

**Attachment J**

**TERMS AND CONDITIONS**

**AWARD #**

**PON-10-603**



**TERMS AND CONDITIONS  
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## TERMS AND CONDITIONS

### 1. ***Grant Agreement***

This project is being funded with a grant from the California Energy Commission (Commission). Funding for this project was authorized by the Budget Act of 2010-2011, Chapter 710, Statutes of 2010, and the Budget Act of 2011-2012, Chapter 33, Statutes of 2011, and consists of funds from Alternative and Renewable Fuel and Vehicle Technology Program Awards.

This Agreement is comprised of the grant funding award, the Terms and Conditions, and all attachments. These Terms and Conditions are standard requirements for grant awards. The Commission may impose additional special conditions in this grant Agreement that address the unique circumstances of this project. Special conditions that conflict with these standard provisions take precedence.

The Recipient's authorized representative shall sign all copies of this Agreement and return all signed packages to the Commission's Grants and Loans Office within 30 days. Failure to meet this requirement may result in the forfeiture of this award. When all required signatures are obtained, an executed copy will be returned to the Recipient.

All work and/or the expenditure of funds (Commission-reimbursed and/or match share) must occur within the approved term of this Agreement. The Commission cannot authorize any payments until all parties sign this Agreement.

### 2. ***Attachments and References***

The following are attached and hereby expressly incorporated into this Agreement.

- Payment Request Form.
- Work Statement.
- Budget.
- Resolution of the Recipient or Local Jurisdiction Governing Body (if applicable).
- Resolution of the California Energy Commission (if applicable).
- Special Conditions (if applicable).

The Office of Management and Budget (OMB) Circulars and/or federal regulations identified below are incorporated by reference as part of this Agreement. These Terms and Conditions and any Special Conditions take precedence over the circulars and/or regulations. The OMB Circulars and federal regulations are used to help guide the administration of the award when questions arise during the course of performance of the award. The Commission reserves the right to use as much or as little of each circular or regulation it deems necessary to administer the award in good faith and consistent with prudent fiscal management of public funds. OMB

Circulars may be accessed on the OMB web site at [www.whitehouse.gov/omb/circulars/index.html](http://www.whitehouse.gov/omb/circulars/index.html) or by calling the Office of Administration, Publications Office, at (202) 395-7332.

- Title 10 Code of Federal Regulations (CFR) Part 600: Department of energy (DOE) Financial Assistance Regulations
- Title 10 Code of Federal Regulations (CFR) Part 420: State Energy Program
- Title 48 Code of Federal Regulations (CFR), Ch. 1, Subpart 31.2: Contracts with Commercial Organizations (Supplemented by 48 CFR, Ch. 9, Subpart 931.2 for Department of Energy grants) (commercial firms and certain non-profit organizations)
- State Energy Program Funding Opportunity Announcement DE-FOA-0000052, CDFA Number 81.041, State Energy Program (<https://www.fedconnect.net/FedConnect/>)
- OMB Circular A-102: Common Rule for Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments
- OMB Circular A-110: Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (also applicable to private entities)
- OMB Circular A-87: Cost Principles for State, Local and Tribal Governments
- OMB Circular A-21: Cost Principles for Educational Institutions
- OMB Circular A-122: Cost Principles Applicable to Grants, Contracts, and Other Agreements with Non-Profit Organizations (non-profit organizations and individuals, except for those specifically exempted)
- OMB Circular A-133: Audits of States, Local Governments, and Non-Profit Organizations
- Other: \_\_\_\_\_
- None

### **3. *Funding Limitations***

Any federal, State, and local laws and regulations applicable to your project not expressly listed in this Agreement are incorporated herein as part of this Agreement.

### **4. *Due Diligence***

The Recipient is required to take timely actions which, taken collectively, move this project to completion. The Commission Project Manager will periodically evaluate the schedule for completion of the Statement of Work tasks. If the Commission Project Manager determines (1) the Recipient is not being diligent in completing the tasks in the Statement of Work or (2) the time remaining in this Agreement is insufficient to complete all project work tasks by the approved Agreement end term date, the Project Manager may recommend to the Policy Committee of the Commission (Committee) that this Agreement be terminated, and the Committee may, without prejudice to any of its remedies, terminate this Agreement.

### **5. *Products***

Products are defined as any tangible item specified in the Statement of Work. Unless otherwise directed, draft copies of all products identified in the Work Statement shall be submitted to the Commission Project Manager for review and comment. The Recipient will submit an original and two copies of the final version of all products to the Commission Project Manager.

### **6. *Reports***

#### **a. Progress Reports**

The Recipient shall submit progress reports to the Commission Project Manager as indicated in the Special Conditions or Work Statement. At a minimum, each progress report shall include the following:

**Work Statement:** This section should include a brief restatement of the approved tasks in the Work Statement and a report on the status of each, including a discussion of any products due and whether or not the project is progressing according to schedule. This section also should include a discussion of any problems encountered, proposed changes to the tasks in the Work Statement, and anticipated accomplishments in the upcoming quarter.

**Financial Status:** This section should include a narrative report comparing costs incurred to date with the approved Budget. The report should state whether or not the project is progressing within the approved Budget and discuss any proposed changes.

**Additional Information:** Additional information may be required in the progress reports as specified in the Work Statement or Special Conditions.

b. Final Reports

A draft final report shall be submitted to the Commission Project Manager no later than 60 days prior to the end of the Agreement term. At a minimum, the report shall include:

- Table of Contents.
- Abstract.
- A brief summary of the objectives of the project and how these objectives were accomplished.
- Any findings, conclusions, or recommendations for follow-up or ongoing activities that might result from the successful completion of the project.
- A statement of future intent of the grant Recipient to maintain or further develop the project.
- A Payment Request form for the final payment (including any retention).
- A consolidated list of subcontractors funded in whole or in part by the grant Recipient. Include the name, address, concise statement of work done, period, and value of each.
- Additional information specified in the Work Statement or Special Conditions.

The Commission Project Manager will review the draft report. The Recipient will incorporate applicable comments and submit the final report (the original and two copies) to the Commission Project Manager.

Upon receipt of the final report, the Commission Project Manager shall ensure that all work has been satisfactorily completed.

c. Rights in Reports

The Commission reserves the right to use and reproduce all reports and data produced and delivered pursuant to this Agreement, and reserves the right to authorize others to use or reproduce such materials. Each report becomes the property of the Commission.

d. **Failure to Comply with Reporting Requirements**

Failure to comply with the reporting requirements contained in this Agreement will be considered a material noncompliance with the terms of this Agreement. Noncompliance may result in withholding of future payments, suspension or termination of the current award, and withholding of future awards. A willful failure to perform, a history of failure to perform, or unsatisfactory performance of this and/or other financial assistance awards, may also result in a debarment action to preclude future awards.

**7. Publications - Legal Statement on Reports and Products**

You are encouraged to publish or otherwise make publicly available the results of the work conducted under the award.

No product or report produced as a result of work funded by this program shall be represented to be endorsed by the Commission, and all such products or reports shall include the following statement:

**LEGAL NOTICE**

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

**8. Changes to the Agreement**

a. **Significant Changes**

Significant changes to this Agreement must be approved at a Commission business meeting through a formal amendment. Significant changes include, but are not limited to:

- Change of Recipient's legal name,
- Change of Recipient,
- Changes in order to disencumber funds,
- Changes to the Work Statement that reasonably modify the purpose of the Agreement,
- Changes to the Work Statement that extend the due dates beyond the term of the Agreement,
- Changes to the Budget that increase the amount of the Agreement,
- Changes to the Budget that increase rates or fees.

The Recipient shall submit a request in writing to the Project Manager with a copy to the Commission Grants and Loans Officer for any significant change. The Project Manager will notify the Recipient Project Manager of the appropriate Commission action within ten (10) working days.

b. Nonsignificant Changes

Changes that are not significant to the Agreement do not need to be approved at a Commission business meeting through a formal amendment. These changes shall be approved by the Commission Project Manager and documented in a Letter of Agreement, signed by both parties.

c. Budget Reallocations

(1) The Commission, through its Project Manager and Grants and Loans Officer, and the Recipient can agree upon and make certain budget reallocations without a formal amendment to this Agreement as long as ALL of the following conditions are met:

(a) The total of all budget reallocations cannot exceed ten percent (10%) with a cap amount of \$75,000 of the Agreement Amount. For purposes of this provision, "Agreement Amount" means the total amount of Commission funds being paid to the Recipient under this Agreement. It does not include any match funds provided by the Recipient.

For example, if under an agreement the Commission agrees to pay a recipient \$100,000 and the recipient is supplying \$500,000 in match funding, the ten percent (10%) limitation applies to the \$100,000. Only up to \$10,000 of Commission funds could be reallocated without a formal amendment. If under an agreement the Commission agrees to pay a recipient \$800,000, ten percent would be \$80,000, but the cap is \$75,000, so the most that could be reallocated without a formal amendment is \$75,000.

(b) The budget reallocation cannot substantially change the scope of work. Examples of budget reallocations that do not substantially change the scope of work include, but are not limited to, the following:

- Increasing or decreasing the overall travel budget. This does not mean an increase to the allowed per diem rates under this Agreement.
- Increasing or decreasing the equipment budget.
- Increasing or decreasing the number of personnel assigned to complete tasks. This does not include increasing the hourly rates of the personnel and

classifications listed in the budget. Increasing hourly rates requires a formal amendment. The addition of personnel also requires a formal amendment unless there is already an identified classification of rates in the budget that the new personnel will be filling.

(c) The budget reallocation only involves moving funds between tasks or categories. The total Agreement Amount must remain unchanged. Increasing the total amount of the Agreement requires a formal amendment.

(d) The budget reallocation does not increase the percentage rate of Indirect Overhead, Fringe Benefits, General and Administrative Costs, or any other rates listed in the budget. For example, if an agreement budget lists the Indirect Overhead percentage rate as 25% of Direct Labor, the 25% cannot be changed without a formal amendment.

(2) To effectuate a budget reallocation under this section, the Recipient must make a request in writing to both the Project Manager and the Grants and Loans Officer. Both the Project Manager and the Grants and Loans Officer will then approve or disapprove the request in writing; the approval or disapproval is not effective or binding unless signed by both the Project Manager and the Grants and Loans Officer. Oral communications cannot be used or relied upon. If the request is approved, the Project Manager shall revise the Budget Attachments to reflect the changes and send them to the Grants and Loans Officer and the Recipient.

(3) Any desired budget reallocations that do not meet the four criteria in this section must be made through a formal amendment. For purposes of this provision, a “formal amendment” means that all of the following must occur: approval by the Commission at a Commission business meeting and a written amendment signed by both parties.

(4) Attempted budget reallocations that do not meet the requirements of this section are not legally binding upon the parties.

d. Amendments

This Agreement may be amended to make changes, including without limitation, additional funds, additional time, additional or modified tasks, and additional or modified terms.

**9. Contracting and Procurement Procedures**

This section provides general requirements for an agreement between the Recipient and a project applicant or a third party (“subcontractor”).

All subcontracts must be submitted to the Commission Project Manager for review prior to execution, pursuant to Task 1.8.

The Recipient is required, where feasible, to employ contracting and procurement practices that promote open competition for all goods and services needed to complete this project. Recipient shall obtain price quotes from an adequate number of sources for all subcontracts.

Subcontracting criteria are specified in the applicable OMB Circulars and/or federal regulations incorporated by reference in this Agreement. The Commission will defer to the Recipient's own regulations and procedures as long as they reflect applicable state and local laws and regulations and are not in conflict with the minimum standards specified in this Agreement and any OMB Circulars and/or federal regulations incorporated by reference in this Agreement.

Upon request, the Recipient must submit to the Commission Project Manager a copy of all solicitations for services or products required to carry out the terms of this Agreement, copies of the proposals or bids received, and copies of subcontracts executed. If a specific subcontractor was identified in the original grant application and the grant was evaluated based in part on this subcontractor's qualifications, then prior written approval from the Commission Project Manager is required before substituting a new subcontractor.

The Recipient is responsible for handling all contractual and administrative issues arising out of or related to any subcontracts it enters into under this Agreement.

All subcontracts must incorporate all of the following:

- A clear and accurate description of the material, products, or services to be procured as well as a detailed budget and timeline.
- Provisions that allow for administrative, contractual, or legal remedies in instances where subcontractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.
- Provisions for termination by the Recipient, including termination procedures and the basis for settlement.
- Language conforming to the "Nondiscrimination" provision in this Agreement.
- Any additional requirements specified in the OMB Circulars incorporated by reference in this Agreement.
- The Standard of Performance provisions specified in this Agreement.
- Retention of Records provisions specified in this Agreement.

- Audits provisions specified in this Agreement.
- Equipment provisions related to subcontractors specified in this Agreement.
- Language conforming to the “Indemnification” provision in this Agreement.

Failure to comply with the above requirements may result in the termination of this Agreement.

#### **10. *Bonding and Insurance***

The Recipient will follow its own bonding and insurance requirements relating to bid guarantees, performance bonds, and payment bonds without regard to the dollar value of the subcontract(s) as long as they reflect applicable state and local laws and regulations and are not in conflict with the minimum standards specified in the OMB Circulars and/or federal regulations incorporated by reference in this Agreement.

#### **11. *Permits and Clearances***

The Recipient is responsible for ensuring all necessary permits and environmental documents are prepared and clearances are obtained from the appropriate agencies.

#### **12. *Equipment***

Title to equipment acquired by the Recipient with grant funds shall vest in the Recipient. The Recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by grant funds, and the Recipient shall not encumber the property without Commission Project Manager approval. When no longer needed for the original project or program, the Recipient shall contact the Commission Project Manager for disposition instructions.

Title to equipment acquired by the subcontractor with grant funds shall vest in the subcontractor. The subcontractor shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by grant funds, and the subcontractor shall not encumber the property without Commission Project Manager approval. When no longer needed for the original project or program, the Recipient shall contact the Commission Project Manager for disposition instructions.

Recipient and/or subcontractor should refer to the applicable OMB circulars and/or federal regulations incorporated by reference in this Agreement for additional equipment requirements.

### **13. Termination**

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

#### **a. With Cause**

In the event of any breach by the Recipient of the conditions set forth in this Agreement, the Commission Policy Committee may, without prejudice to any of its legal remedies, terminate this Agreement for cause upon five (5) days written notice to the Recipient.

#### **b. Without Cause**

The Commission Policy Committee 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 Recipient by certified mail, return receipt requested. In such event, the Recipient agrees to use all reasonable efforts to mitigate the Recipient's expenses and obligations hereunder. Also in such event, the Commission shall pay the Recipient for all satisfactory work performed and expenses incurred within 30 days after such notice of termination which could not by reasonable efforts of the Recipient have been avoided, but not in excess of the maximum payable under this Agreement.

### **14. Stop Work**

The Commission Grants Officer may, at any time, by written notice to Recipient, require Recipient 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, Recipient 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 Energy Commission based upon a written request by Recipient. Such adjustment request must be made by Recipient within thirty (30) days from the date of the stop work order.
- c. Canceling a Stop Work Order. Recipient shall resume the work only upon receipt of written instructions from the Commission Grants Officer.

### **15. Travel and Per Diem**

- a. The Recipient shall be reimbursed for travel and per diem expenses using the same rates provided to non-represented State employees. The

[http://www.energy.ca.gov/contracts/TRAVEL\\_PER\\_DIEM.PDF](http://www.energy.ca.gov/contracts/TRAVEL_PER_DIEM.PDF).

- b. For purposes of payment, Recipient's headquarters shall be considered the location of the Recipient's office where the employees' assigned responsibilities for this award are permanently assigned. Travel expenditures not listed in this section cannot be reimbursed.
- c. Travel identified in the Budget section of this Agreement is approved and does not require further authorization.
- d. Travel that is not included in the Budget section of this Agreement shall require written authorization from the Project Manager and Grants and Loans Officer prior to travel departure. The Energy Commission will reimburse travel expenses from the Recipient's office location.
- e. The Recipient must retain documentation of travel expenses in its financial records. The documentation must be listed by trip and include dates and times of departure and return. Travel receipts, except for travel meals and incidentals, shall be submitted with invoices requesting reimbursement from the Energy Commission.

## **16. Standard of Performance**

Recipient, its subcontractors and their employees, in the performance of Recipient's work under this Agreement shall be responsible for exercising the degree of skill and care required by customarily accepted good professional practices and procedures used in the Recipient's field.

Any costs for failure to meet the foregoing standard or to correct otherwise defective work that requires re-performance of the work, as directed by Commission Project Manager, shall be borne in total by Recipient and not the Commission. The failure of a project to achieve the performance goals and objectives stated in the Work Statement is not a basis for requesting re-performance unless the work conducted by Recipient and/or its subcontractors is deemed by the Commission to have failed the foregoing standard of performance.

In the event Recipient/subcontractor fails to perform in accordance with the above standard:

- Recipient/subcontractor will re-perform, at its own expense, any task which was not performed to the reasonable satisfaction of the Commission Project Manager. Any work re-performed pursuant to this paragraph shall be completed within the time limitations originally set forth for the specific task

- The Commission shall provide a new schedule for the re-performance of any task pursuant to this paragraph in the event that re-performance of a task within the original time limitations is not feasible; and
- The Commission shall have the option to direct Recipient/subcontractor not to re-perform any task which was not performed to the reasonable satisfaction of the Commission Project Manager pursuant to application of (1) and (2) above. In the event the Commission directs Recipient/subcontractor not to re-perform a task, the Commission and Recipient shall negotiate a reasonable settlement for satisfactory work performed. No previous payment shall be considered a waiver of the Commission's right to reimbursement.

Nothing contained in this section is intended to limit any of the rights or remedies which the Commission may have under law.

## **17. Payment of Funds**

The Energy Commission agrees to reimburse the Recipient for actual allowable expenditures incurred in accordance with the Budget. The rates in the Budget are rate caps, or the maximum amount allowed to be billed. The Recipient can only bill for actual expenses incurred at the Recipient's actual direct labor rate(s), fringe benefit rate(s), and indirect rate(s), not to exceed the rates specified in the Budget.

### **a. Payment Requests**

The Recipient may request payment from the Commission at any time during the term of this Agreement although it is preferred that payment requests be submitted with the progress reports. The final payment request must be received by the Energy Commission along with the draft Final Report 60 days prior to the end of the Agreement term.

Payments will generally be made on a reimbursement basis for Recipient expenditures, i.e., after the Recipient has paid for a service, product, supplies, or other approved budget item. No reimbursement for food or beverages shall be made other than allowable per diem charges.

As a general rule, advance payments are not allowed and discouraged. The Commission, at its sole discretion, may honor advance payment requests if warranted by **compelling need**. Advance payments shall only be made upon the satisfaction of conditions intended to protect grant funds from loss or misuse, including (1) demonstrating the willingness and ability to maintain procedures to minimize the time elapsing between the receipt of the advanced funds and the Recipient's disbursement of the funds, (2)

depositing all advance payments into a separate interest-earning account; (3) reporting interest earned on advance payments to the Commission Project Manager and remitting quarterly to the Commission's Accounting Office; (4) accounting for the expenditure of all advance payments and returning any unexpended advanced funds within 120 days of the advance or 60 days prior to termination of this Agreement, whichever comes sooner, unless the Commission Grants and Loans Office specifies a different time period; (5) other conditions as specified by the Grants and Loans Office.

Funds in this Agreement have a limited period in which they must be expended. All Recipient expenditures (Commission-reimbursed and match share) must occur within the approved term of this Agreement.

b. Documentation

All payment requests, including payment requests from the lead subcontractor for a Project, must be submitted using a completed Payment Request form (Exhibit C, Attachment 1). This form must be accompanied by an itemized list of all charges and copies of all receipts or invoices necessary to document these charges for both Commission and match share, including backup documentation for actual expenditures, such as time cards, vendor invoices, and proof of payment. Any payment request that is submitted without the itemization will not be authorized. If the itemization or documentation is incomplete, inadequate, or inaccurate, the Commission Project Manager will inform the Recipient and hold the invoice until all required information is received or corrected. Any penalties imposed on the Recipient by a subcontractor because of delays in payment will be paid by the Recipient.

Any documentation in foreign currency must be converted to dollars, and the conversion rate must be included in your itemization.

c. Certification

The following certification shall be included on each Payment Request form and signed by the Recipient's authorized officer or Project's authorized officer, as appropriate:

***I certify to the best of my knowledge and belief that this report is correct and complete and all outlays and obligations are for the purposes set forth in the funding Agreement and that the reimbursement of these costs has not and will not be received under other sources including, but not limited to, a Government Entity contract, subcontract or other procurement method.***

d. Government Entity

Government Entity is defined as a governmental agency from California or any state or a state college or state university from California or any state; a local government entity or agency, including those created as a Joint Powers Authority; an auxiliary organization of the California State University or a California community college; the Federal Government; a foundation organized to support the Board of Governors of the California Community Colleges or an auxiliary organization of the Student Aid Commission established under Education Code 69522.

e. Release of Funds

The Commission Project Manager will not process any payment request during the Agreement term until the following conditions have been met:

- All required reports have been submitted and are satisfactory to the Commission Project Manager.
- All applicable special conditions have been met.
- All appropriate permits or permit waivers from governmental agencies have been issued to the Recipient and copies have been received by the Commission Project Manager.
- All products due have been submitted and are satisfactory to the Commission Project Manager.
- All relevant subcontracts have been executed.
- Other prepayment conditions as may be required by the Commission Project Manager have been met. Such conditions will be specified in writing ahead of time, if possible.

f. Fringe Benefits, Indirect Overhead, General and Administrative (G&A), and Facilities and Administration (F&A)

Indirect cost rates must be developed in accordance with generally accepted accounting principles and the applicable OMB circulars or federal acquisition regulations. If the Recipient has an approved fringe benefits or indirect cost rate (indirect overhead, G&A, or F&A) from their cognizant Federal Agency, the Recipient may bill at the federal rate up to the Budget rate caps if the following conditions are met:

- The Recipient may bill at the federal provisional rate but must adjust annually to reflect their actual final rates for the year in accordance

with the Labor, Fringe, and Indirect Invoicing Instructions which can be accessed in this agreement.

- The cost pools used to develop the federal rates must be allocable to the Commission Agreement, and the rates must be representative of the portion of costs benefiting the Commission Agreement. For example, if the federal rate is for manufacturing overhead at the Recipient's manufacturing facility and the Commission Agreement is for research and development at their research facility, the federal indirect overhead rate would not be applicable to the Commission Agreement.
- The federal rate must be adjusted to exclude any costs that are specifically prohibited in the Commission Agreement.
- The Recipient may only bill up to the Agreement Budget rate caps unless and until an amendment to the Agreement Budget is approved.

g. Retention

It is the Commission's policy to retain 10 percent of any payment request or 10 percent of the total Commission award at the end of the project. After the project is complete the Recipient must submit a completed payment request form requesting release of the retention. The Commission Project Manager will review the project file and, when satisfied that the terms of the funding Agreement have been fulfilled, will authorize release of the retention.

h. State Controller's Office

Payments are made by the State Controller's Office.

**18. *Fiscal Accounting Requirements***

The Recipient shall review and comply with the administrative requirements outlined in the applicable sections of the OMB circulars and/or federal regulations incorporated as part of the funding Agreement. The OMB circulars and/or federal regulations are supplemented with the following requirements:

a. Accounting and Financial Methods

The Recipient shall establish a separate ledger account or fund for receipt and disbursement of Commission funds for each project funded by the Commission. Expenditure details must be maintained in accordance with the approved budget details using appropriate accounting practices.

b. Retention of Records

The Recipient shall retain all project records (including financial records, progress reports, and payment requests) for a minimum of three (3) years after the final payment has been received or three years after the federal grant term, whichever is later, unless otherwise specified in the funding Agreement.

Records for nonexpendable personal property acquired with grant funds shall be retained for three years after its final disposition or three years after the federal grant term, whichever is later.

c. Audits

Upon written request from the Commission, the Recipient shall provide detailed documentation of all expenses at any time throughout the project. In addition, the Recipient agrees to allow the Commission or any other agency of the State or the Federal Government, or their designated representative, upon written request, to have reasonable access to and the right of inspection of all records that pertain to the project during the term of this Agreement and for a period of three (3) years thereafter or three years after the federal grant term, whichever is later, unless the Commission notifies the Recipient, prior to the expiration of such three-year period, that a longer period of record retention is necessary. Further, the Recipient agrees to incorporate an audit of this project within any scheduled audits, when specifically requested by the State. Recipient agrees to include a similar right to audit in any subcontract.

Recipients are strongly encouraged to conduct annual audits in accordance with the single audit concept. The Recipient should provide two copies of the independent audit report and any resulting comments and correspondence to the Commission Project Manager within 30 days of the completion of such audits.

d. Cost or Match Share

If the grant Budget includes cost or match share under this Agreement, the Recipient agrees to be liable for the percentage of cost or match share identified in this Agreement of the total allowable project costs incurred even if the project is terminated early or is not funded to its completion. The percentage of match share required will be reconciled quarterly.

*Total allowable project cost* is the sum of the Agreement share and Recipient share of the project costs. *Cost share* percentage is calculated by dividing Recipient cost share amount by the total allowable project cost. *Match share*

percentage is calculated by dividing Recipient match share by the Agreement share of the project costs.

Failure to provide the minimum required cost or match share may result in the subsequent recovery of some or all of the funds provided under this Agreement.

The Recipient must maintain accounting records detailing the expenditure of the match (actual cash and in-kind services) and provide complete documentation of expenditures as described under "Payment of Funds."

## **19. Indemnification**

The Recipient agrees to indemnify, defend, and save harmless the State, its officers, agents, and employees from any and all claims and losses accruing or resulting to Recipient and to any and all contractors, subcontractors, materialmen, laborers, and any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the Recipient in the performance of this Agreement.

## **20. Disputes**

In the event of a dispute or grievance between Recipient and the Commission regarding this Agreement, the following two-step procedure shall be followed by both parties. Recipient shall continue with responsibilities under this Agreement during any dispute.

### **a. Commission Dispute Resolution**

The Recipient shall first discuss the problem informally with the Commission Project Manager. If the problem cannot be resolved at this stage, the Recipient must direct the grievance together with any evidence, in writing, to the Commission Grants and Loans Officer. The grievance must state the issues in the dispute, the legal authority or other basis for the Recipient's position and the remedy sought. The Commission Grants and Loans Officer 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 Recipient. The Grants and Loans Officer shall respond in writing to the Recipient, indicating a decision supported by reasons. Should the Recipient disagree with the Grants and Loans Officer decision, the Recipient may appeal to the second level.

The Recipient must prepare a letter indicating why the Grants and Loans Officer's decision is unacceptable, attaching to it the Recipient's original

statement of the dispute with supporting documents, along with a copy of the Grants and Loans Officer's response. This letter shall be sent to the Executive Director at the Commission within ten (10) working days from receipt of the Grants and Loans Officer's decision. The Executive Director or designee shall meet with the Recipient to review the issues raised. A written decision signed by the Executive Director or designee shall be returned to the Recipient within twenty (20) working days of receipt of the Recipient's letter. The Executive Director may exercise the option of presenting the decision to the Commission at a business meeting. Should the Recipient disagree with the Executive Director's decision, the Recipient may appeal to the Commission at a regularly scheduled business meeting. Recipient will be provided with the current procedures for placing the appeal on a Commission Business Meeting Agenda.

b. Mutual Agreement for Arbitration

Should the Commission's Dispute Resolution procedure described above fail to resolve a dispute or grievance to the satisfaction of the Recipient, either party may seek to have the dispute or grievance resolved through binding arbitration. Both parties must consent before submitting the dispute to arbitration. The arbitration proceeding shall take place in Sacramento County, California, and shall be governed by the commercial arbitration rules of the American Arbitration Association (AAA) in effect on the date the arbitration is initiated. The dispute or grievance shall be resolved by one (1) arbitrator who is an expert in the particular field of the dispute or grievance. The arbitrator shall be selected in accordance with the aforementioned commercial arbitration rules. If arbitration is mutually decided by the parties, arbitration is in lieu of any court action and the decision rendered by the arbitrator shall be final (not appealable to a court through the civil process). However, judgment may be entered upon the arbitrator's decision and is enforceable in accordance with the applicable law in any court having jurisdiction over this Agreement. The demand for arbitration shall be made no later than six (6) months after the date of the termination of this Agreement, irrespective of when the dispute or grievance arose, and irrespective of the applicable statute of limitations for a suit based on the dispute or grievance.

The cost of arbitration shall be borne by the parties as follows:

- The AAA's administrative fees shall be borne equally by the parties;
- The expense of a stenographer shall be borne by the party requesting a stenographic record;
- Witness expenses for either side shall be paid by the party producing the witness;

- Each party shall bear the cost of its own travel expenses;
- All other expenses shall be borne equally by the parties, unless the arbitrator apportions or assesses the expenses otherwise as part of his or her award.

At the option of the parties, any or all of these arbitration costs may be deducted from any balance of Agreement funds. Both parties must agree, in writing, to utilize Agreement funds to pay for arbitration costs.

If the parties do not mutually agree to binding arbitration, the sole forum to resolve the dispute is State court.

## **21. *Workers' Compensation Insurance***

- a. Recipient hereby warrants that it carries Worker's Compensation Insurance for all of its employees who will be engaged in the performance of this Agreement, and agrees to furnish to the Commission Project Manager satisfactory evidence of this insurance at any time the Commission Project Manager may request.
- b. If Recipient is self-insured for worker's compensation, it hereby warrants such self-insurance is permissible under the laws of the State of California and agrees to furnish to the Commission Project Manager satisfactory evidence of this insurance at any time the Commission Project Manager may request.

## **22. *General Provisions***

- a. **Governing Law**

It is hereby understood and agreed that this Agreement shall be governed by the laws of the State of California as to interpretation and performance.

- b. **Independent Capacity**

The Recipient, and the agents and employees of the Recipient, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State of California.

c. Assignment

Without the written consent of the Commission in the form of a formal written amendment, this Agreement is not assignable or transferable by Recipient either in whole or in part.

d. Timeliness

Time is of the essence in this Agreement.

e. Unenforceable Provision

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.

f. 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.

g. Assurances

The Commission reserves the right to seek further written assurances from the Recipient and its team that the work of the project under this Agreement will be performed consistent with the terms of the Agreement.

h. Change in Business

(1) Recipient shall promptly notify the Commission of the occurrence of each of the following:

(a) A change of address.

(b) A change in the business name or ownership.

(c) The existence of any litigation or other legal proceeding affecting the project.

(d) The occurrence of any casualty or other loss to project personnel, equipment or third parties of a type commonly covered by insurance.

(e) Receipt of notice of any claim or potential claim against Recipient for patent, copyright, trademark, service mark and/or trade secret infringement that could affect the Commission's rights.

(2) Recipient shall not change or reorganize the type of business entity under which it does business except upon prior written notification to the Commission. A change of business entity or name change requires an amendment assigning or novating the Agreement to the changed entity. In the event the Commission is not satisfied that the new entity can perform as the original Recipient, the Commission may terminate this Agreement as provided in the termination paragraph.

i. Survival of Terms

It is understood and agreed that certain provisions shall survive the completion or termination date of this Agreement for any reason. The provisions include, but are not limited to:

- "Payments of Funds"
- "Equipment"
- "Change in Business"
- "Disputes"
- "Termination"
- "Audit"
- "Indemnification"
- "Fiscal Accounting Requirements"

**23. *Certifications and Compliance***

a. Federal, State and Municipal Requirements

Recipient must obtain any required permits and shall comply with all applicable federal, State, and municipal laws, rules, codes, and regulations for work performed under this Agreement.

b. Nondiscrimination Statement of Compliance

During the performance of this Agreement, Recipient and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. Recipient and its subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination

and harassment. Recipient and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Sections 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 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 of it as if set forth in full. Recipient 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 Recipient shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

c. Drug-Free Workplace Certification

By signing this Agreement, the Recipient hereby certifies under penalty of perjury under the laws of the State of California that the Recipient will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- (1) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations as required by Government Code Section 8355(a)(1).
- (2) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(a)(2) to inform employees about all of the following:
  - The dangers of drug abuse in the workplace;
  - The person's or organization's policy of maintaining a drug-free workplace;
  - Any available counseling, rehabilitation, and employee assistance programs; and
  - Penalties that may be imposed upon employees for drug abuse violations.

(3) Provide, as required by Government Code Section 8355(a)(3), that every employee who works on the proposed project:

- Will receive a copy of the company's drug-free policy statement;
- Will agree to abide by the terms of the company's statement as a condition of employment on the project.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both, and the Recipient may be ineligible for any future State awards if the Commission determines that any of the following has occurred: (1) the Recipient has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above.

d. Child Support Compliance Act (Applicable to California Employers)

For any Agreement in excess of \$100,000, the Recipient acknowledges that:

- It recognizes the importance of child and family support obligations and shall fully comply with all applicable State and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
- To the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

e. Americans with Disabilities Act

By signing this Agreement, Recipient assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 12101, et seq.), which prohibits discrimination on the basis of disability, as well as applicable regulations and guidelines issued pursuant to the ADA.

## **24. Site Visits**

The California Energy Commission, the federal awarding agency, and/or their designees have the right to make site visits at reasonable times to review and inspect project accomplishments and management control systems and to provide technical assistance, if required. Recipient must provide and must require subawardees to provide reasonable facilities and assistance for the safety and

convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

**25. Confidentiality**

A. Information Considered Confidential

Confidential information is information designated confidential pursuant to the procedures specified in 20 CCR 2505. If applicable, all Recipient 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 Recipient, as “Confidential” on each page of the document containing the Confidential Information and presented in a sealed package to the Commission Grants 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 Recipient and the Energy Commission agree that during this Agreement, it is possible that the Recipient may develop additional data or information not originally anticipated as a confidential deliverable. In this case, Recipient 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 Recipient or any other entity become public records and are no longer subject to the above confidentiality designation.

**26. Budget Contingency Clause**

It is mutually agreed that this Agreement shall be of no further force and effect 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. In this event, the Energy Commission shall have no liability to pay any funds whatsoever to the Recipient or to furnish any other consideration under this Agreement, and the Recipient 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 Energy Commission shall have the option to either: 1) cancel this Agreement with no liability occurring to the Energy Commission; or 2) offer an Agreement Amendment to the Recipient to reflect the reduced amount.

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**EXHIBIT C**  
**Attachment 1**

**PAYMENT REQUEST FORM**

**FINANCIAL STATUS REPORT OR PAYMENT REQUEST**

Grant  
CEC 211-(a) (Rev. 1/01)

Payment Request No.:

*Instructions are on the reverse*

Recipient (Name and Address)		Type of Request <input type="checkbox"/> Reimbursement <input type="checkbox"/> Status Report Only <input type="checkbox"/> Release Retention		Amount of this Request  \$ _____	
		Period Covered by this Request  to		Funding History Funds Requested to Date: \$ _____ Funds Received to Date: \$ _____ Expenses to Date: \$ _____ Funds on Hand: \$ _____ Interest Earned to Date: \$ _____	
Grant No.	Recipient ID No.	Approved Project Term  to			

ENERGY COMMISSION SHARE Line Item	Budget	Expenses this Period	Expenses to Date	Obligations Not Yet Paid	Remaining Balance
Personnel					
Fringe Benefits					
Travel					
Equipment					
Supplies					
Contractual					
Construction					
Other					
Indirect					
<b>TOTAL</b>					

MATCH SHARE Line Item	Budget	Expenses this Period	Expenses to Date	Obligations Not Yet Paid	Remaining Balance
Personnel					
Fringe Benefits					
Travel					
Equipment					
Supplies					
Contractual					
Construction					
Other					
Indirect					
<b>TOTAL</b>					

**GRAND TOTAL**

STATE OF CALIFORNIA

CALIFORNIA ENERGY COMMISSION

<b>RECIPIENT CERTIFICATION</b>		<b>ENERGY COMMISSION USE ONLY (-NS-)</b>	
I certify to the best of my knowledge and belief that this report is correct and complete and all outlays and obligations are for the purposes set forth in the funding Agreement and that the reimbursement of these costs has not and will not be received under other sources including, but not limited to, a Government Entity contract, subcontract, or other procurement method.		Amount Authorized	
		Signature of Authorized Certifying Officer	Date
Type or Print Name and Title	Phone	Fiscal Year	
<b>ENERGY COMMISSION APPROVALS</b>		Appropriation Code	
Commission Project Manager	Date		
Commission Program Manager	Date	Retention	
Grants Office	Date	Amount Scheduled	

## INSTRUCTIONS

**Payment Request No.:** Begin with the number 1 on your first payment request and consecutively number each subsequent payment request. The last payment request should include the notation, "Final."

**Recipient (Name and Complete Address):** Same as "Recipient" on the Grant Agreement. Address should include the city, state, and zip code.

**Type of Request:** Indicate if this is a "Reimbursement" or "Status Report Only." Be sure to provide backup documentation. If no funds are being requested, check "Status Report Only."

**Amount of this Request:** This line shows the amount currently being requested. Indicate the amount being requested.

**Period Covered by this Report:** The time period covered by this request. The first day of the period should be the day after the last day covered by your previous report. Example: 1/14/94 to 3/31/94.

**Grant No.:** Same as "Grant Number" on the Grant Agreement. This is the eight digit code assigned by the Energy Commission (example 961-93-000).

**Recipient ID No.:** This space is for an account number or other identifier that may be assigned by the Recipient (optional).

**Approved Project Term:** This is the entire project period beginning with the date the project starts through the end date. This date should match the "Term" on the Grant Agreement unless you have received a term extension.

**Total Funds Requested to Date:** Show the total of all funds requested from the Energy Commission prior to this request.

**Funds Received to Date:** Show the total amount of funds received from the Energy Commission prior to this request. "Funds Requested to Date" minus any retention withheld equals "Funds Received to date".

**Total Expenses to Date:** Show the total expenses from the beginning of the project through and including the period covered by this report. This amount should be the same as the "Grand Total" expenses to date.

**Funds on Hand:** This should be filled in only if you have received any advance funds from the Commission. If you have, show the balance of funds received. ("Funds Received to Date" minus "Expenses to Date" equals "Funds on Hand.")

**Interest Earned to Date:** Show all interest earned on previously advanced funds.

**Line Items:** The following budget categories apply to all expenditures invoiced.

- **Budget:** Show by line item the budget as shown in the Grant Agreement.
- **Expenses this Period:** Show by line item the actual payments made by the Recipient during the period covered by this report.
- **Expenses to Date:** Show by line item the cumulative total of all expenses from the beginning of the project through and including the period covered by this report.
- **Obligations Not Yet Paid:** Show by line item all funds obligated on purchase orders, contracts, etc. for which you have received an invoice but have not yet paid.
- **Remaining Balance:** Show by line item the funds available for expenses or obligations. "Budget" minus "Expenses to Date" minus "Obligations Not Yet Paid" equals "Remaining Balance."

**Certification:** Name, title and signature of authorized certifying official (usually the grant Recipient's project manager).

**Submit original and one copy to:**

California Energy Commission  
Accounting Office  
1516 Ninth Street, MS # 2  
Sacramento, CA 95814