

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

STANDARD AGREEMENT

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER

PURCHASING AUTHORITY NUMBER (If Applicable)

1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME

State Energy Resources Conservation and Development Commission (Energy Commission)

CONTRACTOR NAME

2. The term of this Agreement is:

START DATE

XX/XX/XXXX

The effective date of this Agreement is the start date, or the signature date this agreement was signed by the California Energy Commission representative below, or the approval date by the Dept. of General Services (if required), whichever is later. No work shall commence until the effective date.

THROUGH END DATE

XX/XX/XXXX

3. The maximum amount of this Agreement is:

\$0.00

4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of the Agreement.

Exhibits	Title	Pages
Exhibit A	Scope of Work	
Exhibit B	Budget Detail and Payment Provisions	
Exhibit B-1	Budget	
+ - Exhibit C*	General Terms and Conditions	
+ - Exhibit D	Special Terms and Conditions	
+ - Exhibit E	Conflict of Interest	
+ - Exhibit F	Federally Funded Contract Terms and Conditions	
+ - Exhibit G	Agreement Contacts	

Items shown with an asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto.

These documents can be viewed at <https://www.dgs.ca.gov/OLS/Resources>

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.

CONTRACTOR

CONTRACTOR NAME (if other than an individual, state whether a corporation, partnership, etc.)

CONTRACTOR BUSINESS ADDRESS

CITY

STATE

ZIP

PRINTED NAME OF PERSON SIGNING

TITLE

CONTRACTOR AUTHORIZED SIGNATURE

DATE SIGNED

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

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AGREEMENT NUMBER

PURCHASING AUTHORITY NUMBER (If Applicable)

STATE OF CALIFORNIA

CONTRACTING AGENCY NAME

State Energy Resources Conservation and Development Commission (Energy Commission)

CONTRACTING AGENCY ADDRESS

715 P Street, MS-18

CITY

Sacramento

STATE

CA

ZIP

95814

PRINTED NAME OF PERSON SIGNING

Adrienne Winuk

TITLE

Contracts, Grants and Loans Office Manager

CONTRACTING AGENCY AUTHORIZED SIGNATURE

DATE SIGNED

CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL

EXEMPTION (If Applicable)

EXHIBIT A
Scope of Work described in the RFP

DRAFT

NOTE: Bidders must review these draft terms and conditions. Bidders must agree to all final terms and conditions to receive the Agreement award. Be aware that the terms and conditions included in this Attachment are subject to change based on, in addition to other potential reasons, modifications to federal program requirements or terms and conditions by the U.S. Department of Energy (DOE), Federal Highway Administration (FHWA), and U.S. Environmental Protection Agency (USEPA), feedback and guidance the Energy Commission receives from the DOE, FHWA or USEPA, and any project-specific special terms and conditions the Energy Commission deems appropriate for an Agreement. The Energy Commission will not award agreements to non-complying entities. The Energy Commission reserves the right to modify the terms and conditions prior to executing agreements.

EXHIBIT B

Budget Detail and Payment Provisions

1. **CONDITIONS FOR PAYMENT**

- A. No payment shall be made in advance of services rendered.
- B. For services satisfactorily rendered, and upon receipt and approval of invoices, the Energy Commission agrees to compensate the Contractor for actual allowable expenditures incurred in accordance with Exhibit B. The rates in Exhibit B are rate caps, or the maximum amount allowed to be billed. The Contractor can only bill for actual expenses incurred for hours worked **at the Contractor's and subcontractor's actual labor and non-labor rates**, not to exceed the rates specified in Exhibit B.
- C. The Contractor is not allowed to charge profit, fees or mark-ups on any subcontracted budget item, including lower tier subcontracted amounts. Subcontractors are not allowed to profit from their subcontractors' costs.
- D. Each invoice is subject to the Energy Commission Agreement Manager's (CAM) approval.
- E. Payments shall be made to the Contractor for undisputed invoices. An undisputed invoice is an invoice submitted by the Contractor for services rendered, and for which additional evidence is not required to determine its validity. The invoice will be disputed if all deliverables due for the billing period have not been received and approved, if the invoice is inaccurate, or if it does not comply with the terms of this Agreement. If the invoice is disputed, Contractor will be notified via a Dispute Notification Form within 15 working days of receipt of the invoice.
- F. Payment will be made in accordance with the Prompt Payment Act, Government Code Chapter 4.5, commencing with Section 927, which requires payment of properly submitted, undisputed invoices within 45 days of receipt or automatically pay late payment penalties when applicable.
- G. Final invoice must be received by the Energy Commission no later than 30 calendar days after the Agreement termination date.

- H. The State will pay for State or local sales or use taxes on the services rendered or equipment, parts or software supplied to the Energy Commission pursuant to this Agreement. The State of California is exempt from Federal excise taxes, and no payment will be made for any taxes levied on employee's wages.
- I. No payment will be made for costs identified in Contractor invoices that have or will be reimbursed by another source, including but not limited to a government entity agreement or subcontract or other procurement methods.

2. **PAYMENT TERMS**

Check all that apply:

- ☒ In Arrears
 - ☒ Itemized
 - ☒ Monthly

3. **INVOICING PROCEDURES**

- A. Invoices shall be submitted in duplicate not more frequently than monthly. The following certification shall be included on each invoice and signed by an authorized official of the Contractor:

I certify that this invoice is correct and proper for payment, and reimbursement for these costs has not and will not be received from any other sources, including but not limited to a government entity contract, subcontract or other procurement method.

- B. The Energy Commission will accept computer generated or electronically transmitted invoices. Electronic signatures are acceptable. The date of "invoice receipt" shall be the date the Energy Commission receives the electronic copy.

Send invoices to:

California Energy Commission
Accounting Office, MS-2
invoices@energy.ca.gov

- C. An invoice shall consist of, but not be limited to, the following:
 - 1) Agreement number, date prepared, and billing period.
 - 2) The Work Authorization number.
 - 3) The Contractor's actual unloaded hourly labor rates by individual and number of hours worked during the reporting period. Identify actual, agreement, and billed amounts.
 - 4) Non-Labor rates (fringe benefits, indirect overheads, general and administrative, profit, etc.). Identify actual, agreement, and billed amounts
 - 5) Other direct operating expenses, including equipment, travel, materials and miscellaneous, etc.
 - 6) Subcontractor expenditures.
 - 7) An indication of whether a subcontractor is a California Certified Small Business or a Certified Disabled Veteran Business Enterprise.

- 8) Identify the specific task(s) and/or the categories of expenditures under the applicable Work Authorization.
- 9) Consistent with the applicable Work Authorization budget provide current billing, previously billed, budgeted amounts and balance of funds.
- 10) If applicable, the match fund expenditures.
- 11) All invoices must be accompanied by the following documentation to support the expenditure:
 - a) Subcontractor invoices which shall include items 1-10 above for corresponding information, if any, identified in the budget detail (e.g., if the budget detail lists hourly labor rates, then the subcontractor's invoice would include hourly labor rates).
 - b) Receipts for travel expenses.
 - c) Receipts for materials, miscellaneous, and/or equipment.
 - d) A report that documents the progress of the work during the billing period; and
 - e) Any other deliverables due during the billing period.

4. **RETENTION**

The Energy Commission shall retain from each invoice ten per cent (10%) of that invoice, excluding equipment invoices, pursuant to Public Contract Code section 10346. The retained amount shall be held and released only upon approval that work has been satisfactorily completed and the Final Report (if required) has been received and approved. The Contractor must submit a separate invoice for the retained amount. Retained funds may be withheld by the Energy Commission to compensate or credit for amounts that were paid in error, or amounts that were paid but exceed the actual allowable incurred costs.

Retention may be released upon completion of a work authorization as each is considered a separate and distinct piece of work (i.e. the work authorization is a stand-alone piece of work and could be completed without other work authorizations). A work authorization for administration or management of the Agreement and/or subcontractors is not considered separate and distinct and retention will not be released early. Retention for the administrative/management work authorization will be released upon completion and approval of all Agreement final deliverables.

5. **TRAVEL AND PER DIEM RATES**

The Contractor shall be reimbursed for travel and per diem expenses using the Energy Commission Contractor Travel Rates. The Contractor must pay for travel in excess of these rates. The Contractor may obtain current rates from the Energy Commission's Web Site at: http://www.energy.ca.gov/contracts/TRAVEL_PER_DIEM.PDF.

- A. Before Contractor incurs travel costs and travels under this Agreement:
- CAM shall provide written authorization in a Work Authorization.
 - Work Authorization Manager or designee shall approve the trip details in writing (e.g., by email).
 - Contractor shall ensure that the trip is authorized in the WA and that sufficient labor hours and travel budget remains in the WA to cover the trip expenses.

- B. The Energy Commission will reimburse travel expenses from the Contractor's office location. For purposes of payment, the Contractor's office location shall be considered the office location where the Contractor's employees or, if applicable, the employees of a subcontractor with responsibilities for this Agreement are permanently assigned.
- C. Travel receipts and documentation of travel expenses, including travel meals and incidentals, shall be submitted with invoices requesting reimbursement from the Energy Commission. The documentation must be listed by trip and include dates and times of departure and return. The documentation must also include written trip approval by the WA Manager or designee.

6. **BUDGET CONTINGENCY CLAUSE**

It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the work identified in Exhibit A, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to the Contractor or to furnish any other consideration under this Agreement and the Contractor shall not be obligated to perform any provisions of this Agreement.

If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either: cancel this Agreement with no liability occurring to the State, or offer an Agreement amendment to the Contractor to reflect the reduced amount.

7. **RATES & CLASSIFICATIONS: CHANGES IN CONTRACTOR PERSONNEL OR SUBCONTRACTOR PERSONNEL**

This section contains provisions allowing rate and classification changes without a formal amendment. Exhibit D contains the rules for adding or replacing personnel and subcontractors listed in the Agreement. When a Contractor makes personnel and subcontractor changes in accordance with Exhibit D that do not require a formal amendment, the following rules explain the rates and classifications for which the Contractor can invoice. Changes outside of these rules require a formal amendment to the Agreement.

A. **New Personnel**

If Contractor or a subcontractor adds new personnel after the Agreement has been executed, the Contractor shall submit the new personnel's resume and proposed job classification/rate, consistent with classifications/rates within the respective budget, to CAM for review and approval. If the Agreement budget includes a job classification with the person identified as "To Be Determined", and a person is later identified, this person is considered to be new personnel. The new personnel shall not provide services until the CAM approves the new personnel request in writing and notifies the Energy Commission Agreement Officer (CAO). Any work performed by these new personnel prior to CAM approval is at Contractor's expense; the Energy Commission will not reimburse Contractor for work performed by these new personnel that occurs prior to CAM approval.

B. Labor Rates & Classifications

The Agreement budget identifies individuals and/or job classifications and the maximum rates that the Contractor can invoice for them. The Contractor shall only invoice for the actual rates up to the maximum amount listed. Contractor can only increase rates or add new job classifications to the Agreement through a formal amendment to this Agreement.

1. Contractor Changes: Addition or Replacement of Personnel

a) Labor Rates

If the Contractor adds a new person to a job classification listed in the Contractor's budget or replaces a person listed in the Contractor's budget, the Contractor can only invoice for the new person's actual rate up to the maximum amount listed for that classification in the Contractor's budget. The Contractor cannot use for its personnel a rate of a subcontractor.

b) Classifications

Additions or replacement of personnel can only be made within existing job classifications identified in the Contractor's budget. The Contractor cannot use for its personnel a job classification of a subcontractor. The new person must be invoiced within job classifications that already exist in the budget for the Contractor. If the Contractor wishes to add a new job classification to the Agreement (for instance to bring in a new person or possibly promote a person) this will require a formal amendment to the Agreement.

c) Promotions

Contractor personnel listed in the Contractor's budget can be moved to a higher-paying job classification listed in the Contractor's budget with prior written approval of the CAM and the appropriate Division Deputy Director. The written approval must be submitted to the CAO.

2. Subcontractor Changes: Addition or Replacement of Personnel

a) Labor Rates

If a subcontractor adds a new person to a job classification listed in the subcontractor's budget or replaces a person listed in the subcontractor's budget for that subcontractor, the subcontractor can only invoice for the new person's actual rate up to the maximum amount listed for that classification in the subcontractor's budget. The subcontractor cannot use for its personnel a rate of another subcontractor or of the Contractor.

b) Classifications

Additions or replacement of personnel can only be made within existing job classifications identified in the subcontractor's budget. The subcontractor cannot use for its personnel a job classification of another subcontractor or of the Contractor. The new person must be invoiced within job classifications that already exist in the budget for the subcontractor. If the subcontractor wishes to add a new job classification to the Agreement (for instance to bring in a new person or possibly promote a person) this will require a formal amendment to the Agreement.

c) Promotions

Subcontractor personnel listed in the subcontractor's budget can be moved to a higher-paying job classification listed in the subcontractor's budget with prior written approval of the CAM and the appropriate Division Deputy Director. The written approval must be submitted to the CAO.

C. Changes in Assigned Personnel Hours

Contractor may move dollars allocated for a specific person (employee or subcontractor) to another person listed in an Agreement or Work Authorization budget. However such changes cannot change the amount of the budget for the task or labor category. If a change in personnel will result in a change in the dollar amount of the task or in the labor category, then refer to the Budget Reallocation provision in this Exhibit B.

8. **BUDGET REALLOCATION**

A. The Energy Commission, through its CAM and CAO, and the Contractor can agree upon and make certain budget reallocations without a formal amendment to this Agreement as long as ALL of the following conditions are met:

- 1) For agreements without work authorizations, the total of all budget reallocations cannot exceed ten percent (10%) with a cap amount of \$150,000 of the Agreement Amount. For purposes of this provision, "Agreement Amount" means the total amount of Energy Commission funds being paid to Contractor under this Agreement. It does not include any match funds provided by Contractor.

For example, if under an agreement the Energy Commission agrees to pay a contractor \$100,000 and the contractor is supplying \$500,000 in match funding, the ten percent (10%) limitation applies to the \$100,000. Only up to \$10,000 of Energy Commission funds can be reallocated without a formal amendment. If under an agreement the Energy Commission agrees to pay a contractor \$1,750,000, ten percent would be \$175,000, but the cap is \$150,000, so the most that could be reallocated without a formal amendment is \$150,000.

For agreements with work authorizations, budget reallocations up to ten percent (10%) with a cap of \$150,000 of the entire agreement can be made. Budget reallocations up to ten percent (10%) of each work authorization can be made so long as the total amount of all work authorization budget reallocations does not exceed 10 percent of the agreement amount and is within the cap of \$150,000. For example, assume an Agreement Amount is \$175,000 and the agreement has two work authorizations, WA1 and WA2. WA1 has a budget of \$100,000, and WA2 has a budget of \$50,000. \$10,000 (10% of \$100,000) can be moved within WA1. \$5,000 (10% of \$50,000) can be moved within WA2. In addition to this, \$2,500 (10% of \$25,000, the Agreement Amount of \$175,000 minus the combined work authorization budgets of \$150,000) can be made to the portion of the Agreement Amount not associated with work authorizations. The total of these budget reallocations does not exceed ten percent of the total agreement amount or the \$150,000 cap.

- 2) The budget reallocation cannot substantially change the Scope of Work. Examples of budget reallocations that do not substantially change the Scope of Work include, but are not limited to, the following:
- Increasing or decreasing the overall travel budget. This does not mean an increase to the allowed per diem rates under this Agreement.
 - Increasing or decreasing the equipment budget.
 - Increasing or decreasing the number of personnel assigned to complete tasks. This does not include increasing the hourly rates of the personnel and classifications listed in the budget. Increasing hourly rates requires a formal amendment. The addition of personnel also requires a formal amendment unless there is already an identified classification of rates in the budget that the new personnel will be filling.
- 3) The budget reallocation only involves moving funds between tasks or categories. The total Agreement Amount and the total budget of any work authorizations must remain unchanged. Increasing the total amount of the Agreement requires a formal amendment.
- 4) The budget reallocation does not increase the percentage rate of Indirect Overhead, Direct Overhead, Fringe Benefits, General and Administrative Costs, Profit, or any other rates listed in the budget. For example, if an agreement budget lists the Indirect Overhead percentage rate as 25% of Direct Labor, the 25% cannot be changed without a formal amendment. Another example is that if a contractor listed that its profit rate is 8% of the total agreement, to increase this rate would require a formal amendment.
- B. To effectuate a budget reallocation under this section, the Contractor must make a request in writing to both the CAM and the CAO. Both the CAM and CAO will then approve or disapprove the request in writing; the approval or disapproval is not effective or binding unless signed by both the CAM and the CAO. Oral communications cannot be used or relied upon. If the request is approved, the CAM shall revise the Budget Attachments to reflect the changes and send them to the CAO and Contractor.
- C. Any desired budget reallocations that do not meet the four criteria in this section must be made through a formal amendment. For purposes of this provision, a "formal amendment" means that all of the following must occur: approval by the Energy Commission at a Commission Business Meeting, a written amendment signed by both parties, and approval by the California Department of General Services. Attempted budget reallocations that do not meet the requirements of this section are not legally binding upon the parties.

9. **ADMINISTRATIVE WORK CAP**

The budget for Task 1 – Agreement Management and General Project Tasks cannot exceed 10 percent of the total funds encumbered by the Agreement. The amount of program administration funds and its associated administrative Agreement management budget is subject to change depending on the program needs and the authority to spend those funds. The CAM will notify the Contractor of these changes if they are needed.

10. **MULTI-YEAR FUNDING**

There is \$20,000,000 available for the first two years of the Agreement. There is a maximum total budget of \$60,000,000, with a maximum Agreement term of 12 years

Funding for the first two years of the Agreement is from ___ fiscal years (FY), \$___ from FY ___ and \$___ from FY ___. Funding for FY ___, expires on ___. To make payments from FY ___ funding prior to the expiration date, all Agreement services, products, deliverables and invoices using these funds must be received by the Energy Commission by ___. The Energy Commission does not warrant or guarantee that payment will be made for services, products or deliverables performed if invoices are received after ___.

11. **BUDGET DETAIL**

Budget detail is contained in the Attachments to this Exhibit.

EXHIBIT B-1

Budget

For years 1-2, Budget table includes the same rates for two years.
For years 3-12, There will be a separate budget table, with rate increases, if any.

The year in which the Agreement is amended will include the hourly rates associated with that year, as provided in the Agreement budget.

EXHIBIT D

Special Terms and Conditions

1. **AGREEMENT MANAGEMENT**

- A. Contractor may change Project Manager but the Energy Commission reserves the right to approve any substitution of the Project Manager.
- B. The Energy Commission may change the Energy Commission Agreement Manager (CAM) at any time and will send a written notice to the Contractor signed by the Energy Commission Agreement Officer (CAO).
- C. Energy Commission staff will be permitted to work side by side with Contractor's staff to the extent and under conditions that may be directed by the CAM. In this connection, Energy Commission staff will be given access to all data, working papers, etc., which Contractor may seek to utilize.
- D. Contractor will not be permitted to utilize Energy Commission personnel for the performance of services, which are the responsibility of Contractor unless the CAM previously agrees to such utilization in writing and an appropriate adjustment in price is made. No charge will be made to Contractor for the services of Energy Commission employees while performing, coordinating or monitoring functions.
- E. If the Schedule of Deliverables and Due Dates needs to be revised after the execution of the Agreement, the revised dates cannot extend beyond the term end date of the Agreement. Contractor shall work with the CAM to agree on the new deliverable due dates. The CAM shall issue the revised Schedule of Deliverables and Due Dates to the Contractor and the CAO. Although the dates can be revised, the deliverables cannot be changed through this process.

2. **STANDARD OF PERFORMANCE**

Contractor shall be responsible in the performance of Contractor's/subcontractor's work under this Agreement for exercising the degree of skill and care required by customarily accepted good professional practices and procedures. Any costs for failure to meet these standards, or otherwise defective services, which require reperformance, as directed by CAM or its designee, shall be borne in total by the Contractor/subcontractor and not the Energy Commission. In the event the Contractor/subcontractor fails to perform in accordance with the above standard the following will apply. Nothing contained in this section is intended to limit any of the rights or remedies which the Energy Commission may have under law.

- A. Contractor/subcontractor will reperform, at its own expense, any task, which was not performed to the reasonable satisfaction of the CAM. Any work reperformed pursuant to this paragraph shall be completed within the time limitations originally set forth for the specific task involved. Contractor/subcontractor shall work any overtime required to meet the deadline for the task at no additional cost to the Energy Commission.
- B. The Energy Commission shall provide a new schedule for the reperformance of any task pursuant to this paragraph in the event that reperformance of a task within the original time limitations is not feasible.
- C. If the Energy Commission directs the Contractor not to reperform a task; the CAM and Contractor shall negotiate a reasonable settlement for satisfactory services rendered. No previous payment shall be considered a waiver of the Energy Commission's right to reimbursement.

3. **SUBCONTRACTS**

Contractor shall enter into subcontracts with the following firms and/or individuals and shall manage the performance of the subcontractors.

(Insert Subcontractor Names)

- A. Nothing contained in this Agreement or otherwise, shall create any contractual relationship between the State and any subcontractors, and no subcontractors and no subcontract shall relieve Contractor of its responsibilities and obligations hereunder. Contractor agrees to be as fully responsible to the State for the acts and omissions of its subcontractors and/or persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Contractor. Contractor's obligation to pay its subcontractors is an independent obligation from the State's obligation to make payments to Contractor. As a result, the State shall have no obligation to pay or to enforce the payment of any monies to any subcontractor.
- B. Contractor shall be responsible for establishing and maintaining contractual agreements with and the reimbursement of each of the subcontractors for work performed in accordance with the terms of this Agreement. Contractor shall be responsible for scheduling and assigning subcontractors to specific tasks in the manner described in this Agreement; coordinating subcontractor accessibility to Energy Commission staff, and submitting completed products to the CAM.
- C. Contractor shall not allow any subcontractor to assign any portion of a subcontract related to this Agreement to a third party or subsequent tier subcontractor (lower tier subcontractor) without first obtaining the written consent of the CAM and following the procedures below "Process for New Subcontractors".
- D. All subcontracts entered into pursuant to this Agreement shall be subject to examination and audit by the Bureau of State Audits for a period of three (3) years after final payment under the Agreement.
- E. Upon request by the CAM or CAO, Contractor shall provide copies of all contractual agreements with subcontractors and lower tier subcontractors.
- F. Upon the termination of any subcontract or lower tier subcontract, Contractor shall notify the CAM and CAO immediately in writing.
- G. In addition to any other flow-down provisions required by this Agreement, all subcontracts shall contain the following: 1) the audit rights and non-discrimination provision stated in the General Terms and Conditions (Exhibit C) and in D above; and 2) further assignments shall not be made to any lower tier subcontractor without written consent of the CAM.
- H. Process for New Subcontractors

The Energy Commission reserves the right to replace a subcontractor, request additional subcontractors, and approve additional subcontractors requested by Contractor. A replaced subcontractor and an added subcontractor are both defined as a "new" subcontractor. Such changes shall be subject to the following conditions:

- 1) The new subcontractor shall be selected using either: (a) A competitive bid process with written evaluation criteria by obtaining three or more bids and advertising the work to a suitable pool of subcontractors including without limitation: California Contracts Register; Contractor's mailing lists; mass media; professional papers or journals; posting on websites; and telephone or email solicitations; or (b) Non-competitive bid (sole source) process with a specific subcontractor.
- 2) Contractor may also need to comply with Disabled Veteran Business Enterprise requirements for the proposed subcontractor.
- 3) When a new subcontractor is proposed the CAM shall complete and submit to the CAO a "Subcontractor Addition" form. The proposed subcontract can be executed only after the CAO approves the Subcontractor Addition form. This form identifies the new subcontractor and bidding method used (competitive or non-competitive), the tasks the new subcontractor will be performing and the following shall be attached: resumes and completed Energy Commission budget forms.
- 4) Labor Rates & Classifications: Personnel of new subcontractors must fit within a classification and be equal to or less than a rate already listed in the Agreement budget and the rate cannot exceed the subcontractor's actual rate. Adding classifications and/or higher rates for the new subcontractor other than ones currently listed in the Agreement requires a formal amendment.
- 5) Non-Labor Rates: The non-labor rates (such as fringe, indirect overhead, general and administrative, profit) charged by the new subcontractor shall be equal to or less than the existing non-labor rates already listed in the Agreement budget and cannot exceed subcontractor's actual non-labor rates. Adding higher non-labor rates for the new subcontractor than ones currently listed in the Agreement requires a formal amendment.
- 6) Other Direct Operating Expenses: The new subcontractor may charge other direct operating expenses (such as material or equipment) as already identified in the Agreement budget. No new types of operating expenses are allowed to be charged by the new subcontractor. Adding new types of operating expenses for the new subcontractor requires a formal amendment.

4. **DISABLED VETERAN BUSINESS ENTERPRISE (DVBE) AND SMALL BUSINESS REQUIREMENTS**

A. Certification Report

If Contractor made a commitment to achieve DVBE participation for this Agreement with DVBE subcontractor(s), then upon completion of the work or upon the Agreement end date, whichever is earlier, Contractor shall certify in a DVBE Subcontracting Report to the CAO that DVBE subcontractor participation under this Agreement is in compliance with the goals specified at the time of award of the Agreement or with any subsequent amendment. The report shall include: (1) the total amount the Contractor received under this Agreement; (2) the name and address of the DVBE(s) that participated in the performance of the Agreement and the Agreement number; (3) the amount and percentage of work the Contractor committed to provide to one or more DVBEs under the

requirements of the Agreement and the amount each DVBE received from the Contractor; (4) that all payments under the Agreement have been made to the DVBE(s); and (5) the actual percentage of DVBE participation that was achieved. Upon request by the Commission, the Contractor shall provide proof of payment for the work. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. Military & Veterans Code section 999.5(d).

B. Withholding

1) \$10,000 Withholding

If Contractor made a commitment to achieve DVBE participation for this Agreement with DVBE subcontractor(s), then the Commission shall withhold \$10,000 (or full payment if less than \$10,000) from Contractor's final payment, pending receipt of the certification report in A above. This withholding is in addition to retention, if any, in Exhibit B, para 4.

2) Failure to comply with Certification Report

In addition to any other rights and remedies available to the Commission, if Contractor fails to comply with the certification report, Contractor shall, after notice by the Commission, be allowed to cure the defect. Notwithstanding any other law, if, after at least 15 calendar days but not more than 30 calendar days from the date of notice, Contractor refuses to comply with the certification report requirements, the Commission shall permanently deduct \$10,000 from the final payment (or the full payment if less than \$10,000). Military & Veterans Code section 999.7(a) and (c). For purposes of this paragraph, time is of the essence; Contractor is deemed to have refused to comply with the certification report requirements, if the Commission does not receive the report within 30 calendar days from the date of the notice.

C. Substitution of DVBE

Contractor shall use each DVBE identified in its proposal or listed in this Agreement. Contractor understands and agrees that if DVBE(s) were identified in its proposal or listed in this Agreement, award of this Agreement is based in part on its commitment to use the DVBE subcontractor(s). If Contractor believes an identified DVBE must be replaced or substituted, Contractor shall request a substitution in writing to CAM and CAO, including the reason for the DVBE substitution. Contractor shall complete revised DVBE certification forms (provided by the CAO) identifying the proposed new DVBE. A DVBE subcontractor may only be replaced by another DVBE subcontractor and must be approved by the Commission and the Department of General Services (DGS). Any work by the proposed new subcontractor can be performed only after written approval by the Commission and DGS. The substitution shall maintain, at minimum, the level of DVBE participation stated in the original Proposal. Military and Veterans Code section 999.5(g); 2 California Code of Regulations 1896.73.

D. Amendment

This Agreement shall be amended if a DVBE must be substituted and DGS has given approval. This Agreement shall be amended if there are changes to the scope of work that impact the DVBE subcontractor(s) identified in the proposal or listed in this Agreement. If there are modifications for additional work, the same percentage of DVBE participation is required as in the original Agreement. The

Commission shall document the modification and DVBE participation. 2
California Code of Regulations 1896.76.

E. Compliance with Law; Grounds for Termination; Damages; Penalties

Contractor shall comply with all applicable statutory and regulatory DVBE requirements, which include in part, adherence to the DVBE participation level identified in the Proposal or listed in this Agreement, and seeking substitution of a DVBE if necessary. Failure of Contractor to comply with or violation of statutory, regulatory and Agreement requirements may be cause for: termination of this Agreement; recovery of damages and penalties due to the State; loss of certification; bidding suspension; sanctions; imprisonment; penalties; and civil actions. Military and Veterans Code sections 999.5, 999.9 and Public Contract Code section 10115.10.

F. Commercially Useful Function

During the course of the Agreement, Contractor shall ensure that all DVBEs performing work under the Agreement maintain a commercially useful function related to the work scope. Military and Veterans Code section 999; 2 California Code of Regulations section 1896.71.

G. Records Retention

Contractor shall retain all records related to DVBE participation for this Agreement for a minimum of six years following final payment under the Agreement. Military and Veterans Code section 999.55.

H. DVBE Name for this Agreement: Insert DVBE name _____

I. Small Business Reporting. If the Agreement includes small business participation, upon completion of the Agreement, Contractor shall report to the Energy Commission the percentage of small business participation achieved.

J. Small Business Infrastructure Investment and Jobs Act Requirements. This Agreement is funded in whole or in part with the proceeds of Division A of the Infrastructure Investment and Jobs Act (IIJA) (Public Law 117-58). In order to encourage participation of small businesses in construction, alteration, demolition, repair or improvement of the state's infrastructure, Government Code section 14838.1 provides for a 25% small business participation goal in all contracts over \$500,000 financed in whole or in part by certain Divisions in IIJA, including Division A. Contractor's budget includes ____ % small business participation. If this Agreement is amended to add funds, the 25% small business goal continues to apply. At a minimum, Contractor is expected to devote ____ % of the work to small businesses, and if this is less than 25%, Contractor is encouraged to increase the amount to devote at least 25% to small businesses.

5. PROCESS FOR OFFERING WORK

If the Energy Commission or Contractor requires the replacement of a person listed in the Agreement to provide a particular service, or requires that a new person is added, the Contractor shall:

A. First offer the work to qualified persons already listed in this Agreement (either an employee of Contractor or a subcontractor).

- B. If there is no available qualified person listed in this Agreement who can perform the work, then Contractor shall provide documentation from all the persons who were offered and declined the work to the CAM. Then, Contractor may request to add a new person to the Agreement in accordance with Exhibit B, Rates & Classifications: Changes in Contractor Personnel or Subcontractor Personnel. A person added to the Agreement is thereafter treated as a person listed in this Agreement and can be offered future work without first offering it to originally listed people.
- C. If the person to be replaced or substituted was identified in the Agreement as a Disabled Veteran Business Enterprise (DVBE) firm, refer to the DVBE provision above for changes to DVBEs.
- D. If the person added is a new subcontractor, Contractor shall use the process outlined in the Subcontracts provision, Process for New Subcontractors.
6. **PERFORMANCE EVALUATION** Consistent with Public Contract Code Sections 10367 through 10371, the Energy Commission shall, upon completion of this Agreement, prepare a performance evaluation of the Contractor. Upon filing an unsatisfactory evaluation with the Department of General Services, Office of Legal Services (DGS) the Energy Commission shall notify and send a copy of the evaluation to the Contractor within 15 days. The Contractor shall have 30 days to prepare and send statements to the Energy Commission and the DGS defending his or her performance. The Contractor's statement shall be filed with the evaluation in the Energy Commission's Contract file and with DGS for a period of 36 months and shall not be a public record.
7. **REPORTS**
- A. **Progress and Final Reports:** Contractor shall prepare progress reports summarizing all activities conducted by Contractor to date on a schedule as provided in Exhibit A. At the conclusion of this Agreement, Contractor shall prepare a comprehensive Final Report, on a schedule as provided in Exhibit A.
- B. **Title:** Contractor's name shall only appear on the cover and title page of reports as follows:
- California Energy Commission
Project Title
Contractor Number
By (Contractor)
- C. **Ownership.** Each report shall become the property of the Energy Commission.

- D. **Nondisclosure:** Contractor will not disclose data or disseminate the contents of the final or any progress report without written permission of the CAM, except as provided in E, below. Permission to disclose information on one occasion or at public hearings held by the Energy Commission relating to the same shall not authorize Contractor to further disclose and disseminate the information on any other occasion. Contractor will not comment publicly to the press or any other media regarding its report, or the Energy Commission's actions on the same, except to Energy Commission staff, Contractor's own personnel involved in the performance of this Agreement, or at a public hearing, or in response to questions from a legislative committee. Notwithstanding the foregoing, in the event any public statement is made by the Energy Commission or any other party, based on information received from the Energy Commission as to the role of Contractor or the content of any preliminary or final report, Contractor may, if it believes the statement to be incorrect, state publicly what it believes is correct.
- E. **Disclosure:** Ninety days after any document submitted by the Contractor is deemed by the CAM to be a part of the public records of the State, Contractor may, if it wishes to do so at its own expense, publish or utilize a report or written document but shall include the following legend:

"LEGAL NOTICE"

"This report was prepared as a result of work sponsored by the California Energy Commission. It does not necessarily represent the views of the Energy Commission, its employees, or the State of California. The Energy Commission, the State of California, its employees, contractors, and subcontractors make no warranty, express or implied, and assume no legal liability for the information in this report; nor does any party represent that the use of this information will not infringe upon privately owned rights."

See Exhibit F, Federally Funded Contract Terms and Conditions, Publications paragraph for related requirements. The Publications paragraph in Exhibit F contains an additional disclaimer/notice that Contractor must include on any publications arising out of, or relating to, work performed under this Agreement,

8. **CONFIDENTIAL CONTRACTOR INFORMATION**

A. **Identification of Confidential Contractor Information**

For the purposes of this Section, "Confidential Contractor Information" refers to information the Contractor has satisfactorily identified as confidential and the Energy Commission has agreed to designate as confidential under Title 20 California Code of Regulations Section 2505. If applicable, all Contractor information considered confidential at the commencement of this Agreement is designated in an Attachment to this Exhibit.

B. **Confidential Deliverables: Labeling and Submitting Confidential Information**

Prior to the commencement of this Agreement, if applicable, the parties have identified in an Attachment to this Exhibit, specific Confidential Contractor Information to be provided as a deliverable. All such confidential deliverables shall be marked, by the Contractor, as "Confidential" on each page of the document containing the Confidential Contractor Information and presented in a sealed package to the Commission Agreement Officer. (Non-confidential deliverables are submitted to the Accounting Office.) All Confidential Information will be contained in the "confidential" volume: no Confidential Information will be in the "public" volume.

C. Submittal of Unanticipated Confidential Contractor Information as a Deliverable

The Contractor and the Energy Commission agree that during this Agreement, it is possible that the Contractor may obtain or develop additional data or information not originally identified as a confidential deliverable. In this case, Contractor shall follow the procedures for a request for designation of Confidential Information specified in 20 CCR 2505. The Energy Commission's Executive Director makes the determination of confidentiality. Such subsequent determinations may be added to the list of confidential deliverables in an Attachment to this Exhibit.

D. Disclosure of Confidential Contractor Information

Disclosure of Confidential Information by the Energy Commission may only be made pursuant to 20 CCR 2506 and 2507. All confidential data, records or deliverables that are legally disclosed by the Contractor or any other entity become public records and are no longer subject to the above confidentiality designation.

9. RECEIPT OF CONFIDENTIAL INFORMATION AND PERSONAL INFORMATION

A. Application: These special terms and conditions set forth information privacy and security requirements Contractor must follow if Confidential Information or Personal Information as defined herein is disclosed to Contractor, or is collected, created, maintained, stored, transmitted, or otherwise used by Contractor in the performance of this Agreement. Contractor must ensure that all individuals and entities participating in any way with this Agreement, including but not limited to its officers, employees, agents, subcontractors, subawardees, vendors, and other project partners, comply with this Section. Contractor must flow-down this Section to all subcontracts, subawards, vendor agreements, and all other project partner agreements that will be provided access to Confidential Information or Personal Information before the individual or entity has access to any such information. Contractor must also require all individuals and entities to flow-down this Section to any lower tier subcontractors, subawardees, vendors, project partners, and other individual or entity participating in any way with this Agreement that will be provided access to Confidential Information or Personal Information before the individual or entity has access to any such information.

B. Definitions:

1) "Confidential Information" means information the Energy Commission has designated as confidential pursuant to Title 20 of the California Code of Regulations, Section 2505 et seq., information the Energy Commission has otherwise deemed or stated to be confidential, and other information exempt from Disclosure under the Public Records Act or any other applicable state or federal laws. Contractor may obtain confidential

information from the Energy Commission or third parties on behalf of the Energy Commission for the performance of this Agreement.

- 2) "Disclose" or Disclosure" refers to the release, transfer, provision of, access to, or divulging in any manner of information outside the entity holding the information.
- 3) "Personal Information" means information that meets the definition of "personal information" in California Civil Code Section 1798.3(a) or one of the data elements set forth in California Civil Code Section 1798.29(g)(1) or (g)(2). **Personal information is a type of confidential information and is therefore subject to all requirements for Confidential Information provided in this Agreement and applicable law. However, there are additional requirements specific to personal information, pursuant to subsection K.**
- 4) "Security Incident" means the theft, loss, damage, unauthorized destruction, unauthorized modification, or any intentional, unintentional, negligent, inappropriate or unauthorized release of any Confidential Information, data classified as confidential, sensitive, or personal, including critical infrastructure information.

C. **Labeling.** Confidential Information and Personal Information shared by the Energy Commission will be provided as follows:

- 1) **List Describing Confidential Information and Personal Information.** A description of Confidential Information and Personal Information that the Energy Commission anticipates it will provide to Contractor is attached as an appendix to this Exhibit. If the Energy Commission needs to add items after execution of this Agreement, the Energy Commission will update the list and provide a copy to Contractor; and
- 2) **Identification of Confidential Information.** Each individual item of Confidential Information and Personal Information will be visibly identifiable, regardless of file type, before the Energy Commission provides access to Contractor. The Confidential Information and Personal Information could be identified as a separate folder, workbook, document, field, electronic tag, etc.

D. **Use and Disclosure Restrictions.** Notwithstanding any other provision in this Agreement, Contractor and all individuals and entities participating in any way with this Agreement must:

- 1) Protect all Confidential Information and Personal Information from unauthorized Disclosure. This includes but is not limited to implementing administrative, physical, and technical safeguards that reasonably and appropriately protect the privacy, confidentiality, security, integrity, and availability of Confidential Information, including electronic or computerized Confidential Information.
- 2) Promptly transmit to the Energy Commission's Commission Agreement Manager all requests for Disclosure of any Confidential Information or Personal Information unless prohibited from doing so by applicable state or federal law.
- 3) Not use any Confidential Information or Personal Information for any purpose other than performing Contractor's work under this Agreement.

- 4) Not Disclose any Confidential Information or Personal Information to anyone other than the Energy Commission without prior written authorization from the Energy Commission's Commission Agreement Manager, except as otherwise specifically permitted by this Agreement, as provided in 20 California Code of Regulations, Sections 2506 and 2507, or when disclosure is required by State or Federal law.

E. Information Security Program Plan.

- 1) Attestation and Review. Before Contractor is provided access to Confidential Information or Personal Information, Contractor must attest, using a form provided by the Energy Commission, it has in place an Information Security Program Plan (ISPP) that meets or exceeds the minimum requirements as stated in the California State Administrative Manual Chapter 5300, Information Security (<https://www.dgs.ca.gov/Resources/SAM>), and any other applicable law. Further, the Energy Commission may, at its discretion, also request a copy of Contractor's ISPP for review. After the Energy Commission's review, the Energy Commission may choose whether to direct Contractor to perform work that involves Confidential Information or Personal Information.
- 2) Content. Contractor's ISPP can be represented in a single document or a compilation of documents.
- 3) Implementation. Contractor must implement and maintain appropriate procedural safeguards to secure Confidential Information and Personal Information from Security Incidents and unauthorized use for the term of this Agreement. Contractor is responsible for the security and confidentiality of the Confidential Information and Personal Information under its control and the control of its employees, agents, subcontractors, and other project partners and follow the requirements of its ISPP.

F. Encryption. All Confidential information and Personal Information accessed by Contractor must be encrypted in transit and at rest.

G. Computer Security Updates. Contractor must use computer, software and network systems that are updated with the latest security patches, upgrades, and virus software at all times Contractor has access to Confidential Information or Personal Information.

H. Nondisclosure Agreements.

- 1) Need to Access Confidential Information or Personal Information. Contractor agrees to release Confidential Information and Personal Information only to the individuals who need to access such information to complete work under the Agreement. Contractor must ensure individuals properly handle and secure Confidential Information and Personal Information from unauthorized use or Disclosure, including signed nondisclosure agreements and security awareness training as described in this Section and Section I, Security Awareness Training, below.
- 2) Maintain Current List of Individual Employees. Contractor must maintain a current list, and keep past versions of it, of all individuals who have access to Confidential Information or Personal Information and the dates each individual has access. Contractor must remove individuals who are no longer employed or no longer have access to Confidential Information or Personal Information and add individuals who are subsequently granted access.

- 3) Nondisclosure Agreement. Contractor must ensure all individuals who will have access to Confidential Information or Personal Information are provided a copy of, and comply with, these special terms and conditions. Contractor must ensure that individuals sign a nondisclosure agreement provided by the Energy Commission before being provided access to Confidential Information or Personal Information. The nondisclosure agreement includes maintaining the security of Confidential Information and Personal Information; not disclosing Confidential Information or Personal Information to others; using Confidential Information and Personal Information only for the scope of work in support of the Agreement; providing written notification of any unauthorized release of Confidential Information or Personal Information; destruction of Confidential Information and Personal Information; etc.
- 4) Copy of Nondisclosure Agreement. Contractor must provide a copy of each signed nondisclosure agreement to the Energy Commission's Commission Agreement Manager.
- 5) Federal Requirements. See Exhibit G for additional requirements related to nondisclosure agreements funded with the certain federal grants.

K. **Security Awareness Training.** Contractor must ensure that all individuals who will have access to Confidential Information or Personal Information take security awareness training before being given access to Confidential Information or Personal Information and then annually thereafter until this Agreement ends for any reason, including termination, or the individual no longer has access, possession, use, or control of Confidential Information or Personal Information. The training must include, at a minimum, the following topics: password protection; malware, social engineering, phishing, social media, privacy awareness, acceptable use, and data protection (data collection, storage, transmission, use, disclosure and destruction). Before Contractor allows any individual access to Confidential Information or Personal Information, Contractor must provide to the Commission Agreement Manager a copy of that individual's training certificate.

L. **Security Incident.**

- 1) Reporting of Security Incident. If Contractor becomes aware of a potential Security Incident that might affect Confidential Information in this Agreement, Contractor must notify the Commission Agreement Manager in writing immediately, but no later than 48 hours, after the Contractor first learns of the potential Security Incident. Contractor must promptly provide communications to the Commission Agreement Manager in writing as new information becomes available during the Security Incident response process.
- 2) Prompt Action. Contractor must take prompt corrective action to mitigate any risks or damages involved with the Security Incident and to protect the operating environment, and any action pertaining to a Security Incident required by applicable federal and state laws.

- 3) Investigation. Contractor must immediately investigate a Security Incident and provide a written report to the Energy Commission as soon as practicable. The report must describe the extent of the Security Incident and Contractor's corrective action to contain the Security Incident and prevent any recurrence. The Energy Commission has the right to participate in any investigation of a Security Incident. In addition, the Energy Commission has the right to conduct its own independent investigation. Contractor must fully cooperate in all investigations related to the Security Incident. Contractor is responsible for its expenses for conducting its own investigation or participating in the investigation by the Energy Commission or other entity selected by the Energy Commission.
- 4) Notification. If there is a Security Incident that results in the loss of Confidential Information in Contractor's possession, Contractor must comply with any notice requirement under applicable state or federal law. Contractor must, at its sole expense, provide required notices and any other mitigation efforts, with the Energy Commission's written approval. The Energy Commission reserves the right to provide the required notices and any other mitigation efforts.
- 5) Costs. In addition to any other rights and remedies available to the Energy Commission, Contractor is responsible for, and must promptly pay to the Energy Commission, all costs, fees, and any other type of expense incurred by the Energy Commission due to a Security Incident resulting from the failure of Contractor to perform, or the intentional, unintentional, negligent, inappropriate or unauthorized acts of Contractor's personnel, that results in an unauthorized Disclosure, release, access, review, or destruction; or loss, theft or misuse of Confidential Information provided to Contractor. These costs include, but are not limited to, staff time, material costs, postage, media announcements, and other identifiable costs associated with the Security Incident causing loss of Confidential Information. Contractor is also responsible for all costs incurred by the Energy Commission due to a Security Incident resulting from the same failure of a subcontractor, lower tier of subcontractor, project partner, match funder or any other entity or person who received Confidential Information under this Agreement.
- 6) Subcontracts and Others with Access to Confidential Information. In order that all subcontractors, subawardees, vendors, project partners, and others with access to Confidential information are liable to the Energy Commission for costs as detailed in subsection J.5, above, Contractor must include a provision indicating the Energy Commission is a third-party beneficiary to all such agreements.

M. Additional Requirements for Personal Information.

- 1) Possession, Handling, or Use of Personal Information. If Contractor possesses, handles or uses Personal Information during the course of this Agreement, Contractor agrees to comply with the provisions of the Information Practices Act in Civil Code Section 1798 et seq., the California State Administrative Manual chapter 5300 as if Contractor were an "agency" for its work under the Agreement, and any other applicable law. This includes but is not limited to complying with the following:
 - a. Maintaining only Personal Information relevant and necessary for the purposes of this Agreement in accordance with Civil Code Section 1798.14.

- b. Maintaining the source or sources of Personal Information in accordance with Civil Code Section 1798.16.
 - c. Providing notice on or with any form used to collect personal information from individuals in accordance with Civil Code Section 1798.17.
 - d. Establishing appropriate and reasonable administrative, technical, and physical safeguards to ensure compliance with the Information Practices Act, to ensure the security and confidentiality of records, and to protect against anticipated threats or hazards to their security or integrity which could result in any injury in accordance with Civil Code Section 1798.21.
- 2) Notification. If there is a Security Incident that results in the loss of Personal Information in Contractor's possession, Contractor must comply with the notice requirements in Civil Code Section 1798.29 and California State Administrative Manual chapter 5300. Contractor must, at its sole expense, provide required notices and any other mitigation efforts, with the Energy Commission's written approval. The Energy Commission reserves the right to provide the required notices and any other mitigation efforts.
- 3) Rights. Contractor has no ownership, license, or other rights in Personal Information or in any form in which it is used (e.g., Products). In this regard, the Personal Information is not treated like Data, Products, Intellectual Property, or other provisions in the Agreement that may indicate Contractor has ownership, license, or other rights.
- 4) Costs. In addition to any other rights and remedies available to the Energy Commission, Contractor is responsible for, and must promptly pay to the Energy Commission, all costs, fees, and any other type of expense incurred by the Energy Commission due to a Security Incident resulting from the failure of Contractor to perform, or the intentional, unintentional, negligent, inappropriate or unauthorized acts of Contractor's personnel, that results in an unauthorized Disclosure, release, access, review, or destruction; or loss, theft or misuse of Personal Information provided to Contractor. These costs include, but are not limited to, staff time, material costs, postage, media announcements, and other identifiable costs associated with the Security Incident causing loss of Personal Information. Contractor is also responsible for all costs incurred by the Energy Commission due to a Security Incident resulting from the same failure of a subcontractor, lower tier of subcontractor, project partner, match funder or any other entity or person who received Personal Information under this Agreement.
- 5) Subcontracts and Others with Access to Personal Information. In order that subcontractors, subawardees, vendors, project partners, and others with access to Personal information are liable to the Energy Commission for costs as detailed in subsection K.4, above, Contractor must include a provision indicating the Energy Commission is a third-party beneficiary to all such agreements.

- N. **End of the Agreement.** When this Agreement ends for any reason, including termination, or sooner if Contractor's work with the Confidential Information or Personal Information has concluded, Contractor must securely destroy all Confidential Information and Personal Information and ensure that each entity with individuals that received Confidential Information or Personal Information does the same. Contractor must not attempt to reuse or distribute Confidential Information or Personal Information after destruction. Contractor must provide written verification to the Energy Commission that all Confidential Information and Personal Information has been properly destroyed, including the date and method of destruction.
- O. **Audit.** Contractor must maintain books, records, documents, and other evidence, sufficient to reflect that Contractor properly followed all requirements related to these special terms and conditions for a minimum of three years after final payment, unless a longer period of records retention is stipulated. The Energy Commission, other state agencies, and agents designated by the Energy Commission have the right to review, copy and audit Contractor's records related to Confidential Information and Personal Information at all reasonable times, with prior notice by the Energy Commission. Contractor agrees to provide auditors access to such records during normal business hours and to allow interviews of any individual employees who might reasonably have information related to such records.
- P. **Public Records Act Request.** Contractor must work cooperatively with the Energy Commission to respond timely and accurately to Public Records Act requests the Energy Commission receives about Contractor's activities and related Confidential Information or Personal Information under this Agreement.
- Q. **Termination.** Contractor understands and agrees that in addition to any other rights and remedies available to the Energy Commission, any unauthorized release of Confidential Information or Personal Information, or disregard for appropriate security protocols that could result in Confidential Information or Personal Information being released may result in the Energy Commission's termination of this Agreement.
- R. **Amendment.** Contractor and the Energy Commission acknowledge that federal and state laws regarding information security and privacy rapidly evolves and that amendment of these special terms and conditions may be required to provide for procedures to ensure compliance with such laws. Contractor and the Energy Commission specifically agree to take such action as is necessary to implement new standards and requirements imposed by regulations and other applicable laws relating to the security or privacy of Confidential Information and Personal Information.

10. **CONTRACT DATA, OWNERSHIP RIGHTS**

- A. "Data" as used in this Agreement means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research or experimental, developmental or engineering work, or be usable or be used to define a design or process, or to support a premise or conclusion asserted in any deliverable document required by this Agreement. The data may be graphic or pictorial delineations in media, such as drawings or photographs, data or information, etc. It may be in machine form, such as punched cards, magnetic tape or computer printouts, or may be retained in computer memory.

- B. "Deliverable data" is that data which, under the terms of this Agreement, is required to be delivered to the Energy Commission and shall belong to the Energy Commission.
- C. "Proprietary data" is such data as the Contractor has identified in a satisfactory manner as being under Contractor's control prior to commencement of performance of this Agreement, and which Contractor has reasonably demonstrated as being of a proprietary nature either by reason of copyright, patent or trade secret doctrines in full force and effect at the time when performance of this Agreement is commenced. The title to "proprietary data" shall remain with the Contractor throughout the term of this Agreement and thereafter. The extent of the Energy Commission access to and the testimony available regarding, the proprietary data shall be limited to that reasonably necessary to demonstrate, in a scientific manner to the satisfaction of scientific persons, the validity of any premise, postulate or conclusion referred to or expressed in any deliverable for this Agreement.
- D. "Generated data" is that data, which a Contractor has collected, collated, recorded, deduced, read out or postulated for utilization in the performance of this Agreement. Any electronic data processing program, model or software system developed or substantially modified by the Contractor in the performance of this Agreement at the Energy Commission's expense, together with complete documentation thereof, shall be treated in the same manner as "generated data." "Generated data" shall be the property of the Energy Commission, unless and only to the extent that it is specifically provided otherwise in this Agreement.
- E. As to "generated data" which is reserved to Contractor by the express terms hereof, and as to any pre-existing or "proprietary data" which has been utilized to support any premise, postulate or conclusion referred to or expressed in any deliverable hereunder, Contractor shall preserve the same in a form which may be introduced as evidence in a court of law at Contractor's own expense for a period of not less than three years after receipt by the Energy Commission of the Final Report herein.
- F. Before the expiration of the three years and before changing the form of or destroying any data, Contractor shall notify the Energy Commission of any contemplated action and the Energy Commission may, within thirty (30) days after notification, determine whether it desires the data to be preserved. If the Energy Commission so elects, the expense of further preserving data shall be paid for by the Energy Commission. Contractor agrees that the Energy Commission may at its own expense, have reasonable access to data throughout the time during which data is preserved. Contractor agrees to use its best efforts to furnish competent witnesses or to identify competent witnesses to testify in any court of law regarding data.
- G. Nothing in this Agreement gives the Contractor any rights to "Confidential Information" and "Personal Information" as defined in Section 9, other than using Confidential Information and Personal Information for the limited purpose of performing Contractor's work under this Agreement in accordance with Section 9.

11. **PUBLIC HEARINGS**

If public hearings on the scope of work are held during the period of the Agreement, Contractor will make available to testify the personnel assigned to this Agreement. The Energy Commission will reimburse Contractor for compensation and travel of the personnel at the Agreement rates for the testimony which the Energy Commission requests.

12. **DISPUTES**

In the event of an Agreement dispute or grievance between Contractor and the Energy Commission, both parties may follow the procedure detailed below. Contractor shall continue with the responsibilities under this Agreement during any dispute.

A. First Level Dispute Resolution

The Contractor shall first discuss the problem informally with the CAM. If the problem cannot be resolved at this stage, the Contractor must direct the grievance together with any evidence, in writing, to the CAO. The grievance must state the issues in the dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The CAO and the Program Office Manager must make a determination on the problem within ten (10) working days after receipt of the written communication from the Contractor. The CAO shall respond in writing to the Contractor, indicating a decision and explanation for the decision. Should the Contractor disagree with the CAO's decision, the Contractor may appeal to the second level.

B. Second Level Dispute Resolution

The Contractor must prepare a letter indicating why CAO's decision is unacceptable, attaching to it the Contractor's original statement of the dispute with supporting documents, along with a copy of the CAO's response. This letter shall be sent to the Energy Commission's Executive Director within ten (10) working days from receipt of the CAO's decision. The Executive Director or designee shall meet with the Contractor to review the issues raised. A written decision signed by the Executive Director or designee shall be returned to the Contractor within twenty (20) working days of receipt of the Contractor's letter. The Executive Director may inform the Energy Commission of the decision at an Energy Commission business meeting. Should the Contractor disagree with the Executive Director's decision, the Contractor may appeal to the Energy Commission at a regularly scheduled business meeting. Contractor will be provided with the current procedures for placing the appeal on an Energy Commission Business Meeting Agenda.

13. **TERMINATION**

The parties agree that because the Energy Commission is a state entity it is necessary for the Energy Commission to be able to terminate, at once, upon the default of Contractors and to proceed with the work required under the Agreement in any manner the Energy Commission deems proper. Contractor specifically acknowledges that the unilateral termination of the Agreement by the Energy Commission under the terms set forth below is an essential term of the Agreement, without which the Energy Commission would not enter into the Agreement. Contractor further agrees that upon any of the events triggering the unilateral termination of the Agreement by the Energy Commission, the Energy Commission has the sole right to terminate the Agreement, and it would constitute bad faith of the Contractor to interfere with the immediate termination of the Agreement by the Energy Commission.

This Agreement may be terminated for any reason set forth below.

A. With Cause

In the event of any breach by the Contractor of the conditions set forth in this Agreement, the Energy Commission may, without prejudice to any of its legal remedies, terminate this Agreement for cause upon five (5) days written notice to the Contractor. In such event, the Energy Commission shall pay Contractor only the reasonable value of the services theretofore rendered by Contractor, as may be agreed upon by the parties or determined by a court of law, but not in excess of the Agreement maximum payable. "Cause" includes without limitation:

- 1) Failure to perform or breach of any of the terms or covenants at the time and in the manner provided in this Agreement; or
- 2) Contractor is not able to pay its debts as they become due and/or Contractor is in default of an obligation that impacts his ability to perform under this Agreement; or
- 3) It is determined after notice and hearing by the Energy Commission or the Executive Director that gratuities were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the Energy Commission, with a view toward securing an Agreement or securing favorable treatment with respect to awarding or amending or making a determination with respect to performance of the Agreement; or
- 4) Significant change in Energy Commission policy such that the work or product being funded would not be supported by the Energy Commission; or
- 5) Reorganization to a business entity unsatisfactory to the Energy Commission; or
- 6) The retention or hiring of subcontractors, or the replacement or addition of personnel that fail to perform to the standards and requirements of this Agreement.

B. Without Cause

The Energy Commission may, at its option, terminate this Agreement without cause in whole or in part, upon giving thirty (30) days advance notice in writing to the Contractor. In such event, the Contractor agrees to use all reasonable efforts to mitigate the Contractor's expenses and obligations hereunder. Also, in such event, the Energy Commission shall pay the Contractor for all satisfactory services rendered and expenses incurred within 30 days after notice of termination which could not by reasonable efforts of the Contractor have been avoided, but not in excess of the maximum payable under this Agreement.

14. WAIVER

No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or by law. The failure of the Energy Commission to enforce at any time any of the provisions of this Agreement, or to require at any time performance by Contractor of any of the provisions, shall in no way be construed to be a waiver of those provisions, nor in any way affect the validity of this Agreement or any part of it or the right of the Energy Commission to thereafter enforce each and every such provision.

15. **CAPTIONS**

The clause headings appearing in this Agreement have been inserted for the purpose of convenience and ready reference and do not define, limit, or extend the scope or intent of the clauses.

16. **PRIOR DEALINGS, CUSTOM OR TRADE USAGE**

In no event shall any prior course of dealing, custom or trade usage modify, alter, or supplement any of these terms.

17. **NOTICE**

Legal notice must be given using any of the following delivery methods: U.S. Mail, overnight mail, or personal delivery, providing evidence of receipt to the person identified in Exhibit F of this Agreement for legal notices. Delivery by fax or e-mail is not considered legal notice for the purpose of this clause. This clause is not intended to apply to normal, daily communication between the parties related to progress of the work. This clause applies to situations where notice is required to be given by this Agreement or the parties are asserting their legal rights and remedies.

Notice shall be effective when received, unless a legal holiday for the State commences on the date of the attempted delivery. In which case, the effective date shall be postponed until the next business day.

18. **STOP WORK**

The CAO may, at any time, by written notice to Contractor, require Contractor to stop all or any part of the work tasks in this Agreement. Stop Work Orders may be issued for reasons such as a project exceeding budget, standard of performance, out of scope work, delay in project schedule, misrepresentations and the like.

- A. **Compliance.** Upon receipt of such stop work order, Contractor shall immediately take all necessary steps to comply therewith and to minimize the incurrence of costs allocable to work stopped.
- B. **Equitable Adjustment.** An equitable adjustment shall be made by the Energy Commission based upon a written request by Contractor for an equitable adjustment. Such adjustment request must be made by Contractor within thirty (30) days from the date of receipt of the stop work notice.
- C. **Revoking a Stop Work Order.** Contractor shall resume the stopped work only upon receipt of written instructions from the CAO canceling the stop work order.

19. **INTERPRETATION OF TERMS**

This Agreement shall be conducted in accordance with the terms and conditions of the solicitation, if applicable. The Contractor's proposal is not attached, but is expressly incorporated by reference into this Agreement. In the event of conflict or inconsistency between the terms of this Agreement and the solicitation or proposal, this Agreement shall be considered controlling.

20. **AMENDMENTS**

This Agreement may be amended through a formal amendment process to make changes, including without limitation;

- Increases in total Agreement amount,
- Extending the Agreement end date,
- Modifying tasks,

- Adding or modifying terms and conditions.

Amendments may be made without competitively bidding, so long as the amendment is exempt from competitive bidding pursuant to Public Contract Code section 10335, Government Code section 11010.5 and the State Contract Manual.

There is \$20,000,000 available for the first two years of the Agreement. There is a maximum total budget of \$60,000,000, with a maximum Agreement term of 12 years, with optional amendments, as described below.

- **Amendments to Add Funds and Time**
The Energy Commission has the option to amend this Agreement and add up to \$8,000,000 up to 12 times. The Energy Commission also has the option to add time to the Agreement, up to 12 years. The amendments may occur annually; more frequently if needed; or less frequently.
When the Energy Commission amends the Agreement to add funds, and the budget reaches \$60 million, there shall be no additional amendments to add funds. This structure may result in funding being allocated unevenly over time with some amendments having higher amounts than others. The Agreement amount of \$20,000,000 covers the initial 2-year period. If the Energy Commission exercises the option to amend the Agreement to add time or funds, the additional funding will be added to the Agreement in an amount to be determined, up to \$8,000,000 for each amendment. Each subsequent amendment can extend the agreement and add up to \$8,000,000 at the Energy Commission's sole discretion.
- **Amendments to Add Funds**
The Energy Commission may also amend the Agreement to add funds, but not time. This amendment would be included as one of the 12 optional amendments.
- **Amendments to Add Time**
The Energy Commission may also amend the Agreement to add time, but not funds. In particular, if there is still time remaining within the possible 12-year term, but the budget has reached \$60 million, the Energy Commission can still amend the Agreement to add time, up to 12 years. This amendment would be included as one of the 12 optional amendments.

The year in which the Agreement is amended will include the hourly rates associated with that year, as provided in the Agreement budget.

The amendments are shown in the table below.

Vehicle	Funding
Initial Agreement	\$20,000,000
Amendment #1	Up to \$8,000,000
Amendment #2	Up to \$8,000,000
Amendment #3	Up to \$8,000,000
Amendment #4	Up to \$8,000,000
Amendment #5	Up to \$8,000,000
Amendment #6	Up to \$8,000,000
Amendment #7	Up to \$8,000,000

Amendment #8	Up to \$8,000,000
Amendment #9	Up to \$8,000,000
Amendment #10	Up to \$8,000,000
Amendment #11	Up to \$8,000,000
Amendment #12	Up to \$8,000,000
Total – up to \$60,000,000	
Total duration – up to 12 years	

21. **SURVIVAL OF TERMS**

Certain provisions will survive the completion or termination date of this Agreement for any reason. The provisions include but are not limited to:

- General Terms and Conditions (Exhibit C)
- Audits Rights (included in Section 3, “Subcontracts,” paragraph D)
- Legal Notice on Products (included in Section 7, “Reports”)
- Receipt of Confidential Information and Personal Information (Section 9)
- Contract Data, Ownership Rights (Section 10)
- Termination (Section 13)
- Waiver (Section 14)
- Notice (Section 17)
- Venue (Section 22)
- Energy Commission as Third-Party Beneficiary (Section 23)
- Purchase of Equipment (Section 26)
- Conflict of Interest [Exhibit E]
- Federally Funded Contract Terms and Conditions [Exhibit F]

22. **VENUE**

The venue for any court action to enforce any part of this Agreement must be Sacramento County.

23. **THE ENERGY COMMISSION AS THIRD-PARTY BENEFICIARY**

Contractor ensures that in all of its agreements with all subcontracts and all lower-tier subcontracts that the Energy Commission is specifically named as a third-party beneficiary to the agreement. In addition, the term shall state the entity agrees that if the Energy Commission brings a court action, the entity agrees to venue in Sacramento County.

24. **DISCRIMINATION AND HARASSMENT TRAINING**

All employees of Contractor and any subcontractor who provide service under this Agreement and maintain work space at the Energy Commission shall take annual training on the prevention of discrimination and harassment. The Energy Commission shall provide the online training course at no charge to Contractor or subcontractors. However, Contractor and subcontractors shall not invoice for the time spent taking the course. Contractor shall ensure that all employees of Contractor and any subcontractor who provide service under this Agreement and represent the Energy Commission in public hearings and workshops, but do not maintain office space at the Energy Commission, receive training on prevention of discrimination and harassment.

25. **EXECUTIVE ORDER N-6-22 – RUSSIA SANCTIONS**

On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under state law. The EO directs state agencies to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should the State determine Contractor is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this agreement. The State shall provide Contractor advance written notice of such termination, allowing Contractor at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the State.

26. **PURCHASE OF EQUIPMENT**

- A. Only equipment identified in this Agreement is approved for purchase. Equipment not identified in this Agreement shall be subject to prior written approval from the CAM.
- B. All equipment purchased with Energy Commission funds shall be made subject to the following terms and conditions:
 - 1) The CAO will complete a Uniform Commercial Code (UCC.1) Financing Statement and submit it to the Contractor for signature. The CAO will file the signed UCC.1 with the Secretary of State's Office. Invoices for equipment purchases associated with a UCC.1 will not be processed until the UCC.1 has been filed with the Secretary of State's Office.
 - 2) Title to all non-expendable equipment purchased in part or in whole with Commission funds shall remain with the Energy Commission.
 - 3) Contractor shall assume all risk for maintenance, repair, destruction and damage to equipment while in the possession or subject to the control of Contractor. Contractor is not expected to repair or replace equipment that is intended to undergo significant modification or testing to the point of damage/destruction as part of the work described in Exhibit A, Scope of Work.
- C. Upon termination or completion of this Agreement, or Work Authorization, if applicable, the Executive Director of the Energy Commission may:
 - 1) Authorize the continued use of such equipment.
 - 2) Request equipment is delivered to the Energy Commission with any costs incurred for such return to be borne by the Energy Commission.

27. **RIGHTS OF PARTIES IN COPYRIGHTS, PHYSICAL WORKS OF ART AND FINE ART**

Identical copyright allocation of rights language pursuant to 2 CFR 200.315(b) is included in Exhibit D Special Terms and Conditions paragraph 27 and Exhibit F, Federally Funded Contract Terms and Conditions paragraph 18.

A. Copyright

Contractor may copyright any work that is subject to copyright and was developed or for which ownership was acquired under this Agreement.

B. License

Contractor expressly grants to the Energy Commission, United States Department of Energy, Federal Highway Administration and United States Environmental Protection Agency for all copyrightable works, work of art and original work of authorship first produced, composed or authored in the performance of this Agreement a royalty-free, paid-up, nonexclusive, irrevocable, nontransferable, worldwide license to produce, translate, publish, use, dispose of, produce, prepare derivative works based on, distribute copies of, publicly perform, or publicly display such works and to authorize others to produce, translate, publish, use, dispose of, reproduce, prepare derivative works based on, distribute copies of, publicly perform, or publicly display such works.

C. Use of Copyrightable Works

Contractor must use the copyrightable works only for the originally-authorized purpose, and must not encumber them without approval of the Energy Commission.

D. Physical Works of Art and Fine Art

Contractor, by signing this Agreement, expressly conveys to the Energy Commission all ownership of the physical works of art and fine art produced under this Agreement. Contractor agrees it does not reserve any rights to the physical works of art and fine art produced under this Agreement.

E. Subcontractor Flow Down

Contractor shall obtain these same rights for the Energy Commission and DOE from all subcontractors and others who produce copyrightable works, works of art, or works of fine art under this Agreement. Contractor shall flow down and incorporate these paragraphs, modified appropriately, into agreements with subcontractors and lower tier subcontractors. No subcontract shall be entered into without these rights being assured to the Energy Commission from the subcontractor.

28. **CONFLICT OF INTEREST**

See Exhibit E, Conflict of Interest

29. **WORK AUTHORIZATIONS**

A. Process

- 1) The Energy Commission Agreement Manager (CAM), with the assistance of the Contractor shall prepare Work Authorizations (WA) directing the work of the Contractor. The CAM will provide the WA format.
- 2) The WA shall be signed by the Contractor's authorized individual and by the CAM. In addition to the CAM, the WA may also be signed by Energy Commission staff serving as Project Manager for the individual WA. The CAM shall sign after the Contractor.
- 3) The CAM shall submit the signed WA to the Commission Agreement Officer. The WA will be submitted to the Department of General Services (DGS) for review and final approval. No work shall begin until the WA is approved by DGS. The effective date of the WA is the DGS approval date.
- 4) DGS returns the approved WA to the Contracts Office for final distribution.
- 5) The CAM shall file each signed WA with the Energy Commission Agreement Officer (CAO) before payment is approved for the WA.

B. Content of WA

Each WA shall include:

- 1) Agreement Number
- 2) WA Number
- 3) WA Title
- 4) Effective Date (date approved by the Department of General Services)
- 5) End Date
- 6) Objective or goal of the WA
- 7) Detailed scope of work and tasks
- 8) What task the WA falls within the Agreement
- 9) Schedule/Due dates and Deliverables
- 10) Contact Information
- 11) Contractor and Subcontractor personnel who will perform the work
- 12) Identification of DVBE
- 13) Detailed Budget for types of costs that are identified as allowable in Agreement budget

C. Work Authorization Budgets

- 1) Category Budget.

Each WA shall contain a category budget. CAM shall allocate a total budget to each WA. WA budgets are divided into categories such as:

- Total labor amount, based on unloaded rates of person or job classification
- Fringe benefit rates, indirect overhead rates, general & administrative rates and profit rates
- Subcontracted amount

- Travel and per diem total amount, with details of trip (number of trips, to and from location, number of people).
- Equipment, as allowed by Agreement budget, with details of specific equipment for purchase and cost.
- Other direct or miscellaneous costs, including rental charges/fees, with details of specific item, quantity, rate and cost.
- Other items as required by CAM, as allowed by the Agreement Budget

NOTE: these categories are examples only. The WA budget shall contain the actual budget categories.

Within each category, specific budget items are estimates and Contractor may spend the category budget up to the maximum amounts allocated for each category in the WA. Contractor shall not exceed the budgeted amount for each category unless the WA is amended. Contractor shall not exceed budgeted rate caps in the Agreement budget. See Exhibit B, Budget Reallocation.

- 2) Non-Labor Direct Costs, such as travel, materials or equipment. The Agreement will include the Contractor's mark-ups, if any, to non-labor direct costs. Work authorization budgets will include non-labor direct cost details that are allowable and reimbursable for that specific work authorization. Non-labor direct costs will only be included in a work authorization budget if considered appropriate to the specific work authorization scope of work by the CAM.

D. Payment

Payment for services is based upon an approved category budget in each WA. Any costs or expenses incurred by the Contractor or any subcontractor that have not been identified in the WA shall be borne by the Contractor.

E. Costs

The actual cost of an approved, completed WA shall not exceed the authorized amount of the WA budget. If, in the performance of the WA, the Contractor or CAM determines that the total cost might exceed the WA budget amount, Contractor or CAM shall immediately notify the other. Upon such notification, the CAM may:

- 1) Amend the WA scope of work to accomplish the work within the budget; or
- 2) Amend the WA to augment the budget; or
- 3) Direct the Contractor to complete the work for the budgeted amount without changes to the scope of work; or
- 4) Terminate the WA.

F. Amendments.

- 1) An amendment of the WA is required for the following changes, including but not limited to:
 - Changes to the scope of work (i.e. new or changed work)
 - Adding Funds
 - Extending the Term

- Adding new job classifications to the WA budget (job classification must already be included in Agreement budget)
- WA budget reallocations in accordance with the Budget Reallocation provision in Exhibit B.

- 2) Amendments shall be approved and signed using the same process as the original WA.
- 3) Amendments must be made prior to the termination date of the original WA or as amended.

G. Changes without Amendment

CAM may make the following changes to the WA without an amendment upon prior written notification to Contractor:

- 1) Changes to deliverable due dates, as long as the due dates do not go beyond the end term of the WA.
- 2) Minor scope of work changes that only correct grammatical errors or reference mistakes.
- 3) Adding people within existing job classifications to perform service under the WA
- 4) WA budget reallocations in accordance with the Budget Reallocation provision in Exhibit B.

H. Stop Work

The Energy Commission reserves the right to require the Contractor to stop or suspend work on any WA. The CAM, in consultation with the CAO, shall provide notice in writing to the Contractor of the date work is stopped or suspended. Costs incurred up to that date shall be reimbursed in accordance with the Stop Work clause in Exhibit D.

I. Termination of WA

The CAM, in consultation with the CAO, may terminate the WA without cause with 30 days written notice to Contractor. Costs incurred up to that date shall be reimbursed in accordance with the termination clause in Exhibit D.

J. Incorporated into Agreement

Each WA shall be incorporated into this Agreement. However, it is understood and agreed by both parties that all of the terms and conditions of this Agreement shall remain in force with the inclusion of any such WA. A WA shall in no way constitute an independent Agreement, nor in any way amend or supersede any of the other provisions of this Agreement.

K. Information Technology

Work Authorizations may be reviewed by the Energy Commission's Information Technology Services Branch to determine if any information technology (IT) activities or acquisitions are included in the Work Authorization. If it is determined the Work Authorization includes IT activities or acquisitions the Energy Commission's Chief Information Officer or designee must approve the Work Authorization before it can be executed. Activities under the Agreement that could impact the Energy Commission IT systems include, but are not limited to using GIS software to produce maps.

DRAFT

EXHIBIT D – Attachment 1

Confidential Deliverables and Pre-existing Intellectual Property Lists

PART I: CONFIDENTIAL DELIVERABLES

Pursuant to 20 California Code of Regulations section 2505(c)(2)(B), the Energy Commission designates the following as confidential.

☐ **No Confidential Deliverables,**

OR

☐ **Confidential Deliverables:**

Description of Information to be Kept Confidential: <ul style="list-style-type: none">• Title of document/name of deliverable• Task Number• Portion of document to be kept confidential• General description of the technology to be kept confidential.	Legal Basis for Confidential Designation: <ul style="list-style-type: none">• Trade Secret<ul style="list-style-type: none">--Technical--Business--Marketing--Economic/Financial• Patent application number	Term of Confidentiality
Draft Audit Reports	Government Code 13293.1	Until report is final

PART II: PRE-EXISTING INTELLECTUAL PROPERTY

Contractor has identified the following intellectual property as pre-existing the effective date of this Agreement and is required for performance of this Agreement but is not a deliverable.

☐ **No Pre-existing Intellectual Property**

OR

☐ **Pre-existing Intellectual Property (Please insert "none" in the types that do not apply):**

Patents Issued

Title	Patent Number	Inventors/ Assignee (Owner)	File Date	Issue/ Grant Date	Country	Description

Patent Applications

Title	File Date	Public Description (2-3 sentences)

Trade Secrets

Title	Public Description (2-3 sentences)

Copyrights

Title	Copyright Number	Owner	File Date	Issue/Grant Date	Country	Description

Trademarks

Title	Trademark Number	Owner	File Date	Issue/Grant Date	Country	Description

Disclosure Memos

Title	Disclosure Date	Memo Number, if applicable	Public Description (2-3 sentences)

Invention Berkley (DOE National Labs Only)

Title	Number	Date

EXHIBIT D – Appendix 1

List of Confidential Information and Personal Information

The following is a general description of Confidential Information and Personal Information that the Energy Commission anticipates it will provide to Contractor, or that Contractor will obtain from a third party, such as a subrecipient.

A detailed specific list of Confidential Information and Personal Information will be included in work authorizations.

- Financial, proprietary, market sensitive, critical energy infrastructure information and other information needed to perform monitoring and auditing of subrecipients
- Davis-Bacon payroll and other prevailing wage records
- Building owner and tenant: names, contact information, income and utility account data related to Home Energy Performance-Based Whole House (HOMES) Rebates, High-Efficiency Electric Home Rebate (HEEHRA) Program, Training for Residential Energy Contractors (TREC) and other federal home energy programs.
- Proposals from potential subrecipients, before release of the Notice of Proposed Award.

EXHIBIT E Conflict of Interest

These Special Terms and Conditions prevail over any conflicting terms in this Agreement _____ (Agreement) between _____ (Contractor) and the California Energy Commission (Energy Commission), of which this Exhibit is a part, including the General Terms and Conditions.

1. Applicability of Laws and Definitions.
 - a. Contractor agrees that California conflict of interest laws, including but not limited to Government Code sections 81000 *et seq.* and 1090 *et seq.*, apply to Contractor, its subcontractors and project partners, and their employees under this Agreement.
 - b. The term “subcontractor” in this Exhibit means not only the direct subcontractors to Contractor but also any lower tier level of subcontractor (e.g., sub-subcontractors, sub-sub-subcontractors, etc.).
 - c. Unless specifically otherwise provided, the term “employees” or “their employees” as used in this Exhibit, means the employees of the Contractor, subcontractors, and project partners.
 - d. The phrase “working under this Agreement” and similar phrases in this Exhibit include work by Contractor, subcontractors, project partners, and their employees.
2. Contractor’s Responsibility for Compliance. Contractor shall avoid, and shall ensure all subcontractors, project partners, and their employees avoid, all conflicts of interest in the performance of this Agreement. Contractor, subcontractors, project partners, and their employees are responsible for compliance with California conflict of interest laws, including but not limited to Government Code sections 81000 *et seq.* (Political Reform Act) and 1090 *et seq.*, as well as all other applicable laws, ordinances, regulations, and standards.
 - a. Contractor shall make subcontractors, project partners, and their employees aware of the provisions in the Political Reform Act and in this Exhibit, and shall enforce them. Contractor shall ensure that these provisions are included in all subcontracts and agreements with project partners, and shall enforce them.
 - b. Contractor understands and agrees that every individual qualifying as a “consultant” under the Political Reform Act has an ongoing duty to avoid conflicts of interest and is personally liable for penalties.
 - c. Individuals Designated as Consultants. All employees working on Tasks 2-9 are “consultants” assigned to Disclosure Category 1. A description of the disclosure categories in Title 20 California Code of Regulations sections 2401 and 2402 is located at: <https://govt.westlaw.com/calregs/Browse/Home/California/CaliforniaCodeofRegulations?guid=IC23FEB00D44E11DEA95CA4428EC25FA0>. Consultants are subject to the requirements and restrictions of the Political Reform Act, and shall file an original Form 700 with the Energy Commission (See Government Code sections 82019 and 87302), except those employees working in strictly administrative job classifications. Contractor and the Commission Agreement Manager may work together to narrow the list of consultants as job duties are more specifically defined. The following job classifications are strictly administrative: _____

Employees working only on strictly administrative tasks, including Task 1 are not consultants and do not need to file a Form 700 unless directed to do so by the Energy Commission.

- d. Contractor is responsible for having consultants complete Form 700s and Contractor is responsible for reviewing each Form 700 at multiple points: 1) within 30 business days from the date a consultant begins work under the Agreement; 2) at least every twelve months until the Agreement end date; and 3) within 30 days of the end date of the Agreement or after the consultant ends their work under the Agreement. These points of review will ensure that each employee, subcontractor, and project partner has considered their relationship with the Contractor and other project entities, as such entities are subject to change over the life of the project.
 - e. Contractor is responsible for ensuring that consultants complete the online ethics training within six months of beginning work under this Agreement, and at least once every two years thereafter, as required by Government Code section 11146 *et seq.* The training is provided by the Fair Political Practices Commission and the California Office of the Attorney General and is available at <https://oag.ca.gov/ethics/course>. Contractor shall provide records to the Energy Commission Filing Officer indicating each consultant's name, job classification, and date of completion of the course.
 - f. **Failure to file a Form 700, or failure to meet training requirements of Government Code 11146 *et seq.*, can result in automatic daily fines and other consequences.**
3. Reservation of Right to Require Form 700 from Any Employee. The Energy Commission reserves the right to require any individual working under this Agreement to file Form 700s.
4. Form 700. Each individual designated as a consultant under this Agreement (see section 2.c. of this Exhibit), or other individual required by the Energy Commission to do so, shall file a Form 700.
- a. Form 700s shall be (i) submitted electronically at <https://CEC.southtechhosting.com/eDisclosure/>, or (ii) filed in person at, or mailed to, the following address (e-mails and faxes are not acceptable):
Energy Commission Filing Officer – Form 700 Filing
Selection & Equal Employment Opportunity Office
715 P St., MS 52
Sacramento, CA 95814
 - b. A Form 700 must be filed at the times required under the Political Reform Act, which include the following:
 - i. Assuming Office Statement. Must be filed within 30 days of beginning work under the Agreement. Beginning work means when the employee actually performs work under the Agreement; it does not mean the start date of the Agreement unless the employee starts work on the start date.
 - ii. Annual Statement. Must be filed annually, no later than April 1.
 - iii. Leaving Office Statement. Must be filed within 30 days of ceasing to perform work under the Agreement (e.g., removed as a subcontractor,

completion of assigned tasks) or within 30 days after the Agreement ends.

c. Failure to file the Form 700 when required can result in automatic daily fines and other consequences.

- d. When completing the Form 700, each consultant must disclose financial interests that fit within the disclosure categories assigned to them (see section 2.c. of this exhibit). A description of the disclosure categories is set forth in the Energy Commission's Conflict of Interest Code at Cal. Code Regs., tit. 20, § 2402.

5. Form 805. Contractor shall:

- a. Provide the CAM with a Fair Political Practices Commission Form 805, Agency Report of Consultant, within 5 days of the Agreement start date. Form 805 is available at: <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Agency%20Reports/805.pdf>.
- i. The Contractor shall complete Section 2, Firm Information.
- ii. Under Section 3, Consultant Information, the Contractor shall write the name, job classification and email address for every employee working on Tasks 2-9 along with the date that individual began work on the Agreement.
- iii. The Contractor shall leave the remaining parts of the Form 805 blank.
- b. Within 30 days of the Contractor's submittal of the Form 805, the CAM may return the completed Form 805 to the Contractor for use in completing the Form 700(s). In the event the Form 805 is not returned by the CAM to the Contractor before an individual's Assuming Office Form 700 is due, the individual shall report under the broadest disclosure of the Energy Commission's Conflict of Interest Code at Cal. Code Regs., tit. 20, § 2402 which is Category 1.
- c. Submit to the CAM an amended Form 805 whenever a new consultant begins work under the Agreement, or whenever a consultant ceases to perform work under the Agreement, within 5 days after the consultant begins or ceases work.

6. Restrictions on Outside Work.

- a. **Prohibition on Participating in or Sharing Information about Energy Commission Funding Opportunities.**
Under this Agreement, if the Contractor, subcontractors, or project partners assist the Energy Commission to develop agreements, develop competitive solicitations or score applications, then the Contractor, subcontractors, project partners, and their employees are prohibited from participating and agree not to participate (e.g., through development of an application, as an applicant, subcontractor, or match-fund partner), in any Energy Commission solicitation or other funding opportunity that solicits or includes work that is related to work done under this Agreement. Except with prior written permission of the CAM, the Contractor, subcontractors, project partners, and their employees shall not share any non-public information about applicants, applications, solicitations, other funding mechanisms, or any other non-public information related to Energy Commission funding opportunities with any other person or entity.
- b. **Contractor, Subcontractor and Project Partner Financial Interests.**
The Contractor, subcontractors, project partners and their employees shall not negotiate, make arrangements, or enter into any other agreement or working relationship with an individual or entity who is interested in or is likely to be interested in the federal funding programs administered by the Energy Commission under this Agreement.

If such an agreement or working relationship began prior to and exists at the start of this Agreement, the Contractor, subcontractor, project partner, or their employees shall complete the agreement or working relationship as soon as possible. And during the pendency of the pre-existing relationship or working relationship, the Contractor, subcontractor, project partner, or their employees shall not provide advice or guidance to the individual or entity regarding the federal funding programs administered by the Energy Commission under this Agreement.

c. Restrictions Following Agreement Term.

All individuals identified as consultants are subject to restrictions of the Political Reform Act on post-governmental activity. Contractor shall ensure that all consultants are aware of these restrictions. Guidance published by the Fair Political Practices Commission on these restrictions can be found at:

http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Public%20Officials%20and%20Employees/Leaving_State_Employment.pdf

7. Avoidance of Appearance of Conflict. Contractor acknowledges that in governmental contracting even the appearance- or perception- of a conflict of interest can be harmful to the interests of the State. Thus, Contractor agrees to refrain from, and shall ensure subcontractors, project partners, and their employees refrain from, any practices, activities, or relationships that appear to conflict with obligations under this Agreement. In the event Contractor is uncertain whether the appearance of a conflict of interest may exist, Contractor shall submit to the CAM a written description of the relevant details, and shall avoid the activity in question until receiving written approval from the Energy Commission to carry out that activity.
8. Notification of Potential Problems. Contractor shall immediately inform the CAM of any potential problems in compliance with this Exhibit.
9. Flow-Down. Contractor shall flow-down the terms in this Exhibit to its subcontractors and project partners.
10. Section 8, Notification of Potential Problems, and to the extent applicable, all other terms in this Exhibit survive the end of this Agreement.

EXHIBIT F
FEDERALLY FUNDED CONTRACT TERMS AND CONDITIONS

1. FEDERAL FUNDING

This Agreement is subject to financial assistance from the United States Department of Energy (DOE), the Federal Highway Administration (FHWA), the United States Environmental Protection Agency (EPA) and other federal agencies for Inflation Reduction Act and the Infrastructure Investment and Jobs Act.

2. COMPLIANCE WITH FEDERAL, STATE, AND MUNICIPAL LAW

- A. Contractor must comply with applicable federal, state, and local laws and regulations for all work performed under this Agreement.
- B. Contractor must obtain all necessary federal, state, and local permits, authorizations, and approvals for all work performed under this Agreement.
- C. Any apparent inconsistency between federal and state laws and regulations and the terms and conditions of this Agreement must be referred to the Energy Commission for guidance.
- D. This agreement is subject to the following federal laws, as applicable:
 - 2 CFR 200 (Office of Management and Budget);
 - 2 CFR 910 (Department of Energy);
 - 2 CFR 1201 (Department of Transportation);
 - 2 CFR 1500 (Environmental Protection Agency).

3. NO OBLIGATION BY FEDERAL GOVERNMENT

The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the Contractor, or any other party pertaining to any matter resulting from this Agreement.

4. CONTRACT

This Agreement is a "Contract" as defined by 2 CFR 200.1 and 2 CFR 200.331(b). The purpose of this Agreement is to obtain services for the Energy Commission's own use, in order to carry out the projects and programs under various DOE federal awards to the Energy Commission. This Agreement is not a "Federal Award". 2 CFR 200.501(f) and 2 CFR 910.501(f).

5. CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT.

- A. Clean Air Act

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 USC 7401 et seq. The Contractor agrees to report each violation to the Energy Commission and understands and agrees that the Energy Commission will, in turn, report each violation as required to assure notification to the Department of Energy and the Regional Office of the Environmental Protection Agency. The Contractor agrees to

include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance.

B. Federal Water Pollution Control Act

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. The Contractor agrees to report each violation to the Energy Commission and understands and agrees that the Energy Commission will, in turn, report each violation as required to assure notification to the Department of Energy and the Regional Office of the Environmental Protection Agency. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance.

6. DEBARMENT AND SUSPENSION

A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

This Agreement is a covered transaction for purposes of 2 CFR Part 180 and 2 CFR Part 3000. As such, the Contractor is required to verify that none of the Contractor's principals (defined at 2 CFR 180.995) or its affiliates (defined at 2 CFR 180.905) are excluded (defined at 2 CFR 180.940) or disqualified (defined at 2 CFR 180.935). The Contractor must comply with 2 CFR Part 180, subpart C and 2 CFR Part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

This certification is a material representation of fact relied upon by the Energy Commission when entering into this Agreement. If it is later determined that the Contractor did not comply with 2 CFR Part 180, subpart C and 2 CFR Part 3000, subpart C, in addition to remedies available to the Energy Commission, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.

7. BYRD ANTI-LOBBYING AMENDMENT

Contractors that apply or bid for an award exceeding \$100,000 must file the required certification (see certification form included in the Energy Commission Request for Proposal, and Contractor's completed certification form submitted with its Proposal). Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 USC 1352.

Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award (see Standard Form-LLL, Disclosure of Lobbying Activities” at <https://grants.gov/forms>). Such disclosures are forwarded from tier to tier up to the non-Federal award.

Contractor shall require that the language of this certification be included in all subcontracts at all tiers and that all subcontractors shall certify and disclose accordingly.

8. LOBBYING

By accepting funds under this Agreement, the Contractor agrees that none of the funds encumbered in this Agreement shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 USC 1913. This restriction is in addition to those prescribed elsewhere in statute, including the Byrd Anti-Lobbying Amendment, and prescribed by regulation.

9. PROCUREMENT OF RECOVERED MATERIALS

Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

10. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

As set forth in 2 CFR 200.216, Contractor is prohibited from obligating or expending federal funds to:

- A. Procure or obtain;
- B. Extend or renew a contract to procure or obtain; or
- C. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - 1) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

- 2) Telecommunications or video surveillance services provided by such entities or using such equipment.
- 3) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

See Public Law 115-232, section 889 for additional information.

11. DOMESTIC PREFERENCES FOR PROCUREMENTS

- A. As appropriate and to the extent consistent with law, Contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). This requirement must be included in all subcontracts for work or products under this Agreement.
- B. For purposes of this section:
“Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
“Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

12. RECORD RETENTION AND ACCESS TO RECORDS

DOE, FHWA, EPA, Inspectors General, the Comptroller General of the United States, the Energy Commission and the California Department of Transportation or any of their authorized representatives, must have the right of access to any documents, papers, or other records of the Contractor that are pertinent to the work scope in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the Contractor’s personnel for the purpose of interview and discussion related to such documents. The Contractor agrees to maintain all such documents, papers or other records related to this Contract for a period of three years from the date of submission of the final report, or three years after final payment, whichever is later, except in the event of litigation, settlement of claims, or audit related to this Contract, in which case Contractor agrees to maintain records until litigation, claims or audit are resolved.

13. NONDISCLOSURE AGREEMENTS

If Contractor employees sign a nondisclosure agreement pursuant to Exhibit D, paragraph 9, then the following language shall be included in the nondisclosure agreement:

- A. These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a

violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.

- B. The limitation above shall not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.
- C. Notwithstanding provision listed in paragraph (a), a nondisclosure or confidentiality policy form or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or officer of the United States Government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement shall, at a minimum, require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government. Such nondisclosure or confidentiality forms shall also make it clear that they do not bar disclosures to Congress, or to an authorized official of an executive agency or the Department of Justice, that are essential to reporting a substantial violation of law.

14. FOREIGN NATIONAL INVOLVEMENT AND FOREIGN ENTITY OF CONCERN

- A. Foreign Nationals.
If the Contractor anticipates involving foreign nationals in the performance of this Agreement, Contractor must provide the Energy Commission with specific information about each foreign national before the foreign national begins work. The Energy Commission must ensure compliance with the requirements for foreign national participation and access approvals from DOE. The volume and type of information required may depend on various factors.

Approval for foreign nationals in Principal Investigator/Co-Principal Investigator roles, from countries of risk (i.e., China, Iran, North Korea, and Russia), and from countries identified on the U.S. Department of State's list of State Sponsors of Terrorism (<https://www.state.gov/state-sponsors-of-terrorism/>) must be obtained from DOE before they can participate in the performance of any work under this award.

A "foreign national" is defined as any person who is not a United States citizen by birth or naturalization. DOE may elect to deny a foreign national's participation in the Agreement. Likewise, DOE may elect to deny a foreign national's access to DOE sites, information, technologies, equipment, programs, or personnel. DOE's determination to deny participation or access is not appealable.

Contractor shall include this provision in any subcontracts and lower tier subcontracts. Contractor shall notify the Energy Commission if a subcontractor anticipates involving a foreign national in the performance of the Agreement, and provide necessary information so the Energy Commission can seek DOE approvals.

A foreign national employed by Contractor, a subcontractor, or any lower tier subcontractor shall not provide service under this Agreement until the Energy Commission has received approval from DOE.

B. Foreign Entity of Concern

Contractor shall not subcontract with or provide Agreement funds to:

1. An entity owned by, controlled by, or subject to the direction of a government of a covered nation under 10 U.S.C. 4872(d);
2. An entity headquartered in a covered nation under 10 U.S.C. 4872(d); or
3. A subsidiary of an entity described in (1) or (2).

Covered nations under 10 U.S.C. § 4872(d) are the Democratic People's Republic of North Korea; the People's Republic of China; the Russian Federation; and the Islamic Republic of Iran.

15. **PUBLICATIONS**

Contractor shall include the following acknowledgement and legal disclaimer in publications, documents or other materials developed for public distribution arising out of, or relating to, work performed under this Agreement, whether copyrighted or not:

Acknowledgment: "This material is based upon work supported by the United States Department of Energy, the United States Environmental Protection Agency, and the Federal Highway Administration."

Full Legal Disclaimer: "This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof."

Abridged Legal Disclaimer: "The views expressed herein do not necessarily represent the views of the United States Department of Energy, the United States Environmental Protection Agency, the Federal Highway Administration or the United States Government."

Contractor should make every effort to include the full Legal Disclaimer. However, in the event that Contractor is constrained by formatting and/or page limitations set by the publisher, the abridged Legal Disclaimer is an acceptable alternative.

16. **AUDIT**

Contractor shall ensure that the procurement, receipt and payment for goods and services with funds from this Agreement, such as subcontracts at any tier, comply with Federal statutes, regulations, and the terms and conditions of DOE or other Federal

grants to the Energy Commission, as applicable. DOE, FHWA, EPA, the Energy Commission, the California Department of Transportation or their designees, may review Contractor's records to audit and determine program compliance. 2 CFR 200.501(g) and 2 CFR 910.501(g).

DOE, FHWA, EPA, the Energy Commission and California Department of Transportation shall have the audit rights pursuant to Department of General Services General Terms and Conditions, (Exhibit C paragraph 4).

17. DISADVANTAGED BUSINESS ENTERPRISE—EPA

Contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this Agreement. Contractor shall carry out applicable requirements of 40 CFR part 33 in procuring and administering contracts/subcontracts with funds provided from EPA in this Agreement. Failure by Contractor to carry out these requirements is a material breach of this Agreement which may result in the termination of this Agreement or other legally available remedies.

Contractor shall employ the six good faith efforts in 40 CFR 33.301 in procurement of goods and services/subcontracts funded by EPA.

Contractor shall pay its DBE subcontractors for satisfactory performance no more than 30 days from Contractor's receipt of payment from the Energy Commission.

Contractor shall notify the Energy Commission in writing prior to any termination of a DBE subcontractor for convenience by Contractor.

If a DBE subcontractor fails to complete work under the subcontract for any reason, Contractor shall employ the six good faith efforts in 40 CFR 33.301 if soliciting a replacement subcontractor.

Contractor shall keep records related to DBE participation and report to the Energy Commission DBE participation in a format to be specified by the Energy Commission.

18. FLOW DOWN REQUIREMENTS

Contractor must flow down to its subcontractor agreements, and further require inclusion in all lower tier subcontractor agreements, the following requirements in this Federally Funded Contracts Exhibit. These are in addition to other flow down requirements in other Exhibits in this Agreement:

- Federal Funding
- Compliance with Federal, State, and Municipal Law
- Clean Air Act and the Federal Water Pollution Control Act
- Debarment and Suspension
- Byrd Anti-Lobbying Amendment
- Lobbying
- Procurement of recovered materials
- Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

Domestic Preference for Procurements
Record Retention and Access to Records
Nondisclosure Agreements
Foreign National Involvement
Publications
Audit
Intellectual Property—Copyrights

19. **INTELLECTUAL PROPERTY: COPYRIGHTS**

Identical copyright allocation of rights language pursuant to 2 CFR 200.315(b) is included in Exhibit D Special Terms and Conditions paragraph 27 and Exhibit F, Federally Funded Contract Terms and Conditions paragraph 18.

- A. Copyright
Contractor may copyright any work that is subject to copyright and was developed or for which ownership was acquired under this Agreement.
- B. License
Contractor expressly grants to the Energy Commission, DOE, FHWA and EPA for all copyrightable works, work of art and original work of authorship first produced, composed or authored in the performance of this Agreement a royalty-free, paid-up, nonexclusive, irrevocable, nontransferable, worldwide license to produce, translate, publish, use, dispose of, produce, prepare derivative works based on, distribute copies of, publicly perform, or publicly display such works and to authorize others to produce, translate, publish, use, dispose of, reproduce, prepare derivative works based on, distribute copies of, publicly perform, or publicly display such works.
- C. Use of Copyrightable Works
Contractor must use the copyrightable works only for the originally-authorized purpose, and must not encumber them without approval of the Energy Commission.
- D. Physical Works of Art and Fine Art
Contractor, by signing this Agreement, expressly conveys to the Energy Commission all ownership of the physical works of art and fine art produced under this Agreement. Contractor agrees it does not reserve any rights to the physical works of art and fine art produced under this Agreement.
- E. Subcontractor Flow Down
Contractor shall obtain these same rights for the Energy Commission and DOE from all subcontractors and others who produce copyrightable works, works of art, or works of fine art under this Agreement. Contractor shall flow down and incorporate these paragraphs, modified appropriately, into agreements with subcontractors and lower tier subcontractors. No subcontract shall be entered into without these rights being assured to the Energy Commission from the subcontractor.

20. **INTELLECTUAL PROPERTY: RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT / PATENTS**

[Reserved for agreements for experimental, developmental, research or demonstration work pursuant to:

2 CFR 200 Appendix II (F) and 37 CFR 401.2(a);

2 CFR 200.315(c) and 37 CFR 401;

2 CFR 910.362(b), Appendix A.1 and Appendix A.2 to Subpart D.]

21. **INTELLECTUAL PROPERTY: DATA**

[Reserved for agreements that involve Data as defined and pursuant to 2 CFR 910.362(d)(1) and Appendix A.3(a).]

22. **EQUAL EMPLOYMENT OPPORTUNITY**

[Reserved for construction contracts pursuant to 41 CFR Part 60.]

23. **DAVIS-BACON ACT**

[Reserved for construction contracts pursuant to 40 USC 3141 et seq. and 29 CFR Part 5.]

24. **COPELAND ANTI-KICKBACK ACT**

[Reserved for construction contracts pursuant to 40 USC 3145 and 29 CFR Part 3.]

25. **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

[Reserved for construction contracts pursuant to 40 USC 3701 et seq. and 29 CFR Part 5.]

26. **BUY AMERICA REQUIREMENT**

[Reserved for infrastructure projects.]

27. **AFFIRMATIVE ACTION AND PAY TRANSPARENCY REQUIREMENTS**

[Reserved for construction contracts pursuant to Executive Order 11246.]

28. **CALIFORNIA DEPARTMENT OF TRANSPORTATION-ELECTRIC VEHICLES**

The following requirements apply to the National Electric Vehicle Infrastructure Formula Program (NEVI) and the Electric Vehicle Charging, Reliability and Accessibility Accelerator (Federal EVC RAA) Program. These programs are administered through agreements between the Energy Commission and the California Department of Transportation (Cal Trans). The Energy Commission must flow down certain requirements.

- A. Record Retention and Access to Records; Audit
See Exhibit F paragraphs 12 and 16 for rights of Federal Highway Administration and CalTrans.
- B. Intellectual Property
Contractor shall avoid designing or developing any items that infringe on one or more patents or other intellectual property rights of any third party. If Contractor becomes aware of any such possible infringement in the course of performing any work under Agreement, Contractor shall immediately notify the Energy Commission in writing.
- C. Nondiscrimination
The Energy Commission has certain obligations regarding nondiscrimination in selection and retention of subrecipients, contractors and subcontractors related to the NEVI and Federal EVC RAA Programs. The Energy Commission must act in accordance with Title VI. The Energy Commission must allow access to information and reports related to these Programs. There are sanctions that can be imposed by CalTrans for Energy Commission noncompliance with these requirements.

In its agreement with CalTrans, the Energy Commission agreed to specific nondiscrimination obligations. The Energy Commission also agreed to include these obligations in this Agreement. The language from the Energy Commission-CalTrans agreement is included below verbatim:

“During the performance of this Agreement, the CEC, for itself, its assignees, and successors in interest (hereinafter collectively referred to as the CEC) agrees as follows:

- (1) Compliance with Regulations: The CEC shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this agreement.
- (2) Nondiscrimination: The CEC, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. The CEC shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the agreement covers a program set forth in Appendix B of the Regulations.
- (3) Funding opportunities for EVC RAA Projects, including procurements of materials and equipment: In all funding opportunities for work to be performed under a EVC RAA Project Agreement, including procurements of materials or leases of equipment, each potential Awardee or supplier shall be notified by the CEC of the CEC’s obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- (4) Information and Reports: the CEC shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to the CEC’s books, records, accounts, other sources of information, and its facilities as may be determined by Caltrans or FHWA to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of the CEC is in the exclusive possession of another who fails or refuses to furnish this information, the CEC shall so certify to Caltrans or the FHWA as appropriate and shall set forth what efforts the CEC has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of the CEC’s noncompliance with the nondiscrimination provisions of this agreement, Caltrans shall impose such agreement sanctions as it or the FHWA may determine to be appropriate,

including, but not limited to:

- a. withholding of payments to the CEC under the Agreement within a reasonable period of time, not to exceed 90 days; and/or
 - b. cancellation, termination, or suspension of the Agreement, in whole or in part.
- (6) Incorporation of Provisions: The CEC shall include the provisions of paragraphs (1) through (5) in every EVC RAA Project Agreement, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The CEC shall take such action with respect to any sub-agreement or procurement as Caltrans or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event the CEC becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, the CEC may request Caltrans enter into such litigation to protect the interests of Caltrans, and, in addition, the CEC may request the United States to enter into such litigation to protect the interests of the United States.

US Department of Transportation Order 1050.2A

During the performance of this agreement, the CEC agrees to comply with the following nondiscrimination statutes and authorities, and to flow down these statutes and authorities to its contractors and Awardees; including but not limited to:

Pertinent Nondiscrimination Authorities:

- A. Title VI of the Civil Rights Act of 1964 (42 USC 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR 21 et seq.;
- B. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC 4601 et seq.), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- C. Federal-Aid Highway Act of 1973, (23 USC 324 et seq.), (prohibits discrimination on the basis of sex);
- D. Section 504 of the Rehabilitation Act of 1973, (29 USC 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR 27 et seq.;
- E. The Age Discrimination Act of 1975, as amended, (42 USC 6101 et seq.), (prohibits discrimination on the basis of age);
- F. Airport and Airway Improvement Act of 1982, (49 USC 4 71, Section 4 7123 et seq.), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- G. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid Recipients, Subrecipients and Contractors, whether such programs or activities are Federally funded or not);
- H. Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC 12131-12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38 et seq.;
- I. The Federal Aviation Administration's Nondiscrimination statute (49 USC 47123 et seq.) (prohibits discrimination on the basis of race, color, national origin, and sex);
- J. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- K. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, CEC must take reasonable steps to ensure that LEP persons have meaningful access to CEC's programs (70 Fed. Reg. at 74087 to 74100);
- L. Title IX of the Education Amendments of 1972, as amended, which prohibits CEC from discriminating because of sex in education programs or activities (20 USC 1681 et seq)."

DRAFT

EXHIBIT G

Agreement Contacts

Commission Agreement Manager: (Name) California Energy Commission 715 P Street, MS-XX Sacramento, CA 95814 Phone (916) XXX-XXXX e-mail: _____@energy.ca.gov	Contractor Project Manager: (Name) (Contractor Name) Address Phone: Fax: e-mail:
Confidential Deliverables/Products California Energy Commission Contracts, Grants and Loans Office 715 P Street, MS-18 Sacramento, CA 95814	Contractor Contract Administrator/Officer: (Name) (Contractor Name) Address Phone: Fax: e-mail:
Invoices, Progress Reports and Non-Confidential Deliverables to: California Energy Commission Accounting Office 715 P Street, MS-2 Sacramento, CA 95814 Electronic Submittal at: <u>invoices@energy.ca.gov</u>	Remittance for Payment: (Name) (Contractor Name) Address Phone: Fax: e-mail:
Commission Legal Notices: Adrienne Winuk, Manager California Energy Commission Contracts, Grants, and Loans Office 715 P Street, MS-18 Sacramento, CA 95814 e-mail: Adrienne.Winuk@energy.ca.gov Deliver confidential deliverables to this location only.	(contractor legal person)