

GRANT FUNDING OPPORTUNITY

TRIBAL GOVERNMENT CHALLENGE PLANNING GRANT PROGRAM

<https://www.energy.ca.gov/programs-and-topics/programs/tribal-program>

State of California

Governor's Office of Planning and Research

California Strategic Growth Council

March 13, 2020



CALIFORNIA
STRATEGIC
GROWTH
COUNCIL



CALIFORNIA
ENERGY
COMMISSION

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I. Introduction

BACKGROUND

The Tribal Government Challenge planning grant program (grant program) will award funds to California Native American Tribes (Tribes)¹ to support climate and energy-related planning activities, feasibility studies, and auditing that identify tribally tailored solutions to reduce greenhouse gas emissions and improve clean energy access while advancing climate adaptation and resiliency on Tribal lands² and for Tribal communities³.

As demonstrated in the November 2018 inaugural California Tribal Energy Summit sponsored by the California Energy Commission, the State recognizes the valuable role Tribes serve in promoting strong clean air standards as well as ambitious climate and energy goals. Tribes create, co-author, and demonstrate leadership in research and technological advancements. Tribes can also foster innovation as well as share what they have learned with other Tribes and with the State. More specifically, Tribes have recommended that the State assess Tribal participation in State Energy Programs (SEP), as well as Tribal energy needs and the available energy resources on Tribal lands.

The program is funded through the American Recovery and Reinvestment Act of 2009 (ARRA), specifically by funds collected in repayment of past revolving loans from the highly successful California Rural Home Mortgage Finance Authority Homebuyers Fund (CHF) Moderate Income Sustainability Technology program, which closed in 2012. These repayments are available for use on projects and programs related to the original ARRA guidelines. Two-million dollars (\$2 million) will be available through this grant program, administered through a partnership between the California Energy Commission (CEC) and the California Strategic Growth Council (SGC).

These grants provide opportunities to focus on a new Tribal climate and energy planning initiative. This grant program seeks to fund climate and energy-related planning activities, feasibility studies, and auditing to eligible Tribes in California. More information on eligible activities appears in [Section II, Eligibility Requirements](#).

The CEC must comply with Federal and State requirements for ARRA funding as described in the [Laws, Regulations, and Guidelines](#) section of this solicitation.

GOALS OF SOLICITATION

This grant program is designed to help Tribes meet the challenges of adopting energy or climate plans that integrate strategies to enhance their communities and create long-term prosperity. As the administering agency for this grant program, SGC will invest in energy-related Tribal climate

¹ **California Native American Tribe:** A “California Native American Tribe” is a Native American Tribe that is on the contact list maintained by the Native American Heritage Commission (NAHC) for the purposes of Chapter 905 of the Statutes of 2004 (Pub. Resources Code, § 21073).

² **Tribal land:** For the purposes of this solicitation, tribal lands refers to lands located in the State of California that are tribally owned lands, buildings, or facilities, lands a Tribe exercises jurisdiction over, or lands that the Bureau of Indian Affairs holds in trust for Tribes, individual allottees, or public domain allottees, or lands managed through conservation easements or through lease agreement, or through co-management agreements, for the benefit of Tribes.

³ **Tribal Communities:** Tribal communities are groups of people living within reservation or allotment boundaries, or that otherwise fall under the jurisdiction of a tribe, regardless of whether or not those people are tribal members of one or another tribe or are not tribal members.

planning activities that foster the development of sustainable tribal communities. Sustainable tribal communities shall “promote equity, strengthen the economy, protect the environment, and promote healthy, safe communities”⁴.

Planning activities must be consistent with Tribal values and any applicable Tribal, general, or regional plan. Proposals must outline or lay out plans, processes, or practices that reduce greenhouse gas emissions and provide benefits that increase Tribes’ adaptabilities to climate change.

Specific goals for this program are to:

- Support planning activities that promote clean energy access and energy efficiency, with a focus on promoting public health, reducing emissions, and supporting climate adaptation and resiliency in Tribal communities. These planning activities can include increasing access to clean transportation and clean energy options, increasing agricultural energy efficiency, increasing energy affordability, increasing energy efficiency in buildings, and planning for climate impacts and risks to energy systems and community members.
- Support the State of California’s climate and energy policies through Tribal planning and analysis.

KEY ACTIVITIES AND DATES

Key activities including dates and times for this solicitation appear below. The State will release an addendum if the dates change for the activities marked with an asterisk (*).

Table 1: Key Activities and Dates

ACTIVITY	ACTION DATE
Solicitation Release	3/13/2020
Proposal Assistance Webinar	3/18/2020
Deadline for Written Questions* by 5:00 p.m. PDT	4/2/2020
Distribute Questions/Answers and Addenda (if any) to solicitation	4/10/2020
Deadline to Submit Proposals by 5:00 p.m.* PDT	5/22/2020
Anticipated Notice of Proposed Award Posting Date	6/22/2020
Anticipated Agreement Start Date	July – August 2020
Agreement Termination Date	March 31, 2022

HOW AWARD IS DETERMINED

Complete proposal packages (proposals) that pass administrative and technical screening will compete based on evaluation criteria and will be scored and ranked based on those criteria. Proposals obtaining at least the minimum passing score will be recommended for funding in ranked order, and final funding decisions will be subject to programmatic considerations including diversity of project types and geographic locations. Awards will be made until all funds available under this solicitation are exhausted.

⁴ California Planning Priorities, Government Code § 65041.1.

If the funds available under this solicitation are insufficient to fully fund a grant proposal, SGC reserves the right to recommend partially funding that proposal. In this event, the proposed participating Tribe/Awardee and SGC will meet and reach agreement on a reduced scope of work commensurate with the level of available funding.

Each agreement resulting from this solicitation includes terms and conditions that set forth the Awardee's rights and responsibilities. SGC will not award grants to non-complying entities. SGC reserves the right to modify a grant scope and budget prior to executing agreements.

MAXIMUM AND MINIMUM AWARD AMOUNTS

A total of two million dollars (\$2 million) are available for grants awarded through this solicitation. The maximum award amount is \$250,000, and the minimum award amount is \$150,000 per funded proposal. Per State requirements, the State will enter into a cost reimbursement agreement with grant awardees that will compensate Tribes for allowable direct and indirect expenditures.

PROPOSAL ASSISTANCE WEBINAR

March 18, 2020

1:00 pm – 3:00 pm (PDT)

See instructions below to participate on the GoToWebinar online meeting platform.

The State will host a Proposal Assistance Webinar on Wednesday, March 18, 2020. Participation in this meeting by prospective applicants is optional but encouraged. The Proposal Assistance Webinar will be held through GoToWebinar. To participate, register at <https://attendee.gotowebinar.com/register/591524466895041035>. After registering, you will receive a confirmation email containing information about joining the webinar.

This webinar will only be accessible virtually. Presentations will appear on your computer screen, and you may listen to audio via your computer or telephone. Please be aware that the presentation portions of both webinars will be recorded and made available after the conclusion of the webinars at <https://www.energy.ca.gov/programs-and-topics/programs/tribal-program>.

FOR ADDITIONAL INFORMATION ON HOW TO JOIN THE WEBINARS, PLEASE REFER TO THE ABOVE WEBSITE. QUESTIONS

Please direct questions about this solicitation to the SGC program manager identified in the following section. Potential applicants may submit written questions by mail, electronic mail, and by fax. All questions must be received by 5:00 pm on April 2, 2020.

Question and answer sets will be emailed to all parties who both attend the webinar(s) and provide their contact information upon registering. The State will also post the questions and answers document on CEC's website at: <https://www.energy.ca.gov/programs-and-topics/programs/tribal-program>.

Any verbal communication with an SGC or CEC employee concerning this solicitation is not binding on the State and shall in no way alter a specification, term, or condition of the solicitation. Therefore, please direct all communication to the SGC program manager assigned to the solicitation.

SGC PROGRAM MANAGER CONTACT INFORMATION

Elizabeth Grassi, Program Manager
California Strategic Growth Council
1400 Tenth Street; Sacramento, CA 95814
(916) 327-5362
tribalprograms@sgc.ca.gov

LAWS, REGULATIONS, AND GUIDELINES

Participating Tribes should note that activities funded by ARRA must comply with various Federal and State requirements. While Federal or State requirements may not apply directly to sovereign Tribal governments, the agency providing grant funding is subject to these laws and is required to flow down certain requirements to any entity receiving funding. Participating Tribes should review the Terms and Conditions applicable to this solicitation.

Single Audit Act: Participating Tribes must comply with requirements of the Single Audit Act. The Single Audit Act and Office of Management and Budget Circular A-133, *Audits of State, Local Governmental, and Non-profit Organizations*, require entities that expend equal to or in excess of \$750,000 in a fiscal year to have an audit performed in accordance with the Act. The Awardee must verify compliance with the Single Audit Act, if applicable, prior to SGC's approval of an agreement. For additional information on specific requirements, please visit the Single Audit Requirement webpage on the State Controller's Office web portal, https://www.sco.ca.gov/aud_single_audit_requirement.html.

Planning Purposes Only: Eligible grant activities are restricted to planning activities, and do not include any construction or ground disturbance activities. Funding exclusively climate and energy related planning studies, feasibility studies, and auditing, allows the SGC and the CEC to comply with California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) requirements, by limiting proposals to activities statutorily exempt under CEQA and categorically excluded from NEPA review to meet the ARRA fund encumbrance deadline.

REGISTRATION REQUIREMENTS

All eligible participating Tribes must be registered with the following systems:

Dun and Bradstreet data Universal Number System (DUNS): Prior to beginning work, participating Tribes/Awardees must obtain a **DUNS** number or, if necessary, update their organization's information. A DUNS number is a unique identifier used by the federal government to track distribution of federal funds. To obtain a DUNS number or to update information, please go online or contact the D&B Government Customer Response Center at 1-866-705-5711.

System for Award Management (SAM): All participating Tribes/Awardees must maintain current registration in the SAM at all times during which they have an active award funded with ARRA funds. The SAM database is the federal government's primary registrant database. It

collects, validates, stores and disseminates data in support of federal grants, cooperative agreements, and other forms of assistance. To register, please visit SAM's website at <https://www.sam.gov/SAM/pages/public/samStatusTracker.jsf#step1content>. For assistance, contact the Federal Service Desk at 1-866-606-8220. Registrants must update or renew their registration at least once per year to maintain an active status.

A DUNS number is one of the requirements for registration in the SAM.

In addition, some eligible applicants may be required to register with the **California Secretary of State's Office**. California business entities as well as non-California business entities conducting intrastate business in California are required to register and be in good standing with the California Secretary of State to enter into an agreement with the SGC. If not currently registered with the California Secretary of State, applicants are encouraged to contact the Secretary of State's Office as soon as possible to avoid potential delays in beginning the proposed project (should the proposal be successful). This requirement does not necessarily apply to federally recognized Tribes, but does apply to California Native American Tribes operating as non-profits organizations or businesses. For more information, contact the Secretary of State's Office via its website <https://www.sos.ca.gov/>.

II. Eligibility Requirements

ELIGIBLE PROPOSALS

This is an open solicitation for California Native American Tribes to apply funds towards planning activities, feasibility studies, and energy auditing. The applicant must be a California Native American Tribe (defined on page 1). Tribal health clinics, Tribal housing authorities, Tribal government business entities, Tribal non-profits, and other entities may partner with Tribal governments, but the primary applicant must be a California Native American Tribe.

Proposal activities must be located in the State of California and must apply funds towards planning activities involving one or more of the following:

- Tribally owned lands, buildings, or facilities
- Lands over which a Tribe exercises jurisdiction, or lands that the Bureau of Indian Affairs holds in trust for Tribes Individual allottees
- Public domain allottees
- Lands managed for the benefit of Tribes through conservation easements, lease agreements, or co-management agreements

When completed, the plans or analyses will serve as examples for other Tribes. The participating Tribe will identify ways in which the Tribe will broadcast or showcase the results of the plan to other tribal governments.

Any federally recognized Tribe receiving a grant must provide a limited waiver of sovereign immunity.

ELIGIBLE ACTIVITIES

This grant program will fund energy, climate, and adaptation planning and feasibility studies, and auditing activities. Applicants must demonstrate a connection to energy in all planning activities funded through this grant and are encouraged to consider climate mitigation, adaptation, and resiliency as well. Federal and State requirements for ARRA funding are described in the section I of this solicitation titled [Laws, Regulations, and Guidelines](#).

The following section provides **examples** of eligible activities and example objectives of this grant; this is not a comprehensive list of topics that may be funded.

1. **Energy-related planning.** Plans or audits conducted under this topic focus solely on energy sources, energy use, renewable energy planning, etc.
 - a. Project examples include:
 - i. Energy planning study
 - ii. Energy feasibility study
 - iii. Energy audit
 - b. Sample planning objectives can include:
 - i. Reduce energy use
 - ii. Increase energy efficiency
 - iii. Increase renewable energy development and procurement
 - iv. Reduce greenhouse gas emissions
 - v. Improve energy grid resiliency
 - vi. Inform energy efficiency improvements for buildings, facilities, and transportation.
2. **Climate adaptation and resiliency planning.** Planning activities in this topic are broader than above and incorporate climate change risk into energy planning for climate adaption measures into Tribal policies or Tribal lands management practices.
 - a. Planning examples include:
 - i. Climate change vulnerability assessment that incorporates energy system vulnerabilities
 - ii. Climate adaptation planning for energy system resilience
 - iii. Hazard mitigation planning that incorporates energy system risk

- b. Planning examples include:
 - i. Climate change vulnerability assessment that incorporates energy system vulnerabilities
 - ii. Climate adaptation planning for energy system resilience
 - iii. Hazard mitigation planning that incorporates energy system risk
 - c. Sample planning objectives can include:
 - i. Assess climate risks to energy systems; these can include, but are not limited to wildfire, extreme heat and heat waves, drought, flooding, and sea level rise
 - ii. Determine tribal community members/populations most vulnerable to climate change impacts (i.e., impoverished, youth, elderly and/or disabled community members) and associated impacts of losing power or other energy impacts (higher energy bills because of extreme heat/extreme weather, need to upgrade energy efficiencies, etc.)
 - iii. Develop strategies to mitigate climate risks to energy infrastructure and/or vulnerable tribal communities, including but not limited to, wildfire, extreme heat and heat waves, drought, flooding, and sea level rise
 - iv. Improve energy resiliency to extreme weather events and other potential disturbances
3. **Sustainable communities planning.** This category is the broadest of the three but planning activities in this category must maintain a connection to energy-related topics or issues in the planning proposed. These plans would look at sustainability in a holistic way, including energy needs, climate adaptation and resilience, reduced emissions, and improved community livability.
- a. Project examples include:
 - i. Climate Action Planning
 - ii. Land Use and Energy Planning
 - iii. Transportation Planning
 - b. Sample planning objectives can include any of the above objectives, as well as:
 - i. Promoting and improving public health outcomes through clean energy and/or clean transportation investments
 - ii. Improving access to renewable energy and clean transportation
 - iii. Improving access to electric vehicles and charging stations
 - iv. Improving energy infrastructure systems
 - v. Reducing automobile usage and fuel consumption

Applicants should also consider and describe how results of funded planning activities will be shared with other Tribes, with a focus on replicable activities and models. The State will share the deliverables produced through the planning activities funding by this solicitation with the public and other Tribes.

INELIGIBLE ACTIVITIES

- This grant program will not fund construction or ground disturbance activities.
- The grant program cannot fund revolving loan programs or rebate programs.
- Proposed activities must be statutorily exempt from CEQA and be categorically excluded in NEPA. In addition, none of the awarded funds can be spent on work products developed expressly for use in a NEPA or CEQA process.
- Any activities that would cause direct physical change in the environment (i.e., construction, ground disturbance, installations, and retrofits).
- Any activities with foreseeable indirect physical changes in the environment or that would have a legally binding effect on later activities.
- The grant program cannot fund negotiations of contracts, including contracts regarding energy utilities, procurement, or rate adjustments.

INDIRECT COST RATE

This grant funding opportunity will accept any indirect cost rate provided the applying Tribe substantiates the rate with supporting documentation. However, please note that this is a competitive grant solicitation and the most cost-effective proposals will be prioritized.

MATCH FUNDING REQUIREMENTS

There is no match share requirement under this solicitation.

REQUIRED SUBMISSION OF DELIVERABLES

SGC requires all of the grant program's awardees to submit final deliverables of the project's best practices and implementation templates and materials to OPR's [Integrated Climate Adaptation and Resiliency Program Clearinghouse](#). The Clearinghouse shall make all data and information publicly available through its internet web portal, <https://resilientca.org/>

III. Proposal Format, Required Documents, and Delivery

REQUIRED FORMAT FOR A PROPOSAL

This section contains the format requirements and instructions for how to submit a proposal. The format is prescribed to assist the participating Tribe in meeting State requirements and to enable SGC and CEC to evaluate each proposal uniformly and fairly. Participating Tribes must follow all proposal format instructions, answer all questions, and supply all requested data. Each proposal must clearly reference this solicitation title, Tribal Government Challenge, on the cover page.

METHOD FOR DELIVERY

The only method of delivery for submitting a proposal in response to this solicitation is the Energy Commission’s Grant Solicitation System, available at: <https://gss.energy.ca.gov/>. This online tool allows applicants to submit their electronic documents to the Energy Commission prior to the date and time specified in this solicitation. Electronic files must be in MS Word version 1997-2003, or version 2007 or later (.doc or .docx format) and Excel Office Suite formats unless originally provided in the solicitation in another format. Attachments requiring signatures may be scanned and submitted in PDF format. Completed Budget Forms, [Attachment 5](#), must be in Excel format. The system will not allow applications to be submitted after the due date and time.

First time users must register as a new user to access the system. Applicants will receive a confirmation email after documents have been successfully uploaded. You may contact SGC staff identified in the Questions section of the solicitation for more assistance.

PROPOSAL ORGANIZATION

Table 3: Proposal Organization

Requirement	Instructions
Proposal Cover Page	Include Solicitation Title: Tribal Government Challenge
Table of Contents	
A. Proposal Questionnaire	Attachment 1
B. Proposal Narrative	Attachment 2
C. Scope of Work/Deliverables Schedule	Attachments 3 & 4, Scope of Work and Deliverables Schedule
D. Project Team	
E. Previous Work Products (Optional)	
F. Budget Forms and information	Attachment 5
G. Contacts	Attachment 6

A. Proposal Questionnaire

Participating Tribes must include a complete and signed Proposal Questionnaire, [Attachment 1](#). The questionnaire must be signed by an authorized representative of the Tribe. This signature certifies that all information in the proposal is correct and complete to the best of the participating Tribe's knowledge AND that the participating Tribe has read the Terms and Conditions and will accept them without negotiation if awarded.

B. Proposal Narrative

The Proposal Narrative, [Attachment 2](#) must include a detailed description of the proposed activities, as well as goals and objectives of the proposed activities. The Proposal Narrative will address the scoring criteria described in [Section 4](#) and provide sufficient detail so that reviewers will be able to evaluate the proposal against each of the scoring criteria.

C. Scope of Work and Schedule

Participating Tribes must include a completed Scope of Work and Schedule for the overall proposal. Please complete the Scope of Work and Deliverables Schedule Template, [Attachment 3](#) and refer to the Scope of Work Instructions, [Attachment 4](#). Electronic files for the Scope of Work must be in Microsoft Word.

Note: Awardees must complete all activities and submit a final invoice to SGC by March 31, 2022.

Instructions for the Schedule of Products and Due Dates are included in the document template.

The description of activities in the Proposal Narrative must conform to the Tasks described in the Scope of Work.

D. Project Team

1. Identify by name all key personnel assigned to the proposed plan, including the project manager, and clearly describe their individual areas of responsibility. The project manager is the responsible for interacting with SGC on all issues relating to the overall plan and coordinating all aspects of work under the proposal.
2. For each team member, include company, position title, job description, resume (maximum of two pages), and contact information.
3. Include letters of commitment from key project partners.
4. Provide a list of past projects detailing relevant technical and business experience.

E. Previous Work Products (Optional)

Participating Tribes may include in the proposal any previous work products related to climate or energy planning (optional).

F. Budget Forms and Information

1. The participating Tribe must submit information on the provided Budget Forms, ([Attachment 5](#)). The State will use these forms to prepare agreements with Awardees. A separate set of complete budget forms, comprised of the budget, and justification of costs, is required for the Participating Tribe/Awardee.
2. Proposed rates and personnel must reflect rates and personnel the Tribe would charge if chosen as the Awardee for this solicitation. The salaries, rates, indirect cost rates, and other costs entered on these forms become a part of the final agreement. The rates proposed are considered capped and shall not change during the term of the agreement. The Awardee shall only be reimbursed for its **actual** rates up to these rate caps. The hourly or monthly rates provided shall be unloaded (before fringe benefits or indirect costs). Proposed fringe and indirect cost rates should be supported with substantial documentation.
3. The information provided in these forms will **not** be kept confidential.
4. Awardees must expend all proposal activity expenditures (reimbursable) within the approved term of the funding agreement.
5. The Budget should allow for the expenses of a kick-off meeting. It is anticipated that meetings will be conducted at the SGC located in Sacramento, CA, or by conference call. Other meetings between grantees and State staff can occur on an as-needed basis, as determined by the State's project manager.
6. The Budget should allow for the preparation and submission of progress reports (1-2 pages each) that will occur not more than once a month and not less than once per quarter during the approved term of the agreement, and a Final Report. The State will provide Awardees with instructions for preparing the Monthly/Quarterly Reports and Final Report.
7. The Budget must reflect estimates for **actual** costs Tribes expect to incur during the approved term of the project. SGC can only approve and reimburse for actual costs that are properly documented in accordance with the Grant Terms and Conditions.
8. Participating Tribes shall **NOT** budget for, and **CANNOT** be reimbursed for, more than their actual allowable expenses (i.e., cannot include profit, fees, or markups) under the agreement. Subcontractors (all tiers) may include up to a maximum total of 10% profit, fees or mark-ups on their own actual allowable expenses less any expenses further subcontracted to other entities (i.e., profit, fees and markups are not allowed on subcontractor expenses). For example, if a subcontractor has \$100,000 in actual allowable costs but has further subcontracted \$20,000 to another entity, then the subcontractor can only include up to 10% profit on \$80,000 (\$100,000 minus \$20,000). See the Terms and Conditions for more information on allowable costs.

IV. Evaluation Process and Criteria

PROPOSAL EVALUATION

This section explains how the State will evaluate proposals. It describes the evaluation stages, preference points, and scoring of all proposals.

The State will evaluate and score proposals based on their response to the information requested in this solicitation.

To evaluate all proposals, SGC will organize an Evaluation Committee. The Evaluation Committee may consist of SGC staff or staff of other California state entities.

SGC and the Evaluation Committee will evaluate proposals in two stages:

Stage One: Screening Criteria

SGC will screen proposals for compliance with the Administrative Screening Criteria and Technical Screening criteria identified below. Proposals that fail any of the Administrative or Technical Screening Criteria shall be disqualified and eliminated from further evaluation.

Administrative Screening Criteria
1. The complete proposal package is received by SGC by the specified due date and time in Section I of this solicitation.
2. The Proposal Questionnaire, Attachment 1 is complete and is signed by the Tribe's authorized representative.
3. The proposal does not contain confidential information, or any portion marked confidential.
4. The participating Tribe agrees to all Terms and Conditions and meet all requirements of the solicitation by signing the Proposal Form.
5. The proposal does not include any statement in the proposal that acceptance is based on modifications to those Terms and Conditions or separate terms and conditions.
6. The proposal package is prepared in the mandatory format described.
7. The budget forms are filled out completely.
Technical Screening Criteria
1. The proposal is an eligible proposal (Section II, Eligible Proposals).
2. The proposal activities are eligible activities (Section II, Eligible Activities).

Grounds to Reject a Proposal

In addition to the Screening Criteria identified above, SGC reserves the right to reject a proposal and/or cancel an award if at any time during the proposal or agreement process the following circumstances are discovered:

- The proposal contains false or intentionally misleading statements or references which do not support an attribute or condition contended by the participating Tribe.

- The proposal is intended to erroneously and fallaciously mislead the State in its evaluation of the proposal and the attribute, condition, or capability is a requirement of this solicitation.
- The proposal does not literally comply or contains caveats that conflict with the solicitation and the variation or deviation is material or it is otherwise non-responsive.
- The participating Tribe has previously received funding through a Public Interest Energy Research (PIER) agreement, has received the PIER Royalty Review letter which the CEC annually sends out to remind past recipients of their obligations to pay royalties, and has not responded to the letter or is otherwise not in compliance with repaying royalties.

Stage Two: Technical Evaluation of Proposals

SGC will submit proposals passing Stage One to the Evaluation Committee to review and score based on the Evaluation Criteria in this solicitation.

During the evaluation and selection process, the Evaluation Committee may schedule a clarification interview with an applying Tribe that will either be held by telephone or in person for the purpose of clarification and verification of information provided in the proposal. However, these interviews may not be used to change or add to the contents of the original proposal. Participating Tribes will not be reimbursed for time spent answering clarifying questions.

The total score for each proposal will be the average of the combined scores of all Evaluation Committee members.

A minimum score of 70 points is required for the proposal to be eligible for funding. The maximum points possible is 100 points.

Awards made by the selection committee will consider the highest-ranked proposals and will take into consideration programmatic factors including geographic diversity and diversity of project types.

NOTICE OF PROPOSED AWARD

The State will post the results of SGC's decisions about proposed funding level, the rank-order of participating Tribes, and the amount of each proposed award in a Notice of Proposed Award (NOPA). SGC will post a NOPA at its headquarters in Sacramento, on the SGC and CEC websites, and will mail the NOPA to all parties that submitted a proposal.

DEBRIEFINGS

Unsuccessful participating Tribes may request a debriefing after the release of the NOPA. A request for debriefing must be received by the SGC no later than 15 days after the NOPA is released.

SCORING SCALE

Using this Scoring Scale, the Evaluation Committee will give a score for each criterion described in the Evaluation Criteria Worksheet.

Table 2: Scoring Scale

% of Possible Points	Interpretation	Explanation for Percentage Points
0%	Not Responsive	Response does not include or fails to address the requirements being scored. The omission(s), flaw(s), or defect(s) are significant and unacceptable.
10-30%	Minimally Responsive	Response minimally addresses the requirements being scored. The omission(s), flaw(s), or defect(s) are significant and unacceptable.
40-60%	Inadequate	Response addresses the requirements being scored, but there are one or more omissions, flaws, or defects or the requirements are addressed in such a limited way that it results in a low degree of confidence in the proposed solution.
70%	Adequate	Response adequately addresses the requirements being scored. Any omission(s), flaw(s), or defect(s) are inconsequential and acceptable.
80%	Good	Response fully addresses the requirements being scored with a good degree of confidence in the participating Tribe's response or proposed solution. No identified omission(s), flaw(s), or defect(s). Any identified weaknesses are minimal, inconsequential, and acceptable.
90%	Excellent	Response fully addresses the requirements being scored with a high degree of confidence in the participating Tribe's response or proposed solution. Participating Tribe offers one or more enhancing features, methods or approaches exceeding basic expectations.
100%	Exceptional	All requirements are addressed with the highest degree of confidence in the participating Tribe's response or proposed solution. The response exceeds the requirements in providing multiple enhancing features, a creative approach, or an exceptional solution.

TECHNICAL EVALUATION CRITERIA

All attachments provided by the applying Tribe will be considered against the criterion below.

<i>Technical Evaluation Criteria</i>	<i>Maximum Points</i>
<p>1. Demonstrated Need or Value</p> <ul style="list-style-type: none"> a. Clearly identifies and provides detailed justification for the need and/or value of the proposal as a whole, as well as justification for the need and/or value of each of the technical tasks or activities proposed. b. Reflects the goals of the Tribe as stated in other planning documents. c. Reflects the needs of the Tribal communities. d. Identifies and discusses any benefits of the proposed activities and who will receive those benefits. e. Explains how the proposed plan would not be able to move forward without the Tribal Government Challenge grant. Describes probable next steps toward implementing the proposed plan. f. Identifies and discusses any consequences that may result from not doing the proposal. g. Identifies whether the Tribe contains or constitutes a tribal community that is vulnerable to wildfire, sea-level rise, or other climate-change phenomena. 	20
<p>2. Climate and Energy Goals</p> <ul style="list-style-type: none"> a. Demonstrates how the proposed plan would progress the Tribe toward current and future climate and energy goals, as relevant. b. Describes how the proposed plan would lead to measurable energy savings, greenhouse gas emissions reductions, and/or advance adaptation and resiliency. c. Describes how the proposed plan would promote a combination of energy resiliency, efficiency, flexibility, as well as health and social equity. 	20
<p>3. Technical Approach</p> <ul style="list-style-type: none"> a. Describes the technique, approach, and methods to be used in performing the work. b. Describes how tasks will be executed and coordinated with various participants and team members. c. Identifies and discusses factors critical for success, in addition to risks, barriers, and limitations, and provides a plan to address them. 	20

Technical Evaluation Criteria	Maximum Points
<p>4. Scope of Work and Proposed Tasks</p> <ul style="list-style-type: none"> a. Describes a Scope of Work with quantifiable/measurable technical, administrative, and economic performance goals and objectives for the proposal, including what criteria and metrics will be used to determine plan successes and failures. b. Proposal tasks are stated as separate and distinct, clearly defined and logically presented, with appropriate goals, objectives, and interim and final products. c. Proposal package includes a realistic schedule for completion of the proposal tasks during the contract period, as well as clearly described interim and final products for each task and an appropriate budget. d. The Tribe demonstrates a plan to successfully complete proposal tasks and deploy results. e. Proposal Package is complete and organized correctly. f. Participating Tribe has a follow up plan and/or follow up funding source(s) to utilize the successful planning product of this grant program and take physical actions to achieve the Tribe's energy goals. 	20
<p>5. Sharing Plan</p> <ul style="list-style-type: none"> a. Discusses how proposed planning activities could be replicated by other Tribal governments b. Participating Tribe has a plan to broadcast and/or showcase the proposal implementation and results to the State and other Tribal governments. c. A sharing plan identifies more than one mode of broadcast and/or showcase e.g. conference, workshop, website, press release, podcast, Twitter thread, etc. 	5
<p>6. Team Qualifications</p> <ul style="list-style-type: none"> a. Explains how the various tasks will be managed and coordinated, and how the project manager's technical expertise will support the effective management and coordination of all activities in the proposal by the end of the grant period. b. Resumes are included for the project team as required under Section III., Proposal Format, Required Documents, and Delivery, D. Project Team. 	5

Technical Evaluation Criteria	Maximum Points
7. Budget and Cost Effectiveness <ul style="list-style-type: none"> a. Overall proposal cost is consistent with the proposed work and products to be provided. b. Personnel rates/costs, operating expenses, and indirect rates/costs are reasonable for the proposed work and consistent with the experience of the project team. 	10
Total Possible Points	100
Minimum Passing Score (70%)	70

V. Administration

DEFINITION OF KEY WORDS

Important definitions for this solicitation are presented below:

Table 3 Definition of Key Words

Word/Term	Definition
ARRA	American Recovery and Reinvestment Act of 2009
Awardee	Respondent to this solicitation that is selected for funding
California Native American Tribe	A Native American Tribe located in California that is on the contact list maintained by the Native American Heritage Commission (NAHC) for the purposes of Chapter 905 of the Statutes of 2004 (Pub. Resources Code, § 21073).
CEQA	California Environmental Quality Act
Energy Commission	California Energy Commission
GFO	Grant Funding Opportunity number assigned to this solicitation; see also <i>Solicitation</i>
Grant program	Tribal Government Challenge Planning Grant program
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
NOPA	Notice of Proposed Award
OPR	Governor's Office of Planning and Research
Participating Tribe	Respondent to this solicitation
Proposal Package	(Proposal) Formal written response to this document from participating Tribe
SEP	State Energy Program
SGC	Strategic Growth Council
Solicitation	Program Opportunity Notice, which refers to this entire solicitation document and all its attachments and exhibits; see also <i>GFO</i>
State	State of California
Tribal Communities	Groups of people living within reservation or allotment boundaries, or that otherwise fall under the jurisdiction of a California Native American Tribe, regardless of whether or not those people are tribal members of one or another tribe or are not tribal members.
Tribal Land	Lands located in the State of California that are: <ul style="list-style-type: none"> tribally owned lands, buildings, or facilities, lands a Tribe exercises jurisdiction over, or

Word/Term	Definition
	<ul style="list-style-type: none"> lands that the Bureau of Indian Affairs holds in trust for Tribes, individual allottees, or public domain allottees, or lands managed through conservation easements or through lease agreement, or through co-management agreements, for the benefit of Tribes.

COST OF DEVELOPING PROPOSAL

The participating Tribe is responsible for the cost of developing a proposal, and this cost cannot be charged to the State.

CONFIDENTIAL INFORMATION

SGC will not accept or retain any proposals with any portion marked confidential.

PAYMENT AND ACCOUNTING OF GRANT FUNDS

- Grant Recipient will be required to submit a Payee Data Record STD 204 form ([Attachment 10](#)) in order to be added as a vendor in the State’s Financial Information System for California (Fi\$Cal)
- The State cannot disburse grant funds until the grant has been fully executed.
- Only approved and eligible costs incurred during the grant term will be reimbursable.
- On a quarterly basis, the Grant Recipient will submit project invoices to the SGC by electronic submission to AccountsPayable@opr.ca.gov or by sending a hard copy by mail.
- Before submitting an invoice to SGC, the Grant Recipient will be responsible for compiling all supporting documentation from Project team members for a specific time-period. Invoices without adequate supporting documentation for all costs will not be paid.
- Supporting documentation may include, but is not limited to purchase orders, receipts, progress payments, subcontractor invoices, timecards, etc.
- Each invoice must be accompanied by appropriate quarterly reporting materials.
- Payments are made on a reimbursement basis; advance payments are not allowed. The Grant Recipient must have adequate cash flow to pay all grant-related expenses prior to requesting reimbursement from SGC. The reimbursement process may take up to 90 days.
- The disbursement process and acceptable forms of supporting documentation will be finalized during the Pre-contract Consultation.
- Final invoices will be due to SGC no later than 30 days after the end of the grant agreement term.
- SGC will withhold five percent of the total award amount until the SGC determines that all of the requirements of the planning grant have been fulfilled per the Grant Agreement.

REPORTING REQUIREMENTS

The Grant Recipient shall submit quarterly progress reports that comply with ARRA and the SGC requirements. These reports will express the grantee’s progress in administering and

implementing project tasks, describe successes with community engagement efforts, discuss any opportunities or challenges that have occurred, and the Grant Recipient will attach any required grant deliverables due for submission to the report.

Additionally, the Grant Recipient will submit a final report as part of the closeout of the grant award that summarizes the key findings, accomplishments (including best practices and implementation templates) and deliverables completed during the grant term.

REVIEW AND AUDIT PROCEDURES

- The State has the right to review project records, conduct audits, and perform site visits during the Grant Agreement Term. This right shall extend to all Partners and subcontractors, and the Grant Recipient shall include provisions ensuring such access in all contracts or subcontracts.
- The Grant Recipient must have the proposal records, including the source documents and evidence of payment, readily available, and provide an employee with knowledge of the project to assist the auditor.
- The Grant Recipient must maintain copies of project records for at least three (3) years after the "Project Closeout" report or final report is submitted.

ACCOUNTING REQUIREMENTS

The Grant Recipient must maintain an accounting system that:

- Accurately reflects fiscal transactions, with the necessary controls and safeguards;
- Provides a good audit trail, including original source documents such as purchase orders, receipts, progress payments, invoices, timecards, canceled checks, etc.; and
- Provides accounting data according to generally accepted accounting principles so the total cost of each individual proposal can be readily determined.

REMEDIES FOR NON-PERFORMANCE

The State has the discretion to determine if the Grant Recipient has performed in accordance with program requirements, the grant agreement, or any other legally binding agreements. Examples of non-performance include but are not limited to misuse of funding for ineligible expenses, failure to comply with program guidelines or requirements, inability to meet performance requirements or schedule milestones, and failure to comply with the terms and conditions identified in legal agreements governing the grant award.

If the State determines that the Grant Recipient has not performed in accordance with program requirements, the grant agreement, or any other legally binding agreements governing the grant award, the Grant Recipient will be notified and provided instructions and a timeline to rectify all cases of non-performance. The State may withhold any payments due the Grant Recipient until the Grant Recipient brings the project back into full compliance. Should the Grant Recipient fail to come back into compliance, the State may terminate the grant agreement or any other legally binding agreement governing the grant award at any time upon 30 days of written notice to the Grant Recipient.

SOLICITATION CANCELLATION AND AMENDMENTS

It is the policy of SGC not to solicit proposals unless there is a bona fide intention to award an agreement. However, if it is in the State's best interest, SGC reserves the right to do any of the following:

- Cancel this solicitation;
- Revise the amount of funds available under this solicitation;
- Amend this solicitation as needed; or
- Reject any or all proposals received in response to this solicitation.

If the solicitation is amended, SGC will send an addendum to all parties who requested the solicitation and will also post it on the SGC and CEC websites.

ERRORS

If a participating Tribe discovers any ambiguity, conflict, discrepancy, omission, or other error in the solicitation, the participating Tribe shall immediately notify SGC of such error in writing and request modification or clarification of the document. Modifications or clarifications will be given by written notice of all parties who requested the solicitation, without divulging the source of the request for clarification. SGC shall not be responsible for failure to correct errors.

MODIFYING OR WITHDRAWAL OF PROPOSAL

A participating Tribe may, by letter to Elizabeth Grassi at SGC, withdraw or modify a submitted proposal before the deadline to submit proposals. Proposals cannot be changed after that date and time. A proposal cannot be "timed" to expire on a specific date. For example, a statement such as the following is non-responsive to the solicitation: "This proposal and the cost estimate are valid for 60 days."

IMMATERIAL DEFECT

SGC may waive any immaterial defect or deviation contained in a participating Tribe's proposal. The SGC waiver shall in no way modify the proposal or excuse the successful participating Tribe from full compliance.

DISPOSITION OF PARTICIPATING TRIBE'S DOCUMENTS

All proposals and related material submitted in response to this solicitation become a part of the property of the State and public record. Participating Tribes who want any work examples they submitted with their proposals returned to them shall make this request and provide either sufficient postage, or a Courier Charge Code to fund the cost of returning the examples.

PARTICIPATING TRIBES' ADMONISHMENT

This solicitation contains the instructions governing the requirements for a firm quotation to be submitted by interested participating Tribes, the format in which the technical information is to be submitted, the material to be included, the requirements, which must be met to be eligible for consideration, and participating Tribe responsibilities. Participating Tribes must take the responsibility to carefully read the entire solicitation, ask appropriate questions in a timely manner, submit all required responses in a complete manner by the required date and time, and make sure that all procedures and requirements of the solicitation are followed and appropriately addressed.

AGREEMENT REQUIREMENTS

The content of this solicitation shall be incorporated by reference into the final agreement. See the sample agreement terms and conditions included in this solicitation.

SGC reserves the right to negotiate with participating Tribes to modify the project scope, the level of funding, or both. Participating Tribes will not be able to negotiate the Terms and Conditions laid out in this document, if awarded. If SGC is unable to successfully negotiate and execute a funding agreement with a participating Tribe, SGC, at its sole discretion, reserves the right to cancel the pending award and fund the next highest ranked eligible project, with programmatic consideration given to diversity of project types and geographic locations.

All Tribes entering into agreement with SGC will be required to provide an authorized limited waiver of sovereign immunity covering the scope of the grant agreement.

Tribes that receive funding under this solicitation must provide an authorizing resolution approved by their governing authority to enter into an agreement with SGC and designating an authorized representative to sign. Applicants are encouraged to provide authorizing resolutions at the time of proposal submission, but must be submitted no later than 60 days after the notice of award.

The Governor's Office of Planning and Research (OPR), on behalf of SGC will send the approved agreement, including the Terms and Conditions to the grant recipient for review, approval, and signature. Once the grant recipient signs, OPR will fully execute the agreement. Recipients are approved to begin the proposal activities only after full execution of the agreement.

NO AGREEMENT UNTIL SIGNED AND APPROVED

No agreement between the OPR and the successful participating Tribe is in effect until the agreement is signed by the Recipient and signed by the SGC representative. No work shall begin until an agreement has been fully executed. SGC reserves the right to modify the award documents prior to executing the agreement.

COMMUNICATIONS

Branding: Grant Recipients are required to use SGC's name and/or logo for all published materials related to the project funded through this program. All press releases, fact sheets, talking points and press interviews related to this research must include the phrase "administered by the California Strategic Growth Council" and the logo should be included where applicable.

Media: Grant Recipients are required to identify a point of contact for all press inquiries and communications needs related to the project and provide the name, phone number and email address of this individual to SGC.

Summary Brief: Grant Recipients are required to prepare a two-page summary of the selected proposal, corresponding to the template provided by SGC to be displayed on SGC's website and used for other communications purposes.

GOVERNMENT ALLIANCE ON RACE & EQUITY (GARE)

SGC is a member of the [Government Alliance on Race and Equity's California Capitol Cohort](#). Earlier this year, the Council adopted a [racial equity action plan](#) that outlines action steps toward increasing equity through organizational commitments, stakeholder engagement practices, workforce development, program planning, and other priorities. The plan aims to, among several objectives, diversify grant review panels; provide guidance on measuring, tracking, and scoring for racial equity priority topics; investigate and remove barriers to apply for or to spend grant funding; and, introduce the racial equity action plan to and share best practices with grant recipients. Staff continues to work with leadership and member agencies to operationalize and implement this action plan.

Attachment 1: Proposal Questionnaire

This form provides the Strategic Growth Council with basic information about the applicant and the project. Each applicant must complete and sign this form. To obtain a Word formatted version of this document, send a request to tribalprograms@sgc.ca.gov.

Applicant's Identification Information

Legal Name:		
Status:	<i>Check all that apply.</i>	<input type="checkbox"/> Federally Recognized Tribe <input type="checkbox"/> California Tribal Government <input type="checkbox"/> Non-Profit, 401(C)(3) Organization <input type="checkbox"/> Other: _____
Federal Tax ID #	XX-XXXXXXX	
Project Manager (serves as the point of contact for all communications)	Name	
	Street Address	
	City, State, and Zip Code	
	Phone Numbers	() - _____
	E-Mail Address	

Project Title

Proposed Term

Must fall within the dates specified in the "Key Activities Schedule" in Part I of the solicitation.)

Start Date:		End Date:	
--------------------	--	------------------	--

Project Location

Facility Name: _____

Street Address: _____

City: _____ State: _____ Zip Code: _____

Project Description (brief paragraph)

Planning Activities (check all that apply)

<input type="checkbox"/>	Energy-related planning
<input type="checkbox"/>	Climate adaptation and resiliency planning
<input type="checkbox"/>	Sustainable communities planning

Funding (See "Maximum and Minimum Awards" on page 3 of the solicitation.)

Amount Requested \$ _____

Subcontractors (If subcontractors will perform work for the project, insert the legal name of each subcontractor below.)

--

Past Agreements

Complete the table below if the applicant and/or its subcontractors have any active or past (within the last thtrr years) agreements with a California state agency. If the number of agreements for the applicant or subcontractor exceeds ten, list at least ten of the applicant or subcontractor's most recent agreements, in order of date and relevance to the proposed project.)

Name of Applicant or Subcontractor	Name of Entity that Issued the Agreement, Contact Name, and Phone Number	Description of Project and Status

Certifications

1. I am authorized to complete and sign this form on behalf of the applicant.
2. I authorize the Strategic Growth Council to make any inquiries necessary to verify the information presented in this application.
3. I authorize the Strategic Growth Council to obtain business credit reports and make any inquiries necessary to verify and evaluate the financial condition of the applicant.
4. I have read and understand the terms and conditions contained in this solicitation. I accept the terms and conditions contained in this solicitation on behalf of the applicant, and the applicant is willing to enter into an agreement with the State of California to conduct the proposed project according to the terms and conditions without negotiation.
5. To the best of my knowledge, and under penalty of perjury, the information contained in this application is correct and complete.

Signature of Authorized Representative: _____ Date: _____

Printed Name of Authorized Representative: _____

Attachment 2: Proposal Narrative

The Proposal Narrative must include a detailed description of the proposed activities, as well as goals and objectives of the proposed activities and provide sufficient detail so that reviewers will be able to evaluate the proposal against each of the screening criteria, scoring scale, and the scoring criteria. This narrative should concisely address each of the five sections below using the headings provided, without sacrificing sufficient details requested. The narrative should be written in straightforward language and be formatted using 11-point font and 1” margins. Proposals should avoid the use of technical or discipline-specific jargon. Spell out any acronyms that are not universally understood.

- I. Project Overview – describe what the proposal intends to do. Describe the purpose, aims and objectives of the activities described in the proposed scope of work. As applicable, include:
 - How specified objectives will allow the Tribe to better understand and implement its climate and energy plans.
 - How the project tasks and planning activities will be conveyed throughout the tribal community to support climate/energy-action.
 - How the project addresses challenging issues and tackles or anticipates problems or barriers to move towards solutions.
- II. Statement of Need - a clear, detailed justification statement that identifies the need and/or value of the proposal, as well as additional needs and/or values that are reflected through the technical tasks or planning activities proposed. This statement should, at a minimum:
 - Reflect the Tribe’s goals as stated in its current planning or policy documents.
 - Reflect the needs of the Tribal community members.
 - Identify and discuss any benefits of the proposed planning activities and who will receive those benefits.
 - Explain how the proposed project and planning activities would not be able to move forward without funding from the Tribal Government Challenge grant.
 - Describe probable next steps toward plan implementation at the end of the grant period.
 - Identify and discuss any consequences that may result from not doing the proposed work.
 - Identify whether the tribal community contains or constitutes a landscape that is vulnerable to wildfire, sea-level rise, or other climate-change phenomena.
- III. Climate and Energy Goals – a brief discussion about how the Tribe has developed overarching goals for achieving short- and long-term climate resiliency and related energy goals, and how the proposed project will advance these goals. At a minimum this discussion should:
 - Demonstrate how the proposed project would progress the Tribe toward current and future climate and energy goals.

- Describe how the proposed project will result in measurable energy savings, greenhouse gas emissions reductions, and/or advance adaptation and resiliency.
 - Explain how the proposed project will promote a combination of energy resiliency, efficiency, flexibility, as well as health and social equity.
- IV. Technical Approach – an examination discussing tactics, practices and processes that will be employed to ensure successful outcomes for the proposed project. Include the following, as relevant:
- Describe the technique, approach, and methods to be used in performing the work.
 - Discuss how tasks and activities will be performed and coordinated with various participants and team members.
 - Identify and discuss the critical factors for success, in addition to any anticipated risks, barriers, and limitations. Responses should convey strategies or plans that will be developed to address these factors.
- V. Sharing Plan – briefly outline how the tasks, activities, plans and/or deliverables can be shared with others and used to support the climate/energy objectives of other Tribes and governments. At a minimum:
- Discuss how proposed planning activities could be replicated by other Tribal governments.
 - Indicate plans to broadcast and/or showcase the project’s implementation and results to the State and other Tribal governments.
 - Identify multiple engagement modes that will be used to broadcast and/or showcase your work. E.g., conference, workshop, website, press release, podcast, Twitter thread, etc.

Attachment 3: Scope of Work and Deliverables Schedule

TEMPLATE

Governor’s Office of Planning and Research/Strategic Growth Council –Tribal Government Challenge Planning Grant Award

To obtain a Word formatted version of this document, send a request to tribalprograms@sgc.ca.gov.

Tribe: _____

Proposal Title: _____

Table A3-1, Work Plan Template

High Level Activities/Milestones (with Deliverables, and Benchmarks and Metrics)	Responsible Parties	Timetable in months (Start year: 2020)
TASK 1. Sub-Task A Sub-Task B Sub-Task C Sub-Task D		
TASK 2. Sub-Task A Sub-Task B Sub-Task C Sub-Task D		
TASK 3. Sub-Task A Sub-Task B Sub-Task C Sub-Task D		

SCHEDULE OF DELIVERABLES

List all items that will be delivered to the State under the proposed Scope of Work. Include all reports, including draft reports for State review, and any other Deliverables, if requested by the State and agreed to by the Parties.

Table A3-2, Schedule of Deliverables Form

Task Number	Deliverable	Description	Due Date

Attachment 4: Scope of Work Instructions

The Scope of Work Template contains a framework to use to complete the Scope of Work. The following instructions will assist with the development of the Scope of Work. For a Word formatted version of this document, send a request to tribalprograms@sgc.ca.gov.

I. Task List

Insert the Task numbers and Task names for the project. Add additional rows as necessary. The work effort should be divided into a series of logical, discrete and sequential tasks. Tasks may be divided into sub-tasks to better frame the work. Each task (and to a lesser extent, subtasks) will include the following components.

A. The Goal

The goal of this task is to ... <Complete the sentence with a brief description of the goal(s). Please be brief, two to three sentences maximum.>

B. High Level Activities/Milestones

Using deliverables, benchmarks, and metrics; identify, discuss and quantify how progress will be measured and reported on for each task listed.

C. Responsible Parties (The Recipient shall ...)

List each individual activity with a separate bullet if there are more than two individual activities and begin each bullet with a verb to complete the sentence beginning with "The Recipient shall." Organize activities in the order in which they will occur. Use this section to describe the essential elements of the process you will use to complete the project. The contents of each product shall also be described in this section.

D. Timetable (in months)

Provide anticipated start and end months for each task identified. All work should end before April 1, 2022.

E. Task Deliverables

Each task must include one or more deliverables that will be completed and submitted to the SGC before closing out the task. Provide a description of each deliverable and explain the method for submitting each deliverable.

F. Task 1.0 Administration

The administrative tasks must be included in every agreement. Sub-tasks should include, at a minimum, project kick-off meetings, reporting activities, and project closeout.

II. Schedule of Deliverables

Proposals must include a schedule of deliverables that lists, in chronological order, each deliverable and identifies the corresponding task number, provides a description of the deliverable and the due date (anticipated date of submission).

Attachment 5: Budget Forms

To obtain an Excel formatted version of this document, send a request to tribalprograms@sgc.ca.gov.

Applying Tribe: _____ Project Manager: _____

Grant Title: _____

PERSONNEL	Title	Hourly Rate	# of Hours	(D*E) Salary	Benefits	(F+G) Total
Total						

CONSULTANTS
Show the job title/classification, hourly rate of the consultants, and estimation of time Per Diem and travel expenses are wrapped into the consultant's hourly rate
Totals

SUPPLIES
Such as but not limited to mailing, postage, printing (show how arrived at amount)
Totals

MEETINGS, WORKSHOPS						
Such as but not limited to rent, rentals, supplies (show how arrived at amount)						
					Totals	
OTHER						
Such as but not limited to software (show how arrived at amount)						
					Totals	
TRAVEL						
Mileage is calculated at .575/mile. For information about allowable travel rates, please visit https://www.calhr.ca.gov/employees/Pages/travel-reimbursements.aspx						
					Totals	
COMBINED TOTAL						
					Total Project Costs	

BUDGET JUSTIFICATION

In addition to an initial budget, applicants are required to provide justification for the anticipated costs occurred. The Budget Justification will include the following categories with brief narratives describing costs.

Personnel

Name. Starting with the Project Manager list the names of all known personnel who will be involved on the project for the proposed project period. Include all collaborators, individuals in training, technical and support staff or include as “to be determined” (TBD).

Role on Project. For all personnel by name, position, function, and a percentage level of effort (as appropriate), including “to-be-determined” positions.

***Please note:** grant funds cannot pay for salary and benefit rates in excess of those noted on the initial budget. Applicants may want to develop annual budgets that reflect expected increases to these items verified by documented plans and calculations that forecast future personnel costs.*

Fringe Benefits.

Explain the costs included in the budgeted fringe benefit percentages used.

Travel

Itemize all travel requests separately by trip and justify in accordance with State travel guidelines. Provide the purpose, destination, travelers (name or position/role), and duration of each trip. Include detail on airfare, lodging and mileage expenses, if applicable. Please note: this program will not fund travel outside of the state of California.

Materials and Supplies

Itemize materials supplies in separate categories. Include a complete justification of the project’s need for these items. Theft sensitive equipment (under \$5,000) must be justified and tracked separately in accordance with State Contracting Manual Section 7.29.

Equipment

Please note: this program will not fund equipment (greater than or equal to \$5,000 with a useful life of more than one year).

Consultant Costs

Consultants are individuals/organizations who provide expert advisory or other services for brief or limited periods and do not provide a percentage of effort to the project or program.

Provide the names and organizational affiliations of all consultants. Describe the services to be performed, and include the number of days of anticipated consultation, the expected rate of compensation, travel, per diem, and other related costs.

Subawardee (Subrecipient) Costs

Each participating organization funded in the budget must submit a separate detailed budget for the project period, including a complete set of budget justifications that indicates the need for any subawardee listed in the application.

Other Direct Costs

Itemize any other expenses by category and cost. Specifically justify costs that may typically be treated as indirect costs. For example, if insurance, telecommunication, or IT costs are charged as a direct expense, explain reason and methodology.

Indirect Costs

Federally recognized tribes may use the indirect cost rate negotiated through their cognizant Federal Agency (generally DOI National Business Center). California Tribes that are not recognized by the Federal Government and other businesses and organizations can apply an indirect cost rate of up to 25%.

Attachment 6: Contacts

Identify the names and contact information of the project manager, administrator, accounting officer, and recipient of legal notices. **Complete the information in the “Grant Recipient” column.**

Strategic Growth Council	Grant Recipient
<p><u>SGC Grant Agreement Manager:</u> (TBD) Strategic Growth Council 1400 Tenth Street Sacramento, CA 95814 Phone: (916) 327-5363 e-mail: TribalPrograms@sgc.ca.gov</p>	<p>Project Manager: (Name) (Recipient’s Name) Address Phone: (XXX) XXX -XXXX e-mail:</p>
<p><u>Deliverables/Products and Reports:</u> Elizabeth Grassi Strategic Growth Council 1400 Tenth Street Sacramento, CA 95814 Phone: (916) 327-5362 e-mail: Elizabeth.Grassi@sgc.ca.gov</p>	<p>Administrator: (Name) (Recipient’s Name) Address Phone: (XXX) XXX -XXXX e-mail:</p>
<p><u>Invoices:</u> Governor’s Office of Planning and Research ATTN: Accounts Payable Office 1400 Tenth Street Sacramento, CA 95814 e-mail: AccountsPayable@opr.ca.gov</p>	<p>Accounting Officer: (Name) (Recipient’s Name) Address Phone: (XXX) XXX -XXXX e-mail:</p>
<p><u>Legal Notices:</u> Elizabeth Grassi Strategic Growth Council 1400 Tenth Street Sacramento, CA 95814 Phone: (916) 327-5362 e-mail: Elizabeth.Grassi@sgc.ca.gov</p>	<p>Legal Notices: (Name) Address Phone: (XXX) XXX -XXXX e-mail:</p>

Attachment 7: Budget Detail and Payment Provisions

Introduction and Budget Terms

I. Introduction to All Terms and Conditions

For purposes of this Agreement, the following terms have the following meaning:

1. "Agreement" means this entire agreement between SGC and Grantee and all of its incorporated provisions.
2. "ARRA" means the American Recovery and Reinvestment Act of 2009.
3. "CEC" means the California Energy Commission.
4. "CFR" means the Code of Federal Regulations.
5. "CMIA" means the Cash Management Improvement Act.
6. "Contracting Officer" in Exhibit E and its Attachments means DOE's Contracting Officer.
7. "DOE," "U.S.DOE," or any derivations thereof mean the United States Department of Energy.
8. "EERE" means DOE's Office of Energy Efficiency and Renewable Energy.
9. "Grantee" means the entity other than SGC executing this Agreement.
10. "NEPA" means the National Environmental Policy Act.
11. "SAM" means System of Award Management.
12. "SEP" means State Energy Program.
13. "SGC" means the Strategic Growth Council within the Office of Planning and Research.
14. "Subrecipient" has the meaning in 2 CFR § 200.93.
15. "USC" means United States Code.
16. "Vendor" has the meaning in 2 CFR § 200.23 which is the definition for "Contractor." CEC's ARRA funds predate the federal change from "Vendor" to "Contractor." In order to prevent confusion within these terms, this Agreement still uses Vendor.

This Agreement uses federal funds from the American Recovery and Reinvestment Act of 2009 (ARRA). The federal government provided the ARRA funds to the California Energy Commission (CEC). The CEC, in turn, is providing them to the Strategic Growth Council within the Office of Planning and Research (SGC).

Because this Agreement uses federal funds, the CEC is required to include certain federal terms. The CEC and SGC also have terms that they include in their agreements. Accordingly, the terms of this Agreement, include the following:

- i. This Exhibit B and any included budget documents.
- ii. Exhibit C is Reserved and not used. In the companion gap analysis contract, Exhibit C contained required terms from the Department of General Services. Those terms do not apply to grants. To keep the other terms in this and the other tribal grants the same to the extent possible as the gap analysis contract, Exhibit C is reserved in this Agreement and not used (i.e., it is a placeholder so the other Exhibit lettering is the same between the gap analysis contract and tribal grants).
- iii. Exhibit D, State Special Terms and Conditions. This includes from section 20 (Authority) a "copy of the tribal resolution authorizing execution of the agreement and stating that

such authorization is in compliance with tribal law specifically as to the Limited Waiver of Sovereign Immunity and Consent to Jurisdiction....”

- iv. Exhibit E, Federal Special Terms and Conditions, and its following attachments:
 - Exhibit E, Attachment 1, Reporting Requirements.
 - Exhibit E, Attachment 2, Intellectual Property Rights.
 - Exhibit E Attachment 3, 2 CFR 200.326 Requirements, and its two forms:
 - Form 1, Certifications.
 - Form 2, Disclosure of Lobbying Activities.
 - Exhibit E, Attachment 4, SEP ARRA Requirements.
 - Exhibit E, Attachment 5, NEPA Determination.

Some of the above exhibits, in turn, incorporate other terms and law into this Agreement, which are incorporated by reference into this Agreement.

- **Budget Detail and Payment Provisions**

- 1. **Allowable Costs:**

- A. Allowable costs shall be determined in accordance with the provisions in this Agreement, including those in Exhibit E.
 - B. The Grantee recognizes that 10 CFR § 420.18 places limitations on the use of funds available under this Agreement. SGC shall comply with these limitations. These limitations include not using the funds under this Agreement “for development or demonstration of energy efficiency or renewable energy techniques and technologies not commercially available.” (10 CFR § 420.18(a)(5).)
 - C. Grantee shall not use any the funds provided under this Agreement to improve or otherwise do work or make any physical change on any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool. However, funds can be used for planning and feasibility studies that are comprehensive for a given Tribe’s infrastructure, even if that infrastructure happens to include any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

- 2. **Invoicing Procedures**

For funds under this Agreement, and upon receipt and approval of the invoices, SGC will pay for actual expenditures incurred in accordance with the approved budget and other Agreement requirements. The following certification shall be included with each invoice and signed by an authorized official of the Grantee:

I certify that this invoice is correct and proper for payment, and reimbursement for these costs complies with all Agreement requirements, including not exceeding 20% of administrative costs, including office supplies, library materials, and other equipment, is otherwise in compliance with Code of Federal Regulations (CFR) section 420.18, and will not be received from any other sources, including but not limited to a government entity contract, subcontract or other procurement method.

Invoices shall be submitted to:

Governor’s Office of Planning and Research
ATTN: Accounts Payable Office
1400 Tenth Street
Sacramento, CA 95814
e-mail: AccountsPayable@opr.ca.gov

Payment Request Format

SGC will accept computer generated or electronically transmitted invoices, provided Grantee sends a paper copy the same day to SGC. The date of "invoice receipt" shall be the date the SGC receives the paper copy.

A request for payment shall consist of, but not be limited to, the following:

- 1) Agreement number, date prepared, and billing period.
- 2) Any progress reports and deliverables that were due during the invoice period, as detailed in Exhibit A.
- 3) Actual expenditures to be reimbursed.
- 4) Receipts for all expenditures except labor, indirect costs, and fringe benefits.

1. **Budget Contingency Clause**

It is mutually agreed that funding for this Agreement is dependent upon a federal agreement that is subject to the following provisions:

- D. This Agreement is subject to any additional restrictions, limitations or conditions enacted by Congress or any statute enacted by Congress that may affect the provisions, terms or funding of this Agreement.
- E. Funding for this Agreement is subject to the approval of United States Department of Energy (DOE) and to any additional restrictions, limitations, or conditions imposed by DOE, federal law, federal court judgments, and/or federal agency orders which may affect the provisions or terms of this Agreement.
- F. If Congress does not appropriate sufficient funds for the program or the federal government requests the return of the funds, in addition to any other rights and actions available to SGC, this Agreement can be amended to reflect any reduction in funds or SGC can unilaterally terminate this Agreement without cause by providing 10 days written notice.

2. **Travel and Per Diem Rates**

SGC must provide written approval, which can be as simple as an email, before any travel is taken for which reimbursement will be sought under this Agreement. Grantee and any entities receiving funds from it under this agreement shall only be reimbursed for travel and per diem expenses using the same rates provided to non-represented state employees. SGC is not responsible for expenses in excess of these rates. Grantee may obtain current rates from SGC upon request.

3. **Retention**

SGC shall retain 10 percent of each payment request or 10 percent of the total contract at the end of the project. SGC has the sole discretion to decide which of these methods of retention will be used in this Agreement. The Grantee must submit a completed payment request requesting release of the retention within the required timeframe (see Section 6 (Payment Terms and Conditions) part D below). The Commission Agreement Manager will review the project file and, when satisfied that the terms of the funding Agreement have been fulfilled, will authorize release of the retention.

Retention may be released upon completion of tasks that are considered separate and distinct (i.e., the task is a stand-alone piece of work and could be completed without the other tasks). Tasks for administration or management of the Agreement and/or Subrecipients are not considered separate and distinct tasks. The tasks for which retention may be released prior to the end of the Agreement must be identified in the Agreement's budget.

When the SGC withholds 10% retention from each invoice, the Grantee can choose to flow down the retention requirement to its Subrecipients and Vendors subject to the following restrictions and any other requirements in this Agreement:

- The Grantee shall not flow down retention requirements to U.S. Department of Energy national laboratories.
- The retention flowed down to Subrecipients and Vendors can only be up to a total of 10% of the amount of SGC funds the Subrecipient or Vendor is to receive. The Grantee is responsible for carrying the retention for its funded portion of the entire Agreement and cannot pass its share of retention to Subrecipients and Vendors. Here are three examples:
 - v. A Subrecipient submits an invoice for \$100,000 to the Grantee, and the Grantee in turn submits it to the SGC. The SGC will only pay \$90,000 of the invoice and the Grantee can elect to pay only \$90,000 to the Subrecipient.
 - vi. The Subrecipient is the U.S. Department of Energy national laboratory and it submits an advance request for \$100,000 to the Grantee, including any other documents required in this Agreement. The Grantee in turn submits the advance requests to the SGC for payment. The SGC will pay the full amount of the advance requests to the Grantee and the Grantee must pay the full amount to the U.S. Department of Energy.
 - vii. The Grantee submits an invoice for its own staff in the amount of \$20,000. The SGC will only pay \$18,000 to the Grantee, and the Grantee cannot withhold the \$2,000 difference from Subrecipient and Vendor reimbursements.

These requirements apply to all levels of Subrecipient and Vendor (e.g., a Vendor to a Subrecipient).

4. Payment Terms and Conditions

- A. Each invoice is subject to written approval by the SGC.
- B. Payments shall only be made to Grantee for undisputed invoices.
- C. In accordance with 31 USC sections 3335, 6501, and 6503 (the Cash Management Improvement Act, or CMIA) and implementing regulations at 31 CFR Part 205, Grantee shall minimize the time elapsing between the drawdown of funds from SGC and the disbursement of funds. Grantee shall request reimbursement to occur as close as possible to the disbursement.

Grantee agrees that it has reviewed the applicable CMIA rules and regulations, and will follow their requirements in handling funds received pursuant to this Agreement.

- D. SGC must receive the final invoice no later than ninety (90) calendar days after the Agreement end date or March 31, 2022, whichever is earlier. SGC needs time to process the final invoice and submit it to the State Controller's Office, which issues the checks. If Grantee misses this deadline for submitting the final invoice, it does so at its own risk of not receiving payment. Accordingly, time is of the essence in submitting this final invoice.

- E. No payment will be made for costs identified in Grantee invoices that have or will be reimbursed by any other source, including but not limited to a government entity contract or subcontract.
- F. Grantee is not allowed to profit from its agreements with other entities receiving funds from it under this Agreement.
- G. Grantee shall not be reimbursed for more than 10% profit or the amount listed in the budget, whichever is less. Any entity Grantee enters into an agreement with under this Agreement cannot profit from its agreement with a lower-tiered entity (e.g., Subrecipient).

5. [Reserved]

6. Budget Detail

See [Attachment 5, Budget Forms](#)

Attachment 8: General Terms and Conditions

EXHIBIT C (GTC 04/2017) [RESERVED]

Attachment 9: Special Terms and Conditions

EXHIBIT D, STATE SPECIAL TERMS AND CONDITIONS

1. **Audit**

Grantee agrees that the SGC, the CEC, and any of their representatives shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Grantee agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Grantee agrees to allow access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records.

2. **Subrecipient and Vendor Agreements**

A. Nothing contained in this Agreement or otherwise shall create any contractual relation between the CEC or SGC and any other entities with which Grantee enters into an agreement. Except for its duty to pay Grantee as set forth in this Agreement, SGC shall have no obligation to pay or to enforce the payment of any monies to any other entity.

B. The CEC is a third-party beneficiary of this Agreement.

C. Subaward Documentation

1) Subrecipient and Vendor Agreements and Prevailing Wage Determinations

(a) Grantee must submit (1) below and include flow-down provisions to ensure that they submit (2) below to the SGC within thirty (30) days or less of execution of the agreements:

(1) The complete, executed Subrecipient or Vendor agreement.

(2) The applicable wage determinations, if any, for all labor and mechanic work to be performed under the Subrecipient or Vendor agreement.

SGC must approve the executed Subrecipient or Vendor agreement and applicable wage determinations prior to the commencement of any work under the Subrecipient or Vendor agreement. Any costs incurred prior to SGC's approval of the Subrecipient or Vendor agreement and wage determinations are not reimbursable under this Agreement.

D. Grantee shall flow-down all applicable terms and requirements from this Agreement, which include but are not be limited to, the following for Subrecipients:

1) All terms in Exhibit B except sections II. 2, 5, and 7.

2) All terms in this Exhibit D except section 2. B. Also, Sections 19 and 20 only have to be flowed down if the Subrecipient is a Native American Tribe as defined in the solicitation that resulted in this Agreement.

3) All of Exhibit E, including all attachments E-1 through E-5, including Forms 1 and 2 of Attachment E-3.

E. Grantee shall flow-down all applicable terms and requirements from this Agreement, which include but are not be limited to, the following for Vendors:

1) Exhibit B, sections II. 1. (Allowable Costs), and if the Vendor will travel then section 4 (Travel and Per Diem Rates).

2) This Exhibit D, sections 1 (Audit), 2 (Subrecipient and Vendor Agreements), 12 (Independent Capacity), 13 (Survival of Provisions) to the extent any of these flowed down provisions are listed in section 15, 13 (Certifications and Compliance), 14 (California Taxpayer Access to Publicly Funded Research Act), 16 (Indemnification), 17 (Amendment), 19 (Limited Waiver of Sovereign Immunity

and Consent to Jurisdiction) and 20 (Authority). Sections 19 and 20 only have to be flowed down if the Vendor is a Native American Tribe as defined in the solicitation that resulted in this Agreement.

- 3) All terms in Exhibit E, Federal Special Terms and Conditions, except terms 7 (NEPA REQUIREMENTS), 8 (HISTORIC PRESERVATION), and 11 (REPORTING REQUIREMENTS).
- 4) All of Exhibit E, Attachment E-1 except for section 3 (Quarterly Progress Reports).
- 5) All of Exhibit E, Attachment E-2.
- 6) All of Exhibit E, Attachment E-3 including Forms 1 and 2, except section 2 (Termination With and Without Cause and Settlement Authority).
- 7) All of Exhibit E, Attachment E-4.

3. **Equipment and Supplies**

See Exhibit E, sections 18 Equipment and 19 Supplies.

4. **Confidentiality**

A. Submittal of Unanticipated Confidential Information as a Deliverable

Neither SGC nor Grantee anticipate that any deliverable will contain any confidential information. SGC and Grantee agree that during this Agreement, it is possible that Grantee may develop data or information not originally anticipated as a confidential deliverable. If this occurs, SGC shall first find out from the CEC Agreement Manager if the CEC wants the information as a deliverable, and if so, SGC and Grantee will then follow the procedures for a designation of Confidential Information specified in 20 California Code of Regulations section 2505.

B. Confidential Deliverables: Labeling and Submitting Confidential Information

If confidential information is allowed under this Agreement, Grantee shall mark any information designated as confidential as "Confidential" on each page containing the confidential information, and if submitting it to the SGC as a deliverable, Grantee shall submit it separately from non-confidential deliverables.

5. **Enforceability**

Grantee agrees that if it or one of its Subrecipients or Vendors fails to comply with any applicable Federal and State requirement, including those governing the use of ARRA funds, SGC may withhold or suspend, in whole or in part, funds awarded under this Agreement, or recover misspent funds. This provision is in addition to all other rights and remedies available to SGC.

6. **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, meaning in addition to every other remedy provided therein or by law. The failure of the SGC to enforce at any time any of the provisions of this Agreement, or to require at any time performance by SGC 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 SGC to thereafter enforce each and every such provision.

7. **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.

8. **Notice**

This section applies to situations where notice is required to be given by this Agreement, or the Parties are asserting their legal rights and remedies. This paragraph is not intended to apply to normal, daily communication between the Parties related to progress of the work.

SGC and the Grantee must give legal notice 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 section.

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

9. **Stop Work Order**

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

A. Compliance: Upon receipt of such stop work order, Grantee shall immediately take all necessary steps to comply with the order and to minimize the incurrence of costs allocable to work stopped.

B. Revoking a Stop Work Order: Grantee shall resume the stopped work only upon receipt of written instructions from SGC personnel canceling the stop work order.

10. **Severability**

If any provision of this Agreement is unenforceable or held to be unenforceable, all other provisions of this Agreement will remain in full force and effect.

11. **Governing Law**

Except as provided in Exhibit E, Term 4, this Agreement is governed by the laws of the State of California as to interpretation and performance.

12. **Independent Capacity**

In the performance of this Agreement, Grantee and its employees, agents, Subrecipients, and Vendors will act in an independent capacity and not as officers, employees, or agents of the SGC.

13. **Certifications and Compliance**

A. **Federal, State, and Local Laws**

See Exhibit E, Term 3.

B. Nondiscrimination Statement of Compliance

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

Grantee and its Subrecipients and Vendors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Sections 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 11000 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4.1 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part of it as if set forth in full. Grantee and its Subrecipients and Vendors shall give written notice of their obligations under this section to labor organizations with which they have a collective bargaining or other Agreement.

C. Drug-Free Workplace Certification

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

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

In addition to any other rights and remedies available to the SGC, failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both, and Grantee may be ineligible for any future state awards if the SGC determines that any of the following has occurred: (1) the Grantee has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above.

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

Grantee acknowledges that:

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

E. Air or Water Pollution Violation

Under state laws, the Grantee shall not be:

- 1) In violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district;
- 2) Subject to a cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or
- 3) Finally determined to be in violation of provisions of federal law relating to air or water pollution.

14. California Taxpayer Access to Publicly Funded Research Act

- A. As a condition to receiving funding under this Agreement, Grantee agrees to fully comply with the California Taxpayer Access to Publicly Funded Research Act (California Government Code sections 13989 et seq., the “Act”) and provisions of this section, which apply to publications describing knowledge, an invention, or technology funded within the scope of this Agreement.
- B. For purposes of complying with the Act and this section of the Agreement, the following definitions shall apply.
 - 1) “Peer-Reviewed Manuscript” means a manuscript after it has been peer reviewed and in the form in which it has been accepted for publication in a scientific journal.
 - 2) “Research Grant” in the Act and “this Agreement” in this section mean this Agreement.
 - 3) “State Agency” in the Act means the CEC.
- C. Grantee shall provide for free public access to any Peer-Reviewed Manuscript developed within the scope of this Agreement.
- D. Grantee shall ensure that any publishing or copyright agreements concerning Peer-Reviewed Manuscripts:
 - 1) Fully comply with California Government Code section 13989.6;
 - 2) Do not conflict with the SGC’s and the CEC’s rights under this Agreement;
 - 3) Secure for the SGC and the CEC the rights provided under this Agreement, including the rights to Intellectual Property as specified in Exhibit E Attachment E-2 “Intellectual Property Rights;” and
 - 4) Recognize the free public access to the Peer-Reviewed Manuscript.
- E. Grantee shall report to the SGC and CEC the final disposition of any Peer-Reviewed Manuscript, including but not limited to if it was published; when it was published; where it was published; and, when the 12-month time period expires, where the Peer-Reviewed Manuscript will be available for open access.

- F. Not later than 12 months after the official date of publication, or sooner if specified in the Schedule of Products, the Grantee shall make available to the SGC and CEC an electronic version of any Peer-Reviewed Manuscript that is developed within the scope of this Agreement.
- G. Grantee shall make publicly accessible an electronic version of any Peer-Reviewed Manuscript that is developed within the scope of this Agreement, not later than 12 months after the official date of publication, on a repository approved in writing by the CEC, including but not limited to the University of California's eScholarship Repository at the California Digital Library; the California State University's ScholarWorks at the Systemwide Digital Library; or PubMed Central. Grantee shall notify the CEC when the Peer-Reviewed Manuscript is available on a CEC-approved repository.
- H. If Grantee is unable to ensure that its Peer-Reviewed Manuscript is accessible on a CEC-approved, publicly accessible repository, Grantee may comply by providing the manuscript to the CEC not later than 12 months after the official date of publication.
- I. For any publications other than a Peer-Reviewed Manuscript, (herein referred to as "Other Publications") including scientific meeting abstracts, developed within the scope of this Agreement, the Grantee shall:
 - 1) Provide an electronic version of the Other Publications to the SGC and the CEC not later than 12 months after the official date of publication.
 - 2) Ensure that any publishing or copyright agreements concerning Other Publications:
 - i. Do not conflict with the SGC's and CEC's rights under this Agreement.
 - ii. Secure for the SGC and CEC the rights provided under this Agreement, including the rights to Intellectual Property as specified in Exhibit E, Attachment E-2.
- J. The Act states that "Grantees are authorized to use grant money for publication costs, including fees charged by a publisher for color and page charges, or fees for digital distribution."

Grantee agrees that for purposes of this Agreement, the Grantee is only authorized to use funds under this Agreement, including Matching funds, for these purposes if the expenses are included in the Agreement's Budget and meet the other Agreement requirements for payment, including that the SGC will only reimburse Grantee for expenditures incurred during the Agreement term. If these expenses are not included in the Budget, both the SGC and Grantee must agree and amend the Budget to include such expenditures before Grantee is authorized to use Agreement funds, either reimbursable expenses or match, for these purposes.
- K. Should a conflict exist between the federal terms in, or incorporated in, this Agreement, and this Section 14, the federal terms prevail.

15. **Survival of Provisions**

The following Terms survive the end of this Agreement, even if the agreement ends (e.g., termination) before reaching the stated end date:

- A. Exhibit B, Part II, sections 1 (Allowable Costs) and 6 (Payment Terms and Conditions).
- B. This Exhibit D, sections 1 (Audit), 2 (Subrecipient and Vendor Agreements) part B, 5 (Enforceability), 6 (Waiver), 7 (Captions), 8 (Notice), 10 (Severability), 11 (Governing Law), 12 (Independent Capacity), 13 (Certifications and Compliance), 14 (California Taxpayer Access to Publicly Funded Research Act), 16 (Indemnification), 17

(Amendment), 19 (Limited Waiver of Sovereign Immunity and Consent to Jurisdiction), and 20 (Authority).

- C. Exhibit E, Terms 3 (COMPLIANCE WITH FEDERAL, STATE, AND MUNICIPAL LAW), 6 (FEDERAL INVOLVEMENT), 12 (LOBBYING), 13 (PUBLICATIONS), 17 (REAL PROPERTY), 18 (EQUIPMENT), 19 (SUPPLIES), 20 (PROPERTY TRUST RELATIONSHIP), 21 (RECORD RETENTION), 22 (AUDITS), 26 (REFUND OBLIGATION), 27 (ALLOWABLE COSTS), 28 (INDIRECT COSTS), 29 (DECONTAMINATION AND/OR DECOMMISSIONING (D&D) COSTS), 38 (NONDISCLOSURE AND CONFIDENTIALITY AGREEMENTS ASSURANCES), and as applicable to this Agreement 42 (SEP ARRA FUNDED FINANCING PROGRAM REQUIREMENTS). In addition, Exhibit E on page 1 before the table of contents incorporates many laws by reference. Grantee agrees to continue to comply with them relative to this Agreement.
- D. Exhibit E, Attachment E-1, sections 1 (no title) and 4 (Special Status Reports).
- E. Exhibit E, Attachment E-2, the entire document.
- F. Exhibit E, Attachment E-3, sections 1 (Violation or Breach of Agreement), 2 (the settlement portion of the term), 6 (Rights of Inventions Made Under a Contract or Agreement), and 9 (Byrd Anti-Lobbying Amendment).
- G. Exhibit E, Attachment E-4, the entire document

16. **Indemnification**

Grantee agrees to indemnify, defend and save harmless the State, including but not limited to the CEC and SGC, and their officers, agents and employees from any and all claims and losses accruing or resulting to any and all Subrecipients, Vendors, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Grantee in the performance of this Agreement. In addition, Grantee agrees to afford the same rights to the federal government, which includes but is not limited to DOE.

17. **Amendment**

No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.

18. **Assignment**

This Agreement is not assignable by the Grantee, either in whole or in part, without the written consent of SGC.

19. **Limited Waiver of Sovereign Immunity and Consent to Jurisdiction**

The Grantee expressly and irrevocably waives sovereign immunity (and any defenses based thereon) in favor of the SGC and the CEC, but not as to any other person or entity, as to any dispute which specifically arises under this Agreement and not as to any other action, matters or disputes. The Grantee does not waive its sovereign immunity with respect to (i) actions by third parties, except for parties acting on behalf of, under authorization from the Grantee, the CEC, or the SGC; or (ii) disputes between the Grantee and the SGC and/or CEC which do not specifically arise under this Agreement. The Grantee further agrees that exhaustion of tribal administrative remedies, including before any tribal court, shall not be required prior to proceeding to filing a complaint in the appropriate court of law; and

The Grantee and the SGC agree that any monetary damages awarded or arising under this Agreement shall be exclusively limited to actual direct damages incurred based on obligations contained in this Agreement that have been demonstrated with substantial certainty and which do not, in any event, exceed the total amount of the award under the this Agreement. The Grantee and the SCG agree not to assert any claim for damages, injunctive, or other relief which is not consistent with the provisions of this Agreement; and

The SGC and the CEC may seek, and the Grantee may seek after it has exhausted any available remedy through the Government Claims Program and the Program so approves, judicial review for breach of contract in the State Superior Court for Sacramento County, including any appellate proceedings. The Grantee and SGC expressly consent to the jurisdiction of such Court, provided that:

- No person or entity other than the Grantee, SGC, and CEC is a party to the action, unless failure to join a third party would deprive the court of jurisdiction; provided, however, that nothing herein shall be construed to constitute a waiver of the sovereign immunity of the Grantee or SGC in respect to any such third party except the CEC.
- The judgment so entered has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action, and may be enforced like any other judgment of the court in which it is entered.
- Nothing in this Agreement shall be construed to constitute a waiver of the sovereign immunity of the Grantee with respect to intervention by any additional party not deemed an indispensable party to the proceeding. Unless otherwise agreed by the Grantee, SGC, and CEC, any dispute resolution meetings or communications, or mediation, shall be in the context of a settlement discussion to potential litigation and remain confidential to the extent not prohibited by applicable law.

20. **Authority**

The Grantee authorize[s] this Agreement, including Limited Waiver of Sovereign Immunity and Consent to Jurisdiction, and hereby affirms that such authorization is done in full compliance Grantee tribal laws and ordinances. A copy of the tribal resolution authorizing execution of the agreement and stating that such authorization is in compliance with tribal law specifically as to the Limited Waiver of Sovereign Immunity and Consent to Jurisdiction shall be provided by the Grantee prior to execution of this Agreement and attached to the executed Agreement.

EXHIBIT E, FEDERAL SPECIAL TERMS AND CONDITIONS

The CEC initially received federal funds under the American Recovery and Reinvestment Act of 2009 (“ARRA”) via agreement DE-EE0000221, as amended, with USDOE. USDOE has since closed agreement DE-EE0000221, and now federal requirements, including those specific to ARRA, come from agreement DE-EE0008283, including amendments, between the CEC and USDOE.

Under agreement DE-EE0008283, the CEC had to flow-down certain requirements to SGC, and SGC must in turn flow down certain requirements in its agreements, like this one, and so forth to each lower tier agreement. The CEC and SGC have included in some of these terms’ rights for itself to avoid having separate terms on the same topic.

The following are incorporated into this Agreement by reference and Grantee agrees to adhere to them:

- a) The State Energy Program statutes under the Energy Policy and Conservation Act, as amended (42 U.S.C. § 6321 et seq.).
- b) Applicable program regulations, including but not limited to 10 CFR Part 420 – State Energy Program at <http://eCFR.gov>.
- c) DOE Assistance Regulations, 2 CFR part 200 as amended by 2 CFR part 910 at <http://www.eCFR.gov>.
- d) National Policy Assurances to be incorporated as Award Terms in effect on date of award at <http://www.nsf.gov/awards/managing/rtc.jsp>.
- e) All other applicable laws.

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SUBPART A. GENERAL PROVISIONS

Term 1. [RESERVED]

Term 2. FLOW DOWN REQUIREMENT

Grantee agrees to apply the terms and conditions of this Agreement, as applicable, including the Intellectual Property Provisions, to all Subrecipients (and subcontractors and Vendors, as appropriate) as required by 2 CFR 200.101 and to require their strict compliance therewith. Further, the Grantee must apply the Agreement terms as required by 2 CFR 200.326 to all Subrecipients (and subcontractors and Vendors, as appropriate) and to require their strict compliance therewith.

Term 3. COMPLIANCE WITH FEDERAL, STATE, AND MUNICIPAL LAW

Grantee is required to comply with applicable Federal, California, and local laws and regulations for all work performed under this Agreement. Grantee is required to obtain all necessary Federal, state, and local permits, authorizations, and approvals for all work performed under this Agreement.

Term 4. [RESERVED]

Term 5. [RESERVED]

Term 6. FEDERAL INVOLVEMENT

[a and b Reserved]

c. Site Visits.

Authorized representatives from EERE, the CEC, and SGC have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. Grantee must provide, and must require Subrecipients to provide, reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives, including those of the CEC and SGC, in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

d. SGC, CEC, and EERE Access.

Grantee must provide any information, documents, site access, or other assistance requested by the SGC, CEC, or EERE for the purpose of their respective State and Federal stewardship or substantial involvement.

Term 7. NEPA REQUIREMENTS

a. Authorization.

DOE must comply with the National Environmental Policy Act (NEPA) prior to authorizing the use of Federal funds. EERE has determined that certain activities that fall under the Bounded Categories defined in Exhibit E - Attachment 5, "NEPA Determination" are categorically excluded and require no further NEPA review, absent extraordinary circumstances, cumulative impacts, or connected actions that may lead to significant impacts on the environment, or any inconsistency with "integral elements" (as contained in 10 C.F.R. Part 1021, Appendix B) as they relate to a particular project. Grantee is thereby authorized to use Agreement funds for project activities that fall within the Bounded Categories defined in Exhibit E - Attachment 5, subject to the conditions listed in paragraph b. "Conditions" directly below.

b. Conditions.

- 1) The activities must comply with the restrictions set forth for each of the Bounded Categories. See Exhibit E- Attachment 5;
- 2) [Reserved]
- 3) This authorization does not include activities where the following elements exist: extraordinary circumstances, cumulative impacts, or connected actions that may lead to significant impacts on the environment, or any inconsistency with the "integral elements" (as contained in 10 C.F.R. Part 1021, Appendix B) as they relate to a particular project;
- 4) Grantee must identify and promptly notify SGC, CEC, and DOE of extraordinary circumstances, cumulative impacts, or connected actions that may lead to significant impacts on the environment, or any inconsistency with the "integral elements" (as contained in 10 C.F.R. Part 1021, Appendix B) as they relate to a particular project;
- 5) The Grantee must document in writing its review of projects to determine there are no extraordinary circumstances, cumulative impacts, or connected actions that may lead to significant impacts on the environment, or any inconsistency with the "integral elements" (as contained in 10 C.F.R. Part 1021, Appendix B) as they relate to a particular project and compliance with Section 106 of the National Historic Preservation Act (NHPA), as applicable;
- 6) Grantee must document that project activities do not occur in a floodplain or wetland. If the project activities do occur in a floodplain or wetland, (except those under Bounded Categories 1-6 as listed in the Program Year 2019 SEP Formula Guidance), those project activities are subject to additional NEPA review and approval by DOE; and
- 7) This authorization excludes any activities that are otherwise subject to a restriction set forth elsewhere in this Agreement.

c. Modifications/Activities Outside the Bounded Categories.

If Grantee later intends to undertake activities/projects that do not fall within the Bounded Categories, those activities/projects are subject to additional NEPA review by DOE and are not authorized for funding unless and until SGC, the CEC, and DOE's Contracting Officer provide written authorization for those additions or modifications. Should Grantee elect to undertake activities/projects prior to such written authorization, Grantee does so at the risk of not receiving funding for those activities/projects, and such costs may not be recognized as allowable cost match.

Term 8. HISTORIC PRESERVATION

a. Authorization.

DOE must comply with the requirements of Section 106 of the National Historic Preservation Act (NHPA) prior to authorizing the use of Federal funds. Section 106 applies to historic properties that are listed in or eligible for listing in the National Register of Historic Places. Because CEC has a DOE-executed Programmatic Agreement (PA), Grantee must comply with the requirements identified in paragraph B. Conditions below.

b. Conditions.

States with a DOE executed PA for Historic Preservation

(AL, AK, AS, AZ, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, LA, ME, MD, MA, MI, MN, MO, MT, ND, NE, NV, NH, NJ, NM, NY, NC, OH, OK, PA, PR, SC, SD, TN, TX, UT, VT, VA, WA, WI, WY)

Because the CEC has a DOE executed historic preservation Programmatic Agreement (PA), which is incorporated by reference into this Agreement, Grantee must adhere to all the

Stipulations in the PA. All DOE executed PAs are available on the Weatherization and Intergovernmental Programs website: <https://www.energy.gov/eere/wipo/historic-preservation-executed-programmatic-agreements>.

In addition to the Stipulations in the PAs, Grantee must notify the CEC in writing and EERE via GONEPA@ee.doe.gov whenever:

- Either the Grantee or the State Historic Preservation Office (SHPO)/Tribal Historic Preservation Office (THPO) believes that the Criteria of Adverse Effect pursuant to 36 CFR § 800.5, apply to the proposal under consideration by EERE;
- There is a disagreement between an Applicant, or its authorized representative, and the SHPO/THPO about the scope of the area of potential effects, identification and evaluation of historic properties and/or the assessment of effects;
- There is an objection from a consulting party or the public regarding their involvement in the review process established by 36 CFR Part 800, Section 106 findings and determinations, or implementation of agreed upon measures; or
- There is the potential for a foreclosure situation or anticipatory demolition as defined under 36 CFR §800.9 (b) and 36 CFR § 800.9 (c).

Term 9. PERFORMANCE OF WORK IN UNITED STATES

a. Requirement.

All work performed under this Agreement must be performed in the United States unless the Contracting Officer and the CEC provide a waiver. This requirement does not apply to the purchase of supplies and equipment. However, Grantee should make every effort to purchase supplies and equipment within the United States. Grantee must flow down this requirement to its Subrecipients and Vendors.

b. Failure to Comply.

If Grantee fails to comply with the Performance of Work in the United States requirement, SGC, in addition to any other rights and remedies, may deny reimbursement for the work conducted outside the United States and such costs may not be recognized as allowable Grantee cost share regardless if the work is performed by Grantee, Subrecipients, Vendors or other project partners.

c. Waiver for Work Outside the U.S.

All work performed under this Agreement must be performed in the United States. However, the Contracting Officer and the CEC may approve Grantee to perform a portion of the work outside the United States under limited circumstances. Grantee must obtain a waiver from both the Contracting Officer and the CEC prior to conducting any work outside the U.S. To request a waiver, the Grantee must submit a written waiver request to SGC (and SGC will in turn pass it along to the CEC), which includes the following information:

- The rationale for performing the work outside the U.S.;
- A description of the work proposed to be performed outside the U.S.;
- Proposed budget of work to be performed; and
- The countries in which the work is proposed to be performed.

For the rationale, Grantee must demonstrate to the satisfaction of the Contracting Officer and the CEC that the performance of work outside the United States would further the purposes of the FOA that the DOE Award to the CEC was selected under and is in the economic interests of the United States. The Contracting Officer and the CEC may require additional information before considering such request.

Term 10. NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS – SENSE OF CONGRESS

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this Agreement should be American-made.

Term 11. REPORTING REQUIREMENTS

a. Requirements.

The reporting requirements for this Agreement are identified Exhibit E, Attachment E-1. In addition to any other rights and remedies available to SGC, CEC, and DOE, failure to comply with these reporting requirements is considered a material noncompliance with the terms of this Agreement. Noncompliance may include but not be limited to withholding of future payments, suspension, or termination of the current Agreement, and withholding of future agreements. A willful failure to perform, a history of failure to perform, or unsatisfactory performance of this and/or other financial assistance awards, may also result in a debarment action to preclude future awards by State and Federal agencies.

b. Dissemination of scientific/technical reports.

Scientific/technical reports submitted under this Agreement will be disseminated on the Internet via the DOE Information Bridge (www.osti.gov/bridge), unless the report contains patentable material, protected data or SBIR/STTR data. Citations for journal articles produced under this Agreement will appear on the DOE Energy Citations Database (www.osti.gov/energycitations).

c. Restrictions.

Reports submitted to the DOE Information Bridge must not contain any Protected Personal Identifiable Information (PII), limited rights data (proprietary data), classified information, information subject to export control classification, or other information not subject to release.

Term 12. LOBBYING

By accepting funds under this Agreement, Grantee agrees that none of the funds obligated on the Agreement shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. § 1913. This restriction is in addition to those prescribed elsewhere in statute, regulation, and this Agreement.

Term 13. PUBLICATIONS

Grantee is encouraged to publish or otherwise make publicly available the results of work performed under this Agreement. Grantee is required to include the following acknowledgement in publications arising out of, or relating to, work performed under this Agreement, whether copyrighted or not:

- *Acknowledgment:* "This material is based upon work supported by the U.S. Department of Energy's, Office of Energy Efficiency and Renewable Energy (EERE), under the State Energy Program Award Numbers DE-EE0000221 and DE-EE0008283."
- *Disclaimer:* "This report was prepared as an account of work sponsored by an agency of the United States Government and provided through the California Energy Commission and the Office of Planning and Research's Strategic Growth Council. The United States Government, the State of California, nor any agency of either (including the California Energy Commission and the Office of Planning and Research's Strategic Growth Council), nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus,

product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government, the State of California, or any agency of either, including the California Energy Commission and the Office of Planning and Research's Strategic Growth Council. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government, the State of California, or any agency of either, including the California Energy Commission and the Office of Planning and Research's Strategic Growth Council."

Term 14. [RESERVED]

Term 15. PROPERTY STANDARDS

The Grantee is not allowed to purchase, or allow any of its Subrecipients or Vendors to purchase, real property under this Agreement. Beyond this restriction and to the extent otherwise applicable, the complete text of the Property Standards can be found at 2 CFR 200.310 through 200.316. Also see 2 CFR 910.360 for additional requirements for real property and equipment for For-Profit entities.

Term 16. INSURANCE COVERAGE

See 2 CFR 200.310 for insurance requirements for real property (which is not allowed to be purchased under this Agreement) and equipment acquired or improved with Federal funds. Also see 2 CFR 910.360(d) for additional requirements for real property and equipment for For-Profit entities.

Term 17. REAL PROPERTY

The Grantee is not allowed to purchase, or allow any of its Subrecipients or Vendors to purchase, real property under this Agreement. Beyond this restriction and to the extent otherwise applicable, subject to the conditions set forth in 2 CFR 200.311, title to real property acquired or improved under a Federal award will conditionally vest upon acquisition in the non-Federal entity. The non-Federal entity cannot encumber this property and must follow the requirements of 2 CFR 200.311 before disposing of the property.

Except as otherwise provided by Federal statutes or by the Federal awarding agency, real property will be used for the originally authorized purpose as long as needed for that purpose. When real property is no longer needed for the originally authorized purpose, the non-Federal entity must obtain disposition instructions from DOE or pass-through entity. The instructions must provide for one of the following alternatives: (a) retain title after compensating DOE as described in 2 CFR 200.311(c)(1); (b) Sell the property and compensate DOE as specified in 2 CFR 200.311(c)(2); or (c) transfer title to DOE or to a third party designated/approved by DOE as specified in 2 CFR 200.311(c)(3).

See 2 CFR 200.311 for additional requirements pertaining to real property acquired or improved under a Federal award. Also see 2 CFR 910.360 for additional requirements for real property for For-Profit entities.

Term 18. EQUIPMENT

Grantee must obtain prior written permission from the SGC before purchasing any equipment. Equipment is generally defined as an item with an acquisition cost greater than \$5,000 and a useful life expectancy of more than one year.⁵

Subject to the conditions provided in 2 CFR 200.313 and 200.439, title to equipment acquired by Grantee under this Agreement will conditionally vest upon acquisition with SGC. Grantee and SGC shall comply with 2 CR 200.313 and 200.439, which include but are not limited to:

- a. Grantee must use equipment purchased under this Agreement for this Agreement long as the equipment is needed, whether or not the project or program continues to be supported by the Federal award. When no longer needed for this Agreement, the equipment may be used by programs supported by DOE in the priority order specified in 2 CFR 200.313(c)(1)(i) and (ii).
- b. Management requirements, including inventory and control systems, for equipment are provided in 2 CFR 200.313(d).
- c. When equipment acquired under this Agreement is no longer needed, SGC must obtain, through the CEC, disposition instructions from DOE.
- d. Disposition will be made as follows: (a) items of equipment with a current fair market value of \$5,000 or less may be retained, sold, or otherwise disposed of with no further obligation to DOE; (b) SGC may retain title or sell the equipment in accordance with applicable California state equipment requirements after compensating DOE as described in 2 CFR 200.313(e)(2); or (c) transfer title to DOE or to an eligible third party as specified in 2 CFR 200.313(e)(3).

See 2 CFR 200.313 for additional requirements pertaining to equipment acquired under a Federal award. Also see 2 CFR 910.360 for additional requirements for equipment for For-Profit entities. See also 2 CFR 200.439 equipment and other capital expenditures.

Term 19. SUPPLIES

Supplies are generally defined as an item with an acquisition cost of \$5,000 or less and a useful life expectancy of less than one year. Supplies are generally consumed during the project performance.⁶

See 2 CFR 200.314 for requirements pertaining to supplies acquired under a Federal award. See also 2 CFR 200.453 materials and supplies costs, including costs of computing devices.

Term 20. PROPERTY TRUST RELATIONSHIP

Real property (which is not allowed to be purchased under this Agreement), equipment, and intangible property, that are acquired or improved under this Agreement must be held in trust by the Grantee as trustee for the beneficiaries of the project or program under which the property was acquired or improved. See 2 CFR 200.316 for additional requirements pertaining to real property, equipment, and intangible property acquired or improved under this Agreement.

Term 21. RECORD RETENTION

Consistent with 2 CFR 200.333 through 200.337, Grantee is required to retain records relating to this Agreement.

Term 22. AUDITS

- a. Government-Initiated Audits.

⁵ From agreement DE-EE0008283, Attachment 3, p. 6 of 7.

⁶ From agreement DE-EE0008283, Attachment 3, p. 6 of 7.

In addition to the audit rights in Exhibit D, Section 1, Grantee is required to provide any information, documents, site access, or other assistance requested by the CEC, SGC, EERE, DOE or Federal auditing agencies (e.g., DOE Inspector General, Government Accountability Office) for the purpose of audits and investigations. Such assistance may include, but is not limited to, reasonable access to the Grantee's records relating to this Agreement.

Consistent with 2 CFR part 200 as amended by 2 CFR part 910, all of these entities may audit Grantee's financial records or administrative records relating to this Agreement at any time.

Grantee is responsible for its own costs of any audit.

All of these entities may conduct a final audit at the end of the project period (or the termination of the Agreement, if applicable).

Upon completion of any audit, Grantee is required to refund to SGC, CEC, or DOE, as applicable, any payments for costs that were determined to be unallowable.

If an audit has not been performed or completed prior to the closeout of the Agreement, DOE, SGC, and the CEC retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

All of these entities will provide reasonable advance notice of audits and will minimize interference with ongoing work, to the maximum extent practicable.

b. Annual Independent Audits (Single Audit or Compliance Audit).

Grantee is required to comply with the annual independent audit requirements in 2 CFR 200.500 through .521 for institutions of higher education, nonprofit organizations, and state and local governments (Single audit), and 2 CFR 910.500 through .521 for for-profit entities (Compliance audit). The annual independent audits are separate from Government-initiated audits discussed in paragraph A of this Term, and must be paid for by Grantee. To minimize expense, SGC may have a compliance audit in conjunction with its annual audit of financial statements. The financial statement audit is **not** a substitute for the compliance audit. If the audit (Single audit or Compliance audit, depending on entity type) has not been performed or completed prior to the closeout of the Agreement, DOE may impose one or more of the actions outlined in 2 CFR 200.338, Remedies for Noncompliance.

SUBPART B. FINANCIAL PROVISIONS

Term 23. [RESERVED]

Term 24. [RESERVED]

Term 25. [RESERVED]

Term 26. REFUND OBLIGATION

Grantee must refund any excess payments received under this agreement, including any costs determined unallowable by EERE, the CEC, or SGC. Upon the end of the project period (or the termination of this Agreement, if applicable), Grantee must refund to the CEC the difference between (i) the total payments received and (ii) the Federal share of the costs incurred. This is in addition to any other rights and remedies DOE, the CEC, or SGC may have.

Term 27. ALLOWABLE COSTS

EERE determines the allowability of costs through reference to 2 CFR part 200 as amended by 2 CFR part 910. All project costs must be allowable, allocable, and reasonable. Grantee must

document and maintain records of all project costs, including, but not limited to, the costs paid by Federal funds, costs claimed by its Subrecipients and Vendors and project costs that Grantee claims as cost sharing, including in-kind contributions. Grantee is responsible for maintaining records adequate to demonstrate that costs claimed have been incurred, are reasonable, allowable and allocable, and comply with the cost principles. Upon request, Grantee is required to provide such records to EERE, the CEC, and SGC. Such records are subject to audit. In addition to any other rights and remedies available, failure to provide EERE, the CEC, or SGC adequate supporting documentation may result in a determination by EERE, the CEC, or SGC that those costs are unallowable.

Grantee is required to obtain the prior written approval of the CEC for any foreign travel costs.

Term 28. INDIRECT COSTS

[a and b Reserved]

c. Subrecipient and Vendor Indirect Costs.

Grantee must ensure its Subrecipient's and Vendor's indirect costs are appropriately managed, allowable and otherwise comply with the requirements of this Agreement and 2 CFR part 200 as amended by 2 CFR part 910.

Term 29. DECONTAMINATION AND/OR DECOMMISSIONING (D&D) COSTS

Notwithstanding any other provisions of this Agreement, the Government, including DOE, the CEC, and SGC, shall not be responsible for or have any obligation for (1) Decontamination and/or Decommissioning (D&D) of any facilities, or (2) any costs which may be incurred connection with the D&D of any of its facilities due to the performance of the work under this Agreement, whether said work was performed prior to or subsequent to the effective date of this Agreement.

Term 30. USE OF PROGRAM INCOME

If the Grantee earns program income during the project period as a result of this Agreement, the Grantee must add the program income to the funds committed to the Agreement and used to further eligible Agreement objectives.

Term 31. [RESERVED]

Term 32. [RESERVED]

Term 33. [RESERVED]

Term 34. [RESERVED]

SUBPART C. MISCELLANEOUS PROVISIONS

Term 35. INSOLVENCY, BANKRUPTCY, OR RECEIVERSHIP

1. Grantee shall immediately, but no later than five days, notify the CEC and SGC of the occurrence of any of the following events: (1) Grantee or one of its Subrecipients or Vendors or Grantee's parent entity filing of a voluntary case seeking liquidation or reorganization under the Bankruptcy Act; (2) Grantee's consent to the institution of an involuntary case under the Bankruptcy Act against Grantee or any of its subrecipient's parent entity; (3) the filing of any

similar proceeding for or against Grantee or any of its subrecipient parent entities, or Grantee's consent to the dissolution, winding-up or readjustment of its debts, appointment of a receiver, conservator, trustee, or other officer with similar powers over Grantee, under any other applicable state or Federal law; or (4) Grantee's insolvency due to its inability to pay debts generally as they become due.

2. Such notification shall be in writing and shall: (1) specifically set out the details of the occurrence of an event referenced in paragraph A; (2) provide the facts surrounding that event; and (3) provide the impact such event will have on the project being funded by this Agreement.
3. In addition to any other rights and remedies available, upon the occurrence of any of the four events described in paragraph A. of this term, EERE, the CEC, and SGC reserve the right to conduct a review to determine compliance with the required elements of this Agreement (including such items as cost share, progress towards technical project objectives, and submission of required reports). If the review determines that there are significant deficiencies or concerns with the performance, EERE, the CEC, and SGC, in addition to any other rights and remedies, reserve the right to impose additional requirements, as needed, including (1) change of payment method; or (2) institute payment controls.
4. In addition to any other rights and remedies available to DOE, the CEC, or SGC, failure of Grantee to comply with this term may be considered a material noncompliance of this Agreement.

Term 36. REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION

a. Reporting of first-tier subawards.

1. Applicability. Unless the Grantee is exempt as provided in paragraph d. of this award term, the Grantee must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this award term).
2. Where and when to report.
 - i. The Grantee must report each obligating action described in paragraph a.1. of this award term to the CEC and to <https://www.fsrs.gov>.
 - ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
3. What to report. The Grantee must report the information about each obligating action that the submission instructions posted at <https://www.fsrs.gov> specify.

b. Reporting Total Compensation of Grantee Executives.

1. Applicability and what to report. The Grantee must report total compensation for each of its five most highly compensated executives for the preceding completed fiscal year, if
 - i. The total Federal funding authorized to date under this Award is \$25,000 or more;
 - ii. In the preceding fiscal year, the Grantee received;
 - (A) 80 percent or more of the Grantee's annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - (B) \$25,000,000 or more in annual gross revenues from Federal procurement

contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

- iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>).

2. Where and when to report. The Grantee must report executive total compensation described in paragraph b.1. of this award term:

- i. As part of the Grantee's registration profile at <https://www.sam.gov>.
- ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless the Grantee is exempt as provided in paragraph d. of this award term, for each first-tier Subrecipient under this award, the Grantee shall report the names and total compensation of each of the Subrecipient's five most highly compensated executives for the Subrecipient's preceding completed fiscal year, if;

- i. In the Subrecipient's preceding fiscal year, the subrecipient received;
 - (A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
- ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>).

2. Where and when to report. The Grantee must report Subrecipient executive total compensation described in paragraph c.1. of this award term:

- i. To the CEC and SGC.
- ii. By the end of the month following the month during which the Grantee makes the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (*i.e.*, between October 1 and 31), the Grantee must report any required compensation information of the Subrecipient by November 30 of that year.

d. Exemptions.

If, in the previous tax year, the Grantee had gross income, from all sources, under \$300,000, it is exempt from the requirements to report:

- i. Subawards and;
- ii. The total compensation of the five most highly compensated executives of any Subrecipient.

e. Definitions. For purposes of this term:

1. Entity means all of the following, as defined in 2 CFR Part 25:

- i. A Governmental organization, which is a State, local government, or Indian tribe;
 - ii. A foreign public entity;
 - iii. A domestic or foreign nonprofit organization;
 - iv. A domestic or foreign for-profit organization;
 - v. A Federal agency, but only as a Subrecipient under an award or subaward to a non-Federal entity.
- 2. Executive means officers, managing partners, or any other employees in management positions.
- 3. Subaward:
 - i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which the Grantee received this award and that the Grantee awards to an eligible Subrecipient.
 - ii. The term does not include the Grantee's procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200.501 Audit requirements, (f) *Subrecipients and Contractors* and/or 2 CFR 910.501 Audit requirements, (f) *Subrecipients and Contractors*).

A subaward may be provided through any legal agreement, including an agreement that the Grantee or a Subrecipient considers a contract.
- 4. Subrecipient means an entity that:
 - i. Receives a subaward from the Grantee under this award; and
 - ii. Is accountable to the Grantee for the use of the Federal funds provided by the subaward.
- 5. Total compensation means the cash and noncash dollar value earned by the executive during the Grantee's or Subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
 - i. Salary and bonus.
 - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
 - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
 - v. Above-market earnings on deferred compensation which is not tax-qualified.
 - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

Term 37. SYSTEM FOR AWARD MANAGEMENT AND UNIVERSAL IDENTIFIER REQUIREMENTS

- a. [Reserved]
- b. Requirement for Data Universal Numbering System (DUNS) Numbers
If Grantee is authorized to make subawards under this Agreement, Grantee:

1. Must notify potential Subrecipients that no entity (see definition in paragraph c. of this Agreement term directly below) may receive a subaward from Grantee unless the entity has provided its DUNS number to the Grantee.
2. May not make a subaward to an entity unless the entity has provided its DUNS number to SGC.

c. Definitions

For purposes of this Agreement:

1. [Reserved]
 2. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).
 3. Entity, as it is used in this Agreement, means all of the following, as defined at 2 CFR Part 25, subpart C:
 - i. A Governmental organization, which is a State, local government, or Indian Tribe;
 - ii. A foreign public entity;
 - iii. A domestic or foreign nonprofit organization;
 - iv. A domestic or foreign for-profit organization; and
 - v. A Federal agency, but only as a Subrecipient under an award or subaward to a non-Federal entity.
 4. Subaward:
 - i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which Grantee received this Agreement and that Grantee awards to an eligible Subrecipient.
 - ii. The term does not include Grantee procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200.501 Audit requirements, (f) *Subrecipients and Contractors* and/or 2 CFR 910.501 Audit requirements, (f) *Subrecipients and Contractors*).
 - iii. A subaward may be provided through any legal agreement, including an agreement that Grantee considers a contract.
 5. Subrecipient means an entity that:
 - i. Receives a subaward from Grantee under this Agreement; and
 - ii. Is accountable to Grantee for the use of the Federal funds provided by the subaward.
- d. Grantee must obtain a DUNS number and provide it to the SGC and CEC before SGC will pay it any funds under this Agreement. The SGC will not pay any funds to Grantee for work performed before it obtains a DUNS number.

Term 38. NONDISCLOSURE AND CONFIDENTIALITY AGREEMENTS ASSURANCES

By entering into this Agreement, Grantee attests that it **does not and will not** require its employees or Subrecipients or Vendors to sign internal nondisclosure or confidentiality agreements or statements prohibiting or otherwise restricting its employees or Subrecipients or Vendors from lawfully reporting waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

Grantee further attests that it **does not and will not** use any Federal or Agreement funds to implement or enforce any nondisclosure and/or confidentiality policy, form, or agreement it uses unless it contains the following provisions:

- i. *“These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.”*
- ii. The limitation above shall not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.
- iii. Notwithstanding provision listed in paragraph (a), a nondisclosure or confidentiality policy form or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or officer of the United States Government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement shall, at a minimum, require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government. Such nondisclosure or confidentiality forms shall also make it clear that they do not bar disclosures to Congress, or to an authorized official of an executive agency or the Department of Justice, that are essential to reporting a substantial violation of law.

Term 39. CONFERENCE SPENDING

Grantee shall not expend any funds on a conference not directly and programmatically related to the purpose for which this Agreement was awarded that would defray the cost to the United States Government of a conference held by any federal Executive branch department, agency, board, commission, or office for which the cost to the United States Government would otherwise exceed \$20,000, thereby circumventing the required notification by the head of any such Executive Branch department, agency, board, commission, or office to the Inspector General (or senior ethics official for any entity without an Inspector General), of the date, location, and number of employees attending such conference.

Term 40. GRANTEE INTEGRITY AND PERFORMANCE MATTERS

A. General Reporting Requirement

If the total value of Grantee's currently active Financial Assistance awards, cooperative agreements, and procurement contracts from all Federal awarding agencies, including this Agreement, exceeds \$10,000,000 for any period of time during the period of performance of this Agreement, then Grantee during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this term. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance

reviews required for Federal procurement contracts, will be publicly available.

B. Proceedings About Which You Must Report

Submit the information required about each proceeding that:

- i. Is in connection with this Agreement, the award or performance of a Financial Assistance, cooperative agreement, or procurement contract from the Federal Government;
- ii. Reached its final disposition during the most recent five year period; and
- iii. Is one of the following:
 1. A criminal proceeding that resulted in a conviction, as defined in paragraph E below of this Term 40;
 2. A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
 3. An administrative proceeding, as defined in paragraph E of below of this Term 40, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
 4. Any other criminal, civil, or administrative proceeding if:
 - a. It could have led to an outcome described in paragraph B.iii.1, 2, or 3 of this term;
 - b. It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
 - c. The requirement in this term to disclose information about the proceeding does not conflict with applicable laws and regulations.

C. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph B of this term. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

D. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph A above of this Term 40 you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. If Grantee has Federal contract, Financial Assistance awards, (including cooperative agreement awards) with a cumulative total value greater than \$10,000,000, including this Agreement, Grantee must disclose semiannually any information about the criminal, civil, and administrative proceedings.

E. Definitions

For purposes of this term:

- i. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or Financial Assistance awards. It does not include audits, site visits, corrective plans, or inspection of deliverables.

- ii. Conviction means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of *nolo contendere*.
- iii. Total value of currently active Financial Assistance awards, cooperative agreements and procurement contracts includes—
 1. Only the Federal share of the funding under any Federal award, including this Agreement, with a Grantee cost share or match; and
 2. The value of all expected funding increments under a Federal award and options, even if not yet exercised.

Term 41. SUBRECIPIENT CHANGE NOTIFICATION

Grantee must notify the SGC in writing 30 days prior to the execution of new or modified Subrecipient agreements, including naming any To Be Determined Subrecipients. This notification does not constitute a waiver of the prior approval requirements outlined in 2 CFR part 200 as amended by 2 CFR part 910, nor does it relieve SGC from its obligation to comply with applicable Federal statutes, regulations, and executive orders.

In order to satisfy this notification requirement, Grantee’s documentation must, as a minimum, include the following:

- A description of the research to be performed, the service to be provided, or the equipment to be purchased;
- Cost share commitment letter if the Subrecipient is providing cost share;
- An assurance that the process undertaken by Grantee to solicit the Subrecipient complies with their written procurement procedures as outlined in 2 CFR 200.317 through 200.329;
- An assurance that no planned, actual or apparent conflict of interest exists between Grantee and the selected Subrecipient and that Grantee’s written standards of conduct were followed⁷;
- A completed Environmental Questionnaire, if applicable;
- An assurance that the Subrecipient is not a debarred or suspended entity; and
- An assurance that all required Agreement provisions will be flowed down in the resulting Subrecipient agreement.

SGC is responsible for making a final determination if Grantee can award or modify Subrecipient agreements under this Agreement, and Grantee may not proceed with the Subrecipient agreement until the SGC determines, and provides Grantee written notification, that the information provided is adequate.

Term 42. SEP ARRA FUNDED FINANCING PROGRAM REQUIREMENTS

⁷ It is DOE’s position that the existence of a “covered relationship” as defined in 5 CFR 2635.502(a)&(b) between a member of the Grantee’s owners or senior management and a member of a Grantee’s owners or senior management creates at a minimum an apparent conflict of interest that would require the Grantee to notify the Contracting Officer and provide detailed information and justification (including, for example, mitigation measures) as to why the Subrecipient agreement does not create an actual conflict of interest. Grantee must also notify the Contracting Officer of any new Subrecipient agreement with: (1) an entity that is owned or otherwise controlled by SGC; or (2) an entity that is owned or otherwise controlled by another entity that also owns or otherwise controls the SGC, as it is DOE’s position that these situations also create at a minimum an apparent conflict of interest.

- a. [Reserved]
- b. [Reserved]
- c. [Reserved]
- d. [Reserved]
- e. [Reserved]
- f. By accepting this Agreement, SGC agrees to comply with the provisions listed below for financing programs capitalized with Recovery Act funds (see Exhibit E, Attachment 4 for full text of provisions):
 - **SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (MAR 2009)**
 - **REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS (COVERED UNDER INTERNATIONAL AGREEMENTS) --SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009**
 - **WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF THE RECOVERY ACT**
 - **RECOVERY ACT TRANSACTIONS LISTED IN SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS AND RECIPIENT RESPONSIBILITIES FOR INFORMING SUBRECIPIENTS**
 - **HISTORIC PRESERVATION**
 - **DAVIS BACON ACT AND CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**
 - **RECIPIENT FUNCTIONS**

EXHIBIT E-1, REPORTING REQUIREMENTS

The CEC's agreement with the Department of Energy requires the CEC to provide certain reporting.⁸ Accordingly, the CEC requires certain reporting from SGC, and SGC in this Agreement requires certain reporting from Grantee.

1. Grantee shall not include any Protected Personally Identifiable Information (Protected PII) in its submissions to SGC. Protected PII is defined as any data that, if compromised, could cause harm to an individual such as identify theft. Protected PII includes:
 - Social Security Numbers in any form;
 - Place of Birth associated with an individual;
 - Date of Birth associated with an individual;
 - Mother's maiden name associated with an individual;
 - Biometric record associated with an individual;
 - Fingerprint;
 - Iris Scan;
 - DNA;
 - Medical history information associated with an individual;
 - Medical conditions, including history of disease;
 - Metric information, e.g., weight, height, blood pressure;
 - Criminal history associated with an individual;
 - Ratings;
 - Disciplinary actions;
 - Financial information associated with an individual;
 - Credit card numbers; and
 - Security clearance history or related information (not including actual clearances held).

2. Acknowledgement and Disclaimer
Please see Exhibit E, Term 13 for required acknowledgement and disclaimer statements.

3. Quarterly Progress Reports
The CEC is required to provide Quarterly Progress Reports to DOE "[w]ithin 30 calendar days after the end of the quarterly reporting period (January 30, April 30, July 30, and October 30)."
Grantee shall prepare Quarterly Progress Reports. Grantee shall submit Quarterly Progress Reports to SGC so SGC has enough time to review and comment and Grantee has enough time to make any necessary revision, so that SGC can submit quarterly reports to the CEC by January 1, April 1, July 1, and October 1 of each year of this Agreement. Because Grantee must provide a Progress Reports with each invoice, the Quarterly Progress Reports only have to provide information for the period of each reported quarter not covered by submitted Progress Reports.

Quarterly Progress Reports shall include, but may not be limited to, the following:

- Report submission date.
- Reporting Period Start and End Date

⁸ See agreement DE-EE0008283, Attachment 2. Page 10 of Attachment 2 states in terms of reporting the ARRA funds are "subject to the terms and conditions of the SEP formula award and the Recovery Act terms and conditions set forth in the grantee's original Recovery Act award." But there is no statement about the applicability of the new SEP agreement terms if they do not conflict with old SEP ARRA terms. Thus, this Exhibit contains a combination of the requirements of both SEP agreements.

- A concise narrative assessment of the status of work.
- A written comparison of the actual project accomplishments with the project goals and objectives established for the reporting period; if goals and/or objectives for the reporting period were not met, a detailed description of the variance shall be provided.
- A discussion of what was accomplished under these goals and objectives established for this reporting period, including major activities, significant results, major findings or conclusions, key outcomes, or other achievements. This section should not contain any proprietary data or other information not subject to public release. If such information is important to reporting progress, do not include the information, but include a note in the report advising the reader to contact the Principal Investigator or the Project Director for further information.
- Cost Status. A comparison of the approved budget by budget period and the actual costs incurred during the reporting period shall be provided. If cost sharing is required, the cost breakdown shall show the DOE share, Grantee share, and total costs.
- Schedule Status. List milestones, anticipated completion dates and actual completion dates. If you submitted a project management plan with your application, you must use this plan to report schedule and budget variances. You may use your own project management system to provide this information.
- Describe any changes during the reporting period in project approach and the reasons for these changes.
- Describe any actual or anticipated problems or delays and any actions taken or planned to resolve them.
- Describe any absence or changes of key personnel or changes in consortium/teaming arrangement during the reporting period.
- List and describe any product produced or technology transfer activities accomplished during this reporting period, such as:
 - i. Publications (list journal name, volume, issue); conference papers; or other public releases of results. Attach or send copies of public releases to the DOE Program Manager identified in Block 15 of the Assistance Agreement Cover Page.
 - ii. Web site or other Internet sites (list the URL) that reflect the results of this project.
 - iii. Networks or collaborations fostered.
 - iv. Technologies/Techniques (Identify and Describe).
 - v. Inventions/Patent Applications (Identify and Describe with date of application)
 - vi. Other products, such as data or databases, physical collections, audio or video, software or NetWare, models, educational aid or curricula, instruments or equipment (Identify and Describe).

4. Special Status Reports

If any of the following events arise under this Agreement (including the tribal grant awards and the gap analysis contract), Grantee shall report them in writing to the SGC within 5 days after the event:

- Refusal of a Subrecipient to accept flowdown terms;
- Potential or actual violations of federal, state, and municipal laws;
- Any improper claims or excess payments;
- Potential or actual violations of any match share requirements;
- Potential or actual noncompliance with requirements;
- Potential or actual violations of the lobbying restrictions; and
- Potential Any notices or claims of patent or copyright infringement;

- or actual bankruptcy/insolvency.

5. Final Property Report

By no later than the end date of this Agreement, Grantee must submit a final inventory of Government-furnished property, and property acquired with Agreement funds, whether the property is in the possession of the Grantee, SGC, or any other entity. Grantee must submit a completed SF-428B, available at http://www.whitehouse.gov/omb/grants_forms, to the SGC. The inventory must include a description of the property, tag number, acquisition date, and acquisition cost, if purchased with Agreement funds. The location of property should be listed under the Comments section. Any property with a fair market value below \$5,000 may be omitted from the inventory.

The CEC must, in turn, submit this information to DOE. The EERE Contracting Officer has sole and exclusive authority to approve disposition plans and requests.

6. Annual Cost Incurred Proposal

Grantee must submit an Annual Incurred Cost Proposal, reconciled to its financial statements unless its Agreement is based on a predetermined or fixed indirect rate(s) or a fixed amount for indirect or facilities and administration (F&A) costs. Grantee must submit its Annual Incurred Cost Proposal to the SGC by no later than September 1 of each year of the Agreement.

7. Single Audit: States, Locals, Tribal Governments, and Non-Profits

As required by 2 CFR 200 Subpart F, non-federal entities that expend \$750,000 or more during its fiscal year in federal awards must have a single or program-specific audit conducted. The single audit must be conducted in accordance with 2 CFR §200.514 Scope of audit, except when it elects to have a program-specific audit conducted.

For most single audits, the requirement is for annual single audits. However, there are occasions where a single audit is not required annually. Per 2 CFR 200.504 - Frequency of audits, a state, local government, or Indian tribe that is required by constitution or statute to undergo its audits less frequently than annually, is permitted to undergo its audits biennially. Also, any nonprofit organization that had biennial audits for all biennial periods ending between July 1, 1992, and January 1, 1995, is permitted to undergo its single audits biennially.

For a program-specific audit, when an entity expends federal awards under only one Federal program (excluding R&D) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted. A program-specific audit may not be elected for R&D unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-through entity in the case of a Subrecipient, approves in advance a program specific audit.

The single audit report(s) must be submitted to DOE within the earlier of thirty days after receipt of the auditor's report(s) or nine months after the end of the audit period (Grantee's fiscal year-end). The compliance audit report must be submitted, along with audited financial statements (if applicable), to the Federal Audit Clearinghouse website.

8. Davis Bacon

As applicable, Grantee shall submit to the SGC weekly for each week in which any Agreement work is performed, a copy of all required payrolls so the SGC can provide them to the CEC, which then can provide the information to DOE.

EXHIBIT E-2, INTELLECTUAL PROPERTY RIGHTS

For purposes of this Agreement, Intellectual Property has the definition of “Intangible Property” under 2 CFR 200.59.

The CEC’s agreement with the DOE requires the CEC to provide certain Intellectual Property rights to DOE.⁹ Grantee irrevocably provides such rights to the CEC.

Grantee expressly acknowledges that the work under this Agreement contributed by Grantee (for purposes of this Exhibit E, Attachment E-2, “Work”) is being paid for by SGC via CEC via the federal government. In addition to the rights reserved by the federal government in 2 CFR 200.315 that Grantee irrevocably provides, Grantee also irrevocably grants the CEC and SGC a no-cost, non-exclusive, transferable, royalty-free, worldwide, perpetual license to use, publish, translate, modify, and reproduce all Work, including any Intellectual Property, for governmental purposes.

Grantee agrees that SGC and CEC may make any changes or additions to the Work, including Intellectual Property, in ways including but not limited to the preparation of derivative works which SGC or CEC in its sole discretion may consider necessary, and may engage others to make changes to the Work, including Intellectual Property, with or without attribution to Grantee.

Grantee represents that, except with respect to material furnished to Grantee by SGC or CEC, Grantee or its Subrecipients and Vendors are the sole author of the Work, including Intellectual Property, which is not copied in whole or in part from any other work. Grantee further represents that the Work, including Intellectual Property, does not violate the intellectual property rights of any person, firm or entity.

Grantee releases and discharges the State, including but not limited to SGC and the CEC, and the federal government, including but not limited to DOE, from any and all claims and demands arising out of, or in connection with, any use of the Work or its associated rights, such as Intellectual Property, including but not limited to, any and all claims of libel, moral rights and invasion of privacy, and/or any claims under the Visual Artists Rights Act. Grantee realizes that it cannot withdraw its consent after executing this Agreement, and acknowledges that this Agreement is binding on Grantee and his or her heirs, legal representatives and other assigns.

Grantee shall ensure its agreements with Subrecipients and Vendors include provisions effectuating all of these rights, interests, representations, releases and discharges.

⁹ See agreement DE-EE0008283, Attachment 4, incorporated by reference into this Agreement, of which 2 CFR 200.315 applies since 910.362 only applies to DOE agreements with for-profit entities and the CEC, which has the agreement with DOE, is not a for-profit entity.

EXHIBIT E-3, 2 CFR 200.326 REQUIREMENTS

2 CFR 200.326 requires SGC to address in this Agreement applicable provisions from Appendix II to 2 CFR Part 200, which are contained in this Attachment E-3.

1. Violation or Breach of Agreement¹⁰

Should Grantee violate or breach this Agreement, the SGC and the CEC (as a third party beneficiary) can exercise any rights and remedies available to them, including administrative, contractual, or legal remedies such as disputing invoices, issuing stop work orders, terminating with or without cause, seeking further assurances, requesting additional documentation, conducting an audit, filing a claim with the Government Claims Program, or filing a lawsuit in court. These rights are in addition to, and not exclusive, of any other rights and remedies the SGC and CEC may have.

2. Termination With and Without Cause and Settlement Authority¹¹

The Grantee agrees that because SGC is a state entity, SGC must be able to terminate this Agreement without cause. Accordingly, SGC may, at its option, terminate this Agreement without cause in whole or in part, upon giving thirty (30) days advance notice in writing. In such event, Grantee agrees to use all reasonable efforts to mitigate its expenses and obligations hereunder. In addition, either party may terminate this Agreement for cause in accordance with applicable state law upon giving fifteen (15) days advance notice in writing to the other. For any disputes that arise under this Agreement, the Grantee and SGC reserve all rights to settle the dispute in any appropriate and authorized manner. These rights are in addition to, and not exclusive, of any other rights and remedies the SGC and Grantee may have.

3. Equal Employment Opportunity [RESERVED]¹²

4. Davis-Bacon Act [RESERVED]¹³

5. Contract Work Hours and Safety Standards Act¹⁴

If Grantee employs any “mechanics or laborers” then Grantee shall comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, Grantee shall compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

¹⁰ This term is included to address the requirement in Appendix II to 2 CFR Part 200, part (A).

¹¹ This term is included to address the requirement in Appendix II to 2 CFR Part 200, part (B). Because this term is included here, a termination provision is not included in Exhibit D, the typical location in CEC contract terms for termination provisions.

¹² Appendix II to 2 CFR Part 200, part (C) is not required under this Agreement because this Agreement does not meet the definition of a “federally assisted construction contract.”

¹³ Appendix II to 2 CFR Part 200, part (D) requires Davis-Bacon Act provisions for “all prime construction contracts in excess of \$2,000.” This Agreement will not involve a “construction contract” and Exhibit E and Exhibit E – Attachment 4 already require Davis-Bacon Act provisions to be included. Thus, no such provisions are included here.

¹⁴ This term is included to address the requirement in Appendix II to 2 CFR Part 200, part (E).

6. Rights of Inventions Made Under a Contract or Agreement

If Contactor enters into an agreement “with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that ‘funding agreement,’ [Grantee shall] comply with the requirements of 37 CFR Part 401, ‘Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,’ and any implementing regulations issued by the awarding agency.”

7. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended

Grantee shall “comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the [SGC, CEC, and] Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).”

8. Debarment and Suspension (Executive Orders 12549 and 12689)

Grantee shall not make a “contract award (see 2 CFR 180.220)” to “parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), ‘Debarment and Suspension.’ SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.”

9. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)

Grantee shall comply with 31 U.S.C. § 1352 and 10 CFR Part 601, including using attached Forms 1 and 2 to this Exhibit E – Attachment 3.

10. Procurement of Recovered Materials (2 C.F.R. § 200.322)

Grantee shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include but are not limited to procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

EXHIBIT E-3, FORM 1

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, AND DRUG FREE WORKPLACE REQUIREMENTS

Grantee should review the instructions for certification included in the regulations cited in this paragraph before completing this form. Signature of this form is meant to provide compliance with certification requirements under 10 CFR Part 601 "New Restrictions on Lobbying," 10 CFR Part 606 "Governmentwide Debarment and Suspension (Nonprocurement)" and 10 CFR Part 607 "Governmentwide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the SGC executes this Agreement.

1. LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, cooperative agreements, Subrecipients and Vendors) and that all Subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file or amend the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.¹⁵

2. ADDITIONAL LOBBYING REPRESENTATION

Applicant organizations which are described in section 501(c)(4) of the Internal Revenue Code of 1986 and engage in lobbying activities after December 31, 1995, are not eligible for the receipt of Federal funds constituting an award, grant, or loan.

As set forth in section 3 of the Lobbying Disclosure Act of 1995 as amended, (2 U.S.C. 1602),

¹⁵ Please note that although 31 USC § 1352 states "a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure," 10 CFR Appendix A to Part 601 states "Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$20,134 and not more than \$201,340 for each such failure."

lobbying activities are defined broadly to include, among other things, contacts on behalf of an organization with specified employees of the Executive Branch and Congress with regard to Federal legislative, regulatory, and program administrative matters.

Check the appropriate block:

The undersigned is an organization described in section 501(c)(4) of the Internal Revenue Code of 1986?

_____ **Yes**

_____ **No**

If you checked “Yes” above, the undersigned represents that after December 31, 1995 it has not engaged in any lobbying activities as defined in the Lobbying Disclosure Act of 1995, as amended.

3. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

- (1) The undersigned certifies to the best of its knowledge and belief, that it and its principals:
 - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery; falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

4. DRUG-FREE WORKPLACE

This certification is required by the Drug-Free Workplace Act of 1988 (Pub.L. 100-690, Title V, Subtitle D) and is implemented through additions to the Debarment and Suspension regulations, published in the Federal Register on January 31, 1989, and May 25, 1990.

ALTERNATE I (ENTITIES OTHER THAN INDIVIDUALS)

- (1) The undersigned certifies that it will or will continue to provide a drug-free workplace by:
 - (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the entity’s workplace and specifying the actions that will be taken against employees for violation of such prohibition;
 - (b) Establishing an ongoing drug-free awareness program to inform employees about:
 - (1) The dangers of drug abuse in the workplace;

- (2) The entity's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (c) Making it a requirement that each employee to be engaged in the performance of the Agreement be given a copy of the statement required by paragraph (a);
 - (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the Agreement, the employee will:
 - (1) Abide by the terms of the statement; and
 - (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace not later than five calendar days after such conviction;
 - (e) Notifying the agency, in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every officer or other designee on whose activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected agreement;
 - (f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:
 - (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency;
 - (g) Making a good faith effort to continue to maintain a drug- free workplace through implementation of paragraphs (a),(b),(c),(d),(e), and (f).
- (2) The entity may insert in the space provided below the site(s) for the performance of work done in connection with the specific agreement:

Place of Performance: (Street address, city, county, state, zip code):

Check if there are workplaces on file that are not identified here.

ALTERNATE II (INDIVIDUALS)

- (1) The individual certifies that, as a condition of the Agreement, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the Agreement.
- (2) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any Agreement activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected agreement.

5. SIGNATURE

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

Name of Applicant: _____

Printed Name and Title of Authorized Representative: _____

SIGNATURE

DATE

EXHIBIT E-4, SEP ARRA REQUIREMENTS

Agreement DE-EE0008283 between DOE and the CEC states that the Energy Commission “must include these special terms and conditions in any subaward.”¹⁶ The CEC flowed down these requirements to SGC, which in turn must also flow them down in this Agreement.

These SEP ARRA Requirements use the term “Recipient” and define it on page 2 as “any entity that receives Recovery Act funds directly from the Federal government (including Recovery Act funds received through grant, loan, or contract) other than an individual and includes a State that receives Recovery Act Funds.”

Grantee and any lower-tiered entity do not meet the definition of a Recipient because they are not receiving ARRA funds directly from the federal government. However, the CEC and now SGC must flow down these requirements, including Recipient requirements, to Grantee and require the same in any lower-tier subawards. For ease of not having to change the word “Recipient” in these “SEP ARRA Requirements,” Grantee agrees to comply with all of these requirements, including those applicable to a “Recipient” except for the following:¹⁷

- 1) Special Provision J, “Availability of Funds.”
- 2) Special Provision K, “Additional Funding Distribution and Assurance of Appropriate Use of Funds.”

Preamble

The American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (Recovery Act) was enacted to preserve and create jobs and promote economic recovery, assist those most impacted by the recession, provide investments needed to increase economic efficiency by spurring technological advances in science and health, invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits, stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive State and local tax increases. Recipients shall use grant funds in a manner that maximizes job creation and economic benefit.

The Recipient shall comply with all terms and conditions in the Recovery Act relating generally to governance, accountability, transparency, data collection and resources as specified in Act itself and as discussed below.

Recipients should begin planning activities for their first tier subrecipients, including obtaining a DUNS number (or updating the existing DUNS record), and registering with the Central Contractor Registration (CCR).

Be advised that Recovery Act funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and related guidance. For projects funded by sources other than the Recovery Act,

¹⁶ In DE-EE0008283, see Appendix A, Special Provision A, p. 2.

¹⁷ Although Appendix A requires the CEC and now SGC to include these terms in all subawards, not all of the provisions actually apply to all subawards. Thus, the CEC and SGC are complying by including the requirements, but exempting Grantee and lower-tiered subawards from the two provisions that do not apply to them.

Contractors must keep separate records for Recovery Act funds and to ensure those records comply with the requirements of the Act.

The Government has not fully developed the implementing instructions of the Recovery Act, particularly concerning specific procedural requirements for the new reporting requirements. The Recipient will be provided these details as they become available. The Recipient must comply with all requirements of the Act. If the recipient believes there is any inconsistency between ARRA requirements and current award terms and conditions, the issues will be referred to the Contracting Officer for reconciliation.

Definitions

For purposes of this term, Covered Funds means funds expended or obligated from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5. Covered Funds will have special accounting codes and will be identified as Recovery Act funds in the grant, cooperative agreement or TIA and/or modification using Recovery Act funds. Covered Funds must be reimbursed by September 30, 2015.

Non-Federal employer means any employer with respect to covered funds -- the contractor, subcontractor, grantee, or recipient, as the case may be, if the contractor, subcontractor, grantee, or recipient is an employer; and any professional membership organization, certification of other professional body, any agent or licensee of the Federal government, or any person acting directly or indirectly in the interest of an employer receiving covered funds; or with respect to covered funds received by a State or local government, the State or local government receiving the funds and any contractor or subcontractor receiving the funds and any contractor or subcontractor of the State or local government; and does not mean any department, agency, or other entity of the federal government.

Recipient means any entity that receives Recovery Act funds directly from the Federal government (including Recovery Act funds received through grant, loan, or contract) other than an individual and includes a State that receives Recovery Act Funds.

Special Provisions

A. Flow Down Requirement

Recipients must include these special terms and conditions in any subaward.

B. Segregation of Costs

Recipients must segregate the obligations and expenditures related to funding under the Recovery Act. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams. No part of the funds from the Recovery Act shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for Recovery Act projects.

C. Prohibition on Use of Funds

None of the funds provided under this agreement derived from the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be used by any State or local government, or any

private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool. [Please see Exhibit B, part II. 1. C. for additional information about this requirement.]

D. Access to Records

With respect to each financial assistance agreement awarded utilizing at least some of the funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1988 (5 U.S.C. App.) or of the Comptroller General is authorized --

- (1) to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract that pertain to, and involve transactions that relate to, the subcontract, subgrant, grant, or subgrant; and
- (2) to interview any officer or employee of the contractor, grantee, subgrantee, or agency regarding such transactions.

E. Publication

An application may contain technical data and other data, including trade secrets and/or privileged or confidential information, which the applicant does not want disclosed to the public or used by the Government for any purpose other than the application. To protect such data, the applicant should specifically identify each page including each line or paragraph thereof containing the data to be protected and mark the cover sheet of the application with the following Notice as well as referring to the Notice on each page to which the Notice applies:

Notice of Restriction on Disclosure and Use of Data

The data contained in pages ---- of this application have been submitted in confidence and contain trade secrets or proprietary information, and such data shall be used or disclosed only for evaluation purposes, provided that if this applicant receives an award as a result of or in connection with the submission of this application, DOE shall have the right to use or disclose the data here to the extent provided in the award. This restriction does not limit the Government's right to use or disclose data obtained without restriction from any source, including the applicant.

Information about this agreement will be published on the Internet and linked to the website www.recovery.gov, maintained by the Accountability and Transparency Board. The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

F. Protecting State and Local Government and Contractor Whistleblowers.

The requirements of Section 1553 of the Act are summarized below. They include, but are not limited to:

Prohibition on Reprisals: An employee of any non-Federal employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or

law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives information that the employee believes is evidence of:

- gross mismanagement of an agency contract or grant relating to covered funds;
- a gross waste of covered funds;
- a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- an abuse of authority related to the implementation or use of covered funds; or
- as violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

Agency Action: Not later than 30 days after receiving an inspector general report of an alleged reprisal, the head of the agency shall determine whether there is sufficient basis to conclude that the non-Federal employer has subjected the employee to a prohibited reprisal. The agency shall either issue an order denying relief in whole or in part or shall take one or more of the following actions:

- Order the employer to take affirmative action to abate the reprisal.
- Order the employer to reinstate the person to the position that the person held before the reprisal, together with compensation including back pay, compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.
- Order the employer to pay the employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the employee for or in connection with, bringing the complaint regarding the reprisal, as determined by the head of a court of competent jurisdiction.

Nonenforceability of Certain Provisions Waiving Rights and remedies or Requiring Arbitration: Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

Requirement to Post Notice of Rights and Remedies: Any employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, shall post notice of the rights and remedies as required therein. (Refer to section 1553 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, www.Recovery.gov, for specific requirements of this section and prescribed language for the notices.).

G. Request for Reimbursement RESERVED

H. False Claims Act

Recipient and sub-recipients shall promptly refer to the [SGC, CEC, and], DOE or other appropriate Inspector General any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving those funds.

I. Information in Support of Recovery Act Reporting

Recipient may be required to submit backup documentation for expenditures of funds under the Recovery Act including such items as timecards and invoices. Recipient shall provide copies of backup documentation at the request of the Contracting Officer or designee.

J. Availability of Funds [Not Applicable]

Funds appropriated under the Recovery Act and obligated to this award are available for reimbursement of costs until September 30, 2015.

K. Additional Funding Distribution and Assurance of Appropriate Use of Funds [Not Applicable]

Certification by Governor -- Not later than April 3, 2009, for funds provided to any State or agency thereof by the American Reinvestment and Recovery Act of 2009, Pub. L. 111-5, the Governor of the State shall certify that: 1) the state will request and use funds provided by the Act; and 2) the funds will be used to create jobs and promote economic growth.

Acceptance by State Legislature -- If funds provided to any State in any division of the Act are not accepted for use by the Governor, then acceptance by the State legislature, by means of the adoption of a concurrent resolution, shall be sufficient to provide funding to such State.

Distribution -- After adoption of a State legislature's concurrent resolution, funding to the State will be for distribution to local governments, councils of government, public entities, and public-private entities within the State either by formula or at the State's discretion.

L. Certifications

With respect to funds made available to State or local governments for infrastructure investments under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, the Governor, mayor, or other chief executive, as appropriate, certified by acceptance of this award that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. Recipient shall provide an additional certification that includes a description of the investment, the estimated total cost, and the amount of covered funds to be used for posting on the Internet. A State or local agency may not receive infrastructure investment funding from funds made available by the Act unless this certification is made and posted.

REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS (COVERED UNDER INTERNATIONAL AGREEMENTS)--SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

(a) Definitions. As used in this award term and condition--

Designated country --

(1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Chinese Taipei (Taiwan), Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan,

Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom;

- (2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore);
- (3) A United States-European Communities Exchange of Letters (May 15, 1995) country: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom; or
- (4) An Agreement between Canada and the United States of America on Government Procurement country (Canada).

Designated country iron, steel, and/or manufactured goods

- (1) Is wholly the growth, product, or manufacture of a designated country; or
- (2) In the case of a manufactured good that consist in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different manufactured good distinct from the materials from which it was transformed.

Domestic iron, steel, and/or manufactured good

- (1) Is wholly the growth, product, or manufacture of the United States; or
- (2) In the case of a manufactured good that consists in whole or in part of materials from another country, has been substantially transformed in the United States into a new and different manufactured good distinct from the materials from which it was transformed. There is no requirement with regard to the origin of components or subcomponents in manufactured goods or products, as long as the manufacture of the goods occurs in the United States.

Foreign iron, steel, and/or manufactured good means iron, steel and/or manufactured good that is not domestic or designated country iron, steel, and/or manufactured good.

Manufactured good means a good brought to the construction site for incorporation into the building or work that has been

- (1) Processed into a specific form and shape; or
- (2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

Public building and public work means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) Iron, steel, and manufactured goods.

(1) The award term and condition described in this section implements-

- (i) Section 1605(a) of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States; and
 - (ii) Section 1605(d), which requires application of the Buy American requirement in a manner consistent with U.S. obligations under international agreements. The restrictions of section 1605 of the Recovery Act do not apply to designated country iron, steel, and/or manufactured goods. The Buy American requirement in section 1605 shall not be applied where the iron, steel or manufactured goods used in the project are from a Party to an international agreement that obligates the recipient to treat the goods and services of that Party the same as domestic goods and services. As of January 1, 2010, this obligation shall only apply to projects with an estimated value of \$7,804,000 or more.
- (2) The recipient shall use only domestic or designated country iron, steel, and manufactured goods in performing the work funded in whole or part with this award, except as provided in paragraphs (b)(3) and (b)(4) of this section.
- (3) The requirement in paragraph (b)(2) of this section does not apply to the iron, steel, and manufactured goods listed by the Federal Government as follows:
none
- (4) The award official may add other iron, steel, and manufactured goods to the list in paragraph (b)(3) of this section if the Federal Government determines that--
- (i) The cost of domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, and/or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the overall cost of the project by more than 25 percent;
 - (ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or
 - (iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American Act.

(1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(4) of this section shall include adequate information for Federal Government evaluation of the request, including--

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

- (C) Quantity;
- (D) Cost;
- (E) Time of delivery or availability;
- (F) Location of the project;
- (G) Name and address of the proposed supplier; and
- (H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(4) of this section.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.

(iii) The cost of iron, steel, or manufactured goods shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other appropriate actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods.. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds, as appropriate, by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods other than designated country iron, steel, and/or manufactured goods is noncompliant with the applicable Act.

(d) Data. To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the applicant shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Items Cost Comparison

Description	Unit of measure	Quantity	Item:	Cost (dollars)*
Foreign steel, iron, or manufactured good	_____	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____	_____
Foreign steel, iron, or manufactured good	_____	_____	_____	_____

Description	Unit of measure	Quantity Item:	Cost (dollars)*
Domestic steel, iron, or manufactured good	_____	_____	_____

Figure 1: Foreign and Domestic Items Cost Comparison

[List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[*Include all delivery costs to the construction site.]

WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF THE RECOVERY ACT

(a) Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section. Federal agencies providing grants, cooperative agreements, and loans under the Recovery Act shall ensure that the standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant covered contracts that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating).

(b) For additional guidance on the wage rate requirements of section 1606, contact your awarding agency. Recipients of grants, cooperative agreements and loans should direct their initial inquiries concerning the application of Davis-Bacon requirements to a particular federally assisted project to the Federal agency funding the project. The Secretary of Labor retains final coverage authority under Reorganization Plan Number 14.

RECOVERY ACT TRANSACTIONS LISTED IN SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS AND RECIPIENT RESPONSIBILITIES FOR INFORMING

SUBRECIPIENTS

(a) To maximize the transparency and accountability of funds authorized under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111--5) (Recovery Act) as required by Congress and in accordance with 2 CFR 215.21 "Uniform Administrative Requirements for Grants and Agreements" and OMB Circular A-102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of Recovery Act funds. OMB Circular A--102 is available at <http://www.whitehouse.gov/omb/circulars/a102/a102.html>.

(b) For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A--133, "Audits of States, Local Governments, and Non-Profit Organizations," recipients agree to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures

of Federal Awards (SEFA) and the Data Collection Form (SF--SAC) required by OMB Circular A--133. OMB Circular A--133 is available at <http://www.whitehouse.gov/omb/circulars/a133/a133.html>. This shall be accomplished by identifying expenditures for Federal awards made under the Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF--SAC by CFDA number, and inclusion of the prefix "ARRA-" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF--SAC.

(c) Recipients agree to separately identify to each subrecipient, and document at the time of subaward and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When a recipient awards Recovery Act funds for an existing program, the information furnished to subrecipients shall distinguish the subawards of incremental Recovery Act funds from regular subawards under the existing program.

(d) Recipients agree to require their subrecipients to include on their SEFA information to specifically identify Recovery Act funding similar to the requirements for the recipient SEFA described above. This information is needed to allow the recipient to properly monitor subrecipient expenditure of ARRA funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.

HISTORIC PRESERVATION

Prior to the expenditure of Federal funds to alter any structure or site, the Recipient is required to comply with the requirements of Section 106 of the National Historic Preservation Act (NHPA), consistent with DOE's 2009 letter of delegation of authority regarding the NHPA. Section 106 applies to historic properties that are listed in or eligible for listing in the National Register of Historic Places. In order to fulfill the requirements of Section 106, the recipient must contact the State Historic Preservation Officer (SHPO), and, if applicable, the Tribal Historic Preservation Officer (THPO), to coordinate the Section 106 review outlined in 36 CFR Part 800. SHPO contact information is available at the following link: <http://www.ncshpo.org/find/index.htm>. THPO contact information is available at the following link: <http://www.nathpo.org/map.html>.

Section 110(k) of the NHPA applies to DOE funded activities. Recipients shall avoid taking any action that results in an adverse effect to historic properties pending compliance with Section 106.

Recipients should be aware that the DOE Contracting Officer will consider the recipient in compliance with Section 106 of the NHPA only after the Recipient has submitted adequate background documentation to the SHPO/THPO for its review, and the SHPO/THPO has provided written concurrence to the Recipient that it does not object to its Section 106 finding or determination. Recipient shall provide a copy of this concurrence to the Contracting Officer.

DAVIS BACON ACT AND CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Definitions: For purposes of this article, Davis Bacon Act and Contract Work Hours and Safety Standards Act, the following definitions are applicable:

- (1) "Award" means any grant, cooperative agreement or technology investment agreement made with Recovery Act funds by the Department of Energy (DOE) to a Recipient. Such Award must require compliance with the labor standards clauses and wage rate requirements of the DavisBacon Act (DBA) for work performed by all laborers and

mechanics employed by Recipients (other than a unit of State or local government whose own employees perform the construction) Subrecipients, Contractors and subcontractors.

- (2) “Contractor” means an entity that enters into a Contract. For purposes of these clauses, Contractor shall include (as applicable) prime contractors, Recipients, Subrecipients, and Recipients’ or Subrecipients’ contractors, subcontractors, and lower-tier subcontractors. “Contractor” does not mean a unit of State or local government where construction is performed by its own employees.”
- (3) “Contract” means a contract executed by a Recipient, Subrecipient, prime contractor or any tier subcontractor for construction, alteration, or repair. It may also mean (as applicable) (i) financial assistance instruments such as grants, cooperative agreements, technology investment agreements, and loans; and, (ii) Sub awards, contracts and subcontracts issued under financial assistance agreements. “Contract” does not mean a financial assistance instrument with a unit of State or local government where construction is performed by its own employees.
- (4) “Contracting Officer” means the DOE official authorized to execute an Award on behalf of DOE and who is responsible for the business management and non-program aspects of the financial assistance process.
- (5) “Recipient” means any entity other than an individual that receives an Award of Federal funds in the form of a grant, cooperative agreement or technology investment agreement directly from the Federal Government and is financially accountable for the use of any DOE funds or property, and is legally responsible for carrying out the terms and conditions of the program and Award.
- (6) “Subaward” means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a Recipient to an eligible Subrecipient or by a Subrecipient to a lower- tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include the Recipient’s procurement of goods and services to carry out the program nor does it include any form of assistance which is excluded from the definition of “Award” above.
- (7) “Subrecipient” means a non-Federal entity that expends Federal funds received from a Recipient to carry out a Federal program, but does not include an individual that is a beneficiary of such a program.

(a) Davis Bacon Act

- (1) Minimum wages.
 - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any

contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional

classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The Contracting Officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on

the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The Department of Energy or the Recipient or Subrecipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to DavisBacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, the Department of Energy, Recipient, or Subrecipient, may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked,

deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- (ii) (A) The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the Department of Energy if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit the payrolls to the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner, as the case may be, for transmission to the Department of Energy. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Department of Energy if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit them to the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner, as the case may be, for transmission to the Department of Energy, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner).

- (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

- (1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

- (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
 - (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.
 - (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.
 - (D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 3729 of title 31 of the United States Code.
 - (iii) The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Department of Energy or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.
- (4) Apprentices and trainees--
 - (i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a

locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Contract.

- (6) Contracts and Subcontracts. The Recipient, Subrecipient, the Recipient's and Subrecipient's contractors and subcontractor shall insert in any Contracts the clauses contained herein in(a)(1) through (10) and such other clauses as the Department of Energy may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of the paragraphs in this clause.
- (7) Contract termination: debarment. A breach of the Contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
- (8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.
- (9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Recipient, Subrecipient, the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
- (10) Certification of eligibility.
 - (i) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the DavisBacon Act or 29 CFR 5.12(a)(1).
 - (ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) Contract Work Hours and Safety Standards Act. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

- (1) Overtime requirements. No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for

the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The Department of Energy or the Recipient or Subrecipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Contracts and Subcontracts. The Recipient, Subrecipient, and Recipient's and Subrecipient's contractor or subcontractor shall insert in any Contracts, the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(5) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract.

Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Energy and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

RECIPIENT FUNCTIONS

(1) This delegation of Department of Energy (DOE) functions to the Recipient applies only to DBA effort performed by Subrecipients and Contractors under this award. Those functions are not delegated to the Recipient for any DBA effort performed by employees of the Recipient under this award. On behalf of the Department of Energy (DOE), Recipient shall perform the following functions:

- (a) Obtain, maintain, and monitor all DBA certified payroll records submitted by the Subrecipients and Contractors at any tier under this Award;
- (b) Review all DBA certified payroll records for compliance with DBA requirements, including applicable DOL wage determinations;

- (c) Notify DOE of any non-compliance with DBA requirements by Subrecipients or Contractors at any tier, including any non-compliances identified as the result of reviews performed pursuant to paragraph (b) above;
- (d) Address any Subrecipient and any Contractor DBA non-compliance issues; if DBA noncompliance issues cannot be resolved in a timely manner, forward complaints, summary of investigations and all relevant information to DOE;
- (e) Provide DOE with detailed information regarding the resolution of any DBA non-compliance issues;
- (f) Perform services in support of DOE investigations of complaints filed regarding noncompliance by Subrecipients and Contractors with DBA requirements;
- (g) Perform audit services as necessary to ensure compliance by Subrecipients and Contractors with DBA requirements and as requested by the Contracting Officer; and
- (h) Provide copies of all records upon request by DOE or DOL in a timely manner.

(2) All records maintained on behalf of the DOE in accordance with paragraph (1) above are federal government (DOE) owned records. DOE or an authorized representative shall be granted access to the records at all times.

(3) In the event of, and in response to any Freedom of Information Act, 5 U.S.C. 552, requests submitted to DOE, Recipient shall provide such records to DOE within 5 business days of receipt of a request from DOE.

EXHIBIT E-5, U.S. DOE: OFFICE OF ENERGY EFFICIENCY AND RENEWABLE ENERGY - ENVIRONMENTAL QUESTIONNAIRE

PMC-ND (1.08.09.13)	U.S. DEPARTMENT OF ENERGY OFFICE OF ENERGY EFFICIENCY AND RENEWABLE ENERGY NEPA DETERMINATION	
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RECIPIENT: State Energy Program-Weatherization and intergovernmental Programs Office (WIPO)
STATE: CO

PROJECT TITLE: State Energy Program - Program Year 2018 - Formula Awards - Administrative and Legal Requirements Document (ALRD)

Funding Opportunity Announcement Number: SEP-ALRD-2018

Procurement Instrument Number

NEPA Control Number: GFO-SEP-ALRD-2018

CID Number

Based on my review of the information concerning the proposed action, as NEPA Compliance Officer (authorized under DOE Order 451.1A), I have made the following determination:

CX, EA, EIS APPENDIX AND NUMBER:

Description:

A9 Information gathering, analysis, and dissemination	Information gathering (including, but not limited to, literature surveys, inventories, site visits, and audits), data analysis (including, but not limited to, computer modeling), document preparation (including, but not limited to, conceptual design, feasibility studies, and analytical energy supply and demand studies), and information dissemination (including, but not limited to, document publication and distribution, and classroom training and informational programs), but not including site characterization or environmental monitoring. (See also B3.1 of appendix B to this subpart.)
	Technical advice and planning assistance to international, national, state, and local organizations.
	(a) Actions to conserve energy or water, demonstrate potential energy or water conservation, and promote energy efficiency that would not have the potential to cause significant changes in the indoor or outdoor concentrations of potentially harmful substances. These actions may involve financial and technical assistance to individuals (such as builders, owners, consultants, manufacturers, and designers), organizations (such as utilities), and governments (such as state, local, and tribal). Covered actions include, but are not limited to weatherization (such as insulation and replacing windows and doors); programmed lowering of thermostat settings; placement of timers on hot water heaters; installation or replacement of energy efficient lighting, low-flow plumbing fixtures (such as faucets, toilets, and showerheads), heating, ventilation, and air conditioning systems, and appliances; installation of drip-irrigation systems; improvements in generator efficiency and appliance efficiency ratings; efficiency improvements for vehicles and transportation (such as fleet changeout); power storage (such as flywheels and batteries, generally less than 10 megawatt equivalent); transportation management systems (such as traffic signal control systems, car navigation, speed cameras, and automatic plate number recognition); development of energy-efficient manufacturing, industrial, or building practices; and small-scale energy efficiency and conservation research and development and small-scale pilot projects. Covered actions include building renovations or new structures, provided that they occur in a previously disturbed or developed area. Covered actions could involve commercial, residential, agricultural, academic, institutional, or industrial sectors. Covered actions do not include rulemakings, standard-settings, or proposed DOE legislation, except for those actions listed in B5.1(b) of this appendix. (b) Covered actions include rulemakings that establish energy conservation standards for consumer products and industrial equipment, provided that the actions would not:

	<ul style="list-style-type: none"> (1) have the potential to cause a significant change in manufacturing infrastructure (such as construction of new manufacturing plants with considerable associated ground disturbance); (2) involve significant unresolved conflicts concerning alternative uses of available resources (such as rare or limited raw materials); (3) have the potential to result in a significant increase in the disposal of materials posing significant risks to human health and the environment (such as RCRA hazardous wastes); or (4) have the potential to cause a significant increase in energy consumption in a state or region.
B5.14 Combined heat and power or cogeneration systems+	Conversion to, replacement of, or modification of combined heat and power or cogeneration systems (the sequential or simultaneous production of multiple forms of energy, such as thermal and electrical energy, in a single integrated system) at existing facilities, provided that the conversion, replacement, or modification would not have the potential to cause a significant increase in the quantity or rate of air emissions and would not have the potential to cause significant impacts to water resources.
B5.16 Solar photovoltaic systems	The installation, modification, operation, and removal of commercially available solar photovoltaic systems located on a building or other structure (such as rooftop, parking lot or facility, and mounted to signage, lighting, gates, or fences), or if located on land, generally comprising less than 10 acres within a previously disturbed or developed area. Covered actions would be in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices.
B.5.17 Solar thermal systems	The installation, modification, operation, and removal of commercially available small scale solar thermal systems (including, but not limited to, solar hot water systems) located on or contiguous to a building, and if located on land, generally comprising less than 10 acres within a previously disturbed or developed area. Covered actions would be in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices.
B5.18 Wind turbines	The installation, modification, operation, and removal of a small number (generally not more than 2) of commercially available wind turbines, with a total height generally less than 200 feet (measured from the ground to the maximum height of blade rotation) that (1) are located within a previously disturbed or developed area; (2) are located more than 10 nautical miles (about 11.5 miles) from an airport or aviation navigation aid; (3) are located more than 1.5 nautical miles (about 1.7 miles) from National Weather Service or Federal Aviation Administration Doppler weather radar; (4) would not have the potential to cause significant impacts on bird or bat populations; and (5) are sited or designed such that the project would not have the potential to cause significant impacts to persons (such as from shadow flicker and other visual effects, and noise). Covered actions would be in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices. Covered actions include only those related to wind turbines to be installed on land.
B5.19 Ground source heat pumps	The installation, modification, operation, and removal of commercially available small scale ground source heat pumps to support operations in single facilities (such as a school or community center) or contiguous facilities (such as an office complex) (1) only where (a) major associated activities (such as drilling and discharge) are regulated, and (b) appropriate leakage and contaminant control measures would be in place (including for cross-contamination between aquifers); (2) that would not have the potential to cause significant changes in subsurface temperature; and (3) would be located within a previously disturbed or developed area. Covered actions would be in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices.
B5.20 Biomass power plants	The installation, modification, operation, and removal of small-scale biomass power plants (generally less than 10 megawatts), using commercially available technology (1) intended primarily to support operations in single facilities (such as a school and community center) or contiguous facilities (such as an office complex); (2) that would not affect the air quality attainment status of the area and would not have the potential to cause a significant increase in the quantity or rate of air emissions and would not have the potential to cause significant impacts to water resources; and (3) would be located within a previously disturbed or developed area. Covered actions would be in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices.

B5.22 Alternative fuel vehicle fueling stations	The installation, modification, operation, and removal of alternative fuel vehicle fueling stations (such as for compressed natural gas, hydrogen, ethanol and other commercially available biofuels) on the site of a current or former fueling station, or within a previously disturbed or developed area within the boundaries of a facility managed by the owners of a vehicle fleet. Covered actions would be in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices.
B5.23 Electric vehicle charging stations	The installation, modification, operation, and removal of alternative fuel vehicle fueling stations (such as for compressed natural gas, hydrogen, ethanol and other commercially available biofuels) on the site of a current or former fueling station, or within a previously disturbed or developed area within the boundaries of a facility managed by the owners of a vehicle fleet. Covered actions would be in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices.
B2.2 Building and equipment instrumentation	Installation of, or improvements to, building and equipment instrumentation (including, but not limited to, remote control panels, remote monitoring capability, alarm and surveillance systems, control systems to provide automatic shutdown, fire detection and protection systems, water consumption monitors and flow control systems, announcement and emergency warning systems, criticality and radiation monitors and alarms, and safeguards and security equipment).

Rationale for determination:

The U.S. Department of Energy (DOE) administers the annually appropriated State Energy Program (SEP) as authorized by Title III, Energy Policy and Conservation Act, as amended. All grant awards made under this program shall comply with applicable laws and procedures including regulations contained in 10 CFR Part 420 and other procedures applicable to this regulation as DOE may prescribe for the administration of financial assistance. The goal of the SEP is to provide leadership to maximize the benefits of energy efficiency and renewable energy through communications and outreach activities, technology deployment, and accessing new partnerships and resources.

Under the SEP Formula Awards as outlined in the Administrative Legal Requirements Document, Program Year 2018, (SEP-ALRD-2018), DOE would provide approximately \$39M in formula-based awards to all 50 States, Territories, and the District of Columbia (hereinafter “States”). Estimated individual State allocations are included in the administrative legal requirements document. As matching funds to each award, States must contribute an amount no less than 20% of their total federal allocation; for the Territories the cost match requirement is waived.

DOE has determined the following bounded categories of activities that are funded by SEP-ALRD-2018 are categorically excluded from further NEPA review, absent extraordinary circumstances, cumulative impacts, or connected actions that may lead to significant impacts on the environment, or any inconsistency with “integral elements” (as contained in 10 C.F.R. Part 1021, Appendix B) as they relate to a particular project:

The Bounded Categories below only apply to projects funded under SEP-ALRD 2018. Bounded Categories:

1. Administrative activities associated with management of the designated State Energy Office and management of programs and strategies to encourage energy efficiency and renewable energy, including energy audits.
2. Development and implementation of programs and strategies to encourage energy efficiency and renewable energy.
3. Development and implementation of training programs.
4. Development and implementation of building codes and inspection services, and associated training and enforcement of such codes in order to support code compliance and promote building energy efficiency.
5. Implementing financial incentive programs such as rebates and energy savings performance contracts for existing facilities or for energy efficient equipment, provided that the incentives are not so large that they would be deemed to be grants that create projects that would not otherwise exist. (For example, giving a wind farm that cost \$100 million a sum of \$50 million and calling it a rebate would not fall

within this Bounded Category).

6. Funding energy efficiency upgrades, provided that projects adhere to the requirements of the respective state's programmatic agreement with its SHPO, and are limited to:
 - a. installation of insulation;
 - b. installation of energy efficient lighting;
 - c. HVAC upgrades (to existing systems);
 - d. weather sealing;
 - e. purchase and installation of ENERGY STAR appliances (includes, but not limited to, furnaces and air conditioners);
 - f. replacement of windows and doors; and
 - g. high efficiency shower/faucet upgrade.
7. Development, implementation, and installation of onsite renewable energy technology from renewable resources, provided that projects are installed in or on an existing structure or within the boundaries of a facility and limited to:
 - a. Solar Electricity/Photovoltaic - appropriately sized system or unit not to exceed 60 kW
 - b. Wind Turbine - 20 kW or smaller.
 - c. Solar Thermal (including solar thermal hot water) - system must be 20 kW or smaller.
 - d. Ground Source Heat Pump - 5.5 tons of capacity or smaller, horizontal/vertical, ground, closed-loop system.
 - e. Combined Heat and Power System - boilers sized appropriately for the buildings in which they are located.
 - f. Biomass Thermal - 3 MMBTUs per hour or smaller system with appropriate Best Available Control Technologies (BACT) installed and operated.
8. Development, implementation and installation of energy efficient or
9. renewable energy-powered systems (limited to lighting, cooling, heat) installed in existing buildings and facilities.
10. Installation of fueling pumps and systems for fuels such as compressed natural gas, hydrogen, ethanol and other commercially available biofuels, (but not storage tanks) installed on the site of a current fueling station.
11. Purchase of alternative fuel vehicles.
12. Installation of electric vehicle charging stations installed on existing facilities.

DOE is required to consider floodplain management and wetland protection as part of its environmental review process (Subpart B of 10 CFR 1022). As part of this required review, DOE determined requirements set forth in Subpart B of 10 CFR 1022 are not applicable to the activities described in Bounded Categories 1-6g above that would occur in a floodplain or wetland because the activities would not have short-term or long-term adverse impacts to the floodplain or wetland. These activities are administrative or minor modifications of existing facilities to improve environmental conditions. All projects (except those under Bounded Categories 1-6g) must document that project activities do not occur in a floodplain or wetland. If the project activities do occur in a floodplain or wetland (except those under Bounded Categories 1-6g), those project activities are subject to additional NEPA review and approval by DOE.

Some Bounded Categories are more restrictive than the Categorical Exclusion. The restrictions must be followed for the Bounded Category to be applicable.

NEPA PROVISION

DOE has made a final NEPA determination for this award.

Insert the following language in the award:

If the Recipient intends to make changes to the scope or objective of this project, the Recipient is required to

contact the Project Officer, identified in Block 15 of the Assistance Agreement before proceeding. The Recipient must receive notification of approval from the DOE Contracting Officer prior to commencing with work beyond that currently approved. If the Recipient moves forward with activities that are not authorized for Federal funding by the DOE Contracting Officer in advance of a final NEPA decision, the Recipient is doing so at risk of not receiving Federal funding and such costs may not be recognized as allowable cost share.

Insert the following language in the award:

You are required to:

The State is responsible for informing DOE of any extraordinary circumstances, cumulative impacts, or connected actions that may lead to significant impacts on the environment, or any inconsistency with the "integral elements" (as contained in 10 C.F.R. Part 1021, Appendix B) as they relate to a particular Project.

States shall adhere to the restrictions of the programmatic agreement with their State Historic Preservation Office (SHPO). Additionally, documentation of the above reviews for NEPA and Section 106, must be available for DOE review at all times.

States must document that project activities do not occur in a floodplain or wetland. If the project activities do occur in a floodplain or wetland, (except those under Bounded Categories 1-6g as listed in the Program Year 2018 SEP Formula Guidance), those project activities are subject to additional NEPA review and approval by DOE.

For activities/projects requiring additional NEPA review, States must complete the environmental questionnaire (<https://www.eere-pmc.energy.gov/NEPA.aspx>).

Some Bounded Categories are more restrictive than the Categorical Exclusion. The restrictions must be followed for the Bounded Category to be applicable.

Any work proposed to be conducted at a DOE laboratory may be subject to additional NEPA review by the cognizant DOE NEPA Compliance Officer for the specific DOE laboratory prior to initiating such work. Further, any work conducted at a DOE laboratory must meet the laboratory's health and safety requirements.

This NEPA determination applies only to projects funded by SEP-ALRD-2018. Contact your Project Officer for the NEPA determination on projects funded under previous ALRD's.

Note to Specialist:

Weatherization & Intergovernmental Programs Office - SEP

This NEPA Determination requires a tailored NEPA provision.

NEPA review completed by Diana Heyder, 01/30/18

SIGNATURE OF THIS MEMORANDUM CONSTITUTES A RECORD OF THIS DECISION.

NEPA Compliance Officer Signature: _____

 Electronically Signed By: **Kristin Kerwin**
NEPA Compliance Officer

Date: 2/1/2018

FIELD OFFICE MANAGER DETERMINATION

Field Office Manager review required

NCO REQUESTS THE FIELD OFFICE MANAGER REVIEW FOR THE FOLLOWING REASON:

- Proposed action fits within a categorical exclusion but involves a high profile or controversial issue that warrants Field Office Manager's attention.
- Proposed action falls within an EA or EIS category and therefore requires Field Office Manager's review and determination.

BASED ON MY REVIEW I CONCUR WITH THE DETERMINATION OF THE NCO :

Field Office Manager's Signature: _____

Field Office Manager

Date: _____

Attachment 10 – Payee Data Record

STATE OF CALIFORNIA-DEPARTMENT OF FINANCE

PAYEE DATA RECORD

(Required when receiving payment from the State of California in lieu of IRS W-9 or W-7)

STD 204 (Rev. 10/2019)

1	<p>INSTRUCTIONS: Type or print the information. Complete all information on this form. Sign, date, and return to the state agency (department/office) address shown in Box 6. Prompt return of this fully completed form will prevent delays when processing payments.</p> <p>Information provided in this form will be used by California state agencies to prepare Information Returns (Form1099). See next page for more information and Privacy Statement.</p> <p>NOTE: Governmental entities, i.e. federal, state, and local (including school districts), are not required to submit this form.</p>					
2	<p>BUSINESS NAME (As shown on your income tax return)</p> <p>_____</p>					
	<p>SOLE PROPRIETOR, SINGLE MEMBER LLC, INDIVIDUAL (Name as shown on SSN or ITIN) Last, First, MI</p> <p>_____</p>				<p>E-MAIL ADDRESS</p> <p>_____</p>	
	<p>MAILING ADDRESS</p> <p>_____</p>			<p>BUSINESS ADDRESS</p> <p>_____</p>		
	CITY	STATE	ZIP CODE	CITY	STATE	ZIP CODE
	_____	_____	_____	_____	_____	_____
3	<p>ENTER FEDERAL EMPLOYER IDENTIFICATION NUMBER (FEIN): _____</p> <p> <input type="checkbox"/> PARTNERSHIP CORPORATION: </p> <p> <input type="checkbox"/> ESTATE OR TRUST <input type="radio"/> MEDICAL (e.g., dentistry, psychotherapy, chiropractic, etc.) </p> <p> <input type="radio"/> LEGAL (e.g., attorney services) </p> <p> <input type="radio"/> EXEMPT (nonprofit) </p> <p> <input type="radio"/> ALL OTHERS </p>					<p>NOTE: Payment will not be processed without an accompanying taxpayer identification number.</p>
CHECK ONE BOX ONLY	<p>ENTER SSN OR ITIN: _____</p> <p> <input type="checkbox"/> SOLE PROPRIETOR, INDIVIDUAL, OR SINGLE MEMBER LLC (Disregarded Entity) </p> <p style="font-size: small;">Social Security Number (SSN) or Individual Taxpayer Identification Number (ITIN) are required by authority of California Revenue and Tax Code sections 10545 and 10561</p>					
4	<p> <input type="checkbox"/> CALIFORNIA RESIDENT - Qualified to do business in California or maintains a permanent place of business in California. </p> <p> <input type="checkbox"/> CALIFORNIA NON RESIDENT (see next page for more information) - Payments to nonresidents for services may be subject to state income tax withholding. </p> <p> <input type="radio"/> No services performed in California. </p> <p> <input type="radio"/> Copy of Franchise Tax Board waiver of state withholding attached. </p>					
5	<p>I hereby certify under penalty of perjury that the information provided on this document is true and correct. Should my residency status change, I will promptly notify the state agency below.</p>					
	<p>AUTHORIZED PAYEE REPRESENTATIVE'S NAME (Type or Print)</p> <p>_____</p>			<p>TITLE</p> <p>_____</p>		<p>TELEPHONE (Include area code)</p> <p>_____</p>
	<p>SIGNATURE</p> <p>_____</p>			<p>DATE</p> <p>_____</p>	<p>E-MAIL ADDRESS</p> <p>_____</p>	
6	<p>Please return completed form to:</p>					
	<p>DEPARTMENT/OFFICE</p> <p>_____</p>			<p>UNIT/SECTION</p> <p>_____</p>		
	<p>MAILING ADDRESS</p> <p>_____</p>			<p>TELEPHONE (Include area code)</p> <p>_____</p>	<p>FAX</p> <p>_____</p>	
	CITY	STATE	ZIP CODE	E-MAIL ADDRESS		
	_____	_____	_____	_____		

PAYEE DATA RECORD

(Required when receiving payment from the State of California in lieu of IRS W-9 or W-7)

STD 204 (Rev. 10/2019)

1	<p>Requirement to Complete the Payee Data Record, STD 204</p> <p>A completed Payee Data Record, STD 204 form, is required for all payees (non-governmental entities or individuals) entering into a transaction that may lead to a payment from the state. Each state agency requires a completed, signed, and dated STD 204 on file; therefore, it is possible for you to receive this form from multiple state agencies with which you do business.</p> <p>Payees who do not wish to complete the STD 204 may elect not to do business with the state. If the payee does not complete the STD 204 and the required payee data is not otherwise provided, payment may be reduced for federal and state backup withholding. Amounts reported on Information Returns (Form 1099) are in accordance with the Internal Revenue Code (IRC) and the California Revenue and Taxation Code (R&TC).</p>
2	<p>Enter the payee's legal business name. The name must match the name on the payee's tax return as filed with the federal Internal Revenue Service. Sole proprietorships and single member limited liability companies (LLCs) must also include the owner's full name. An individual must list his/her full name as shown on the SSN or as entered on the W-7 form for ITIN. The mailing address should be the address at which the payee chooses to receive correspondence. The business address is the address of the business' physical location.</p>
3	<p>Check only one box that corresponds to the payee business type. Corporations must check the box that identifies the type of corporation.</p> <p>The State of California requires that all parties entering into business transactions that may lead to payment(s) from the state provide their Taxpayer Identification Number (TIN). The TIN is required by the R&TC sections 18646 and 18651 to facilitate tax compliance enforcement activities and the preparation of Form 1099 and other information returns as required by the IRC section 6109(a) and R&TC section 18652 and its regulations.</p> <p>Payees must provide one of the following TINs on this form: social security number (SSN), individual taxpayer identification number (ITIN), or federal employer identification number (FEIN). The TIN for sole proprietorships, single member LLC (disregarded entities), and individuals is the SSN or ITIN. Only partnerships, estates, trusts, corporations, and LLCs (taxed as partnerships or corporations) will enter their FEIN.</p>
4	<p>Are you a California resident or nonresident?</p> <p>A corporation will be defined as a "resident" if it has a permanent place of business in California or is qualified through the Secretary of State to do business in California.</p> <p>A partnership is considered a resident partnership if it has a permanent place of business in California. An estate is a resident if the decedent was a California resident at time of death. A trust is a resident if at least one trustee is a California resident.</p> <p>For individuals and sole proprietors, the term "resident" includes every individual who is in California for other than a temporary or transitory purpose and any individual domiciled in California who is absent for a temporary or transitory purpose. Generally, an individual who comes to California for a purpose that will extend over a long or indefinite period will be considered a resident. However, an individual who comes to perform a particular contract of short duration will be considered a nonresident.</p> <p>Payments to all nonresidents may be subject to withholding. Nonresident payees performing services in California or receiving rent, lease, or royalty payments from property (real or personal) located in California will have 7% of their total payments withheld for state income taxes. However, no withholding is required if total payments to the payee are \$1,500 or less for the calendar year.</p> <p>For information on Nonresident Withholding, contact the Franchise Tax Board at the numbers listed below: Withholding Services and Compliance Section: 1-888-792-4900 E-mail address: wscs.gen@ftb.ca.gov For hearing impaired with TDD, call: 1-800-822-6268 Website: www.ftb.ca.gov</p>
5	<p>Provide the name, title, email address, signature, and telephone number of the individual completing this form. Provide the date the form was completed.</p>
6	<p>This section must be completed by the state agency requesting the STD 204.</p>

Privacy Statement

Section 7(b) of the Privacy Act of 1974 (Public Law 93-579) requires that any federal, state, or local governmental agency, which requests an individual to disclose their social security account number, shall inform that individual whether that disclosure is mandatory or voluntary, by which statutory or other authority such number is solicited, and what uses will be made of it.

It is mandatory to furnish the information requested. Federal law requires that payment for which the requested information is not provided is subject to federal backup withholding and state law imposes noncompliance penalties of up to \$20,000.

You have the right to access records containing your personal information, such as your SSN. To exercise that right, please contact the business services unit or the accounts payable unit of the state agency(ies) with which you transact that business.

All questions should be referred to the requesting state agency listed on the bottom front of this form.