

Sales and Use Tax Exclusion Program Regulatory Agreement

[Company's Full Legal Name]
Application No. **[XX-SMXXX]**

Sales and Use Tax Exclusion Program ("Program")

Regulatory Agreement

This Regulatory Agreement dated _____, 20____, is between the California Alternative Energy and Advanced Transportation Financing Authority and **[company's full legal name]** ("Company", as more specifically defined below), a **[state of incorporation]** **[corporation/limited liability company/limited partnership/special district/local agency]**.

Defined Terms

1. "Act" means Division 16 (commencing with Section 26000) of the Public Resources Code.
2. "Administrative Fee" means the fee specified in Section 10036(b) of Division 13 of Title 4 of the California Code of Regulations.
3. "Application" means the application submitted by the Participating Party subject to this Regulatory Agreement.
4. "CAEATFA" means the California Alternative Energy and Advanced Transportation Financing Authority created pursuant to the Act.
5. "CDTFA" means the California Department of Tax and Fee Administration.
6. "Company" means the entity and its subsidiaries or affiliates (if any), collectively and individually meeting the definition of Participating Party, as more specifically described in the Application approved by resolution for Financial Assistance.
7. "Effective Date" means the date the Regulatory Agreement is signed by the CAEATFA and the Company.
8. "Financial Assistance" has the same meaning as in Section 26003 of the Public Resources Code.
9. "Participating Party" has the same meaning as in Section 26003 of the Public Resources Code.
10. "Program" means the Manufacturing Sales and Use Tax Exclusion Program established pursuant to the Act and Article 2 (commencing with Section 10030) of Division 13 of Title 4 of the California Code of Regulations.
11. "Project" has the same meaning as in Section 26011.8 of the Public Resources Code.
12. "Qualified Property" has the same meaning as in Section 10031 of Division 13 of Title 4 of the California Code of Regulations.

RECITALS

Pursuant to the Act, CAEATFA provides financial assistance for (1) facilities utilized for the design, manufacture, production, or assembly of advanced transportation technologies or alternative source products, components, or systems, or (2) facilities utilizing an advanced manufacturing process or utilizing or processing recycled feedstock.

The Company received a sales and use tax exclusion under the Program's **[Select one of the following: advanced manufacturing, alternative source, advanced transportation, or recycled feedstock]** pathway to **[insert a one or two sentence project description and include the project location]**.

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The Company applied to CAEATFA for Financial Assistance for the transaction contemplated by and between the Parties in this Regulatory Agreement. The Application's Project Narrative and Qualified Property List are attached as Exhibit A.

The CAEATFA Board approved the Company's Project for financial assistance under the Program on [date of board approval].

The transactions contemplated by and between the Parties in this Regulatory Agreement are designed and intended to be excluded from the imposition of the sales and use tax in California pursuant to Section 6010.8 of the Revenue and Taxation Code.

The Parties agree that Sections 2, 3, and 4 set forth the acquisition of Qualified Property by the Company from the Vendors provisions of this Regulatory Agreement.

AGREEMENT

1. Qualification

A. *Financial Assistance.* CAEATFA agrees and has found by resolution that the transactions described in this Regulatory Agreement qualify as Financial Assistance pursuant to the Act.

B. *Participating Party.* CAEATFA agrees and has found by resolution that Company meets the definition of a Participating Party pursuant to the Act. Subject to the approval by the Executive Director pursuant to Section 10036(c)(1) of Division 13 of Title 4 of the California code of Regulations, Company may add an additional subsidiary or affiliate to this Regulatory Agreement upon written request.

C. *Project.* CAEATFA agrees and has found by resolution that the acquisition of the Qualified Property is collectively a Project pursuant to the Act. Notwithstanding the Application, Section 10031 of Division 13 of Title 4 of the California Code of Regulations and the Act shall control in a determination of whether Qualified Property shall be excluded from the imposition of sales and use tax in California during the term of this Regulatory Agreement.

2. Acquisition of Qualified Property by the Company from Vendors

A. *Selection and Acquisition of Qualified Property.* Throughout the term of this Regulatory Agreement, the Company agrees to acquire up to [Qualified Property amount approved] of tangible personal property that at least fifty percent (50.0%) of its use is either (1) to process recycled feedstock that is intended to be reused in the production of another product or using recycled feedstock in the production of another product or Soil amendment, or (2) is utilized in an advanced manufacturing process or for the design, manufacture, production, or assembly of advanced transportation technologies or alternative source products, components, or systems or for advanced manufacturing facilities from one or more vendors for the Project, as described in the Application. The sum of all those assets, as measured by the original acquisition price of the assets is referred to as the "Aggregate Asset Price." The Qualified Property will be selected by the Company in its sole discretion, and the transactions will take place at the discretion of the Company and in multiple installments. The Qualified Property will include, but need not be limited to, the materials or equipment described in the

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attached Exhibit B, except where Section 10031 of Division 13 of Title 4 of the California Code of Regulations and the Act control the determination of whether Qualified Property shall be excluded from the imposition of sales and use tax in California

B. *Assistance by CAEATFA to Secure Exclusion from Sales and Use Taxes.* The Parties anticipate that the CDTFA will agree that the acquisitions purchased pursuant to this Regulatory Agreement by the Company from vendors of the Qualified Property are excluded from the imposition California state and local sales and use taxes pursuant to Section 35(b) of Article XIII of the California Constitution, Section 6352 of the Revenue and Taxation Code, and CDTFA Regulation 1667 (18 CCR §1667). CAEATFA agrees to provide reasonable assistance to the Company to secure that exclusion.

C. *Cooperation.* CAEATFA agrees to advise any vendor from which the Company is acquiring Qualified Property as part of a transaction contemplated by this Regulatory Agreement.

3. Semi-Annual Report

A. *Reporting to CAEATFA.* The Company will submit a semi-annual report for Qualified Property acquisitions made from January 1 to June 30 on or before July 31. For Qualified Property acquisitions made from July 1 to December 31, the semi-annual report will be due on or before January 31 of the immediately following calendar year. The semi-annual report must also meet any other requirement set forth in Section 10035 of Division 13 of Title 4 of the California Code of Regulations. Each semi-annual report will be accompanied by the appropriate Administrative Fee.

B. *Other Terms.* The Parties agree the only fees for the Qualified Property acquired are those set forth in Section 10036 of Division 13 of Title 4 of the California Code of Regulations. The Parties agree there will be multiple semi-annual reports throughout the Term of this Regulatory Agreement consistent with this section. The Parties also agree the Aggregate Asset Price shall not exceed [Qualified Property amount approved].

C. *Amendment of Exhibit B.* The Company agrees it will amend Exhibit B with an aggregate individualized list of all Qualified Property acquired from vendors pursuant to this Regulatory Agreement. The Company agrees the amended Exhibit B will be submitted to CAEATFA within thirty (30) days after the Initial Term, as set forth in Section 5(A), of the acquisition and semi-annual report provisions of this Regulatory Agreement.

4. Conditions Precedent

This Regulatory Agreement is subject to the following conditions precedent:

A. *CAEATFA Approval.* The Application by the Company for financial assistance from CAEATFA shall have been approved by the CAEATFA Board.

B. *Certification.* The Company shall provide certification to CAEATFA with each proposed semi-annual report pursuant to this Regulatory Agreement that the Qualified Property acquired pursuant to this Regulatory Agreement will be installed, maintained, and operated at a site located within California.

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5. Term and Termination

A. *Initial Term; Full Term.* The initial term of this Regulatory Agreement shall be for a period of five (5) years after CAEATFA Board's approval of the Application, until [date of initial term expiration], or until the Aggregate Asset Price is reached, or when the final semi-annual report is submitted, whichever occurs first. Subject to the preceding sentence, the full term of this Regulatory Agreement shall be for a period of twelve (12) years, until [date of remaining term expiration], including the period for providing annual Compliance Reports as set forth in Section 10035(b)(4) of Division 13 of Title 14 of the California Code of Regulations.

B. *Audit.* Any information provided by the Company to CAEATFA is subject to an audit and verification. Upon a ten (10)-business-day notice to the Company, the Company will permit CAEATFA or its designee, during normal business hours, to inspect the relevant files of the Company solely for the purposes of verifying the eligibility of the transactions pursuant to the Act. The results of any audit pursuant to this paragraph may be forwarded to CDTFA for a possible enforcement action. Ten (10) business days prior to the initiation of an enforcement action, CAEATFA will provide the Company with a notice of its intent to take that action and the basis for that action.

C. *Termination.* If CAEATFA determines the Company has violated any terms of this Regulatory Agreement, CAEATFA may terminate this Regulatory Agreement.

D. *Rescission.* Following a finding that the Company has provided false information pursuant to Section 10035(b)(6) of Division 13 of Title 4 of the California Code of Regulations, or has otherwise violated this Regulatory Agreement, CAEATFA, after written notice to the Company, may rescind the approval resolution and Regulatory Agreement in addition to other remedies. Upon a final decision by CAEATFA, the approval resolution and this Regulatory Agreement with the Company shall be rescinded, and a notice of the rescission may be provided to CDTFA.

E. *Notice.* Prior to taking any adverse action against the Company pursuant to Section 5(C), CAEATFA will provide the Company with written notice of CAEATFA's intent to take that action and the basis for that action and will provide the Company with at least thirty (30) calendar days to cure.

6. Regulatory Provisions

A. *Fifteen Percent (15%) of Qualified Property Purchases Requirement.* The Company agrees to make purchases or have executed purchase orders of at least fifteen percent (15%) of the Aggregate Asset Price within two (2) years of the date of the CAEATFA Board's approval of the Application. Failure to meet this requirement shall make the Company or any of its parent companies or subsidiaries ineligible for a new award for a period of two (2) years from the applicable requirement deadline.

B. *Annual Certification Letter and Compliance Report.* The Company by July 31 each year shall submit to CAEATFA an annual "Certification Letter and Compliance Report." The Company is required to report activity for the entire calendar year in which this Regulatory Agreement expires.

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The annual Certification Letter must document that the Qualified Property has been used for the purposes specified in the Application for the entire period since the acquisition of the Qualified Property pursuant to this Regulatory Agreement and has been installed, maintained, and operated within California.

Consistent with Section 10035(b)(4) of Division 13 of Title 14 of the California Code of Regulations, the annual Compliance Report shall contain (1) total payroll; (2) the number of permanent and construction jobs; (3) the total annual product sales (in dollars) and including the fraction in California; (4) the number of units sold, including the fraction in California; (5) the anticipated corporate or personal income tax related to the Project; (6) the amount spent on supplier acquisitions, including the fraction of acquisitions from California suppliers; (7) the total amount of Qualified Property acquired to date; (8) a description of the Project status and consistency with the timeline in the Application; (9) the anticipated acquisition dates of additional Qualified Property; (10) an explanation of any material changes to the product or manufacturing process implemented since the approval of the Application; and (11) a statement indicating the fraction of time the Qualified Property has been used to make advanced transportation or alternative source products, components, or systems or utilized in an advanced manufacturing process or to process recycled feedstock.

CAEATFA may request other information reasonably related to the purposes of the Program.

C. *Retention of Records.* The Company shall retain the records necessary to document the information provided in the annual Certification Letter and Compliance Report required pursuant to this Section and the semi-annual reports required pursuant to Section 3 for at least five (5) years after the date of the latest annual Certification Letter, annual Compliance Report or semi-annual report required by this Regulatory Agreement.

D. *Program Compliance.* The Company shall at all times be in compliance with the Act and Article 2 (commencing with Section 10030) of Division 13 of Title 4 of the California Code of Regulations, and ensure any contractors or subcontractors shall at all times be in compliance, as appropriate. Continued compliance with the Program's requirements is the Company's responsibility.

E. *Suspension.* If the Company violates the Act, regulations, or the terms of this Regulatory Agreement, the Executive Director may suspend this Regulatory Agreement until the Executive Director certifies that the Company is once again in compliance. Purchases made during this suspension will not be excluded from the imposition of sales and use tax. During a suspension, the Authority will not accept new applications or requests to modify existing awards from the Company or any of its parent companies or subsidiaries.

F. *Recovery of Financial Assistance.* CAEATFA may seek the recovery of the Financial Assistance actually utilized in cases in which the Company: (1) does not meet the substantial use requirements identified in Section 10033(b)(1)(A) of Division 13 of Title 4 of the California Code of Regulations or (2) removes the Qualified Property acquired from the California prior to the shorter of (a) the expiration of the term of this Regulatory Agreement or (b) five (5) years.

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The recovery of Financial Assistance will be in the amount of the estimated sales and use tax exclusion actually utilized as determined by CAEATFA at the time of acquisition plus a fixed rate of five percent (5%) of the sales and use tax exclusion amount.

7. Miscellaneous

A. *Assignment.* This Regulatory Agreement shall not be transferred or assigned to any other person prior to the expiration of this Regulatory Agreement unless that person acquires all or substantially all of the assets of the Company. In that case, the Authority shall authorize the transfer of the Company's rights pursuant to this Regulatory Agreement to the successor in interest upon board approval if the successor meets eligibility requirements. The successor in interest shall agree in writing to assume all of the duties and responsibilities of the Company pursuant to this Regulatory Agreement. If the successor in interest for the Qualified Property does not assume all of the duties and responsibilities under this Regulatory Agreement with the Authority, then the Company shall be required to repay the amount of the sales and use tax exclusion.

B. *Severance.* If any clause, provision, or Section of this Regulatory Agreement is held illegal or invalid by any court, the invalidity of that clause, provision, or Section shall not affect any of the remaining clauses, provisions or sections hereof, and this Regulatory Agreement shall be construed and enforced as if that illegal or invalid clause, provision, or Section had not been contained in this Regulatory Agreement.

C. *Notices.* All notices, certificates, requests, or other communications shall be sufficiently given when delivered, if delivered by registered or certified mail, postage prepaid, return receipt requested, or by messenger or professional courier service, addressed as follows:

Attention: Executive Director
California Alternative Energy and Advanced Transportation Financing Authority
915 Capitol Mall
Sacramento, California 95814

If to the Company:

Attention: [Name, Title]
[company's full legal name]
_____, California _____

And to [USE IF MULTIPLE PARTIES]:

Attention: [Name, Title]
[company's full legal name]
_____, California _____

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D. *Entirety.* Subject to the Act, this Regulatory Agreement and the Exhibits attached to it contain the entire Regulatory Agreement between the Company and CAEATFA with respect to the matters described herein and supersede any and all previous Agreements. This Regulatory Agreement may not be amended except with the written consent of CAEATFA and the Company.

E. *Captions.* The captions in this Regulatory Agreement are for convenience only and shall not define, limit, or describe the scope of intent of the provisions in this Regulatory Agreement.

F. *Governing Law.* This Regulatory Agreement will be governed by and interpreted in accordance with the laws of the State of California.

G. *Liability.* The Company releases CAEATFA, and covenants and agrees, to the extent permitted by law, to indemnify and hold harmless CAEATFA and the California State Treasurer and their members, officers, employees, and agents (the "State Indemnified Parties") from and against any and all losses, claims, damages, liabilities, taxes (and interest and penalties), or expenses (including, without limitation, reasonable attorneys' fees, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments), of every conceivable kind, character, and nature whatsoever (including, without limitation, federal and state securities laws) arising out of, resulting from or in any way connected with (1) the Project, or the conditions, occupancy, use, possession, conduct, or management of, or work done in or about the Project or the other facilities of the Company or its participating affiliates, or from the planning, design, acquisition, construction, rehabilitation, renovation, improvement, installation, or equipping of the Project or any part thereof; (2) the carrying out of any of the transactions contemplated by this Regulatory Agreement; (3) any violation of any environmental regulations or the release of any hazardous substance from, on or near the Project or any other facilities of the Company or its participating affiliates; or (4) the taxability of the sale or use of the Project, or allegations that the sale or use of the Project is taxable or any regulatory audit or inquiry regarding whether that tax is applicable; provided that with respect to the indemnification of the State Indemnified Parties, that indemnity shall not be required for damages that result from the gross negligence or willful misconduct on the part of the party seeking that indemnity and with respect to any other indemnified party, that indemnity shall not be required for damages that result from the negligence or willful misconduct on the part of the party seeking that indemnity. The Company further covenants and agrees, to the extent permitted by law, to pay or to reimburse CAEATFA and its members, officers, employees, and agents for any and all costs, reasonable attorneys' fees and expenses, liabilities, or other expenses incurred in connection with investigating, defending against, or otherwise in connection with any those losses, claims, damages, liabilities, expenses, or actions, except to the extent that the same arise out of the gross negligence or willful misconduct of CAEATFA and its members, officers, employees, and agents claiming that payment or reimbursement. Notwithstanding the foregoing, the Company shall not have any liability to CAEATFA and the State Indemnified Parties for any losses, claims, damages, liabilities, taxes (and interest and penalties), or expenses (including, without limitation, reasonable attorneys' fees, litigation and court costs, amounts paid in settlement, and amounts paid to discharge judgments), of every conceivable kind, character, and nature whatsoever (including, without limitation, federal, and state securities laws) arising solely from acts or omissions by CAEATFA.

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H. *Insurance and Risk of Loss.* The Company agrees and covenants that it bears all risk of loss relating to any damage, loss, destruction, or any other harm to the Qualified Property. The Parties further agree that CAEATFA shall have no duty or obligation to obtain insurance of any kind relative to the Qualified Property.

I. *Compliance with Applicable Local, State, and Federal Laws.* The Company agrees and covenants that all Project Qualified Property acquired and included in semi-annual reports pursuant to this Regulatory Agreement will be installed, maintained, and operated in accordance with all applicable local, state, and federal laws.

J. *No Waiver.* Any waiver by either CAEATFA or the Company of any obligation in this Regulatory Agreement shall be in writing. A waiver shall not be implied from any failure of CAEATFA or the Company to take action, or any delay or failure by CAEATFA to take action on any breach or default or Event of Default by the Company or to pursue any remedy allowed pursuant to this Regulatory Agreement or applicable law.

K. *Execution of Counterparts.* This Regulatory Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. However, only the counterpart delivered to CAEATFA shall be deemed the original.

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The Parties have executed this Regulatory Agreement as of the Effective Date.

**California Alternative Energy and
Advanced Transportation Financing
Authority**

[company's full legal name]

By: _____

Name of Executive Director

Executive Director

By: _____

Name of Signatory

Title of Signatory [must match signature

Certificate]

**(If multiple Participating Parties- may be the
same signatory as above)**

[company's full legal name]

By: _____

Name of Signatory

Title of Signatory [must match signature

Certificate]

EXHIBIT A
Application

Project Narrative

EXHIBIT A
(Continued)

Qualified Property List from Application

EXHIBIT B

List of Qualified Property

	Qualified Property Item	Approximate Cost	Anticipated Purchase Date	Description & Purpose
	Item	\$xxx,xxx,xxx	Month, Year	Description of Item and Purpose as Related to the Manufacturing Process
	[delete any unnecessary table lines]			

Total **\$**