STATE OF CALIFORNIA

LOAN AWARD REQUEST

CEC-271 (Revised 05/11) CALIFORNIA ENERGY COMMISSION

To: Grants and Loans Office Date: 12 / 5 / 13

Project Manager: Cheng Moua Phone Number: (916) 651-3004

Office Local Financing and Assistance Office Division: Efficiency MS- 23

Project Title: City of Berkeley

Type of Request: *(check one)*

☒ **New Agreement:** *(include items A - F from below)* Agreement Number: Assigned by the G&L Office

Program: 1% Loan Program

Solicitation Name: Energy Conservation Assistance Account

Legal Name of Recipient: City of Berkeley

Recipient's Full Mailing Address: 2120 Milvia Street 2nd Floor, Berkeley, CA 94704

Recipient's Project Officer: Billi Romain Phone Number: (510) 981-7432 ext.

Email Address bromain@ci.berkeley.ca.us

Agreement Start Date: / / Agreement End Date: 06 / 30 / 15

Annual Energy Savings: $ 368,626.00 Total Loan Amount: $ 3,000,000.00

Number of Repay Periods: (Leave blank if repay is based on energy savings)

☐ **Amendment :** *(Check all that apply)* Agreement Number:

☐ Term Extension – New End Date: / /

☐ Change of Scope *(include items A – G from below, as applicable)*

☐ Loan Augmentation: $

ITEMS TO ATTACH WITH REQUEST:

A. Loan information including application and budget details.
B. Recipient Resolution.
C. Special Conditions, if applicable.
D. CEQA Compliance Form.
E. Other Documents as applicable.
- Copy of Pre-Award Correspondence
- Copy of All Other Relevant Documents

F. ECM Codes, if applicable.
G. Justification for Amendment.
H. Subcontractor Information

California Environmental Quality Act (CEQA)

☒ CEC finds, based on recipient's documentation in compliance with CEQA:

☒ Project exempt: Section 14 CCR 15301 c NOE filed: / /

☐ Environmental Document prepared: Type NOD filed: / /

☐ Other: Explain

☐ CEC has made CEQA finding described in CEC-280, attached

Funding Information:

Source #1:	ECD	Amount: $ 3,000,000.00	Statute: 1995	FY: 2013	Budget List #: 401.007D
Source #2:		Amount: $ 0.00	Statute:	FY:	Budget List #:
Source #3:		Amount: $ 0.00	Statute:	FY:	Budget List #:

Business Meeting Approval: *(refer to Business Meeting Schedule)* Date due to Secretariat: 12 / 24 / 2013

Proposed Business Meeting Date: 1 / 15 / 2014 ☐ Consent ☒ Discussion

Business Meeting Participant: Cheng Moua Time Needed: (5 minutes)

Agenda Notice Statement: *(This is the description that will appear on the agenda)*

Possible approval of a loan for $3,000,000 for the City of Berkeley to implement its street light retrofit project. The project includes retrofitting 7,653 street lights to LED technology. The project will save over 2,900,000 kilowatt-hours annually which translates to approximately $368,626 of annual cost savings for City of Berkeley. The payback period is 8 years based on the loan amount. (ECAA funded)

Please list all known Subcontractors paid with proceeds connected to the project mentioned above:
The cell will expand as space is needed...

Project Manager	**Date**	**Office Manager**	**Date**	**Deputy Director**	**Date**
Executive Director	**Date**	**Presiding Policy Committee**	**Date**	**Associate Policy Committee**	**Date**

EXHIBIT A

ENERGY CONSERVATION ASSISTANCE ACT LOAN AGREEMENT

This Loan Agreement (the "Agreement") is entered into as of the date it is executed by both parties hereto, between the California Energy Resources Conservation and Development Commission (the "Energy Commission") and the 005-13-ECD (the "Borrower") located in Alameda County, CA.

1. STATUTORY AUTHORITY AND LOAN

A. Pursuant to the purposes authorized by section 25410, et seq., of the California Public Resources Code (the "Energy Conservation Assistance Act"), the Energy Commission has approved the Borrower's loan application dated November 05, 2013, which is not attached but is expressly incorporated by reference herein.

B. Subject to the terms, covenants, conditions, and including Special Conditions (if applicable) contained herein, and the Budget Detail/Summary of Project Cost and Savings attached as Exhibit A, Attachment 1 hereto to the extent it modifies the Borrower's loan application, the Energy Commission shall make a loan to the Borrower (the "Loan") in the amount of three million dollars ($3,000,000.00) evidenced by a Promissory Note (the "Promissory Note") for loan number 005-13-ECD attached hereto as Exhibit B.

2. PURPOSE

The Borrower agrees to expend all funds disbursed pursuant to this Agreement only for the purposes and in the amounts set forth in Exhibit A, Attachment 1 (the "Project"). Any other use of funds disbursed hereunder shall require prior written approval by the Energy Commission.

3. LOAN DISBURSEMENT SCHEDULE

A. The Energy Commission agrees to disburse funds to the Borrower upon the Borrower's execution of the attached Promissory Note and required supplemental documents, including invoices as required in Section 3.B below.

B. Loan funds shall be disbursed on a reimbursement basis based on invoices submitted by Borrower in a form approved by the Energy Commission. Backup documentation for actual expenditures (such as timecards, vendor invoices, etc.) and proof of payment must be provided to substantiate the request. Energy Commission staff will approve

invoices only after verifying requested amounts against backup billings and determining that expenses are appropriate and used for the authorized purposes of this Loan. For executed Agreements, invoices for expenses incurred during the Agreement Term are eligible for reimbursement.

C. All invoices must be submitted within sixty (60) days after Project completion.

D. The final ten percent (10%) of the Loan amount will be withheld as retention until the final report is received from the Borrower and the Commission's Project Manager determines the Project has been satisfactorily completed.

4. LOAN REPAYMENT AND INTEREST

All funds disbursed hereunder, together with all interest payable thereon, shall be repaid to the Energy Commission in accordance with the terms of the Promissory Note. The Loan shall bear simple interest at the annual rate set forth in the attached Promissory Note on the principal balance of Loan funds disbursed to the Borrower. Payment of said interest shall be due at the time of semiannual scheduled Loan repayment installments to the Energy Commission, and interest shall accrue from the time of disbursal of funds to the Borrower until receipt of full Loan repayment to the Energy Commission.

5. TERM

A. The effective date of this Agreement shall be the date on which it has been executed by both parties hereto. No work is authorized, or shall begin until the Energy Commission signs the Agreement.

B. The Borrower agrees to complete performance of its obligations under this Agreement within the applicable periods stated in this Agreement.

6. PREPAYMENT

The Borrower shall have the right to prepay all or any part of the amount of this Loan at any time without penalty.

7. PROMISSORY NOTE

In order to evidence its debt to the Energy Commission hereunder, the Borrower agrees to, contemporaneously with the execution of this Agreement, execute and deliver to the Energy Commission the Promissory Note (attached as Exhibit B hereto).

8. ACCOUNTS, AUDITS, AND RECORDS

A. The Borrower agrees to establish on its books a separate account for this Loan. This account shall be maintained as long as the Loan obligation remains unsatisfied.

B. The Borrower further agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures drawn on said account for three (3) years after this Loan is repaid in full unless the Energy Commission requests a longer retention period.

C. The Borrower further agrees to utilize a voucher system by which all expenditures from said account will be authorized and authenticated.

D. The Borrower further agrees to allow the Energy Commission or any other agency of the State of California (the "State") or their designated representatives, on written request, to have reasonable access to, and the right of inspection of, all records that pertain to said account or the Project. The Borrower also agrees to submit to an independent audit, if requested by the Energy Commission, at the expense of the Borrower. Borrower agrees to maintain all such records for a minimum of three years after this Loan is repaid in full unless the Energy Commission notifies the Borrower, prior to the expiration of such three-year period, that a longer period of record retention is necessary.

9. SOURCE OF REPAYMENT; OPERATION OF PROJECT

A. Semiannual payments due to the Energy Commission under this Agreement shall be made from savings in energy costs or other legally available funds as the Borrower chooses. If the Borrower is a county, city, town, township, board of education, or school district, the Borrower agrees that the amount of the semiannual Loan repayment shall not be raised by the levy of additional taxes and shall not be an obligation against tax revenues, but shall be obtained either from savings in energy costs resulting from the subject energy conservation projects or other legally available funds as the Borrower chooses.

B. Energy cost savings as determined by the Energy Commission are based on energy usage and serving utility rate schedules at the time of the issuance of this Loan, except as specified in Special Conditions, if any, as detailed in this Agreement, and the information and data contained in the Borrower's loan application and technical study. The following will not affect the Energy Commission's initial finding of energy cost savings, and are not a basis for claiming a lack of energy savings: a) changes in

energy use and/or rate schedules which occur after issuance of the Loan, except as specified in Special Conditions, if any, as detailed in this Agreement, b) deviations in the Project work scope from what was approved by the Energy Commission, c) changes in the Borrower's facility and/or equipment which occur after the issuance of the Loan, including, but not limited to maintenance, operations, schedules, employees and facility alterations and expansions, d) deviations, omissions or errors found in the loan application and technical study after the Loan award. The Borrower is responsible for ensuring the accuracy of the information contained in its loan application and technical study. In the event annual energy cost savings resulting from the Project, as determined by the Energy Commission, fail to equal or exceed the amount due under this Agreement, this Agreement may be renegotiated to assure that the repayment amount does not exceed the actual energy savings or avoided costs resulting from the Project, and the Promissory Note will be revised accordingly. In no event, however, will the number of semiannual installments payable hereunder and under the Promissory Note exceed forty.

C. The Borrower shall obtain and maintain in its records any and all permits and licenses required to install or operate the Project and shall comply with all local, state, and federal laws, rules and codes concerning the Project. The Borrower shall maintain the Project in good working order for the duration of the Loan and shall insure that staff members are provided appropriate training on the operation and maintenance of the Project. The Borrower shall maintain insurance on the Project and**,** in the event of any casualty loss covered by such insurance policy, apply the proceeds to the repair of the Project or, with the approval of the Energy Commission, may use the insurance proceeds to install alternate projects to generate alternative energy cost savings to repay the Loan.

D. The Borrower agrees to provide the Energy Commission with the following information for three years following completion of the Project, unless the Energy Commission requests a longer period: (1) the annual computation, required by Section 25414 of the Energy Conservation Assistance Act, of energy cost savings for the most recent fiscal year, calculated in the manner and provided in the format prescribed by the Energy Commission; and (2) any information or change in assumptions or operations which might affect the Energy Commission's initial determination of energy savings.

E. The Borrower authorizes any official or agent of the Energy Commission, or the State to conduct physical inspections of the Project before the commencement; during construction, installation and implementation of the Project; and at any time prior to the complete repayment of the Loan.

In each contract entered into with suppliers of goods and services to install, conduct, or operate the Project, including management services, the Borrower shall include terms which allow any officer or agent of the Energy Commission or the State access to the Project site and to any books, documents, or records directly relevant to the Project.

F. Borrower will execute a continuing disclosure agreement to provide annual information and other operating or financial information as required by the Energy Commission and applicable law if Borrower is notified by the Energy Commission that: 1) its aggregate loan repayments equal or exceed 10 percent of the aggregate annual debt service on any series of Bonds, the repayment of which is secured by such loan or loans of the Borrower; or 2) its aggregate loans represent more than 10 percent of the aggregate principal amount of all Bond-funded loans pledged to a single Bond series.

G. If, prior to final repayment of the Loan, the Borrower sells the equipment or material installed with the proceeds of the Loan or sells the building, facility or system in which the Project has been implemented, then the Borrower shall apply the sale proceeds to repay any remaining balance due under this Agreement in full at the time of such sale. All such transactions shall comply with the requirements in Exhibit C, Borrower Tax Certificate. The Borrower shall notify the Energy Commission within five business days of the date on which the Borrower enters into an agreement to effect such transaction. The Borrower shall repay the Energy Commission within 30 calendar days of receiving an invoice from the Energy Commission for the balance due.

H. In accordance with Section 25415 of the Energy Conservation Assistance Act, the Borrower covenants to take such action as may be necessary to include all payments due hereunder in its annual budget and to make the necessary annual appropriations for all such payments. The obligation of the Borrower to make such payments shall be limited to the savings realized by the Borrower as a result of implementing the Project funded by the Loan.

10. DEFAULT

A. The Borrower's failure to comply with any of the terms of this Agreement shall constitute a breach of this Agreement and an event of default. In such case, the Energy Commission may declare this Agreement to have been breached and be released from any further performance hereunder.

B. In the event of any default or breach of this Agreement by the Borrower, the Energy Commission, without limiting any of its other legal rights or

remedies, may, to the extent permitted by law, declare the Promissory Note evidencing this Loan to be immediately due and payable.

11. TERMINATION

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

A. With Cause

In the event of any breach by the Borrower 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 Borrower. "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) Significant change in Energy Commission or State policy such that the work or product being funded would not be supported by the Energy Commission; or

3) Reorganization to a business entity unsatisfactory to the Energy Commission.

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 Borrower.

12. REPORTING

A. Progress reports are due each calendar quarter until Project completion. At a minimum, Borrower shall submit progress reports in accordance with the following schedule:

PROGRESS REPORT SCHEDULE	
For the Period Covering	**Report Due Date**
January 1 through March 31	April 30
April 1 through June 30	July 31
July 1 through September 30	October 31
October 1 through December 31	January 30

B. A final report is due no later than (sixty) 60 days after Project completion.

C. The Energy Commission will not process an invoice unless the Borrower's report submittals are up to date.

D. If requested by the Energy Commission, Borrower shall submit, within ten (10) days after the Energy Commission's written request, a status report on its activities to date, pursuant to this Agreement.

E. Reports shall be in a format as determined by the Energy Commission.

F. The Borrower shall submit reports regarding energy savings as described in Section 9.D above.

13. **GENERAL TERMS**

A. Indemnification by the Borrower. The Borrower agrees to indemnify, defend, and save harmless the Energy Commission, the State, and their officers, agents, and employees from any and all claims, losses, or costs (including reasonable attorney fees) arising out of, resulting from, or in any way connected with: (1) the Loan or this Agreement, or the financing or the operation of the facilities financed with the Loan; or (2) the Borrower's violation or alleged violation of any tax covenant made or tax certificate executed in connection with the Loan or this Agreement or any action of the Borrower that causes interest on any bonds secured by repayment of the Loan to be included in gross income of the owners of such bonds for federal income tax purposes.

B. Ownership of Equipment and Material. All equipment and material acquired under this Agreement shall become the property of the Borrower at time of purchase. The Borrower shall obtain and maintain in its records a written waiver of all claims, other than those previously made in writing and still unsettled, from each contractor who supplies goods and services, including management services, in connection with the Project.

C. Independent Capacity. The Borrower, and the agents and employees of the Borrower, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the Energy Commission or the State of California.

D. Assignment. Without the written consent of the Energy Commission, this Agreement is not assignable or transferable by the Borrower either in whole or in part. The Energy Commission may assign its rights under this Agreement for security purposes, and in such event the assignee of this Loan Agreement, including the bond trustee of any bonds which may be secured by repayment of this Loan**,** shall be entitled to enforce the provisions hereof and shall be a third party beneficiary of this Agreement.

E. Time of the Essence. Time is of the essence in this Agreement. Borrower is required to take timely actions which, taken collectively, move to completion of the purpose for which this Loan was awarded. The Commission Project Manager will periodically evaluate the progress toward completion. If the Commission Project Manager determines that the Borrower is not progressing toward completion within one (1) year after the effective date of this Agreement, the Commission Project Manager may, without penalty or prejudice to any of the Energy Commission's other remedies, terminate this Agreement.

F. Amendment. No amendment or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

G. Severability. In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

H. Governing Law and Venue. This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California. Venue shall be in Sacramento County.

I. Non-discrimination. During the performance of this Agreement, the Borrower and its contractors and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and family care leave. The Borrower and its contractors and subcontractors shall insure the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Borrower and its contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this agreement by reference and made a part hereof as if set forth in full. The Borrower and its contractors and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a

collective bargaining or other agreement. The Borrower and its contractors shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

J. Incorporation of Energy Conservation Assistance Act. The Energy Conservation Assistance Act, together with any applicable rules, regulations or procedures authorized by such statute, is incorporated by reference in this Agreement.

K. Borrower Authorization. The Borrower certifies it has full power and authority to enter into this Agreement, and this Agreement has been duly authorized, executed and delivered by the Borrower. The Borrower acknowledges the resolution of its governing body or other official action authorizing it to enter into this Agreement. The Borrower also authorizes such further acts as are necessary, including execution of the Promissory Note, to implement and further the intent of this Agreement.

L. Prevailing Wage. The Borrower shall comply with Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code relating to the payment of prevailing wage for work performed on the Project financed in whole or in part with the proceeds of the Loan.

M. Funding Eligibility. By signing this Agreement, Borrower certifies it is eligible to receive state funding under all applicable laws, including but not limited to Chapter 2.8 “Project Labor Agreements”, of Part 1, of Division 2 of the Public Contract Code.

14. TAX COVENANTS

The Borrower acknowledges that the proceeds of bonds issued by the California Infrastructure and Economic Development Bank, or other issuer authorized by law, may be used to fund all or a portion of this Loan and, in consideration of such funding, the Borrower hereby covenants that it shall not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of interest on such bonds under Section 103 of the Internal Revenue Code of 1986 and the regulations issued thereunder, as the same may be amended from time to time. In furtherance of the preceding sentence, the Borrower hereby covenants that it will comply with the provisions of the Tax Certificate which is attached hereto as Exhibit C and incorporated herein as if fully set forth herein.

15. NOTICE

Any notice required to be given to the Energy Commission hereunder shall be sent to the person and address listed under Legal Notices in Exhibit F, Contacts,

or at such other address as the Energy Commission may designate in writing to the Borrower. Any notice required to be given to the Borrower hereunder shall be sent to the address shown for Borrower in this Agreement, or at such other address as the Borrower shall designate in writing to the Energy Commission. Notice to either party may be given using the following delivery methods: U.S. mail, overnight mail, or personal delivery, providing evidence of receipt, to the respective parties identified in this Agreement. Delivery by fax or e-mail is not considered notice for the purposes of this Agreement. 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 24 hours, or whenever the next business day occurs.

EXHIBIT A

ATTACHMENT 1

BUDGET DETAIL/PROJECT COST AND SAVINGS

This loan is made to the City of Berkeley ("Borrower") for an energy savings Project. The Project consists of retrofitting 7,653 street lights to LED technology to be installed in the city of Berkeley, CA.

The Table below summarizes the estimated Project cost(s), saving(s) and simple payback(s) for the Project.

TABLE 1: Summary of Project Cost and Savings:

Energy Efficiency Projects	Estimated Total Project Cost	Energy Commission Loan	Estimated Annual Energy Cost Savings	Simple Payback* (Years)
LED Street Lights	$3,338,000		$368,626	
GRAND TOTAL ALL MEASURES	**$3,338,000**	**$3,000,000**	**$368,626**	**8.1**

* The simple payback is based on the loan amount.

The Borrower shall implement each measure listed in Table 1

If Borrower does not complete one or more of the measures or deviates from the quantities and specifications listed in Table 1, the Energy Commission will calculate the maximum Loan amount supported by the Project. The Loan amount will be determined by the lesser of: 1) multiplying the annual energy cost savings by 11; 2) total Project costs; or 3) approved Loan amount.

A letter of agreement or Loan amendment may be necessary to document these changes, at the discretion of the Energy Commission. If the Borrower has received disbursements exceeding the maximum Loan amount supported by the Project, the Borrower shall refund the difference to the Energy Commission within 30 days of notification.

RESOLUTION NO: 14-0115-13

STATE OF CALIFORNIA

STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

RESOLUTION - RE: CITY OF BERKELEY

RESOLVED, that the State Energy Resources Conservation and Development Commission (Energy Commission) approves Loan Agreement 005-13-ECD with the **City of Berkeley**, in the amount of **$3 million** to implement its streetlight retrofit project. The project includes retrofitting 7,653 streetlights to LED technology. The project will save over two million kilowatt-hours annually which translates to approximately $368,626 of annual cost savings for the City of Berkeley. The payback period is eight years based on the loan amount.

FURTHER BE IT RESOLVED, that this document authorizes the Executive Director to execute the same on behalf of the Energy Commission.

CERTIFICATION

The undersigned Secretariat to the Commission does hereby certify that the foregoing is a full, true, and correct copy of a Resolution duly and regularly adopted at a meeting of the California Energy Commission held on January 15, 2014.

AYE: [List of Commissioners]
NAY: [List of Commissioners]
ABSENT: [List of Commissioners]
ABSTAIN: [List of Commissioners]

_____
Harriet Kallemeyn,
Secretariat