1. **Payment Contingent Upon Completion of Critical Milestones:** Time is of the essence in project completion. Therefore, to incentivize and ensure timely project completion, in addition to meeting other Agreement requirements, **the Recipient must complete certain activities in order to receive payment by the California Energy Commission (CEC) under this Agreement**.

For stations funded under this Agreement (resulting from GFO-19-602), funding will be disbursed on a station-by-station basis as the Recipient proves to the CEC that all four Critical Milestones have been met for each station by the dates specified in Exhibit [X – Insert schedule of products and delivery dates exhibit number] to this Agreement, the “Schedule of Products and Due Dates.” In other words, **the CEC will not pay the Recipient any money for a station funded under this Agreement unless the Recipient meets all four Critical Milestones, and proves so to CEC staff’s satisfaction, by the dates specified in Exhibit X**. Following completion of the Critical Milestones, payment will be made pursuant to the Staged Reimbursement described in Section 7 below.

For example, if the Recipient has been awarded funds under this Agreement to build 5 stations; has submitted to the Commission Agreement Manager (CAM) by the deadlines listed in Exhibit X to this Agreement proof definitively showing that they have met all Critical Milestones for 4 of the 5 stations; but has not submitted this documentation for 1 of the 5 stations, then funds may be disbursed under this Agreement for 4 of the stations but not for the 5th station for which no documentation of the Critical Milestones having been met has been submitted by the deadlines listed in Exhibit X.

The Critical Milestones are as follows:

***Critical Milestone 1:*** The Recipient must have held the following meetings:

● An in-person, pre-application meeting for permits to build and operate each proposed hydrogen refueling station with the authority having jurisdiction (AHJ) over the project and entitlement process. The meeting should include but not be limited to discussion of the purpose and design of the hydrogen refueling station(s), the entitlement and permit application process, zoning requirements, aesthetics, the AHJ’s California Environmental Quality Act (CEQA) process, and project timeline. The meeting may be, for example, a scheduled presentation given by the Recipient to an AHJ, or an unscheduled discussion with AHJ staff.

● An in-person, pre-application meeting, at the same time or separately from the meeting with the AHJ regarding permits, with a representative of the Office of the Fire Marshal, or other similar fire control office, in the AHJ. The meeting should include but not be limited to discussion about how to obtain compliance with local fire code requirements and National Fire Protection Association (NFPA) 2 requirements.

● A telephone or web-based meeting with a representative of the Pacific Northwest National Laboratory (PNNL) Hydrogen Safety Panel (HSP) to establish a common understanding of the Hydrogen Safety Plan and station design review process that will be required of Recipients.

The Recipient must provide to the CEC proof of having met this Critical Milestone in order to receive reimbursement for equipment under this Agreement, by submitting notes from each meeting, including date, time, location, names and titles of meeting participants, a summary of the topics discussed, and any open issues and next steps, to the CAM on or before the date specified in Exhibit X to this Agreement. CEC staff will determine whether the documentation submitted by the Recipient is sufficient to show that this Critical Milestone has been met.

***Critical Milestone 2:*** The Recipient must have control and possession of the site at which each hydrogen refueling station is to be constructed.

The Recipient must provide to the CEC proof of having met this Critical Milestone in order to receive reimbursement for equipment under this Agreement, by submitting adequate documentation of site control and possession to the CAM on or before the date specified in Exhibit X to this Agreement. Documentation of site control and possession may include, but is not limited to, an executed lease for the land on which the station will be constructed. CEC staff will determine whether the documentation submitted by the Recipient is sufficient to show that this Critical Milestone has been met.

***Critical Milestone 3:*** The Recipient must meet with representatives of the utility company that will serve each proposed station to arrange the utility connection. The Recipient must provide to the CEC proof of having met this Critical Milestone in order to receive reimbursement for equipment under this Agreement by submitting meeting notes, including date, time, location, names and titles of meeting participants, a summary of the topics discussed, and any open issues or next steps, to the CAM on or before the date specified in Exhibit X to this Agreement. CEC staff will determine whether the documentation submitted by the Recipient is sufficient to show that this Critical Milestone has been met.

***Critical Milestone 4:*** The Recipient must meet with representatives of the hydrogen fuel supplier that will serve each proposed station to arrange the supply chain and hydrogen delivery. The Recipient must provide to the CEC proof of having met this Critical Milestone in order to receive reimbursement for equipment under this Agreement by submitting meeting notes, including date, time, location, names and titles of meeting participants, a summary of the topics discussed, and any open issues and next steps, to the CAM on or before the date specified in Exhibit X to this Agreement. CEC staff will determine whether the documentation submitted by the Recipient is sufficient to show that this Critical Milestone has been met.

1. **Amendment to Critical Milestone Due Dates:** The timelines to complete any Critical Milestone can be changed only by a written amendment to this Agreement via the Amendment provision in Exhibit C, “Clean Transportation Program Terms and Conditions,” which the CEC is only likely to approve in unusual circumstances.
2. **Right to Terminate Agreement due to Non-Compliance with Critical Milestones:** In addition to the payment restrictions associated with meeting the Critical Milestones listed in Section 1 above, the CEC reserves the right to terminate this Agreement via the Termination provision in Exhibit C, in addition to any other rights held by the CEC, if any of the Critical Milestones are missed or if the supporting evidence is inadequate to show that the Critical Milestones have been reached. In the event that the CEC terminates this Agreement before the Recipient meets the requirements in these Special Terms and Conditions and other requirements under this Agreement to receive payment, the CEC is not liable for any costs incurred by the Recipient under this Agreement.
3. **Expenses for Which Funds Have Not Yet Been Allocated Are Incurred at Recipient’s Risk:** The CEC may vote to approve funds up to a certain amount, but only execute an Agreement for a portion of that amount for a first batch of hydrogen refueling stations. Additional funding for subsequent batches of stations may only be added to the Agreement via the Amendment provision in Exhibit C.

If the Recipient incurs expenses for stations not authorized by the Agreement terms, those expenses may be reimbursable if the Agreement is later amended to allow them. But if the Agreement is not amended or later funds are not approved, the Recipient will not receive reimbursement for any expenses incurred that do not comport with the existing Agreement. The CEC is not liable for these expenses. The CEC is also not liable for any other loss, such as a bulk discount loss occurring as a result of failure to approve additional funds or amend the Agreement to allow additional batches of stations.

For example, if the CEC votes to approve an Agreement for up to $30,000,000, for 30 stations at $1,000,000 per station, and then executes an agreement for just $10,000,000 for 10 stations, the CEC and the Recipient may later choose to amend the agreement via the Amendment provision in Exhibit C for an additional $20,000,000 for 20 more stations, depending on availability of funds and the Recipient’s performance. In this case, if the Recipient purchases equipment for all 30 stations at the outset of the Agreement, at that time the Recipient would only be reimbursed for costs actually incurred and allocable to the first 10 stations, contingent on completion of the Critical Milestones and pursuant to the provisions of Exhibit C, Section 17, Payment of Funds. Any costs incurred by the Recipient for the additional 20 stations prior to any potential amendment would be at the Recipient’s own risk. If an amendment to the agreement were not executed, the Recipient would receive no reimbursement from the CEC for those 20 stations not authorized by the agreement. In addition, if the Recipient received a bulk discount per station based on purchase of equipment for all 30 stations, and that discount were lost as a result of failure to amend the agreement for additional funds and stations, the CEC would not be liable for the increased cost per station. On the other hand, if an amendment were made to add additional funds and stations to the Agreement, the Recipient could invoice the CEC for costs actually incurred and authorized by the amendment, but incurred after agreement execution and prior to the amendment.

1. In the event of any conflict between these Special Terms & Conditions and Exhibit C, Clean Transportation Program Terms and Conditions, these Special Terms & Conditions shall prevail.
2. **Staged Reimbursement of CEC Funds:** CEC funds will only be available to reimburse a Recipient for actual, allowable, and allocable equipment costs under the Agreement. The CEC will reimburse equipment in stages for each station, as follows:

**Stage 1**: Recipient has completed all Critical Milestones; completed the preliminary station design plans; and ordered the necessary equipment. Up to 25 percent of the CEC funding allocated to the station or the actual, allowable, and allocable equipment costs incurred (whichever is less) will be reimbursed.

**Stage 2**: Recipient has submitted documentation to the CEC showing they have submitted an entitlement application or initial permit application for the station, and submitted the preliminary Hydrogen Safety Plan to the PNNL HSP. Up to 50 percent of the CEC funding allocated to the station or the actual, allowable, and allocable equipment costs incurred (whichever is less) will be reimbursed.

**Stage 3**: Recipient has provided documentation to the CEC that equipment is assembled and ready for shipping, received a permit to build from the AHJ, and submitted the final Hydrogen Safety Plan to the PNNL HSP. Up to 75 percent of the CEC funding allocated to the station or the actual, allowable, and allocable equipment costs incurred (whichever is less) will be reimbursed.

**Stage 4**: Recipient has submitted an Open Retail Station Checklist to the CEC and the station has achieved open retail status. Up to 90 percent of the CEC funding allocated to the station or the actual, allowable, and allocable equipment costs incurred (whichever is less) will be reimbursed. The remaining 10 percent of the CEC funding allocated to the station will be held as retention.

**Stage 5**: Recipient has completed the required data collection using the National Renewable Energy Laboratory (NREL) Data Collection Tool, submitted a Final Report that the CEC’s CAM approves, and timely submitted an invoice to the CEC for the retention. Timely submitted in this context means with enough time before the funds liquidate for the CEC to have the State Controller’s Office issue the check without having to pay any charges for expedited processing. The 10 percent retention will be released.