

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

CONTRACTOR NAME

2. The term of this Agreement is:

START DATE

THROUGH END DATE

3. The maximum amount of this Agreement is:

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 C * | General Terms and Conditions (GIA 610 or GTC 04/2017) | |
| + - | Exhibit D Special Terms and Conditions | |
| + - | Exhibit E Confidential Deliverables | |
| + - | Exhibit E Additional Provisions | |
| + - | Exhibit F Contacts | |
| + - | Exhibit G Conflict of Interest | |

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 |
|---------------------------------|-------------|

SCO ID:

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

STANDARD AGREEMENT

STD 213 (Rev. 04/2020)

| | |
|------------------|---|
| AGREEMENT NUMBER | PURCHASING AUTHORITY NUMBER (If Applicable) |
|------------------|---|

STATE OF CALIFORNIA

CONTRACTING AGENCY NAME

| | | | |
|----------------------------|------|-------|-----|
| CONTRACTING AGENCY ADDRESS | CITY | STATE | ZIP |
|----------------------------|------|-------|-----|

| | |
|--------------------------------|-------|
| PRINTED NAME OF PERSON SIGNING | TITLE |
|--------------------------------|-------|

| | |
|---|-------------|
| CONTRACTING AGENCY AUTHORIZED SIGNATURE | DATE SIGNED |
|---|-------------|

| | |
|--|---------------------------|
| CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL | EXEMPTION (If Applicable) |
|--|---------------------------|

EXHIBIT A

Scope of Work described in the RFP

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
- Quarterly
- Other (Explain)

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, provided the Contractor sends a paper copy the same day to the Energy Commission. The date of "invoice receipt" shall be the date the Energy Commission receives the paper copy.

Send invoices to:

California Energy Commission
Accounting Office
1516 Ninth Street
Sacramento, California 95814

- 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. Travel identified in Exhibit B, Pre-Approved Travel List is approved and does not require further authorization.
- B. Travel that is not included in Exhibit B, Pre-Approved Travel List shall require written authorization from the CAM and the Commission Agreement Officer (CAO) prior to travel departure. 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.

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, which is addressed in Section 8, below. 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**

The Budget must include certain details per State Contract Manual, Volume 1, section 7.30. The Energy Commission will, however, treat the total amount listed in the Budget for each budget category as estimates and permit the Contract to move funds from one budget category to another without a formal amendment provided the Contractor complies with the following: (1) The Contractor does not exceed the total Contract amount and otherwise adheres to the requirements in this Contract, such as invoicing for actual costs not exceeding the labor, indirect, and other rates in the Budget which are NOT being treated as estimates, it can move funds between budget categories without an amendment. (2) In order for the Energy Commission to properly monitor the use of funds, the Contractor will obtain approval from the CAM in writing prior to moving funds between budget categories and will provide the amount being moved and the justification for the move. For example, the Contractor could move \$5,000 from the travel budget category to the labor budget category with prior notice to the CAM. But the Contractor could not use this to change a rate, such as for example trying to increase a listed labor rate of \$35 per hour to a higher rate.

9. **BUDGET DETAIL**

Budget detail is contained in the Attachments to this Exhibit.

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.

AND

- 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. Contractors who are subcontracting with University of California or California State University may use the terms and conditions negotiated by the Department of General Services with University of California/ California State University for their subcontracts. Contractors who are subcontracting with the Department of Energy's (DOE) Lawrence Livermore National Laboratory, Lawrence Berkeley National Laboratory, and the Sandia National Laboratories may use the terms and conditions negotiated with the Department of General Services. Contractors who are subcontracting with all other DOE laboratories may use the terms and conditions negotiated by the Energy Commission with DOE for their subcontracts.
- G. Upon the termination of any subcontract or lower tier subcontract, Contractor shall notify the CAM and CAO immediately in writing.

H. 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; 2) further assignments shall not be made to any lower tier subcontractor without written consent of the CAM; and 3) the confidentiality provisions in the Reports paragraph of this Agreement.

I. 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) REQUIREMENTS**

A. Reporting

If Contractor made a commitment to achieve DVBE participation for this Agreement, then Contractor must within 60 days of receiving final payment under this Agreement, certify in a report to the CAO: (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; (3) 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. 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. 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 inform CAM and CAO in writing of the reason for the DVBE replacement. A DVBE subcontractor may only be replaced by another DVBE subcontractor and must be approved by the Department of General Services (DGS). Military and Veterans Code section 999.5 (e). Contractor shall complete revised DVBE certification forms (provided by the CAO) identifying the new DVBE.

C. Amendment

This Agreement shall be amended if: a DVBE must be substituted and DGS has given approval; or there are changes to the scope of work that impact the DVBE subcontractor(s) identified in the proposal or listed in this Agreement.

D. Grounds for Termination; Damages; Penalties

Failure of Contractor to seek substitution and adhere to the DVBE participation level identified in the proposal or listed in this Agreement may be cause for: termination of this Agreement, recovery of damages under rights and remedies due to the State; and penalties as outlined in Military and Veterans Code section 999.9 and Public Contract Code section 10115.10.

E. DVBE Name for this Agreement:

5. **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.

6. **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.

7. **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.

8. **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.

9. **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.

10. **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.

11. **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.

12. **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.

13. **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.

14. **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.

EXHIBIT E

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 |
|---|--|--------------------------------|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

EXHIBIT E

**Confidential Deliverables and Pre-existing Intellectual Property Lists
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) |
|--------------|---|
| | |
| | |

EXHIBIT E

**Confidential Deliverables and Pre-existing Intellectual Property Lists
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 E

Additional Provisions

1. CONFIDENTIALITY

A. Information Considered Confidential

If applicable, all Contractor information considered confidential at the commencement of this Agreement is designated in the 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 the Attachment to this Exhibit, specific Confidential 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 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 Information as a Deliverable

The Contractor and the Energy Commission agree that during this Agreement, it is possible that the Contractor may develop additional data or information not originally anticipated 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 the Attachment to this Exhibit.

D. Disclosure of Confidential 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.

2. 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.

3. **WORK FOR HIRE, RIGHTS OF PARTIES IN DATA, DELIVERABLES, COPYRIGHTS, AND SERVICE AND TRADEMARKS**

- A. The work the Contractor performs under this agreement may result in the collection, procurement, creation, derivation of data, will result in the items specified for delivery to the Energy Commission in the Scope of Work, and may result in development of materials that are governed by the Copyright Act of 1976, and may also result in service marks and trademarks (collectively together referred in this section as "Work").
- B. Contractor expressly acknowledges that the Work contributed by Contractor is being specially ordered and commissioned by the Energy Commission. The Work contributed by Contractor shall be considered a "work made for hire" as defined by the copyright

laws of the United States. The Energy Commission shall be the sole and exclusive owner and copyright holder of the Work. If for any reason the Work is determined at any time not to qualify as a "work made for hire", Contractor hereby irrevocably transfers and assigns to the Energy Commission all right, title and interest therein, including all copyrights, as well as all renewals and extensions, and including the entire right, title, interest in and to the service marks and/or trademarks in the United States and all jurisdictions outside the United States, together with the goodwill of the business connected with and symbolized by the service marks and/or trademarks.

- C. Contractor agrees that the Energy Commission may make any changes or additions to the Work, including but not limited to the preparation of derivative works which the Energy Commission in its sole discretion may consider necessary, and may engage others to make changes to the Work, with or without attribution to Contractor.
- D. Contractor represents that, except with respect to material furnished to Contractor by the California Energy Commission, Contractor is the sole author of the Work, which is not copied in whole or in part from any other work. Contractor further represents that the Work does not violate the intellectual property rights of any person, firm or entity.
- E. Contractor releases and discharges the Energy Commission from any and all claims and demands arising out of, or in connection with, any use of the Work, including but not limited to, any and all claims of libel, moral rights and invasion of privacy, and/or any claims under the Visual Artists Rights Act. Contractor realizes that he or she cannot withdraw their consent after executing this Contract, and acknowledges that this Contract is binding on Contractor and his or her heirs, legal representatives and other assigns.
- F. No license, either express or implied, is granted hereby to Contractor, with respect to the Work. Contractor agrees that the Work is and will remain the sole property of the Energy Commission.
- G. Contractor will not apply for or obtain any intellectual property protection in any of the Work or related derivative works. All intellectual property rights relating to any materials of any kind developed by Contractor using the Work, and all rights in any derivative works, belong exclusively to the Energy Commission.
- H. Any action or inaction by the Energy Commission or the failure of the Energy Commission on any occasion, to enforce any right or provision of this Section or any other Section of this Contract shall not be construed to be a waiver by the Energy Commission of its rights hereunder and shall not prevent the Energy Commission from enforcing such provision or right on any future occasion. The rights and remedies of the Energy Commission hereunder are cumulative and are in addition to any other rights or remedies that the Energy Commission may have in law or equity.
- I. The terms of this Section 3 shall remain in full force and effect in perpetuity.
- J. The Contractor shall flow-down the terms in this Section 3 to its subcontractors and project partners to ensure the Energy Commission through those agreements obtains all rights in this section.

4. **PURCHASE OF EQUIPMENT**

- A. Equipment identified in this Agreement is approved for purchase.
- B. Equipment not identified in this Agreement shall be subject to prior written approval from the CAM.
- C. 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.
- D. 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.

5. **Information Practices Act**

A. Priority of this Section 5

In the event of a conflict between this Section 5 and other terms in this Agreement, this Section 5 shall govern.

B. Contractor and All Subcontractors and Project Partners shall comply with the Information Practices Act

The Information Practices Act ("IPA") is codified at California Civil Code sections 1798 et seq. Personal Information is defined in the IPA at Civil Code section 1798.3(a). Contractor shall comply and ensure that all of its subcontractors and project partners shall comply with the IPA relative to the activities under this Agreement. This includes but is not limited to complying with

Section 1798.16 (Personal Information; maintaining sources of information) and Section 1798.17 (Notice; periodic provision; contents). For example:

1. Sources of information. Contractor, and Contractor's subcontractors and project partners, shall maintain a record of the source of an individual's Personal Information in accordance with § 1798.16. Per IPA § 1798.16, this requirement does not apply if the data subject is the source of the Personal Information.
2. Use of information. Pursuant to IPA § 1798.14, the Contractor, and Contractor's subcontractors and project partners shall only use Personal Information for the purposes of this Agreement. Contractor, and Contractor's subcontractors and project partners shall not disclose any Personal Information to any person or entity other than the Energy Commission and Energy Commission employees.
3. Security. Pursuant to IPA § 1798.21, Contractor, and Contractor's subcontractors and project partners, shall employ appropriate and reasonable safeguards to ensure the security and confidentiality of Personal Information and to protect against anticipated threats or hazards to their security or integrity which could result in any injury.
4. Notice. On or with any form used to collect Personal Information from individuals, the Contractor, and Contractor's subcontractors and project partners, shall provide the notice required in § 1798.17. At the time of executing this agreement, § 1798.17 requires the following:
 - (a) The name of the agency and the division within the agency that is requesting the information.
 - (b) The title, business address, and telephone number of the agency official who is responsible for the system of records and who shall, upon request, inform an individual regarding the location of his or her records and the categories of any persons who use the information in those records.
 - (c) The authority, whether granted by statute, regulation, or executive order which authorizes the maintenance of the information.
 - (d) With respect to each item of information, whether submission of such information is mandatory or voluntary.
 - (e) The consequences, if any, of not providing all or any part of the requested information.
 - (f) The principal purpose or purposes within the agency for which the information is to be used.

(g) Any known or foreseeable disclosures which may be made of the information pursuant to subdivision (e) or (f) of Section 1798.24.

(h) The individual's right of access to records containing personal information which are maintained by the agency.

C. Contractor has no Ownership or other Rights to the Personal Information

See Section 3 above for how the Energy Commission and not the Contractor owns and has all other rights associated with the Personnel Information.

D. Retention and Destruction of Personal Information

Upon the request of the Energy Commission, or upon termination of this Agreement, whichever is earlier, the Contractor and all subcontractors and project partners shall promptly deliver to the Energy Commission or destroy all Personal Information, regardless of form (e.g., written or electronic) and all copies, abstracts, media, and backups thereof, however stored in Contractor's and all of its subcontractors' and project partners' possession. No Personal Information shall remain with Contractor, its subcontractors, or its project partners upon request of the Energy Commission or after the termination of this Agreement, whichever occurs first.

E. Survival

The terms of this Section 5 shall remain in full force and effect in perpetuity.

F. Flow-down

The Contractor shall flow-down the terms in this Section 5 to its subcontractors and project partners.

EXHIBIT F Agreement Contacts

| | |
|--|---|
| <p>Commission Agreement Manager:</p> <p>(Name) California Energy Commission 1516 Ninth Street Sacramento, CA 95814 Phone (916) XXX-XXXX e-mail: _____@energy.ca.gov</p> | <p>Contractor Project Manager:</p> <p>(Name) (Contractor Name) Address</p> <p>Phone: Fax: e-mail:</p> |
| <p>Confidential Deliverables/Products</p> <p>California Energy Commission Contracts, Grants and Loans Office 1516 Ninth Street Sacramento, CA 95814 Phone: (916) 654-4381</p> | <p>Contractor Contract Administrator/Officer:</p> <p>(Name) (Contractor Name) Address</p> <p>Phone: Fax: e-mail:</p> |
| <p>Invoices, Progress Reports and Non-Confidential Deliverables to:</p> <p>California Energy Commission Accounting Office 1516 Ninth Street Sacramento, CA 95814</p> | <p>Remittance for Payment:</p> <p>(Name) (Contractor Name) Address</p> <p>Phone: Fax: e-mail:</p> |
| <p>Commission Legal Notices:</p> <p>Adrienne Winuk, Manager California Energy Commission Contracts, Grants and Loans Office 1516 Ninth Street Sacramento, CA 95814 Phone: (916) 891-8629 e-mail: adrienne.winuk@energy.ca.gov</p> | <p>(contractor legal person)</p> |

EXHIBIT G Conflict of Interest

These Special Terms and Conditions prevail over any conflicting terms in the general Terms & Conditions of Agreement _____ [CAO enter Agreement number XXX-XX-XXX], “_____” [CAO enter Agreement title], (Agreement) between _____ [CAO enter Contractor’s name] (Contractor) and the California Energy Commission (Energy Commission), of which this Exhibit is a part.

1. **Applicability of Laws.** 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 under this Agreement.
2. **Contractor’s Responsibility for Compliance.** Contractor shall avoid all conflicts of interest in the performance of this Agreement. Contractor and its 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 its 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 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. **Consultants Defined.** All of the Contractor’s and any subcontractors’ employees working on Task 4 are “Consultants” assigned to Disclosure Categories 4 and 7. A description of the disclosure categories in Title 20 California Code of Regulations sections 2401 and 2401 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.
 - 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 the 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. These points of review will ensure that each employee and subcontractor 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 at least once every two years as required by Government Code section 11146. 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 the name, job title, and date of completion of the orientation course.
 - f. Failure to file a Form 700, or failure to meet training requirements of Government Code 11146, 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 a Form 700.
4. Form 700. Each Consultant, or other individual required by the Energy Commission to do so, shall file a Form 700. Form 700 is available at http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Form%20700/2015-16/Form_700_2015.2016.pdf.
- a. The Form 700 shall be 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
1516 9th 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 through the Form 805. 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 complete the Consultant Name section for every individual (including names of subcontractors' employees) performing working under Task 4, along with the Assuming/Start Date for each individual.
 - iii. The Contractor shall leave the remaining information, other than all of Section 2 and Contractor Name only under Section 3, required by the Form 805 blank.
 - b. Within 30 days of the Contractor's submittal of the Form 805, the CAM will return the completed Form 805 to the Contractor for use in completing Form 700. 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 should 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 a supplemental Form 805 whenever a new Consultant begins work under the Agreement.
 - d. Notify the CAM in writing if a Consultant listed on a Form 805 ceases to perform work under the Agreement, within 30 days of the date the Consultant ceases to perform such work.
6. Restrictions on Outside Work.
 - a. Prohibition on Participating in Energy Commission Funding Opportunities. Under this Agreement, if the Contractor and its subcontractors assist the Energy Commission to develop agreements, develop competitive solicitations or score applications, then Contractor and all of its subcontractors 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.
 - b. Contractor and Subcontractor Financial Interests
Contractor and subcontractors 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 receiving technical assistance or applying for incentives under the BUILD program under this Agreement.

If such an agreement or working relationship began prior to and exists at the start of this Agreement, the Contractor or subcontractor 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 or subcontractor shall not provide advice or guidance to the individual or entity regarding in technical assistance or applying for incentives under the BUILD program 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 of a conflict of interest can be harmful to the interest of the State. Thus, Contractor agrees to refrain from any practices, activities, or relationships that appear to conflict with Contractor's obligations under this Agreement, including but not limited to participating in any independent evaluation of work under this Agreement beyond providing program data and other information requested by CEC or a third-party evaluator for the purposes of program evaluation. 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.