

**SCO ID:**

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

**STANDARD AGREEMENT**

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER

PURCHASING AUTHORITY NUMBER (If Applicable)

1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME

State Energy Resources Conservation and Development Commission (Energy Commission)

CONTRACTOR NAME

2. The term of this Agreement is:

START DATE

XX/XX/XX

The effective date of this Agreement is either the start date or the signature date this agreement was signed by the California Energy Commission representative below, whichever is later. No work shall commence until the effective date.

THROUGH END DATE

XX/XX/XX

3. The maximum amount of this Agreement is:

4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of the Agreement.

Exhibits	Title	Pages
Exhibit A	Scope of Work	1
Exhibit B	Budget Detail and Payment Provisions	8
Exhibit C *	General Terms and Conditions - GTC 04/2017	
+ - Exhibit D	Special Terms and Conditions	15
+ - Exhibit E	Additional Provisions	6
+ - Exhibit E - Attachment 1	Confidential Deliverables and Pre-Existing Intellectual Property	3
+ - Exhibit F	Agreement Contacts	1
+ - Exhibit G	Conflict of Interest	6

Items shown with an asterisk (\*), are hereby incorporated by reference and made part of this agreement as if attached hereto.

These documents can be viewed at <https://www.dgs.ca.gov/OLS/Resources>

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.

**CONTRACTOR**

CONTRACTOR NAME (if other than an individual, state whether a corporation, partnership, etc.)

CONTRACTOR BUSINESS ADDRESS

CITY

STATE

ZIP

PRINTED NAME OF PERSON SIGNING

TITLE

CONTRACTOR AUTHORIZED SIGNATURE

DATE SIGNED

**SCO ID:**

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

**STANDARD AGREEMENT**

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER	PURCHASING AUTHORITY NUMBER (If Applicable)
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**STATE OF CALIFORNIA**

CONTRACTING AGENCY NAME

State Energy Resources Conservation and Development Commission (Energy Commission)

CONTRACTING AGENCY ADDRESS	CITY	STATE	ZIP
715 P Street, MS-18	Sacramento	CA	95814

PRINTED NAME OF PERSON SIGNING	TITLE
Adrienne Winuk	Contracts, Grants and Loans Office Manager

CONTRACTING AGENCY AUTHORIZED SIGNATURE	DATE SIGNED
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CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL	EXEMPTION (If Applicable)
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ATTACHMENT 6  
Standard Agreement Example

**EXHIBIT A**

**Scope of Work described in the RFQ**

ATTACHMENT 6  
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**EXHIBIT B**

**Budget Detail and Payment Provisions**

**1. CONDITIONS FOR PAYMENT**

- A. No payment shall be made in advance of services rendered.
- B. For services satisfactorily rendered, and upon receipt and approval of invoices, the Energy Commission agrees to compensate the Contractor for actual allowable expenditures incurred in accordance with Exhibit B. The rates in Exhibit B are rate caps, or the maximum amount allowed to be billed. The Contractor can only bill for actual expenses incurred and paid in the performance of the work identified in the Scope of Work, at the Contractor's and subcontractor's actual direct labor, fringe benefit, indirect and general and administrative (G&A) rates, not to exceed the maximum rates specified in Exhibit B.
- C. The Contractor and any subcontractors, including lower tier subcontractors, can include up to a maximum total of ten percent (10%) profit, fees or mark-ups on their own actual labor expenses less any further subcontracted to other entities (i.e., profit, fees, and markups are not allowed on subcontractor expenses). The Contractor and subcontractors are not allowed to profit from their subcontractors' costs.
- D. Each request for payment is subject to the Energy Commission Agreement Manager's (CAM) approval.
- E. Payments shall be made to the Contractor for undisputed invoices. An undisputed invoice is an invoice submitted by the Contractor for services rendered, and for which additional evidence is not required to determine its validity. The invoice will be disputed if all deliverables due for the billing period have not been received and approved, if the invoice is inaccurate, or if it does not comply with the terms of this Agreement. If the invoice is disputed, Contractor will be notified via a Dispute Notification Form within 15 working days of receipt of the invoice.
- F. Payment will be made in accordance with the Prompt Payment Act, Government Code Chapter 4.5, commencing with Section 927, which requires payment of properly submitted, undisputed invoices within 45 days of receipt or automatically pay late payment penalties.
- G. Final invoice must be received by the Energy Commission no later than 30 calendar days after the Agreement termination date.

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- H. The State will pay for State or local sales or use taxes on the services rendered or equipment, parts or software supplied to the Energy Commission pursuant to this Agreement. The State of California is exempt from Federal excise taxes, and no payment will be made for any taxes levied on employee's wages.
- I. No payment will be made for costs identified in Contractor invoices that have or will be reimbursed by another source, including but not limited to a Government Entity agreement or subcontract or other procurement methods.
- J. Upon request or audit by the State, the Contractor or its subcontractors will be required to furnish documentation to support that the claimed expenses are based on actual allowable costs. Examples of supporting documentation for labor rates include paystubs, W-2s, or in the case of self-employed Contractors or subcontractors, copies of the individual's or business' federal tax returns. For labor hours, the Contractor and its subcontractors must have timesheets with sufficient internal controls to demonstrate that the timesheets are an accurate and complete reflection of both claimed contract hours and all hours worked. Fringe benefit, indirect, and G&A rates must be developed in accordance with generally accepted accounting principles and the applicable federal cost principles or acquisition regulations.

2. **PAYMENT TERMS**

- In Arrears
- Itemized
  - Monthly
  - Quarterly
  - One-Time Payment

3. **INVOICING PROCEDURES**

- A. Invoices shall be submitted in duplicate not more frequently than monthly. Time is of the essence for submitting invoices and invoicing for completed work. Invoices are due no later than fifteen (15) calendar days after the end of the monthly invoicing period. Invoices for work completed within a monthly invoicing period must be submitted no later than ninety (90) calendar days after the end of the monthly invoicing period. The following certification shall be included on each invoice and signed by an authorized official of the Contractor:

*I certify that this invoice is correct and proper for payment, and reimbursement for these costs has not and will not be received from any other sources, including but not limited to a government entity contract, subcontract or other procurement method.*

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- B. Invoices shall be submitted electronically to: [invoices@energy.ca.gov](mailto:invoices@energy.ca.gov). The date of "invoice receipt" shall be the date the Energy Commission receives the electronic copy.
- C. An invoice shall consist of, but not be limited to, the following:
- 1) Agreement number, date prepared, and billing period.
  - 2) The Work Authorization number.
  - 3) The Contractor's actual fully loaded hourly labor rates by individual and number of hours worked during the reporting period.
  - 4) Other direct operating expenses, including equipment, travel, materials, and miscellaneous, etc.
  - 5) Subcontractor expenditures.
  - 6) An indication of whether a subcontractor is a California Certified Small Business or a Certified Disabled Veteran Business Enterprise.
  - 7) Identify the specific task(s) and/or the categories of expenditures under the applicable Work Authorization.
  - 8) Consistent with the applicable Work Authorization budget provide current billing, previously billed, budgeted amounts and balance of funds.
  - 9) If applicable, the match fund expenditures.
  - 10) All invoices must be accompanied by the following documentation to support the expenditure:
    - a) Subcontractor invoices which shall include items 1-7 above for corresponding information, if any, identified in the budget detail (e.g., if the budget detail lists hourly labor rates, then the subcontractor's invoice would include hourly labor rates).
    - b) Receipts for travel expenses.
    - c) Receipts for materials, miscellaneous, and/or equipment.
    - d) A report that documents the progress of the work during the billing period; and
    - e) Any other deliverables due during the billing period.

4. **RETENTION**

The Energy Commission shall retain from each invoice ten per cent (10%) of that invoice, excluding equipment invoices. The retained amount shall be held and released only upon approval that work has been satisfactorily completed and the Final Report (if required) has been received and approved. The Contractor must submit a separate invoice for the retained amount. Retained funds may be withheld by the Energy Commission to compensate or credit for amounts that were paid in error, or amounts that were paid but exceed the actual allowable incurred costs.

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Retention may be released upon completion of a work authorization as each is considered a separate and distinct piece of work (i.e., the work authorization is a stand-alone piece of work and could be completed without other work authorizations). A work authorization for administration or management of the Agreement and/or subcontractors is not considered separate and distinct and retention will not be released early. Retention for the administrative/management work authorization will be released upon completion and approval of all Agreement final deliverables.

5. **TRAVEL AND PER DIEM RATES**

The Contractor shall be reimbursed for travel and per diem expenses using the Energy Commission Contractor Travel Rates. The Contractor must pay for travel in excess of these rates. The Contractor may obtain current rates from the Energy Commission's Web Site at:

[http://www.energy.ca.gov/contracts/TRAVEL\\_PER\\_DIEM.PDF](http://www.energy.ca.gov/contracts/TRAVEL_PER_DIEM.PDF).

- A. Before Contractor incurs travel costs and travels under this Agreement:
- CAM shall provide written authorization in a Work Authorization.
  - Work Authorization Manager or designee shall approve the trip details in writing (e.g., by email).
  - Contractor shall ensure that the trip is authorized in the WA and that sufficient labor hours and travel budget remains in the WA to cover the trip expenses.
- B. The Energy Commission will reimburse travel expenses from the Contractor's office location. For purposes of payment, the Contractor's office location shall be considered the office location where the Contractor's employees or, if applicable, the employees of a subcontractor with responsibilities for this Agreement are permanently assigned.
- C. Travel receipts and documentation of travel expenses, including travel meals and incidentals, shall be submitted with invoices requesting reimbursement from the Energy Commission. The documentation must be listed by trip and include dates and times of departure and return. The documentation must also include written trip approval by the WA Manager or designee.

6. **BUDGET CONTINGENCY CLAUSE**

It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the work identified in Exhibit A, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to the Contractor or to furnish any other consideration under this Agreement and the Contractor shall not be obligated to perform any provisions of this Agreement.

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If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either: cancel this Agreement with no liability occurring to the State, or offer an Agreement amendment to the Contractor to reflect the reduced amount.

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

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

A. New Personnel

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

B. Labor Rates & Classifications

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

1. Contractor Changes: Addition or Replacement of Personnel

a) Labor Rates

If the Contractor adds a new person to a job classification listed in the Contractor's budget or replaces a person listed in the



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

b) Classifications

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

c) Promotions

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

2. Subcontractor Changes: Addition or Replacement of Personnel

a) Labor Rates

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

b) Classifications

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

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person or possibly promote a person) this will require a formal amendment to the Agreement.

c) Promotions

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

C. Changes in Assigned Personnel Dollars

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

8. **BUDGET REALLOCATION**

Any movement of funds from one category to another must be done through an amendment to the Agreement or Work Authorization.

9. **MULTI-YEAR FUNDING**

There is a maximum of up to \$750,000 available to fund the Agreement. This is an hourly rate plus cost reimbursement contract with a ceiling on the total contract amount.

FISCAL YEAR	AMOUNT
2022-2023	\$250,000
2023-2024	\$250,000
2024-2025	\$250,000

Funding for this Agreement is from Cost of Implementation Account funds, including \$250,000 from FY 2022-2023; \$250,000 from FY 2023-2024; and \$250,000 from FY 2024-2025.

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Funding for FY 2022-2023 expires on June 30, 2025. To make payments from FY 2022-2023 funding prior to the expiration date, all Agreement services, products, deliverables and invoices using these funds must be received by the Energy Commission by April 30, 2025. The Energy Commission does not warrant or guarantee that payment will be made for services, products or deliverables performed if invoices are received after April 30, 2025.

Funding for FY 2023-2024 expires on June 30, 2026. To make payments from FY 2023-2024 funding prior to the expiration date, all Agreement services, products, deliverables and invoices using these funds must be received by the Energy Commission by April 30, 2026. The Energy Commission does not warrant or guarantee that payment will be made for services, products or deliverables performed if invoices are received after April 30, 2026.

Funding for FY 2024-2025 expires on June 30, 2027. To make payments from FY 2024-2025 funding prior to the expiration date, all Agreement services, products, deliverables and invoices using these funds must be received by the Energy Commission by April 30, 2027. The Energy Commission does not warrant or guarantee that payment will be made for services, products or deliverables performed if invoices are received after April 30, 2027.

10. **COSTS OF ADMINISTRATION**

No more than 10% of the total Agreement budget shall be spent for Task 1, Administration.

11. **BUDGET DETAIL**

Budget detail is contained in the Attachments to this Exhibit.

The attached Budget Rates are to be used when drafting Work Authorizations. Each Work Authorization will identify specific costs for each category.

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**EXHIBIT D**

**Special Terms and Conditions**

**1. AGREEMENT MANAGEMENT**

- A. Contractor may change Project Manager but the Energy Commission reserves the right to approve any substitution of the Project Manager.
- B. The Energy Commission may change the Energy Commission Agreement Manager (CAM) at any time and will send a written notice to the Contractor signed by the Energy Commission Agreement Officer (CAO).
- C. Energy Commission staff will be permitted to work side by side with Contractor's staff to the extent and under conditions that may be directed by the CAM. In this connection, Energy Commission staff will be given access to all data, working papers, etc., which Contractor may seek to utilize.
- D. Contractor will not be permitted to utilize Energy Commission personnel for the performance of services, which are the responsibility of Contractor unless the CAM previously agrees to such utilization in writing and an appropriate adjustment in price is made. No charge will be made to Contractor for the services of Energy Commission employees while performing, coordinating or monitoring functions.
- E. If the Schedule of Deliverables and Due Dates needs to be revised after the execution of the Agreement, the revised dates cannot extend beyond the term end date of the Agreement. Contractor shall work with the CAM to agree on the new deliverable due dates. The CAM shall issue the revised Schedule of Deliverables and Due Dates to the Contractor and the CAO. Although the dates can be revised, the deliverables cannot be changed through this process.

**2. STANDARD OF PERFORMANCE**

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

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- A. Contractor/subcontractor will reperform, at its own expense, any task, which was not performed to the reasonable satisfaction of the CAM. Any work reperformed pursuant to this paragraph shall be completed within the time limitations originally set forth for the specific task involved. Contractor/subcontractor shall work any overtime required to meet the deadline for the task at no additional cost to the Energy Commission.
- B. The Energy Commission shall provide a new schedule for the reperformance of any task pursuant to this paragraph in the event that reperformance of a task within the original time limitations is not feasible.
- C. If the Energy Commission directs the Contractor not to reperform a task; the CAM and Contractor shall negotiate a reasonable settlement for satisfactory services rendered. No previous payment shall be considered a waiver of the Energy Commission's right to reimbursement.

3. **SUBCONTRACTS**

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**OR**

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

**AND**

- A. Nothing contained in this Agreement or otherwise, shall create any contractual relationship between the State and any subcontractors, and no subcontractors and no subcontract shall relieve Contractor of its responsibilities and obligations hereunder. Contractor agrees to be as fully responsible to the State for the acts and omissions of its subcontractors and/or persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Contractor. Contractor's obligation to pay its subcontractors is an independent obligation from the State's obligation to make payments to Contractor. As a result, the State shall have no obligation to pay or to enforce the payment of any monies to any subcontractor.
- B. Contractor shall be responsible for establishing and maintaining contractual agreements with and the reimbursement of each of the subcontractors for work performed in accordance with the terms of this Agreement. Contractor

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shall be responsible for scheduling and assigning subcontractors to specific tasks in the manner described in this Agreement; coordinating subcontractor accessibility to Energy Commission staff, and submitting completed products to the CAM.

- C. Contractor shall not allow any subcontractor to assign any portion of a subcontract related to this Agreement to a third party or subsequent tier subcontractor (lower tier subcontractor) without first obtaining the written consent of the CAM and following the procedures below “Process for New Subcontractors”.
- D. All subcontracts entered into pursuant to this Agreement shall be subject to examination and audit by the Bureau of State Audits for a period of three (3) years after final payment under the Agreement.
- E. Upon request by the CAM or CAO, Contractor shall provide copies of all contractual agreements with subcontractors and lower tier subcontractors.
- F. Contractors who are subcontracting with University of California or California State University may use the terms and conditions negotiated by the Department of General Services with University of California/California State University for their subcontracts. Contractors who are subcontracting with the Department of Energy’s (DOE) Lawrence Livermore National Laboratory, Lawrence Berkeley National Laboratory, and the Sandia National Laboratories may use the terms and conditions negotiated with the Department of General Services. Contractors who are subcontracting with all other DOE laboratories may use the terms and conditions negotiated by the Energy Commission with DOE for their subcontracts.
- G. Upon the termination of any subcontract or lower tier subcontract, Contractor shall notify the CAM and CAO immediately in writing.
- H. In addition to any other flow-down provisions required by this Agreement, all subcontracts shall contain the following: 1) the audit rights and non-discrimination provision stated in the Budget Detail and Payment Provisions (Exhibit B, paragraph 1), General Terms and Conditions (Exhibit C) and in 3.D above; 2) further assignments shall not be made to any lower tier subcontractor without written consent of the CAM; and 3) the confidentiality provisions in the Reports paragraph of this Agreement.
- I. **Process for New Subcontractors**  
  
The Energy Commission reserves the right to replace a subcontractor, request additional subcontractors, and approve additional subcontractors requested by Contractor. A replaced subcontractor and an added subcontractor are both defined as a “new” subcontractor. Such changes shall be subject to the following conditions:

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

4. **DISABLED VETERAN BUSINESS ENTERPRISE (DVBE) REQUIREMENTS**

A. Certification Report

If Contractor made a commitment to achieve DVBE participation for this Agreement with DVBE subcontractor(s), then upon completion of the work or upon the Agreement end date, whichever is earlier, Contractor shall certify in a DVBE Subcontracting Report to the CAO that DVBE subcontractor participation under this Agreement is in compliance with the goals specified at the time of award of the Agreement or with any subsequent amendment. The report shall include: (1) the total amount the

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Contractor received under this Agreement; (2) the name and address of the DVBE(s) that participated in the performance of the Agreement and the Agreement number; (3) the amount and percentage of work the Contractor committed to provide to one or more DVBEs under the requirements of the Agreement and the amount each DVBE received from the Contractor; (4) that all payments under the Agreement have been made to the DVBE(s); and (5) the actual percentage of DVBE participation that was achieved. Upon request by the Commission, the Contractor shall provide proof of payment for the work. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. Military & Veterans Code section 999.5(d).

B. Withholding

1) \$10,000 Withholding

If Contractor made a commitment to achieve DVBE participation for this Agreement with DVBE subcontractor(s), then the Commission shall withhold \$10,000 (or full payment if less than \$10,000) from Contractor's final payment, pending receipt of the certification report in A above. This withholding is in addition to retention, if any, in Exhibit B, para 4.

2) Failure to comply with Certification Report

In addition to any other rights and remedies available to the Commission, if Contractor fails to comply with the certification report, Contractor shall, after notice by the Commission, be allowed to cure the defect. Notwithstanding any other law, if, after at least 15 calendar days but not more than 30 calendar days from the date of notice, Contractor refuses to comply with the certification report requirements, the Commission shall permanently deduct \$10,000 from the final payment (or the full payment if less than \$10,000). Military & Veterans Code section 999.7(a) and (c). For purposes of this paragraph, time is of the essence; Contractor is deemed to have refused to comply with the certification report requirements, if the Commission does not receive the report within 30 calendar days from the date of the notice.

C. Substitution of DVBE

Contractor shall use each DVBE identified in its proposal or listed in this Agreement. Contractor understands and agrees that if DVBE(s) were identified in its proposal or listed in this Agreement, award of this Agreement is based in part on its commitment to use the DVBE subcontractor(s). If Contractor believes an identified DVBE must be replaced or substituted, Contractor shall request a substitution in writing to CAM and CAO, including the reason for the DVBE substitution. Contractor shall complete revised DVBE certification forms (provided by the CAO)



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identifying the proposed new DVBE. A DVBE subcontractor may only be replaced by another DVBE subcontractor and must be approved by the Commission and the Department of General Services (DGS). Any work by the proposed new subcontractor can be performed only after written approval by the Commission and DGS. The substitution shall maintain, at minimum, the level of DVBE participation stated in the original Proposal. Military and Veterans Code section 999.5(g); 2 California Code of Regulations 1896.73.

D. Amendment

This Agreement shall be amended if a DVBE must be substituted and DGS has given approval. This Agreement shall be amended if there are changes to the scope of work that impact the DVBE subcontractor(s) identified in the proposal or listed in this Agreement. If there are modifications for additional work, the same percentage of DVBE participation is required as in the original Agreement. The Commission shall document the modification and DVBE participation. 2 California Code of Regulations 1896.76.

E. Compliance with Law; Grounds for Termination; Damages; Penalties

Contractor shall comply with all applicable statutory and regulatory DVBE requirements, which include in part, adherence to the DVBE participation level identified in the Proposal or listed in this Agreement, and seeking substitution of a DVBE if necessary. Failure of Contractor to comply with or violation of statutory, regulatory and Agreement requirements may be cause for: termination of this Agreement; recovery of damages under rights and remedies due to the State; loss of certification; bidding suspension; sanctions; imprisonment; penalties; and civil actions. Military and Veterans Code sections 999.5, 999.9 and Public Contract Code section 10115.10.

F. Commercially Useful Function

During the course of the Agreement, Contractor shall ensure that all DVBEs performing work under the Agreement maintain a commercially useful function related to the work scope. Military and Veterans Code section 999; 2 California Code of Regulations section 1896.71.

G. Records Retention

Contractor shall retain all records related to DVBE participation for this Agreement for a minimum of six years following final payment under the Agreement. Military and Veterans Code section 999.55.

H. DVBE Name for this Agreement: [Insert DVBE name]

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5. **PROCESS FOR OFFERING WORK**

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

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

6. **PERFORMANCE EVALUATION**

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

7. **REPORTS**

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

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California Energy Commission  
Project Title  
Contractor Number  
By (Contractor)

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

**"LEGAL NOTICE"**

**"This report was prepared as a result of work sponsored by the California Energy Commission. It does not necessarily represent the views of the Energy Commission, its employees, or the State of California. The Energy Commission, the State of California, its**

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**employees, contractors, and subcontractors make no warranty, express or implied, and assume no legal liability for the information in this report; nor does any party represent that the use of this information will not infringe upon privately owned rights."**

8. **CONTRACT DATA, OWNERSHIP RIGHTS**

- A. "Data" as used in this Agreement means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research or experimental, developmental or engineering work, or be usable or be used to define a design or process, or to support a premise or conclusion asserted in any deliverable document required by this Agreement. The data may be graphic or pictorial delineations in media, such as drawings or photographs, data or information, etc. It may be in machine form, such as punched cards, magnetic tape or computer printouts, or may be retained in computer memory.
- B. "Deliverable data" is that data which, under the terms of this Agreement, is required to be delivered to the Energy Commission and shall belong to the Energy Commission.
- C. "Proprietary data" is such data as the Contractor has identified in a satisfactory manner as being under Contractor's control prior to commencement of performance of this Agreement, and which Contractor has reasonably demonstrated as being of a proprietary nature either by reason of copyright, patent or trade secret doctrines in full force and effect at the time when performance of this Agreement is commenced. The title to "proprietary data" shall remain with the Contractor throughout the term of this Agreement and thereafter. The extent of the Energy Commission access to, and the testimony available regarding, the proprietary data shall be limited to that reasonably necessary to demonstrate, in a scientific manner to the satisfaction of scientific persons, the validity of any premise, postulate or conclusion referred to or expressed in any deliverable for this Agreement.
- D. "Generated data" is that data, which a Contractor has collected, collated, recorded, deduced, read out or postulated for utilization in the performance of this Agreement. Any electronic data processing program, model or software system developed or substantially modified by the Contractor in the performance of this Agreement at the Energy Commission's expense, together with complete documentation thereof, shall be treated in the same manner as "generated data." "Generated data" shall be the property of the Energy Commission, unless and only to the extent that it is specifically provided otherwise in this Agreement.

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- E. As to "generated data" which is reserved to Contractor by the express terms hereof, and as to any pre-existing or "proprietary data" which has been utilized to support any premise, postulate or conclusion referred to or expressed in any deliverable hereunder, Contractor shall preserve the same in a form which may be introduced as evidence in a court of law at Contractor's own expense for a period of not less than three years after receipt by the Energy Commission of the Final Report herein.
- F. Before the expiration of the three years, and before changing the form of or destroying any data, Contractor shall notify the Energy Commission of any contemplated action and the Energy Commission may, within thirty (30) days after notification, determine whether it desires the data to be preserved. If the Energy Commission so elects, the expense of further preserving data shall be paid for by the Energy Commission. Contractor agrees that the Energy Commission may at its own expense, have reasonable access to data throughout the time during which data is preserved. Contractor agrees to use its best efforts to furnish competent witnesses or to identify competent witnesses to testify in any court of law regarding data.

9. **PUBLIC HEARINGS**

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

10. **DISPUTES**

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

A. First Level Dispute Resolution

The Contractor shall first discuss the problem informally with the CAM. If the problem cannot be resolved at this stage, the Contractor must direct the grievance together with any evidence, in writing, to the CAO. The grievance must state the issues in the dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The CAO and the Program Office Manager must make a determination on the problem within ten (10) working days after receipt of the written communication from the Contractor. The CAO shall respond in writing to the Contractor, indicating a decision and explanation for the decision. Should the

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Contractor disagree with the CAO decision, the Contractor may appeal to the second level.

B. Second Level Dispute Resolution

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

11. **TERMINATION**

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

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

A. With Cause

In the event of any breach by the Contractor of the conditions set forth in this Agreement, the Energy Commission may, without prejudice to any of its legal remedies, terminate this Agreement for cause upon five (5) days written notice to the Contractor. In such event, the Energy Commission shall pay Contractor only the reasonable value of the services theretofore rendered by Contractor, as may be agreed upon by the parties or

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determined by a court of law, but not in excess of the Agreement maximum payable. "Cause" includes without limitation:

- 1) Failure to perform or breach of any of the terms or covenants at the time and in the manner provided in this Agreement; or
- 2) Contractor is not able to pay its debts as they become due and/or Contractor is in default of an obligation that impacts his ability to perform under this Agreement; or
- 3) It is determined after notice and hearing by the Energy Commission or the Executive Director that gratuities were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the Energy Commission, with a view toward securing an Agreement or securing favorable treatment with respect to awarding or amending or making a determination with respect to performance of the Agreement; or
- 4) Significant change in Energy Commission policy such that the work or product being funded would not be supported by the Energy Commission; or
- 5) Reorganization to a business entity unsatisfactory to the Energy Commission; or
- 6) The retention or hiring of subcontractors, or the replacement or addition of personnel that fail to perform to the standards and requirements of this Agreement.

B. Without Cause

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

12. **WAIVER**

No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or by law. The failure of the Energy Commission to enforce at

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any time any of the provisions of this Agreement, or to require at any time performance by Contractor of any of the provisions, shall in no way be construed to be a waiver of those provisions, nor in any way affect the validity of this Agreement or any part of it or the right of the Energy Commission to thereafter enforce each and every such provision.

13. **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.

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

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

15. **NOTICE**

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

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

16. **STOP WORK**

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

- A. Compliance. Upon receipt of such stop work order, Contractor shall immediately take all necessary steps to comply therewith and to minimize the incurrence of costs allocable to work stopped.
- B. Equitable Adjustment. An equitable adjustment shall be made by the Energy Commission based upon a written request by Contractor for an



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equitable adjustment. Such adjustment request must be made by Contractor within thirty (30) days from the date of receipt of the stop work notice.

- C. Revoking a Stop Work Order. Contractor shall resume the stopped work only upon receipt of written instructions from the CAO canceling the stop work order.

17. **INTERPRETATION OF TERMS**

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

18. **AMENDMENTS**

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

- Increases in total Agreement amount,
- Extending the Agreement end date,
- Modifying tasks,
- Adding or modifying terms and conditions.

19. **DISCRIMINATION and HARASSMENT TRAINING**

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

20. **EXECUTIVE ORDER N-6-22 – RUSSIA SANCTIONS**

On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S.

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government in response to Russia's actions in Ukraine, as well as any sanctions imposed under state law. The EO directs state agencies to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should the State determine Contractor is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this agreement. The State shall provide Contractor advance written notice of such termination, allowing Contractor at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the State.

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**EXHIBIT E**  
**Additional Provisions**

1. **CONFIDENTIALITY**

A. Information Considered Confidential

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

B. Confidential Deliverables: Labeling and Submitting Confidential Information

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

C. Submittal of Unanticipated Confidential Information as a Deliverable

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

D. Disclosure of Confidential Information

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

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2. **WORK AUTHORIZATIONS**

A. Process

1. The Energy Commission Agreement Manager (CAM), with the assistance of the Contractor shall prepare Work Authorizations (WA) directing the work of the Contractor. The CAM will provide the WA format.
2. The WA shall be signed by the Contractor's authorized individual and by the CAM. In addition to the CAM, the WA may also be signed by Energy Commission staff serving as Project Manager for the individual WA. The CAM shall sign after the Contractor.
2. The WA becomes effective when the CAM signs the WA. No work shall begin until the WA is approved and signed by both parties.
4. The CAM shall file each signed WA with the Energy Commission Agreement Officer (CAO) before payment is approved for the WA.

B. Content of WA

Each WA shall include:

1. Agreement Number
2. WA Number
3. WA Title
4. Effective Date (date signed by the CAM, indicating Contractor may begin work)
5. End Date
6. Objective or goal of the WA
7. Detailed scope of work and tasks
8. What task the WA falls within the Agreement
9. Schedule/Due dates and Deliverables
10. Contact Information
11. Contractor and Subcontractor personnel who will perform the work
12. Identification of DVBE
13. Detailed Budget for types of costs that are identified as allowable in Agreement budget.

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C. Work Authorization Budgets

1. Category Budget.

Each WA shall contain a category budget. CAM shall allocate a total budget to each WA. WA budgets are divided into categories such as:

- Total labor amount, based on loaded rates of person or job classification
- Subcontracted amount
- Travel and per diem total amount, with details of trip (number of trips, to and from location, number of people).
- Other direct or miscellaneous costs, including rental charges/fees, with details of specific item, quantity, rate and cost.
- Other items as required by CAM, as allowed by the Agreement Budget

NOTE: these categories are examples only. The WA budget shall contain the actual budget categories.

Within each category, specific budget items are estimates and Contractor may spend the category budget up to the maximum amounts allocated for each category in the WA. Contractor shall not exceed the budgeted amount for each category unless the WA is amended. The Contractor can only bill for actual expenses incurred and paid in the performance of the work identified in the Agreement Scope of Work, not to exceed budgeted rate caps in the Agreement budget. See Exhibit B, Budget Reallocation.

3. Non-Labor Direct Costs, such as travel, materials or equipment. The Contractor and any subcontractors, including lower tier subcontractors, can include up to a maximum total of ten percent (10%) profit, fees or mark-ups on their own actual labor expenses less any further subcontracted to other entities (i.e., profit, fees, and markups are not allowed on subcontractor expenses). The Contractor and subcontractors are not allowed to profit from their subcontractors' costs.

Work authorization budgets will include non-labor direct cost details that are allowable and reimbursable for that specific work authorization. Non-labor direct costs will only be included in a work authorization budget if considered appropriate to the specific work authorization scope of work by the CAM.

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D. Payment

Payment for services is based upon an approved category budget in each WA. Any costs or expenses incurred by the Contractor or any subcontractor that have not been identified in the WA shall be borne by the Contractor.

E. Costs

The actual cost of an approved, completed WA shall not exceed the authorized amount of the WA budget. If, in the performance of the WA, the Contractor or CAM determines that the total cost might exceed the WA budget amount, Contractor or CAM shall immediately notify the other. Upon such notification, the CAM may:

1. Amend the WA scope of work to accomplish the work within the budget; or
2. Amend the WA to augment the budget; or
3. Direct the Contractor to complete the work for the budgeted amount without changes to the scope of work; or
4. Terminate the WA.

F. Amendments

1. An amendment of the WA is required for the following changes, including but not limited to:
  - Changes to the scope of work (i.e., new or changed work)
  - Adding Funds
  - Extending the Term
  - Exceeding the amount allocated to a specific category (i.e., labor, travel or other direct costs).
  - Adding new job classifications to the WA (job classification must already be included in Agreement budget)
2. Amendments shall be approved and signed using the same process as the original WA.
3. Amendments must be made prior to the termination date of the original WA or as amended.

G. Changes without Amendment

CAM may make the following changes to the WA without an amendment upon prior written notification to Contractor:

1. Changes to deliverable due dates, as long as the due dates do not go beyond the end term of the WA.

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2. Minor scope of work changes that only correct grammatical errors or reference mistakes.
3. Adding people within existing job classifications to perform service under the WA

H. Stop Work

The Energy Commission reserves the right to require the Contractor to stop or suspend work on any WA. The CAM, in consultation with the CAO, shall provide notice in writing to the Contractor of the date work is stopped or suspended. Costs incurred up to that date shall be reimbursed in accordance with the Stop Work clause in Exhibit D.

I. Termination of WA

The CAM, in consultation with the CAO, may terminate the WA without cause with 30 days written notice to Contractor. Costs incurred up to that date shall be reimbursed in accordance with the termination clause in Exhibit D.

J. Incorporated into Agreement

Each WA shall be incorporated into this Agreement. However, it is understood and agreed by both parties that all of the terms and conditions of this Agreement shall remain in force with the inclusion of any such WA. A WA shall in no way constitute an independent Agreement, nor in any way amend or supersede any of the other provisions of this Agreement.

K. Information Technology

Work Authorizations may be reviewed by the Energy Commission's Information Technology Services Branch to determine if any information technology (IT) activities or acquisitions are included in the Work Authorization. If it is determined the Work Authorization includes IT activities or acquisitions the Energy Commission's Chief Information Officer or designee must approve the Work Authorization before it can be executed. Activities under the Agreement that could impact the Energy Commission IT systems include, but are not limited to using GIS software to produce maps.

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

The Contractor; by signing this Agreement, expressly grants to the Energy Commission for all copyrightable material, work of art and original work of authorship first produced, composed or authored in the performance of this Agreement a royalty-free, paid-up, non-exclusive, irrevocable, nontransferable, worldwide license to produce, translate, publish, use, dispose of, reproduce,

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prepare derivative works based on, distribute copies of, publicly perform, or publicly display a work of art or fine art, and to authorize others to produce, translate, publish, use, dispose of, reproduce, prepare derivative works based on, distribute copies of, publicly perform, or publicly display a work of art or fine art.

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

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

4. **CONFLICT OF INTEREST**

See Exhibit G for Conflict-of-Interest Provisions.

5. **PURCHASE OF EQUIPMENT**

No equipment shall be purchased under this Agreement.



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**EXHIBIT E – Attachment 1**

**Confidential Deliverables and Pre-Existing Intellectual Property Lists**

**PART I: CONFIDENTIAL DELIVERABLES**

Pursuant to 20 California Code of Regulations section 2505(c)(2)(B), the Energy Commission designates the following as confidential.

**No Confidential Deliverables,**

**OR**

**Confidential Deliverables:**

<b>Description of Information to be Kept Confidential:</b> <ul style="list-style-type: none"><li>• Title of document/name of deliverable</li><li>• Task Number</li><li>• Portion of document to be kept confidential</li><li>• General description of the technology to be kept confidential.</li></ul>	<b>Legal Basis for Confidential Designation:</b> <ul style="list-style-type: none"><li>• Trade Secret<ul style="list-style-type: none"><li>--Technical</li><li>--Business</li><li>--Marketing</li><li>--Economic/Financial</li></ul></li><li>• Patent application number</li></ul>	<b>Term of Confidentiality</b>

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**PART II: PRE-EXISTING INTELLECTUAL PROPERTY**

Contractor has identified the following intellectual property as pre-existing the effective date of this Agreement and is required for performance of this Agreement but is not a deliverable.

**No Pre-existing Intellectual Property**

**OR**

**Pre-existing Intellectual Property (Please insert "none" in the types that do not apply):**

**Patents Issued**

<b>Title</b>	<b>Patent Number</b>	<b>Inventors /Assignee (Owner)</b>	<b>File Date</b>	<b>Issue/ Grant Date</b>	<b>Country</b>	<b>Description</b>

**Patent Applications**

<b>Title</b>	<b>File Date</b>	<b>Public Description (2-3 sentences)</b>

**Trade Secrets**

<b>Title</b>	<b>Public Description (2-3 sentences)</b>

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**Copyrights**

<b>Title</b>	<b>Copyright Number</b>	<b>Owner</b>	<b>File Date</b>	<b>Issue/ Grant Date</b>	<b>Country</b>	<b>Description</b>

**Trademarks**

<b>Title</b>	<b>Trademark Number</b>	<b>Owner</b>	<b>File Date</b>	<b>Issue/ Grant Date</b>	<b>Country</b>	<b>Description</b>

**Disclosure Memos**

<b>Title</b>	<b>Disclosure Date</b>	<b>Memo Number, if applicable</b>	<b>Public Description (2-3 sentences)</b>

**Invention Berkley  
(DOE National Labs Only)**

<b>Title</b>	<b>Number</b>	<b>Date</b>

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**EXHIBIT F**

**Agreement Contacts**

**Commission Agreement Manager:**

(Name)

California Energy Commission  
715 P Street, MS-  
Sacramento, CA 95814  
Phone: (916) XXX-XXXX  
e-mail: [@energy.ca.gov](mailto:@energy.ca.gov)

**Contractor Project Manager:**

(Name)

(Contractor Name)  
Address Line 1  
Address Line 2  
Phone:  
e-mail:

**Confidential Deliverables/Products:**

California Energy Commission  
Contracts, Grants and Loans Office  
715 P Street, MS-18  
Sacramento, CA 95814

**Contractor Contract Administrator/Officer:**

(Name)

(Contractor Name)  
Address Line 1  
Address Line 2  
Phone:  
e-mail:

**Invoices, Progress Reports and  
Non-Confidential Deliverables to:**

California Energy Commission  
Accounting Office  
715 P Street, MS-2  
Sacramento, CA 95814  
e-mail: [invoices@energy.ca.gov](mailto:invoices@energy.ca.gov)

**Remittance for Payment:**

(Name)

(Contractor Name)  
Address Line 1  
Address Line 2  
Phone:  
e-mail:

**Commission Legal Notices:**

Adrienne Winuk, Manager  
California Energy Commission  
Contracts, Grants and Loans Office  
715 P Street, MS-18  
Sacramento, CA 95814  
Phone: (916) 891-8629  
e-mail: [adrienne.winuk@energy.ca.gov](mailto:adrienne.winuk@energy.ca.gov)

**Contractor Legal Notice:**

(Name)

(Business Name)  
Address Line 1  
Address Line 2  
Phone:  
e-mail:

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**EXHIBIT G**  
**Conflict of Interest**

These Special Terms and Conditions prevail over any conflicting terms in this Agreement *number XXX-XX-XXX, Agreement title*, (Agreement) between *Contractor's name* (Contractor) and the California Energy Commission (Energy Commission), of which this Exhibit is a part, including the General Terms and Conditions.

1. Applicability of Laws and Definitions.
  - a. Contractor agrees that California conflict of interest laws, including but not limited to Government Code sections 81000 *et seq.* and 1090 *et seq.*, apply to Contractor, its subcontractors and project partners, and their employees under this Agreement.
  - b. The term “subcontractor” in this Exhibit G means not only the direct subcontractors to Contractor but also any lower tier level of subcontractor (e.g., sub-subcontractors, sub-sub-subcontractors, ect.).
  - c. Unless specifically otherwise provided, the term “employees” or “their employees” as used in this Exhibit G, means the employees of the Contractor, subcontractors, and project partners.
  - d. The phrase “working under this Agreement” and similar phrases in this Exhibit G include work by Contractor, subcontractors, project partners, and their employees.
  
2. Contractor’s Responsibility for Compliance. Contractor shall avoid and shall ensure all subcontractors, project partners, and their employees avoid, all conflicts of interest in the performance of this Agreement. Contractor, subcontractors, project partners and their employees are responsible for compliance with California conflict of interest laws, including but not limited to Government Code sections 81000 *et seq.* (Political Reform Act) and 1090 *et seq.*, as well as all other applicable laws, ordinances, regulations, and standards.
  - a. Contractor shall make subcontractors, project partners, and their employees aware of the provisions in the Political Reform Act and in this Exhibit, and shall enforce them. Contractor shall ensure that these provisions are included in all subcontracts and agreements with project partners, and shall enforce them.
  
  - b. Contractor understands and agrees that every individual qualifying as a “consultant” under the Political Reform Act has an ongoing duty to avoid conflicts of interest and is personally liable for penalties.
  
  - c. Consultants Defined. All of the Contractor’s and any subcontractors’ employees working on Tasks 2-4 are “Consultants” assigned to Disclosure Category 1. A description of the disclosure categories in Title 20 California Code of Regulations sections 2401 and 2401 is located at:  
<https://govt.westlaw.com/calregs/Browse/Home/California/CaliforniaCodeo>

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[fRegulations?guid=IC23FEB00D44E11DEA95CA4428EC25FA0.](#)

Consultants are subject to the requirements and restrictions of the Political Reform Act, and shall file an original Form 700 with the Energy Commission (See Government Code sections 82019 and 87302), except those employees working in strictly administrative job classifications.

Contractor and the Commission Agreement Manager may work together to narrow the list of consultants as job duties are more specifically defined. The following job classifications are strictly administrative:

- i. Administrative Specialist
- ii. Administrative Assistant

Employees working only on strictly administrative tasks, including Task 1, are not consultants and need not file a Form 700 unless directed to do so by the Energy Commission.

- d. Contractor is responsible for having consultants complete Form 700s and Contractor is responsible for reviewing each Form 700 at multiple points: 1) within 30 business days from the date the Consultant begins work under the Agreement; 2) at least every twelve months until the Agreement end date; and 3) within 30 days of the end date of the Agreement. These points of review will ensure that each employee and subcontractor has considered their relationship with the Contractor and other project entities, as such entities are subject to change over the life of the project.
  - e. Contractor is responsible for ensuring that consultants complete the online ethics training at least once every two years as required by Government Code section 11146. The training is provided by the Fair Political Practices Commission and the California Office of the Attorney General and is available at <https://oag.ca.gov/ethics/course>. Contractor shall provide records to the Energy Commission Filing Officer indicating the name, job title, and date of completion of the orientation course.
  - f. Failure to file a Form 700, or failure to meet training requirements of Government Code 11146 et seq., can result in automatic daily fines and other consequences.**
3. Reservation of Right to Require Form 700 from Any Employee. The Energy Commission reserves the right to require any individual working under this Agreement to file Form 700s.
4. Form 700. Each individual designated as a consultant under this contract (see section 2.c of this exhibit), or other individual required by the Energy Commission to do so, shall file a Form 700. Form 700 is available at <https://fppc.ca.gov/Form700.html>.
- a. The Form 700 shall be (i) submitted electronically through the AutoHR system at <https://autohr.energy.ca.gov/HRPortal>, or (ii) filled in person at,

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or mailed to, the following address (e-mails and faxes are not acceptable):

Energy Commission Filing Officer – Form 700 Filing  
Selection & Equal Employment Opportunity Office  
715 P Street, MS 52  
Sacramento, CA 95814

- b. A Form 700 must be filed at the times required under the Political Reform Act, which include the following:
    - i. Assuming Office Statement. Must be filed within 30 days of beginning work under the Agreement. Beginning work means when the employee actually performs work under the Agreement; it does not mean the start date of the Agreement unless the employee starts work on the start date.
    - ii. Annual Statement. Must be filed annually, no later than April 1.
    - iii. Leaving Office Statement. Must be filed within 30 days of ceasing to perform work under the Agreement (e.g., removed as a subcontractor, completion of assigned tasks) or within 30 days after the Agreement ends.
  - c. **Failure to file the Form 700 when required can result in automatic daily fines and other consequences.**
  - d. When completing the Form 700, each Consultant must disclose financial interests that fit within the disclosure categories assigned to them through the Form 805. A description of the disclosure categories is set forth in the Energy Commission's Conflict of Interest Code at Cal. Code Regs., tit. 20, § 2402.
5. Form 805. Contractor shall:
- a. Provide the CAM with a Fair Political Practices Commission Form 805, Agency Report of Consultant, within 5 days of the Agreement start date. Form 805 is available at: <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Agency%20Reports/805.pdf>.
    - i. The Contractor shall complete Section 2, Firm Information.
    - ii. Under Section 3, Consultant Information, the Contractor shall write the name, job classification and email address for every employee working on Tasks 2-4, along with the date that individual began work on the Agreement.
    - iii. The Contractor shall leave the remaining parts of the Form 805 blank.
  - b. Within 30 days of the Contractor's submittal of the Form 805, the CAM will return the completed Form 805 to the Contractor for use in completing Form 700(s). In the event the Form 805 is not returned by the CAM to the Contractor before an individual's Assuming Office Form 700 is due, the individual should report under the broadest disclosure of the Energy Commission's Conflict of Interest Code at Cal. Code Regs., tit. 20, § 2402 which is Category 1.

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- c. Submit to the CAM an amended Form 805 whenever a new Consultant begins work under the Agreement, or whenever a consultant ceases to perform work under the Agreement, within 5 days after the consultant begins or ceases work.

6. Restrictions on Outside Work.

- a. Prohibition on Participating in or Sharing Information about Energy Commission Funding Opportunities.

Under this Agreement, if the Contractor, subcontractors, or project partners assist the Energy Commission to develop agreements, develop competitive solicitations or score applications, then Contractor, subcontractors, project partners, and their employees are prohibited from participating and agree not to participate (e.g., through development of an application, as an applicant, subcontractor, or match-fund partner), in any Energy Commission solicitation or other funding opportunity that solicits or includes work that is related to work done under this Agreement. Except with prior written permission of the CAM, the Contractor, subcontractors, project partners, and their employees shall not share any non-public information about applicants, applications, solicitations, other funding mechanisms, or any other non-public information related to Energy Commission funding opportunities with any other person or entity.

- b. Separation of Duties and Contractor and Subcontractor Financial Interests  
For the purposes of this Agreement, all Separation of Duties and Contractor and Subcontractor Financial Interests will be handled at the Work Authorization level. As part of the Work Authorization approval process, entities that have and/or don't have a financial interest in, or are likely to have a financial interest in, the building standards measures being developed under the Work Authorization, will be identified to clarify where Separation of Duties is required. The term "financial interest" shall have the same meaning as under the Political Reform Act, Government Code section 87103 and California Code of Regulations, title 2, section 18700.

Where separation of duties is required, Contractors involved will demonstrate to the Energy Commission their ability to establish and maintain organizational separation of duties between employees or subcontractors providing services to the Energy Commission under this Agreement, and other employees and subcontractors serving entities that have a financial interest in and/or are likely to have a financial interest in, the building standards being developed. Upon such demonstration of appropriate measures to prevent any actual or apparent conflict of interest, the Energy Commission will provide approval by executing the Work Authorization.

In general, to ensure the separation of its duties to the Energy Commission under this Agreement, any individual consultant who is



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performing work under this Agreement shall not maintain, negotiate, make arrangements for, or enter into, any other agreement or working relationship with an individual or entity who has a financial interest in, or is likely to have a financial interest in, the building standards being developed under this Agreement.

If such an agreement or working relationship began prior to and exists at the start of the individual's work under this Agreement, the individual shall complete the agreement or working relationship as soon as possible. The Energy Commission may prohibit the individual from performing work under this Agreement during the pendency of a financial interest.

In the event Contractor is uncertain whether a separation of duties is required, Contractor shall submit to the CAM a written description of the relevant details, and shall avoid assigning individuals to perform the activity in question until receiving written approval from the Energy Commission to carry out that activity.

- c. Prohibition on Appearances Before the Energy Commission.  
During the performance of work under this Agreement, all individuals identified as consultants shall not, for compensation, act as an attorney or agent or represent another person or entity who has a financial interest in or is likely to have a financial interest in the building standards being developed under this Agreement, including their employer, in an appearance before or communication to the Energy Commission, whether in person or in writing (such as through comments), for the purpose of influencing an Energy Commission decision on a contract, grant, loan, license, permit, or other entitlement for use.
  
- d. Restrictions Following Agreement Term.  
All individuals identified as consultants are subject to restrictions of the Political Reform Act on post-governmental activity, including but not limited to the one-year ban on representing another entity who has a financial interest in or is likely to have a financial interest in the building standards being developed under this Agreement, in an appearance before or communication to the Energy Commission on any rulemaking, permit, license, contract, or other decision as provided in Government Code section 87406(d). These restrictions apply following the last day that the individual performs work under this Agreement, as documented by the Contractor. Contractor shall ensure that all consultants are aware of these restrictions. Guidance published by the Fair Political Practices Commission on these restrictions can be found at:  
[http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Public%20Officials%20and%20Employees/Leaving\\_State\\_Employment.pdf](http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Public%20Officials%20and%20Employees/Leaving_State_Employment.pdf).

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- e. Exceptional Method Applicant. In limited circumstances, it may be appropriate to permit Contractor to enter into a service agreement with an individual or business who has an exceptional design method approved by the Energy Commission pursuant to California Code of Regulations, Title 24, Part 1, section 10-109 (exceptional method applicant). Contractor may do so subject to the Energy Commission making each of the following findings:
  - i. That the service agreement is in the public interest beyond the marketing interests of the exceptional method applicant, and
  - ii. The Contractor's proposed scope of work is entirely objective and ministerial.

Such service agreement shall provide that the Energy Commission is the beneficiary of the work, and that the Contractor's work will be subject to approval by the Executive Director of the Energy Commission. The Executive Director of the Energy Commission shall set a reasonable maximum amount the Contractor may charge under the service agreement.

- 7. Avoidance of Appearance of Conflict. Contractor acknowledges that in governmental contracting even the appearance of a conflict of interest can be harmful to the interest of the State. Thus, Contractor agrees to refrain from, and shall ensure subcontractors, project partners, and their employees refrain from, any practices, activities, or relationships that appear to conflict with Contractor's obligations under this Agreement. In the event Contractor is uncertain whether the appearance of a conflict of interest may exist, Contractor shall submit to the CAM a written description of the relevant details, and shall avoid the activity in question until receiving written approval from the Energy Commission to carry out that activity.
- 8. Notification of Potential Problems. Contractor shall immediately inform the CAM of any potential problems in compliance with this Exhibit.
- 9. Flow-Down. Contractor shall flow-down the terms in this Exhibit to its subcontractors and project partners.
- 10. Section 8, Notification of Potential Problems, and to the extent applicable, all other terms in this Exhibit G survive the end of this Agreement.