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A. TEICHERT & SON, INC.

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California Air Resources Board

1001 'I' Street

Sacramento, CA 95814

Submitted electronically via the ACF comment portal.

Re: Comments on the Second Notice of Public Availability of Modified Text, Proposed Amendments to the Advanced Clean Fleets and Low Carbon Fuel Standard Regulations (State and Local Government Fleets; Vehicles Under Contract)

Dear Chair Sanchez and Honorable Members of the California Air Resources Board:

Teichert is one of California's oldest construction and materials companies, serving public and private customers continuously since 1887. For well over a century, Teichert has built and maintained California's highways, bridges, and local and regional infrastructure, and has supplied aggregate, asphalt, and ready-mix concrete to projects across Northern California and Nevada, including emergency and disaster-recovery work performed for public agencies on short notice. Teichert is a privately held company that prides itself on doing the right thing for the communities we serve. This letter is submitted on behalf of Teichert. It supplements Teichert's April 17, 2026 comments on the first 15-day package, which raised several of these same concerns, and responds to the second 15-day modifications concerning vehicles under contract to State and local government (SLG) agencies. We state our overriding concern plainly at the outset: these amendments, if adopted as proposed, will impose unanalyzed compliance burdens on the public agencies this regulation was designed to serve, undermine the competitive bid process for public works projects, and expose CARB's rulemaking record to challenge before the Office of Administrative Law.

CARB's current guidance (updated June 1, 2026) states that the second 15-day changes were issued "to address confusion regarding vehicles under contract," and characterizes the resulting obligations as "existing requirements as intended in the initial ACF amendment language released on July 29, 2025." Respectfully, the confusion is real, but it was created by staff interpretation that the adopted regulatory text does not support, and the second 15-day package does not resolve it for the construction and material-supply sector. If anything, for the reasons set out below, SLG agencies and private fleets now have less clarity than they did before the second 15-day changes were released. Teichert submits these comments to identify where the text remains unclear, why the proposed approach exceeds the proper scope of a 15-day modification, and what the consequences will be for existing contracts and the competitive bid process if the ambiguity is finalized.

1. The Notice's own language describes vehicles operated by the government, not vehicles operated by its contractors

The Notice states that the changes "make explicit the existing requirement that vehicles being operated *by* State and local governments, including those through a contractual arrangement, are part of the government entity's fleet for purposes of the regulation." Teichert agrees with that sentence as written. A vehicle "operated by" a government through a contractual arrangement is one whose operation the government has procured, a leased unit, a rented unit, or a dedicated service fleet operated for the agency. Teichert's vehicles are operated by Teichert. When a Teichert ready-mix truck delivers concrete to a public project, or a Teichert crew arrives at a job site, the government is not operating those vehicles through any arrangement; it has purchased a product or a constructed result, and the vehicles are Teichert's own instrumentalities, selected, scheduled, and operated at Teichert's sole discretion.

This reading is confirmed by the structure of section 2013.3 itself, which reaches vehicles a public agency "directly owns, rents, leases, or contracts to operate on its behalf." Each term in that series describes a means by which the agency acquires the operational use of a vehicle. "Contracts to operate" belongs to the same family: an agreement whose subject is the ongoing operation of vehicles for the agency, a franchised waste-collection fleet or a contracted street-sweeping operation, where vehicle operation is the deliverable and the contractor performs the agency's own recurring function in its place. A construction contract or a supply contract is a different kind of agreement: the agency purchases a finished capital improvement or a good, not the operation of vehicles, and would be indifferent if the contractor performed by other lawful means. Teichert does not dispute that dedicated fleet-service contracts, where the operation of vehicles is itself the contracted deliverable, may appropriately fall within the SLG regulation. The problem is that "contract for services" has no limiting principle that stops there.

CARB's September 2025 amendments draw the same boundary. Staff added the word "specific" before "vehicle" in the definition of "dispatch," and the Initial Statement of Reasons (page 37) explained that "dispatch" does not apply "to general instructions to the hired entity, such as a contract that specifies the areas to service … or a contract that specifies when and where road activities need to be made." A construction or supply contract specifies a scope, a site, and a schedule; it does not dispatch identified vehicles. If the second 15-day changes are truly a clarification of these provisions, they exclude construction and material-supply work, and Teichert asks CARB to say so expressly.

2. "Binding agreement with a third party" cannot serve as an independent capture trigger

The guidance states that agencies "must report any covered vehicle added to its California Fleet through a binding agreement with a third party," while vehicles "renewed through existing leases or service contracts" need not be counted as added. Two observations follow. First, the phrase is tethered to vehicles "added to [the agency's] California Fleet", it describes how a vehicle enters the agency's fleet, not what makes a vehicle the agency's fleet vehicle in the first place. A purchase order for material, or a fixed-price construction contract, is a binding agreement with a third party, but it adds no vehicle to anyone's fleet. Second, the guidance's own carve-out for renewed "leases or service contracts" shows the provision contemplates fleet-operation arrangements, not transactions in which vehicles are incidental to the delivery of a result or a good. If "binding agreement" meant any contract whatsoever, it would capture every vendor that delivers anything to any public site, a result irreconcilable with the same guidance's statement that "private fleets are not subject to the ACF State and local government regulations." Neither "binding agreement" nor "under contract" is defined in the adopted or proposed regulatory text, nor are there any dollar or duration thresholds distinguishing the contracts CARB intends to reach. We request that CARB supply those definitions in regulatory text.

3. Scenarios and structural questions the proposed text cannot answer

Teichert prices, staffs, and equips its work based on what the rules require. From the operator's side of these contracts, the proposed text leaves the following questions unanswerable:

1. **Material delivery.** A Teichert ready-mix truck delivers a load to a public works project and serves private job sites the rest of the day. Is that vehicle "under contract" such that the awarding agency must count it in its ACF compliance inventory? For what unit of time, the trip, the day, the project?
2. **Crews and equipment arriving at a job site.** A vehicle arrives at a public project carrying employees, tools, and supplies, for work that is not an enumerated service such as waste hauling or street sweeping. Is it captured simply because the project is publicly funded, although it is not dedicated to the agency, is not dispatched by the agency, and moves freely between public and private work?
3. **Double counting across agencies.** A single Teichert vehicle may serve contracts with several public agencies in the same compliance period. Would each agency count the same vehicle in its inventory? One agency could place the vehicle under the ZEV Purchase Schedule while another places it under the ZEV Milestones Option, simultaneously, under incompatible pathways. The regulation provides no allocation method, and none could be administered for transient construction vehicles.
4. **Statutory useful-life protections.** Pathway elections carry consequences for vehicle retirement schedules. Can a public agency's compliance election effectively waive the SB 1 useful-life protections attached to vehicles Teichert owns? An agency cannot waive statutory protections belonging to a fleet it neither owns nor operates, yet the proposed structure appears to assume exactly that.
5. **Exemptions for vehicles no one can apply for.** The regulation's flexibility provisions, ZEV-unavailability, infrastructure, and daily-use exemptions, are available to regulated fleet owners. Teichert is not a regulated entity and therefore has no standing to request them; the

agency, which neither owns nor operates the vehicles, lacks the operational knowledge to support an application. If contracted vehicles are counted in agency inventories, the flexibilities CARB cites are structurally unavailable for precisely those vehicles.

6. **Fleet-wide spillover.** After the 100 percent ZEV purchase requirement takes effect in 2030, how would an agency comply for contracted vehicles whose purchase decisions it does not control? Would the purchase obligation spill over to a contractor's entire fleet, including the substantial majority of vehicles never used on that agency's work? The text does not say.
7. **Short-term and partial-period contracts.** If an agency otherwise compliant under the Milestones Option enters a contract of less than one year, must it ensure the contractor's ZEV/ICE composition does not drop the agency below its phase-in threshold for the duration of that contract? The proposed text distinguishes neither short-term from long-term contracts nor full-period from partial-period engagements.
8. **Emergency and disaster work.** Teichert performs wildfire cleanup, flood response, and other emergency work for public agencies on hours' notice. The proposed text contains no treatment of near-term or emergency contracts. Resolution 25-9 directed the Executive Officer to ensure the regulation has no adverse impact on essential public services; an unanswered question about whether emergency contractors' vehicles count against agency compliance is precisely such an impact.
9. **Enforcement.** If a contracted private fleet's composition causes an agency to miss a milestone, against whom does CARB enforce, the agency that does not control the vehicles, or the contractor the regulation does not reach?

Government Code section 11349(c) requires that a regulation be written so that those affected by it can easily understand how it applies. If these ordinary, everyday situations cannot be answered from the text, the text does not meet that standard. Without additional clarification, Teichert will be unable to know whether these proposed 15-day cleanup amendments will have little to no impact on us and general contractors like us, or whether these proposals, if moved forward by CARB, would significantly impact our market fundamentals and financial position. A regulation that cannot answer these questions for an ordinary construction or materials contract is not a clarification—it is an unlawful delegation of interpretive authority to staff guidance, which is precisely the underground regulation concern raised in Section 5 below.

4. Impacts on existing contracts and the competitive bid process

Existing contracts. Teichert currently holds multi-year construction, maintenance, and supply agreements with SLG entities that were scoped, priced, bid, and awarded without any requirement, or any notice, that Teichert's vehicles would be counted in the agency's ACF compliance inventory or that zero-emission vehicles would be expected. If the staff interpretation is finalized, agencies will face pressure to renegotiate, amend, or impose mid-term requirements on agreements whose economics were fixed at award. Neither the contractor nor the agency priced that risk, because no adopted text created it. Retroactive application of new compliance expectations to executed contracts, including any retroactive Milestones accounting, raises serious fairness and legal concerns and invites disputes among awarding bodies, primes, and subcontractors.

The competitive bid process. Public contracting follows a fixed sequence: the agency develops a scope, budgets against it, solicits bids, and awards to a responsive low bidder. If a scope does not require ZEVs, no rational bidder prices them in, doing so forfeits the award. If agencies must nonetheless account for contractor vehicles in their own compliance, agencies will be forced to impose ZEV requirements through contract terms the regulation never adopted, with costs and feasibility never analyzed. Agencies cannot plan or execute RFPs when what applies to contracted vehicles is unknown. The predictable results are higher bid prices passed through to public budgets; reduced bidder participation, as fleets unable to source compliant heavy-duty ZEVs for construction duty cycles decline to bid; and an unlevel field in which identical work carries different fleet obligations depending on the customer. Construction work is short-term and transitory, vehicles cannot be assigned to a single contract, and zero-emission configurations are not available for many of the heavy duty cycles this work requires. Moreover, imposing fleet composition requirements through mid-term contract amendments or "contractual arrangements" as contemplated by the guidance would, in many instances, constitute a material change to an awarded contract inconsistent with California's competitive bidding laws. Agencies cannot unilaterally impose material new obligations on fixed-price contracts without re-bidding the work, placing both the agency and the contractor in legal jeopardy.

5. Procedural deficiencies under the Administrative Procedure Act

Teichert respectfully submits that the manner in which the contractor-capture position has been developed and noticed does not comply with the Administrative Procedure Act, for at least the following reasons:

1. **New substantive obligations characterized as "clarification."** The second 15-day notice describes the modifications as making explicit "existing requirement[s]." But the obligation for agencies to account for contracted private-fleet vehicles, and the expectation that agencies "may impose contractual requirements to ensure regulatory compliance", appears in none of the regulatory support documents, the September 25, 2025 Board presentation, the amendments the Board adopted, Resolution 25-9, or the original 45-day notice. The record in fact supports the opposite understanding: the same rulemaking repealed the High Priority and Drayage requirements to provide "regulatory certainty for private fleets," and private fleets reasonably did not participate because nothing indicated they were implicated. Had capture of contracted private fleets been proposed, it would have been a major subject of Board discussion. A requirement that appears nowhere in the adopted text or rulemaking

record is not an "existing requirement," and labeling it a clarification does not exempt it from the notice, comment, and analysis the APA requires.

2. **Scope beyond what 15-day modifications permit.** Government Code section 11346.8(c) permits post-hearing modifications only where they are sufficiently related to the original proposal that the public had adequate notice. A change of this character and consequence belongs before the Board, not in successive staff-issued 15-day packages following a single hearing.

3. **No economic or fiscal analysis of the expanded scope.** Government Code sections 11346.2, 11346.3, and 11346.5 require assessment of a regulation's economic impact, including effects on businesses and costs to local agencies. Teichert asks CARB to identify where the ISOR, the Standardized Regulatory Impact Assessment, or the Environmental Analysis explicitly analyzes the contractor interpretation, the ZEV price premium for heavy construction configurations, charging infrastructure, the pass-through to public project budgets, or the administrative burden on agencies of tracking transient construction vehicles. We are aware of no such analysis. An obligation with cost implications of this magnitude cannot be adopted on a record that never studied it.

4. **Regulation through guidance.** The substance of the contractor-capture position was first communicated in a March 20, 2026 staff email, stating that agencies "must include vehicles used under contract" and "may impose contractual requirements to ensure regulatory compliance", and now resides in a guidance document that neither the Notice nor the second 15-day changes reference or incorporate. Regulated parties must comply with the rule, not with guidance; an unincorporated guidance document can be revised at any time without process, and where it conflicts with a plain reading of the regulation, CARB lacks authority to implement the guidance over the rule. Under Government Code section 11340.5, an agency may not issue or enforce a rule of general application unless adopted pursuant to the APA. To the extent these statements are intended to bind agencies or their contractors, they constitute an underground regulation.

5. **Legislative supremacy: SB 1 useful-life protections.** As noted in Section 3, the proposed structure would allow a public agency's compliance pathway election to govern the retirement schedule of vehicles owned entirely by a private contractor. SB 1 useful-life protections are statutory rights belonging to the vehicle owner, not compliance options available to a contracting agency. A regulation cannot, through a 15-day staff clarification, create a mechanism by which a public agency's administrative election alters or waives the statutory rights of a third party who is not a regulated entity and who had no notice that its vehicles would be subject to any such election. Where a regulation conflicts with a governing statute, the statute controls. Teichert asks CARB to identify the specific statutory authority under which an SLG's compliance election could affect the SB 1 rights of a privately-owned fleet, or to confirm that no such authority exists and that the proposed structure does not reach those vehicles.

6. **Clarity.** For the reasons in sections 1 through 3 above, the proposed text fails the clarity standard of Government Code section 11349(c) as applied to construction and material-supply contracting: the regulated community cannot determine from the text which vehicles, which contracts, and which time periods are captured.

Teichert also notes, without elaborating here, that requirements compelling private fleets to acquire ZEVs through the mechanism of public contracting raise the same federal preemption questions that led CARB to withdraw its Clean Air Act waiver request and repeal the private-fleet portions of this regulation. We respectfully suggest that CARB consider that exposure before finalizing an interpretation that reaches private fleets indirectly. The practical effect of requiring private contractors to equip their fleets with ZEVs as a condition of performing public work is functionally identical to directly regulating those private fleets—the very result CARB acknowledged it cannot achieve without a Clean Air Act waiver from the U.S. EPA. CARB withdrew that waiver request and formally repealed the High Priority and Drayage provisions specifically to provide “regulatory certainty for private fleets.” An interpretation that reimports private-fleet ZEV obligations through the back door of public contracting is inconsistent with that Board action and invites the same preemption exposure CARB sought to avoid.

6. Teichert’s operating assumptions

Consistent with the adopted regulatory text, Teichert is operating, preparing its fleet, and pricing its bids under the following assumptions. We ask CARB to confirm them or to identify the specific adopted regulatory provision that contradicts them:

1. Teichert, as a private fleet, is not a regulated entity under the ACF regulation. CARB’s March 20, 2026 staff response and its current guidance both state that private fleets are not subject to the SLG regulation.
2. Zero-emission vehicles are not required for Teichert to perform construction services, public works projects, design-build contracts, project-specific services, material supply and delivery, emergency and disaster-response work, or subcontracted services, unless ZEV use is expressly written into the project scope or bid for services.
3. Where an agency must verify a hired fleet under the “Hiring Compliant Fleets” provisions, Teichert will provide a signed statement that its fleet is not subject to the SLG fleet requirements of title 13, CCR sections 2013 through 2013.6, a statement accurate on the face of those sections, which regulate only State and local government fleets.

7. Requested actions

1. Confirm in regulatory text, not guidance, that private fleets performing construction, public works, design-build, project-specific, material-supply, emergency-response, and subcontracted work are outside the scope of the SLG regulation, consistent with the Notice’s own description of vehicles “operated by” the government, and that “contracts to operate on

its behalf" reaches only agreements whose subject is the operation of vehicles for the agency;

2. Define "contract," "binding agreement," "under contract," and "services" as used in the phrase "contract for services," and any dollar or duration thresholds, together with the time and allocation basis on which a contracted vehicle is counted, including how double counting across multiple agencies, conflicting pathway elections, exemption standing, and SB 1 useful-life protections would be administered, if CARB intends any capture of contracted vehicles; It would be most useful for CARB to publish a list identifying which "services" are included and which are not, and we ask that construction, infrastructure work, maintenance, and the supply of construction materials (asphalt, concrete, aggregate) be expressly placed in the not-included category;

3. If CARB intends to extend ACF compliance obligations to privately-owned vehicles performing construction, material-supply, or related work for public agencies, initiate a new rulemaking with proper notice, a revised Initial Statement of Reasons and Standardized Regulatory Impact Assessment that analyzes the costs and feasibility of ZEV configurations for construction duty cycles, the administrative burden on agencies of tracking transient contracted vehicles, and the pass-through impact on public project budgets—before any such requirement becomes effective. The present rulemaking record does not support adoption of contractor-capture obligations, and the 15-day modification process is not an adequate substitute for the full rulemaking those obligations require.

Teichert appreciates CARB's engagement and stands ready to provide operational detail on our fleet, duty cycles, and contracting practices to assist staff. Thank you for your time and consideration.

Respectfully submitted,

DocuSigned by:
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Mary Teichert
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Teichert Inc.