

Attachment 14
Exhibit D
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1. Public Work -- Payment of Prevailing Wages Generally Required by Law

Projects that receive an award of public funds from the Energy Commission often involve construction, alteration, demolition, installation, repair or maintenance work over \$1,000.

NOTE: Therefore projects that receive an award of public funds from the Energy Commission are likely to be considered public works under the California Labor Code. See Chapter 1 of Part 7 of Division 2 of the California Labor Code, commencing with Section 1720 and Title 8, California Code of Regulations, Chapter 8, Subchapter 3, commencing with Section 16000.

Accordingly, the Energy Commission assumes that all projects it funds are public works. Projects deemed to be public works require among other things the payment of prevailing wages.

NOTE: Prevailing wage rates can be significantly higher than non-prevailing wage rates.

By accepting this grant, Recipient as a material term of this agreement shall be fully responsible for complying with all California public works requirements including but not limited to payment of prevailing wage. Therefore, as a material term of this grant, Recipient must either:

(a) Proceed on the assumption that the project is a public work and ensure that:

- (i) prevailing wages are paid; and
- (ii) the project budget for labor reflects these prevailing wage requirements; and
- (iii) the project complies with all other requirements of prevailing wage law including but not limited to keeping accurate payroll records, and complying with all working hour requirements and apprenticeship obligations;

or,

(b) Timely obtain a legally binding determination from DIR or a court of competent jurisdiction before work begins on the project that the proposed project is not a public work.

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NOTE: Only the California Department of Industrial Relations (DIR) and courts of competent jurisdiction have jurisdiction to issue legally binding determinations that a particular project is or is not a public work.

If the Recipient is unsure whether the project receiving this award is a “public work” as defined in the California Labor Code, it may wish to seek a timely determination from the California Department of Industrial Relations (DIR) or an appropriate court.

NOTE: Such processes can be time consuming and therefore it may not be possible to obtain a timely determination before the date for performance of the award commences.

If the Recipient does not timely obtain a binding determination from DIR or a court of competent jurisdiction that the project is not a public work, before the grant agreement from the Commission is executed, the Recipient shall assume that the project is a public work and that payment of prevailing wages is required and shall pay prevailing wages unless and until such time as the project is subsequently determined to not be a public work by DIR or a court of competent jurisdiction.

NOTE: California Prevailing Wage law provides for substantial damages and financial penalties for failure to pay prevailing wages when payment of prevailing wages is required.

Subcontractors and Flow-down Requirements. Recipient shall ensure that its subcontractors, if any, also comply with above requirements with respect to public works/prevailing wage. Recipient shall ensure that all agreements with its contractors/subcontractors to perform work related to this Project contain the above terms regarding payment of prevailing wages on public works projects. Recipient shall be responsible for any failure of Recipient’s subcontractors to comply with California prevailing wage and public works laws.

Indemnification and breach. Any failure of Recipient or its subcontractors to comply with the above requirements shall constitute a breach of this agreement that excuses the Commission’s performance of this grant agreement at the Commission’s option, and shall be at Recipient’s sole risk. In such a case, Commission may refuse payment to Recipient of any amount under this award and Commission shall be released, at its option, from any further performance of this award or any portion thereof. By accepting this grant award, as a material term of this agreement, Recipient

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agrees to indemnify the Energy Commission and hold the Energy Commission harmless for any and all financial consequences arising out of or resulting from the failure of Recipient and/or any of Recipient's subcontractors to pay prevailing wages or to otherwise comply with the requirements of prevailing wage law.

Budget. Recipient's budget on public works projects must indicate which job classifications are subject to prevailing wage. For detailed information about prevailing wage and the process to determine if the proposed project is a public work, Recipient may wish to contact the California Department of Industrial Relations (DIR) or a qualified labor attorney of their choice for guidance.

Covered Trades. For public works projects, Recipient may contact DIR for a list of covered trades and the applicable prevailing wage.

Questions. If Recipient has any questions about this contractual requirement or the wage, record keeping, apprenticeship or other significant requirements of California prevailing wage law, it is recommended that Recipient consult DIR and/or a qualified labor attorney of its choice before accepting the award for this grant.

Certification. Recipient shall certify to the Energy Commission on each Payment Request Form, either that (a) prevailing wages were paid to eligible workers who provided labor for work covered by the payment request and that the Recipient and all contractors and subcontractors otherwise complied with all California prevailing wage laws, or (b) that the project is not a public work requiring the payment of prevailing wages. In the latter case, Recipient shall provide competent proof of a DIR or court determination that the project is not a public work requiring the payment of prevailing wages.

Prior to the release of any retained funds under this Agreement, the Recipient shall submit to the Energy Commission the above-described certificate signed by the Recipient and all contractors and subcontractors performing public works activities on the project. Absent such certificate, Recipient shall have no right to any funds under this grant, and Commission shall be relieved of any obligation to pay said funds.

1. ~~Public Works and Payment of Prevailing Wage~~

~~If state prevailing wage laws apply to the project funded under this Agreement, then the requirements contained in this special condition shall apply:~~

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A. Recipient/General Requirements

- ~~1. Recipient shall comply with state prevailing wage law, Chapter 1 of Part 7 of Division 2 of the Labor Code, commencing with Section 1720 and Title 8, California Code of Regulations, Chapter 8, Subchapter 3, commencing with Section 16000, for any "public works" (as that term is defined in the statutes) performed on the Project funded by this Agreement. For purpose of compliance with prevailing wage law, the Recipient shall comply with provisions applicable to an awarding body. Compliance with state prevailing wage law includes without limitation: payment of at least prevailing wage as applicable; overtime and working hour requirements; apprenticeship obligations; payroll recordkeeping requirements; and other obligations as required by law.~~
- ~~2. Recipient shall certify to the Energy Commission on each Payment Request Form, that prevailing wages were paid to eligible workers who provided labor for work covered by the payment request and that the Recipient and all contractors complied with prevailing wage laws.~~
- ~~3. Prior to the release of any retained funds under this Agreement, the Recipient shall submit to the Energy Commission a certificate signed by the Recipient and all contractors performing public works activities stating that prevailing wages were paid as required by law. The required certificate will be provided by the Commission Project Manager at the Final Meeting.~~

B. Flowdown Requirements

~~Recipient shall ensure that all agreements with its contractors to perform work related to this Project contain the following provisions:~~

- ~~1. Contractor shall comply with state prevailing wage law, Chapter 1 of Part 7 of Division 2 of the Labor Code, commencing with Section 1720; and Title 8, California Code of Regulations, Chapter 8, Subchapter 3, commencing with Section 16000, for all construction, alteration, demolition, installation, repair or maintenance work over \$1,000 performed under the contract. Contractor's obligations under prevailing wage laws include without limitation: pay at least the applicable prevailing wage for public works activities performed on the Project; comply with overtime and working hour~~

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~~requirements; comply with apprenticeship obligations; comply with payroll recordkeeping requirements; and comply with other obligations as required by law.~~

- ~~2. Contractor shall ensure that the above requirements are included in all its contracts and any layer of subcontracts for activities for the Project.~~

2. Funding Restrictions

- A. Applicability of Funding Restrictions: Recipients are required to comply with all regulations applicable to the ARFVT program. The following funding restrictions are based on the Energy Commission's current regulation found at Title 20, California Code of Regulations, section 3103, as of November 2012. Recipients should note that the following item was approved at the November 14, 2012 Business Meeting:

ALTERNATIVE AND RENEWABLE FUEL AND VEHICLE TECHNOLOGY PROGRAM REGULATIONS. Possible approval of proposed rulemaking proceeding to consider possible revision of Section 3103 of the Alternative and Renewable Fuel and Vehicle Technology (ARFVTP) Program regulations. (Title 20, California Code of Regulations, Section 3103.) This includes but is not limited to consideration of possible elimination of the Low Carbon Fuel Standard credit discount provisions set forth in subsection (b) of the regulation, as well as possible revisions to Subsection (a) of the regulation.

If the rulemaking proceeding results in any changes, revision or elimination of all or any portion of current Regulation 3103, the following funding restrictions shall automatically become inapplicable to the extent they are inconsistent with the new regulation. If Regulation 3103 does not change, then the following funding restrictions shall continue to be fully applicable as provided below.

- B. If Recipient is an obligated party under either the California Low Carbon Fuel Standard (17 CCR 95480-95490) (LCFS) or initiatives under Assembly Bill 32 (17 CCR 95800-96023) (AB 32), Recipient may only receive funding for the portion of the project that exceeds what is required for compliance with the applicable performance requirement. For purposes of this Agreement, an "obligated party" is one that is required to meet a performance standard under the LCFS or AB 32 initiatives.
- C. If Recipient is an obligated party under the LCFS or AB 32 or if Recipient "opts in" to either program before or during the Agreement term, Recipient agrees that if it transfers credits during the term of the Agreement or for a

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period of three years thereafter, it will do so at a discounted value in proportion to the funding received from the Energy Commission for the project, according to the following formula:

$(\text{Fair market value of credits}) \times (1 - [\text{Commission Share}/\text{Total Facility Costs}])$,

where "Total Facility Costs" includes the Commission share plus all costs incurred for the grant funded project, even if not counted as match share (such as data collection, operation and maintenance costs, feedstock costs, etc.), and any prior investments related to the production of fuel from the project.

This requirement applies only to credits generated by the project during the term of the Agreement.

- D. If, during the term of the Agreement or for a period of three years thereafter, the Recipient transfers credits generated by the project during the term of the agreement, the Recipient shall submit a report to the Energy Commission that demonstrates that the value of the credit was discounted in proportion to the funding received by the Energy Commission. The report shall include:
- The Recipient's name and Grant Agreement number,
 - The percentage of Commission funds to Recipient funds expended during the grant agreement,
 - The amount of fuel produced and credits generated during the term of the Agreement,
 - The fair market value of the credits at the time of transfer, including a justification of that fair market value,
 - The negotiated value of the credits at the time of transfer (must be at least reduced from the fair market value by the percentage of Commission funds received),
 - Any additional information as specified in writing in advance by the CAM.
- E. **If Recipient violates this term, the Commission may, without prejudice to any of its legal remedies, require the Recipient to repay the project funds in proportion to the value of the credits transferred in violation of this provision, remove the Recipient from eligibility for Alternative and Renewable Fuel and Vehicle Technology Program**

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funding and/or bring a debarment action to preclude future incentives and awards.

F. This term survives the end of the Agreement for any reason.

3. Intellectual Property

A. The Energy Commission makes no claim to intellectual property developed under this Agreement that is not specified for delivery, except as expressly provided herein.