

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
NEW JERSEY ZERO-EMISSION INCENTIVE PROGRAM
VOUCHER AGREEMENT**

This New Jersey Zero-Emission Incentive Program Voucher Agreement (hereinafter the “Agreement”) dated as of the Effective Date set forth below between _____, **[BOLD CAPS]** (“Purchaser”) having its principal offices at _____, ^New Jersey, _____, **[BOLD CAPS]** (“Vendor”) having its principal offices at _____, ^New Jersey, and the **NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY** (the “Authority”), a body corporate and politic organized and existing under the authority of N.J.S.A. 34:1B-1 et seq., having its offices at 36 West State Street, PO Box 990, Trenton, New Jersey 08625-0990 (collectively the “Parties”).

WITNESSETH:

WHEREAS, in furtherance of the purposes of the Global Warming Response Act P.L. 2007, c. 112, and pursuant to Exec. Order No. 7 (Jan. 29, 2018), the Authority has established the New Jersey Zero-Emission Incentive Program: Voucher Pilot for Medium-duty Zero-emission Vehicles (“NJ ZIP” or “Program”) to subsidize the higher upfront cost of Zero-emission Vehicles (“ZEV”), as compared to the upfront costs of their conventional gasoline or diesel-powered alternatives, for use in the Greater Newark and Greater Camden areas.

WHEREAS, the Authority has found, on the basis of the information provided in Purchaser’s application dated _____, and any other documentation submitted by Purchaser in support of its application, that Purchaser is eligible to participate in the Program and qualifies to receive a Voucher Award as evidenced by the Authority issued Voucher Approval Letter dated _____; and

WHEREAS, the Authority has found, on the basis of the information provided in Vendor’s application dated _____, and any other documentation submitted by Vendor in support of its application, that Vendor is eligible to participate in the Program and qualifies to receive a Voucher Award as evidenced by the Authority issued Approval Letter dated _____; and

WHEREAS, pursuant to the Program, the Authority has approved the individual applications submitted by Purchaser and Vendor, and has determined to provide a Voucher Award up to a maximum amount of (\$ _____) on behalf of Purchaser to Vendor in accordance with the requirements of the NJ ZIP Program, and in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants made herein, it is agreed as follows:

This is intended as a SAMPLE document only, it is not executable. It is subject to customization and revision by the Authority. The Authority reserves the right to make changes to this document without notice. The final executable version of this document will be provided to you by the Authority at the appropriate time.

1. **Definitions.** The following terms shall have the following meaning when used in this Agreement, unless the context clearly indicates otherwise.

“Agreement Term” means from the Effective Date through the end of the Voucher Compliance Term.

“Bonus Criteria” means the eligibility requirement(s) to qualify for voucher bonus funds available based on Purchaser and/or Vendor proof of compliance as set forth in Section 3.

“DEP” means the New Jersey Department of Environmental Protection.

“Effective Date” means the date last written below representing the date of execution of this Agreement by the respective parties.

“Greater Camden Area” is defined as the overburdened communities (as defined by NJ P.L.2020, c.92, and which, for the purposes of this pilot, is used interchangeably with the term “environmental justice communities” specified in the RGGI Strategic Funding Plan) within or intersected by a circle with a 10-mile radius centered in Camden. Specifically, the eligible municipalities are Bellmawr, Camden, Cherry Hill, Cinnaminson, Collingswood, Delran, Deptford, Gloucester, Lawnside, Lindenwold, Magnolia, Maple Shade, Merchantville, Mount Ephraim, Mount Laurel, Palmyra, Paulsboro, Pennsauken, Riverside, Somerdale, Stratford, Voorhees, Washington, West Deptford, Westville, Woodbury, Woodlynne.

“Greater Newark Area” is defined as the overburdened communities (as defined by NJ P.L.2020, c.92, and which, for the purposes of this pilot, is used interchangeably with the term “environmental justice communities” specified in the RGGI Strategic Funding Plan) within or intersected by a circle with a 10-mile radius centered in Newark. Specifically, the eligible municipalities are Bayonne, Belleville, Bloomfield, Carlstadt, Carteret, Clark, Clifton, Cranford, East Newark, East Orange, East Rutherford, Elizabeth, Glenridge, Guttenberg, Harrison, Hillside, Hoboken, Irvington, Jersey City, Kearney, Kenilworth, Linden, Little Falls, Livingston, Lyndhurst, Maplewood, Millburn, Montclair, Moonachie, Newark, North Arlington, North Bergen, Nutley, Orange, Passaic, Rahway, Roselle, Roselle Park, Rutherford, Secaucus, South Orange, Springfield, Summit, Union City, Verona, Wallington, Weehawken, West New York, West Orange, Winfield, Woodridge.

“LWD” means the New Jersey Department of Labor and Workforce Development.

“NJ ZIP” or **“Program”** means the New Jersey Zero-emission Incentive Program: Voucher Pilot for Medium-duty Zero-emission Vehicles, through which the Authority issues Voucher Awards for the purchase of eligible zero-emission vehicles.

“Pilot Communities” means eligible communities, as approved by the Authority, located within the Greater Newark and Greater Camden areas of the State of New Jersey.

This is intended as a SAMPLE document only, it is not executable. It is subject to customization and revision by the Authority. The Authority reserves the right to make changes to this document without notice. The final executable version of this document will be provided to you by the Authority at the appropriate time.

“**Qualifying Vehicles**” or “**Qualifying ZEV**” means a zero- emission vehicle or vehicles designated as a Class 2b through Class 6 vehicle, approved by the Authority as being eligible under the Program, and purchased in whole or in part with the Voucher Award provided by the Authority.

“**Requisition**” means the form attached hereto as **Exhibit B**.

“**State**” means the State of New Jersey.

“**Voucher Award**” means the aggregate amount of all monies to be paid, including all applicable bonus amounts, by the Authority on behalf of the Purchaser and directly to Vendor, for the purchase expense of the Purchaser.

“**Voucher Approval Letter**” means the Authority-issued approval letter sent via email delineating and reserving the Voucher Award to be paid by the Authority on behalf of the Purchaser and directly to Vendor, for the purchase expense of the Purchaser, and delineating the conditions that must be met for the funds to be released attached hereto as **Exhibit A**. The approval letter is valid for six months from its issuance unless an extension of that time has been approved by the Authority.

“**Voucher Compliance Term**” means the three consecutive years from the end of the Voucher Reservation Term that the Purchaser and/or Vendor must be in compliance with the applicable Program requirements and the terms and conditions of this Agreement.

“**Voucher Reservation Term**” means the duration of time that the Voucher Award will be reserved for the eligible applicant until funds are either redeemed or expire, whichever comes first and not to exceed six months from issuance of the Voucher Approval Letter. Funds shall be redeemed by Vendor upon providing proof to the satisfaction of the Authority that Vendor has delivered the Qualifying Vehicle(s) and complied with all relevant obligations under this agreement and upon proof that the Purchaser registered the vehicle and has complied with all relevant obligations under this agreement. The reservation of the Voucher Award shall expire six months after the date of the Voucher Approval letter, with expired funds returned the voucher pool. The six-month term may be extended for up to an additional six months, at the sole discretion of the Authority, if requested by either party or both in writing prior to expiration of the six-month period and upon a demonstration of good faith efforts on the part of the requesting Party(s) to register and/or deliver the vehicle and to comply with all relevant obligations under this Agreement within the first six-month period.

“**Vehicle Scrappage,**” “**Scrappage**” or “**Scrap**” means rendering a vehicle inoperable and available for recycle; at a minimum, to cut a 3-inch hole in the engine block and disable the chassis by cutting the vehicle’s frame rails in half.

2. Voucher Award and Terms. The Voucher Award available to Purchaser is up to the maximum amount of \$ _____ as provided in the Voucher Approval letter attached hereto as **Exhibit A** for previously approved Qualifying Vehicle(s), including any eligible bonuses applied or capped at the sole discretion of the Authority.

The obligation of the Authority to issue a Voucher Award pursuant to this Agreement shall expire at the end of the Voucher Reservation Term on _____ [six months after the issuance of the Purchaser's Voucher Approval Letter] if Vendor fails to deliver or Purchaser fails to register the Qualified Vehicle or either Party fails to comply with all relevant obligations under this Agreement by this time and the Parties fail to secure an extension from the Authority as set forth in Sections 2.1(a) and 2.2(a). Upon the expiration of the Voucher Reservation term, all obligations of the Authority under this Agreement including releasing the funds to the Vendor on Purchaser's behalf shall terminate and Purchaser and Vendor shall have no rights, claims or causes of action of any kind against the Authority.

2.1 Purchaser Covenants. The Purchaser covenants and agrees to the following as a condition to receiving the Voucher Award:

- a) Purchaser agrees to register the Qualifying Vehicle(s) with the State of New Jersey within six months of the issuance of the Voucher Approval Letter attached hereto as **Exhibit A** unless an extension of that time has been approved by the Authority in its sole discretion.
- b) Purchaser agrees to maintain the vehicle registration with the State of New Jersey for any Qualifying Vehicle(s), for a minimum of three continuous years from the date of initial vehicle registration.
- c) Purchaser agrees to the following:
 - i. Purchaser agrees that on an annual basis for the duration of the Voucher Compliance Term, at least 75% of the vehicle miles traveled (VMT) in the Qualifying Vehicle(s) shall be in the State, and that at least 50% of VMT in the Qualifying Vehicle(s) shall be within the Greater Newark Greater Camden area [choose one of the two depending on which pilot community the Purchaser has designated]; or
 - ii. Purchaser agrees that on an annual basis for the duration of the Voucher Compliance Term, at least 75% of the VMT in the Qualifying Vehicle(s) shall be in the State, and that it shall have a registration address and domicile for the vehicle within the Greater Newark Greater Camden area [choose one of the two depending on which pilot community the Purchaser has designated].
- d) Purchaser agrees to adhere to the Vehicle Scrapage requirement, as defined within this Agreement, of all vehicle models year 2009 or earlier in Purchaser's current fleet being replaced by a Qualifying Vehicle, and will provide documentation of such compliance prior to the end of the Voucher Reservation Term.
- e) Purchaser agrees to display a visual indication on the Qualified Vehicle(s) purchased, to the satisfaction of the Authority, reflecting that the vehicle is a ZEV and that its purchase was subsidized through NJ ZIP. The Authority shall provide the display.

- f) Purchaser shall at all times during the Voucher Compliance Term satisfy and comply with all conditions and terms as required by this Agreement.
- g) Purchaser shall not sell any Qualifying Vehicle(s) purchased in whole or in part with the Voucher Award provided by the Authority for the period of the Voucher Compliance Term without the prior written consent of the Authority.
- h) Purchaser agrees to insure any Qualifying Vehicles pursuant to all applicable laws.

2.2 Vendor Covenants. The Vendor covenants and agrees to the following as a condition to receiving the Voucher Award:

- a) The Vendor agrees to deliver the Qualified Vehicle(s) included within this Agreement to the Purchaser prior to the end of the Voucher Reservation Term unless an extension of that time has been approved by the Authority in its sole discretion.
- b) The Vendor reaffirms its self-certification submitted in conjunction with its application for this Program attesting that all Qualifying Vehicle(s) purchased with the Voucher Award comply with all applicable State and Federal requirements for safety and operation, as issued by the National Highway Traffic Safety Administration and as codified in 49 C.F.R. 571.
- c) The Vendor agrees to provide for each Qualified Vehicle purchased with the Voucher Award a warranty of at least three (3) years of coverage or 50,000 miles, whichever comes first, for the Qualifying Vehicle's parts, including at a minimum the motor, drive train, batteries, hydrogen fuel cells, and labor.
- d) The Vendor agrees, prior to the end of the Voucher Reservation Term, to implement a servicing plan within the State of New Jersey that is aligned with industry norms and current best practices for maintenance of Qualified Vehicles during at least the Voucher Compliance Term, and subject to the approval of the Authority.
- e) The Vendor agrees to accept the Voucher Award issued by the Authority on behalf of the Purchaser in the amount of \$_____ as a portion of the Purchaser's vehicle(s) payment, and shall deduct the full amount of the Voucher Award from the upfront vehicle(s) cost.
- f) The Vendor agrees to implement a charging/fueling plan for the Qualified Vehicle(s) as agreed to between the Vendor and Purchaser, prior to the end of the Voucher Reservation Term.

- g) Vendor shall at all times during the Voucher Compliance Term satisfy and comply with all conditions and terms as required by this Agreement.
- h) Vendor shall at all times during the Voucher Compliance Term carry General Liability insurance coverage in such a manner and against such loss, damage and liability to third parties as is customary with companies in the same or similar business. The Vendor shall at all times during the Voucher Compliance Term carry general liability insurance with the following minimum limits: Each Occurrence - \$1,000,000.00; General Aggregate - \$2,000,000.00.

2.3 Authority Review of Purchaser and/or Vendor Compliance with Voucher Award Requirements. Notwithstanding any other provision in this Agreement to the contrary, the Authority reserves the right to verify Purchaser and/or Vendor ongoing eligibility and compliance with contractual commitments, periodically but not more than on annual basis during the Vehicle Compliance Term. The Purchaser and Vendor agree to provide information and data related to the Voucher Award and this Agreement upon the request of the Authority to support such verification including but not limited to the following:

- a) Proof that Purchaser maintained registration of the vehicle in the State of New Jersey continuously during the Voucher Compliance Term; and
 - i. Purchaser annually operated at least 75% of VMT in the State of New Jersey and annually operated at least 50% of VMT within the Greater Newark Greater Camden area during the Voucher Compliance Term; or
 - ii. Purchaser annually operated at least 75% of VMT in the State of New Jersey and has maintained a registration address and domiciled the vehicle within the Greater Newark Greater Camden area during the Voucher Compliance Term;
- b) Odometer reading from Purchaser;
- c) Vehicle maintenance information (if maintenance occurred, what the issue was, if it was covered by warranty, when maintenance occurred, what the service was, and what the cost was) from Purchaser;
- d) Confirmation by Purchaser that NJ ZIP program bumper sticker or placard is being displayed on the vehicle;
- e) As applicable, total fuel consumption since last verification or average driving range per charge reported by Purchaser;
- f) Continued availability of in-state maintenance services;

- g) ^Vendor provides driver readiness and education session updates and results, including at least session dates and durations, links (for virtual) or locations (for in person) of sessions, and session sign in sheets for participants (name, contact information, organization); and, in the case of training sessions, training materials; and, in the case of demonstration sessions, count and type of available vehicles present onsite.

VMT verification may be provided in the following ways:

- a) Telematics reporting (i.e., GPS tracking);
- b) Fixed route maps and associated daily mileage;
- c) Delivery/appointment/shuttle request/etc. history and associated daily mileage;
- d) third-party tracking (e.g., battery supplier records);
- e) use records that document daily use (purpose, distance, location).

Alternative methods to prove VMT may be considered on a case by case basis.

The Authority reserves the right to request additional information not specifically listed herein, as needed, regarding compliance with Program requirements as outlined within this Agreement. All information and data requested by the Authority to determine compliance shall be in form and substance satisfactory to the Authority in its sole discretion. The Purchaser and Vendor also agree to permit the Authority to use any data and information obtained from the Purchaser and Vendor, as permitted by law, to be utilized in case studies and to be used as necessary to support development of future Authority sponsored programs.

The Authority reserves the right to seek a refund from the Purchaser and/or Vendor, as appropriate, of all or part of the Voucher Award pursuant to this Agreement if the Authority determines, in its sole discretion, that the Purchaser and/or Vendor is in non-compliance with the terms and conditions of this Agreement or the Program, or the Purchaser and/or Vendor made materially false or misleading representations on their application or on any information submitted to the Authority in connection with this Agreement and receipt of the Voucher Award.

The non-compliant party will have thirty (30) business days from the date of written notice from the Authority to cure the non-compliance. If the cure of such non-compliance requires more than thirty (30) business days after written notice, as determined by the Authority, and the non-compliant party demonstrates it has promptly initiated reasonable steps to cure the non-compliance within the initial cure period, and is proceeding with due diligence and in good faith to cure the non-compliance, the Authority may, at its discretion, extend the time necessary to cure such non-compliance by a reasonable period, which shall be determined by the Authority.

3. Post-Closing Bonus Criteria. Eligible Purchasers may receive the following per-vehicle voucher bonus funds:

- a) Small Business Vehicle Scrappage Bonus: \$2,000 per vehicle scrapped and replaced with Qualifying ZEV;
- b) Driver Readiness and Education Bonus: \$2,000 per vehicle. The criteria for the Driver Readiness and Education Bonus is as follows:
 - i. Vendor must provide two in person public training sessions (may be virtual contingent on COVID-19 safety recommendations) per quarter in the year following the issuance of Purchaser's Voucher(s) Approval Letter, for a total of eight sessions, which shall include at least an overview of the technology, operation, and safety associated with operation, charging, and/or maintenance on two separate days, given by subject matter experts; and
 - ii. Vendor must provide a once per quarterly opportunity in the year following the issuance of Purchaser's Voucher(s) Approval Letter for publicly available vehicle test drive or in-person vehicle viewing and demonstration within one or more of the selected Pilot Communities.
 - iii. The Authority will verify satisfactory completion of these commitments and, if Vendor does not complete its obligations to the satisfaction of the Authority in its sole discretion, Vendor may be required to refund all or a portion of the bonus funds to the Authority subject to the cure provisions in Section 2.3 above.

^3.1 Post-Closing Purchaser-related Bonus Funding. The Purchaser has declared that it intends to comply with the Vehicle Scrappage Bonus for _____ vehicle(s) [enter number of vehicles being scrapped from project checklist], as set forth in Section 3(a) of this Agreement and as stated in Purchaser's application. Vehicle Scrappage bonus funding in the amount of \$ _____ is included in the Voucher Award awarded to Purchaser and as set forth in Section 2 of this Agreement. Documentation acceptable to the Authority in its sole discretion, showing proof of applicable Vehicle Scrappage must be provided to the Authority by the end of the Voucher Reservation Term in order to receive this bonus.

^3.2 Post-Closing Vendor-related Bonus Funding. The Vendor has declared that it intends to provide the required training and instruction for the Driver Readiness and Education Bonus as set forth in Section 3(b) of this Agreement and as stated in Vendor's Application. Driver Readiness and Education Bonus funding in the amount of \$ _____ for _____ [number of vehicles in voucher] is included in the Voucher Award awarded to Purchaser as set forth in Section 2 of this Agreement. Documentation acceptable to the Authority in its sole discretion showing proof of Driver Readiness and Education training and instruction completed to date, and planned on being completed post-Voucher Reservation Term, must be provided to the Authority by the end of the Voucher Reservation Term in order to receive this bonus funding.

3.3 Authority Review of Bonus Funding. All applicable bonus funds are subject to the review and approval of the Authority. All documentation shall be in form and substance satisfactory to the Authority in its sole discretion. The Authority reserves the right to request additional

information, as needed, regarding the eligibility for bonus funds and adherence to applicable requirements. Bonus funds may be stacked together, up to the total amount of each individual eligible ZEV purchased but shall not exceed the cost of the vehicle. The Authority, at its discretion, reserves the right to seek a refund of all or a portion of the Voucher Award, including bonus funds, awarded to Purchaser and/or Vendor if the Authority determines that Purchaser and/or Vendor have not satisfied the applicable requirements necessary for such funding subject to the cure provisions in Section 2.3 above.

4. Representations and Warranties of Purchaser.

- a) (i) Purchaser is a ^corporation, partnership, limited liability company or a non-profit corporation duly organized, validly existing and in good standing under the laws of the State of ^_____, (ii) is duly registered to conduct business in the State of New Jersey, (iii) is not in violation of any provision of its certificate of incorporation or by-laws (LLC use certificate of formation or operating agreement), and (iv) has the power and authority to own its property and assets, to carry on its business as now being conducted by it and to execute, deliver and perform this Agreement.
- b) Purchaser represents and warrants that the Qualifying Vehicle(s) purchased in whole or in part with the Voucher Award provided by the Authority and as set forth in this Agreement ^is ^are not subject to Volkswagen Settlement Funding or any other State Funding for the same Qualifying Vehicle(s).
- c) To the best of Purchaser's knowledge, and upon due inquiry, there is no action or proceeding pending or threatened against Purchaser before any court or administrative agency that might adversely affect the ability of Purchaser to perform its obligations under this Agreement and all consents, authorizations, and approvals of governmental bodies or agencies required in connection with the performance of Purchaser's obligations under this Agreement have been obtained and will be obtained whenever required hereunder or by law.
- d) Purchaser represents and warrants that it (1) is not in violation of any statute governing the LWD or the DEP; (2) it is not in violation of any rule or regulation issued by the LWD or DEP; and (3) it does not have any unpaid fines or penalties or otherwise have any outstanding payment due to the LWD or DEP that is not subject to a payment plan approved by LWD or DEP.
- e) Neither the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by, or conflicts with or results in a breach of the terms, conditions, or provisions of any corporate restrictions or any evidence of indebtedness, agreement, or instrument of whatever nature to which Purchaser is bound, or constitutes a default under any of the foregoing.

- f) All tax returns and reports of Purchaser required by law to be filed have been duly filed and all taxes, assessments, fees and other governmental charges upon Purchaser or upon any of its respective properties, assets, income or franchises which are due and payable have been paid other than those which are presently payable without penalty or interest. Nothing in this subparagraph is intended to preclude Purchaser from exercising its lawful right to contest any tax, assessment, fee or other governmental charge.
- g) All statements, representations and warranties made by Purchaser in its application to the Authority, and in any materials furnished in support of that application were true when made, are true, in all material respects, as of the date hereof, and shall remain and be true and correct during the Agreement Term, it being understood by the Purchaser that all such statements, representations, warranties and materials have been relied upon by the Authority as an inducement to disburse the Voucher Award and shall continue to be relied upon by the Authority in administering the Agreement. Purchaser further understands and agrees that, if, during the term of this Agreement, any such statements, representations, warranties or materials become untrue or false, it shall have a duty to immediately notify the Authority in writing of such fact.
- h) The principal office of Purchaser is located at _____ . All of Purchaser's books and records relating to NJ ZIP shall be located at _____ . Purchaser shall notify the Authority in writing of any change in the location of such books and records prior to any such relocation.
- i) Purchaser represents that it has at all times relevant to this Agreement been represented by advisors of its own selection, including, but not limited to, attorneys at law and/or certified public accountants; that it has not relied upon any statement, representation, warranty, agreement or information provided by the Authority in making its decision to purchase a ZEV and further waives all claims against the Authority arising from the purchase or use of the vehicle; that it acknowledges that it is informed by its advisors of its respective rights, duties, and obligations with respect to the transaction which is the subject of this Agreement under all applicable laws, and that it has no set-offs, defenses or counterclaims against the Authority with respect to the transaction which is the subject of this Agreement.
- j) If during the duration of this Agreement Purchaser becomes aware of any facts, occurrences, information, statements, or events that render any of the foregoing representations or warranties herein untrue or materially misleading or incomplete, Purchaser shall immediately notify the Authority in writing of such facts, occurrences, information, statements, or events.

The representations and warranties made in this Section shall survive termination of this

Agreement.

5. Representations and Warranties of Vendor.

- a) (i) Vendor is a ^corporation, partnership, limited liability company or a non-profit corporation duly organized, validly existing and in good standing under the laws of the State of ^_____, (ii) is duly registered to conduct business in the State of New Jersey, (iii) is not in violation of any provision of its certificate of incorporation or by-laws (LLC use certificate of formation or operating agreement), and (iv) has the power and authority to own its property and assets, to carry on its business as now being conducted by it and to execute, deliver and perform this Agreement.
- b) To the best of Vendor's knowledge, and upon due inquiry, there is no action or proceeding pending or threatened against Vendor before any court or administrative agency that might adversely affect the ability of Vendor to perform its obligations under this Agreement and all consents, authorizations, and approvals of governmental bodies or agencies required in connection with the performance of Vendor's obligations under this Agreement have been obtained and will be obtained whenever required hereunder or by law.
- c) Vendor represents and warrants that it (1) is not in violation of any statute governing the LWD or the DEP; (2) it is not in violation of any rule or regulation issued by the LWD or DEP; and (3) it does not have any unpaid fines or penalties or otherwise have any outstanding payment due to the LWD or DEP that is not subject to a payment plan approved by LWD or DEP.
- d) Neither the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by, or conflicts with or results in a breach of the terms, conditions, or provisions of any corporate restrictions or any evidence of indebtedness, agreement, or instrument of whatever nature to which Vendor is bound, or constitutes a default under any of the foregoing.
- e) All tax returns and reports of Vendor required by law to be filed have been duly filed and all taxes, assessments, fees and other governmental charges upon Vendor or upon any of its respective properties, assets, income or franchises which are due and payable have been paid other than those which are presently payable without penalty or interest. Nothing in this subparagraph is intended to preclude Vendor from exercising its lawful right to contest any tax, assessment, fee or other governmental charge.
- f) All statements, representations and warranties made by Vendor in its application to the Authority, and in any materials furnished in support of that application were true when made, are true, in all material respects, as of the date hereof, and shall remain and be true and correct during the term of this Agreement, it being understood by the Vendor that all

such statements, representations, warranties and materials have been relied upon by the Authority as an inducement to disburse the Voucher Award and shall continue to be relied upon by the Authority in administering the Agreement. Vendor further understands and agrees that, if, during the term of this Agreement, any such statements, representations, warranties and materials become untrue or false, it shall have a duty to immediately notify the Authority in writing of such fact.

- g) The principal office of Vendor is located at _____ . All of Vendor's books and records relating to NJ ZIP shall be located at _____ . Vendor shall notify the Authority in writing of any change in the location of such books and records prior to any such relocation.
- h) Vendor represents that it has at all times relevant to this Agreement been represented by advisors of its own selection, including, but not limited to, attorneys at law and/or certified public accountants; that it has not relied upon any statement, representation, warranty, agreement or information provided by the Authority in making its choice to participate in the NJ ZIP Program and further waives all claims against the Authority arising from the sale of the vehicle; that it acknowledges that it is informed by its advisors of its respective rights, duties, and obligations with respect to the transaction which is the subject of this Agreement under all applicable laws, and that it has no set-offs, defenses or counterclaims against the Authority with respect to the transaction which is the subject of this Agreement.
- i) If during the duration of this Agreement Vendor becomes aware of any facts, occurrences, information, statements, or events that render any of the foregoing representations or warranties herein untrue or materially misleading or incomplete, Vendor shall immediately notify the Authority in writing of such facts, occurrences, information, statements, or events.

The representations and warranties made in this Section shall survive termination of this Agreement.

6. Publicity. Purchaser and Vendor each grant the Authority and the State the right to use their respective names and logos in public communications announcing or reporting this Agreement and listing their names and logos on the Authority's and State's website(s) in relation to their participation in the Program. Purchaser and Vendor may use the State's or Authority's name and logo in public communications announcing or reporting this Agreement or their participation in this Program and on their websites listing their transactions and news only upon prior written consent of the Authority.

7. Records, Access and Maintenance. Purchaser and Vendor shall each establish and maintain during the Voucher Compliance Term such records as are required by the Authority hereof, and all relevant supporting documentation pursuant to this Agreement. Purchaser and

Vendor further agree that records required by the Authority with respect to any questioned costs, litigation or dispute between the Authority and the Purchaser and/or Vendor arising out of this agreement shall be maintained for the time needed for the final resolution of any such issue. In the event of early termination of this Agreement, or if for any other reason the Authority shall require a review of the records related to the Program, the Purchaser and/or Vendor shall, at their own cost and expense provide all such records to the Authority. Purchaser and Vendor agree to be subject to review and audit by the Authority, any other agency or department of the State of New Jersey, including but not limited to, the Office of the State Comptroller and the Department of Labor and Workforce Development in relation to this transaction.

The provisions of this Section shall survive termination of this Agreement.

The Purchaser and Vendor shall maintain all documentation related to products, transactions or services under this contract for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.

8. Purchaser Default. Any one or more of the following shall constitute an Event of Default (“Event of Default”) if during the Voucher Compliance Term the default is not cured within thirty (30) business days after written notice of the default, provided, however, if the cure of such default requires more than thirty (30) business days after written notice as determined by the Authority, and Purchaser demonstrates it has promptly initiated reasonable steps to cure the default within the initial cure period, and is proceeding with due diligence, and in good faith to cure the default, then the Authority may, at its sole discretion, extend the time necessary to cure such default by a reasonable period as determined by the Authority for Purchaser to cure such default. Notwithstanding the foregoing, if such default is not cured within the initial or extended cure period, the Authority may terminate this Agreement at the conclusion thereof and avail itself of the remedies in Section 10 of this Agreement.

- a) If Purchaser has breached or failed to perform in any material respect any term or condition required under this Agreement.
- b) If any representation or warranty made by Purchaser herein, in the application for participation in the Program, or, in any report, certificate, financial statement or other instrument furnished in connection with the subject matter of this Agreement is false or misleading in any material respect.
- c) The failure of Purchaser to timely submit the documents, materials, and information required to be submitted pursuant to this Agreement.
- d) The Authority has made a determination of debarment as to Purchaser pursuant to its debarment/disqualification regulations set forth in N.J.A.C. 19:30-2.1 et seq. as amended from time to time.

- e) If the Purchaser has ceased to operate its vehicle for a commercial, industrial or institutional purpose.
- f) If the Purchaser sells, assigns, or otherwise transfers its rights and obligations under this Agreement, without the prior written consent of the Authority.
- g) If Purchaser sells any Qualifying Vehicle(s) purchased in whole or in part with the Voucher Award provided by the Authority during the Voucher Compliance Term without the prior written consent of the Authority.

9. Vendor Default. Any one or more of the following shall constitute an Event of Default (“Event of Default”) if during the Voucher Compliance Term the default is not cured within thirty (30) business days after written notice of the default, provided, however, if the cure of such default requires more than thirty (30) business days after written notice as determined by the Authority, and Vendor demonstrates it has promptly initiated reasonable steps to cure the default within the initial cure period, and is proceeding with due diligence, and in good faith to cure the default, then the Authority may, at its sole discretion, extend the time necessary to cure such default by a reasonable period as determined by the Authority for Vendor to cure such default. Notwithstanding the foregoing, if such default is not cured within the initial or extended cure period, the Authority may terminate this Agreement at the conclusion thereof and avail itself of the remedies in Section 10 of this Agreement.

- a) If Vendor has breached or failed to perform in any material respect any term or condition under this Agreement.
- b) If any representation or warranty made by Vendor herein, in the application for participation in the Program, or, in any report, certificate, financial statement or other instrument furnished in connection with the subject matter of this Agreement is false or misleading in any material respect.
- c) The failure of Vendor to timely submit the documents, materials, and information required to be submitted pursuant to this Agreement.
- d) The Authority has made a determination of debarment as to Vendor pursuant to its debarment/disqualification regulations set forth in N.J.A.C. 19:30-2.1 et seq. as amended from time to time.
- e) If the Vendor has ceased to operate its business without prior written notice to the Authority.
- f) If the Vendor sells, assigns or otherwise transfers its rights and obligations under the Agreement, without the prior written consent of the Authority.

10. Remedies Upon Default. Upon the occurrence of any Event(s) of Default, the Authority may, in its sole and absolute discretion, do any of the following, alone or in combination, after having first given the defaulting party notice and opportunity to cure the default in accordance with Sections 8 and 9 hereof:

- a) Require the defaulting party to repay all or a portion of the Voucher Award paid to Vendor under this Agreement;
- b) Remove Vendor from the approved NJ ZIP Vendor list and/or bar the defaulting party from participation in the Program in the future;
- c) Terminate this Agreement; and
- d) Exercise any other right or remedy that may be available to it under applicable law or under this Agreement.

No remedy referred to in this Agreement is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to in this Agreement or otherwise available under applicable law.

11. Taxes and Other Charges. Purchaser and Vendor shall pay during the duration of this Agreement as the same become due, all taxes, assessments and governmental charges which may be required by law or contract to be paid by Purchaser and Vendor. Nothing in this Section 11 is intended to preclude Purchaser or Vendor from exercising its lawful right to contest any tax, assessment, fee or other governmental charge and, if authorized under law, withholding payment of such tax, assessment, fee, or other governmental charge during the period of such contest.

12. Audits and Inspections. At any time during normal business hours upon written notice and as often as the Authority may reasonably deem necessary, the Purchaser and Vendor shall make available to the Authority, for examination, and to appropriate State agencies or officials, all of its records with respect to matters related to this Agreement and shall permit the Authority to audit, examine and make excerpts or transcripts from such records. Purchaser shall maintain records to adequately verify all information required under this Agreement. The provisions of this Section shall survive termination of this Agreement.

13. Assignment. Purchaser and/or Vendor may not sell, assign or otherwise transfer their interests in this Agreement without the prior written consent of the Authority. Unless otherwise indicated by the Authority in writing, any obligations hereunder shall become the obligations of any assignee or successor of the Purchaser and/or Vendor.

14. Forbearance Not a Waiver. No act of forbearance or failure to insist on the prompt performance by Purchaser and/or Vendor of their obligations pursuant to this Agreement, either express or implied, shall be construed as a waiver by the Authority of any of its rights hereunder. In the event that any provision of this Agreement should be breached by Purchaser and/or Vendor and the breach may thereafter be waived by the Authority, such waiver shall be limited to the

particular breach waived by Authority and shall not be deemed to waive any other breach.

15. Indemnification. Purchaser and Vendor covenant and agree to indemnify and hold harmless the Authority, the State of New Jersey and their respective members, agents, officers, employees and servants from all losses, claims, damages, liabilities, and costs whatsoever (including all costs, expenses and reasonable counsel fees incurred in investigating and defending such losses and claims, etc.), brought by any person or entity, and caused by, related to, arising or purportedly arising out of, or from: (i) Purchaser's and/or Vendor's participation in NJ ZIP; (ii) the performance by Purchaser and/or Vendor of their obligations under this Agreement; (iii) any loss, damage or injury to, or death of, any person occurring at or about or resulting from Purchaser's and/or Vendor's participation in NJ ZIP; and (iv) any damage or injury to property of Purchaser and/or Vendor, or to the agents, servants, employees of Purchaser and/or Vendor, caused by the negligence, gross negligence and willful misconduct of any person, except for: losses, claims, damages, liabilities and costs arising from the gross negligence or willful misconduct of the Authority and its respective members, agents, officers, employees and servants. The provisions of this Section shall survive termination of this Agreement.

16. Adherence to Federal, State and Local Laws and Regulations. Purchaser and Vendor shall comply with all applicable federal, state and local laws and regulations relevant to its participation in NJ ZIP.

17. Applicability of Disqualification Regulations to Entities. The Authority's disqualification/ debarment regulations, which are set forth in N.J.A.C. 19:30-2.1 through 2.7, shall be applicable to any entities with which Purchaser and/or Vendor merges, consolidates or combines. In the event that, in accordance with the procedures and provisions set forth in such regulations, the Authority makes a determination to disqualify any such entity from participation in this Program, then, notwithstanding anything contained in the Agreement to the contrary, no Voucher Award payment will be made.

18. Covenant Not to Violate First Amendment [Applies only to religious organizations]

- a) No part of the Voucher Award will be used for any purpose that would cause the Authority's Voucher Award to constitute a violation of the First Amendment to the United States Constitution or the State Constitution. In particular, the Purchaser and Vendor represent, warrant, certify and covenant that none of the Voucher Award shall be used for any sectarian instruction or instruction in the tenets of a particular faith, for the purposes of advancement of religion, for religious worship, or in connection with any part of a program of a school or department of divinity for any religious denomination; and the Voucher Award is not intended to be and shall not be made available by Purchaser or Vendor for, or to provide a place for, such instruction, worship or program.
- b) Purchaser and Vendor agree that they shall not discriminate or permit any discrimination in the conduct of any activity which relates to or is the subject of this Agreement against any person on the grounds of race, color, religion, creed, gender or national origin or in any manner prohibited by the laws of the United States or the State.

- c) Purchaser and Vendor agree that the Voucher Award shall not be made in conjunction with, or as part of, any activities or services consisting of religious worship, instruction, or expression.
- d) The Purchaser, Vendor and the Authority acknowledge that this section 18 of the Agreement is intended to ensure that no portion of the Voucher Award is used for activities or services consisting of religious worship, instruction or expression.

19. Miscellaneous.

- a) Governing Law. This Agreement shall be governed by the laws of the State of New Jersey.
- b) Forum and Venue. All actions related to the matters which are the subject of this Agreement shall be forumed and venued in a court of competent jurisdiction in the County of Mercer and State of New Jersey.
- c) Entire Agreement. This Agreement and its exhibits and any documents referred to herein constitute the complete understanding of the Parties and merge and supersede any and all other discussions, agreements and understandings, either oral or written, between the Parties with respect to the subject matter of this Agreement.
- d) Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid pursuant to applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions of this Agreement, unless the Authority shall in its sole and absolute discretion deem the invalidated provision essential to the accomplishment of the public purposes served by this Agreement, in which case the Authority has the right to terminate this Agreement and all benefits provided to Purchaser and/or Vendor hereunder upon the giving of thirty (30) calendar days prior notice as set forth in the following Section hereof.
- e) Notices. All notices, consents, demands, requests and other communications which may be or are required to be given pursuant to any term of this Agreement shall be in writing and shall be deemed duly given when personally delivered or sent by United States mail, registered or certified, return receipt requested, postage prepaid, to the addresses set forth hereunder or to such other address as each party to this Agreement may hereafter designate in a written notice to the other party transmitted in accordance with this provision.

Authority: New Jersey Economic Development Authority
36 West State Street
PO Box 990
Trenton, NJ 08625-0990
Attention: Daniel T. Weick, Managing Director Post-Closing Financial Services
Telephone: 609-858-6769
Email: DWeick@njeda.com

Purchaser: _____

Vendor: _____

- f) Amendments or Modifications. This Agreement may only be amended in writing executed by all Parties. Such Amendments or Modifications shall become effective only upon execution of same by all Parties.
- g) Headings. Section headings contained in this Agreement are inserted for convenience only and shall not be deemed to be a part of this Agreement.
- h) Contractual Liability Act. The rights and remedies of the Purchaser and Vendor under this Agreement shall be subject to the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., the provisions of which are hereby incorporated herein by reference.
- i) Tort Claims Act. The rights and remedies of the Purchaser and Vendor under this Agreement shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq., the provisions of which are hereby incorporated herein by reference.
- j) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument. This Agreement may be delivered by telecopier, e-mail, PDF or other facsimile transmission all with the same force and effect as if the same were a fully executed and delivered original manual counterpart.
- k) Successors and Assigns. This Agreement shall be binding upon the successors and assigns.

- l) No Third-Party Beneficiaries. This Agreement has been entered into solely by and among the parties that have executed this Agreement; except as otherwise expressly provided in this Agreement, this Agreement will not be deemed to create any rights in third parties or create any obligations of any party hereto to any such third parties.

- m) Cross-Default. It is specifically understood and agreed that this Agreement is *cross-defaulted* with any existing assistance and any future assistance provided by the Authority and/or the State to the Purchaser and Vendor and/or any of their affiliates, including, but not limited to, entities that have common principals. For purposes of this cross-default, a principal of an entity shall be any executive officer, director, or general partner of the entity; any person or other entity directly or indirectly controlling the entity; or a person or other entity directly or indirectly owning or controlling ten percent (10%) or more of the entity's ownership interest. Additionally, for purposes of this cross-default, an affiliate means any entity or person having an overt or covert relationship such that any one of them directly or indirectly controls or has the power to control another as determined by directly or indirectly owning or controlling ten percent (10%) or more of an entity's ownership interest.

- n) Electronic signature on this Agreement shall be deemed to be valid execution and delivery as though an original ink. The parties explicitly consent to the electronic delivery of the terms of the transaction evidenced by this Agreement and affirm that their electronic signatures indicate a present intent to be bound by the electronic signatures and the terms of the Agreement. The electronic signature can be done either by ADOBE Acrobat or any other similar signature software that can be used for electronic signatures or by printing, manually signing, and scanning.

[SIGNATURE PAGE FOLLOWS]

This is intended as a SAMPLE document only, it is not executable. It is subject to customization and revision by the Authority. The Authority reserves the right to make changes to this document without notice. The final executable version of this document will be provided to you by the Authority at the appropriate time.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective signatories duly authorized as of the date and year last written below (“Effective Date”).

NEW JERSEY ECONOMIC DEVELOPMENT
AUTHORITY

By: _____

Arlene M. Clark
Director-Closing Services

Date: _____

Purchaser:

^

By: _____

Name: _____

Title: ^ Authorized Officer ^ Authorized Member

Date: _____

Vendor:

^

By: _____

Name: _____

Title: ^ Authorized Officer ^ Authorized Member

Date: _____

This is intended as a SAMPLE document only, it is not executable. It is subject to customization and revision by the Authority. The Authority reserves the right to make changes to this document without notice. The final executable version of this document will be provided to you by the Authority at the appropriate time.

EXHIBIT A
Voucher Approval Letter

SAMPLE

This is intended as a SAMPLE document only, it is not executable. It is subject to customization and revision by the Authority. The Authority reserves the right to make changes to this document without notice. The final executable version of this document will be provided to you by the Authority at the appropriate time.

EXHIBIT B
Requisition Form

SAMPLE

This is intended as a SAMPLE document only, it is not executable. It is subject to customization and revision by the Authority. The Authority reserves the right to make changes to this document without notice. The final executable version of this document will be provided to you by the Authority at the appropriate time.

New Jersey Zero-emission Incentive Program (NJ ZIP) Voucher Requisition Form

INSTRUCTIONS: This form must be used to request voucher disbursements.
 1. The Payee is the Approved Vendor that completed its obligations to the Purchaser Applicant, documented to the satisfaction of the New Jersey Economic Development Authority
 2. The Payee will be paid via check or via wire, per their selection below

The undersigned, on behalf of _____ [Payee] _____ in regards to _____ [PROD- _____] _____ hereby requisitions the following payment from the New Jersey Economic Development Authority:

Via check Via wire (Payee bank may charge a fee)

Payee

Voucher Request

(Controller/MIS Use Only)	
<u>Date</u>	<u>Transaction # or Check #</u>

If requested by wire

Bank Name Routing number Account name Account number

If requested by check

Mailing address:

CERTIFICATION
The undersigned, a duly authorized representative of Payee, hereby certifies to the Authority on his/her behalf and on behalf of Payee that:
 1. The vehicle delivery and related obligations of the Payee and to the Purchaser Applicant covered by this requisition have been or will be completed in accordance with the Agreement.
 Capitalized terms used in this Certification shall have the same meaning as ascribed to them in the Agreement unless expressly indicated otherwise.

Payee: _____

BY: _____
 [Name, Title]

DATE: _____

**DO NOT WRITE BELOW THIS LINE – FOR USE BY
 NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY ONLY**

<u>Name of Payee:</u>	<u>Product Number:</u>
<u>Funding source:</u>	<u>Total Amount of Voucher:</u>
<u>Closing Date:</u>	<u>Date & Time Check Needed:</u>

Special Instructions:

Reviewed by:

Approved by:

 [Account Officer’s Name]
 [Title]

 [Approver’s Name]
 [Title]

Date: