in the capacity of owner, partner, director, officer, or manager:
  - a. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;



- b. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
    - c. Does not have a proposed debarment pending; and
    - d. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
  - iv) This certification is a material representation of fact relied upon by the DISTRICT. If it is later determined that CONTRACTOR did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to the remedies available to the DISTRICT, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
  - v) Any exceptions to this certification must be disclosed to DISTRICT. Exceptions will not necessarily result in denial of recommendation for award or Contract, but will be considered in determining responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.
  - vi) CONTRACTOR agrees to comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C throughout the period of any contract that may arise out of this offer. CONTRACTOR agrees to include such compliance in its lower tier covered transactions.
- H. ACCESS TO RECORDS
- i) CONTRACTOR agrees to provide the DISTRICT, the EPA administrator, the Comptroller General of the United States, or any of their authorized representative access to any books, documents, papers, and records of CONTRACTOR which are directly pertinent to the Contract for the purposes of making audits, examinations, excerpts and transcriptions.
  - ii) CONTRACTOR agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
  - iii) CONTRACTOR agrees to provide the EPA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the Contract.
  - iv) In compliance with the Disaster Recovery Act of 2018, the DISTRICT and CONTRACTOR acknowledge and agree that no language in the Contract is intended to prohibit audits or internal reviews by the EPA Administrator or the Comptroller General of the United States.
- I. NO OBLIGATION BY FEDERAL GOVERNMENT
- i) The Federal Government is not a party to the Contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor or any other party pertaining to any matter resulting from the contract.
  - ii) CONTRACTOR agrees to include the above clause in each third-party subcontract financed in whole or in part with Federal assistance provided by EPA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.
- J. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS
- i) CONTRACTOR acknowledges that the 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to CONTRACTOR'S actions pertaining to the Contract.
- K. TERMINATION FOR CAUSE
- i) CONTRACTOR'S failure to perform or observe any term, covenant or condition of this

Section 29 shall constitute an event of default under the Contract and DISTRICT may terminate the Contract.

L. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

i) Contractor and subcontractors are prohibited from obligating funds from this Contract to:

- a. Procure or obtain;
- b. Extend or renew a contract to procure or obtain; or
- c. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

1. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
2. Telecommunications or video surveillance services provided by such entities or using such equipment.
3. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

ii) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

iii) See Public Law 115-232, section 889 for additional information.

M. DOMESTIC PEFERENCES FOR PROCUREMENTS

i) As practicable and to the extent consistent with the law, CONTRACTOR should to the greatest extent practical under this Contract, use a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). For purposes of this section:

- a. "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- b. "Manufactured products" means items and construction materials composed in



whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

N. INCORPORATION OF UNIFORM ADMINISTRATIVE REQUIREMENTS

- i) The preceding paragraphs A-M in this Section 29 include, in part, certain standard terms and conditions required by EPA, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by EPA are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all EPA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in the Contract. CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any DISTRICT requests that would cause DISTRICT to be in violation of the EPA terms and conditions.

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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

ICF INCORPORATED, LLC

By: \_\_\_\_\_  
Philip M. Fine  
Executive Officer/APCO

By: \_\_\_\_\_  
Matt Sylvester  
Contracts Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form:  
District Counsel

By: \_\_\_\_\_  
Alexander Crockett  
District Counsel

DRAFT

## ATTACHMENT A

### SCOPE OF WORK

DISTRICT is the lead coordinating agency for the United States Environmental Protection Agency (EPA) Climate Pollution Reduction Grant (CPRG) program's planning grant to the San Francisco-Oakland-Berkeley Metropolitan Statistical Area (MSA). The MSA covers Alameda, Contra Costa, Marin, San Mateo, and San Francisco counties.

CONTRACTOR shall assist the DISTRICT in developing a Priority Climate Action Plan (PCAP) and a Comprehensive Climate Action Plan (CCAP) for the San Francisco-Oakland-Berkeley MSA as required through the CPRG planning grant. Specific tasks will include quantifying greenhouse gas (GHG) emission reductions from measures in the PCAP and CCAP; estimating costs to implement PCAP measures and projects; providing key assumptions for GHG projections in the CCAP; recommending measures to reduce GHG emissions for the CCAP; quantifying changes in criteria air pollutants and hazardous air pollutants from CCAP measures; and synthesizing documentation of input, methods, and findings into a report and assisting the DISTRICT in developing PCAP and CCAP technical appendices.

CONTRACTOR shall be responsible for providing technical support and completing the tasks outlined in this Scope of Work.

#### **Task 1: Project Management**

CONTRACTOR will convene an initial kick-off meeting with the DISTRICT to:

1. Review the scope of work;
2. Develop a shared understanding of project objectives and deliverables;
3. Review data needs and collaboratively identify available data sources and potential gaps; and
4. Confirm project timelines and roles.

After the kick-off meeting, CONTRACTOR will continue to coordinate with the DISTRICT, including holding regular check-in calls.

Deliverables:

1. Written meeting summary including key take-aways and action steps.

#### **Task 2: Quantify GHG Emission Reductions from PCAP Measures**

DISTRICT will identify up to six (6) draft GHG reduction measures for inclusion in the PCAP through a separate stakeholder engagement process. CONTRACTOR will quantify the GHG emissions reductions from these draft PCAP measures.

##### Task 2.1: Develop Methodology and Collect Data for Each Draft PCAP Measure

For each of the six (6) draft PCAP measures, CONTRACTOR will document the methodology it proposes to use to estimate GHG emissions reductions. DISTRICT will review the proposed estimation methodology and suggest modifications, if needed. CONTRACTOR will also document reference information that includes, but is not limited to, data sources and assumptions for mathematical modeling (such as emission factors, control factors, adoption rates of policies and/or controls, timelines for implementation of different regulations, improvements in technology, fleet mix ratios,

product mix, equipment turnover rates, and raw data that will be used for forecasting (e.g., population growth, vehicle-miles traveled (VMT), and other activity data)). Where modeling analyses are not readily available for use, CONTRACTOR will use its proprietary decarbonization platform, CO2 Sight™ to quantify impacts of the GHG reduction measures at the county level.

Deliverables:

1. Documentation of quantification methodology.
2. Documentation of reference information included in the quantification methodology.

Task 2.2: Quantify GHG Emissions Reductions for Each Draft PCAP Measure

Upon the DISTRICT's approval, CONTRACTOR will use the proposed methodology to estimate GHG emissions reductions for each of the draft PCAP measures. CONTRACTOR will document how the data collected under Task 2.1 are used to quantify GHG emission changes/reductions associated with each PCAP measure. CONTRACTOR will submit estimates of GHG emission reductions from the draft PCAP measures to the DISTRICT for review and feedback.

Deliverables:

1. Estimated emission impacts/reductions from draft PCAP measures, presented in Microsoft Excel, Power BI (for CO2 Sight™ results), and Word
2. Spreadsheets with draft PCAP measures and estimated emission reductions that can easily be manipulated by DISTRICT staff to change assumptions and inputs

Task 2.3: Quantify Emissions Reductions for Each Final PCAP Measure

CONTRACTOR will quantify GHG emission changes/reductions associated with each final GHG reduction measure (final measures will be provided by the DISTRICT). CONTRACTOR will provide documentation regarding the final version of data sources and assumptions (if updated from those used in Tasks 2.1 and 2.2), as well as the results of the quantification calculations. The DISTRICT may consider leading on quantifying certain final measures for which CONTRACTOR does not have expertise, as necessary.

Deliverables:

1. Final quantified emission impacts/reductions from final list of PCAP measures, presented in Microsoft Excel, Power BI (for CO2 Sight™ results), and Word.
2. Documentation of final data sources, assumptions and methodology (if updated from those used in Tasks 2.1 and 2.2).

**Task 3: Estimate Costs for Implementing PCAP Measures and Projects**

Task 3.1: Estimate Costs to Implement PCAP Measures

CONTRACTOR will estimate the costs to implement 4-6 final PCAP measures, including the costs of implementation to government agencies and the net cost of implementation to the public (i.e., implementation costs minus available incentives). CONTRACTOR will meet with DISTRICT to determine what types of costs will be included in the estimations. CONTRACTOR will share the proposed cost estimation methodology with the DISTRICT for review and approval before beginning final estimation calculations. Cost data will be combined with energy data and other activity data developed during the emission estimates prepared for PCAP measures.

CONTRACTOR will work with the DISTRICT to confirm key assumptions, data sources, and decision points. This will include, for example, determining cost framing (e.g., costs for the measures or project owner for implementation or for the region generally), types of costs to include in the analysis (e.g., energy costs, equipment costs, labor costs), key assumptions to apply (e.g., interest rates, inflation rates, discount rates), and final cost presentation (e.g., total cost, incremental costs, net present value).

Deliverables:

1. Documentation of proposed cost estimation methodology.
2. Memo and/or presentation with draft results of cost analysis.
3. Written documentation of final cost analysis.

#### Task 3.2: Estimate Costs to Implement Projects Supporting PCAP Measures and GHG Reductions

Upon the DISTRICT's request, CONTRACTOR will estimate the costs to implement specific projects that are consistent with a PCAP measure, such as the cost to the government and net costs to the public, and estimate anticipated GHG emission reductions from those projects, for 2-4 projects. CONTRACTOR will share its proposed cost estimation methodology with the DISTRICT for review before beginning estimation calculations. GHG emissions reductions for the project(s) will build upon quantification of the relevant PCAP measures.

Deliverables:

1. Documentation of proposed cost estimation methodology.
2. Memo and/or presentation with draft results of cost analysis.
3. Written documentation of final cost analysis.

#### **Task 4: Provide Key Assumptions for GHG Projections in CCAP**

CONTRACTOR will support the DISTRICT's development of GHG projections for 2030 and 2045 by providing data for sector and sub-sector key growth assumptions (e.g., projected population and number of households, growth profiles for equipment targeted by measures, etc.) with documented references, including but not limited to those applied by the Metropolitan Transportation Commission (MTC) for its Plan Bay Area 2050 update. CONTRACTOR will review relevant data and assumptions applied from local studies, and public data sources. CONTRACTOR will work with the DISTRICT to develop the list of specific assumptions to be provided.

Deliverables:

1. List of assumptions for GHG projections in CCAP.
2. Spreadsheet including supporting data for GHG projections analysis.

#### **Task 5: Recommend GHG Reduction Measures for CCAP**

CONTRACTOR will support the DISTRICT in identifying GHG reduction measures for possible inclusion in the CCAP. CONTRACTOR will leverage its knowledge of what other states, regional organizations, and local governments are doing to make recommendations for additional strategies that the DISTRICT can include in the CCAP. In developing these recommendations, CONTRACTOR will consider any potential additional efforts, including new regulations at the state or local level, new federal actions resulting in mandatory requirements or funding opportunities, and policies likely to influence

Bay Area emissions that were not accounted for in prior planning efforts.

CONTRACTOR will meet up to four (4) times with the DISTRICT and its partners to recommend regional measures for the CCAP. Measures will focus on filling the emissions gap to carbon neutrality and meeting other measure selection criteria as determined by the DISTRICT.

Deliverables:

1. Notes and meeting summaries from each meeting documenting decisions and outstanding items to address.
2. Memo or report recommending and detailing up to 25 GHG measures for inclusion in the CCAP.

### **Task 6: Quantify GHG Emission Reductions, Criteria Pollutant Reductions, and Hazardous Air Pollutant Reductions for CCAP Measures**

The DISTRICT will identify a list of GHG reduction measures for inclusion in the CCAP through a stakeholder engagement process. CONTRACTOR will quantify the estimated emission reductions of GHGs, criteria air pollutants (including total particulate matter (PM), PM2.5, PM10, nitrogen oxide (NOx), sulfur dioxide (SO2), carbon monoxide (CO), and total organic gases) and appropriate hazardous air pollutants (e.g., benzene, toluene, ethylbenzene, xylene (BTEX) compounds, formaldehyde, ethanol, etc.) associated with each draft and final CCAP measure, at a minimum geographic specificity of the county and facility (if appropriate) level.

The CCAP will cover seven sectors (agriculture, commercial and residential (or buildings), transportation, electricity generation, industrial, waste management, and land-use change and forestry (including sinks)), with potentially an average of 3-5 measures per sector. The DISTRICT anticipates up to 21-35 draft CCAP measures.

#### Task 6.1: Develop Methodology and Collect Data for Each Draft CCAP Measure

CONTRACTOR will document the methodology it proposes to use to estimate GHG emission reductions from all potential CCAP measures. The DISTRICT will review CONTRACTOR's proposed estimation methodology and suggest modifications, if needed. CONTRACTOR will also document reference information that includes, but is not limited to, data sources and assumptions for mathematical modeling (such as emission factors, control factors, adoption rates of policies and/or controls, timelines for implementation of different regulations, improvements in technology, fleet mix ratios, product mix, equipment turnover rates, and raw data that will be used for forecasting (e.g., population growth, VMT, and other activity data).

Deliverables:

1. Documentation of quantification methodology.
2. Documentation of reference information included in the quantification methodology.

#### Task 6.2: Quantify GHG Emissions Reductions for Each Draft CCAP Measure

With the DISTRICT's approval, CONTRACTOR will use the proposed methodology to estimate GHG emissions reductions for each of the draft CCAP measures. CONTRACTOR will document how the data collected under Task 6.1 are used in this Task 6.2 to quantify GHG emissions changes associated with each CCAP measure. CONTRACTOR will submit estimates of GHG emission reductions from draft

CCAP measures to the DISTRICT for review. The DISTRICT will provide CONTRACTOR with feedback.

Deliverables:

1. Estimated emission impacts/reductions from draft PCAP measures, presented in Microsoft Excel, Power BI (for CO2 Sight™ results), and Word.
2. Spreadsheets with draft CCAP measures and estimated emission reductions that can easily be manipulated by DISTRICT staff to change assumptions and inputs.

Task 6.3: Quantify GHG Emissions Reductions for Each Final CCAP Measure

Based on CONTRACTOR's estimation of emissions reductions from the draft CCAP measures and stakeholder engagement, the DISTRICT will provide a list of final measures to CONTRACTOR. The DISTRICT anticipates up to 21-35 final measures. For this final list of measures, CONTRACTOR will quantify GHG emissions changes associated with each measure and share documentation regarding the final version of data sources and assumptions (if updated from those used in Tasks 6.1 and 6.2), as well as the results of the quantification calculations, with the DISTRICT. The DISTRICT may consider leading on quantifying certain final measures for which CONTRACTOR does not have expertise, as necessary.

Deliverables:

1. Final quantified emission impacts/reductions from final list of CCAP measures, presented in Microsoft Excel, Power BI (for CO2 Sight™ results), and Word.
2. Documentation of final data sources, assumptions and methodology (if updated from those used in Tasks 6.1 and 6.2).

Task 6.4: Estimate Co-pollutant (Criteria Air Pollutant (CAP) and Hazardous Air Pollutant (HAP)) Emissions Reductions for Each Final CCAP Measure

CONTRACTOR will estimate emission reductions of both CAPs and HAPs from implementation of the final CCAP measures, relative to the DISTRICT's base year CCAP inventory and EPA's National Emissions Inventory (NEI) with a minimum geographic specificity at the county level and/or facility level. CONTRACTOR will discuss in detail with DISTRICT the available information suitable for the analysis and identify a proposed methodology for emission change analysis. DISTRICT will review CONTRACTOR's methodology and suggest modifications, if needed, to estimate changes before CONTRACTOR begins this task. The DISTRICT may consider leading on quantifying certain final measures for which CONTRACTOR does not have expertise, as necessary. CONTRACTOR will not include estimates of CAP and HAP emission reductions from measures associated with land use, land-use change, and forestry.

Deliverables:

1. Proposed methodology for emission change analysis
2. Documentation of proposed data sources, approaches, and CAP and HAP's that will be quantified for each measure
3. Memo and/or presentation with results of emission change analysis for 15-30 measures

**Task 7: Synthesize Documentation on Methods and Findings from Tasks 2-6 and Supporting Materials into a Report for Input into PCAP and CCAP Technical Appendices**

CONTRACTOR will synthesize documentation of input, methods, and findings of Tasks 2-6 into a report and assist the DISTRICT in developing PCAP and CCAP technical appendices. CONTRACTOR will



submit to the DISTRICT supporting materials needed for replication of the deliverables with sufficient information (metadata and READMEs) for DISTRICT to follow CONTRACTOR's methods.

#### Task 7.1: Prepare a Report Summarizing Input, Methods, and Findings from Tasks 2-3

CONTRACTOR will document, compile, and synthesize technical information related to quantification of GHG emissions reductions from PCAP measures and estimation of costs for implementing PCAP measures. CONTRACTOR will synthesize the documentation prepared for Tasks 2 and 3 into a single, detailed, and understandable format delivered in both a Microsoft Word document and as a PDF file. The report will include graphics, info charts, and formulae to make clear to a reader the methods and results. CONTRACTOR will submit a draft of this report to the DISTRICT for review and modifications, as needed. CONTRACTOR will provide a final report that incorporates the DISTRICT's comments.

#### Deliverables:

1. Draft synthesis report documenting technical information related to quantification of GHG emissions reductions from and costs of implementing PCAP measures.
2. Final report incorporating DISTRICT feedback and comments.

#### Task 7.2: Support Development of PCAP Technical Appendices

CONTRACTOR will draft language for inclusion in the technical appendices for PCAP based on the report from Task 7.1 and drawing heavily on materials already prepared through previous tasks. The DISTRICT will review and suggest modifications, as needed.

#### Deliverables:

1. Draft language for inclusion in technical appendices.

#### Task 7.3: Prepare Supporting Materials Needed for Replicating All Task Deliverables

CONTRACTOR will submit draft supporting materials needed for replication of the deliverables with sufficient information (metadata and READMEs) for the DISTRICT to follow CONTRACTOR's methods. The DISTRICT will review and suggest modifications, as needed.

#### Deliverables:

1. Excel spreadsheets that can be clearly followed to replicate calculations, including labeled data sources and external links removed.

#### Task 7.4: Prepare Report from Tasks 4-6 and Final Supporting Materials, Incorporating DISTRICT Comments

The DISTRICT will submit a draft summary report documenting the methods and findings of Tasks 4 through 6 for the DISTRICT's review and modifications, as needed. The report will include the key assumptions used to develop the GHG projections for the CCAP that CONTRACTOR advised on, recommended GHG reductions measures for the CCAP, and quantification of GHG emission reductions and air quality impacts for CCAP measures. CONTRACTOR will provide a final report – with final supporting materials as described in Task 7.3 – that incorporates DISTRICT's comments.

#### Deliverables:

1. Draft summary report documenting the methods and findings of Tasks 4 through 6, synthesizing interim deliverables developed for each Task.
2. Final report incorporating DISTRICT feedback and comments.



Task 7.5: Support Development of CCAP Technical Appendices

CONTRACTOR will draft language for inclusion in the technical appendices for CCAP based final report. The DISTRICT will review and suggest modifications, as needed.

Deliverables:

1. Draft language for inclusion in technical appendices.

DRAFT

**ATTACHMENT B**

**COST SCHEDULE**

DISTRICT will pay CONTRACTOR at the hourly rates listed in Table 1 below, up to a maximum amount of \$199,934. Total payments for each task shall not exceed the amount listed for each task in Table 2 below, unless DISTRICT provides written approval to reallocate funds from a different task. Payments will be made in accordance with Section 8, Payment; Acceptance, of the Contract.

**Table 1: Hourly Rates**

<b>Level</b>	<b>Hourly Rate (October 2023 – September 2024)</b>	<b>Hourly Rate (October 2024 – June 30, 2025)</b>
Senior Subject Matter Expert	\$254.13	\$264.30
Subject Matter Expert	\$224.72	\$233.71
Project Manager	\$204.24	\$212.41
Senior Consultant	\$175.89	\$182.93
Consultant	\$147.58	\$153.48
Senior Analyst	\$129.16	\$134.33
Analyst	\$104.77	\$108.96
Research	\$84.80	\$88.19

**Table 2: Maximum Cost Per Task**

<b>Task</b>	<b>Maximum Cost</b>
Task 1: Project Management	\$27,026
Task 2: Quantify GHG Emissions Reductions from PCAP Measures	\$18,897
Task 3: Estimate Costs for Implementing PCAP Measures and Projects	\$29,839
Task 4: Provide Key Assumptions for GHG Projections in CCAP	\$7,472
Task 5: Recommend GHG Reduction Measures for CCAP	\$19,389
Task 6: Quantify GHG Emission Reductions, Criteria Pollutant Reductions, and Hazardous Air Pollutant Reductions for CCAP Measures	\$73,878
Task 7: Synthesize Documentation on Methods and Findings from Tasks 2-6 and Supporting Materials into a Report for Input into PCAP and CCAP Technical Appendices	\$23,434
<b>Total</b>	<b>\$199,934</b>

**Total Cost of Contract Not to Exceed \$199,934.**

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

Memorandum

To: Chairperson John J. Bauters and Members  
of the Board of Directors

From: Philip M. Fine  
Executive Officer/APCO

Date: October 4, 2023

Re: Authorization to Continue Using and to Expend Monies Under the Existing Agreements with Enterprise Fleet Management, Inc. (EFM) and EAN Services, LLC (EAN) for Fleet Management Services and Rental Vehicle Services.

RECOMMENDED ACTION

Recommend the Board of Directors authorize the Executive Officer/APCO to:

1. Expend an amount up to \$2,400,000 with EFM for the purchase, lease, and maintenance of vehicles, and to execute all agreements for the purchase and lease of new vehicles under the Air District’s existing Master Lease Agreement with EFM for a period not to exceed April 18, 2026;
2. Expend an amount up to \$100,000 with EAN (a subsidiary of Enterprise Holdings, Inc.) for rental vehicle services for a period not to exceed April 18, 2026; and
3. Utilize the cooperative agreements established by Sourcewell and the State of California Department of General Services (DGS) for fleet management services and rental vehicle services, respectively, for a period not to exceed April 18, 2026.

BACKGROUND

The Air District’s fleet consists of 107 leased and 11 owned vehicles, ranging from small compact cars to heavy-duty specialty vans. Based on job duties and responsibilities, different divisions and employees are assigned vehicles for various terms of use. Since as early as 1999, EFM has provided 24-hour roadside assistance, routine maintenance, and repairs for the Air District’s leased vehicles. In 2022, the Air District entered into a Company Owned Vehicle Service Agreement with EFM to enroll the Air District’s owned vehicles under the Enterprise Maintenance Plan to create a uniform service and maintenance plan for both leased and owned vehicles in the fleet program.

In addition to assigned vehicles, the Air District also manages a dedicated pool of shared vehicles for the short-term business transportation needs of staff for the Air District, Metropolitan Transportation Commission, and Bay Conservation Development Commission. If the transportation need does not lend itself to the use of pool vehicles, the Air District offers rental vehicles through EAN as an alternative. Benefits of rental vehicles include a lower overall

cost, convenient pick-up and drop-off locations, flexible pick-up and drop-off times, and access to a large inventory of different vehicle sizes, makes, and models.

Historically, expenditures for fleet management and rental vehicle services have been reported in the Financial Quarterly Report to the Board of Directors. Over the previous twenty-four years, the Air District has expended \$9.4 million with EFM and \$303,000 with EAN.

## DISCUSSION

Staff anticipates procuring a number of new vehicles to meet the agency's growing needs, and to replace old, high mileage, and environmentally inefficient vehicles from the fleet program. The Air District anticipates total expenditures not to exceed \$2,400,000 with EFM for the purchase, lease, and maintenance of new and existing vehicles. The actual costs of new vehicle purchases and leases will be dependent on the vehicle type as well as the timing of the acquisition. Furthermore, staff seeks authorization to utilize the Sourcewell cooperative agreement until the cooperative agreement is terminated or no longer available for use, whichever occurs sooner. Sourcewell, a national cooperative purchasing program that may be utilized by participating public agencies, issued a competitive Request for Proposals (RFP)# 030122 for fleet management services on January 11, 2022, and awarded a contract to EFM. A copy of the cooperative agreement and RFP can be found here: <https://www.sourcewell-mn.gov/cooperative-purchasing/030122-efm#tab-contract-documents>.

In addition, the Air District anticipates expenditures not to exceed \$100,000 with EAN for rental vehicle services. Furthermore, staff seeks authorization to utilize the State of California DGS cooperative agreement with EAN until the cooperative agreement is terminated or no longer available for use, whichever occurs sooner. The State of California DGS issued a competitive RFP# 5209924 for Commercial Car Rental Services (CCR) on December 29, 2020, and awarded the contract to EAN. The CCR contract provides rental vehicles to all Executive Branch agencies in the State of California, as well as participating local agencies. The use of the CCR contract allows participating agencies access to discounted rates, added rental benefits, and insurance. A copy of the contract can be found here: <https://caleprocure.ca.gov>. Prior to the expiration of the cooperative agreements on April 18, 2026, staff will utilize a competitive procurement for these goods and services in alignment with the Air District's Administrative Code and procurement policies that are currently undergoing restructuring to conform to best governmental practices. This will allow the Air District's vehicle lease and service programs to continue to operate under the prior competitive procurements while moving towards greater transparency and best government practices.

## BUDGET CONSIDERATION/FINANCIAL IMPACT

The first year cost of the anticipated expenditures is included in the Fiscal Year Ending 2024 program 710 budget; the second and third year expenditures will be budgeted accordingly in the subsequent years' budgets.

Respectfully submitted,

Philip M. Fine  
Executive Officer/APCO

Prepared by: Maricela Martinez  
Reviewed by: John Chiladakis

ATTACHMENTS:

1. Executed Original Master Equity Agreement - Enterprise Fleet Services
2. Maintenance Addendum to Master Equity Lease Agreement
3. Amended and Restated Enterprise Master Equity Lease Agreement
4. Company Owned Vehicle Service Agreement - Enterprise Fleet Management Contract No. 2022.139





### MASTER EQUITY LEASE AGREEMENT

This Master Equity Lease Agreement is entered into this 18 day of November, 1999 by and between Enterprise Rent-A-Car Company of San Francisco, a Nevada corporation doing business as "Enterprise Fleet Services" ("Lessor"), and the lessee whose name and address is set forth on the signature page below ("Lessee").

1. **LEASE OF VEHICLES:** Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the vehicles ("Vehicle(s)") described in the schedules from time to time delivered by Lessor to Lessee as set forth below ("Schedule(s)") for the rentals and on the terms set forth in this Agreement and in the applicable Schedule. References to this "Agreement" shall include this Master Equity Lease Agreement, the various Schedules and addenda to this Master Equity Lease Agreement and all other related agreements, documents and instruments. Lessor will, on or about the date of delivery of each Vehicle to Lessee, send Lessee a Schedule covering the Vehicle which will include, among other things, a description of the Vehicle, the lease term and the monthly rental and other payments due with respect to the Vehicle. The terms contained in each Schedule will be binding on Lessee unless Lessee objects in writing to such Schedule within ten (10) days from the date of delivery of the Vehicle covered by such Schedule. This Agreement is a lease only and Lessor will at all times remain the owner of the Vehicles and Lessee will have no right, title or interest in or to the Vehicles except for the use of the Vehicles as described in this Agreement. This Agreement shall be treated as a true lease for federal and applicable state income tax purposes with Lessor having all benefits of ownership.

2. **TERM:** The term of this Agreement ("Term") for each Vehicle begins on the date such Vehicle is delivered to Lessee (the "Delivery Date") and, unless terminated earlier in accordance with the terms this Agreement, continues for the "Lease Term" as described in the applicable Schedule.

3. **RENT AND OTHER CHARGES:**

(a) Lessee agrees to pay Lessor monthly rental according to the Schedules and this Agreement. The monthly rental payments will be in the amount listed as the "Total Monthly Rental Including Additional Services" on the applicable Schedule and will be due and payable in advance on the first day of each month. If a Vehicle is delivered to Lessee on any day other than the first day of a month, monthly rental payments will begin on the first day of the next month. In addition to the monthly rental payments, Lessee agrees to pay Lessor a pro-rated rental charge for the number of days that the Delivery Date precedes the first rental payment date. A portion of each monthly rental payment, being the amount designated as "Depreciation Reserve" on the applicable Schedule, will be considered as a reserve for depreciation and will be credited against the Delivered Price of the Vehicle for purposes of computing the Book Value of the Vehicle under Section 3(c). Lessee agrees to pay Lessor the "Total Initial Charges" set forth in each Schedule on the due date of the first monthly rental payment under such Schedule.

(b) In the event the Term for any Vehicle ends prior to the last day of the scheduled Term, whether as a result of a default by Lessee, a Casualty Occurrence or any other reason, the rentals and management fees paid by Lessee will be recalculated in accordance with the rule of 78's and the adjusted amount will be payable by Lessee to Lessor on the termination date.

(c) Lessee agrees to pay Lessor within thirty (30) days after the end of the Term for each Vehicle, additional rent equal to the excess, if any, of (1) the Book Value of such Vehicle over (2) the wholesale value of such Vehicle as determined by Lessor in good faith. If the wholesale value of a Vehicle is greater than the Book Value of such Vehicle, Lessor agrees to pay such excess to Lessee as a terminal rental adjustment within thirty (30) days after the end of the applicable Term. The "Book Value" of a Vehicle means the sum of (i) the "Delivered Price" of the Vehicle as set forth in the applicable Schedule minus (ii) the total Depreciation Reserve paid by Lessee to Lessor with respect to such Vehicle plus (iii) all accrued and unpaid rent and/or other amounts owed by Lessee with respect to such Vehicle.

(d) Any security deposit of Lessee will be returned to Lessee at the end of the applicable Term, except that the deposit will first be applied to any losses and/or damages suffered by Lessor as a result of Lessee's breach of or default under this Agreement and/or to any other amounts then owed by Lessee to Lessor.

(e) Any rental payment or other amount owed by Lessee to Lessor which is not paid within twenty (20) days after its due date will accrue interest, payable on demand of Lessor, from the date due until paid in full at a rate per annum equal to the lesser of (i) Eighteen Percent (18%) per annum or (ii) the highest rate permitted by applicable law.

(f) If Lessee fails to pay any amount due under this Agreement or to comply with any of the covenants contained in this Agreement, Lessor may, at its option, pay such amounts or perform such covenants and all sums paid or incurred by Lessor in connection therewith will be repayable by Lessee to Lessor upon demand.

4. **USE AND SURRENDER OF VEHICLES:** Lessee agrees to allow only duly authorized, licensed and insured drivers to use and operate the Vehicles. Lessee agrees to comply with, and cause its drivers to comply with, all laws, statutes, rules, regulations and ordinances and the provisions of all insurance policies affecting or covering the Vehicles or their use or operation. Lessee agrees to keep the Vehicles free of all liens, charges and encumbrances. Lessee agrees that in no event will any Vehicle be used or operated for transporting hazardous substances or persons for hire, for any illegal purpose or to pull trailers that exceed the manufacturer's trailer towing recommendations. Lessee agrees not to remove any Vehicle from the continental United States without first obtaining Lessor's written consent. At the expiration or earlier termination of this Agreement with respect to each Vehicle, or upon demand by Lessor made pursuant to Section 14, Lessee at its risk and expense agrees to return such Vehicle to Lessor at such place and by such reasonable means as may be designated by Lessor. If for any reason Lessee fails to return any Vehicle to Lessor as and when required in accordance with this section, Lessee agrees to pay Lessor additional rent for such Vehicle at twice the normal pro-rated daily rent. Acceptance of such additional rent by Lessor will in no way limit Lessor's remedies with respect to Lessee's failure to return any Vehicle as required hereunder.

5. **COSTS, EXPENSES, FEES AND CHARGES:** Lessee agrees to pay all costs, expenses, fees, charges, fines, tickets, penalties and taxes (other than federal and state income taxes on the income of Lessor) incurred in connection with the titling, registration, delivery, purchase, sale, rental, use or operation of the Vehicles during the Term. If Lessor incurs any such costs or expenses, Lessee agrees to promptly reimburse Lessor for the same.

6. **LICENSE AND CHARGES:** Each Vehicle will be licensed in Lessor's name at Lessee's expense. Certain other charges relating to the acquisition of each Vehicle and paid or satisfied by Lessor have been capitalized in determining the monthly rental, treated as an initial charge or otherwise charged to Lessee. Such charges have been determined without reduction for trade-in, exchange allowance or other credit attributable to any Lessor-owned vehicle.

7. **REGISTRATION PLATES, ETC.:** Lessee agrees, at its expense, to obtain in the name of Lessor all registration plates and other plates, permits, inspections and/or licenses required in connection with the Vehicles, except for the initial registration plates which Lessor will obtain at Lessee's expense. The parties agree to cooperate and to furnish any and all information or documentation which may be reasonably necessary for compliance with the provisions of this section or any federal, state or local law, rule, regulation or ordinance. Lessee agrees that it will not permit any Vehicle to be located in a state other than the state in which such Vehicle is then titled for any continuous period of time that would require such Vehicle



to become subject to the titling and/or registration of such other state.

8. **IMPROVEMENTS & MAINTENANCE OF VEHICLES:** Lessee agrees, at its expense, to (a) maintain the Vehicles in good condition, repair, maintenance and running order and in accordance with all manufacturer's instructions and warranty requirements and all legal requirements and (b) furnish all labor, materials, parts, and other essentials required for the proper operation and maintenance of the Vehicles. Any alterations, additions, replacement parts or improvements to the Vehicles will become and remain the property of Lessor and will be returned with the Vehicles pursuant to Section 4. Notwithstanding the foregoing, so long as no Event of Default has occurred and is continuing, Lessee shall have the right to remove any additional equipment installed by Lessee on a Vehicle prior to returning such Vehicle to Lessor under Section 4. The value of such alterations, additions, replacement parts and improvements will in no instance be regarded as rent. Without the prior written consent of Lessor, Lessee will not make any alterations, additions, replacement parts or improvements to the Vehicles which detract from its economic value or functional utility. Lessor will not be required to make any repairs or replacements of any nature or description with respect to the Vehicles, to maintain or repair the Vehicles or to make any expenditure whatsoever in connection with the Vehicles or this Agreement.

9. **SELECTION OF VEHICLES AND DISCLAIMER OF WARRANTIES:**

(a) LESSEE ACCEPTANCE OF DELIVERY AND USE OF EACH VEHICLE WILL CONCLUSIVELY ESTABLISH THAT SUCH VEHICLE IS OF A SIZE, DESIGN, CAPACITY, TYPE AND MANUFACTURE SELECTED BY LESSEE AND THAT SUCH VEHICLE IS IN GOOD CONDITION AND REPAIR AND IS SATISFACTORY IN ALL RESPECTS AND IS SUITABLE FOR LESSEE'S PURPOSE. LESSEE ACKNOWLEDGES THAT LESSOR IS NOT A MANUFACTURER OF OR A DEALER IN ANY VEHICLE OR AN AGENT OF A MANUFACTURER OF OR A DEALER IN ANY VEHICLE.

(b) LESSOR MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO ANY VEHICLE, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY AS TO CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, OR WITH RESPECT TO INFRINGEMENT, TITLE OR THE LIKE, IT BEING AGREED THAT ALL SUCH RISKS ARE TO BE BORNE BY LESSEE. THE VEHICLES ARE LEASED "AS IS," "WITH ALL FAULTS." All warranties made by any supplier, vendor and/or manufacturer are hereby assigned by Lessor to Lessee for the applicable Term and Lessee's only remedy, if any, is against the supplier, vendor or manufacturer of the Vehicles. No defect, unfitness or lack of governmental approval regardless of the cause or consequence will relieve Lessee from the performance of its obligations under this Agreement, including the payment of rent.

(c) Lessor will not be liable to Lessee for any liability, claim, loss, damage (direct, incidental or consequential) or expense of any kind or nature, caused directly or indirectly, by any Vehicle or any inadequacy of any Vehicle for any purpose or any defect (latent or patent) in any Vehicle or the use or maintenance of any Vehicle or any repair, servicing or adjustment of or to any Vehicle, or any delay in providing or failure to provide any Vehicle, or any interruption or loss of service or use of any Vehicle, or any loss of business or any damage whatsoever and however caused. In addition, Lessor will have no liability to Lessee under this Agreement or under order authorization form executed by Lessee if Lessor is unable to locate or purchase a Vehicle ordered by Lessee or for any delay in delivery of any Vehicle ordered by Lessee.

10. **RISK OF LOSS:** Lessee assumes and agrees to bear the risk of loss of, theft of, damage to or destruction of any Vehicle from any cause whatsoever ("Casualty Occurrence"). No Casualty Occurrence to any Vehicle will relieve Lessee from its obligation to pay rent or to perform any of its other obligations under this Agreement. In the event of a Casualty Occurrence, Lessee shall give Lessor prompt notice of the Casualty Occurrence and thereafter will place the applicable Vehicle in good repair, condition and working order; provided, however, that if the applicable Vehicle is determined by Lessor to be lost, stolen, destroyed or damaged beyond repair (a "Totaled Vehicle"), Lessee agrees to pay Lessor no later than the date thirty (30) days after the date of the Casualty Occurrence the amounts owed under Sections 3(b) and 3(c) with respect to such Totaled Vehicle. Upon such payment, this Agreement will terminate with respect to such Totaled Vehicle.

11. **INSURANCE:** Lessee agrees to purchase and maintain in force during the Term, insurance policies in at least the amounts listed below covering each Vehicle, to be written by an insurance company satisfactory to Lessor, insuring Lessee and Lessor against any damage, claim, suit, action or liability:

(a) Commercial Automobile Liability (including Uninsured/Underinsured Motorist Coverage and No-Fault Protection):

<u>State of Vehicle Registration</u>	<u>Coverage</u>
Connecticut, Massachusetts, Maine, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont	\$1,000,000 Combined Single Limit Bodily Injury and Property Damage - No Deductible
Florida	\$500,000 Combined Single Limit Bodily Injury and Property Damage or \$100,000 Bodily Injury Per Person, \$300,000 Per Occurrence and \$50,000 Property Damage (100/300/50) - No Deductible
All Other States	\$300,000 Combined Single Limit Bodily Injury and Property Damage or \$100,000 Bodily Injury Per Person, \$300,000 Per Occurrence and \$50,000 Property Damage (100/300/50) - No Deductible

(b) Physical Damage (Collision & Comprehensive: Actual cash value of the applicable Vehicle. Maximum deductible of \$500 per occurrence - Collision and \$250 per occurrence - Comprehensive).

If the requirements of any governmental or regulatory agency exceed the minimums stated in this Agreement, Lessee must obtain and maintain the higher limits. Lessee agrees that each required policy of insurance will by appropriate endorsement or otherwise name Lessor as an additional insured and as a loss payee, as its interests may appear. Further, each such insurance policy must provide the following: (i) that the same may not be cancelled, changed or modified until after the insurer has given to Lessor or its assigns at least a thirty (30) day prior written notice of such proposed cancellation, change or modification, (ii) that no act or default of Lessee or any other person shall affect the right of Lessor to recover under such policy or policies of insurance in the event of any loss of or damage to any Vehicle and (iii) that the coverage is "primary coverage" for the protection of Lessee and Lessor notwithstanding any other coverage carried by Lessee or Lessor protecting against similar risks. Original certificates evidencing such coverage and naming Lessor as an additional insured and loss payee, shall be furnished to Lessor prior to the Delivery Date, and annually thereafter and/or as reasonably requested by Lessor from time to time. In the event of default, Lessee hereby appoints Lessor as Lessee's attorney-in-fact to receive payment of, to endorse all checks and other documents and to take any other actions necessary to pursue insurance claims and recover payments if Lessee fails to do so. Any expense of Lessor in adjusting or collecting insurance shall be borne by Lessee.

Lessee, its drivers, servants and agents agree to cooperate fully with Lessor and any insurance carriers in the investigation, defense and prosecution of all claims or suits arising from the use or operation of any Vehicle. If any claim is made or action commenced for death, personal injury or property damage resulting from the ownership, maintenance, use or operation of any Vehicle, Lessee will promptly notify Lessor of such action or claim and forward to Lessor a copy of every demand, notice, summons or other process received in connection with such claim or action.

12. **INDEMNITY:** Lessee agrees to indemnify Lessor from and against any and all losses, damages, liabilities, suits, claims, demands,



expenses and costs (including, without limitation, reasonable attorneys' fees and expenses) which Lessor may incur by reason of Lessee's breach or violation of, or failure to observe or perform, any term, provision or covenant of this Agreement, or as a result of any loss, damage, theft or destruction of any Vehicle or related to or arising out of or in connection with the use, operation or condition of any Vehicle.

13. **INSPECTION OF VEHICLES; ODOMETER DISCLOSURE:** Lessee agrees to accomplish, at its expense, all inspections of the Vehicles required by any governmental authority during the Term. Lessor will have the right to inspect any Vehicle at any reasonable time(s) during the Term and for this purpose to enter into or upon any building or place where any Vehicle is located. Lessee agrees to comply with all odometer disclosure laws, rules and regulations and to provide such written and signed disclosure information on such forms and in such manner as directed by Lessor. Providing false information or failure to complete the odometer disclosure form as required by law may result in fines and/or imprisonment.

14. **DEFAULT; REMEDIES:** The following shall constitute events of default ("Events of Default") by Lessee under this Agreement: (a) if Lessee fails to pay when due any rent or other amount due under this Agreement; (b) if Lessee fails to perform, keep or observe any other term, provision or covenant contained in this Agreement; (c) any seizure or confiscation of any Vehicle or any other act (other than a Casualty Occurrence) otherwise rendering any Vehicle unsuitable for use (as determined by Lessor); (d) the occurrence of a material adverse change in the financial condition or business of Lessee; or (e) if Lessee is in default under or fails to comply with any other present or future agreement with or in favor of Lessor.

Upon the occurrence of any Event of Default, Lessor, without notice to Lessee, will have the right to exercise concurrently or separately (and without any election of remedies being deemed made), the following remedies: (a) Lessor may demand and receive immediate possession of any or all of the Vehicles from Lessee, without releasing Lessee from its obligations under this Agreement; if Lessee fails to surrender possession of the Vehicles to Lessor on default (or termination or expiration of the Term), Lessor and its agents and independent contractors shall have the right to enter upon any premises where the Vehicles may be located and to remove and repossess the Vehicles; (b) Lessor may enforce performance by Lessee under this Agreement; (c) Lessor may recover damages and expenses sustained by Lessor by reason of Lessee's default including, to the extent permitted by applicable law, all costs and expenses, including court costs and attorneys' fees and expenses, incurred by Lessor in attempting or effecting enforcement of its rights under this Agreement (whether or not litigation is commenced) and/or in connection with bankruptcy or insolvency proceedings; (d) upon written notice to Lessee, Lessor may terminate Lessee's rights under this Agreement; (e) with respect to each Vehicle, Lessor may recover from Lessee all amounts owed by Lessee under Sections 3(b) and 3(c) of this Agreement (and, if Lessor does not recover possession a Vehicle, the estimated wholesale value of such Vehicle for purposes of Section 3(c) shall be deemed to be \$0.00); and/or (f) Lessor may exercise any other right or remedy which may be available to Lessor under the Uniform Commercial Code, any other applicable law or in equity. A termination of this Agreement shall occur only upon written notice by Lessor to Lessee. Any termination shall not affect Lessee's obligation to pay all amounts due for periods prior to the effective date of such termination or Lessee's obligation to pay any indemnities under this Agreement. All remedies of Lessor under this Agreement or at law or equity are cumulative.

15. **ASSIGNMENTS:** Lessor may from time to time (a) assign, pledge or transfer this Agreement and/or any or all of its rights or interests under this Agreement and/or (b) grant a security interest in or lien on any or all of the Vehicles to secure indebtedness of Lessor. Lessee agrees, upon notice of any such assignment, security interest or lien, to acknowledge receipt thereof in writing and, as instructed in such notice, pay all amounts due or to become due under this Agreement to such assignee or secured party. Each such assignee or secured party will have all of the rights of Lessor under this Agreement but none of Lessor's obligations or duties under this Agreement other than Lessor's obligations under Section 3(c) of this Agreement. Lessee agrees that it will not assert against any such assignee or secured party any defense, offset, claim or counterclaim which Lessee may be entitled to assert against Lessor under this Agreement or otherwise, but any such claim may be separately asserted against Lessor. Lessee's rights and interest in and to the Vehicles are and will continue at all times to be subject and subordinate in all respects to any assignment or security agreement now or hereafter executed by Lessor with or in favor of any such assignee or secured party, provided that Lessee shall have the right of quiet enjoyment of the Vehicles so long as no Event of Default under this Agreement has occurred and is continuing.

Without the prior written consent of Lessor, Lessee may not assign, sublease, transfer or pledge this Agreement, any Vehicle, or any interest in this Agreement or in and to any Vehicle, or permit its rights under this Agreement or any Vehicle to be subject to any lien, charge or encumbrance. Lessee's interest in this Agreement is not assignable and can not be assigned or transferred by operation of law. Lessee will not transfer or relinquish possession of any Vehicle (except for the sole purpose of repair or service of such Vehicle) without the prior written consent of Lessor.

16. **MISCELLANEOUS:** This Agreement contains the entire understanding of the parties. Any modification, change or amendment may be made only by an instrument in writing executed by the parties. If any term or provision of this Agreement or any application of any such term or provision is invalid or unenforceable, the remainder of this Agreement and any other application of such term or provision will not be affected thereby. Giving of all notices under this Agreement will be sufficient if mailed by certified mail to a party at its address set forth below or at such other address as such party may provide in writing from time to time. Any such notice mailed to such address will be effective one (1) day after deposit in the United States mail, duly addressed, with certified mail, postage prepaid. Lessee will promptly notify Lessor of any change in Lessee's address. This agreement may be executed in multiple counterparts (including telecopy counterparts), but the counterpart marked "ORIGINAL" by Lessor will be the original lease for purposes of applicable law. All of the representations, warranties, covenants, agreements and obligations of each Lessee under this Agreement (if more than one) are joint and several.

17. **SUCCESSORS AND ASSIGNS; GOVERNING LAW:** Subject to the provisions of Section 15, this Agreement will be binding upon Lessee and its heirs, executors, personal representatives, successors and assigns, and will inure to the benefit of Lessor and its successors and assigns. This Agreement will be governed by and construed in accordance with the substantive laws of the state where Lessor's office is located (as set forth below), which law will apply in the event of any conflict of law.

IN WITNESS WHEREOF, Lessor and Lessee have duly executed this Master Equity Lease Agreement as of the day and year first above written.

*BAY AREA AIR QUALITY MANAGEMENT DISTRICT*

LESSEE: \_\_\_\_\_  
Signed: *Ellen Garvey*  
By: Ellen Garvey  
Title: Executive Officer/Air Pollution Control Officer  
Address: 939 Ellis Street  
San Francisco, CA 94109

LESSOR: Enterprise Fleet Services  
Signed: *David Welch*  
By: David Welch  
Title: ASM  
Address: 2950 Menard St #100  
San Leandro, CA 94577

Date Signed: \_\_\_\_\_  
**Approved as to form:**  
*Robert N. Kwong*  
**ROBERT N. KWONG**  
District Counsel

Date Signed: 11.18.99






BAY AREA  
AIR QUALITY  
MANAGEMENT  
DISTRICT  
SINCE 1955

September 19, 2006

Kate Larkin  
Account Manager  
Enterprise Fleet Services  
2950 Merced Street, Suite 100  
San Leandro, CA 94577

Dear Kate:

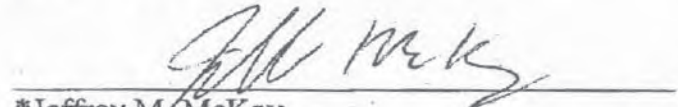
The following executives are authorized and empowered on behalf of the Bay Area Air Quality Management District to execute Motor Vehicle Leases with Enterprise Fleet Services.

  
\_\_\_\_\_  
Jack P. Broadbent  
Executive Officer/APCO

9/19/06  
Date

  
\_\_\_\_\_  
Brian C. Bunger  
District Counsel

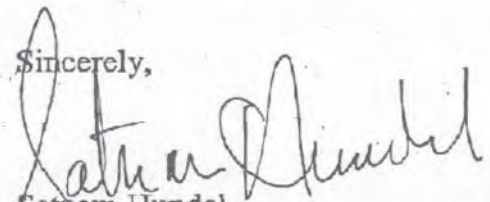
9/19/2006  
Date

  
\_\_\_\_\_  
\*Jeffrey M. McKay  
Chief Financial Officer

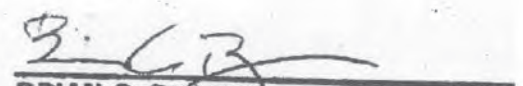
9/19/06  
Date

\* Limit \$10,000

Please call me at (415) 749-5114 if you have any questions.

Sincerely,  
  
\_\_\_\_\_  
Satham Hundel  
Business Manager

**APPROVED AS TO LEGAL FORM**

  
\_\_\_\_\_  
**BRIAN C. BUNGER  
DISTRICT COUNSEL  
BAY AREA AQMD**

*Save the Air*



**MAINTENANCE ADDENDUM TO MASTER EQUITY LEASE AGREEMENT**

This Addendum is made to the Master Equity Lease Agreement dated 11/18/99, as amended (the "Agreement"), by and between, doing business as Enterprise Fleet Services ("Lessor"), and the lessee whose name is set forth on the signature page below (Lessee).

This Addendum is attached to and made a part of the Agreement (including each Schedule to the Agreement). All capitalized terms used and not otherwise defined herein shall have the respective meanings ascribed to them in the Agreement.

Notwithstanding the provisions of Section 9 of the Agreement, Lessor agrees that, subject to the terms and conditions of this Addendum, it will pay for, or reimburse Lessee for its payment of all costs and expenses incurred in connection with the maintenance or repair of the Vehicles. Lessee will remain responsible for and pay for oil between changes, fuel, tires and washing and all service and damages resulting from or related to comprehensive or collision losses or Lessee's failure to maintain the Vehicles as required by the Agreement. Whenever it is necessary to have a Vehicle serviced, Lessee agrees to have the necessary work performed by Lessor, by an authorized dealer of such Vehicle or by a service facility acceptable to Lessor. In every case, if the cost of such service will exceed \$50.00, Lessee must notify Lessor and obtain Lessor's authorization for such service and Lessor's instructions as to where such service shall be made and the extent of service to be obtained. When service is performed by anyone other than the Lessor, Lessee agrees to furnish an invoice for such service, accompanied by a copy of the shop or service order (odometer mileage must be shown on each shop service order). Lessor will not be obligated to pay for any unauthorized charges or those exceeding \$50.00 for one service on any Vehicle unless Lessee has complied with the above terms and conditions. Lessor will not have any responsibility to pay for any service in excess of any of the services recommended by the manufacturer, unless otherwise agreed to by Lessee. Notwithstanding any other provisions of this Addendum, (a) all service performed within one hundred twenty (120) days prior to the last day of the scheduled Term must be authorized by and have the prior consent and approval of Lessor and any service not so authorized will be the responsibility of and be paid for by Lessee, and (b) Lessor is not required to provide or pay for any service to the Vehicle after 100,000 miles.

Lessor may, at its option, provide Lessee with an authorization card (the "Enterprise Card") for use in authorizing the payment of charges incurred in connection with the maintenance of the Vehicle. Lessee agrees to be liable to Lessor for, and upon receipt of a monthly or other statement from Lessor, Lessee agrees to pay to Lessor, all charges made by or for the account of Lessee with the Enterprise Card. Lessor reserves the right to change the terms and conditions for the use of the Enterprise Card at any time. The Enterprise Card remains the property of Lessor and Lessee may revoke Lessee's right to possess or use the Enterprise Card at any time. Upon termination or expiration of the Agreement or upon the demand of Lessor, Lessee must return the Enterprise Card to Lessor. The Enterprise Card is non-transferable.

Except as amended hereby, all of the terms and provisions of the Agreement shall remain in full force and effect. In the event of any conflict between this Addendum and the Agreement or any of the schedules, the terms and provisions of the Addendum govern and control.

LESSEE: BAY AREA AIR QUALITY DISTRICT  
  
Ellen Garvey  
By: Executive Officer/Air Pollution  
Title: Control Officer

LESSOR: Enterprise Fleet Services  
  
By: David Welch  
Title: ASM

Date Signed: \_\_\_\_\_, 19\_\_\_\_

Date Signed: 11-18, 1999

Approved as to form:  
  
**ROBERT N. KWONG**  
District Counsel





**MAINTENANCE ADDENDUM TO MASTER EQUITY LEASE AGREEMENT**

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This Addendum is attached to and made a part of the Agreement (including each Schedule to the Agreement). All capitalized terms used and not otherwise defined herein shall have the respective meanings ascribed to them in the Agreement.

Notwithstanding the provisions of Section 9 of the Agreement, Lessor agrees that, subject to the terms and conditions of this Addendum, it will pay for, or reimburse Lessee for its payment of all costs and expenses incurred in connection with the maintenance or repair of the Vehicles. Lessee will remain responsible for and pay for oil between changes, fuel, tires and washing and all service and damages resulting from or related to comprehensive or collision losses or Lessee's failure to maintain the Vehicles as required by the Agreement. Whenever it is necessary to have a Vehicle serviced, Lessee agrees to have the necessary work performed by Lessor, by an authorized dealer of such Vehicle or by a service facility acceptable to Lessor. In every case, if the cost of such service will exceed \$50.00, Lessee must notify Lessor and obtain Lessor's authorization for such service and Lessor's instructions as to where such service shall be made and the extent of service to be obtained. When service is performed by anyone other than the Lessor, Lessee agrees to furnish an invoice for such service, accompanied by a copy of the shop or service order (odometer mileage must be shown on each shop service order). Lessor will not be obligated to pay for any unauthorized charges or those exceeding \$50.00 for one service on any Vehicle unless Lessee has complied with the above terms and conditions. Lessor will not have any responsibility to pay for any service in excess of any of the services recommended by the manufacturer, unless otherwise agreed to by Lessee. Notwithstanding any other provisions of this Addendum, (a) all service performed within one hundred twenty (120) days prior to the last day of the scheduled Term must be authorized by and have the prior consent and approval of Lessor and any service not so authorized will be the responsibility of and be paid for by Lessee, and (b) Lessor is not required to provide or pay for any service to the Vehicle after 100,000 miles.

Lessor may, at its option, provide Lessee with an authorization card (the "Enterprise Card") for use in authorizing the payment of charges incurred in connection with the maintenance of the Vehicle. Lessee agrees to be liable to Lessor for, and upon receipt of a monthly or other statement from Lessor, Lessee agrees to pay to Lessor, all charges made by or for the account of Lessee with the Enterprise Card. Lessor reserves the right to change the terms and conditions for the use of the Enterprise Card at any time. The Enterprise Card remains the property of Lessor and Lessee may revoke Lessee's right to possess or use the Enterprise Card at any time. Upon termination or expiration of the Agreement or upon the demand of Lessor, Lessee must return the Enterprise Card to Lessor. The Enterprise Card is non-transferable.

Except as amended hereby, all of the terms and provisions of the Agreement shall remain in full force and effect. In the event of any conflict between this Addendum and the Agreement or any of the schedules, the terms and provisions of the Addendum govern and control.

BAY AREA AIR QUALITY DISTRICT

LESSEE:  
  
Ellen Garvey  
By: Executive Officer/Air Pollution  
Title: Control Officer

LESSOR: Enterprise Fleet Services  
  
By: David Welch  
Title: ASM

Date Signed: \_\_\_\_\_, 19\_\_

Date Signed: 11-18, 1999

Approved as to form:  
  
**ROBERT N. KWONG**  
District Counsel





### MASTER EQUITY LEASE AGREEMENT

This Master Equity Lease Agreement is entered into this 18 day of November, 1999 by and between Enterprise Rent-A-Car Company of San Francisco, a Nevada corporation doing business as "Enterprise Fleet Services" ("Lessor"), and the lessee whose name and address is set forth on the signature page below ("Lessee").

1. **LEASE OF VEHICLES:** Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the vehicles ("Vehicle(s)") described in the schedules from time to time delivered by Lessor to Lessee as set forth below ("Schedule(s)") for the rentals and on the terms set forth in this Agreement and in the applicable Schedule. References to this "Agreement" shall include this Master Equity Lease Agreement, the various Schedules and addenda to this Master Equity Lease Agreement and all other related agreements, documents and instruments. Lessor will, on or about the date of delivery of each Vehicle to Lessee, send Lessee a Schedule covering the Vehicle which will include, among other things, a description of the Vehicle, the lease term and the monthly rental and other payments due with respect to the Vehicle. The terms contained in each Schedule will be binding on Lessee unless Lessee objects in writing to such Schedule within ten (10) days from the date of delivery of the Vehicle covered by such Schedule. This Agreement is a lease only and Lessor will at all times remain the owner of the Vehicles and Lessee will have no right, title or interest in or to the Vehicles except for the use of the Vehicles as described in this Agreement. This Agreement shall be treated as a true lease for federal and applicable state income tax purposes with Lessor having all benefits of ownership.

2. **TERM:** The term of this Agreement ("Term") for each Vehicle begins on the date such Vehicle is delivered to Lessee (the "Delivery Date") and, unless terminated earlier in accordance with the terms this Agreement, continues for the "Lease Term" as described in the applicable Schedule.

3. **RENT AND OTHER CHARGES:**

(a) Lessee agrees to pay Lessor monthly rental according to the Schedules and this Agreement. The monthly rental payments will be in the amount listed as the "Total Monthly Rental Including Additional Services" on the applicable Schedule and will be due and payable in advance on the first day of each month. If a Vehicle is delivered to Lessee on any day other than the first day of a month, monthly rental payments will begin on the first day of the next month. In addition to the monthly rental payments, Lessee agrees to pay Lessor a pro-rated rental charge for the number of days that the Delivery Date precedes the first rental payment date. A portion of each monthly rental payment, being the amount designated as "Depreciation Reserve" on the applicable Schedule, will be considered as a reserve for depreciation and will be credited against the Delivered Price of the Vehicle for purposes of computing the Book Value of the Vehicle under Section 3(c). Lessee agrees to pay Lessor the "Total Initial Charges" set forth in each Schedule on the due date of the first monthly rental payment under such Schedule.

(b) In the event the Term for any Vehicle ends prior to the last day of the scheduled Term, whether as a result of a default by Lessee, a Casualty Occurrence or any other reason, the rentals and management fees paid by Lessee will be recalculated in accordance with the rule of 78's and the adjusted amount will be payable by Lessee to Lessor on the termination date.

(c) Lessee agrees to pay Lessor within thirty (30) days after the end of the Term for each Vehicle, additional rent equal to the excess, if any, of (1) the Book Value of such Vehicle over (2) the wholesale value of such Vehicle as determined by Lessor in good faith. If the wholesale value of a Vehicle is greater than the Book Value of such Vehicle, Lessor agrees to pay such excess to Lessee as a terminal rental adjustment within thirty (30) days after the end of the applicable Term. The "Book Value" of a Vehicle means the sum of (i) the "Delivered Price" of the Vehicle as set forth in the applicable Schedule minus (ii) the total Depreciation Reserve paid by Lessee to Lessor with respect to such Vehicle plus (iii) all accrued and unpaid rent and/or other amounts owed by Lessee with respect to such Vehicle.

(d) Any security deposit of Lessee will be returned to Lessee at the end of the applicable Term, except that the deposit will first be applied to any losses and/or damages suffered by Lessor as a result of Lessee's breach of or default under this Agreement and/or to any other amounts then owed by Lessee to Lessor.

(e) Any rental payment or other amount owed by Lessee to Lessor which is not paid within twenty (20) days after its due date will accrue interest, payable on demand of Lessor, from the date due until paid in full at a rate per annum equal to the lesser of (i) Eighteen Percent (18%) per annum or (ii) the highest rate permitted by applicable law.

(f) If Lessee fails to pay any amount due under this Agreement or to comply with any of the covenants contained in this Agreement, Lessor may, at its option, pay such amounts or perform such covenants and all sums paid or incurred by Lessor in connection therewith will be repayable by Lessee to Lessor upon demand.

4. **USE AND SURRENDER OF VEHICLES:** Lessee agrees to allow only duly authorized, licensed and insured drivers to use and operate the Vehicles. Lessee agrees to comply with, and cause its drivers to comply with, all laws, statutes, rules, regulations and ordinances and the provisions of all insurance policies affecting or covering the Vehicles or their use or operation. Lessee agrees to keep the Vehicles free of all liens, charges and encumbrances. Lessee agrees that in no event will any Vehicle be used or operated for transporting hazardous substances or persons for hire, for any illegal purpose or to pull trailers that exceed the manufacturer's trailer towing recommendations. Lessee agrees not to remove any Vehicle from the continental United States without first obtaining Lessor's written consent. At the expiration or earlier termination of this Agreement with respect to each Vehicle, or upon demand by Lessor made pursuant to Section 14, Lessee at its risk and expense agrees to return such Vehicle to Lessor at such place and by such reasonable means as may be designated by Lessor. If for any reason Lessee fails to return any Vehicle to Lessor as and when required in accordance with this section, Lessee agrees to pay Lessor additional rent for such Vehicle at twice the normal pro-rated daily rent. Acceptance of such additional rent by Lessor will in no way limit Lessor's remedies with respect to Lessee's failure to return any Vehicle as required hereunder.

5. **COSTS, EXPENSES, FEES AND CHARGES:** Lessee agrees to pay all costs, expenses, fees, charges, fines, tickets, penalties and taxes (other than federal and state income taxes on the income of Lessor) incurred in connection with the titling, registration, delivery, purchase, sale, rental, use or operation of the Vehicles during the Term. If Lessor incurs any such costs or expenses, Lessee agrees to promptly reimburse Lessor for the same.

6. **LICENSE AND CHARGES:** Each Vehicle will be licensed in Lessor's name at Lessee's expense. Certain other charges relating to the acquisition of each Vehicle and paid or satisfied by Lessor have been capitalized in determining the monthly rental, treated as an initial charge or otherwise charged to Lessee. Such charges have been determined without reduction for trade-in, exchange allowance or other credit attributable to any Lessor-owned vehicle.

7. **REGISTRATION PLATES, ETC.:** Lessee agrees, at its expense, to obtain in the name of Lessor all registration plates and other plates, permits, inspections and/or licenses required in connection with the Vehicles, except for the initial registration plates which Lessor will obtain at Lessee's expense. The parties agree to cooperate and to furnish any and all information or documentation which may be reasonably necessary for compliance with the provisions of this section or any federal, state or local law, rule, regulation or ordinance. Lessee agrees that it will not permit any Vehicle to be located in a state other than the state in which such Vehicle is then titled for any continuous period of time that would require such Vehicle



to become subject to the titling and/or registration of such other state.

8. **IMPROVEMENTS & MAINTENANCE OF VEHICLES:** Lessee agrees, at its expense, to (a) maintain the Vehicles in good condition, repair, maintenance and running order and in accordance with all manufacturer's instructions and warranty requirements and all legal requirements and (b) furnish all labor, materials, parts, and other essentials required for the proper operation and maintenance of the Vehicles. Any alterations, additions, replacement parts or improvements to the Vehicles will become and remain the property of Lessor and will be returned with the Vehicles pursuant to Section 4. Notwithstanding the foregoing, so long as no Event of Default has occurred and is continuing, Lessee shall have the right to remove any additional equipment installed by Lessee on a Vehicle prior to returning such Vehicle to Lessor under Section 4. The value of such alterations, additions, replacement parts and improvements will in no instance be regarded as rent. Without the prior written consent of Lessor, Lessee will not make any alterations, additions, replacement parts or improvements to the Vehicles which detract from its economic value or functional utility. Lessor will not be required to make any repairs or replacements of any nature or description with respect to the Vehicles, to maintain or repair the Vehicles or to make any expenditure whatsoever in connection with the Vehicles or this Agreement.

9. **SELECTION OF VEHICLES AND DISCLAIMER OF WARRANTIES:**

(a) LESSEE ACCEPTANCE OF DELIVERY AND USE OF EACH VEHICLE WILL CONCLUSIVELY ESTABLISH THAT SUCH VEHICLE IS OF A SIZE, DESIGN, CAPACITY, TYPE AND MANUFACTURE SELECTED BY LESSEE AND THAT SUCH VEHICLE IS IN GOOD CONDITION AND REPAIR AND IS SATISFACTORY IN ALL RESPECTS AND IS SUITABLE FOR LESSEE'S PURPOSE. LESSEE ACKNOWLEDGES THAT LESSOR IS NOT A MANUFACTURER OF OR A DEALER IN ANY VEHICLE OR AN AGENT OF A MANUFACTURER OF OR A DEALER IN ANY VEHICLE.

(b) LESSOR MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO ANY VEHICLE, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY AS TO CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, OR WITH RESPECT TO INFRINGEMENT, TITLE OR THE LIKE, IT BEING AGREED THAT ALL SUCH RISKS ARE TO BE BORNE BY LESSEE. THE VEHICLES ARE LEASED "AS IS," "WITH ALL FAULTS." All warranties made by any supplier, vendor and/or manufacturer are hereby assigned by Lessor to Lessee for the applicable Term and Lessee's only remedy, if any, is against the supplier, vendor or manufacturer of the Vehicles. No defect, unfitness or lack of governmental approval regardless of the cause or consequence will relieve Lessee from the performance of its obligations under this Agreement, including the payment of rent.

(c) Lessor will not be liable to Lessee for any liability, claim, loss, damage (direct, incidental or consequential) or expense of any kind or nature, caused directly or indirectly, by any Vehicle or any inadequacy of any Vehicle for any purpose or any defect (latent or patent) in any Vehicle or the use or maintenance of any Vehicle or any repair, servicing or adjustment of or to any Vehicle, or any delay in providing or failure to provide any Vehicle, or any interruption or loss of service or use of any Vehicle, or any loss of business or any damage whatsoever and however caused. In addition, Lessor will have no liability to Lessee under this Agreement or under order authorization form executed by Lessee if Lessor is unable to locate or purchase a Vehicle ordered by Lessee or for any delay in delivery of any Vehicle ordered by Lessee.

10. **RISK OF LOSS:** Lessee assumes and agrees to bear the risk of loss of, theft of, damage to or destruction of any Vehicle from any cause whatsoever ("Casualty Occurrence"). No Casualty Occurrence to any Vehicle will relieve Lessee from its obligation to pay rent or to perform any of its other obligations under this Agreement. In the event of a Casualty Occurrence, Lessee shall give Lessor prompt notice of the Casualty Occurrence and thereafter will place the applicable Vehicle in good repair, condition and working order; provided, however, that if the applicable Vehicle is determined by Lessor to be lost, stolen, destroyed or damaged beyond repair (a "Totaled Vehicle"), Lessee agrees to pay Lessor no later than the date thirty (30) days after the date of the Casualty Occurrence the amounts owed under Sections 3(b) and 3(c) with respect to such Totaled Vehicle. Upon such payment, this Agreement will terminate with respect to such Totaled Vehicle.

11. **INSURANCE:** Lessee agrees to purchase and maintain in force during the Term, insurance policies in at least the amounts listed below covering each Vehicle, to be written by an insurance company satisfactory to Lessor, insuring Lessee and Lessor against any damage, claim, suit, action or liability:

(a) Commercial Automobile Liability (including Uninsured/Underinsured Motorist Coverage and No-Fault Protection):

<u>State of Vehicle Registration</u>	<u>Coverage</u>
Connecticut, Massachusetts, Maine, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont	\$1,000,000 Combined Single Limit Bodily Injury and Property Damage - No Deductible
Florida	\$500,000 Combined Single Limit Bodily Injury and Property Damage or \$100,000 Bodily Injury Per Person, \$300,000 Per Occurrence and \$50,000 Property Damage (100/300/50) - No Deductible
All Other States	\$300,000 Combined Single Limit Bodily Injury and Property Damage or \$100,000 Bodily Injury Per Person, \$300,000 Per Occurrence and \$50,000 Property Damage (100/300/50) - No Deductible

(b) Physical Damage (Collision & Comprehensive: Actual cash value of the applicable Vehicle. Maximum deductible of \$500 per occurrence - Collision and \$250 per occurrence - Comprehensive).

If the requirements of any governmental or regulatory agency exceed the minimums stated in this Agreement, Lessee must obtain and maintain the higher limits. Lessee agrees that each required policy of insurance will by appropriate endorsement or otherwise name Lessor as an additional insured and as a loss payee, as its interests may appear. Further, each such insurance policy must provide the following: (i) that the same may not be cancelled, changed or modified until after the insurer has given to Lessor or its assigns at least a thirty (30) day prior written notice of such proposed cancellation, change or modification, (ii) that no act or default of Lessee or any other person shall affect the right of Lessor to recover under such policy or policies of insurance in the event of any loss of or damage to any Vehicle and (iii) that the coverage is "primary coverage" for the protection of Lessee and Lessor notwithstanding any other coverage carried by Lessee or Lessor protecting against similar risks. Original certificates evidencing such coverage and naming Lessor as an additional insured and loss payee, shall be furnished to Lessor prior to the Delivery Date, and annually thereafter and/or as reasonably requested by Lessor from time to time. In the event of default, Lessee hereby appoints Lessor as Lessee's attorney-in-fact to receive payment of, to endorse all checks and other documents and to take any other actions necessary to pursue insurance claims and recover payments if Lessee fails to do so. Any expense of Lessor in adjusting or collecting insurance shall be borne by Lessee.

Lessee, its drivers, servants and agents agree to cooperate fully with Lessor and any insurance carriers in the investigation, defense and prosecution of all claims or suits arising from the use or operation of any Vehicle. If any claim is made or action commenced for death, personal injury or property damage resulting from the ownership, maintenance, use or operation of any Vehicle, Lessee will promptly notify Lessor of such action or claim and forward to Lessor a copy of every demand, notice, summons or other process received in connection with such claim or action.

12. **INDEMNITY:** Lessee agrees to indemnify Lessor from and against any and all losses, damages, liabilities, suits, claims, demands,



expenses and costs (including, without limitation, reasonable attorneys' fees and expenses) which Lessor may incur by reason of Lessee's breach or violation of, or failure to observe or perform, any term, provision or covenant of this Agreement, or as a result of any loss, damage, theft or destruction of any Vehicle or related to or arising out of or in connection with the use, operation or condition of any Vehicle.

13. **INSPECTION OF VEHICLES; ODOMETER DISCLOSURE:** Lessee agrees to accomplish, at its expense, all inspections of the Vehicles required by any governmental authority during the Term. Lessor will have the right to inspect any Vehicle at any reasonable time(s) during the Term and for this purpose to enter into or upon any building or place where any Vehicle is located. Lessee agrees to comply with all odometer disclosure laws, rules and regulations and to provide such written and signed disclosure information on such forms and in such manner as directed by Lessor. Providing false information or failure to complete the odometer disclosure form as required by law may result in fines and/or imprisonment.

14. **DEFAULT; REMEDIES:** The following shall constitute events of default ("Events of Default") by Lessee under this Agreement: (a) if Lessee fails to pay when due any rent or other amount due under this Agreement; (b) if Lessee fails to perform, keep or observe any other term, provision or covenant contained in this Agreement; (c) any seizure or confiscation of any Vehicle or any other act (other than a Casualty Occurrence) otherwise rendering any Vehicle unsuitable for use (as determined by Lessor); (d) the occurrence of a material adverse change in the financial condition or business of Lessee; or (e) if Lessee is in default under or fails to comply with any other present or future agreement with or in favor of Lessor.

Upon the occurrence of any Event of Default, Lessor, without notice to Lessee, will have the right to exercise concurrently or separately (and without any election of remedies being deemed made), the following remedies: (a) Lessor may demand and receive immediate possession of any or all of the Vehicles from Lessee, without releasing Lessee from its obligations under this Agreement; if Lessee fails to surrender possession of the Vehicles to Lessor on default (or termination or expiration of the Term), Lessor and its agents and independent contractors shall have the right to enter upon any premises where the Vehicles may be located and to remove and repossess the Vehicles; (b) Lessor may enforce performance by Lessee under this Agreement; (c) Lessor may recover damages and expenses sustained by Lessor by reason of Lessee's default including, to the extent permitted by applicable law, all costs and expenses, including court costs and attorneys' fees and expenses, incurred by Lessor in attempting or effecting enforcement of its rights under this Agreement (whether or not litigation is commenced) and/or in connection with bankruptcy or insolvency proceedings; (d) upon written notice to Lessee, Lessor may terminate Lessee's rights under this Agreement; (e) with respect to each Vehicle, Lessor may recover from Lessee all amounts owed by Lessee under Sections 3(b) and 3(c) of this Agreement (and, if Lessor does not recover possession a Vehicle, the estimated wholesale value of such Vehicle for purposes of Section 3(c) shall be deemed to be \$0.00); and/or (f) Lessor may exercise any other right or remedy which may be available to Lessor under the Uniform Commercial Code, any other applicable law or in equity. A termination of this Agreement shall occur only upon written notice by Lessor to Lessee. Any termination shall not affect Lessee's obligation to pay all amounts due for periods prior to the effective date of such termination or Lessee's obligation to pay any indemnities under this Agreement. All remedies of Lessor under this Agreement or at law or equity are cumulative.

15. **ASSIGNMENTS:** Lessor may from time to time (a) assign, pledge or transfer this Agreement and/or any or all of its rights or interests under this Agreement and/or (b) grant a security interest in or lien on any or all of the Vehicles to secure indebtedness of Lessor. Lessee agrees, upon notice of any such assignment, security interest or lien, to acknowledge receipt thereof in writing and, as instructed in such notice, pay all amounts due or to become due under this Agreement to such assignee or secured party. Each such assignee or secured party will have all of the rights of Lessor under this Agreement but none of Lessor's obligations or duties under this Agreement other than Lessor's obligations under Section 3(c) of this Agreement. Lessee agrees that it will not assert against any such assignee or secured party any defense, offset, claim or counterclaim which Lessee may be entitled to assert against Lessor under this Agreement or otherwise, but any such claim may be separately asserted against Lessor. Lessee's rights and interest in and to the Vehicles are and will continue at all times to be subject and subordinate in all respects to any assignment or security agreement now or hereafter executed by Lessor with or in favor of any such assignee or secured party, provided that Lessee shall have the right of quiet enjoyment of the Vehicles so long as no Event of Default under this Agreement has occurred and is continuing.

Without the prior written consent of Lessor, Lessee may not assign, sublease, transfer or pledge this Agreement, any Vehicle, or any interest in this Agreement or in and to any Vehicle, or permit its rights under this Agreement or any Vehicle to be subject to any lien, charge or encumbrance. Lessee's interest in this Agreement is not assignable and can not be assigned or transferred by operation of law. Lessee will not transfer or relinquish possession of any Vehicle (except for the sole purpose of repair or service of such Vehicle) without the prior written consent of Lessor.

16. **MISCELLANEOUS:** This Agreement contains the entire understanding of the parties. Any modification, change or amendment may be made only by an instrument in writing executed by the parties. If any term or provision of this Agreement or any application of any such term or provision is invalid or unenforceable, the remainder of this Agreement and any other application of such term or provision will not be affected thereby. Giving of all notices under this Agreement will be sufficient if mailed by certified mail to a party at its address set forth below or at such other address as such party may provide in writing from time to time. Any such notice mailed to such address will be effective one (1) day after deposit in the United States mail, duly addressed, with certified mail, postage prepaid. Lessee will promptly notify Lessor of any change in Lessee's address. This agreement may be executed in multiple counterparts (including telecopy counterparts), but the counterpart marked "ORIGINAL" by Lessor will be the original lease for purposes of applicable law. All of the representations, warranties, covenants, agreements and obligations of each Lessee under this Agreement (if more than one) are joint and several.

17. **SUCCESSORS AND ASSIGNS; GOVERNING LAW:** Subject to the provisions of Section 15, this Agreement will be binding upon Lessee and its heirs, executors, personal representatives, successors and assigns, and will inure to the benefit of Lessor and its successors and assigns. This Agreement will be governed by and construed in accordance with the substantive laws of the state where Lessor's office is located (as set forth below), which law will apply in the event of any conflict of law.

IN WITNESS WHEREOF, Lessor and Lessee have duly executed this Master Equity Lease Agreement as of the day and year first above written.

*BAY AREA AIR QUALITY MANAGEMENT DISTRICT*

LESSEE: \_\_\_\_\_  
Signed: *Ellen Garvey*  
By: Ellen Garvey  
Title: Executive Officer/Air Pollution Control Officer  
Address: 939 Ellis Street  
San Francisco, CA 94109

LESSOR: Enterprise Fleet Services  
Signed: *David Welch*  
By: David Welch  
Title: ASM  
Address: 2950 Menard St #100  
San Leandro, CA 94577

Date Signed: \_\_\_\_\_  
**Approved as to form:**  
*Robert N. Kwong*  
**ROBERT N. KWONG**  
District Counsel

Date Signed: 11.18.99






BAY AREA  
AIR QUALITY  
MANAGEMENT  
DISTRICT  
SINCE 1955

September 19, 2006

Kate Larkin  
Account Manager  
Enterprise Fleet Services  
2950 Merced Street, Suite 100  
San Leandro, CA 94577

Dear Kate:

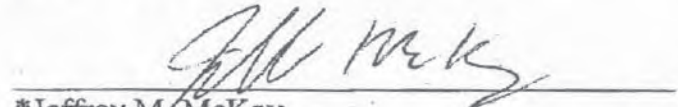
The following executives are authorized and empowered on behalf of the Bay Area Air Quality Management District to execute Motor Vehicle Leases with Enterprise Fleet Services.

  
\_\_\_\_\_  
Jack P. Broadbent  
Executive Officer/APCO

9/19/06  
Date

  
\_\_\_\_\_  
Brian C. Bunger  
District Counsel

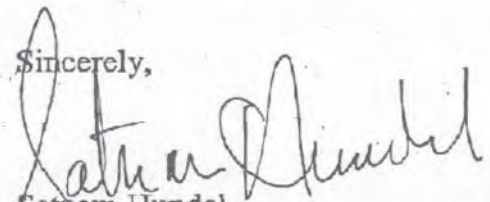
9/19/2006  
Date

  
\_\_\_\_\_  
\*Jeffrey M. McKay  
Chief Financial Officer

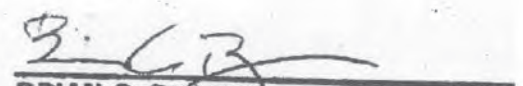
9/19/06  
Date

\* Limit \$10,000

Please call me at (415) 749-5114 if you have any questions.

Sincerely,  
  
\_\_\_\_\_  
Satham Hundel  
Business Manager

**APPROVED AS TO LEGAL FORM**

  
\_\_\_\_\_  
**BRIAN C. BUNGER  
DISTRICT COUNSEL  
BAY AREA AQMD**

*Save the Air*

AMENDED AND RESTATED  
MASTER EQUITY LEASE AGREEMENT

This Amended and Restated Master Equity Lease Agreement is entered into as of Oct. 1st, 2010, by and among Enterprise Fleet Management, Inc., a Missouri corporation ("EFM"), Enterprise FM Trust, a Delaware statutory trust (the "Titling Trust"), and the lessee whose name and address is set forth on the signature page below ("Lessee"). As of the date hereof, the vehicles listed on Exhibit A attached hereto and incorporated herein by reference, if any, are owned by EFM and leased to Lessee hereunder by EFM and the vehicles listed on Exhibit B attached hereto and incorporated herein by reference, if any, are owned by the Titling Trust and leased to Lessee hereunder by the Titling Trust. The owner of each Vehicle which is leased under this Amended and Restated Master Equity Lease Agreement after the date hereof will be as listed on the applicable Schedule. For all purposes of this Amended and Restated Master Equity Lease Agreement (including each Schedule), the term "Lessor" shall mean whichever of EFM or the Titling Trust, as the case may be, is the owner of the applicable Vehicle. The rights and obligations of each Lessor under this Agreement are several and not joint and neither Lessor shall have any liability for or with respect to any act or omission of the other Lessor under or in respect of this Agreement.

This Amended and Restated Master Equity Lease Agreement is an amendment, restatement and continuation of, and not a novation of, that certain Master Equity Lease Agreement dated as of November 18th, 1999, by and between Enterprise Rent-A-Car Co of San Francisco, LLC, a Delaware limited liability company which is the successor to Enterprise Rent-A-Car Company of San Francisco, a Nevada corporation (the "Original Lessor") and Lessee, as amended (as so amended, the "Existing Lease Agreement"). All "Schedules" (as defined therein) under the Existing Lease Agreement shall henceforth be deemed to be Schedules under this Amended and Restated Master Equity Lease Agreement. The Titling Trust and EFM were added as additional lessors under the Existing Lease Agreement and/or were the direct or indirect assignees of the Original Lessor. Lessee hereby consents to any direct or indirect assignment of any or all of the Original Lessor's rights, obligations and duties under the Existing Lease Agreement to the Titling Trust or EFM.

**1. LEASE OF VEHICLES:** Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the vehicles (individually, a "Vehicle" and collectively, the "Vehicles") described in the schedules from time to time delivered by Lessor to Lessee as set forth below ("Schedule(s)") for the rentals and on the terms set forth in this Agreement and in the applicable Schedule. References to this "Agreement" shall include this Amended and Restated Master Equity Lease Agreement and the various Schedules and addenda to this Amended and Restated Master Equity Lease Agreement. Lessor will, on or about the date of delivery of each Vehicle to Lessee, send Lessee a Schedule covering the Vehicle, which will include, among other things, a description of the Vehicle, the lease term and the monthly rental and other payments due with respect to the Vehicle and whether EFM or the Titling Trust is the owner of the Vehicle. The terms contained in each such Schedule will be binding on Lessee unless Lessee objects in writing to such Schedule within ten (10) days after the date of delivery of the Vehicle covered by such Schedule. Lessor is the sole legal owner of each Vehicle. This Agreement is a lease only and Lessee will have no right, title or interest in or to the Vehicles except for the use of the Vehicles as described in this Agreement. This Agreement shall be treated as a true lease for federal and applicable state income tax purposes with Lessor having all benefits of ownership of the Vehicles. It is understood and agreed that, where Lessor is the Titling Trust, EFM or an affiliate thereof (together with any subservicer, agent or successor or assign as servicer on behalf of the Titling Trust, "Servicer") may administer this Agreement on behalf of the Titling Trust, as Lessor, and may perform the service functions herein provided to be performed by Lessor.

**2. TERM:** The term of this Agreement ("Term") for each Vehicle begins on the date such Vehicle is delivered to Lessee (the "Delivery Date") and, unless terminated earlier in accordance with the terms of this Agreement, continues for the "Lease Term" as described in the applicable Schedule.

**3. RENT AND OTHER CHARGES:**

(a) Lessee agrees to pay Lessor monthly rental and other payments according to the Schedules and this Agreement. The monthly payments will be in the amount listed as the "Total Monthly Rental Including Additional Services" on the applicable Schedule (with any portion of such amount identified as a charge for maintenance services under Section 4 of the applicable Schedule being payable to Lessor as agent for EFM) and will be due and payable in advance on the first day of each month. If a Vehicle is delivered to Lessee on any day other than the first day of a month, monthly rental payments will begin on the first day of the next month. In addition to the monthly rental payments, Lessee agrees to pay Lessor a pro-rated rental charge for the number of days that the Delivery Date precedes the first monthly rental payment date. A portion of each monthly rental payment, being the amount designated as "Depreciation Reserve" on the applicable Schedule, will be considered as a reserve for depreciation and will be credited against the Delivered Price of the Vehicle for purposes of computing the Book Value of the Vehicle under Section 3(c). Lessee agrees to pay Lessor the "Total Initial Charges" set forth in each Schedule on the due date of the first monthly rental payment under such Schedule. Lessee agrees to pay Lessor the "Service Charge Due at Lease Termination" set forth in each Schedule at the end of the applicable Term (whether by reason of expiration, early termination or otherwise).

(b) In the event the Term for any Vehicle ends prior to the last day of the scheduled Term, whether as a result of a default by Lessee, a Casualty Occurrence or any other reason, the rentals and management fees paid by Lessee will be recalculated in accordance with the rule of 78's and the adjusted amount will be payable by Lessee to Lessor on the termination date.

(c) Lessee agrees to pay Lessor within thirty (30) days after the end of the Term for each Vehicle, additional rent equal to the excess, if any, of the Book Value of such Vehicle over the greater of (i) the wholesale value of such Vehicle as determined by Lessor in good faith or (ii) except as provided below, twenty percent (20%) of the Delivered Price of such Vehicle as set forth in the applicable Schedule. If the Book Value of such Vehicle is less than the greater of (i) the wholesale value of such Vehicle as determined by Lessor in good faith or (ii) except as provided below, twenty percent (20%) of the Delivered Price of such Vehicle as set forth in the applicable Schedule, Lessor agrees to pay such deficiency to Lessee as a terminal rental adjustment within thirty (30) days after the end of the applicable Term. Notwithstanding the foregoing, if (i) the Term for a Vehicle is greater than forty-eight (48) months (including any extension of the Term for such Vehicle), (ii) the mileage on a Vehicle at the end of the Term is greater than 15,000 miles per year on average (prorated on a daily basis) (i.e., if the mileage on a Vehicle with a Term of thirty-six (36) months is greater than 45,000 miles) or (iii) in the sole judgment of Lessor, a Vehicle has been subject to damage or any abnormal or excessive wear and tear, the calculations described in the two immediately preceding sentences shall be made without giving effect to clause (ii) in each such sentence. The "Book Value" of a Vehicle means the sum of (i) the "Delivered Price" of the Vehicle as set forth in the applicable Schedule minus (ii) the total Depreciation Reserve paid by Lessee to Lessor with respect to such Vehicle plus (iii) all accrued and unpaid rent and/or other amounts owed by Lessee with respect to such Vehicle.

(d) Any security deposit of Lessee will be returned to Lessee at the end of the applicable Term, except that the deposit will first be applied to any losses and/or damages suffered by Lessor as a result of Lessee's breach of or default under this Agreement and/or to any other amounts then owed by Lessee to Lessor.

(e) Any rental payment or other amount owed by Lessee to Lessor which is not paid within twenty (20) days after its due date will accrue interest, payable on demand of Lessor, from the date due until paid in full at a rate per annum equal to the lesser of (i) Eighteen Percent (18%) per annum or (ii) the highest rate permitted by applicable law (the "Default Rate").

(f) If Lessee fails to pay any amount due under this Agreement or to comply with any of the covenants contained in this Agreement, Lessor, Servicer or any other agent of Lessor may, at its option, pay such amounts or perform such covenants and all sums paid or incurred by Lessor in connection therewith will be repayable by Lessee to Lessor upon demand together with interest thereon at the Default Rate.

(g) Lessee's obligations to make all payments of rent and other amounts under this Agreement are absolute and unconditional and such payments



shall be made in immediately available funds without setoff, counterclaim or deduction of any kind. Lessee acknowledges and agrees that neither any Casualty Occurrence to any Vehicle nor any defect, unfitness or lack of governmental approval in, of, or with respect to, any Vehicle regardless of the cause or consequence nor any breach by EFM of any maintenance agreement between EFM and Lessee covering any Vehicle regardless of the cause or consequence will relieve Lessee from the performance of any of its obligations under this Agreement, including, without limitation, the payment of rent and other amounts under this Agreement.

**4. USE AND SURRENDER OF VEHICLES:** Lessee agrees to allow only duly authorized, licensed and insured drivers to use and operate the Vehicles. Lessee agrees to comply with, and cause its drivers to comply with, all laws, statutes, rules, regulations and ordinances and the provisions of all insurance policies affecting or covering the Vehicles or their use or operation. Lessee agrees to keep the Vehicles free of all liens, charges and encumbrances. Lessee agrees that in no event will any Vehicle be used or operated for transporting hazardous substances or persons for hire, for any illegal purpose or to pull trailers that exceed the manufacturer's trailer towing recommendations. Lessee agrees that no Vehicle is intended to be or will be utilized as a "school bus" as defined in the Code of Federal Regulations or any applicable state or municipal statute or regulation. Lessee agrees not to remove any Vehicle from the continental United States without first obtaining Lessor's written consent. At the expiration or earlier termination of this Agreement with respect to each Vehicle, or upon demand by Lessor made pursuant to Section 14, Lessee at its risk and expense agrees to return such Vehicle to Lessor at such place and by such reasonable means as may be designated by Lessor. If for any reason Lessee fails to return any Vehicle to Lessor as and when required in accordance with this Section, Lessee agrees to pay Lessor additional rent for such Vehicle at twice the normal pro-rated daily rent. Acceptance of such additional rent by Lessor will in no way limit Lessor's remedies with respect to Lessee's failure to return any Vehicle as required hereunder.

**5. COSTS, EXPENSES, FEES AND CHARGES:** Lessee agrees to pay all costs, expenses, fees, charges, fines, tickets, penalties and taxes (other than federal and state income taxes on the income of Lessor) incurred in connection with the titling, registration, delivery, purchase, sale, rental, use or operation of the Vehicles during the Term. If Lessor, Servicer or any other agent of Lessor incurs any such costs or expenses, Lessee agrees to promptly reimburse Lessor for the same.

**6. LICENSE AND CHARGES:** Each Vehicle will be titled and licensed in the name designated by Lessor at Lessee's expense. Certain other charges relating to the acquisition of each Vehicle and paid or satisfied by Lessor have been capitalized in determining the monthly rental, treated as an initial charge or otherwise charged to Lessee. Such charges have been determined without reduction for trade-in, exchange allowance or other credit attributable to any Lessor-owned vehicle.

**7. REGISTRATION PLATES, ETC.:** Lessee agrees, at its expense, to obtain in the name designated by Lessor all registration plates and other plates, permits, inspections and/or licenses required in connection with the Vehicles, except for the initial registration plates which Lessor will obtain at Lessee's expense. The parties agree to cooperate and to furnish any and all information or documentation, which may be reasonably necessary for compliance with the provisions of this Section or any federal, state or local law, rule, regulation or ordinance. Lessee agrees that it will not permit any Vehicle to be located in a state other than the state in which such Vehicle is then titled for any continuous period of time that would require such Vehicle to become subject to the titling and/or registration laws of such other state.

**8. MAINTENANCE OF AND IMPROVEMENTS TO VEHICLES:**

(a) Lessee agrees, at its expense, to (i) maintain the Vehicles in good condition, repair, maintenance and running order and in accordance with all manufacturer's instructions and warranty requirements and all legal requirements and (ii) furnish all labor, materials, parts and other essentials required for the proper operation and maintenance of the Vehicles. Any alterations, additions, replacement parts or improvements to a Vehicle will become and remain the property of Lessor and will be returned with such Vehicle upon such Vehicle's return pursuant to Section 4. Notwithstanding the foregoing, so long as no Event of Default has occurred and is continuing, Lessee shall have the right to remove any additional equipment installed by Lessee on a Vehicle prior to returning such Vehicle to Lessor under Section 4. The value of such alterations, additions, replacement parts and improvements will in no instance be regarded as rent. Without the prior written consent of Lessor, Lessee will not make any alterations, additions, replacement parts or improvements to any Vehicle which detract from its economic value or functional utility. Lessor will not be required to make any repairs or replacements of any nature or description with respect to any Vehicle, to maintain or repair any Vehicle or to make any expenditure whatsoever in connection with any Vehicle or this Agreement.

(b) Lessor and Lessee acknowledge and agree that if Section 4 of a Schedule (including, without limitation, any Schedule executed under the Existing Lease Agreement) includes a charge for maintenance, (i) the Vehicle(s) covered by such Schedule are subject to a separate maintenance agreement between EFM and Lessee and (ii) if the Titling Trust is the Lessor, Lessor shall have no liability or responsibility for any failure of EFM to perform any of its obligations thereunder or to pay or reimburse Lessee for its payment of any costs and expenses incurred in connection with the maintenance or repair of any such Vehicle(s).

**9. SELECTION OF VEHICLES AND DISCLAIMER OF WARRANTIES:**

(a) LESSEE ACCEPTANCE OF DELIVERY AND USE OF EACH VEHICLE WILL CONCLUSIVELY ESTABLISH THAT SUCH VEHICLE IS OF A SIZE, DESIGN, CAPACITY, TYPE AND MANUFACTURE SELECTED BY LESSEE AND THAT SUCH VEHICLE IS IN GOOD CONDITION AND REPAIR AND IS SATISFACTORY IN ALL RESPECTS AND IS SUITABLE FOR LESSEE'S PURPOSE. LESSEE ACKNOWLEDGES THAT LESSOR IS NOT A MANUFACTURER OF ANY VEHICLE OR AN AGENT OF A MANUFACTURER OF ANY VEHICLE.

(b) LESSOR MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO ANY VEHICLE, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY AS TO CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, IT BEING AGREED THAT ALL SUCH RISKS ARE TO BE BORNE BY LESSEE. THE VEHICLES ARE LEASED "AS IS," "WITH ALL FAULTS." All warranties made by any supplier, vendor and/or manufacturer of a Vehicle are hereby assigned by Lessor to Lessee for the applicable Term and Lessee's only remedy, if any, is against the supplier, vendor or manufacturer of the Vehicle.

(c) None of Lessor, Servicer or any other agent of Lessor will be liable to Lessee for any liability, claim, loss, damage (direct, incidental or consequential) or expense of any kind or nature, caused directly or indirectly, by any Vehicle or any inadequacy of any Vehicle for any purpose or any defect (latent or patent) in any Vehicle or the use or maintenance of any Vehicle or any repair, servicing or adjustment of or to any Vehicle, or any delay in providing or failure to provide any Vehicle, or any interruption or loss of service or use of any Vehicle, or any loss of business or any damage whatsoever and however caused. In addition, none of Lessor, Servicer or any other agent of Lessor will have any liability to Lessee under this Agreement or under any order authorization form executed by Lessee if Lessor is unable to locate or purchase a Vehicle ordered by Lessee or for any delay in delivery of any Vehicle ordered by Lessee.

**10. RISK OF LOSS:** Lessee assumes and agrees to bear the entire risk of loss of, theft of, damage to or destruction of any Vehicle from any cause whatsoever ("Casualty Occurrence"). In the event of a Casualty Occurrence to a Vehicle, Lessee shall give Lessor prompt notice of the Casualty Occurrence and thereafter will place the applicable Vehicle in good repair, condition and working order; provided, however, that if the applicable Vehicle is determined by Lessor to be lost, stolen, destroyed or damaged beyond repair (a "Totaled Vehicle"), Lessee agrees to pay Lessor no later than the date thirty (30) days after the date of the Casualty Occurrence the amounts owed under Sections 3(b) and 3(c) with respect to such Totaled Vehicle. Upon such payment, this Agreement will terminate with respect to such Totaled Vehicle.

**11. INSURANCE:**

(a) Lessee agrees to purchase and maintain in force during the Term, insurance policies in at least the amounts listed below covering each Vehicle, to be written by an insurance company or companies satisfactory to Lessor, insuring Lessee, Lessor and any other person or entity designated

by Lessor against any damage, claim, suit, action or liability:

(i) Commercial Automobile Liability Insurance (including Uninsured/Underinsured Motorist Coverage and No-Fault Protection where required by law) for the limits listed below (Note - \$5,000,000 Combined Single Limit Bodily Injury and Property Damage with No Deductible is required for each Vehicle capable of transporting more than 8 passengers):

<u>State of Vehicle Registration</u>	<u>Coverage</u>
Connecticut, Massachusetts, Maine, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont	\$1,000,000 Combined Single Limit Bodily Injury and Property Damage - No Deductible
Florida	\$500,000 Combined Single Limit Bodily Injury and Property Damage or \$100,000 Bodily Injury Per Person, \$300,000 Per Occurrence and \$50,000 Property Damage (100/300/50) - No Deductible
All Other States	\$300,000 Combined Single Limit Bodily Injury and Property Damage or \$100,000 Bodily Injury Per Person, \$300,000 Per Occurrence and \$50,000 Property Damage (100/300/50) - No Deductible

(iii) Physical Damage Insurance (Collision & Comprehensive): Actual cash value of the applicable Vehicle. Maximum deductible of \$500 per occurrence - Collision and \$250 per occurrence - Comprehensive).

If the requirements of any governmental or regulatory agency exceed the minimums stated in this Agreement, Lessee must obtain and maintain the higher insurance requirements. Lessee agrees that each required policy of insurance will by appropriate endorsement or otherwise name Lessor and any other person or entity designated by Lessor as additional insureds and loss payees, as their respective interests may appear. Further, each such insurance policy must provide the following: (i) that the same may not be cancelled, changed or modified until after the insurer has given to Lessor, Servicer and any other person or entity designated by Lessor at least thirty (30) days prior written notice of such proposed cancellation, change or modification, (ii) that no act or default of Lessee or any other person or entity shall affect the right of Lessor, Servicer, any other agent of Lessor or any of their respective successors or assigns to recover under such policy or policies of insurance in the event of any loss of or damage to any Vehicle and (iii) that the coverage is "primary coverage" for the protection of Lessee, Lessor, Servicer, any other agent of Lessor and their respective successors and assigns notwithstanding any other coverage carried by Lessee, Lessor, Servicer, any other agent of Lessor or any of their respective successors or assigns protecting against similar risks. Original certificates evidencing such coverage and naming Lessor, Servicer, any other agent of Lessor and any other person or entity designated by Lessor as additional insureds and loss payees shall be furnished to Lessor prior to the Delivery Date, and annually thereafter and/or as reasonably requested by Lessor from time to time. In the event of default, Lessee hereby appoints Lessor, Servicer and any other agent of Lessor as Lessee's attorney-in-fact to receive payment of, to endorse all checks and other documents and to take any other actions necessary to pursue insurance claims and recover payments if Lessee fails to do so. Any expense of Lessor, Servicer or any other agent of Lessor in adjusting or collecting insurance shall be borne by Lessee.

Lessee, its drivers, servants and agents agree to cooperate fully with Lessor, Servicer, any other agent of Lessor and any insurance carriers in the investigation, defense and prosecution of all claims or suits arising from the use or operation of any Vehicle. If any claim is made or action commenced for death, personal injury or property damage resulting from the ownership, maintenance, use or operation of any Vehicle, Lessee will promptly notify Lessor of such action or claim and forward to Lessor a copy of every demand, notice, summons or other process received in connection with such claim or action.

(b) Notwithstanding the provisions of Section 11(a) above: (i) if Section 4 of a Schedule includes a charge for physical damage waiver, Lessor agrees that (A) Lessee will not be required to obtain or maintain the minimum physical damage insurance (collision and comprehensive) required under Section 11(a) for the Vehicle(s) covered by such Schedule and (B) Lessor will assume the risk of physical damage (collision and comprehensive) to the Vehicle(s) covered by such Schedule; provided, however, that such physical damage waiver shall not apply to, and Lessee shall be and remain liable and responsible for, damage to a covered Vehicle caused by wear and tear or mechanical breakdown or failure, damage to or loss of any parts, accessories or components added to a covered Vehicle by Lessee without the prior written consent of Lessor and/or damage to or loss of any property and/or personal effects contained in a covered Vehicle. In the event of a Casualty Occurrence to a covered Vehicle, Lessor may, at its option, replace, rather than repair, the damaged Vehicle with an equivalent vehicle, which replacement vehicle will then constitute the "Vehicle" for purposes of this Agreement; and (ii) if Section 4 of a Schedule includes a charge for commercial automobile liability insurance, Lessor agrees that it will, at its expense, obtain for and on behalf of Lessee, by adding Lessee as an additional insured under a commercial automobile liability insurance policy issued by an insurance company selected by Lessor, commercial automobile liability insurance satisfying the minimum commercial automobile liability insurance required under Section 11(a) for the Vehicle(s) covered by such Schedule. Lessor may at any time during the applicable Term terminate said obligation to provide physical damage waiver and/or commercial automobile liability enrollment and cancel such physical damage waiver and/or commercial automobile liability enrollment upon giving Lessee at least ten (10) days prior written notice. Upon such cancellation, insurance in the minimum amounts as set forth in 11(a) shall be obtained and maintained by Lessee at Lessee's expense. An adjustment will be made in monthly rental charges payable by Lessee to reflect any such change and Lessee agrees to furnish Lessor with satisfactory proof of insurance coverage within ten (10) days after mailing of the notice. In addition, Lessor may change the rates charged by Lessor under this Section 11(b) for physical damage waiver and/or commercial automobile liability enrollment upon giving Lessee at least thirty (30) days prior written notice.

**12. INDEMNITY:** Lessee agrees to defend and indemnify Lessor, Servicer, any other agent of Lessor and their respective successors and assigns from and against any and all losses, damages, liabilities, suits, claims, demands, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) which Lessor, Servicer, any other agent of Lessor or any of their respective successors or assigns may incur by reason of Lessee's breach or violation of, or failure to observe or perform, any term, provision or covenant of this Agreement, or as a result of any loss, damage, theft or destruction of any Vehicle or related to or arising out of or in connection with the use, operation or condition of any Vehicle. The provisions of this Section 12 shall survive any expiration or termination of this Agreement.

**13. INSPECTION OF VEHICLES; ODOMETER DISCLOSURE; FINANCIAL STATEMENTS:** Lessee agrees to accomplish, at its expense, all inspections of the Vehicles required by any governmental authority during the Term. Lessor, Servicer, any other agent of Lessor and any of their respective successors or assigns will have the right to inspect any Vehicle at any reasonable time(s) during the Term and for this purpose to enter into or upon any building or place where any Vehicle is located. Lessee agrees to comply with all odometer disclosure laws, rules and regulations and to provide such written and signed disclosure information on such forms and in such manner as directed by Lessor. Providing false information or failure to complete the odometer disclosure form as required by law may result in fines and/or imprisonment. Lessee hereby agrees to promptly deliver to Lessor such financial statements and other financial information regarding Lessee as Lessor may from time to time reasonably request.

**14. DEFAULT; REMEDIES:** The following shall constitute events of default ("Events of Default") by Lessee under this Agreement: (a) if Lessee fails to



pay when due any rent or other amount due under this Agreement and any such failure shall remain unremedied for ten (10) days; (b) if Lessee fails to perform, keep or observe any term, provision or covenant contained in Section 11 of this Agreement; (c) if Lessee fails to perform, keep or observe any other term, provision or covenant contained in this Agreement and any such failure shall remain unremedied for thirty (30) days after written notice thereof is given by Lessor, Servicer or any other agent of Lessor to Lessee; (d) any seizure or confiscation of any Vehicle or any other act (other than a Casualty Occurrence) otherwise rendering any Vehicle unsuitable for use (as determined by Lessor); (e) if any present or future guaranty in favor of Lessor of all or any portion of the obligations of Lessee under this Agreement shall at any time for any reason cease to be in full force and effect or shall be declared to be null and void by a court of competent jurisdiction, or if the validity or enforceability of any such guaranty shall be contested or denied by any guarantor, or if any guarantor shall deny that it, he or she has any further liability or obligation under any such guaranty or if any guarantor shall fail to comply with or observe any of the terms, provisions or conditions contained in any such guaranty; (f) the occurrence of a material adverse change in the financial condition or business of Lessee or any guarantor; or (g) if Lessee or any guarantor is in default under or fails to comply with any other present or future agreement with or in favor of Lessor, The Crawford Group, Inc. or any direct or indirect subsidiary of The Crawford Group, Inc. For purposes of this Section 14, the term "guarantor" shall mean any present or future guarantor of all or any portion of the obligations of Lessee under this Agreement.

Upon the occurrence of any Event of Default, Lessor, without notice to Lessee, will have the right to exercise concurrently or separately (and without any election of remedies being deemed made), the following remedies: (a) Lessor may demand and receive immediate possession of any or all of the Vehicles from Lessee, without releasing Lessee from its obligations under this Agreement; if Lessee fails to surrender possession of the Vehicles to Lessor on default (or termination or expiration of the Term), Lessor, Servicer, any other agent of Lessor and any of their respective independent contractors shall have the right to enter upon any premises where the Vehicles may be located and to remove and repossess the Vehicles; (b) Lessor may enforce performance by Lessee of its obligations under this Agreement; (c) Lessor may recover damages and expenses sustained by Lessor, Servicer, any other agent of Lessor or any of their respective successors or assigns by reason of Lessee's default including, to the extent permitted by applicable law, all costs and expenses, including court costs and reasonable attorneys' fees and expenses, incurred by Lessor, Servicer, any other agent of Lessor or any of their respective successors or assigns in attempting or effecting enforcement of Lessor's rights under this Agreement (whether or not litigation is commenced) and/or in connection with bankruptcy or insolvency proceedings; (d) upon written notice to Lessee, Lessor may terminate Lessee's rights under this Agreement; (e) with respect to each Vehicle, Lessor may recover from Lessee all amounts owed by Lessee under Sections 3(b) and 3(c) of this Agreement (and, if Lessor does not recover possession of a Vehicle, (i) the estimated wholesale value of such Vehicle for purposes of Section 3(c) shall be deemed to be \$0.00 and (ii) the calculations described in the first two sentences of Section 3(c) shall be made without giving effect to clause (ii) in each such sentence); and/or (f) Lessor may exercise any other right or remedy which may be available to Lessor under the Uniform Commercial Code, any other applicable law or in equity. A termination of this Agreement shall occur only upon written notice by Lessor to Lessee. Any termination shall not affect Lessee's obligation to pay all amounts due for periods prior to the effective date of such termination or Lessee's obligation to pay any indemnities under this Agreement. All remedies of Lessor under this Agreement or at law or in equity are cumulative.

**15. ASSIGNMENTS:** Lessor may from time to time assign, pledge or transfer this Agreement and/or any or all of its rights and obligations under this Agreement to any person or entity. Lessee agrees, upon notice of any such assignment, pledge or transfer of any amounts due or to become due to Lessor under this Agreement to pay all such amounts to such assignee, pledgee or transferee. Any such assignee, pledgee or transferee of any rights or obligations of Lessor under this Agreement will have all of the rights and obligations that have been assigned to it. Lessee's rights and interest in and to the Vehicles are and will continue at all times to be subject and subordinate in all respects to any assignment, pledge or transfer now or hereafter executed by Lessor with or in favor of any such assignee, pledgee or transferee, provided that Lessee shall have the right of quiet enjoyment of the Vehicles so long as no Event of Default under this Agreement has occurred and is continuing. Lessee acknowledges and agrees that the rights of any assignee, pledgee or transferee in and to any amounts payable by the Lessee under any provisions of this Agreement shall be absolute and unconditional and shall not be subject to any abatement whatsoever, or to any defense, setoff, counterclaim or recoupment whatsoever, whether by reason of any damage to or loss or destruction of any Vehicle or by reason of any defect in or failure of title of the Lessor or interruption from whatsoever cause in the use, operation or possession of any Vehicle, or by reason of any indebtedness or liability howsoever and whenever arising of the Lessor or any of its affiliates to the Lessee or to any other person or entity, or for any other reason.

Without the prior written consent of Lessor, Lessee may not assign, sublease, transfer or pledge this Agreement, any Vehicle, or any interest in this Agreement or in and to any Vehicle, or permit its rights under this Agreement or any Vehicle to be subject to any lien, charge or encumbrance. Lessee's interest in this Agreement is not assignable and cannot be assigned or transferred by operation of law. Lessee will not transfer or relinquish possession of any Vehicle (except for the sole purpose of repair or service of such Vehicle) without the prior written consent of Lessor.

**16. MISCELLANEOUS:** This Agreement contains the entire understanding of the parties. This Agreement may only be amended or modified by an instrument in writing executed by each party. Lessor shall not by any act, delay, omission or otherwise be deemed to have waived any of its rights or remedies under this Agreement and no waiver whatsoever shall be valid unless in writing and signed by Lessor and then only to the extent therein set forth. A waiver by Lessor of any right or remedy under this Agreement on any one occasion shall not be construed as a bar to any right or remedy, which Lessor would otherwise have on any future occasion. If any term or provision of this Agreement or any application of any such term or provision is invalid or unenforceable, the remainder of this Agreement and any other application of such term or provision will not be affected thereby. Giving of all notices under this Agreement will be sufficient if mailed by certified mail to a party at its address set forth below or at such other address as such party may provide in writing from time to time. Any such notice mailed to such address will be effective one (1) day after deposit in the United States mail, duly addressed, with certified mail, postage prepaid. Lessee will promptly notify Lessor of any change in Lessee's address. This Agreement may be executed in multiple counterparts (including facsimile and pdf counterparts), but the counterpart marked "ORIGINAL" by Lessor will be the original lease for purposes of applicable law. All of the representations, warranties, covenants, agreements and obligations of each Lessee under this Agreement (if more than one) are joint and several.

**17. SUCCESSORS AND ASSIGNS; GOVERNING LAW:** Subject to the provisions of Section 15, this Agreement will be binding upon Lessee and its heirs, executors, personal representatives, successors and assigns, and will inure to the benefit of Lessor, Servicer, any other agent of Lessor and their respective successors and assigns. This Agreement will be governed by and construed in accordance with the substantive laws of the State of Missouri (determined without reference to conflict of law principles).

**18. NON-PETITION:** Each party hereto hereby covenants and agrees that, prior to the date which is one year and one day after payment in full of all indebtedness of the Titling Trust, it shall not institute against, or join any other person in instituting against, the Titling Trust any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings or other similar proceeding under the laws of the United States or any state of the United States. The provisions of this Section 18 shall survive termination of this Master Equity Lease Agreement.

IN WITNESS WHEREOF, Lessor and Lessee have duly executed this Master Equity Lease Agreement as of the day and year first above written.

LESSEE:

Bay Area Air Quality Management District

By: [Signature]  
Title: \_\_\_\_\_

Address: 939 ELLIS STREET, 4TH FLOOR

SAN FRANCISCO, CA 94109

Date Signed: 10/4/10

LESSOR:

ENTERPRISE FLEET MANAGEMENT, INC.

By: [Signature]  
Title: Controller

Address: \_\_\_\_\_  
\_\_\_\_\_

Date Signed: 10/5/10

ENTERPRISE FM TRUST

BY: ENTERPRISE FLEET MANAGEMENT, INC., its attorney in fact

By: [Signature]  
Title: Controller

Address: \_\_\_\_\_  
\_\_\_\_\_

Date Signed: 10/5/10

## MAINTENANCE AGREEMENT

This Maintenance Agreement (this "Agreement") is made and entered into as of the 1st day of Oct., 20 10, by Enterprise Fleet Management, Inc., a Missouri corporation ("EFM"), and Bay Area Air Quality Management District ("Lessee").

## WITNESSETH

1. **LEASE.** Reference is hereby made to that certain Amended and Restated Master Equity Lease Agreement dated as of October 1st, 2010, by and among EFM and Enterprise FM Trust, a Delaware statutory trust (the "Titling Trust"), as lessors (individually, a "Lessor" and collectively, the "Lessors"), and Lessee, as lessee (as the same may from time to time be amended, modified, extended, renewed, supplemented or restated, the "Lease"). All capitalized terms used and not otherwise defined in this Agreement shall have the respective meanings ascribed to them in the Lease.
2. **COVERED VEHICLES.** This Agreement shall only apply to those vehicles leased by a Lessor to Lessee pursuant to the Lease to the extent Section 4 of the Schedule (including, without limitation, Schedules executed under the Existing Lease Agreement) for such vehicles includes a charge for maintenance (the "Covered Vehicle(s)").
3. **TERM AND TERMINATION.** The term of this Agreement ("Term") for each Covered Vehicle shall begin on the Delivery Date of such Covered Vehicle and shall continue until the last day of the "Term" (as defined in the Lease) for such Covered Vehicle unless earlier terminated as set forth below. Each of EFM and Lessee shall have the right to terminate this Agreement effective as of the last day of any calendar month with respect to any or all of the Covered Vehicles upon not less than sixty (60) days prior written notice to the other party. The termination of this Agreement with respect to any or all of the Covered Vehicles shall not affect any rights or obligations under this Agreement which shall have previously accrued or shall thereafter arise with respect to any occurrence prior to termination, and such rights and obligations shall continue to be governed by the terms of this Agreement.
4. **VEHICLE REPAIRS AND SERVICE.** EFM agrees that, during the Term for the applicable Covered Vehicle and subject to the terms and conditions of this Agreement, it will pay for, or reimburse Lessee for its payment of, all costs and expenses incurred in connection with the maintenance or repair of a Covered Vehicle. This Agreement does not cover, and Lessee will remain responsible for and pay for, (a) fuel, (b) oil and other fluids between changes, (c) tire repair and replacement, (d) washing, (e) repair of damage due to lack of maintenance by Lessee between scheduled services (including, without limitation, failure to maintain fluid levels), (f) maintenance or repair of any alterations to a Covered Vehicle or of any after-market components (this Agreement covers maintenance and repair only of the Covered Vehicles themselves and any factory-installed components and does not cover maintenance or repair of chassis alterations, add-on bodies (including, without limitation, step vans) or other equipment (including, without limitation, lift gates and PTO controls) which is installed or modified by a dealer, body shop, upfitter or anyone else other than the manufacturer of the Covered Vehicle, (g) any service and/or damage resulting from, related to or arising out of an accident, a collision, theft, fire, freezing, vandalism, riot, explosion, other Acts of God, an object striking the Covered Vehicle, improper use of the Covered Vehicle (including, without limitation, driving over curbs, overloading, racing or other competition) or Lessee's failure to maintain the Covered Vehicle as required by the Lease, (h) roadside assistance or towing for vehicle maintenance purposes, (i) mobile services, (j) the cost of loaner or rental vehicles or (k) if the Covered Vehicle is a truck, (i) manual transmission clutch adjustment or replacement, (ii) brake adjustment or replacement or (iii) front axle alignment. Whenever it is necessary to have a Covered Vehicle serviced, Lessee agrees to have the necessary work performed by an authorized dealer of such Covered Vehicle or by a service facility acceptable to EFM. In every case, if the cost of such service will exceed \$50.00, Lessee must notify EFM and obtain EFM's authorization for such service and EFM's instructions as to where such service shall be made and the extent of service to be obtained. Lessee agrees to furnish an invoice for all service to a Covered Vehicle, accompanied by a copy of the shop or service order (odometer mileage must be shown on each shop or service order). EFM will not be obligated to pay for any unauthorized charges or those exceeding \$50.00 for one service on any Covered Vehicle unless Lessee has complied with the above terms and conditions. EFM will not have any responsibility to pay for any services in excess of the services recommended by the manufacturer, unless otherwise agreed to by EFM. Notwithstanding any other provision of this Agreement to the contrary, (a) all service performed within one hundred twenty (120) days prior to the last day of the scheduled "Term" (as defined in the Lease) for the applicable Covered Vehicle must be authorized by and have the prior consent and approval of EFM and any service not so authorized will be the responsibility of and be paid for by Lessee and (b) EFM is not required to provide or pay for any service to any Covered Vehicle after 100,000 miles.
5. **ENTERPRISE CARDS:** EFM may, at its option, provide Lessee with an authorization card (the "EFM Card") for use in authorizing the payment of charges incurred in connection with the maintenance of the Covered Vehicles. Lessee agrees to be liable to EFM for, and upon receipt of a monthly or other statement from EFM, Lessee agrees to promptly pay to EFM, all charges made by or for the account of Lessee with the EFM Card (other than any charges which are the responsibility of EFM under the terms of this Agreement). EFM reserves the right to change the terms and conditions for the use of the EFM Card at any time. The EFM Card remains the property of EFM and EFM may revoke Lessee's right to possess or use the EFM Card at any time. Upon the termination of this Agreement or upon the demand of EFM, Lessee must return the EFM Card to EFM. The EFM Card is non-transferable.
6. **PAYMENT TERMS.** The amount of the monthly maintenance fee will be listed on the applicable Schedule and will be due and payable in advance on the first day of each month. If the first day of the Term for a Covered Vehicle is other than the first day of a calendar month, Lessee will pay EFM, on the first day of the Term for such Covered Vehicle, a pro-rated maintenance fee for the number of days that the Delivery Date precedes the first monthly maintenance fee payment date. Any monthly maintenance fee or other amount owed by Lessee to EFM under this Agreement which is not paid within twenty (20) days after its due date will accrue interest, payable upon demand of EFM, from the date due until paid in full at a rate per annum equal to the lesser of (i) Eighteen Percent (18%) per annum or (ii) the highest rate allowed by applicable law. The monthly maintenance fee set forth on each applicable Schedule allows the number of miles per month as set forth in such Schedule. Lessee agrees to pay EFM at the end of the applicable Term (whether by reason of termination of this Agreement or otherwise) an overmileage maintenance fee for any miles in excess of this average amount per month at the rate set forth in the applicable Schedule. EFM may, at its option, permit an agent for EFM to bill and collect amounts due to EFM under this Agreement from Lessee on behalf of EFM.
7. **NO WARRANTIES.** Lessee acknowledges that EFM does not perform maintenance or repair services on the Covered Vehicles but rather EFM arranges for maintenance and/or repair services on the Covered Vehicles to be performed by third parties. EFM MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO ANY PRODUCTS, REPAIRS OR SERVICES PROVIDED FOR UNDER THIS AGREEMENT BY THIRD PARTIES, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COMPLIANCE WITH SPECIFICATIONS, OPERATION, CONDITION, SUITABILITY, PERFORMANCE OR QUALITY. ANY DEFECT IN THE PERFORMANCE OF ANY PRODUCT, REPAIR OR SERVICE WILL NOT RELIEVE LESSEE OF ITS OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING THE PAYMENT TO EFM OF THE MONTHLY MAINTENANCE FEES AND OTHER CHARGES DUE UNDER THIS AGREEMENT.

8. LESSORS NOT A PARTY. The Titling Trust is not a party to, and shall not have any rights, obligations or duties under or in respect of, this Agreement.

9. NOTICES. Any notice or other communication under this Agreement shall be in writing and delivered in person or sent by facsimile, recognized overnight courier or registered or certified mail, return receipt requested and postage prepaid, to the applicable party at its address or facsimile number set forth on the signature page of this Agreement, or at such other address or facsimile number as any party hereto may designate as its address or facsimile number for communications under this Agreement by notice so given. Such notices shall be deemed effective on the day on which delivered or sent if delivered in person or sent by facsimile, on the first (1st) business day after the day on which sent, if sent by recognized overnight courier or on the third (3rd) business day after the day on which mailed, if sent by registered or certified mail.

10. MISCELLANEOUS. This Agreement embodies the entire Agreement between the parties relating to the subject matter hereof. This Agreement may be amended only by an agreement in writing signed by EFM and Lessee. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provisions in any other jurisdiction. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that Lessee may not assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of EFM. This Agreement shall be governed by and construed in accordance with the substantive laws of the State of Missouri (without reference to conflict of law principles).

IN WITNESS WHEREOF, EFM and Lessee have executed this Maintenance Agreement as of the day and year first above written.

Lessee:

Bay Area Air Quality Management District

By: [Signature]  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address: 939 ELLIS STREET, 4TH FLOOR  
SAN FRANCISCO, CA 94109

Date Signed 16/4/10

EFM:

ENTERPRISE FLEET MANAGEMENT, INC.

By: [Signature]  
Name: Jonathan Lark  
Title: Controller

Address: \_\_\_\_\_  
\_\_\_\_\_

Date Signed: 10/5/10





## COMPANY OWNED VEHICLE SERVICE AGREEMENT

THIS COMPANY OWNED VEHICLE SERVICE AGREEMENT (this "Agreement") is made and entered into as of the 3rd day of September, 2021, by and between Enterprise Fleet Management, Inc. ("EFM"), a Missouri corporation, d/b/a Enterprise Fleet Management, and the company whose name and address is set forth on the signature page below ("Company"). Each of EFM and the Company is a "Party," and collectively, the "Parties."

### WITNESSETH:

**WHEREAS**, EFM desires to offer to the Company certain services, including the Maintenance Program (as defined herein), the Maintenance Management Program (as defined herein), and/or the License Administration Program (as defined herein, together with the Maintenance Program and the Maintenance Management Program, collectively, the "Services," with each of the Services sometimes being individually referred to herein as a "Service") for the Covered Vehicles (as defined herein), and enter into this Agreement regarding same; and

**WHEREAS**, the Company desires to obtain certain services from EFM, including the Maintenance Program, the Maintenance Management Program, and/or the License Administration Program, for the Covered Vehicles, and enter into this Agreement regarding same.

**NOW, THEREFORE**, in consideration of the premises, the mutual covenants, promises, and conditions set forth herein, the Parties agree as follows:

**1. COVERED VEHICLES:** Upon request from the Company to EFM, and in exchange for consideration as set forth in this Agreement, EFM will provide all or certain of the Services to the Company for certain vehicles owned by the Company (individually each is a "Covered Vehicle," and collectively the "Covered Vehicles"), which Covered Vehicles shall only be operated and/or used by an authorized representative of the Company or the Company's subsidiaries or affiliates. Each Service requested to be provided by EFM to the Company shall be set forth on a schedule (individually each is a "Schedule," and collectively the "Schedules") to this Agreement which shall identify the applicable Covered Vehicle and each requested Service for the Covered Vehicle. Each Covered Vehicle will have an individual Schedule. EFM will send the Company a Schedule for each Covered Vehicle, which Schedule will include, but not necessarily be limited to, a description of the Covered Vehicle, the Service or Services requested for the Covered Vehicle, and the recurring charges due from the Company to EFM with respect to each Service requested by the Company. Should a Service being provided for a Covered Vehicle be terminated, EFM will provide to the Company a revised Schedule for the Covered Vehicle which shall supersede the original Schedule for the Covered Vehicle. The Parties agree and acknowledge that each Schedule shall be subject to the terms and conditions of this Agreement, expressly made a part of this Agreement, and deemed completely integrated herein. References to this Agreement shall include all Schedules and exhibits to this Agreement, including, without limitation, the Packet (as defined herein) if applicable.

**2. TERM AND TERMINATION:** The term of this Agreement (the "Term") for each Covered Vehicle shall begin on the first day of the month listed on the applicable Schedule and shall continue for month to month thereafter until terminated as set forth in this Agreement. EFM and the Company shall each have the right to terminate this Agreement with respect to any Covered Vehicle effective as of the last day of any month upon not less than sixty (60) days prior written notice to the other Party. The termination of this Agreement, with respect to any Covered Vehicle or the entirety of this Agreement, shall not affect any rights or obligations under this Agreement which previously arose and were accrued or thereafter arise and accrue, and such rights and obligations shall continue to be governed by the terms of this Agreement. In the event that the Term for each Covered Vehicle has been terminated, either Party may terminate this Agreement in its entirety upon written notice to the other Party.

**3. ADDITIONAL DOCUMENTATION:** Whether at the request of EFM or another, the Company shall execute and deliver any and all additional documents and instruments as well as do such further acts and things as may be necessary or required to carry out the intent and purpose of this Agreement, including executing or delivering any document or instrument required and/or necessary to comply with any applicable federal, state or local law, rule, regulation or ordinance and/or effect the provision of any Service, including any document or instrument necessary to appoint EFM as the Company's agent and provide EFM with power of attorney on behalf of the Company as contemplated by this Agreement.

**4. COVERED VEHICLE FEE:** EFM will charge the Company, and the Company will pay EFM in accordance with the terms of this Agreement, a monthly fee, plus a one time set-up fee per Covered Vehicle.

**5. PAYMENT TERMS:** Any amount owed by the Company to EFM under this Agreement which is not paid within twenty (20) days after its due date will accrue interest, payable upon demand of EFM, at a rate per annum equal to the lesser of (a) Eighteen Percent (18%) per annum, or (b) the highest rate allowed by applicable law, from the due date until paid in full.

**6. BILLING:** All fees, costs, expenses, fees, charges, fines, tickets, penalties, taxes, or any other amounts paid by EFM and for which the Company is responsible and liable for under this Agreement will be submitted to the Company on an invoice. The Company agrees to and shall pay to EFM all invoiced amounts in accordance with the terms of this Agreement. EFM is entitled to retain for its own account, without any benefit being provided to the Company, and treat as being paid by EFM for purposes of this Agreement, any discounts that EFM receives from a third party which are based on the overall volume of business EFM provides to such third party and not solely based upon the Company's business.

**7. ARIIOUS COSTS, EXPENSES, FEES, AND CHARGES.** The Company agrees to pay all costs, expenses, fees, charges, fines, tickets, penalties, taxes (other than federal and state income taxes on the income of EFM), or any other amounts incurred by EFM during the Term in connection with the Services and/or the titling, licensing, registration, maintenance, delivery, purchase, sale, rental, use or operation of any Covered Vehicle. If EFM incurs any such costs, expenses, fees, charges, fines, penalties, taxes, or other amounts, EFM will invoice the Company, and the Company agrees to and shall pay to EFM all invoiced amounts in accordance with the terms of this Agreement.

Initials: EFM \_\_\_\_\_ Customer: Mk \_\_\_\_\_ DS

**8. LICENSE ADMINISTRATION PROGRAM:**

(a) EFM agrees to obtain all initial and renewal registration stickers and registration plates required by any state in which a Covered Vehicle is registered where the presence of the Covered Vehicle is not required for issuance of initial and/or renewal registration stickers and registration plates. The Company agrees that it shall not permit a Covered Vehicle to be located in a location, whether a state or country, other than the state in which the Covered Vehicle is then titled and/or registered for any continuous period of time that would result in the Covered Vehicle being subject to the titling and/or registration laws, rules, regulations, or ordinances of such other state or country without providing at least thirty (30) days advance written notice of same to EFM. The Company shall be responsible and liable for any fees, costs, expenses, fees, charges, fines, tickets, penalties, taxes, or any other amounts which are incurred as a result of the Company's failure to provide the advance written notice as set forth in this Section.

(b) Each Covered Vehicle shall be titled and licensed in the Company's name at the Company's expense. If necessary, EFM will assist the Company with such titling and licensing. The Company shall be liable and responsible for any fees, costs, expenses, fees, charges, fines, tickets, penalties, taxes, or any other amounts related to the titling and licensing of a Covered Vehicle.

(c) The services described in this Section are collectively referred to as the "License Administration Program."

**9. MAINTENANCE PROGRAM:** If the Maintenance Program is requested by the Company and provided by EFM, the following terms shall apply:

(a) EFM will provide the Company with an authorization card (the "EFM Card") for each Covered Vehicle, which EFM Card may or may not be a physical card, for use in authorizing the payment of charges incurred in connection with the Maintenance Program for a Covered Vehicle. The Company agrees to be and shall be liable to EFM for all charges made by or for the account of the Company with the EFM Card (other than any charges which are the responsibility of EFM under the terms of this Agreement). EFM will invoice the Company for all such charges, and the Company agrees to and shall pay to EFM all invoiced amounts in accordance with the terms of this Agreement. EFM reserves the right, and the Company agrees and acknowledges that EFM shall have the right, to change the terms and conditions as set forth in this Agreement for the use of the EFM Card at any time without providing advance notice to the Company. The EFM Card is and shall remain at all times the property of EFM, and EFM may revoke the Company's right to possess, access, or use the EFM Card at any time and for any reason. Upon the termination of this Agreement or upon the demand of EFM, the Company shall immediately cease using or accessing and/or return the EFM Card to EFM. The EFM Card is non-transferable.

(b) EFM agrees that, during the Term for a Covered Vehicle and subject to the terms and conditions of this Agreement, EFM will pay for, or reimburse the Company for its payment of, all reasonable and documented costs and expenses incurred in connection with the service, maintenance, or repair of the Covered Vehicle to the extent same is included on the applicable Schedule for a Covered Vehicle. Unless otherwise agreed to in writing by the Parties and set forth on the Schedule for a Covered Vehicle, neither this Agreement nor the Maintenance Program cover and the Company shall remain solely liable and responsible for and pay for (a) fuel, (b) oil and other fluids between changes, (c) tire repair and replacement, (d) washing, (e) maintenance or repair of, or damage caused by, any alteration, upgrade, upfitting, addition, improvement, or unauthorized replacement part added to a Covered Vehicle or by and of any after-market component (this Agreement covers maintenance and repair only of the Covered Vehicles themselves and any factory-installed components and does not cover maintenance or repair of chassis alterations, add-on bodies (including, without limitations, step vans), software, or other equipment (including, without limitation, lift gates, autonomous or automated vehicle equipment, components, parts or products, and PTO controls) which is installed or modified by the Company, a dealer, a body shop, an upfitter, or anyone else other than the manufacturer of the Covered Vehicle), (f) any service, maintenance, repair, and/or damage resulting from, due to, related to, or arising out of (i) an accident, a collision, theft, fire, freezing, vandalism, riot, explosion, other acts of god, an object striking or colliding with a Covered Vehicle, improper use or abuse of a Covered Vehicle (including, without limitation, driving over curbs, overloading, and racing or other competition), (ii) lack of maintenance, service, or repair by the Company between scheduled services (including, without limitation, failure to maintain manufacturer recommended fluid levels); or (iii) the Company's failure to maintain a Covered Vehicle as recommended by the manufacturer, or as required by and in compliance with (1) all laws, statutes, rules, regulations and ordinances (including without limitation such applicable federal, state and local laws, statutes, rules, regulations, ordinances, guidance and professional standards governing autonomous vehicles and automated driving systems and any parts, components and products related thereto), and (2) the provisions of all insurance policies affecting or covering the Covered Vehicle or its use or operation, (g) roadside assistance or towing for vehicle service, maintenance, or repair purposes, (h) mobile services, (i) the cost of a loaner or rental vehicle, or (j) if the Covered Vehicle is a vehicle with a 1 ton classification or greater, any (i) manual transmission clutch adjustment or replacement, (ii) brake adjustment or replacement or (iii) front axle alignment. Whenever it is necessary to have a Covered Vehicle serviced, maintained or repaired, the Company agrees to have the necessary work performed by a service, maintenance, or repair facility authorized in advance in writing by EFM. In every case, if the cost of any such service, maintenance, or repair is estimated to or does exceed fifty dollars (\$50.00), the Company shall notify EFM in advance of such service, maintenance, or repair being performed and obtain EFM's authorization and approval for such service, maintenance, or repair and abide by EFM's instructions as to where such service, maintenance, or repair shall be made and the extent of service, maintenance, or repair to be obtained. The Company agrees to furnish EFM with an invoice for all service, maintenance, or repair to a Covered Vehicle, which invoice shall be accompanied by a copy of the shop or service order (odometer mileage must be shown on each shop or service order). EFM shall not be, and is not, obligated to pay for any unauthorized charges or those exceeding fifty dollars (\$50.00) for any one service, maintenance, or repair on any Covered Vehicle unless the Company has complied with the terms and conditions of this Agreement and followed all of EFM's instructions. EFM shall not, and does not, have any responsibility to pay for any service, maintenance, or repair in excess of the service, maintenance, or repair recommended by the manufacturer, unless otherwise agreed to in writing by EFM. Notwithstanding any other provision of this Agreement to the contrary, EFM shall not be, and is not, required to provide or pay for any service, maintenance, or repair to any Covered Vehicle after the odometer mileage reaches one hundred thousand (100,000) miles. The Maintenance Program for a Covered Vehicle shall be automatically terminated and no longer provided by EFM to the Company after the odometer mileage for a Covered Vehicle reaches one hundred thousand (100,000) miles.

(c) EFM will charge the Company, and the Company agrees to pay to EFM, a monthly maintenance fee for the Maintenance Program for each Covered Vehicle. The monthly maintenance fee for each Covered Vehicle will be listed on the Schedule for the Covered Vehicle and will be due and payable by the Company to EFM in advance on the first day of each month.

(d) The services described in this Section are collectively referred to as the "Maintenance Program."

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**TU. MAINTENANCE MANAGEMENT PROGRAM:** If the Maintenance Management Program is requested by the Company and provided by EFM, the following terms shall apply:

(a) EFM will provide the Company with an EFM Card for each Covered Vehicle, which EFM Card may or may not be a physical card, for use in authorizing the payment of charges incurred in connection with the Maintenance Management Program for a Covered Vehicle. The Company agrees to be and shall be liable to EFM for all charges made by or for the account of the Company with the EFM Card (other than any charges which are the responsibility of EFM under the terms of this Agreement). EFM will invoice the Company for all such charges, and the Company agrees to and shall pay to EFM all invoiced amounts in accordance with the terms of this Agreement. EFM reserves the right, and the Company agrees and acknowledges that EFM shall have the right, to change the terms and conditions as set forth in this Agreement for the use of the EFM Card at any time without providing advance notice to the Company. The EFM Card is and shall remain at all times the property of EFM, and EFM may revoke the Company's right to possess, access, or use the EFM Card at any time and for any reason. Upon the termination of this Agreement or upon the demand of EFM, the Company shall immediately cease using or accessing and/or return the EFM Card to EFM. The EFM Card is non-transferable.

(b) EFM will provide a driver information packet (the "Packet") outlining the Maintenance Management Program. The Parties agree that the Maintenance Management Program is subject to the terms and conditions of the Packet.

(c) EFM will provide purchase order control by telephone, electronic mail, or in writing authorizing charges for service, maintenance, or repairs for a Covered Vehicle which are estimated to or do exceed seventy five dollars (\$75.00), or such other amount as may be established by EFM, in its sole discretion. From time to time under the Maintenance Management Program. All charges for service, maintenance, or repair for a Covered Vehicle under the Maintenance Management Program will be invoiced to EFM. Invoices will be reviewed by EFM for accuracy, proper application of any applicable manufacturer's warranty, application of potential discounts, and unnecessary, unauthorized repairs. After the invoices are audited, EFM shall pay for the amount of the audited invoice. EFM will provide to the Company the audited invoices (the "Audited Invoices").

(d) Notwithstanding the above, in the event the service, maintenance, or repair are the result of or are related to damage from an accident or other non-maintenance related cause (including glass claims), these matters will be referred to EFM. If the Company prefers that EFM handle the damage service, maintenance, or repair, the Company agrees to assign the administration of the matter to EFM. EFM will administer such claims in its discretion. The fees for this administration service will be up to one hundred twenty five dollars (\$125.00) per claim, and the Company agrees to pay EFM for those fees and reimburse EFM for the damage service, maintenance, and repair as set forth in this Agreement (the "Administrative and Repair Fees"). If the Company desires the assistance of EFM in recovering damage amounts from at fault third parties, a vehicle risk management agreement must be on file with EFM for the Company.

(e) The Company shall pay to EFM the amounts paid for by EFM under this Section and in conjunction with the Maintenance Management Program, including, without limitation, as set forth on the Audited Invoices as well as for the Administrative and Repair Fees in accordance with the terms of this Agreement.

(f) If the Maintenance Management Program is requested by the Company and provided by EFM, the EFM Card will authorize the Company to arrange for a rental vehicle at a discounted rate with a subsidiary or affiliate of Enterprise Holdings, Inc. ("EHI") for a maximum of two (2) days without prior authorization from EFM. Extensions beyond two (2) days must be approved by EFM. The Company shall be fully responsible for all obligations under any rental agreement with a subsidiary or affiliate of EHI pursuant to this Agreement. All drivers of a rental vehicle must be at least twenty one (21) years of age unless otherwise required by law, hold a valid driver's license, be an employee of the Company and authorized by the Company through established reservation procedures and meet all other applicable requirements of the applicable subsidiary or affiliate of EHI. The Company will be provided a specific telephone number for use in arranging a rental vehicle described in this Section.

The services described in this Section are collectively referred to as the "Maintenance Management Program."

**11. ODOMETER:** Neither EFM nor EHI or any of its subsidiaries or affiliates assume responsibility for or shall be responsible or liable for the correctness of the odometer reading on any Covered Vehicle unless that inaccuracy is caused by the action of EFM or EHI or any of its subsidiaries or affiliates.

**12. INSURANCE:** During the term of this Agreement, the Company shall pay for and maintain in full force and effect the insurance outlined herein for coverages at not less than the prescribed minimum limits of liability, covering the Company, its authorized representatives, agents, employees, subsidiaries, affiliates, and all subcontractors, or anyone directly or indirectly employed by any of them, or any for whose acts any of them may be liable: Automobile Liability Insurance covering liability arising out of maintenance, use or operation by the Company, or its employee, authorized representative, or agent of any auto (owned, hired and non-owned) with limits of not less than One Million Dollars (\$1,000,000) per occurrence for bodily injury and property damage. EFM and its subsidiaries and affiliates are to be named as Additional Insureds. All insurance shall be written through companies having an A.M. Best's rating of at least A VII or with such other companies as may reasonably be approved by EFM. All such liability insurance maintained by the Company shall include the condition that it is primary and that any such insurance maintained by EFM or any other additional insured is excess and non-contributory. Certificates of Insurance evidencing such coverages shall be furnished to EFM prior to commencement of this Agreement and at each subsequent policy renewal date. The Certificates shall provide for not less than thirty (30) days written notice to EFM prior to policy cancellation, non-renewal or material change.

**13. NO WARRANTY:** The Company acknowledges that EFM does not perform maintenance, service, or repairs on any Covered Vehicle or any rental vehicle and any maintenance, service, or repair is to be performed by third parties. EFM MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER OF ANY KIND, EXPRESS OR IMPLIED, WHETHER ARISING BY COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE WITH RESPECT TO PRODUCTS, MAINTENANCE, REPAIRS, OR SERVICES PROVIDED IN CONNECTION WITH THIS AGREEMENT BY THIRD PARTIES, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY AS TO MERCHANTABILITY, COMPLIANCE WITH SPECIFICATIONS, OPERATION, CONDITION, SUITABILITY, PERFORMANCE, QUALITY OR FITNESS FOR USE. Any defect in the performance of any product, service, maintenance, or repair will not relieve the Company from its obligations under this Agreement, including, without limitation, the payment to EFM of all amounts for which the Company is responsible and liable for under this Agreement.

**14. NOTICES:** All notices of cancellation or termination or other communications under this Agreement shall be mailed postage prepaid by registered or certified mail or sent by express overnight delivery service with a nationally recognized carrier, to the other Party at its address set forth on the signature page of this

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Agreement or at such other address as such party may provide in writing from time to time. Any such notice or communication sent by mail will be effective and deemed received three (3) days after deposit in the United States mail, duly addressed to the address for the Party set forth below, with registered or certified mail postage prepaid. Any such notice or communication sent by express overnight delivery service with a nationally recognized carrier will be effective and deemed received one (1) day after deposit with such delivery service, duly addressed, with delivery fees prepaid. The Company shall promptly notify EFM of any change in the Company's address.

**15. MISCELLANEOUS:**

(a) Other than as specifically set forth in this Agreement, this Agreement may be amended only by an agreement in writing signed by EFM and the Company.

(b) Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provisions in any other jurisdiction.

(c) This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns, except that the Company may not assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of EFM.

(d) This Agreement is governed by the substantive laws of the State of Missouri (determined without reference to conflict of law principles).

(e) The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

(f) This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument. This instrument shall be a valid and binding agreement when each Party has executed a counterpart. This Agreement may be signed and transmitted electronically or by facsimile machine or telecopier; the signature of any person on an electronically or facsimile transmitted copy hereof shall be considered an original signature and shall have the same binding effect as an original signature on an original document. The Parties agree that the electronic signature of any Party is intended to authenticate this Agreement, shall be considered an original signature, and have the same force and effect as a manual signature.

(g) Whenever the context of this Agreement requires, references to the singular shall include the plural, and the plural shall include the singular, where appropriate; and words denoting gender shall be construed to include the masculine and feminine, where appropriate.

(h) The Parties agree that all agreements and understandings between the Parties related to this Agreement are expressed and embodied herein; and in entering into this Agreement the Parties have not relied upon any statement or representation other than those expressly set forth herein.

(i) Except as specifically set forth in this Agreement, the Company does not have any express or implied right or authority to assume or create any obligations on behalf of or in the name of EFM or to bind EFM to any contract, agreement or undertaking with any third party.

(j) No waiver by any Party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

(k) All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available hereunder, at law, in equity, by statute, in any other agreement between the Parties or otherwise.

**16. LIMITATION OF LIABILITY:**

(a) NONE OF EFM, ITS AGENTS, OR EFM'S OR ITS AGENT'S RESPECTIVE AFFILIATES OR SUBSIDIARIES WILL BE LIABLE TO THE COMPANY FOR ANY LIABILITY, OBLIGATION, CLAIM, LOSS, PENALTY, FINE, COST, DAMAGE OR EXPENSE OF ANY KIND OR NATURE, CAUSED DIRECTLY OR INDIRECTLY, BY ANY COVERED VEHICLE OR RENTAL VEHICLE, OR ANY INADEQUACY OF ANY COVERED VEHICLE OR RENTAL VEHICLE FOR ANY PURPOSE OR ANY DEFECT (LATENT OR PATENT) IN ANY COVERED VEHICLE OR RENTAL VEHICLE, OR THE USE OR MAINTENANCE OF ANY COVERED VEHICLE OR RENTAL VEHICLE, OR ANY REPAIR, SERVICING OR ADJUSTMENT OF OR TO ANY COVERED VEHICLE OR RENTAL VEHICLE, OR ANY PROVISION OF ANY OF THE SERVICES FOR OR TO ANY COVERED VEHICLE, OR ANY DELAY IN SCHEDULING, ARRANGING, REIMBURSING OR PAYING FOR SERVICING, MAINTENANCE OR REPAIR OF OR TO ANY COVERED VEHICLE OR RENTAL VEHICLE, OR ANY INTERRUPTION OR LOSS OF SERVICE OR USE OF ANY COVERED VEHICLE OR RENTAL VEHICLE, OR ANY LOSS OF BUSINESS OR ANY DAMAGE WHATSOEVER AND HOWEVER CAUSED, OR ANY ACTION TAKEN BY EFM UNDER A POWER OF ATTORNEY PURSUANT TO THIS AGREEMENT.

(b) IN NO EVENT SHALL EFM, ITS AGENTS OR EFM'S OR ITS AGENT'S RESPECTIVE AFFILIATES OR SUBSIDIARIES BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY BREACH OR PERFORMANCE OF THIS AGREEMENT, REGARDLESS OF (I) WHETHER SUCH DAMAGES WERE FORESEEABLE, (II) WHETHER OR NOT EFM, ITS AGENTS OR EFM'S OR ITS AGENT'S RESPECTIVE AFFILIATES WERE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND/OR (III) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH A CLAIM, ACTION, CAUSE OF ACTION, DEMAND, LAWSUIT, ARBITRATION, INQUIRY, PROCEEDING OR LITIGATION IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

**17. INDEMNITY:**

(a) The Company agrees to defend, indemnify and hold harmless EFM, its agents, and EFM's or its Agent's respective affiliates, subsidiaries, successors and

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assigns (collectively, the "Indemnified Parties" with each being an "Indemnified Party") from and against any and all losses, damages, liabilities, actions, suits, claims, demands, penalties, fines, costs (including, without limitation, litigation costs) and expenses (including, without limitation, reasonable fees of counsel and experts) the Indemnified Parties may incur arising out of or resulting from any claim of a third party relating to: (a) the Company's breach or violation of, or failure to observe or perform, any term, provision or covenant of this Agreement, (b) any loss, bodily injury, death of any person, theft or destruction of or damage to real or tangible personal property related to or arising out of the acts or omissions of the Company and its agents, employees, representatives, or drivers, including without limitation, the use, operation or condition of any Covered Vehicle or rental vehicle, (c) negligence or more culpable act or omission of the Company or any of its agents, employees, representatives, or drivers (including any recklessness or willful misconduct) in connection with the Company's performance under this Agreement, (d) the Company's failure to comply with, and failure to cause its agents, employees, representatives, or drivers to comply with, all laws, statutes, rules, regulations and ordinances (including without limitation such applicable federal, state and local laws, statutes, rules, regulations, ordinances, guidance and professional standards governing autonomous vehicles and automated driving systems and any parts, components and products related thereto) and the provisions of all insurance policies affecting or covering any Covered Vehicle or rental vehicle or their use or operation, (e) any repair, maintenance, alteration, upgrade, upfit, addition, replacement, or improvement to a Covered Vehicle, (f) any assertion of the infringement of patent, trade secret, trademark, copyright, or other intellectual property rights of third parties, (g) the inaccuracy of the odometer reading on any Covered Vehicle or any odometer statement for any Covered Vehicle, or (h) actions taken by any of the Indemnified Parties while acting as an agent of the Company or under a power of attorney given by the Company.

(b) In the event of a third party claim, suit, action or proceeding giving rise to the indemnification rights and obligations set forth in this Section, the Indemnified Parties (or its designee) shall be entitled to control the defense of such claim, suit, action or proceeding and the Company shall indemnify the Indemnified Parties from and against any fees, costs and expenses (including, without limitation, reasonable fees of counsel and experts) incurred by any of the Indemnified Parties in defending such third party claim; provided that the Company shall have the right to participate in the defense of any third party claim with counsel selected by it at the Company's expense. The indemnifying party shall not enter into a settlement of any such claim, suit, action, or proceeding without the applicable Indemnified Party's prior consent, which consent shall not be unreasonably withheld.

(c) The provisions of this Section shall survive any expiration or termination of this Agreement.

**18. SIGNATORY WARRANTY:** Each Party represents and warrants that it has read and fully understands all of the terms of this Agreement, that it has consulted with its legal counsel and understands the legal ramifications of this Agreement, that it intends the respective Party on whose behalf he or she are is affixing his or her signature to be legally bound, and he or she is fully and duly authorized to enter into and execute this Agreement on behalf of the respective Party on whose behalf he or she is affixing his or her signature.

**19. SCHEDULES, ADDENDA, AND EXHIBITS:** All Schedules and exhibits referenced in and/or attached to this Agreement, including, without limitation, the Packet if applicable, are hereby expressly made a part of this Agreement and deemed completely integrated herein.

**20. POWER OF ATTORNEY:** The Company does hereby constitute and appoint EFM as its agent and true and lawful attorney-in-fact (a) to execute, acknowledge, and deliver on behalf of the Company all instruments, documents, agreements, or assurances as may be required for EFM to the provide to the Company the License Administration Program, (b) to take any and all actions EFM deems necessary to effectuate the License Administration Program, and (c) do and perform any and every act required, necessary or proper to be done in the exercise of any of the rights and powers herein granted, as fully to all intents and purposes as the Company might or could do if personally present, with full power of substitution or revocation, hereby ratifying and confirming all that such attorney-in-fact, shall lawfully do or cause to be done by virtue of this power of attorney and the rights and powers herein granted. The Company ratifies and confirms all actions that the attorneys-in-fact or any of them, lawfully do or cause to be done by virtue of this power of attorney. This power of attorney, unless earlier revoked by the Company, shall remain in effect until this Agreement is terminated in its entirety. IN WITNESS WHEREOF, Lessor and Lessee have duly executed this Master Equity Lease Agreement as of the day and year first above written.

**21. REPRESENTATIONS AND WARRANTIES:**

(a) The Company is duly organized, validly existing and in good standing in the jurisdiction of its incorporation, organization or formation, as applicable.

(b) The Company is duly qualified to do business and is in good standing in every jurisdiction in which such qualification is required for purposes of this Agreement.

(c) This Agreement, when executed by the Company (assuming due authorization, execution and delivery by EFM) will be a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms and conditions, except to the extent that enforcement thereof may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally.

(d) The execution and delivery of this Agreement by the Company and the performance by the Company of its obligations hereunder do not and will not violate or cause a breach of any other agreements or obligations to which the Company is a party or by which it is bound.

(e) The Company shall comply with all applicable laws and regulations in connection with the exercise of its rights and performance of its obligations hereunder.

**22. SURVIVAL:** Subject to the limitations and other provisions of this Agreement, Section 2 (Term and Termination), Section 3 (Additional Documentation), Section 5 (Payment Terms), Section 6 (Billing), Section 7 (Various Costs, Expenses, Fees, and Charges), Section 11 (Odometer), Section 13 (No Warranty), Section 15 (Miscellaneous), Section 16 (Limitation of Liability), Section 17 (Indemnity), Section 20 (Power of Attorney), Section 21 (Representations and Warranties), and Section 22 (Survival) shall survive the expiration or termination of this Agreement, as well as any other Section or provision that, in order to give proper effect to its intent should survive such expiration or termination, shall survive the expiration or earlier termination of this Agreement.

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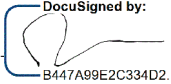

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**IN WITNESS WHEREOF, EFM** and the Company have executed this Agreement as of the day and year first above written.

COMPANY: Bay Area Air Quality Management District

EFM: Enterprise Fleet Management, Inc.

By:  \_\_\_\_\_  
B447A99E2C334D2...

By: Michael Kerbey \_\_\_\_\_

Name: Rex Sanders

Name: Michael Kerbey

Title: Chief Administrative Officer

Title: Finance Director

Address: 375 Beale Street, Ste 600  
San Francisco, CA 94105

Address: 2633 Camino Ramon, Ste 400  
San Ramon, CA 94583

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Initials: EFM

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BOARD MEETING DATE: September 18, 2023

REPORT: Community Advisory Council

SYNOPSIS: The Community Advisory Council (Council) held a special meeting/retreat on Thursday, September 14, and Friday, September 15, 2023. The following is a summary of the meeting.

RECOMMENDED ACTION:  
Receive and file.

Ms. Margaret Gordon, Co-Chair  
John Kevin Jefferson, Co-Chair  
Latasha Washington, Co-Chair  
Community Advisory Council

MG/KJK/LW:mh

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**FRIDAY, SEPTEMBER 14, 2023 (DAY 1)**

**Council Members**

Present, In Person: Council Co-Chairpersons Ms. Margaret Gordon, Kevin John Jefferson, and Latasha Washington; and Council Members Dr. Juan Aguilera, William Goodwin, Ariann Harrison, Joy Massey, Cecilia Mejia, Hana Mendoza, Rio Molina, Mayra Pelagio, Charles Reed, Dr. Jeff Ritterman, Kevin G. Ruano Hernandez, Violet Saena, and Ken Szutu.

Absent: Council Member Fernando Campos.

Others Present: Board Chairperson John J. Bauters and Board Vice Chairperson, Davina Hurt.

**Call to Order**

The meeting Facilitator, Randolph Belle, called the Community Advisory Council meeting to order at 12:07 p.m., on Thursday, September 14, 2023.

*For additional details of the Community Advisory Council meeting, please refer to the webcast, which can be found [here](#) 24 hours after the meeting as concluded. Please use the webcast’s index to view specific agenda items.*

2. **[GROUNDING THE WORK OF THE COMMUNITY ADVISORY COUNCIL ON ENVIRONMENTAL JUSTICE \(EJ\)](#)**

**A. Organizational Level Setting** – Air District Board of Directors Chair Bauters and Vice Chair Hurt provided welcoming remarks. Dr. Philip M. Fine, Executive Officer/Air Pollution Control Officer (APCO), gave the staff presentation *Air Quality Management and Air District Overview*, including: outline; air pollution

terms; emissions: air pollution from sources; ambient concentrations: levels of pollution measured in the air; exposure: amount of pollution that people are exposed to; basics of air quality management (who, what, from where, and how); Air District mission; air pollutants and their impacts; emissions inventory: estimates of sources of air pollution; Bay Area greenhouse gas (GHG) emissions; measurements throughout the Bay Area; examples: some areas have higher day-to-day levels of pollution or higher peak levels of pollution during short episodes, and community-partnered mobile monitoring study to identify areas of elevated air toxics near sources of concern; where can the public get air quality data; rule development; permits; Compliance and Enforcement; incentives: and grants for clean air and climate solutions.

**B. Team Building Discussion** – The Council engaged in a team building discussion to strengthen its communication, collaboration, and connections. One by one, each Council Member answered the question “What air pollution problem exists in your neighborhood or the community you work with?”

**C. Federal Perspective on Environmental Justice** – Robin Collin, Senior Advisor to the U.S. Environmental Protection Agency (EPA) Administrator for Environmental Justice, provided a perspective on how government can partner with local communities to promote wellness, which included her personal experiences of environmental injustice.

#### Public Comments

No requests received.

#### Council Comments:

The Council asked questions and gave comments, including: appreciation for Dr. Fine’s explanation of the Air District’s structure and activities; the history of Assembly Bill (AB) 398 (E. Garcia), how California air districts are prevented from setting limits on carbon dioxide at stationary sources that are subject to the State’s Cap and Trade program; how much control the Air District has over the grant program that it facilitates on behalf of the State; the desire for an official system that addresses questions from communities and puts the community in the center of all Air District activities (planning, engineering, compliance and enforcement, rules, etc.); concerns about the Air District’s new web tool that provides searchable information for all the notices of violation that the agency has issued within the past five years; whether the Air District can ban all residential wood burning activities; whether the Air District is interested in carbon capture; the desire of the Council to see and exchange data with the Air District’s lab that analyses air samples; the request for the Air District’s current organizational chart; concerns that Air District field staff that interface with the public do not communicate the same objectives as Air District management; the desire for both air quality modeling *and* monitoring; the request for reparations to communities impacted by air pollution; whether existing laws may be revised to incorporate community engagement into them; and concerns about industrial plants that operate for years without Air District permits.

#### Council Action

None; receive and file.



### 3. ENVIRONMENTAL JUSTICE ACTION PLANNING

Vernice Miller-Travis, Executive Vice President of The Metropolitan Group, gave the presentation *Environmental Justice Action Planning*, including: outcome; outline; requested action; EJ perspectives from The Metropolitan Group; how agency culture change happens – theory of Diffusion of Ideas; positive impact of community on EJ solutions; EJ community case study of “soft power”; organizing together for effective change; WE ACT for EJ: Theory of Change; and facilitator spotlight.

Co-Chair Washington then provided an update from the EJ Policy Ad Hoc Committee. She showed slides to indicate the EJ Action Plan’s development process and timeline.

Ms. Miller-Travis then engaged the Council in the development of the EJ Action Plan by utilizing the structure of the Theory of Change (Slide 21). The Council was asked to do the following:

1. *Review selected comments that resulted from the EJ Policy Ad Hoc’s brainstorm of Question 1A: What is the Environmental Justice need?*
2. *Review all 13 comments that resulted from the brainstorm of Question 1B: What impact could the EJ Action Plan have?*
3. *Interactive activity – All CAC M embers select the top 3 comments from Question 1B that resonate with their own desired impact of the EJ Action Plan.*
4. *Discussion – CAC M embers may share additional desired impacts of the EJ Action Plan*

1A. What is the Environmental Justice need? (e.g., what is the problem to solve? what changes are we seeking?)

1B. What specific impact could the EJ Action Plan (and Strategic Plan) have in addressing the need?

Based on this activity, the most desired comment that was listed was “Hire more Air District staff with EJ skills, mindsets, and lived experience and have more persons of color in higher positions of leadership.”

#### Public Comments

No requests received.

#### Council Comments

Regarding the presentation, the Council gave comments, including: appreciation for Dr. Phil Martien engaging in community-based science with the West Oakland Environmental Indicators Project; concerns about the Air District’s community engagement practices and the desire for enhanced and improved engagement, as well as a larger community engagement budget; concern about the way in which Council Members’ questions are taken and answered by Air District staff at Council meetings; the fact that those living in impacted, overburdened communities can normalize their degradation; the need to think about those who will be joining the Council in the future and focusing on those transitions; and when utilize direct action.

Ms. Margaret Gordon announced that this will be her last meeting as a Co-Chair.

Council Action

None; receive and file.

4. **APPROVAL OF THE DRAFT MINUTES OF THE COMMUNITY ADVISORY COUNCIL MEETING OF JULY 20, 2023**

Public Comments

No requests received.

Council Comments

None.

Council Action

Co-Chair Washington made a motion, seconded by Co-Chair Jefferson, to **approve** the Draft Minutes of the Community Advisory Council meeting of July 20, 2023, and the motion **carried** by the following vote of the Council:

AYES: Aguilera, Goodwin, Gordon, Harrison, Jefferson, Massey, Mejia, Mendoza, Molina, Pelagio, Reed, Ritterman, Saena, Szutu, Washington.  
NOES: None.  
ABSTAIN: None.  
ABSENT: Campos, Ruano Hernandez.

**THE COUNCIL RECESSED AT 4:57 P.M ON SEPTEMBER 14, 2023, AND RESUMED AT 9:07 A.M. ON SEPTEMBER 15, 2023.**

**FRIDAY, SEPTEMBER 15, 2023 (DAY 2)**

5. **CALL TO ORDER**

Mr. Belle called the Community Advisory Council (Council) meeting to order at 9:07 a.m., and resumed the meeting on Day 2 of 2.

**Roll Call:**

Present, In Person: Council Co-Chairpersons Ms. Margaret Gordon, Kevin John Jefferson, and Latasha Washington; and Council Members Dr. Juan Aguilera, William Goodwin, Arieann Harrison, Joy Massey, Cecilia Mejia, Hana Mendoza, Rio Molina, Mayra Pelagio, Charles Reed, Dr. Jeff Ritterman, Kevin G. Ruano Hernandez, Violet Saena, and Ken Szutu.

Absent: Council Member Fernando Campos.



Others Present: None.

6. **ENVIRONMENTAL JUSTICE PERSPECTIVES**

- A. **Team Building Discussion** – The Council engaged in a team building discussion to strengthen their communication, collaboration, and connections. One by one, each Council Member answered the question “How do you define equity?”
- B. **Local Perspective on Environmental Justice** – Marisol Cantú, third generation Richmond resident, teacher, and advocate, provided a perspective on local efforts to reduce emissions as a member of the Richmond-North Richmond-San Pablo Area AB617 Community Steering Committee. She spoke about her personal experiences with environmental injustice as a resident of Richmond, California, as well as the work of the Richmond Progressive Alliance’s Listening Project, the goal of which is to take political decision-making back from corporations and put power back into the hands of the community. Ms. Cantú then began to engage the Council in a listening activity, but the Council requested that Air District staff be the ones to respond instead. Air District staff was asked to listen to excerpts of the Listening Project’s podcast, and then summarize what they heard; list key themes and messages that they heard; list emotions from tones, pauses, pitches, and inflections that they heard; and express how they felt upon listening.

Public Comments

Public comments were given by Esther Goolsby.

Council Action

None; receive and file.

7. **DEVELOPMENT OF COMMUNITY ADVISORY COUNCIL GOALS AND WORK PLAN**

Council Member Goodwin, and Belinda Lyons-Newman and Erica Harrell, of Lyons-Newman Consulting, gave the presentation *Development of Community Advisory Council Goals and Work Plan*, including: outcome; outline; requested action; expectations & ground rules; Council Work Plan; revised Work Plan; developing an updated Work Plan; Lyons-Newman Consulting staff and approach; project objective; definition of terms; background; goals and action example; and priority goals.

Ms. Lyons-Newman then engaged the Council in a working session to further refine and develop the Council’s Work Plan, including the development of goals for the year. Based on a survey regarding priority goals that was previously completed by the Council, the following subsequent list of five goals were displayed:

- **Goal A:** *educate and engage communities most affected by air pollution*
- **Goal B:** *boost monitoring and reporting on air quality and enforcement of laws*
- **Goal C:** *support community members to replace indoor gas appliances*

- *Goal D: Develop an EJ and equity framework to inform BAAQMD processes and Council’s decision-making*
- *Goal E: Strengthen the Council’s effectiveness and impact on change in communities*
- *Goal F: Find ways to direct resources to communities (added during meeting)*

Based on this activity, the most desired goal became “Build on experience and expertise and engage communities most affected by air pollution.” Ms. Harrell then led the Council through an exercise, filling out the Work Plan framework template created by the consultant. For each goal listed above, the Council was asked to identify activities, potential Board recommendations, and a Council Member lead.

Public Comments

Public comments were given by Esther Goolsby.

Council Comments

The Council discussed and made suggested revisions to the language of the five goals. The question of whether the Council wished to engage in participatory budgeting was also discussed. Co-Chair Washington expressed concern with this activity, as she had hoped to hear more policy-oriented activities identified by the Council.

Council Action

None; receive and file.

**OTHER BUSINESS**

**8. TIME AND PLACE OF NEXT MEETING**

Thursday, November 16, 2023, at 6:00 p.m. at 375 Beale Street, San Francisco, CA, 94105. The meeting will be in-person for the Community Advisory Council members and members of the public will be able to either join in-person or via webcast.

**Adjournment**

The meeting was adjourned at 2:26 p.m.

**Attachments**

- #2: Grounding the Work of the Community Advisory Council on Environmental Justice
- #3: Environmental Justice Action Planning
- #4: Draft Minutes of the Community Advisory Council Meeting of July 20, 2023
- #6: Environmental Justice Perspectives
- #7: Development of Community Advisory Council Goals and Work Plan

BOARD MEETING DATE: September 20, 2023

REPORT: Community Equity, Health, and Justice Committee

SYNOPSIS: The Community Equity, Health, and Justice Committee (Committee) held a meeting on Wednesday, September 20, 2023. The following is a summary of the meeting.

RECOMMENDED ACTION:

Receive and file.

Davina Hurt, Chair  
Community Equity, Health, and Justice Committee

DH:mh

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### **Committee Members**

Present, In-Person (Bay Area Metro Center, 375 Beale Street, 1<sup>st</sup> Floor Board Room, San Francisco, California, 94105): Chairperson Davina Hurt; Vice Chair Katie Rice; and Director John Gioia.

Present, In-Person Satellite Location (Office of Contra Costa County Supervisor John Gioia, Conference Room, 11780 San Pablo Ave., Suite D, El Cerrito, California, 94530): Directors Joelle Gallagher, Erin Hannigan, and Steve Young.

Present, In-Person Satellite Location (Santa Rosa Junior College, Doyle Library, Room 148, 1501 Mendocino Ave., Santa Rosa, California, 95401): Director Brian Barnacle.

Absent: Board Chair John J. Bauters; and Directors Margaret Abe-Koga, Nate Miley, and Vicki Veenker.

### **Call to Order**

Chair Hurt called the meeting to order at 1:03 p.m.

*For additional details of the Community Equity, Health, and Justice Committee Meeting, please refer to the webcast, which can be found [here](#) 24 hours after the meeting as concluded. Please use the webcast's index to view specific agenda items.*

## CONSENT CALENDAR

### 3. APPROVAL OF THE DRAFT MINUTES OF THE COMMUNITY EQUITY, HEALTH, AND JUSTICE COMMITTEE MEETING OF JUNE 21, 2023

#### Public Comments

Public comments were given by “Call-In User\_1”.

#### Committee Comments

None.

#### Committee Action

Director Rice made a motion, seconded by Director Hannigan, to **approve** Minutes of the Community, Equity, Health, and Justice Committee of June 21, 2023; and the motion **carried** by the following vote of the Committee:

AYES: Barnacle, Gallagher, Gioia, Hannigan, Hurt, Rice, Young.  
NOES: None.  
ABSTAIN: None.  
ABSENT: Abe-Koga, Bauters, Miley, Veenker.

## INFORMATIONAL ITEMS

### 4. COMMUNITY PERSPECTIVES

Veronica Eady, Deputy Executive Officer of Equity & Community Programs, introduced Community Advisory Council Member, Dr. Jeff Ritterman, M.D., who gave the presentation *Combating Medical Racism and Air Pollution*, including: biography, Physicians for Social Responsibility (PSR); PSR’s focus; fighting air pollution; uprooting medical racism; discrimination in pain management; Tuskegee syphilis study; how does racism become biology; Journal of the American Medical Association: May 10, 1999; life expectancy by race; infant mortality rates by race and ethnicity, 2018; similarities between our work with the Air Board and combating medical racism; How To Become An Antiracist; Dr. Kendi’s prescription; Isabel Wilkerson’s prescription; and resources.

#### Public Comments

Public comments were given by “Call-In User\_1”; and Jan Warren, Interfaith Climate Action Network of Contra Costa County.

#### Committee Comments

The Committee and staff discussed the role of epigenetics (how do environmental factors affect our genes); and the desire for the Air District to seek root causes of community vulnerabilities to drive health outcomes.

Committee Action

None; receive and file

**5. REPORT OF THE DEPUTY EXECUTIVE OFFICER OF EQUITY AND COMMUNITY PROGRAMS (OUT OF ORDER, ITEM 8)**

Ms. Eady introduced Latasha Washington, one of the three Co-Chairpersons of the Air District's Community Advisory Council, who summarized the activities of the Community Advisory Council's first retreat that was held on September 14 and 15 in Petaluma.

Ms. Eady also mentioned that the Air District observes Hispanic & Latin American Heritage Month from September 15 to October 15, and listed upcoming events and guest speakers (including Dolores Huerta and Elizabeth Yeampierre) that the Air District plans to host during that time.

Chair Hurt gave remarks about the upcoming departure of Ms. Eady from the Air District and Committee members thanked her for her service.

Public Comments

Public comments were given by "Call-In User\_1"; and Janet Johnson, Sunflower Alliance.

**6. BAY AIR CENTER: TECHNICAL SUPPORT FOR AIR QUALITY PROJECTS (ITEM 5)**

Michael Flagg, Principal Air Quality Specialist in the Meteorology and Measurement Division, gave the staff presentation *Bay Air Center: Technical Support for Air Quality Projects*, including: action requested; outline; needs assessment; guiding principles; current contractors; matching support to community needs; types of clients: overburdened communities; program infrastructure: website, sensor verification system, and region-wide datasets; project spotlights: Brightline Defense, Belle Haven and Climate Resilient Communities, and Alameda County Library; funding Fiscal Year Ending (FYE) 2020-FYE 2023; technical support summary; FYE 2024 implementation; next steps; discussion and feedback; and contact us at the Bay Air Center.

Public Comments

Public comments were given by "Call-In User\_1"; Dr. Stephen Rosenblum, Climate Action California; and Jan Warren, Interfaith Climate Action Network of Contra Costa County.

Committee Comments

The Committee and staff discussed Alameda County Library's engagement with Bay Area Center; ways to make the Bay Air Center website more user-friendly and consolidate monitoring data sources; the request for the Bay Air Center to engage with the Benicia Community Air Monitoring Program; the request that the Air District provides technical assistance in setting up the air monitoring trailer located in Benicia; outreach efforts; whether organizations may launch community-based air monitoring projects with the Bay Air Center without being a grantee of the



Bay Air Center; the importance of investing in relationships with community organizations; grant management challenges that small organizations may experience, and whether the Bay Area Center assist with those; whether communities have been surveyed to assess whether their needs for capacity building (regarding air quality) are being met; the importance of enhancing community knowledge so that communities may look to each other's efforts; ways in which to engage youth in air quality and community engagement projects, such as an intern program or youth trainings; and the desire to identify the appropriate amount of leverage needed to successfully launch the Bay Air Center.

Committee Action

None; receive and file.

**OTHER BUSINESS**

**7. PUBLIC COMMENT ON NON-AGENDA MATTERS (ITEM 6)**

Public comments were given by "Call-In User\_1".

**8. COMMITTEE MEMBER COMMENTS (ITEM 7)**

Chair Hurt announced that the American Climate Corps launched today. This is a federal initiative to train young people in high-demand skills for jobs in the clean energy economy. The American Climate Corps will put a new generation of Americans to work conserving our lands and waters, bolstering community resilience, advancing environmental justice, deploying clean energy, implementing energy efficient technologies, and tackling climate change.

**9. TIME AND PLACE OF NEXT MEETING**

Wednesday, October 18, 2023, at 1:00 p.m. at 375 Beale Street, San Francisco, CA 94105. The meeting will be in-person for the Community Equity, Health, and Justice Committee members and members of the public will be able to either join in-person or via webcast.

**Adjournment**

The meeting was adjourned at 2:47 p.m.

**Attachments**

#3: Draft Minutes of the Community Equity, Health, and Justice Committee Meeting of June 21, 2023

#4: Community Perspectives

#5: Bay Air Center: Technical Support for Air Quality Projects