

**TETRA TECH, INC.**  
**DEALERSHIP/ORIGINAL EQUIPMENT OPERATOR (OEM) AGREEMENT**  
**SUBCONTRACT NO. \_\_\_\_\_**

**PROJECT:** New York City Clean Trucks Program, Borough of the Bronx **TETRA TECH, INC. JOB #:** T27953

**CLIENT:** New York City Department of Transportation (NYCDOT) **SUBCONTRACTOR NO:** \_\_\_\_\_

**SUBCONTRACTOR:** \_\_\_\_\_

**FEDERAL ID/BUSINESS LICENSE NO.:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**CONTACT:** \_\_\_\_\_ **TEL:** \_\_\_\_\_ **EMAIL:** \_\_\_\_\_

**CONTRACTOR:** Tetra Tech, Inc.

**ADDRESS:** 3475 E. Foothill Boulevard

Pasadena, CA 91107

**CONTACT:** \_\_\_\_\_ **TEL:** \_\_\_\_\_ **EMAIL:** \_\_\_\_\_

**PROJECT DESCRIPTION:** Rebate Incentive Funding to Replace Eligible Class 4 to Class 8 On-Road Commercial Diesel Trucks with New Class 4 to Class 8 On-Road Commercial Diesel, CNG, Hybrid, or Electric Trucks

**PERIOD OF PERFORMANCE:** \_\_\_\_\_

**SCOPE OF SERVICES:** See attached

**SERVICES AUTHORIZED BY:**  **Execution of Agreement** Or  **Amendment(s) and/or NT.**

**EXECUTION:** Execution of this Agreement by duly authorized representatives of TETRA TECH, INC. and Subcontractor, including TETRA TECH, INC.'S New York City Clean Trucks Program Standard Conditions (reverse side) and any attachments, Additional Provisions as indicated, and addenda, represent the entire Agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended or modified by written instrument, but such instrument is valid only upon signature by both parties. The Subcontractor shall not assign, transfer, or encumber any rights, duties, or interests accruing from this Agreement without the express prior written consent of TETRA TECH, INC.

**TETRA TECH, INC.**

**DEALERSHIP/OEM (SUBCONTRACTOR)**

**BY:** \_\_\_\_\_

**BY:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

Attached: (X) *Exhibit A (Dealership/OEM Requirements)*

Originals: *Subcontractor*

cc: *Project Manager  
Tetra Tech Project File*

New York City Clean Trucks Program  
Revised May 2020

# EXHIBIT A: DEALERSHIP/ORIGINAL EQUIPMENT MANUFACTURER REQUIREMENTS SUBCONTRACT AGREEMENT NO. \_\_\_\_\_

1. **SERVICES.** Subcontractor shall provide professional services in accordance with the **New York City Department of Transportation (NYCDOT; CLIENT) New York City Clean Trucks Program (Program)** and this Agreement and the requirements specified in Exhibit A.

2. **EXECUTION.** TETRA TECH, INC. (Program Administrator), on behalf of the NYCDOT, will administer the Program and distribute the Rebate Incentive(s), where applicable, to Subcontractor. This Agreement becomes effective upon signatures by authorized representatives of TETRA TECH, INC. and Subcontractor and upon receipt of a fully executed original by both TETRA TECH, INC. and Subcontractor. If facsimile transmittal is initially sent and executed thereon by TETRA TECH, INC., a signed original will be provided to the Subcontractor for record as soon as practicable.

3. **PERFORMANCE OF OBLIGATIONS.** Subcontractor shall observe, perform, and fulfill each and every covenant, term, and provision of this Agreement, and any other document applicable to it in connection with the Program.

4. **TERMINATION.** This Agreement shall remain in force until completion and acceptance of the services, terminated by written instrument by mutual agreement or by TETRA TECH, INC. for convenience, or if Subcontractor fails to provide services in accordance with the Agreement. In the Event of Default, TETRA TECH, INC. may terminate this Agreement and the rights of the Subcontractor hereunder without cause at any time upon five (5) Business Days written notice to the Subcontractor and in such event this Agreement shall cease and expire on the date set forth in the notice of termination as fully and completely as though such dates were the original expiration date hereof. For those services not performed by the Subcontractor, TETRA TECH, INC. is entitled to subcontract with another party to complete the services subject to the termination. Termination shall not relieve the Subcontractor of any liabilities which shall have accrued on or prior to the effective date of termination.

5. **COMPENSATION.** Exclusive of the Rebate Incentive, it is expressly understood and agreed that all costs of the Subcontractor of whatever kind or nature, whether imposed directly upon the Subcontractor under the terms and provisions of this Agreement or in any other manner whatsoever because of the requirements of participating in this Program, shall be borne by Subcontractor, without compensation or reimbursement from NYCDOT or TETRA TECH, INC.

6. **SCHEDULE OF PAYMENTS.** Payment of the Rebate Incentive to Subcontractor shall be based on the terms provided in Exhibit A, Payment to the Dealership/OEM. Subcontractor understands that the benefit it receives by entering into this Agreement is the opportunity to participate in the Program, the potential to replace Participant Qualifying Truck(s) (Class 4 to Class 8 diesel trucks) in accordance with Subcontractor's regular course of business and this Agreement. TETRA TECH, INC. shall have no obligation to pay any portion of the Rebate Incentive toward the Replacement Truck Total Purchase Price to Subcontractor if any of the provisions, representations, warranties and/or covenants of this Agreement are not complied with, or if any of the required documents, certificates or information is not received from the Subcontractor, all as determined by TETRA TECH, INC. in its sole discretion. Furthermore, TETRA TECH, INC. reserves the right to reject any Draft or Final Sales Agreement, certificate or documentation provided by Subcontractor if it finds, in its sole discretion, that such Draft or Final Sales Agreement, certification or document is incorrect or insufficient, and in such case, TETRA TECH, INC. shall have no obligation to pay any portion of the Rebate Incentive toward the Replacement Truck Total Purchase Price hereunder.

7. **AUDIT AND ACCESS TO RECORDS.** Subcontractor agrees that it shall maintain records and books of account (in accordance with generally accepted accounting practice) recording all transactions related to a) the obligations of Subcontractor under this Agreement and the Program, and b) such additional information as TETRA TECH, INC. may from time to time require. Such records shall be kept by Subcontractor and be readily available and accessible to the NYCDOT, TETRA TECH, INC., and/or any other NYCDOT representative or designee for at least two (2) years after expiration or earlier termination of this Agreement. The Subcontractor shall permit during ordinary business hours, during the aforementioned period, the examination and audit by the NYCDOT, TETRA TECH, INC., and/or any other NYCDOT representative or designee, of such records and books of account.

8. **OWNERSHIP OF DOCUMENTS.** Subcontractor hereby covenants and agrees with TETRA TECH, INC. that, throughout the term of this Agreement it shall promptly furnish, at its sole cost and expense, to TETRA TECH, INC. each and every document, certificate and photograph which is required to be furnished by the Subcontractor pursuant to the terms of this Agreement, or which is reasonably requested by TETRA TECH, INC. in connection therewith, and shall at all times cooperate with TETRA TECH, INC. in the collection and exchange of information and documentation pertaining to a Participant's

Qualifying Truck and Replacement Truck as is required by this Agreement, or as TETRA TECH, INC. may additionally request.

9. **EQUAL OPPORTUNITY EMPLOYMENT.** Subcontractor shall comply with federal regulations pertaining to Equal Opportunity Employment. Subcontractor will comply with applicable local, state, and federal regulations concerning minority hiring. Subcontractor's policy shall ensure that applicants and employees are treated equally without regard to race, creed, sex, age, color, religion, veteran status, ancestry, citizenship status, national origin, marital status, sexual orientation, or disability. Subcontractor expressly assures all employees, applicants for employment, and the community, of its continuous commitment to equal opportunity and fair employment practices. Subcontractor's equal opportunity employment policy shall apply to all phases of employment, including recruiting, hiring, job assignment, supervision, training, upgrading, transfer, compensation, benefits, promotion, education, recreation, layoff and termination.

10. **STANDARD OF CARE.** Services provided by Subcontractor under this Agreement shall be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

11. **COMPLIANCE WITH LAWS, ORDINANCES, AND CITY, COUNTY, AND STATE LICENSING.** Subcontractor shall comply with Federal, State, and local laws, ordinances, and City, County, and State licensing (professional business, etc.) requirements applicable to the services to be provided by Subcontractor and under this Agreement.

12. **INSURANCE.** Subcontractor shall procure and maintain the following insurance which shall provide primary coverage with respect to the services provided under this Subcontract.

**a. Worker's Compensation (and Employer's Liability Insurance)** — as required by applicable state statute; **b. Commercial General Liability** — \$1,000,000 per occurrence for bodily injury, including death and property damage, and \$2,000,000 in the aggregate; and **c. Automobile Liability** — minimum of \$1,000,000 combined single limit for bodily injury and property damage.

**b.** All insurance policies shall be endorsed to provide TETRA TECH, INC. 30 days' written notice prior to cancellation of the insurance. Commercial General Liability Insurance policies shall name TETRA TECH, INC. and CITY OF NEW YORK as additional insureds. Dealership/OEM shall submit Insurance Certificates or Evidence of Self Insurance for the above policies to TETRA TECH, INC. prior to any payment of grant funds to Dealership/OEM under this Agreement.

Submittal of insurance certificates shall be made to the following:  
New York City Clean Truck Program  
c/o Tetra Tech, Inc.  
249 E. Ocean Blvd., Suite 325  
Long Beach, CA 90802

13. **INDEMNIFICATION AND HOLD HARMLESS.** Subcontractor shall indemnify, defend and hold harmless the CITY OF NEW YORK, TETRA TECH, INC. and its employees and agents from any and all liability, settlements, loss, defense costs, and expenses in connection with any action, suit, or claim resulting from the active or passive negligent acts, errors, or omissions in services provided pursuant to this Agreement by Subcontractor, its employees, or Subcontractor's tier subcontractors and/or subcontractors. However, if any such liability, settlements, loss, defense costs or expenses result from the concurrent negligence of Subcontractor and TETRA TECH, INC., this indemnification applies only to the extent of the negligence of Subcontractor.

14. **DISPUTES AND APPLICABLE LAWS.** The validity and the effect of this Agreement, its interpretation, operations and all questions arising with respect to performance shall be determined by TETRA TECH, INC. In the event any dispute arises out of this Agreement, efforts to resolve such dispute shall first be made by negotiation between Subcontractor and TETRA TECH, INC. If the dispute cannot be resolved through negotiation between the parties, resulting in a mutually agreeable resolution of the dispute, TETRA TECH, INC. has the sole discretion to demand that the dispute be subject to mediation. The fee, if any, of the mediator shall be shared equally by both parties. Mediation involves no formal court procedures or rules of evidence, and the mediator does not have the power to render a binding decision or force an agreement on the parties. If mediation is not successful, either party may pursue all judicial remedies available to that party. Any action for claims arising out of or relating to this Agreement and/or performance of this Agreement shall be governed by the laws.

# EXHIBIT A: DEALERSHIP/ORIGINAL EQUIPMENT MANUFACTURER REQUIREMENTS SUBCONTRACT AGREEMENT NO. \_\_\_\_\_

## Dealership/OEM Represents and Warranties that it:

- Possesses current and valid local, state, and federal permits and licenses legally required within its' operating jurisdiction, and submit to Tetra Tech, Inc. a copy of all such local, state, and federal permits and licenses.
- Understands the New York City Clean Trucks Program (Program or NYCCTP) requirements, signs the Agreement, and adheres to NYCCTP requirements.
- Will maintain a minimum of one (1) supervisory employee trained on the terms, conditions, and requirements of the NYCCTP.
- Shall allow the NYCDOT and/or Tetra Tech, Inc. to inspect Qualifying Truck(s) and Replacement Truck(s), covered under this Agreement and the NYCCTP, during normal business hours.
- Shall only sell Replacement Trucks, with model year engines equal to the delivery date calendar year, one calendar year older, or one calendar year newer, to which Dealership/OEM has good, marketable, and insurable title free and clear of all liens.
- Shall only sell a Replacement Truck which is in good working order and is fit to perform as required by the NYCCTP; provided, however, that if certain repairs are desired by the Participant or are necessary for the Replacement Truck to be in good working order, such repairs shall occur, whenever possible, prior to the sale of such Replacement Truck as a condition to sale, and be itemized on the Sales Agreement that such repairs have been performed. Should circumstances preclude such repairs prior to the sale of such Replacement Truck, then each repair itemized on the Sales Agreement shall also include the date by which such repairs shall be performed.
- Shall, upon execution of the Sales Agreement, promptly complete all documentation necessary to ensure that each Replacement Truck is registered with the appropriate state department of motor vehicles in compliance with applicable federal and state laws, and prepare and/or file all other necessary documents to ensure that title to the Replacement Truck is transferred to the name of Participant.
- Shall release the Replacement Truck to the Participant prior to receipt of the Rebate Incentive from Tetra Tech, Inc.
- Shall apply the value of the Incentive Rebate issued for a specific Replacement Truck only to the purchase of that Replacement Truck.
- Will not willfully, fraudulently, or intentionally include costs in the Replacement Truck Total Purchase Price which are not allowed to be included therein pursuant to the NYCCTP and/or this Agreement.
- Will not modify the Replacement Truck OEM exhaust emission control systems in any manner.

## Requirements and Procedures to Sell a Replacement Truck to Participant

- Dealership/OEM, or an NYCCTP approved alternative, must complete the Certificate of Qualifying Truck Inspection and submit, with the required photographs, to Tetra Tech, Inc. with or before submittal of the draft Sales Agreement.
- Dealership/OEM shall prepare and provide to Participant a draft Sales Agreement which shall specifically identify: a) each element of the Replacement Truck Total Purchase Price, b) any other costs associated with the sale of the Replacement Truck that are not part of the Replacement Truck Total Purchase Price, c) identifying information relating to the Replacement Truck, including its make, model year, vehicle

identification number (VIN) or portion thereof, and the engine's make, model year, serial number, and family name, and d) if required, the cost of an Automatic Vehicle Locator (AVL), including shipping, handling, taxes associated in the connection therewith, and installation costs. The Dealership/OEM shall ensure that no provision of the draft Sales Agreement contradicts with the terms or requirements of this Agreement.

- Upon approval of the draft Sales Agreement by Tetra Tech, Inc., Participant shall execute such agreement at which time it will become the Final Sales Agreement.

## Payment to the Dealership/OEM

- Subcontractor must complete the Certification of Receipt of Replacement Truck and submit, with required attachments, to Tetra Tech, Inc. Payment of the Rebate Incentive for a Qualifying Truck will not be processed without delivery of the Certificate of Receipt of Replacement Truck signed by the Subcontractor.
- After release of the Replacement Truck to the Participant by the Dealership/OEM, and receipt of any other documentation specified, Tetra Tech, Inc. shall pay to the Dealership/OEM the Rebate Incentive to the account provided by the Dealership/OEM. Payment of the Rebate Incentive to the Dealership/OEM is dependent upon payment of Rebate Incentive to Tetra Tech, Inc. It is anticipated that payment of the Rebate Incentive to Dealership/OEM will be completed within two to five (2 to 5) business days after Tetra Tech, Inc.'s receipt of all documentation required to complete the rebate process, including the Certificate of Receipt of Replacement Truck, scrapping of the Qualifying Truck, and installation of AVL Device.
- The remaining amount of the Replacement Truck Total Purchase Price not covered by the Rebate Incentive shall be paid to the Dealership/OEM by the Participant, whether through its own funds or through financing provided by a financial institution of its choice.
- Any costs or expenses listed in the Sales Agreement that are not part of the Replacement Truck Total Purchase Price shall be paid for solely by the Participant, and Tetra Tech, Inc. shall have no obligation to pay any such amount to the Dealership/OEM.

## Inspection Certificates

- Prior to release of the Replacement Truck to Participant, Dealership/OEM shall ensure that the Replacement Truck to be released to Participant is identical to the information for such truck identified in Section A of the Replacement Truck Inspection Certificate.
- Prior to release of the Replacement Truck to Participant, Dealership/OEM shall fully and accurately complete the Replacement Truck Inspection Certificate and take all required photographs.

## Documents Required to be Delivered After Release of Replacement Truck to Participant

- Within ten (10) Business Days after the Release of the Replacement Truck to Participant, Dealership/OEM shall deliver to Tetra Tech, Inc. the completed Replacement Truck Inspection Certificate, with all required photographs and attachments.

# EXHIBIT A: DEALERSHIP/ORIGINAL EQUIPMENT MANUFACTURER REQUIREMENTS SUBCONTRACT AGREEMENT NO. \_\_\_\_\_

## Events of Default

- Dealership/OEM fails to maintain the insurance described in Standard Conditions.
- Dealership/OEM sells a Replacement Truck to Participant pursuant to this Agreement that is not a Qualifying Truck.
- Dealership/OEM willfully, fraudulently or intentionally includes costs in the Replacement Truck Total Purchase Price which are not allowed to be included therein pursuant to this Agreement.
- Dealership/OEM assigns or transfers any of its rights under this Agreement in violation of this Agreement.
- If any representation or warranty made by Dealership/OEM in the Agreement or in any certificate or other instrument or document furnished to Tetra Tech, Inc., shall later prove to have been false or misleading in any material respect as of the date the representation or warranty was made.
- Dealership/OEM fails to observe any of the terms of the Agreement, deliver any documents or certificates required within the time frame specified herein, and/or keep, perform and observe each and every other covenant required on its part to be kept, performed or observed which failure is not remedied within five (5) Business Days after receipt of notice thereof by Tetra Tech, Inc. to the Dealership/OEM, except as otherwise permitted by Tetra Tech, Inc. in writing.

## Rights and Remedies

Tetra Tech, Inc. and the NYCDOT shall have the following rights upon Event of Default:

- The right to terminate this Agreement.
- If such Event of Default occurs prior to payment of the Incentive Rebate, Tetra Tech and/or NYCDOT have the right to refuse to pay the Incentive Rebate.
- If such Event of Default occurs after payment of the Incentive Rebate in the amounts specified below:
  - One hundred (100) percent if occurring within the first annual period from date of Receipt;
  - Eighty (80) percent if occurring within the second annual period from the date of Receipt;
  - Sixty (60) percent if occurring within the third annual period from the date of Receipt;
  - Forty (40) percent if occurring within the fourth annual period from the date of Receipt;
  - Twenty (20) percent if occurring within the fifth annual period from the date of Receipt.
- The right to revoke the Participant's ability to participate in the Program or any future similar NYCDOT programs.
- The right to specific performance, an injunction or any appropriate equitable remedy.

## Government Funding Disclosure

Any and all government (federal, state, or local) funding used toward the purchase of and/or to buy down of the Replacement Truck cost must be disclosed for each Replacement Truck.

## Definitions

- "Business Day" shall mean any day other than a Saturday, Sunday, or any other day on which national banks in New York City, New York, are not open for business.
- "Dealership/OEM" shall mean a dealership or Original Equipment Manufacturer (collectively "Dealership") which has entered into an agreement with Tetra Tech, Inc. to participate in the Program and sell Qualifying Trucks to Participants.
- "Final Sales Agreement" shall mean a sales agreement for the purchase of a Qualifying Truck entered into between the

Dealership/OEM and Participant, which has been approved by Tetra Tech, Inc.

- "Participant" shall mean any individual, corporation, partnership, joint venture, limited liability company, and any fiduciary acting in such capacity on behalf of any of the foregoing who has entered into an agreement with Tetra Tech, Inc. in order to participate in the Program.
- "Participant Agreement" shall mean the agreement entered into between Tetra Tech, Inc. and a Participant.
- "Program" or "NYCCTP" shall mean the New York City Department of Transportation Clean Trucks Program.
- "Qualifying Truck" shall mean a Class 4 to Class 8 on-road commercial truck equipped with a model year 1992 to 2009 diesel engine and to which Participant has title free and clear of all liens whatsoever and meets all Program requirements.
- "Rebate Incentive" shall mean an amount to be paid to the Dealership/OEM by Tetra Tech, Inc. as described herein, and which shall be reimbursable to the NYCDOT pursuant to the Agreement.
- "Receipt" or "Release" shall mean the physical release, or turning over, of the Replacement Truck (or its keys) to Participant after Dealership/OEM has satisfied the conditions set forth in the Agreement.
- "Replacement Truck" shall mean any truck that meets Program requirements for a Rebate Incentive.
- "Replacement Truck Total Purchase Price" shall mean the sum total of only the following costs associated with the purchase of the Replacement Truck, each of which shall be subject to the approval of Tetra Tech, Inc.: (a) the Replacement Truck sale price quoted by the Dealership/OEM, (b) registration and title fees, (c) taxes if applicable, (d) if required, the cost of an Automatic Vehicle Locator (AVL), including shipping, handling, taxes associated in the connection therewith, and installation costs, and (e) any other fees as may be approved by Tetra Tech, Inc.

## Non-Publication & Dealership/OEM Not An Agent

- The Dealership/OEM shall not issue nor permit to be issued any press release, advertisement, or literature of any kind, which refers to the NYCDOT or to Dealership/OEM's participation in the Program, unless the Dealership/OEM first obtains the written approval of the NYCDOT. Such approval may be withheld if for any reason the NYCDOT believes that the publication of such information would be harmful to the public interest or is in any way undesirable.
- Dealership/OEM acknowledges and understands that in performing its services to the NYCCTP, it is and shall be at all times an independent contractor and the officers, agents and employees of the Dealership/OEM shall not be or be deemed to be agents, servants, or employees of the NYCDOT or Tetra Tech, Inc.