

APPENDIX C-1
Creditable Cost Guidance and Attestation Requirements for
the National and California ZEV Investment Plan Commitments

APPENDIX C-1

**CREDITABLE COST GUIDANCE
AND ATTESTATION REQUIREMENTS FOR
THE NATIONAL AND CALIFORNIA ZEV INVESTMENT PLAN COMMITMENTS**

This Appendix C-1 further elaborates on the requirements for the National Creditable Cost Guidance (“NCCG”) and the California Creditable Cost Guidance (“CCCG”) (collectively, the Creditable Cost Guidances (“CCG”)), and Attestation Requirements pursuant to Appendix C of the Consent Decree, and sets forth the requirements for costs incurred by Settling Defendants to qualify as Creditable Costs in connection with the National and California ZEV Investment Plans. The requirements for Creditable Costs are organized and presented in three sections, as follows:

Section I - Statement of Objectives, Definitions, and Limitations.

Section II - Accounting procedures for the accounting for, substantiation, and reporting of Creditable Costs.

Section III - Attestation Requirements to establish whether an expenditure is a Creditable Cost.

I. STATEMENT OF OBJECTIVES, DEFINITIONS, AND LIMITATIONS

Objectives - The objectives of the CCG are to ensure that the costs Settling Defendants submit as Creditable Costs are not specifically excluded below and are otherwise (a) reasonable, (b) necessary, and either (c) directly connected or directly allocable to eligible ZEV Investment projects or activities in the National and California ZEV Investment Plans approved by EPA or CARB, as applicable, pursuant to procedures set out in Appendix C of the Consent Decree. The definitions and limitations below will guide the determination of whether a cost meets this objective.

Definitions and Limitations - In order to qualify as Creditable Costs, costs must be: (1) “reasonable,” “necessary,” and either “directly connected” or “directly allocable,” as defined in Paragraph 1 (Requirements) below; (2) not expressly excluded as a Creditable Cost in the cost categories set out in Paragraph 2 (Excluded Categories of Costs) below; and (3) within the limitations set forth in Paragraph 4 (Specific Limitations on Certain Cost Categories) and Paragraph 5 (General Limitations on All Personnel, Overhead, and Service Level Agreement Costs) below.

1. Requirements

For the purposes of the CCG and Attestation Requirements, the following definitions in Paragraphs 1.1 through 1.4 shall apply.

1.1. Reasonable - A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in the conduct of competitive business. What is reasonable depends upon a variety of considerations and circumstances, including: (1) whether the cost is the type of cost generally recognized as ordinary and necessary for implementation of ZEV Investment projects or activities in the Settling Defendants' approved National or California ZEV Investment Plan; (2) generally accepted sound business practices (consistent with Settling Defendants' existing procurement policies), arm's-length bargaining, and Federal, State, and local laws and regulations; (3) any significant deviations from the Settling Defendants' established practices; and (4) comparison to the costs of similar projects or project components of the same size, in the same industry, or in the same geographic area at or near the time that the expenditure was made.

1.2. Necessary - A cost is necessary if the ZEV Investment projects or activities approved as part of the National or California ZEV Investment Plan could not have been accomplished without incurrence of the cost.

1.3. Directly Connected - A cost is directly connected if it is incurred for the sole purpose of implementing approved ZEV Investment projects or activities as part of the National or California ZEV Investment Plan.

1.4. Directly Allocable - A cost is allocable if it is either directly connected or if some portion of the cost can be directly attributed to implementation of the ZEV Investment projects or activities in the Settling Defendants' approved National or California ZEV Investment Plan on an equitable basis that takes into account the causal/beneficial relationship of the attributed cost to the activities to which it is attributed.

2. Excluded Categories of Costs

Costs that are excluded from Creditable Costs in this Paragraph 2 shall not qualify as Creditable Costs under any other cost principle.

2.1. Disallowed Overhead - A cost incurred by any entity or distinct business group created by Settling Defendants to carry out a National or California ZEV Investment Plan, which is neither Directly Connected nor Directly Allocable to an approved ZEV Investment project or activity included in that National or California ZEV Investment Plan, is not a Creditable Cost.

2.2. Electricity Costs - Unless otherwise agreed to in writing by EPA or CARB, as applicable, the costs for electricity for charging ZEVs are not Creditable Costs.

2.3. Entertainment Expenses - Costs of amusement, diversion, social activities, and any directly associated costs such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities are not Creditable Costs. Costs of membership in social, dining, or country clubs or other organizations having the same purposes are not Creditable Costs, regardless of whether the cost is reported as taxable income to the employees.

2.4. Fines and Penalties - Costs of fines and penalties resulting from violations of, or failure of the Settling Defendants to comply with, Federal, State, local, or foreign laws and regulations, are not Creditable Costs.

2.5. General and Administrative Costs - General and Administrative costs are costs incurred by the parent of the entity or distinct business group created to implement the projects or activities in the Settling Defendants' approved National or California ZEV Investment Plan for the support of the parent's overall organization. General and Administrative costs are not Creditable Costs.

2.6. Income Taxes - All income taxes, with the exception of payroll taxes, are not Creditable Costs.

2.7. Interest and Other Financial Costs - Interest on borrowings (however represented), bond discounts, and costs of financing and refinancing capital (net worth plus long-term liabilities), are not Creditable Costs.

2.8. Legal Costs - Costs for legal services related to issues of Settling Defendants' compliance with the requirements of Appendix C or the Consent Decree are not Creditable Costs.

2.9. Pass-through Costs - Discrete items of cost -- such as surcharges imposed by electric utilities or fees imposed by local governments -- that are imposed by a third party and passed through or transferred by Settling Defendants to an end user, customer

or other third party on a clearly-stated, one-for-one basis -- or are otherwise borne by the end user, customer or other third party -- are not Creditable Costs.

2.10. Trademark - Costs incurred in connection with the establishment and defense of any trademark or other intellectual property are not Creditable Costs.

3. General Guidance on Costs

3.1. Federal Acquisition Regulations - In developing their proposed Creditable Cost Guidances, Settling Defendants may draw from provisions of the Federal Acquisition Regulations, 48 C.F.R. Chapter 1, Subchapter E, Part 31, Subpart 31.205, to the extent appropriate and not inconsistent with the definitions and limitations set forth in this Appendix C-1.

4. Specific Limitations on Certain Cost Categories.

4.1. Land or Facility Rental; Real Estate Acquisition - Subject to the expressed limitations, the following costs may qualify as Creditable Costs.

4.1.1. Rental costs under operating leases, to the extent that the rates are reasonable at the time of the lease decision, after consideration of (i) rental costs of comparable property, if any; (ii) market conditions of the area; (iii) the type, life expectancy, condition, and value of the property leased; (iv) alternatives available; and (v) other provisions of the agreement, may qualify as Creditable Costs.

4.1.2. Rental costs under a sale and leaseback arrangement may qualify as Creditable Costs only up to the amount the Settling Defendants would be allowed if the Settling Defendants had retained title.

4.1.3. Charges in the nature of rent for property between any divisions, subsidiaries, or organization under common control, to the extent that they do not exceed the normal costs of ownership, such as depreciation, taxes, insurance, facilities capital cost of money, and maintenance (excluding interest or other unallowable costs pursuant to Federal Acquisition Regulations, 48 C.F.R. Chapter 1, Subchapter E, Part 31, Subpart 31.205), provided that no part of such costs shall duplicate any other allowed cost. Rental cost of personal property leased from any division, subsidiary, or affiliate of the Settling Defendants under common control that has an established practice of leasing the same or similar property to unaffiliated

lessees may qualify as Creditable Costs in accordance with Paragraph 4.1.1. above.

4.1.4. Land and building acquisitions related to a ZEV Investment are not Creditable Costs unless: (i) such acquisition is necessary to provide Settling Defendants with assurance that they will have access to such land or building for the ten-year period after the Effective Date, or (ii) such acquisition is materially less expensive than leasing the land or building for the ten-year period after the Effective Date.

4.2. Materials - A cost for the physical goods that are required to implement projects or activities in the Settling Defendants' approved National or California ZEV Investment Plan and taxes thereon may qualify as Creditable Costs.

4.3. Marketing - Projects or activities necessary to implement brand-neutral education or public outreach programs that are designed to build or increase public awareness of ZEVs may qualify as Creditable Costs. Costs incurred with marketing of Settling Defendants' products or services are not Creditable Costs.

4.4. National or California ZEV Investment Plan Project Management - A cost for the supervision, oversight, and management of project personnel, including Settling Defendants' employee and contractor or vendor personnel, which are required to implement projects or activities in the Settling Defendants' approved National or California ZEV Investment Plan, may qualify as Creditable Costs.

4.5. Personnel/FTE - Subject to the expressed limitations, the following costs may qualify as Creditable Costs.

4.5.1. Compensation for personnel includes all remuneration paid currently or accrued, in whatever form and whether paid immediately or deferred, for services rendered by employees to the Settling Defendants during and for the implementation of the projects or activities in the Settling Defendants' approved National or California ZEV Investment Plan. This includes salaries; wages; bonuses; employee insurance; fringe benefits; contributions to pension plans; and allowances for off-site pay, incentive pay, location allowances, hardship pay, severance pay, and cost of living differential. Compensation for personnel may qualify as a Creditable Cost subject to the following general criteria.

4.5.1.1. Compensation for personnel must be for work performed by the employee in the current year and must not represent a retroactive adjustment of prior years' salaries or wages.

4.5.1.2. The compensation in total must be reasonable and necessary for the work performed.

4.5.1.3. The compensation must be based upon and conform to the terms and conditions of the Settling Defendants' established compensation plan or practice followed so consistently as to imply, in effect, an agreement to make the payment.

4.5.1.4. No presumption will exist that compensation is a Creditable Cost where the Settling Defendants introduce major revisions of existing compensation plans or new plans and the Settling Defendants have not provided to EPA or CARB, as applicable, either before initiating implementation or within a reasonable period after it, an opportunity to review the creditability of the changes.

4.5.2. Reasonableness. Compensation for personnel may be considered a Creditable Cost if the total compensation conforms generally to compensation paid by other firms of the same size, in the same industry, or in the same geographic area for similar services or work performed. This does not preclude EPA or CARB, as applicable, from challenging the reasonableness of an individual element of compensation where costs are excessive in comparison with compensation paid by other firms of the same size, same industry, or in the same geographic areas for similar services.

4.5.3. Domestic and foreign differential pay.

4.5.3.1. When personal services are performed in a foreign country, compensation may also include a differential that may properly consider all expenses associated with foreign employment such as housing, cost of living adjustments, transportation, bonuses, additional Federal, State, local or foreign income taxes resulting from foreign assignment, and other related expenses.

4.5.3.2. Although the additional taxes in Paragraph 4.5.3.1. above may be considered in establishing foreign overseas differential, any

increased compensation calculated directly on the basis of an employee's specific increase in income taxes is not a Creditable Cost. Differential allowances for additional Federal, State, or local income taxes resulting from domestic assignments are not Creditable Costs.

5. General Limitation on All Personnel, Overhead, and Service Level Agreement Costs

5.1. In addition to having to meet all of the requirements set forth above, all costs incurred by Settling Defendants and any entity or distinct business group created by Settling Defendants to carry out a National or California ZEV Investment Plan for: (i) personnel, (ii) service-level agreements, and (iii) office space and services (direct or indirect overhead) for employees of Settling Defendants or a newly created entity, shall be limited to no more than fourteen (14) percent of the Creditable Costs incurred during the period covered by the first two Annual National ZEV Investment Reports required pursuant to Paragraph 2.9 of Appendix C, or the first two Annual California ZEV Investment Reports required pursuant to Paragraph 3.6 of Appendix C, as applicable, and shall be limited to ten (10) percent thereafter unless otherwise agreed to in writing by EPA or CARB, as applicable, in advance of such cost being incurred. As used herein, a service-level agreement cost is a cost for goods or services provided by an entity that is related to or controlled by Settling Defendants, their parents or subsidiaries (i.e., not a third-party vendor).

II. ACCOUNTING PROCEDURES FOR THE ACCOUNTING FOR, SUBSTANTIATION, AND REPORTING OF CREDITABLE COSTS

In accordance with Paragraphs 2.2 and 3.2 of Appendix C of the Consent Decree, Settling Defendants shall, within thirty (30) days of the Effective Date, concurrently submit to EPA and CARB for review and approval a proposed separate Creditable Cost Guidance to assist in the determination of Creditable Costs under the National and California ZEV Investment Plans, respectively. The Creditable Cost Guidances shall provide the accounting procedures for the accounting, substantiation, and reporting of Creditable Costs under the respective ZEV Investment Plans. The Creditable Cost Guidances shall specify how Settling Defendants will segregate, describe, report, and substantiate costs in a manner that will allow for an independent certified public accountant firm ("Third-Party Reviewer") retained by the Settling Defendants to attest that costs claimed by Settling Defendant as Creditable Costs satisfy all requirements set forth in the Consent Decree, Appendix C, and any approved Creditable Cost Guidances.

In the Creditable Cost Guidances, Settling Defendants shall (a) specify any and all unique accounting cost centers and accounts to record and report Creditable Costs, and (b) identify the

level and type of documentation that are appropriate to substantiate the incurrence of any cost and to demonstrate that such cost meets the standards articulated in Appendix C (and this Appendix C-1) for qualification of costs as Creditable Costs. The level of detail and support required shall be sufficient to meet the requirements of a Compliance Attestation performed in accordance with the Statement on Standards for Attestation Engagements (“Attestation Standards” or “AT”), as issued by the American Institute of Certified Public Accountants. (See AT Sections 101.201 and 601.) In order to satisfy the objectives set forth in Section I above, the procedures performed by the Third-Party Reviewer retained by Settling Defendants shall be agreed upon by the Settling Defendants, EPA, and CARB prior to the Compliance Attestation engagement and shall also be sufficient to meet the requirements of the Attestation Standards. Notwithstanding the preceding, nothing shall preclude the Third-Party Reviewer charged with providing the attestation described in Section III below from utilizing additional records or information to support the attestation.

III. ATTESTATION REQUIREMENTS

In connection with Settling Defendants’ reporting obligations under the Consent Decree, Settling Defendants will retain a Third-Party Reviewer to perform a Compliance Attestation. The Compliance Attestation shall be performed in compliance with the Statements on Standards for Attestation Engagements, as issued by the American Institute of Certified Public Accountants.

The Attestation Report shall be submitted to EPA and CARB in connection with Settling Defendants’ Annual National and California ZEV Investment Reports. The Attestation Report shall be in a format similar to the following illustration:

Third-Party Reviewer’s Attestation Report

[Appropriate Addressee]

We have examined Settling Defendants’ management’s assertion that *[identify the assertion, which includes the subject matter and the criteria; for example, the accompanying schedule of ZEV Investments and Operations of Settling Defendants for the year ended December 31, 20XX, presents the Creditable Costs of Settling Defendants for the year ended December 31, 20XX, based on criteria set forth in Appendix C and any approved Creditable Cost Guidance]*. Settling Defendants’ management is responsible for its assertion. Our responsibility is to express an opinion based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. Those standards require that we plan and perform the examination to obtain reasonable assurance about whether *[identify the subject matter]* is in conformity with the criteria referenced above.

An examination includes performing procedures to obtain evidence about whether *[identify the subject matter]* is in conformity with the criteria referenced above. The nature, timing, and extent of the procedures selected depend on our professional judgment, including an assessment of the risks of material misstatement, whether due to fraud or error, and involve examining evidence about *[identify the subject matter]*. We believe that the evidence we obtained is sufficient and appropriate to provide a reasonable basis for our opinion.

[Include a description of significant inherent limitations, if any, associated with the measurement or evaluation of the subject matter against the criteria.]

[Additional paragraph(s) may be added to emphasize certain matters relating to the attestation engagement or the subject matter.]

In our opinion, the schedule referred to above presents, fairly, in all material respects, an identification of costs that meet the requirements for Creditable Costs as that term is defined by Appendix C to the Consent Decree and the applicable Creditable Cost Guidance *for the year ended December 31, 20XX*.

[Practitioner's signature]

[Practitioner's city and state]

[Date of practitioner's report]