# California Clean Energy Planning Program ATTACHMENT 2 – Terms and Conditions

1. **Documents Incorporated by Reference and Priority**

Incorporated by reference into this agreement are the following documents:

1. Grant Funding Opportunity (GFO) 23-702, the California Clean Energy Planning Program solicitation.
2. Recipient’s application to GFO-23-702.

In case of a conflict between the incorporated documents and the remainder of this Agreement, the rest of the Agreement takes priority.

1. **Budget, Invoices, and Payments**
2. The Energy Commission (CEC) is only obligated to reimburse the Recipient for paid direct labor and fringe benefits costs that are (1) incurred during the Agreement Term; (2) invoiced within the required timeframes of this Agreement; (3) not more than this Agreement’s budget; and (4) reasonable, actual, and allowable expenses under this Agreement.
3. Recipient acknowledges that the funds under this Agreement have a liquidation date of June 30, 2026, a legal timeframe after which the CEC has no authority to pay the funds. In addition, it takes the CEC administrative time to review, approve, work with the Recipient to correct any errors in, and request the State Controller’s Office to pay invoices. Accordingly, Recipient acknowledges that if it does not submit accurate invoices by March 30, 2026, for all amounts due under the Agreement, it risks not receiving payment, and relinquishes all rights to such payments should the CEC not pay it by the liquidation date. Recipient acknowledges that time is of the essence in invoicing by March 30, 2026, for all amounts due under this Agreement.
4. The Recipient may request payment from the CEC at any time during the term of this Agreement for completed project work, but no more frequently than monthly. Recipient must use the CAM provided template invoice spreadsheet.
5. The template invoice spreadsheet must identify the employee’s name, direct labor and fringe benefits rates, and hours worked to be included as a reimbursable expense. For Category 1 projects, tribal member(s) will only be reimbursed at a maximum rate of $50 per hour.
6. The CEC shall retain 10 percent of any payment request. The Recipient must submit a completed payment request requesting release of the retention by March 30, 2026. The CAM will review the project and, when satisfied that the terms of the Agreement have been fulfilled, will authorize release of the retention.
7. **Certification**

By signing this Agreement, Recipient hereby certifies that all funds received pursuant to this Agreement shall be spent exclusively for its California Clean Energy Planning Program project in compliance with this Agreement. The Recipient further certifies that it shall comply with all applicable laws in performing this Agreement.

1. **Deliverables**

“Deliverables” are any tangible item specified for delivery to the CEC in Attachment 1 of this Agreement, such as reports and summaries. The Recipient will submit all deliverables identified in Attachment 1 to the Commission Agreement Manager (CAM), in the manner and form specified in Attachment 1. The CEC owns all deliverables identified in the Scope of Work.

If the CAM reasonably determines that a deliverable is incomplete or inadequate given its description and intended use as described in this Agreement, the CAM may work with the Recipient to cure any deficiency. Until the CAM reasonably determines that the deliverable is adequate, and without prejudice to any of the CEC’s other remedies, the CAM may refuse to authorize payment for the deliverable and any subsequent deliverables that rely on or are based upon the deliverable.

1. **Stop Work**

CEC staff may, at any time by written notice to the Recipient, require the Recipient 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, out of scope work, project delays, and misrepresentations.

Upon receipt of a stop work order, the Recipient must immediately take all necessary steps to comply with the order and to stop the incurrence of costs allocable to the CEC. The Recipient may resume the work only upon receipt of written instructions from CEC staff.

1. **Subcontracting**

The Recipient is responsible for handling all contractual and administrative issues arising out of or related to any subcontracts it enters into for the performance of this Agreement. Nothing contained in this Agreement or otherwise creates any contractual relation between the CEC and any subcontractors, and no subcontract may relieve the Recipient of its responsibilities under this Agreement. The Recipient’s obligation to pay its subcontractors is an independent obligation from the CEC’s obligation to make payments to the Recipient.

Subcontracts funded in whole or in part by this Agreement must include language conforming to the following provisions:

* 7. Nondiscrimination Statement of Compliance
* 8. Drug Free Workplace Certification
* 10. Accounting and Audit
* 11. Public Works
* 13. Indemnification
* 18. Access to Sites and Records
* 19. Due Diligence
* Survival of the following provisions:
  + 10. Accounting and Audit
  + 13. Indemnification
  + 18. Access to Sites and Records

Subcontracts funded in whole or in part by this Agreement must also include the following:

* A clear description of the products or services to be procured or performed.
* A budget and timeline.
* Provisions that allow for administrative, contractual, or legal remedies in instances where subcontractors breach contract terms.
* Provisions for termination by the Recipient.
* A statement that further assignments will not be made to any third or subsequent tier subcontractor.

1. **Nondiscrimination Statement of Compliance**

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

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

The Recipient shall include the nondiscrimination and compliance provisions of this section in all subcontracts to perform work under this Agreement.

1. **Drug-Free Workplace Certification**

By signing this Agreement, the Recipient certifies under penalty of perjury under the laws of the State of California that it will comply and will ensure its subcontractors will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.). In addition to any other rights and remedies available to the CEC, failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both, and the Recipient may be ineligible for any future state awards if the CEC determines that any of the following has occurred: (1) the Recipient has made false certification, or (2) violates the certification by failing to carry out the requirements of the Act.

1. **Americans With Disabilities Act**

By signing this Agreement, the Recipient assures the CEC that it complies with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. Section 12101, et seq.), which prohibits discrimination on the basis of disability, as well as applicable regulations and guidelines issued pursuant to the ADA.

1. **Accounting and Audit**

The Recipient will keep separate, complete, and correct accounting of the costs involved in completing the Agreement. The Recipient agrees that the CEC, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. The Recipient agrees to maintain such records for possible audit for a minimum of three (3) years after the Agreement ends in any way. The Recipient agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Recipient agrees to include a similar right of the CEC, the Bureau of State Audits, or their designated representative, to audit records and interview staff in any subcontract related to performance of this Agreement. These rights and responsibilities are in addition to and not restrictive of those in Section 18. Access to Sites and Records.

1. **Public Works**

The Recipient is responsible for complying with all applicable laws, which can include public works requirements under the Labor Code. Recipient acknowledges acceptance of Agreement funds may trigger Public Works laws (Labor Code Section 1720 et seq.), a requirement of which is to pay prevailing wages, applying to its project. If the project is public works then it is subject to compliance monitoring and enforcement by the Department of Industrial Relations. By signing this Agreement, Recipient certifies that it shall comply with all applicable Public Works laws and requirements.

1. **Amendment**

No amendment or variation of this Agreement shall be valid unless made in writing and signed by both the Recipient and CEC.

1. **Indemnification**

To the extent allowed under California law, the Recipient will indemnify, defend, and hold harmless the state (including the CEC) and state officers, agents, and employees from any and all claims and losses in connection with the performance of this Agreement.

1. **Governing Law**

This Agreement is governed by the laws of the State of California as to interpretation and performance.

1. **Independent Capacity**

In the performance of this Agreement, Recipient and its agents, subcontractors, and employees will act in an independent capacity and not as officers, employees, or agents of the CEC or the State of California.

1. **Severability**

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

1. **Waiver**

No waiver of any breach of this Agreement constitutes waiver of any other breach. All remedies in this Agreement will be taken and construed as cumulative, meaning in addition to every other remedy provided in the Agreement or by law.

1. **Access to Sites and Records**

The Recipient shall provide during the Agreement and for at least 3 years after the Agreement ends in any way to the CEC or its representatives reasonable access to all project sites and to all records related to this Agreement. These rights and responsibilities are in addition to and not restrictive of those in Section 10 Accounting and Audit.

1. **Due Diligence**

The Recipient must take timely actions that, taken collectively, move this project to completion. The CAM will periodically evaluate the project schedule for completion of Scope of Work tasks. If the CAM determines that: (1) the Recipient is not diligently completing the tasks in the Scope of Work; or (2) the time remaining in this Agreement is insufficient to complete all project tasks by the Agreement end date, the CAM may recommend that this Agreement be amended or terminated, and the CEC may amend or terminate this Agreement without prejudice to any of its other remedies.

1. **Termination Without Cause**

The CEC may terminate this Agreement without cause upon giving written notice to the Recipient. In this event, the Recipient will use all reasonable efforts to mitigate its expenses and obligations.

1. **Survival of Terms**

The following terms survive this Agreement no matter how the agreement ends, such as by its own terms or via termination:

* 10. Accounting and Audit
* 11. Public Works
* 13. Indemnification
* 14. Governing Law
* 16. Severability
* 17. Waiver
* 18. Access to Sites and Records