#

# STANDARD AGREEMENT

STD. 213 (NEW 06/03)

|  |  |
| --- | --- |
|  | AGREEMENT NUMBER |
|  | XXX-XX-XXX |
|  | REGISTRATION NUMBER |
|  |  |
|  |
| 1. | This Agreement is entered into between the State Agency and the Contractor named below |
|  | STATE AGENCY’S NAME |
|  | State Energy Resources Conservation and Development Commission (Commission) |
|  | CONTRACTOR’S NAME |
|  |  |
|  |  |
| 2. | The term of this Agreement is: |  | 1/1/2020 through 1/1/2021. The effective date of this Agreement is either the start date or the approval date by the Dept. of General Services, whichever is later. No work shall commence until the effective date. |
|  |  |  |  |
| 3. | The maximum amount |  |  |
|  | of this Agreement is: | **$** |  |
|  |  |  |  |
| 4. | The parties agree to comply with the terms and conditions of the following Exhibits which are by this reference made a part of the Agreement: |
|  |
| Exhibit A – Scope of Work  |       | Pages |
|  |
| Exhibit B – Budget Detail and Payment ProvisionsExhibit B-1 – Third Party Beneficiary Language |       | Pages |
|  |
| Exhibit C\* – General Terms and Conditions GTC 610 |
|  |
| Exhibit D – Special Terms and Conditions (Attached hereto as part of this agreement) |       | Pages |
|  |
| Exhibit E – Additional Provisions  |       | Pages |
|  |
| Exhibit F – Conflict of Interest Provisions |       | Page |
| Exhibit G – Contacts Exhibit H - DCBO Best Management Practices Guide |  |  |
|  |  |  |
|  |
| *Items shown with an Asterisk (\*), are hereby incorporated by reference and made part of this agreement as if attached hereto.**These documents can be viewed at* [*http://www.ols.dgs.ca.gov/Standard%20Language/default.htm*](http://www.ols.dgs.ca.gov/Standard%20Language/default.htm)*.* |
|  |
| **IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.** |
| **CONTRACTOR** | ***California Department of General Services Use Only*** |
| CONTRACTOR’S NAME *(If other than an individual, state whether a corporation, partnership, etc.)* | **[ ]  Exempt per:**  |
|  |
| BY *(Authorized Signature)* | DATE SIGNED *(Do not type)* |
|  |  |  |
| PRINTED NAME AND TITLE OF PERSON SIGNING |
|  |
| ADDRESS |
|  |
| **STATE OF CALIFORNIA** |
| AGENCY NAME |
| State Energy Resources Conservation and Development Commission (Commission) |
| BY *(Authorized Signature)* | DATE SIGNED *(Do not type)* |
|  |  |  |
| PRINTED NAME AND TITLE OF PERSON SIGNING |
|  |
| ADDRESS |
| 1516 Ninth Street, Sacramento, CA 95814 |

**EXHIBIT A**

**Scope of Work described in the RFQ**

EXHIBIT B

Budget Detail and Payment Provisions

1. **PAYMENT PROVISIONS**

Payment for DCBO services will be made by the Project Owner through a separate Agreement between the Contractor and the Project Owner. Contractor shall enter into a separate contract with the Project Owner for payment of DCBO services that Contractor provides under this Contract. The Contractor shall incorporate Exhibit B-1 in the Agreement between the Contractor and Project Owner, and the Energy Commission shall be an express and intended creditor third-party beneficiary in the Agreement between the Contractor and Project Owner.

1. **RATES**

The Contractor shall invoice the Project Owner for DCBO services under Agreement [insert contract #] in accordance with the budget and rates negotiated between the Contractor and the Energy Commission. The Energy Commission is not liable for any payments to the Contractor.

1. **TRAVEL AND PER DIEM RATES**

The Contractor shall invoice the Project Owner for travel and per diem expenses using the Energy Commission Contractor Travel Rates. The Contractor must pay for travel in excess of these rates. The Contractor may obtain current rates from the Energy Commission’s Web Site at: <http://www.energy.ca.gov/contracts/TRAVEL_PER_DIEM.PDF>.

1. **RATES & CLASSIFICATIONS: CHANGES IN CONTRACTOR PERSONNEL OR SUBCONTRACTOR PERSONNEL**

This section contains provisions allowing rate and classification changes without a formal amendment. Exhibit D contains the rules for adding or replacing personnel and subcontractors listed in the Agreement. When a Contractor makes personnel and subcontractor changes in accordance with Exhibit D that do not require a formal amendment, the following rules explain the rates and classifications for which the Contractor can invoice. Changes outside of these rules require a formal amendment to the Agreement.

1. New Personnel

If Contractor or a subcontractor adds new personnel after the Agreement has been executed, the Contractor shall submit the new personnel’s resume and proposed job classification/rate, consistent with classifications/rates within the respective budget, to CAM for review and approval. If the Agreement budget includes a job classification with the person identified as “To Be Determined”, and a person is later identified, this person is considered to be new personnel. The new personnel shall not provide services until the CAM approves the new personnel request in writing and notifies the Commission Agreement Officer (CAO). Any work performed by these new personnel prior to CAM approval is at Contractor’s expense.

1. Labor Rates & Classifications

The Agreement budget identifies individuals and/or job classifications and the maximum rates that the Contractor can invoice for them. The Contractor shall only invoice for the actual rates up to the maximum amount listed. Contractor can only increase rates or add new job classifications to the Agreement through a formal amendment to this Agreement.

1. Contractor Changes: Addition or Replacement of Personnel

* + - 1. Labor Rates

If the Contractor adds a new person to a job classification listed in the Contractor’s budget or replaces a person listed in the Contractor’s budget, the Contractor can only invoice for the new person’s actual rate up to the maximum amount listed for that classification in the Contractor’s budget. The Contractor cannot use for its personnel a rate of a subcontractor.

* + - 1. Classifications

Additions or replacement of personnel can only be made within existing job classifications identified in the Contractor’s budget. The Contractor cannot use for its personnel a job classification of a subcontractor. The new person must be invoiced within job classifications that already exist in the budget for the Contractor. If the Contractor wishes to add a new job classification to the Agreement (for instance to bring in a new person or possibly promote a person) this will require a formal amendment to the Agreement.

* + - 1. Promotions

Contractor personnel listed in the Contractor’s budget can be moved to a higher-paying job classification listed in the Contractor’s budget with prior written approval of the CAM and the appropriate Division Deputy Director. The written approval must be submitted to the CAO.

2. Subcontractor Changes: Addition or Replacement of Personnel

* + - 1. Labor Rates

If a subcontractor adds a new person to a job classification listed in the subcontractor’s budget or replaces a person listed in the subcontractor’s budget for that subcontractor, the subcontractor can only invoice for the new person’s actual rate up to the maximum amount listed for that classification in the subcontractor’s budget. The subcontractor cannot use for its personnel a rate of another subcontractor or of the Contractor.

* + - 1. Classifications

Additions or replacement of personnel can only be made within existing job classifications identified in the subcontractor’s budget. The subcontractor cannot use for its personnel a job classification of another subcontractor or of the Contractor. The new person must be invoiced within job classifications that already exist in the budget for the subcontractor. If the subcontractor wishes to add a new job classification to the Agreement (for instance to bring in a new person or possibly promote a person) this will require a formal amendment to the Agreement.

* + - 1. Promotions

Subcontractor personnel listed in the subcontractor’s budget can be moved to a higher-paying job classification listed in the subcontractor’s budget with prior written approval of the CAM and the appropriate Division Deputy Director. The written approval must be submitted to the CAO.

1. Changes in Assigned Personnel Hours

Contractor may move hours allocated for a specific person (employee or subcontractor) to another person listed in the Agreement, upon written notification to the CAM. However such changes cannot change the amount of the budget for the task or labor category. If a change in personnel will result in a change in the dollar amount of the task or in the labor category, then the Agreement or Work Authorization must be amended.

1. **BUDGET DETAIL**

Budget detail is contained in the Attachments to this Exhibit.

**EXHIBIT B-1**

**Third-Party Beneficiary Language**

**for Contract Between Project Owner and Delegate Chief Building Official (DCBO)**

All of the following provisions must be included in the Agreement between the Project Owner and the DCBO:

1. Parties
2. [NextEra Energy] (herein after referred to as “Project Owner”) is the Project Owner of [Blythe Solar Power Project Phase 2, Units 3 and 4] (“Project”), Docket Log [09-AFC-06C], which was approved by the California Energy Commission (“Energy Commission”) in January 2014. Review by the Energy Commission is evidenced by the Presiding Member’s Proposed Decision (“Proposed Decision”), which includes draft conditions of certification providing the requirements for project construction, operation and closure. Approval of the Project by the Energy Commission is evidenced by the Presiding Member’s Final Decision (“Final Decision”), which includes conditions of certification providing the requirements for project construction, operation and closure. The DCBO and Project Owner must construct the Project according to the requirements in the Final Decision.
3. Project Owner is a party to [Name of Agreement between Project Owner and DCBO].
4. The Energy Commission has authority to approve the Project pursuant to Public Resources Code Section 25500 *et. seq*. Under the California Building Code Standards (CBCS), while monitoring project construction and operation, staff of the Energy Commission acts as, and has the authority of, the Chief Building Official.
5. [Name of DCBO Firm] was selected by the Energy Commission as its Delegated Chief Building Official (“DCBO”) in accordance with the California Building Standards Code (California Code of Regulations, Title 24, Parts 1 through 12) to verify compliance with all applicable conditions of certification in the Final Decision, and facilitate compliance with the design, plan review, construction inspection and monitoring for the Project facility’s compliance plan in accordance with all appropriate building codes; laws, ordinances, regulations and standards (“LORS”); and Energy Commission requirements. [Name of DCBO Firm] (hereinafter referred to as “DBCO”) is a party to [Name of Agreement between Project Owner and DCBO].
6. Express Third-Party Beneficiary
7. To ensure proper enforcement of the Energy Commission’s Final Decision and the success of the Project, in the event that the Energy Commission approves the Project, the Energy Commission is the express and intended creditor third-party beneficiary in [Name of Agreement between Project Owner and DCBO] between Project Owner and DCBO.
8. The Energy Commission does not guarantee the approval of the Project by being named the creditor third-party beneficiary in [Name of Agreement between Project Owner and DCBO].
9. DCBO entered into [Name of Agreement between Project Owner and DCBO] for the express benefit of the Energy Commission as the creditor third-party beneficiary. It is recognized that DCBO’s performance under [Name of Agreement between Project Owner and DCBO] is tied to and related to Project Owner’s obligations under the Energy Commission’s conditions of certification in its Final Decision. DCBO acknowledges that its performance under [Name of Agreement between Project Owner and DCBO] is the benefit contemplated by Project Owner and is a motivating cause of making [Name of Agreement between Project Owner and DCBO]. Naming the Energy Commission as the creditor third-party beneficiary is a material condition of [Name of Agreement between Project Owner and DCBO].
10. In the event the Energy Commission approves the Project, the Energy Commission must ensure that the Project is designed, constructed, and operated in conformity with the Final Decision; the California Building Standards Code (CBSC); the local building codes adopted by the [County] of [*Riverside*]; and LORS. If the Project Owner anticipates site mobilization immediately following issuance of the Final Decision, the Project Owner may be permitted to file compliance submittals prior to the issuance of the Final Decision. Compliance verifications may be submitted in advance of the Final Decision, but the Project Owner submits the compliance verifications at its own risk. Additionally, any work undertaken by DCBO prior to the issuance of the Final Decision shall be performed at the sole risk of DCBO. Any compliance approvals by Energy Commission staff prior to the issuance of the Final Decision are subject to change, and staff compliance approvals provided before the issuance of the Final Decision does not imply that the Energy Commission will approve the Project for actual construction and operation.
11. DCBO, as the delegate of the Energy Commission, shall be compensated by Project Owner to certify Project Owner’s obligations for compliance with the conditions of certification in the Final Decision. [Name of DCBO Firm] shall charge Project Owner, and Project Owner shall compensate [name of DCBO firm], **Option A:** for work satisfactorily completed in advance, in arrears, or from a credit account established with the DCBO Firm by the Project Owner **OR** **Option B:** for services based on the rates in the attached rate schedule (Appendix [X]) negotiated between the Energy Commission and DCBO. **(to be determined)**

1. Duties of Project Owner and DCBO
2. The Final Decision will require that [NextEra Energy], or current Project Owner, submit engineering plans, calculations, specifications, and other project-related facility design, construction, and operational compliance information (as required by sections 105.3 and 106.1 in Appendix Chapter 1 of the California Building Standards Code) to DCBO prior to and during construction of the Project, for review and oversight by the Energy Commission pursuant to the terms and conditions of its Final Decision as specified in California Public Resources Code section 25500 *et seq*.
3. The design review, construction inspections, and necessary approvals prior to and during construction will be provided by DCBO, a fully qualified chief building official contractor experienced in providing industrial building official services, acting as the Energy Commission’s delegate to ensure independent review of the Project.
4. Although DCBO will function as the Energy Commission’s delegate, the Energy Commission has the final authority and responsibility to ensure that the Project is built in accordance with the applicable engineering LORS, the Decision, and subsequent amendments.
5. DCBO shall carry out these duties with all the rights and immunities afforded the Chief Building Official by applicable LORS and building codes.
6. DCBO is authorized to take any action allowed by the California Code of Regulations and the CBSC to ensure that the Energy Commission’s interests are properly addressed and protected. If DCBO has issued, or is considering issuing, a stop-work order to ensure compliance, to ensure that the Energy Commission’s interests are protected, or for any other reason, DCBO shall seek the cooperation and assistance of the Energy Commission’s Compliance Project Manager (“CPM”).
7. Project Owner shall maintain its books, records, documents, and other evidence sufficient to properly reflect all payments made to DCBO under [Name of Agreement between Project Owner and DCBO] for a period of three (3) years after final payment to DCBO. Project Owner shall permit the Energy Commission, another state agency, and/or a public accounting firm designated by the Energy Commission to audit Project Owner’s accounting records associated with [Name of Agreement between Project Owner and DCBO] at all reasonable times, with prior notice by the Energy Commission.
8. Project Owner shall provide the Energy Commission with two (2) copies of the executed [Name of Agreement between Project Owner and DCBO].
9. Enforcement
10. [Name of Agreement between Project Owner and DCBO] is made expressly for the benefit of the Energy Commission as the creditor third-party beneficiary and may be enforced by the Energy Commission at any time.
11. The Energy Commission has a right of enforcement and may elect to take enforcement action against Project Owner or DCBO, and may join them in one action, for failure to perform under [Name of Agreement between Project Owner and DCBO].
12. Nothing in [Name of Agreement between Project Owner and DCBO] will limit or impede the Energy Commission’s legal authority to enforce the terms and conditions of its Decision as specified in Public Resources Code sections 25534 and 25900. The Energy Commission may amend or revoke a project certification and may impose a civil penalty for any significant failure to comply with the terms or conditions of the Decision.
13. Satisfactory Performance

Project Owner and DCBO agree that DBCO’s work under [Name of Agreement between Project Owner and DCBO] must be performed to the satisfaction of the Energy Commission and that the Energy Commission shall decide all questions as to the adequacy of DCBO’s performance. However, lack of objection by the Energy Commission shall not constitute a waiver or estoppel of the Energy Commission’s rights and remedies. Failure of DCBO to comply with the roles, responsibilities, and tasks expected of an DCBO service provider may be a basis for its termination as the delegate of the Energy Commission.

1. Amendment, Assignment and Termination

Project Owner and DCBO agree that [Name of Agreement between Project Owner and DCBO] confers rights and remedies upon the Energy Commission as the creditor third-party beneficiary. No person, other than Project Owner, DCBO, and the Energy Commission, has any rights or remedies under [Name of Agreement between Project Owner and DCBO]. Project Owner and DCBO further agree:

1. No Right to Amend without Consent of the Energy Commission

Neither Project Owner nor DCBO shall amend [Reference to Section] of [Name of Agreement between Project Owner and DCBO] expressly naming the Energy Commission as the creditor third-party beneficiary to the Agreement, without the prior written consent of the Energy Commission.

1. No Right to Assign and Delegate without Consent of the Energy Commission

Neither Project Owner nor DCBO shall assign or delegate the duties and responsibilities of Project Owner or DCBO, without the prior written consent of the Energy Commission.

1. No Right to Terminate without Consent of the Energy Commission

Neither Project Owner nor DCBO shall terminate [Name of Agreement between Project Owner and DCBO] or terminate payments to DCBO under [Name of Agreement between Project Owner and DCBO] without the prior written consent of the Energy Commission.

1. No Liability

Project Owner and DCBO agree that the Energy Commission, as intended creditor third-party beneficiary, is not liable for any events or occurrences that result in harm to persons or property during the course of construction or operation of the Project. The Energy Commission assumes no liability for errors and omissions on the design elements of the Project. If Project Owner or DCBO fail to perform their obligations under [Name of Agreement between Project Owner and DCBO], the Energy Commission shall in no way have any liability to any parties that may be harmed as a result of failure of Project Owner or DCBO to perform their obligations. Further, the Energy Commission is in no way liable for payment to DCBO for its services in the event Project Owner fails to make timely payment.

1. Flow-Down Rights in Subcontracts
2. DCBO may retain the services of one or more independent qualified subcontractor(s) to supplement its employees in the environmental monitoring, design review, plan check, and construction inspection of the project. The subcontractor(s) shall answer directly to, and be responsible to, DCBO. DCBO shall retain responsibility for the construction inspections required by Appendix Chapter 1, section 109 of the CBSC and for monitoring special inspections required by Chapter 17, section 1704 and 1707 of the CBSC.

1. It is expressly recognized that DCBO’s performance under [Name of Agreement between Project Owner and DCBO] is tied to and related to the performance of its subcontractor(s). The Energy Commission shall be expressly recognized and acknowledged as an intended creditor third-party beneficiary in all contracts between DCBO and its subcontractor(s). DCBO shall reserve for the Energy Commission, as an intended creditor third-party beneficiary, the right to proceed directly against its subcontractor(s) in the event subcontractor(s) breaches or fails to perform in whole or in part as required in its contract(s) with DCBO. The Energy Commission’s right to proceed against subcontractor(s) shall be made independent of DCBO's rights.
2. DCBO shall provide the Energy Commission two (2) copies of all executed contracts it enters into with subcontractor(s) in order to substantiate compliance with the requirements of [Name of Agreement between Project Owner and DCBO].

EXHIBIT D

**Special Terms and Conditions**

1. **INTRODUCTION**

This Contract is between the California Energy Commission (Energy Commission) and [insert contractor]. This Contract includes: (1) the Agreement signature page (form STD. 2150; (2) the Scope of Work (Exhibit A); (3) the budget and payment provisions (Exhibit B and B-1); (4) general terms and conditions (Exhibit C); (5) special terms and conditions (Exhibit D); (6) additional provisions (Exhibit E); (7) Conflict of Interest Provisions (Exhibit F); (8) the DCBO Best Practices Guide (Exhibit G); (9) a contacts list (Exhibit H); (10) all attachments; and (11) all documents incorporated by reference.

1. **DOCUMENTS INCORPORATED BY REFERENCE**

The documents below are incorporated by reference into this Agreement. These terms and conditions will govern in the event of a conflict with the documents below, with the exception of the documents in subsection (h). Where this Agreement or California laws and regulations are silent or do not apply, the Energy Commission will use the federal cost principles and acquisition regulations listed below as guidance in determining the allowability of items included in the budget. Documents incorporated by reference include:

**Solicitation Documents (if applicable)**

1. The funding solicitation for the project supported by this Agreement
2. The Contractor’s proposal submitted in response to the solicitation

**Department of General Services Terms and Conditions**

1. Exhibit C, General Terms and Conditions (GTC 610)
2. Contractor Certification Clauses (CCC 307), as incorporated by reference in Exhibit C (GTC 610), Section 11.

**Federal Cost Principles *(applicable to state and local governments, Indian tribes, institutions of higher education, and nonprofit organizations)***

1. 2 Code of Federal Regulations (CFR) Part 200, Subpart E (Sections 200.400 et seq.)

**Federal Acquisition Regulations *(applicable to commercial organizations)***

1. 48 CFR, Ch.1, Subchapter E, Part 31, Subpart 31.2: Contracts with Commercial Organizations (supplemented by 48 CFR, Ch. 9, Subchapter E, Part 931, Subpart 931.2 for Department of Energy grants)

**Federal Audit Requirements**

1. 2 CFR Part 200, Subpart F (Sections 200.500 et seq.): Audits of States, Local Governments, and Non-Profit Organizations

**Nondiscrimination**

1. 2 California Code of Regulations, Section 8101 et seq.: Contractor Nondiscrimination and Compliance

**General Laws**

1. Any federal, state, or local laws or regulations applicable to the project that are not expressly listed in this Agreement
2. 10 CFR Part 600: U.S. Department of Energy Financial Assistance Regulations
3. **AGREEMENT MANAGEMENT**
4. Contractor may change Project Manager but the Energy Commission reserves the right to approve any substitution of the Project Manager.
5. The Energy Commission may change the Energy Commission Agreement Manager (CAM) at any time and will send a written notice to the Contractor signed by the Energy Commission Agreement Officer (CAO).
6. Commission staff will be permitted to work side by side with Contractor's staff to the extent and under conditions that may be directed by the CAM. In this connection, Commission staff will be given access to all data, working papers, etc., which Contractor may seek to utilize.
7. Contractor will not be permitted to utilize Energy Commission personnel for the performance of services, which are the responsibility of Contractor unless the CAM previously agrees to such utilization in writing and an appropriate adjustment in price is made. No charge will be made to Contractor for the services of Energy Commission employees while performing, coordinating or monitoring functions.
8. **STANDARD OF PERFORMANCE**

 Contractor shall be responsible in the performance of Contractor's/subcontractor's work under this Agreement for exercising the degree of skill and care required by customarily accepted good professional practices and procedures. Any costs for failure to meet these standards, or otherwise defective services, which require reperformance, as directed by CAM or its designee, shall be borne in total by the Contractor/subcontractor and not the Energy Commission. In the event the Contractor/subcontractor fails to perform in accordance with the above standard the following will apply. Nothing contained in this section is intended to limit any of the rights or remedies which the Energy Commission may have under law.

1. Contractor/subcontractor will re-perform, at its own expense, any task, which was not performed to the reasonable satisfaction of the CAM. Any work re-performed pursuant to this paragraph shall be completed within the time limitations originally set forth for the specific task involved. Contractor/subcontractor shall work any overtime required to meet the deadline for the task at no additional cost to the Energy Commission.
2. The Energy 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.
3. If the Energy Commission directs the Contractor not to re-perform a task; the CAM and Contractor shall negotiate a reasonable settlement for satisfactory services rendered. No previous payment shall be considered a waiver of the Energy Commission's right to reimbursement.
4. **SUBCONTRACTS**

Contractor shall enter into subcontracts with the following firms and/or individuals and shall manage the performance of the subcontractors.

 (Insert Subcontractor Names)

**OR**

 No Subcontractors are named for this Agreement. If subcontractors are needed to perform any portion of this Agreement, the following criteria must be met and Contractor shall manage the performance of the subcontractors.

**AND**

1. Nothing contained in this Agreement or otherwise, shall create any contractual relationship between the State and any subcontractors, and no subcontractors and no subcontract shall relieve Contractor of its responsibilities and obligations hereunder. Contractor agrees to be as fully responsible to the State for the acts and omissions of its subcontractors and/or persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Contractor. Contractor’s obligation to pay its subcontractors is an independent obligation from the State’s obligation to make payments to Contractor. As a result, the State shall have no obligation to pay or to enforce the payment of any monies to any subcontractor.
2. Contractor shall be responsible for establishing and maintaining contractual agreements with and the reimbursement of each of the subcontractors for work performed in accordance with the terms of this Agreement. Contractor shall be responsible for scheduling and assigning subcontractors to specific tasks in the manner described in this Agreement; coordinating subcontractor accessibility to Energy Commission staff, and submitting completed products to the CAM.
3. Contractor shall not allow any subcontractor to assign any portion of a subcontract related to this Agreement to a third party or subsequent tier subcontractor (lower tier subcontractor) without first obtaining the written consent of the CAM and following the procedures below “Process for New Subcontractors”.
4. All subcontracts entered into pursuant to this Agreement shall be subject to examination and audit by the Bureau of State Audits for a period of three (3) years after final payment under the Agreement.
5. Upon request by the CAM or CAO, Contractor shall provide copies of all contractual agreements with subcontractors and lower tier subcontractors.
6. Contractors who are subcontracting with University of California may use the terms and conditions negotiated by the Department of General Services with University of California for their subcontracts. Contractors who are subcontracting with the Department of Energy’s (DOE) Lawrence Livermore National Laboratory, Lawrence Berkeley National Laboratory, and the Sandia National Laboratories may use the terms and conditions negotiated with the Department of General Services. Contractors who are subcontracting with all other DOE laboratories may use the terms and conditions negotiated by the Energy Commission with DOE for their subcontracts.
7. Upon the termination of any subcontract or lower tier subcontract, Contractor shall notify the CAM and CAO immediately in writing.
8. In addition to any other flow-down provisions required by this Agreement, all subcontracts shall contain the following: 1) the audit rights and non-discrimination provision stated in the General Terms and Conditions (Exhibit C) and in D above; 2) further assignments shall not be made to any lower tier subcontractor without written consent of the CAM; and 3) the confidentiality provisions in the Reports paragraph of this Agreement.
9. Process for New Subcontractors

 The Energy Commission reserves the right to replace a subcontractor, request additional subcontractors, and approve additional subcontractors requested by Contractor. A replaced subcontractor and an added subcontractor are both defined as a “new” subcontractor. Such changes shall be subject to the following conditions:

1. The new subcontractor shall be selected using either: (a) A competitive bid process with written evaluation criteria by obtaining three or more bids and advertising the work to a suitable pool of subcontractors including without limitation: California Contracts Register; Contractor’s mailing lists; mass media; professional papers or journals; posting on websites; and telephone or email solicitations; or (b) Non-competitive bid (sole source) process with a specific subcontractor.
2. Contractor may also need to comply with Disabled Veteran Business Enterprise requirements for the proposed subcontractor.
3. When a new subcontractor is proposed the CAM shall complete and submit to the CAO a “Subcontractor Addition” form. The proposed subcontract can be executed only after the CAO approves the Subcontractor Addition form. This form identifies the new subcontractor and bidding method used (competitive or non-competitive), the tasks the new subcontractor will be performing and the following shall be attached: resumes and completed Energy Commission budget forms.
4. Labor Rates & Classifications: Personnel of new subcontractors must fit within a classification and be equal to or less than a rate already listed in the Agreement budget and the rate cannot exceed the subcontractor’s actual rate. Adding classifications and/or higher rates for the new subcontractor other than ones currently listed in the Agreement requires a formal amendment.
5. Other Direct Operating Expenses: The new subcontractor may charge other direct operating expenses (such as material or equipment) as already identified in the Agreement budget. No new types of operating expenses are allowed to be charged by the new subcontractor. Adding new types of operating expenses for the new subcontractor requires a formal amendment.
6. **DISABLED VETERAN BUSINESS ENTERPRISE (DVBE) REQUIREMENTS**
7. Reporting

If Contractor made a commitment to achieve DVBE participation for this Agreement, then Contractor must within 60 days of receiving final payment under this Agreement, certify in a report to the CAO: (1) the total amount the Contractor received under this Agreement; (2) the name and address of the DVBE(s) that participated in the performance of the Agreement; (3) the amount each DVBE received from the Contractor; (4) that all payments under the Agreement have been made to the DVBE(s); and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. Military & Veterans Code section 999.5(d).

1. Substitution of DVBE

Contractor shall use each DVBE identified in its Statement of Qualifications or listed in this Agreement. Contractor understands and agrees that if DVBES were identified in its proposal or listed in this Agreement, award of this Agreement is based in part on its commitment to use the DVBE subcontractor(s). If Contractor believes an identified DVBE must be replaced or substituted, Contractor shall inform CAM and CAO in writing of the reason for the DVBE replacement. A DVBE subcontractor may only be replaced by another DVBE subcontractor and must be approved by the Department of General Services. Military and Veterans Code section 999.5 (e). Contractor shall complete revised DVBE certification forms (provided by the CAO) identifying the new DVBE.

1. Amendment

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

1. Grounds for Termination; Damages; Penalties

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

1. DVBE Name for this Agreement: Insert DVBE name
2. **PROCESS FOR OFFERING WORK**

If the Energy Commission or Contractor requires the replacement of a person listed in the Agreement to provide a particular service, or requires that a new person is added, the Contractor shall:

1. First offer the work to qualified persons already listed in this Agreement (either an employee of Contractor or a subcontractor).
2. If there is no available qualified person listed in this Agreement who can perform the work, then Contractor shall provide documentation from all the persons who were offered and declined the work to the CAM. Then, Contractor may request to add a new person to the Agreement in accordance with Exhibit B, Rates & Classifications: Changes in Contractor Personnel or Subcontractor Personnel. A person added to the Agreement is thereafter treated as a person listed in this Agreement and can be offered future work without first offering it to originally listed people.
3. If the person to be replaced or substituted was identified in the Agreement as a Disabled Veteran Business Enterprise (DVBE) firm, refer to the DVBE provision above for changes to DVBEs.
4. If the person added is a new subcontractor, Contractor shall use the process outlined in the Subcontracts provision, Process for New Subcontractors.
5. **PERFORMANCE EVALUATION**

 The Energy Commission shall, upon completion of this Agreement, prepare a performance evaluation of the Contractor. Upon filing an unsatisfactory evaluation with the Department of General Services, Office of Legal Services (DGS) the Energy Commission shall notify and send a copy of the evaluation to the Contractor within 15 days. The Contractor shall have 30 days to prepare and send statements to the Energy Commission and the DGS defending his or her performance. The Contractor's statement shall be filed with the evaluation in the Energy Commission's Contract file and with DGS for a period of 36 months and shall not be a public record.

1. **REPORTS**
2. **Progress and Final Reports**: Contractor shall prepare progress reports summarizing all activities conducted by Contractor to date on a schedule as provided in Exhibit A. At the conclusion of this Agreement, Contractor shall prepare a comprehensive Final Report, on a schedule as provided in Exhibit A.
3. **Title:** Contractor's name shall only appear on the cover and title page of reports as follows:

California Energy Commission

Project Title

Contractor Number

By (Contractor)

1. **Ownership**: Each report shall become the property of the Energy Commission.
2. **Non-disclosure**: Contractor will not disclose data or disseminate the contents of the final or any progress report without written permission of the CAM, except as provided in F, below. Permission to disclose information on one occasion or at public hearings held by the Energy Commission relating to the same shall not authorize Contractor to further disclose and disseminate the information on any other occasion. Contractor will not comment publicly to the press or any other media regarding its report, or Commission's actions on the same, except to Commission staff, Contractor's own personnel involved in the performance of this Agreement, or at a public hearing, or in response to questions from a legislative committee. Notwithstanding the foregoing, in the event any public statement is made by the Energy Commission or any other party, based on information received from the Energy Commission as to the role of Contractor or the content of any preliminary or final report, Contractor may, if it believes the statement to be incorrect, state publicly what it believes is correct.
3. **Confidentiality:** No record which has been designated as confidential, or is the subject of a pending application of confidentiality, shall be disclosed by the Contractor, Contractor's employees or any tier of subcontractors, except as provided in 20 California Code of Regulations, Sections 2506 and 2507, unless disclosure is ordered by a court of competent jurisdiction (20 California Code of Regulations, Sections 2501, et seq.). At the election of the CAM, Contractor, Contractor's employees and any subcontractor shall execute a "Confidentiality Agreement," supplied by the CAM or CAO. Each subcontract shall contain provisions similar to the foregoing related to the confidentiality and nondisclosure of data.
4. **Disclosure**: Ninety days after any document submitted by the contractor is deemed by the CAM to be a part of the public records of the State, Contractor may, if it wishes to do so at its own expense, publish or utilize a report or written document but shall include the following legend:

# "LEGAL NOTICE"

**"This report 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 Energy 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 report; nor does any party represent that the use of this information will not infringe upon privately owned rights."**

1. **CONTRACT DATA, OWNERSHIP RIGHTS**
2. "Data" as used in this Agreement means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research or experimental, developmental or engineering work, or be usable or be used to define a design or process, or to support a premise or conclusion asserted in any deliverable document required by this Agreement. The data may be graphic or pictorial delineations in media, such as drawings or photographs, data or information, etc. It may be in machine form, such as punched cards, magnetic tape or computer printouts, or may be retained in computer memory.
3. "Deliverable data" is that data which, under the terms of this Agreement, is required to be delivered to the Energy Commission and shall belong to the Energy Commission.
4. "Proprietary data" is such data as the Contractor has identified in a satisfactory manner as being under Contractor's control prior to commencement of performance of this Agreement, and which Contractor has reasonably demonstrated as being of a proprietary nature either by reason of copyright, patent or trade secret doctrines in full force and effect at the time when performance of this Agreement is commenced. The title to "proprietary data" shall remain with the Contractor throughout the term of this Agreement and thereafter. The extent of the Energy Commission access to, and the testimony available regarding, the proprietary data shall be limited to that reasonably necessary to demonstrate, in a scientific manner to the satisfaction of scientific persons, the validity of any premise, postulate or conclusion referred to or expressed in any deliverable for this Agreement.
5. "Generated data" is that data, which a Contractor has collected, collated, recorded, deduced, read out or postulated for utilization in the performance of this Agreement. Any electronic data processing program, model or software system developed or substantially modified by the Contractor in the performance of this Agreement at the Energy Commission's expense, together with complete documentation thereof, shall be treated in the same manner as "generated data." "Generated data" shall be the property of the Energy Commission, unless and only to the extent that it is specifically provided otherwise in this Agreement.
6. As to "generated data" which is reserved to Contractor by the express terms hereof, and as to any pre‑existing or "proprietary data" which has been utilized to support any premise, postulate or conclusion referred to or expressed in any deliverable hereunder, Contractor shall preserve the same in a form which may be introduced as evidence in a court of law at Contractor's own expense for a period of not less than three years after receipt by the Energy Commission of the Final Report herein.
7. Before the expiration of the three years, and before changing the form of or destroying any data, Contractor shall notify the Energy Commission of any contemplated action and the Energy Commission may, within thirty (30) days after notification, determine whether it desires the data to be preserved. If the Energy Commission so elects, the expense of further preserving data shall be paid for by the Energy Commission. Contractor agrees that the Energy Commission may at its own expense, have reasonable access to data throughout the time during which data is preserved. Contractor agrees to use its best efforts to furnish competent witnesses or to identify competent witnesses to testify in any court of law regarding data.
8. **PUBLIC HEARINGS**

If public hearings on the scope of work are held during the period of the Agreement, Contractor will make available to testify the personnel assigned to this Agreement. The Project Owner will reimburse Contractor for compensation and travel of the personnel at the Agreement rates for the testimony which the Energy Commission requests.

1. **DISPUTES**

In the event of an Agreement dispute or grievance between Contractor and the Energy Commission, both parties may follow the procedure detailed below. Contractor shall continue with the responsibilities under this Agreement during any dispute.

1. First Level Dispute Resolution

 The Contractor shall first discuss the problem informally with the CAM. If the problem cannot be resolved at this stage, the Contractor must direct the grievance together with any evidence, in writing, to the Commission Agreement Officer. The grievance must state the issues in the dispute, the legal authority or other basis for the Contractor’s position and the remedy sought. The Commission Agreement 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 Contractor. The Commission Agreement Officer shall respond in writing to the Contractor, indicating a decision and explanation for the decision. Should the Contractor disagree with the Commission Agreement Officer decision, the Contractor may appeal to the second level.

1. Second Level Dispute Resolution

 The Contractor must prepare a letter indicating why the Commission Agreement Officer’s decision is unacceptable, attaching to it the Contractor’s original statement of the dispute with supporting documents, along with a copy of the Commission Agreement Officer’s response. This letter shall be sent to the Energy Commission’s Executive Director within ten (10) working days from receipt of the Commission Agreement Officer’s decision. The Executive Director or designee shall meet with the Contractor to review the issues raised. A written decision signed by the Executive Director or designee shall be returned to the Contractor within twenty (20) working days of receipt of the Contractor’s letter. The Executive Director may inform the Energy Commission of the decision at an Energy Commission business meeting. Should the Contractor disagree with the Executive Director’s decision, the Contractor may appeal to the Energy Commission at a regularly scheduled business meeting. Contractor will be provided with the current procedures for placing the appeal on an Energy Commission Business Meeting Agenda.

1. **TERMINATION**

The parties agree that because the Energy Commission is a state entity it is necessary for the Energy Commission to be able to terminate, at once, upon the default of Contractors and to proceed with the work required under the Agreement in any manner the Energy Commission deems proper. Contractor specifically acknowledges that the unilateral termination of the Agreement by the Energy Commission under the terms set forth below is an essential term of the Agreement, without which the Energy Commission would not enter into the Agreement. Contractor further agrees that upon any of the events triggering the unilateral termination the Agreement by the Energy Commission, the Energy Commission has the sole right to terminate the Agreement, and it would constitute bad faith of the Contractor to interfere with the immediate termination of the Agreement by the Energy Commission.

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

1. With Cause

 In the event of any breach by the Contractor of the conditions set forth in this Agreement, the Energy Commission may, without prejudice to any of its legal remedies, terminate this Agreement for cause upon five (5) days written notice to the Contractor. In such event, the Energy Commission shall pay Contractor only the reasonable value of the services theretofore rendered by Contractor, as may be agreed upon by the parties or determined by a court of law, but not in excess of the Agreement maximum payable. "Cause" includes without limitation:

1. Failure to perform or breach of any of the terms or covenants at the time and in the manner provided in this Agreement; or
2. Contractor is not able to pay its debts as they become due and/or Contractor is in default of an obligation that impacts his ability to perform under this Agreement; or
3. It is determined after notice and hearing by the Energy Commission or the Executive Director that gratuities were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the Energy Commission, with a view toward securing an Agreement or securing favorable treatment with respect to awarding or amending or making a determination with respect to performance of the Agreement; or
4. Significant change in Commission policy such that the work or product being funded would not be supported by the Energy Commission; or
5. Reorganization to a business entity unsatisfactory to the Energy Commission; or
6. The retention or hiring of subcontractors, or the replacement or addition of personnel that fail to perform to the standards and requirements of this Agreement.
7. Without Cause

 The Energy Commission may, at its option, terminate this Agreement without cause in whole or in part, upon giving thirty (30) days advance notice in writing to the Contractor. In such event, the Contractor agrees to use all reasonable efforts to mitigate the Contractor's expenses and obligations hereunder. Also, in such event, the Energy Commission shall pay the Contractor for all satisfactory services rendered and expenses incurred within 30 days after notice of termination which could not by reasonable efforts of the Contractor have been avoided, but not in excess of the maximum payable under this Agreement.

1. **WAIVER**

No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or by law. The failure of the Energy Commission to enforce at any time any of the provisions of this Agreement, or to require at any time performance by Contractor of any of the provisions, shall in no way be construed to be a waiver of those provisions, nor in any way affect the validity of this Agreement or any part of it or the right of the Energy Commission to thereafter enforce each and every such provision.

1. **CAPTIONS**

 The clause headings appearing in this Agreement have been inserted for the purpose of convenience and ready reference and do not define, limit, or extend the scope or intent of the clauses.

1. **PRIOR DEALINGS, CUSTOM OR TRADE USAGE**

In no event shall any prior course of dealing, custom or trade usage modify, alter, or supplement any of these terms.

1. **NOTICE**

Legal notice must be given using any of the following delivery methods: U.S. Mail, overnight mail, or personal delivery, providing evidence of receipt to the person identified in Exhibit F of this Agreement for legal notices. Delivery by fax or e‑mail is not considered legal notice for the purpose of this clause. This clause is not intended to apply to normal, daily communication between the parties related to progress of the work. This clause applies to situations where notice is required to be given by this Agreement or the parties are asserting their legal rights and remedies.

Notice shall be effective when received, unless a legal holiday for the State commences on the date of the attempted delivery. In which case, the effective date shall be postponed until the next business day.

1. **STOP WORK**

 The CAO may, at any time, by written notice to Contractor, require Contractor to stop all or any part of the work tasks in this Agreement. Stop Work Orders may be issued for reasons such as a project exceeding budget, standard of performance, out of scope work, delay in project schedule, misrepresentations and the like.

1. Compliance. Upon receipt of such stop work order, Contractor shall immediately take all necessary steps to comply therewith and to minimize the incurrence of costs allocable to work stopped.
2. Equitable Adjustment. An equitable adjustment shall be made by Commission based upon a written request by Contractor for an equitable adjustment. Such adjustment request must be made by Contractor within thirty (30) days from the date of receipt of the stop work notice.
3. Revoking a Stop Work Order. Contractor shall resume the stopped work only upon receipt of written instructions from the CAO canceling the stop work order.
4. **INTERPRETATION OF TERMS**

This Agreement shall be conducted in accordance with the terms and conditions of the solicitation, if applicable. The Contractor's Statement of Qualifications is not attached, but is expressly incorporated by reference into this Agreement. In the event of conflict or inconsistency between the terms of this Agreement and the solicitation or proposal, this Agreement shall be considered controlling.

1. **AMENDMENTS**

 This Agreement may be amended through a formal amendment process to make changes, pursuant to 20 California Code of Regulations section 2566, including without limitation;

* Extending the Agreement end date,
* Modifying tasks,
* Adding or modifying terms and conditions.
1. **DISCRIMINATION and HARASSMENT TRAINING**

All employees of Contractor and any subcontractor who provide service under this Agreement and maintain work space at the Energy Commission shall take annual training on the prevention of discrimination and harassment. The Energy Commission shall provide the online training course at no charge to Contractor or subcontractors. However, Contractor and subcontractors shall not invoice for the time spent taking the course. Contractor shall ensure that all employees of Contractor and any subcontractor who provide service under this Agreement and represent the Energy Commission in public hearings and workshops, but do not maintain office space at the Energy Commission, receive training on prevention of discrimination and harassment.

EXHIBIT E

# Additional Provisions

1. **CONFIDENTIALITY**
2. Information Considered Confidential

 If applicable, all Contractor information considered confidential at the commencement of this Agreement is designated in the Attachment to this Exhibit.

1. Confidential Deliverables: Labeling and Submitting Confidential Information

Prior to the commencement of this Agreement, if applicable, the parties have identified in the Attachment to this Exhibit, specific Confidential Information to be provided as a deliverable. All such confidential deliverables shall be marked, by the Contractor, as “Confidential” on each page of the document containing the Confidential Information and presented in a sealed package to the Commission Agreement Officer. (Non-confidential deliverables are submitted to the Accounting Office.) All Confidential Information will be contained in the “confidential” volume: no Confidential Information will be in the “public” volume.

1. Submittal of Unanticipated Confidential Information as a Deliverable

The Contractor and the Energy Commission agree that during this Agreement, it is possible that the Contractor may develop additional data or information not originally anticipated as a confidential deliverable. In this case, Contractor shall follow the procedures for a request for designation of Confidential Information specified in 20 CCR 2505. The Energy Commission’s Executive Director makes the determination of confidentiality. Such subsequent determinations may be added to the list of confidential deliverables in the Attachment to this Exhibit.

### *Disclosure of Confidential Information*

Disclosure of Confidential Information by the Energy Commission may only be made pursuant to 20 CCR 2506 and 2507. All confidential data, records or deliverables that are legally disclosed by the Contractor or any other entity become public records and are no longer subject to the above confidentiality designation.

1. **RIGHTS OF PARTIES IN COPYRIGHTS, PHYSICAL WORKS OF ART AND FINE ART**

The Contractor; by signing this Agreement, expressly grants to the Energy Commission for all copyrightable material, work of art and original work of authorship first produced, composed or authored in the performance of this Agreement a royalty‑free, paid‑up, non‑exclusive, irrevocable, nontransferable, worldwide license to produce, translate, publish, use, dispose of, reproduce, prepare derivative works based on, distribute copies of, publicly perform, or publicly display a work of art or fine art, and to authorize others to produce, translate, publish, use, dispose of, reproduce, prepare derivative works based on, distribute copies of, publicly perform, or publicly display a work of art or fine art.

Contractor, by signing this Agreement, expressly conveys to the Energy Commission all ownership of the physical works of art and fine art produced under this Agreement. Contractor agrees it does not reserve any rights to the physical works of art and fine art produced under this Agreement.

 Contractor shall obtain these same rights for the Energy Commission from all subcontractors and others who produce copyrightable material, works of art, or works of fine art under this Agreement. Contractor shall incorporate these paragraphs, modified appropriately, into its agreements with subcontractors. No subcontract shall be entered into without these rights being assured to the Energy Commission from the subcontractor.

1. **INSURANCE REQUIREMENTS**

A.Commercial General Liability

Contractor shall maintain general liability on an occurrence form with limits not less than $1,000,000 per occurrence and $2,000,000 aggregate for bodily injury and property damage liability. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal and advertising injury, and liability assumed under an insured Agreement. This insurance shall apply separately to each insured against which claim is made, or suit is brought subject to the Contractor's limit of liability. **The policy must name The State of California, its officers, agents, and employees as additional insured, but only with respect to work performed under the contract.**

B.Automobile Liability

Contractor shall maintain motor vehicle liability with limits not less than $1,000,000 combined single limit per accident. Such insurance shall cover liability arising out of a motor vehicle including owned, hired, and non-owned motor vehicles. **The policy must name The State of California, its officers, agents, and employees as additional insured, but only with respect to work performed under the contract.**

C.Workers’ Compensation and Employer’s Liability

Contractor shall maintain statutory worker’s compensation and employer’s liability coverage for all its employees who will be engaged in the performance of the Contract. In addition, employer’s liability limits of $1,000,000 are required. If applicable, contractor shall provide coverage for all its employees for any injuries or claims under the U.S. Longshoremen’s and Harbor Workers’ Compensation Act, the Jones Act or under laws, regulations, or statutes applicable to maritime employees. By signing this contract, Contractor acknowledges compliance with these regulations. **A Waiver of Subrogation or Right to Recover endorsement in favor of the State of California must be attached to certificate.**

D.Professional Liability (If applicable)

Contractor shall maintain Professional Liability at $1,000,000 per occurrence and $2,000,000 aggregate covering any damages caused by a negligent error, act, or omission. The policy’s retroactive date must be displayed on the certificate of insurance and must be before the date this Agreement was executed or before the beginning of this Agreement work. The Contractor is responsible to maintain continuous coverage for up to three years after the notice of completion.

1. **GENERAL PROVISIONS APPLYING TO ALL INSURANCE POLICIES**
2. Coverage Term

Coverage needs to be in force for the complete term of the contract. If insurance expires during the term of the contract, a new certificate must be received by the State at least ten (10) days prior to the expiration of this insurance. Any new insurance must still comply with the original terms of the contract.

1. Policy Cancellation or Termination & Notice of Non-Renewal

Contractor and/or Permittee is responsible to notify the State within five business days before the effective date of any cancellation, non-renewal, or material change that affects required insurance coverage. In the event Contractor and/or Permittee fails to keep in effect at all times the specified insurance coverage, the State may, in addition to any other remedies it may have, terminate this Contract upon the occurrence of such event, subject to the provisions of this Contract.

1. Deductible

Contractor and/or Permittee is responsible for any deductible or self-insured retention contained within their insurance program.

1. Primary Clause

Any required insurance contained in this contract shall be primary, and not excess or contributory, to any other insurance carried by the State.

1. Insurance Carrier Required Rating

All insurance companies must carry a rating acceptable to the Office of Risk and Insurance Management. If the Contractor and/or Permittee is self-insured for a portion or all of its insurance, review of financial information including a letter of credit may be required.

1. Endorsements

Any required endorsements requested by the State must be physically attached to all requested certificates of insurance and not substituted by referring to such coverage on the certificate of insurance.

1. Inadequate Insurance

Inadequate or lack of insurance does not negate the contractor and/or Permittee’s obligations under the contract.

1. Satisfying an SIR

All insurance required by this contract must allow the State to pay and/or act as the contractor’s agent in satisfying any self-insured retention (SIR). The choice to pay and/or act as the contractor’s agent in satisfying any SIR is at the State’s discretion.

1. Available Coverages/Limits

All coverage and limits available to the contractor shall also be available and applicable to the State.

1. Subcontractors

In the case of Contractor and/or Permittee’s utilization of subcontractors to complete the contracted scope of work, contractor and/or Permittee shall include all subcontractors as insured’s under Contractor and/or Permittee’s insurance or supply evidence of insurance to The State equal to policies, coverages and limits required of Contractor and/or Permittee.

EXHIBIT F

Conflict of Interest Provisions

## NOTICE OF POTENTIAL CONFLICTS

 The Contractor represents that it is familiar with California conflict of interest laws, and agrees to comply with those laws in performing this Contract (e.g., Gov. Code § 81000 et seq., and Gov. Code § 1090 et seq.). The Contractor certifies that, as of the effective date of this Agreement, it was unaware of any facts constituting a conflict of interest. The Contractor shall avoid all conflicts of interest in performing this Contract.

 Contractor agrees to continuously review new and upcoming projects in which members of the Contractor team may be involved for potential conflicts of interest. Contractor shall inform the CAM as soon as a question arises about whether a potential conflict may exist. The CAM and the Commission’s Chief Counsel’s Office shall determine what constitutes a potential conflict of interest. Without limiting any of its other available rights, remedies, or actions, the Energy Commission reserves the right to redirect work and funding if the Commission’s Chief Counsel’s Office determines that there is a potential conflict of interest.

## APPEARANCES OF CONFLICTS OF INTEREST

 Contractor acknowledges that in governmental contracting even the appearance of a conflict of interest can be harmful to the interest of the State. Thus, Contractor agrees to refrain from any practices, activities, or relationships that appear to conflict with Contractor’s obligations under this Contract, unless Contractor receives prior written approval of the Commission. In the event Contractor is uncertain whether the appearance of a conflict of interest may exist, Contractor shall submit to the CAM a written description of the relevant details.

1. **RULES REGARDING CURRENT AND FORMER ENERGY COMMISSION EMPLOYEES**

 Please see the CONFLICT OF INTEREST provision in the Contractor Certification Clauses (CCC 307) incorporated by reference into these terms and conditions from the Department of General Services’ required terms (GTC 610), which are also incorporated by reference in Exhibit **[X]**.

1. **CERTIFICATION REGARDING CONFLICTS OF INTEREST**

 The Contractor shall submit the Certification Regarding Conflicts of Interest (Appendix **8**) for each employee considered to be a “consultant” (see below) at multiple points: (1) when the Firm submits a Statement of Qualifications to the Energy Commission; (2) within 30 business days from the date of the contract start date; and (3) every twelve months until the contract end date. Please also see Appendix **[X]** for additional instructions.

1. **FILING STATEMENT OF ECONOMIC INTEREST (FORM 700)**

The California Political Reform Act requires individuals holding positions designated within an agency’s conflict of interest code to file a Statement of Economic Interests (Form 700) at certain times. The Energy Commission’s conflict of interest code designates “consultants” among the positions that must file a Form 700 (see Title 20 California Code of Regulations Sections 2401 and 2402).

The Energy Commission considers all of the Contractor’s and subcontractors’ employees working on (providing labor) on Tasks **[X-X]** **[CAM to complete - these are tasks where employees will be participating in a governmental decision, as opposed to performing strictly administrative tasks]** to be “consultants” subject to the requirements and restrictions of the Political Reform Act and requires them to file an original form 700 with the Energy Commission. (See Government Code Sections 82019 and 87302). Employees working on strictly administrative tasks, such as Tasks **[X-X]** **[CAM to complete – these are strictly administrative tasks]** do not have to fill out Form 700 unless directed to do so by the Energy Commission. The Energy Commission reserves the right to have anyone working under this Contract to fill out a Form 700. Each employee and subcontractor determined to be a consultant under the Political Reform Act shall be subject to the same disclosure category or categories applicable to the Commission staff who perform the same nature and scope of work as the consultant. The Energy Commission will determine the appropriate disclosure category for each consultant through the Agency Report of Consultants (Form 805) (see section below for additional information). The disclosure categories can be found at 20 California Code of Regulations Section 2402.

Each of the Contractor’s and subcontractors’ employees performing work (providing labor) under the Agreement on Tasks **[X-X]**, or as directed by the Energy Commission, must file a Form 700 within the times required under the Political Reform Act, which include the following:

* Assuming Office Statement. Must be filed within 30 days of beginning work under the Contract. Beginning work means when the employee actually performs work under the Contract; it does not mean the start date of the Contract unless the employee starts work on the start date.
* Annual Statement. Must be filed annually, no later than April 1.
* Leaving Office Statement. Must be filed within 30 days of ceasing to perform work under the Contract (e.g., removed as a subcontractor, completion of assigned tasks) or within 30 days after the Agreement ends.

Additionally, consultants are subject to training requirements pursuant to Government Code Section 11146 et. seq. The training, developed by the Attorney General of California and the Fair Political Practices Commission, is offered online and is mandatory for all consultants.

**Every individual that qualifies as a “consultant” under the Political Reform Act has an ongoing duty to avoid conflicts of interest and is personally liable for penalties. Please note that not filing the Form 700 or not meeting the training requirements when required can result in automatic daily fines and other consequences.**

File all original Form 700’s in person at, or by mail to, the following address (e-mails and faxes are not acceptable):

Energy Commission Filing Officer – Form 700 Filing

Selection, Training, & Equal Employment Opportunity Office

1516 9th St., MS 52

Sacramento, CA 95814

1. **AGENCY REPORT OF CONSULTANTS (FORM 805)**

Within 30 days of the Contract start date, Contractor must provide the CAM with a Fair Political Practices Commission Form 805, Agency Report of Consultant. Form 805 is available at: <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Agency%20Reports/805.pdf>. The Contractor shall complete Section 2, Firm Information. Under Section 3, Consultant Information, the Contractor shall complete the Consultant Name section for every individual (including names of subcontractors’ employees) performing working under Tasks **[X-X][same as above - these are the tasks that consultants perform]**, along with the Assuming/Start Date for each individual. A supplemental Form 805 is required within 30 days whenever a new consultant begins work under the contract. If a consultant listed on a Form 805 ceases to perform work under the Contract (e.g., completion of assigned tasks), the Contractor shall notify the CAM of the change within 30 days.

1. **SEPARATION OF DUTIES**

 For the duration of this Contract, Contractor and all subcontractors shall not enter into an agreement or working relationship with anyone, and shall not negotiate or make arrangements concerning employment with anyone, who has a pending Application with the Energy Commission, is planning to file an Application, or is otherwise working on an Application that has been filed or is expected to be filed at the Energy Commission, other than as directed by the Energy Commission for DCBO services.

 All employees (including employees of both Contractor and subcontractors) identified as consultants are subject to restrictions of the Political Reform Act on post-governmental activity. Contractor shall ensure that all employees are aware of these restrictions. Guidance published by the Fair Political Practices Commission on these restrictions can be found at: [http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Public Officials and Employees/Leaving\_State\_Employment.pdf](http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Public%20Officials%20and%20Employees/Leaving_State_Employment.pdf).

1. **ENFORCEMENT**

Contractor shall make its employees aware of these provisions and shall enforce them. Contractor shall ensure that these provisions are included in all subcontracts, and shall enforce them.

1. **NOTIFICATION OF POTENTIAL PROBLEMS**

Contractor shall immediately inform the CAM of any potential problems in compliance with these provisions.

**EXHIBIT G**

**Agreement Contacts**

|  |  |
| --- | --- |
| **Commission Agreement Manager**:Kyle Emigh, MS-2000California Energy Commission1516 Ninth Street Sacramento, CA 95814Phone 916-Fax # 916-e-mail: @energy.ca.gov | **Contractor Project Manager:**(Name)(Contractor Name)AddressPhone: Fax: e-mail:  |
| **Commission Deliverables/Products:**California Energy CommissionContracts, Grants, and Loans Office1516 Ninth Street, MS-18Sacramento, CA 95814Deliver confidential deliverables to this location only. | **Contractor Contract Administrator/Officer**:(Contractor Name)AddressPhone: Fax: e-mail:  |
| **Invoices**, **Progress Reports and** **Non-Confidential Deliverables to:**California Energy CommissionAccounting Office1516 Ninth Street, MS-2Sacramento, CA 95814 |  |
| **Commission Legal Notices**:Michael Poe, ManagerContracts OfficeCalifornia Energy Commission1516 Ninth Street, MS-18Sacramento, CA 95814Phone: 916-654-4809Fax: 916-654-4423e-mail: Michael.poe@energy.ca.gov | (contractor legal person) |