

STREAMLINING GRANT TERMS AND CONDITIONS

The Energy Commission (CEC) has undergone a significant effort to improve its grant agreements across its programs. To implement these improvements, the CEC and existing grant recipients must amend existing agreements. Because different CEC programs have different terms and conditions and because even the same CEC programs can have different terms depending on when the agreements were executed, individually changing the terms in each existing grant agreement is impractical. Instead, the CEC has developed these terms and conditions and placed them in their own document. Existing grant agreements can be amended to include this document.

The CEC acknowledges that terms in this document will conflict with some of the terms and other requirements in existing grant agreements. Accordingly, where there is a conflict, the CEC and Recipient agree that this document controls. Outside of the changes made by this document, all other grant terms and requirements remain unchanged.

Acronyms and Terms Used in this Document and Their Meaning

Agreement	The grant agreement executed between the CEC and the Recipient.
Budget Categories	Means the following categories in Exhibit B, Budget: Direct Labor, Fringe Benefits, Travel, Equipment, Materials and Miscellaneous, Subrecipients and Vendors (formerly Subcontractors), and Indirect Costs and Profit.
CAM	Commission Agreement Manager
CEC	California Energy Commission
Existing Terms	The terms that might be found in any of the CEC grant agreements in any of its programs, including the terms for this Agreement.
Incurred Costs	An expense for which the Recipient has become liable (legally obligated) to pay.
MTDC	Modified Total Direct Costs, which means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each subaward (regardless of the period of performance of the subawards under the award). MTDC excludes equipment, capital expenditures, rental costs, tuition remission, scholarships and fellowships, and the portion of each subaward in excess of \$25,000.
Paid Costs	An expense for which the Recipient has already made payment.
Recipient	The entity that executed this Agreement with the CEC.
Subaward	For the Recipient, a Subaward means all agreements it has with Subrecipients and Vendors. For a Subrecipient, a Subaward means all agreements it has with Sub-Subrecipients and Vendors. For any lower-tiered level of Sub-Subrecipient, a Subaward means all agreements it has with its own Sub-Subrecipients and Vendors.
Subrecipient (formerly Subcontractor)	A person or entity that receives grant funds directly from the Recipient and is entrusted by the Recipient to make decisions about how to conduct some of the grant's activities. A Subrecipient's role involves discretion over grant activities and is not merely just selling goods or services.

Sub-Subrecipient	Has the same meaning as a Subrecipient except that it receives grant funds from a Subrecipient or any lower tier level of a Sub-Subrecipient.
Vendor	A person or entity that sells goods or services to the Recipient, Subrecipient, or any lower-tiered level of Sub-Subrecipient, in exchange for some of the grant funds, and does not make decisions about how to perform the grant’s activities. The Vendor’s role is ministerial and does not involve discretion over grant activities.
These Terms	The terms in this document titled “ Streamlining Grant Terms and Conditions. ”

1. Decoupling Products from Invoices

Existing Terms typically require grant recipients to submit products with invoices. This is no longer required. Recipients can separately submit products and invoices.

2. Quarterly Instead of Monthly Reports

Most grants include within their scopes of work an administrative task requiring grant recipients to submit monthly progress reports, often concurrent with submission of an invoice. This is no longer required. Instead, Recipients will now submit progress reports quarterly instead of monthly. Unless a different arrangement is discussed with and approved by the Commission Agreement Manager (CAM) in writing, which can be done without amending these terms (e.g., as simple as an email from the CAM), quarterly means by the tenth day of each January, April, July, and October.

3. New Requirement for Monthly Calls with the CAM

Instead of monthly progress reports currently required under Task 1, Recipients shall participate in brief phone calls that will occur at least monthly and which will be initiated by the CAM to briefly discuss project progress and identify any emerging issues. Monthly calls might not be held on those months when a quarterly progress report is submitted or the CAM determines that a monthly call is unnecessary.

4. Amendments and Other Changes

Existing Terms typically require a written amendment signed by both the CEC and Recipient for any change to the grant agreement. In contrast, These Terms allow certain changes, as described in this document, to be made to this Agreement without a formal amendment.

A. Budget Reallocations

No CEC approval is needed for a Recipient, Subrecipient, or any lower-tiered level of Sub-Subrecipient to move funds within each of the following Budget Categories listed in the Exhibit B: Direct Labor, Fringe Benefits, Travel, Equipment, Materials and Miscellaneous, Subrecipients, and Indirect Costs. (However, please note that per section 4.B. below, any new M&M, Equipment, Subrecipient or Vendor not listed in the budget does need to be approved prior to

reimbursement.) If the Recipient wants to move funds between Budget Categories or submits an invoice that if paid would exceed a Budget Category, the Recipient has at least the following choices:

1. Request an amendment from the CEC. The CEC will not pay the invoice if and until an amendment is approved, except possibly for the final invoice per section 4.A.3 below. In its sole discretion, the CEC might pay the portion of the invoice that does not involve the amount that goes beyond the Budget Category.
2. Retract the invoice and resubmit a corrected one that keeps within Budget Categories. The Recipient can treat the amount paid beyond the Budget Category as match funds if the expenditure meets all of the applicable Agreement requirements for match funds.
3. If there is a Budget Category overage on the final invoice, the Recipient can discuss with the CAM if the invoice can be approved without needing the amendment in section 4.A.1 above. The CAM will require a written justification for the budget category overage to determine if the invoice can be approved.

This new flexibility does NOT mean the Recipient can exceed the overall Agreement amount.

Because Existing Terms may define “Budget Reallocation” to mean the movement of funds between tasks and possibly in other ways than moving funds between Budget Categories, such definitions are considered deleted and superseded by These Terms.

B. New Items under Materials and Miscellaneous, and Equipment

The CAM must approve in writing of any new materials and miscellaneous expenses of \$5,000 or more or new equipment the Recipient plans to purchase and be reimbursed under this Agreement that is not already listed in Exhibit B, Budget. To accomplish this, the Recipient can submit either prior to invoicing or with its invoice a completed form titled "[NEW EQUIPMENT/M&M FORM](#)" which includes a description of the item and a brief explanation of the need for the item. The CAM will approve items that he or she determines to be necessary to the Agreement and do not exceed budgeted amounts for each Budget Category unless Recipient follows the processes in section 4.A. “Budget Reallocation” directly above.

Any restrictions in the solicitation or elsewhere in the Agreement still apply to the specific items under Materials and Miscellaneous, and Equipment that can be purchased using CEC Funds or Match Share Funds. The restrictions still apply even though the CAM does not have to approve new materials and miscellaneous expenses under \$5,000.

C. An Amendment is No Longer Needed to Replace “Key Personnel.”

Existing Terms typically require Recipients and their Subrecipients to obtain advance written approval, sometimes through a formal written amendment, before the Recipient added or

replaced key or other personnel, or added or removed job classifications. Now, except when replacing “key personnel” the Recipient and its Subrecipients and any lower-tiered level of Sub-Subrecipient, can make change related to their respective personnel without written approval. Although changes to “key personnel” do require written approval, that approval can be requested and granted simply through an e-mail communication or other form of written communication.

These Terms clarify that Recipients may be reimbursed for actual expenses incurred by new “key personnel” during the term of the Agreement, even if written approval comes after an individual begins work on the project. However, if the replacement is not approved, then the Energy Commission will not reimburse for any expenses charged for the individual. Accordingly, Recipients are strongly encouraged to obtain **advance** written approval for “key personnel” or risk not being reimbursed for their work.

Recipient must keep the CAM informed of personnel changes through monthly calls and quarterly progress reports. In addition to any other rights and remedies available to the CEC, the Energy Commission retains its authority to issue a Stop Work Order if it becomes clear that a Recipient or Subrecipient’s personnel, key or otherwise, are unable to fulfill their responsibilities under the Agreement.

Please note that the process in the Existing Terms for replacing Subrecipients and Vendors, and each tier lower of Sub-Subrecipients, may have changed. See section 7 below titled “Subrecipients and Vendors.”

D. Assignment of New Personnel to an Existing Job Classification

Existing Terms might require Recipients to submit a resume and other information to the CAM to approve before assigning new personnel to existing job classifications. The Existing Terms might also require an amendment, and that an amendment must be fully executed before new personnel can begin work on the agreement. This pre-approval is no longer required. Instead, Recipient will keep the CAM informed of personnel changes and provide any information requested by the CAM during monthly calls and/or quarterly progress reports. Please see section 5.A. below in the “Budgets and Payment of Funds” term for how direct labor rates will now be handled.

E. Promotion of Existing Personnel to an Existing Job Classification

Existing Terms might require grant recipients to execute an amendment or otherwise provide information to, and obtain approval from, the CAM before promoting existing personnel to existing job classifications. None of this is required any longer. Please see section 5.A. below in the “Budgets and Payment of Funds” term for how direct labor rates will now be handled.

5. Budgets and Payment of Funds

A. No More Capped Maximum Rates for Direct Labor and Fringe Benefits

Existing Terms typically state that rates in Exhibit B, Budget, for Direct Labor, Fringe Benefits, Indirect Costs, and Profit (for Subrecipients) are maximum rates and Recipients can invoice for actual expenses up to these capped, maximum rates.

Under These Terms, the rates in Exhibit B, Budget, for Direct Labor and Fringe Benefits are now treated as estimates and not capped rates. The Recipient can invoice at higher rates as long as it is only invoicing for actual expenditures it has made. However, the Recipient cannot invoice and be paid for more than the total amount in each Budget Category without an amendment (please see section 4.A. above in these terms), or for more than the total Agreement amount.

Please note this new flexibility only applies to rates for Direct Labor and Fringe Benefits. Except as otherwise provided in These Terms, restrictions on Indirect Costs and Profit in the Existing Terms still apply.

Please also note that rates listed in the budget are NOT “negotiated rates” that can be charged by a Recipient or Subrecipient – documentation must be made available upon request to show that the rates charged reflect actual costs incurred.

B. Options for Indirect Costs

Existing Terms typically allow grant recipients to invoice and receive reimbursement for actual Indirect Costs up to the maximum amount listed in Exhibit B, Budget. Indirect Costs are subject to audit, and recipients are required to provide backup documentation upon request proving the actual amount of their Indirect Costs. These Terms provide two additional options.

The following options may be available to any Recipient who has not yet invoiced for indirect costs at the time of this amendment. These options are not available to any Recipient that has opted not to claim indirect. A Recipient may not use these options to increase a current indirect rate on which the Recipient was scored in the application process. Once a Recipient has been reimbursed for indirect costs, they may not switch among options.

1. De Minimis Option

Under These Terms, the Recipient can elect to invoice and receive a de minimis amount at the set rate of 10% of the Modified Total of Direct Costs (MTDC) for Indirect Costs. This cannot be combined with any other Indirect Rate option.

MTDC is defined for purposes of These Terms as all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each subaward (regardless of the period of performance of the subawards under the award). MTDC excludes equipment, capital expenditures,

rental costs, tuition remission, scholarships and fellowships, and the portion of each subaward in excess of \$25,000. This is the same definition used in federal grants. Keeping this the same as the federal definition should make this easy for recipients with both federal and CEC grants that elect this option.

If the Recipient chooses this de minimis option for Indirect Costs, the Recipient will not have to provide backup documentation for the de minimis amount and will not be audited on it. However, the Existing Term requirements, including for backup documentation and audits, still apply to any Indirect Costs invoiced by the Recipient and reimbursed by the CEC not utilizing the de minimis amount.

2. Defense Contract Audit Agency (DCAA) or other Federally Approved Indirect Rate

An entity that has a federally approved indirect rate from DCAA or another Federal agency may use the approved indirect rate for Energy Commission grants. A copy of the Federal agency's letter must be provided.

This rate will typically shift annually, and this shift is generally acceptable. This is the only Indirect Cost option that is not strictly subject to the max rate cap that typically applies to Indirect Costs. If the federal rate decreases from year to year, that will be a cost savings under this budget category. If the federal rate increases from year to year, this will require a budget reallocation. If the Energy Commission, in its sole discretion, determines that a budget reallocation to accommodate an increased Indirect Rate would risk the ultimate success of the project, or is otherwise not in its best interest, the Energy Commission reserves the right to either propose a smaller increase that would not risk the ultimate success of the project, or refuse to increase the Indirect Rate. For any increase the Energy Commission will not reimburse from CEC Funds, the Recipient or Subrecipient may choose to charge the increase as Match Funds.

If the Recipient chooses this option for Indirect Costs, the Recipient will not be audited on this budget category. However, the Existing Term requirements, including for backup documentation and audits, still apply to any Indirect Costs invoiced by the Recipient and reimbursed by the CEC not utilizing this option.

C. Travel and Per Diem

1. Travel not listed in Exhibit B, Budget, can be added without an amendment via CAM approval. CAM approval can come in one of two forms: written authorization from the CAM prior to the Recipient taking the trip, or through the invoice review. Outside of a budget reallocation, additional travel requests are submitted using the CEC's [Travel Form](#). Recipient understands, however, that any travel taken that is not listed in Exhibit B, the Budget, or not pre-approved by the CAM in writing, is at the Recipient's own financial risk. The CAM might not approve the trip as part of invoice review. Please note that the Recipient cannot invoice and be paid for more than the total amount in

the Travel Budget Category without an amendment (please see section 4.A. above in These Terms), or for more than the total Agreement amount.

2. Existing Terms explain what recipients can invoice for and be reimbursed for travel and per diem expenses. After this Agreement is amended to include These Terms, Recipients can instead invoice and be reimbursed using the rates listed on the ECAMS Resources webpage. Because the rates maintained on the ECAMS Resources webpage can change over time, the Recipient will be allowed to be reimbursed for the rates in place when the trip expenses become an Incurred Cost. The CEC shall notify the Recipient in writing by way of the Active Agreements listserve if the travel rates change. Please sign up for the Active Agreements listserve to stay informed of all updates.

3. Lodging

The Recipient can invoice at standard room rates. The CEC will not reimburse for luxury accommodations.

4. Airfare

The Recipient can invoice at coach rates on commercial carriers. The CEC will not pay for upgrades on flights.

5. Rental Car

The Recipient can invoice for vehicles appropriate for the purpose of the travel. The CEC will not reimburse expenses for luxury vehicles.

6. Bus/Train

The Recipient can invoice for standard coach rates. The CEC will not reimburse for upgrades.

7. Per Diem

Per diem is allowable for actual costs incurred up to the total daily maximum for the following combined expenses:

- Meals
- Incidentals (i.e. tips for hotel staff and taxi/ride share drivers)
- Parking
- Tolls
- Taxi/ride share

The CEC will not reimburse any expenses under this Agreement for alcoholic beverages. In addition, the daily per diem is for the individual expenses of those traveling and

working on the Agreement only. It cannot be used to pay for expenses of others (e.g., it cannot be used to buy a meal for someone else).

D. Payment Request Format

Existing Terms may list specific items the Recipient must include in its invoices. These requirements in the Existing Terms is no longer required. Instead, the CAM will provide an invoice template, and any further modifications to it, that the Recipient shall use.

E. Rounding

Under These Terms, the only exception to the CEC paying actual expenses is rounding to the nearest cent. Recipient, Subrecipients, and each lower-tiered level of Sub-Subrecipients shall round invoiced amounts to the nearest cent (\$0.01) using standard rounding, which is rounding down for \$0.000 through \$0.004, and rounding up for \$0.005 through \$0.009. Rounding cannot be used to exceed the amount in any Budget Category (see section 4.A. above in These Terms) or exceed the total Agreement amount.

F. New Certification for Payment Requests

Existing Terms may require recipients to include and sign a certain certification in its payment requests. These Terms instead require the Recipient to include and sign the certification provided by the CAM in the Invoice Template. The CAM can change this certification without amending this Agreement.

G. The CEC No Longer Must Use a Specific Dispute Notification Form to Dispute Invoices

Existing Terms may require the CEC to use a Dispute Notification Form, Std. 209 Form, or other specific form when disputing invoices. These requirements no longer apply. Under These Terms, the CEC can now dispute an invoice in any manner it chooses as long as it is provided in writing to the Recipient.

6. Incurred Costs

Existing Terms may not allow recipients to be reimbursed for Incurred Costs. Accordingly, These Terms change that and allow the CEC to reimburse the Recipient for Incurred and Paid Costs that are (1) incurred during the Agreement Term; (2) invoiced within the required timeframes of this Agreement; (3) made in accordance with the Agreement's Budget; and (4) actual and allowable expenses under this Agreement.

The Recipient shall pay ALL Incurred Costs for which it has invoiced the CEC within 14 calendar days of receiving payment under this Agreement for the Incurred Costs. For example, if the Recipient invoices the CEC and then receives payment on September 15 for an Incurred Cost of \$10,000, the Recipient shall pay the entire \$10,000 by September 29. This requirement is needed to prevent Recipient from creating long lead times for Incurred Costs (e.g., invoicing

and receiving payment from the CEC but not paying for the Incurred Costs for weeks or months).

The Recipient shall only invoice the CEC for Incurred Costs the Recipient will pay within 14 calendar days of receiving payment. For example, assume the Recipient has an Incurred Cost for a piece of equipment that costs \$300,000 and will pay in three installments of \$100,000 each over three months. The Recipient shall only invoice the CEC for \$100,000 each month. The Recipient shall not invoice for the entire \$300,000 and retain the balance over the three months.

For any Incurred Costs for which the Recipient received funds from the CEC and does not pay within 14 calendar days, the Recipient shall on the very next business day after the 14 calendar days submit repayment of the unpaid amount back to the CEC. Repaid funds will be placed back into the Agreement and will be available to reimburse allowable costs in accordance with this Agreement. When making a repayment under this provision, the Recipient shall specify "Repayment of Unspent Funds under Agreement [insert agreement number]." Recipient shall remit the repayment to:

California Energy Commission
Accounting Office
715 P Street, MS-2
Sacramento, CA 95814

This repayment requirement of the Recipient is in addition to any other rights the CEC can enforce relative to this Agreement. Recipient agrees and acknowledges that time is of the essence in paying Incurred Costs and submitting repayments, and the CEC can treat the Recipient's breach of either requirement as a material breach. Recipient can contact the CAM for any questions about the logistics of making repayments.

7. Subrecipients and Vendors

Existing Terms typically only distinguish between the Recipient and any lower tier of subcontractors. But not all subcontractors are the same. Some are entrusted with significant responsibility to meet the Agreement's objectives, and others are merely suppliers of goods and services.

These Terms allow the Recipient with CAM written approval to divide subcontractors into Subrecipients and Vendors. If this distinction is not made between Subrecipients and Vendors, all entities currently deemed subcontractors will be treated as Subrecipients.

A Subrecipient is defined as a person or entity that receives grant funds directly from the Recipient and is entrusted by the Recipient to make decisions about how to conduct some of the grant's activities. A Subrecipient's role involves discretion over grant activities and is not merely just selling goods or services.

Characteristics which support the classification of the entity as a subrecipient include when the entity:

- (1) Has its performance measured in relation to whether objectives of a CEC program were met;
- (2) Has responsibility for programmatic decision-making;
- (3) Is responsible for adherence to applicable CEC program requirements specified in the CEC award agreement;
- (4) In accordance with its agreement, uses the CEC funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the recipient or subrecipient; or,
- (5) Provides match share funding contributions to the CEC-funded project.

A Sub-Subrecipient has the same meaning as a Subrecipient except that it receives grant funds from a Subrecipient. There can also be further levels below of Sub-Subrecipients.

A Vendor is defined as a person or entity that sells goods or services to the Recipient, Subrecipient, or any lower-tiered level of Sub-Subrecipient, in exchange for some of the grant funds, and does not make decisions about how to perform the Agreement's activities. The Vendor's role is ministerial and does not involve discretion over Agreement activities. A vendor is an entity selected through a competitive process or is otherwise providing a product or service at a fair and reasonable price. Characteristics indicative of a procurement relationship between the Recipient, Subrecipient, and any lower-tiered level of Sub-Subrecipient and a Vendor are when the Vendor:

- (1) Provides the goods and services within normal business operations;
 - (2) Provides similar goods or services to many different purchasers;
 - (3) Normally operates in a competitive environment;
 - (4) Provides goods or services that are ancillary to the operation of the CEC program;
- and
- (5) may not be subject to compliance with all of the requirements of the CEC program as a result of the agreement, though similar requirements may apply for other reasons.

A. Subrecipient and Sub-Subrecipient Flow-Down Terms

For Recipient's agreements with Subrecipients, the Recipient shall follow any flow-down requirements in the Existing Terms for subcontractors, except the Recipient does not need to include the following terms if they are not applicable to a given Subrecipient:

1. The Legal Statements on Products term does not have to be included if the Subrecipient will not generate any Products.
2. The Travel and Per Diem term does not have to be included if the Subrecipient will not be reimbursed for travel with CEC funds.

3. The Equipment term does not have to be included if the Subrecipient will not be reimbursed for equipment with CEC funds.
4. The Confidentiality term does not have to be included if the Subrecipient will not have access to or generate confidential information.

B. Vendor Requirements

The flow-down requirements in the Existing Terms either come from the CEC or the law. Recipient does not have to include any CEC-created requirements in agreements with its Vendors unless it is necessary for the Recipient to meet its obligations to the CEC under the Agreement. But the Recipient is still required to make sure the Vendor complies with all applicable laws. For example, the Recipient still must ensure any Vendor complies with applicable Public Work Requirements, including the payment of prevailing wage, and also with the Nondiscrimination clause. These are requirements under the law.

The Recipient does not have to include in its Vendor agreements CEC-created terms, such as Equipment, Confidentiality, Travel and Per Diem, Retention of Records, and Audits, if the Recipient does not need them to fulfill its obligations to the CEC. An example where the Recipient might need to include a CEC-created term in a Vendor agreement is intellectual property. The Recipient must ensure the CEC has the intellectual property rights required under this Agreement. If a Vendor creates intellectual property that the Recipient provides to the CEC as part of the Agreement, the Recipient shall ensure its Vendor agreement secures the appropriate rights.

C. Replacing Subrecipients or Vendors

Under These Terms, all changes to Subrecipients and Vendors require advance written approval by at least the Commission Agreement Manager. A higher level of approval may be required based upon Energy Commission policy. Required approvals are included in the “Changes to Grants - Level of Approval and Notification Chart” commonly referred to as the “Changes Chart.”

These Terms clarify that Recipients may be reimbursed for actual expenses incurred by a new **Vendor** during the term of the Agreement, even if written approval comes after the entity has completed work on the project. However, if the new Vendor is not approved, then the Energy Commission will not reimburse for any expenses charged for the entity. Accordingly, Recipients are strongly encouraged to obtain advance written approval for new Vendors or risk not being reimbursed for their work.

However, any work completed by an entity that may replace an existing **Subrecipient** WILL NOT BE REIMBURSED for any work completed prior to advance written approval. If a Subrecipient expends funds prior to approval, they can only be claimed as Match Funds.

8. Match Fund Timing

Existing Terms typically require recipients to proportionally spend match funds concurrently or in advance of CEC funds. But this timing does not always work, especially if the CEC funds are used for expensive equipment early in the project.

These Terms allow a CAM, in writing and with Supervisor approval, to authorize a Recipient to spend CEC funds in advance of Match Funds pursuant to [Match Fund Spending Plan](#). The Plan must estimate how Match Funds and CEC funds will be spent over each quarter and briefly explain why it is not practical to spend Match Funds concurrent with CEC Funds. While These Terms allow additional flexibility, the Recipient agrees to spend the agreed match funds as soon as practicable during the Agreement in order to resume proportionality between CEC funds and Match funds spent.