STATE OF CALIFORNIA

LOAN AGREEMENT

CEC-142 (05/10)

CALIFORNIA ENERGY COMMISSION

BORROWER	AGREEMENT NUMBER XXX-XX-XXX
ADDRESS	AGREEMENT TERM / / to / / The effective date of this Agreement is the date the California Energy Commission signs the Agreement. No work is authorized, or shall begin until the California Energy Commission signs the Agreement. See the signature date below for effective start date.

The parties agree to comply with the terms and conditions of the following Exhibits which are by this reference made a part of the agreement.

Exhibit A – KTEP Loan Agreement	Page(s): 10
Exhibit A – Attachment 1 – Budget Detail/Project Cost and Savings	Page(s): 02
Exhibit B – Promissory Note	Page(s): 03
Exhibit C – Contacts	Page(s): 01
Exhibit Z – Federal Award Terms and Conditions	Page(s): 33

REIMBURSABLE AMOUNT	$ 0
MATCH SHARE	$ 0
TOTAL	$ 0

The undersigned parties have read the attachments to this agreement and will comply with the standards and requirements contained therein.

CALIFORNIA ENERGY COMMISSION		RECIPIENT	
AUTHORIZED SIGNATURE	DATE	AUTHORIZED SIGNATURE	DATE
NAME Tatyana Yakshina	PHONE (916) 827-9294	NAME	PHONE
TITLE Contracts, Grants and Loans Office Manager			
CALIFORNIA ENERGY COMMISSION ADDRESS 715 P Street, MS-18, Sacramento, CA 95814			

EXHIBIT A

K-12 ENERGY EFFICIENCY PROGRAM (KTEP) LOAN AGREEMENT

This Loan Agreement (the “Agreement”) is entered into as of the date it is executed by both parties hereto, between the California Energy Resources Conservation and Development Commission (the “Energy Commission”) and the [Name of Borrower] (the “Borrower”, also “Subrecipient”) located in [location], CA.

1. STATUTORY AUTHORITY AND LOAN

A. The Energy Commission has approved the Borrower’s loan application dated Application date which is not attached but is expressly incorporated by reference herein.

B. Subject to the terms, covenants, conditions, and including Special Conditions (if applicable) contained herein, and the Budget Detail/Summary of Loan Project Cost and Savings attached as Exhibit A, Attachment 1 hereto to the extent it modifies the Borrower’s loan application, the Energy Commission shall make a loan to the Borrower (the “Loan”) in the amount of [spell out dollar amount] ($xx) evidenced by a Promissory Note (the “Promissory Note”) for loan number xxx-xx-xxx attached hereto as Exhibit B.

2. PURPOSE

The Borrower agrees to expend all funds disbursed pursuant to this Agreement only for the purposes and in the amounts set forth in Exhibit A, Attachment 1. Any other use of funds disbursed hereunder shall require prior written approval by the Energy Commission.

3. AGREEMENT CONTINGENT ON FUNDING AVAILABILITY

Without limitation to any other of CEC’s rights and remedies, if any of the federal funding for the KTEP **program become unavailable; are reduced; or are deleted, for any reason including but not limited to DOE’s failure to provide sufficient funds to reimburse the** CEC **for the** Borrower’s **work** funded by this Agreement**, CEC may in its so**le discretion **have the option to either: 1) cancel this Agreement with no liability occurring to the CEC; 2) offer an Agreement amendment to the** Borrower **to reflect a reduced amount of funds**, or 3) pause the project to assess the impacts of federal funding uncertainty**. Should CEC choose to cancel**, amend, or pause **this Agreement, CEC shall have no liability to pay any funds whatsoever to the** Borrower**, any** sub-s**ubrecipients, and any** subcontractors**; nor to furnish any other consideration under this Agreement;**

and the Subrecipient shall not be obligated to perform any provisions of this Agreement.

4. **LOAN DISBURSEMENT SCHEDULE**

A. The Energy Commission agrees to disburse funds to the Borrower upon the Borrower's execution of the attached Promissory Note and required supplemental documents, including invoices as required in Section 4.B below.

B. Loan funds shall be disbursed on a reimbursement basis based on invoices submitted by Borrower in a form approved by the Energy Commission. Backup documentation for actual expenditures (such as timecards, vendor invoices, etc.) and proof of payment must be provided to substantiate the request. Energy Commission staff will approve invoices only after verifying requested amounts against backup billings and determining that expenses are appropriate and used for the authorized purposes of this Loan. For executed Agreements, invoices for expenses incurred during the Agreement Term are eligible for reimbursement.

C. All invoices must be submitted within sixty (60) days after Project completion.

D. The final ten percent (10%) of the Loan amount will be withheld as retention until the final report is received from the Borrower and the Commission Agreement Manager ("CAM") determines the Project has been satisfactorily completed.

5. **LOAN REPAYMENT AND INTEREST**

All funds disbursed hereunder, shall be repaid to the Energy Commission in accordance with the terms of the Promissory Note. Payment shall be due at the time of semiannual scheduled Loan repayment installments to the Energy Commission.

6. **TERM**

A. The effective date of this Agreement shall be the date on which it has been executed by both parties hereto. No work is authorized or shall begin until the Energy Commission signs the Agreement.

B. The Borrower agrees to complete performance of its obligations under this Agreement within the Agreement term stated in this Agreement.

7. PREPAYMENT

The Borrower shall have the right to prepay all or any part of the amount of this Loan at any time without penalty.

8. PROMISSORY NOTE

In order to evidence its debt to the Energy Commission hereunder, the Borrower agrees to, contemporaneously with the execution of this Agreement, execute and deliver to the Energy Commission the Promissory Note (attached as Exhibit B hereto).

9. ACCOUNTS, AUDITS, AND RECORDS

A. The Borrower agrees to establish on its books a separate account for this Loan. This account shall be maintained as long as the Loan obligation remains unsatisfied.

B. The Borrower further agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures drawn on said account for three (3) years after this Loan is repaid in full unless the Energy Commission requests a longer retention period.

C. The Borrower further agrees to utilize a system by which all expenditures from said account will be authorized and authenticated.

D. The Borrower further agrees to allow the Energy Commission or any other agency of the State of California (the "State") or their designated representatives, on written request, to have reasonable access to, and the right of inspection of, all records that pertain to said account or the Project. The Borrower also agrees to submit to an independent audit, if requested by the Energy Commission, at the expense of the Borrower. Borrower agrees to maintain all such records for a minimum of three years after this Loan is repaid in full unless the Energy Commission notifies the Borrower, prior to the expiration of such three-year period, that a longer period of record retention is necessary.

E. The requirements and rights described in this Section 9 are in addition to any requirements and rights described in Exhibit Z, including but not limited to Audit rights described in Exhibit Z, Subpart A Section 10, and Subpart B, Sections 2, 3.b, 18, 23 and 26.

10. **SOURCE OF REPAYMENT; OPERATION OF PROJECT**

A. Semiannual payments due to the Energy Commission under this Agreement shall be made from savings in energy costs or other legally available funds as the Borrower chooses. If the Borrower is a county, city, town, township, board of education, or school district, the Borrower agrees that the amount of the semiannual Loan repayment shall not be raised by the levy of additional taxes and shall not be an obligation against tax revenues, but shall be obtained either from savings in energy costs resulting from the subject energy efficiency measures or other legally available funds as the Borrower chooses.

B. Energy cost savings as determined by the Energy Commission are based on energy usage and serving utility rate schedules at the time the Loan application is submitted, and the information and data contained in the Borrower's loan application and Qualifying Energy Audit. The following will not affect the Energy Commission's initial finding of energy cost savings, and are not a basis for claiming a lack of energy savings: a) changes in energy use and/or rate schedules which occur after submittal of the Loan application, b) deviations in the Project work scope from what was approved by the Energy Commission, c) changes in the Borrower's facility and/or equipment which occur after submittal of the Loan application, including, but not limited to maintenance, operations, schedules, employees and facility alterations and expansions, d) deviations, omissions or errors found in the Loan application and Qualifying Energy Audit after submittal of the Loan application. The Borrower is responsible for ensuring the accuracy of the information contained in its Loan application and Qualifying Energy Audit. In the event annual energy cost savings resulting from the Project, as determined by the Energy Commission, fail to equal or exceed the amount due under this Agreement, this Agreement may be renegotiated to assure that the repayment amount does not exceed the actual energy savings or avoided costs resulting from the Project, and the Promissory Note will be revised accordingly. In no event, however, will the number of semiannual installments payable hereunder and under the Promissory Note exceed thirty.

C. The Borrower shall obtain and maintain in its records any and all permits and licenses required to install or operate the Project and shall comply with all local, state, and federal laws, rules and codes concerning the Project. The Borrower shall maintain the Project in good working order for the duration of the Agreement term and shall ensure that staff members are provided appropriate training on the operation and maintenance of the Loan Project.

D. The Borrower agrees to provide the Energy Commission with the following information for five years following completion of the Loan Project, unless the Energy Commission requests a longer period: (1) the annual computation of energy cost savings for the most recent fiscal year, calculated in the manner and provided in the format prescribed by the Energy Commission; and (2) any information or change in assumptions or operations which might affect the Energy Commission's initial determination of energy savings.

E. The Borrower authorizes any official or agent of the Energy Commission or the State to conduct physical inspections of the Loan Project site(s) before the commencement; during construction, installation and implementation of the Loan Project; and at any time prior to the complete repayment of the Loan. In each agreement with a sub-subrecipient or subcontractor entered into that supplies goods and services to install, conduct, or operate the Loan Project, including management services, the Borrower shall include terms which allow any officer or agent of the Energy Commission or the State access to the Loan Project site and to any books, documents, or records directly relevant to the Loan Project.

F. If, prior to final repayment of the Loan, the Borrower sells the equipment installed with the proceeds of the Loan or sells the building, facility or system in which the Loan Project has been implemented, then the Borrower shall apply the sale proceeds to repay any remaining balance due under this Agreement in full at the time of such sale. The Borrower shall notify the Energy Commission within five business days of the date on which the Borrower enters into an agreement to effect such transaction. The Borrower shall repay the Energy Commission within 30 calendar days of receiving an invoice from the Energy Commission for the balance due.

G. The Borrower covenants to take such action as may be necessary to include all payments due hereunder in its annual budget and to make the necessary annual appropriations for all such payments. The obligation of the Borrower to make such payments shall be limited to the savings realized by the Borrower as a result of implementing the Loan Project.

11. DEFAULT

A. The Borrower's failure to comply with any of the terms of this Agreement shall constitute a breach of this Agreement and an event of default. In such case, the Energy Commission may declare this Agreement to have been breached and be released from any further performance hereunder.

B. In the event of any default or breach of this Agreement by the Borrower, the Energy Commission, without limiting any of its other legal rights or remedies, may, to the extent permitted by law, declare the Promissory Note evidencing this Loan to be immediately due and payable.

12. TERMINATION

A. With Cause

The Energy Commission may, at its option, terminate this Agreement with cause in whole or in part, at any time prior to the funding of the Loan, upon giving five (5) days advance notice in writing to the Borrower. "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) Significant change in Energy Commission or State policy such that the work or product being funded would not be supported by the Energy Commission; or

3) Reorganization to a business entity unsatisfactory to the Energy Commission.

B. Without Cause

The Energy Commission may, at its option, terminate this Agreement without cause in whole or in part, at any time prior to the funding of the Loan, upon giving thirty (30) days advance notice in writing to the Borrower.

13. REPORTING

A. Progress reports are due each calendar quarter until Loan Project completion. At a minimum, Borrower shall submit progress reports in accordance with the following schedule:

PROGRESS REPORT SCHEDULE

For the Period Covering	**Report Due Date**
January 1 through March 31	April 5th
April 1 through June 30	July 5th
July 1 through September 30	October 5th
October 1 through December 31	January 5th

B. A final report is due no later than (sixty) 60 days after Loan Project completion.

C. The Energy Commission will not process an invoice unless the Borrower's report submittals are up to date.

D. If requested by the Energy Commission, Borrower shall submit, within ten (10) days after the Energy Commission's written request, a status report on its activities to date, pursuant to this Agreement.

E. Reports shall be in a format as determined by the Energy Commission.

F. The Borrower shall submit reports regarding energy savings as described in Section 10.D above.

14. **GENERAL TERMS**

A. Ownership of Equipment and Material. All equipment and material acquired under this Agreement shall become the property of the Borrower at time of purchase. Also see Exhibit Z for additional requirements regarding equipment, including but not limited to, Subpart A Sections 20, 28, 38 and Subpart B, Sections 7, 9 and 10. The Borrower shall obtain and maintain in its records a written waiver of all claims, other than those previously made in writing and still unsettled, from each sub-subrecipient and subcontractor who supplies goods and services, including management services, in connection with the Loan Project.

B. Independent Capacity. The Borrower, and the agents and employees of the Borrower, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the Energy Commission or the State of California.

C. Assignment. Without the written consent of the Energy Commission, this Agreement is not assignable or transferable by the Borrower either in whole or in part. The Energy Commission may assign its rights under this Agreement for security purposes, and in such event the assignee of this Agreement, including the bond trustee of any bonds which may be secured by repayment of this Loan, shall be entitled to enforce the provisions hereof and shall be a third party beneficiary of this Agreement.

D. Time of the Essence. Time is of the essence in this Agreement. Borrower is required to take timely actions which, taken collectively, move to completion of the purpose for which this Loan was awarded. The CAM will periodically evaluate the progress toward completion. If the CAM determines that the Borrower is not progressing toward completion within one (1) year after the effective date of this Agreement, the CAM may, without penalty or prejudice to any of the Energy Commission's other remedies, terminate this Agreement.

E. Amendment. No amendment or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

F. Severability. In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

G. Governing Law and Venue. This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California. Venue shall be in Sacramento County.

H. Non-discrimination. During the performance of this Agreement, the Borrower and its sub-subrecipients and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and family care leave. The Borrower and its sub-subrecipients and subcontractors shall ensure the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Borrower and its sub-subrecipients and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (af) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (af), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this agreement by reference and made a part hereof as if set forth in full. The Borrower and its sub-subrecipients and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. The Borrower and its sub-subrecipients and subcontractors shall include the nondiscrimination and compliance provisions of this clause in all sub-subrecipient agreements and subcontracts to perform work under this Agreement.

I. Borrower Authorization. The Borrower certifies it has full power and authority to enter into this Agreement, and this Agreement has been duly authorized, executed and delivered by the Borrower. The Borrower acknowledges the resolution of its governing body or other official action authorizing it to enter into this Agreement. The Borrower also authorizes such further acts as are necessary, including execution of the Promissory Note, to implement and further the intent of this Agreement.

J. Prevailing Wage. The Borrower shall comply with Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code relating to the payment of prevailing wage for work performed on the Loan Project.

15. NOTICE

Any notice required to be given to the Energy Commission hereunder shall be sent to the person and address listed under Legal Notices in Exhibit C, Contacts, or at such other address as the Energy Commission may designate in writing to the Borrower. Any notice required to be given to the Borrower hereunder shall be sent to the address shown for Borrower in this Agreement, or at such other address as the Borrower shall designate in writing to the Energy Commission. Notice to either party may be given using the following delivery methods: U.S. mail, overnight mail, or personal delivery, providing evidence of receipt, to the respective parties identified in this Agreement. Delivery by fax or e-mail is not considered notice for the purposes of this Agreement. 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 24 hours, or whenever the next business day occurs.

15. DEFINITIONS

- ***Agreement Term*** means the length of this Agreement, as specified on the Agreement signature page.
- ***Borrower*** means the entity that executed this Agreement with the CEC. Also referred to as “Subrecipient”.
- ***CAM*** means Commission Agreement Manager.
- ***CEC*** means California Energy Commission. Also referred to as “Recipient”.
- ***Loan Project*** means the entire effort undertaken and planned by the Subrecipient and consisting of the work funded in whole or in part by this Agreement.
- ***State*** means the state of California and all California state agencies within it, including but not limited to commissions, boards, offices, and departments.

- ***Sub-Subrecipient*** means a person or entity that receives grant funds directly from the Subrecipient and is entrusted by the Subrecipient to make decisions about how to conduct some of this Agreement's activities. A Subrecipients role involves discretion over grant activities and is not merely just selling goods or services.

- ***Subcontract*** means a legal instrument by which the Subrecipient conducts procurement transactions under this Agreement. For additional information on subrecipient and contractor determinations, see 2 CFR §200.331.

- ***Subcontractor*** means an entity that receives a subcontract.

EXHIBIT A-1
BUDGET DETAIL/PROJECT COST AND SAVINGS

This Loan is made to the [Insert Recipient Name] ("Borrower", also "Subrecipient") for an energy savings Loan Project. The Loan Project consists of the energy efficiency measures listed in Table 1 below to be installed at the [Describe Facilities] in the [Insert City(ies) and County(ies) Where Measures to be Installed], CA.

The Table below summarizes the estimated Loan Project cost(s), saving(s) and simple payback(s) for the Loan Project.

TABLE 1: Summary of Project Cost and Savings:

Energy Efficiency Measures	Estimated Total Project Cost	Energy Commission Loan	Estimated Annual Energy Cost Savings	Simple Payback* (Years)
[Insert EEM #1. Add additional rows as necessary]	[Insert EEM Cost]	$00.00	[Insert Cost Savings]	[Insert EEM Payback]
TOTALS:	[Insert Total Project Cost]	[Insert Loan Amount]	[Insert Total Annual Energy Cost Savings]	[Insert Overall Payback]

*The simple payback is based on the Loan amount.

The Borrower shall implement each measure listed in Table 1.

If the Borrower does not complete one or more of the measures or deviates from the quantities and specifications listed in Table 1, the Commission Agreement Manager will calculate the maximum Loan amount supported by the Loan Project. The Loan amount will be determined by the lesser of: 1) multiplying the annual energy cost savings by [Insert Maximum Simple Payback Period]; 2) total Loan Project costs; or 3) approved Loan amount.

The Borrower shall notify the Commission Agreement Manager in writing if Borrower expects any information in Table 1 to change. Energy Commission staff will advise

Borrower of the procedure to approve any changes. Written documentation is required for any changes to the information included in this Attachment.

If the Borrower has received disbursements exceeding the maximum Loan amount supported by the Loan Project, the Borrower shall refund the difference to the Energy Commission within 30 days of notification.

EXHIBIT B

PROMISSORY NOTE

LOAN NUMBER:	**[Insert Loan #]**
PRINCIPAL AMOUNT:	**$[Insert Loan Amt]**
INTEREST RATE:	**[Interest Rate]%**

1. For value received, the undersigned, (hereinafter referred to as the "Borrower" or "Subrecipient"), promises to pay to the order of the State of California, Energy Resources Conservation and Development Commission (hereinafter referred to as the "Energy Commission"), at its principal place of business at 715 P Street, Sacramento, California 95814, or at such other place as the Energy Commission may designate the principal sum of [Spell Out Loan Amount] dollars ($[Insert Loan Amount]) or such lesser amount as shall equal the aggregate amount disbursed to the Borrower by the Energy Commission pursuant to the above-referenced Loan Agreement (the "Agreement") between the Borrower and the Energy Commission, together with interest thereon at the rate of 0% percent per annum on the unpaid principal, computed from the date of each disbursement to the Borrower. Principal, together with interest thereon, is due and payable in semiannual installments as specified in the Estimated Amortization Schedule, attached hereto as Exhibit B, Attachment 1 and as amended in the Final Amortization Schedule, beginning on or before December 22 of the fiscal year following the year in which the Project is completed and continuing thereafter on each June 22 and December 22 until said principal and interest shall be paid in full. The Final Amortization Schedule, and any amended Final Amortization Schedule(s), are not attached but are expressly incorporated by reference herein.

2. Payments received will be first applied to billed interest, if any, and the balance, if any, to principal. If all principal is repaid, the balance is applied to accrued interest.

3. Payment of any scheduled installment received within thirty (30) days of the due date shall be considered to have been received on the due date.

4. Payment of any scheduled installment received more than thirty (30) days after the due date shall be considered late.

5. The Borrower may prepay this Promissory Note in full or in part, without penalty.

6. The Borrower covenants to take such action as may be necessary to include all payments due hereunder in its annual budget and to make the necessary annual appropriations for all such payments. The obligation of the Borrower to make such payments shall be limited to the savings realized by the Borrower as a result of implementing the Loan Project.

7. If any installment is not paid within thirty (30) days after its due date, the Energy Commission, at its option, may require the Borrower to pay a late charge equal to five percent (5%) of the amount of the installment or Five Dollars ($5.00), whichever is greater.

8. On the occurrence of any event of default, the Energy Commission, at its sole election and without limiting any of its other legal rights or remedies, may, to the extent permitted by law, declare all or any portion of the principal and accrued interest on this Promissory Note to be immediately due and payable and may proceed at once without further notice to enforce this Promissory Note according to law.

9. Each of the following occurrences shall constitute an event of default:

   A. Failure of the Borrower to repay any principal or interest when due under the terms of this Promissory Note;

   B. Termination of the Agreement pursuant to the terms thereof or breach by the Borrower of any terms of said Loan Agreement;

   C. Failure of the Borrower to undertake in a timely way the express and implied activities for which said Agreement has been executed;

   D. Failure of the Borrower to obtain prior written Energy Commission approval before undertaking a change in the scope of the activities for which said Agreement has been executed; or

   E. Occurrence of: (1) the Borrower becoming insolvent or bankrupt or being unable or admitting in writing its inability to pay its debts as they mature or making a general assignment for the benefit of or entering into any composition or arrangement with creditors; (2) proceedings for the appointment of a receiver, trustee, or liquidator of the assets of the Borrower or a substantial part thereof, being authorized or instituted by or against the Borrower; or (3) proceedings under any bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law, or any jurisdiction being authorized or instituted against the Borrower.

10. No delay or failure of the Energy Commission in the exercise of any right or remedy hereunder or under any other agreement which secures or is related hereto shall affect any such right or remedy, and no single or partial exercise of any such right or remedy shall preclude any further exercise thereof, and no action taken or omitted by the Energy Commission shall be deemed a waiver of any such right or remedy.

11. Any notice to the Borrower provided for in this Promissory Note shall be given by mailing such notice by certified mail, return receipt requested, addressed to the Borrower at the address stated in the Agreement, or to such other address as the Borrower may designate by notice to the Energy Commission. Any notice to the Energy Commission shall be given by mailing such notice by certified mail, return receipt requested, to the Energy Commission at the address stated in the Agreement, or at such other address as may have been designated by notice to the Borrower.

12. If suit is brought to collect any part of this Promissory Note, the Energy Commission shall be entitled to collect all reasonable costs and expenses of said suit and any appeal therefrom, including reasonable attorney's fees.

13. This Promissory Note shall be binding upon the Borrower and its permitted successors and assigns and upon the Energy Commission and its permitted successors and assigns. Without the written consent of the Energy Commission, this Promissory Note is not assignable or transferable by the Borrower either in whole or in part. The Energy Commission may assign its rights under this Promissory Note for security purposes, and in such event the assignee of this Promissory Note, including the bond trustee of any bonds which may be secured by repayments of this Promissory Note, shall be entitled to enforce the provisions hereof and shall be a third-party beneficiary of this Promissory Note.

14. This Promissory Note shall be construed and enforced in accordance with the laws of the State of California.

Insert Recipient Name ______________________
BORROWER

____
PRINTED NAME OF AUTHORIZED REPRESENTATIVE

____
AUTHORIZED SIGNATURE

____
TITLE

____
DATE

EXHIBIT C

CONTACTS

Energy Commission Agreement Manager: (Name) California Energy Commission 715 P Street, MS - 23 Sacramento, CA 95814 Phone: (916) Fax: (916) e-mail:	**Borrower Project Manager:** (Name) (Contractor Name) Address Phone: Fax: e-mail:
Energy Commission Agreement Officer: California Energy Commission 715 P Street, MS - 18 Sacramento, CA 95814 Phone: (916) 654-5131 Fax: e-mail:	**Borrower Administrator:** (Name) (Contractor Name) Address Phone: Fax: e-mail:
Invoices, Progress Reports and Non-Confidential Deliverables to: California Energy Commission Accounting Officer Email PDF invoices and reports to invoices@energy.ca.gov	**Borrower Accounting Officer:** (Name) (Contractor Name) Address Phone: Fax: e-mail:
Energy Commission Legal Notice: Loans Manager 715 P Street, MS-18 Sacramento, CA 95814-5512 Phone: Fax: e-mail:	**Borrower Legal Notice:** (Name) (Contractor Name) Address Phone: Fax: e-mail:

EXHIBIT Z

FEDERAL AWARD TERMS AND CONDITION

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Subpart A. Award Specific Provisions

1. **Purpose**

   The purpose of this exhibit is to provide the federal terms and conditions for California Energy Commission's (CEC) Award to Subrecipient under this Agreement. This Award is made pursuant to the Section 40502 Energy Efficiency Revolving Loan Fund Capitalization Loan Program (EERLF) (Program) as authorized under Section 40502 of the Bipartisan Infrastructure Law.

2. **Summary of Award**

   Federal Award Identification Information (2 CFR §200.332)

Criteria	**Provided Information**
Name of Federal awarding agency	U.S. Department of Energy or DOE
Name of Recipient /pass-through entity, and contact information for awarding official of the Recipient	California Energy Commission or CEC
Name of Subrecipient (also "Borrower")	
Subrecipient's unique entity identifier (DUNS)	
Federal award identification number (FAIN)	
Federal Award Date of award to the Recipient by the Federal agency	
Subaward period of performance start and end date	
Amount of Federal funds obligated by this action by the pass-through entity to the Subrecipient	
Total amount of Federal funds obligated to the Subrecipient by the pass-through entity including the current obligation	
Total amount of the Federal award committed to the Subrecipient by the pass-through entity	
Federal award description as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA)	
Assistance Listings number and Title; the pass-through entity must identify the dollar amount made available under each Federal award and the Assistance Listings Number at time of disbursement;	
Identification of whether the award is research and development (R&D)	
Indirect cost rate for Federal award (including if the application of the de minimis rate per §200.414 Indirect (F&A) costs)	[refer to Sub's grant application]

3. **Resolution of Conflicting terms**

In the event of any conflict in the terms of this Agreement, this Exhibit will take precedence.

4. **Documents Incorporated by Reference**

The following documents are hereby incorporated by reference:

a. Award Agreement between the U.S. Department of Energy (DOE) and CEC, Award No. DE-SE0010327 (DOE Award).

b. Public Law 117-58, Bipartisan Infrastructure Law (BIL).

c. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR part 200 as amended by 2 CFR part 910, located at http://www.eCFR.gov.

d. The Funding Opportunity Announcement (FOA) for this Program, located at https://www.fedconnect.net/FedConnect/default.aspx?ReturnUrl=%2ffedconnect%2f%3fdoc%3dDE-FOA-0002736%26agency%3dDOE&doc=DE-FOA-0002736&agency=DOE.

e. The standard DOE financial assistance intellectual property provisions applicable to various types of recipients, located at: https://energy.gov/gc/standard-intellectual-property-ip-provisions-financial-assistance-awards.

f. The National Policy Assurances, located at: http://www.nsf.gov/awards/managing/rtc.jsp and https://www.energy.gov/management/articles/national-policy-assurances-be-incorporated-award-terms.

g. Research Terms and Conditions and the DOE Agency Specific Requirements at http://www.nsf.gov/bfa/dias/policy/rtc/index.jsp (if the Award is for research and the Award is to a university or non-profit).

5. **Funding Restrictions**

Funding is contingent upon the availability of funds appropriated by Congress for the purpose of this program and the availability of future-year budget authority.

6. **Flow Down Requirements**

a. Subrecipient must require inclusion in all lower tier subrecipient or subcontract agreements, all federal award terms and conditions in 2 CFR part 200 as amended by 2 CFR part 910 as set forth in 2 CFR 200.101 and ensure strict compliance.

b. Subrecipient must require inclusion in all lower tier subrecipient or subcontract agreements all applicable Intellectual Property provisions and National Policy Assurances incorporated by reference in Subpart A.3.

c. Subrecipient must require inclusion in all lower tier subrecipient or subcontract agreements, all other requirements as applicable in this Exhibit or elsewhere in the Agreement.

7. **CEC and Federal Involvement**

a. Subrecipient may be required to participate in periodic review meetings with SCEP to assess work performance under the Award and the timely achievement of technical milestones and deliverables. SCEP will determine the frequency of review meetings and select the day, time, and location of each review meeting. Subrecipient may be required to provide an overview of work performed under this Agreement, including but not limited to:

i. Technical progress compared to the Milestone Summary Table stated in Attachment 1 of the Award.

ii. Subrecipient's actual expenditures compared to the approved budget in Attachment 3 to this Award.

iii. Other subject matter specified by the DOE Technology Manager/Project Officer.

b. Subrecipient must notify CEC, who in turn will notify SCEP, in advance of scheduled tests and internal project meetings that would entail discussion of topics that could result in major changes to the baseline project technical scope/approach, cost, or schedule. Upon request by CEC or SCEP, Subrecipient must provide CEC and SCEP with reasonable access (by telephone, webinar, or otherwise) to the tests and project meetings.

c. CEC and SCEP's authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. Subrecipient must provide, and must require any lower tier subrecipients to provide, reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

d. Subrecipient must provide, and must require any lower tier subrecipients to provide, any information, documents, site access, or other assistance requested by CEC SCEP for the purpose of federal stewardship or substantial involvement.

8. **Reporting Requirements**

a. The federal reporting requirements are described in the Federal Assistance Reporting Checklist, Attachment 2 of the DOE Award.

b. CEC's noncompliance with reporting requirements may result in withholding of future payments, suspension, or termination of the Award, and withholding of future federal awards.

c. Subrecipient must assist CEC with meeting all federal reporting requirements by maintaining sufficient records to substantiate the required information and, upon request by CEC or DOE, provide information for reporting purposes within the timeframe requested. Failure to by Subrecipient to comply with this requirement is a material breach of this Agreement.

d. Scientific and Technical Information (STI) generated under this Award will be submitted to DOE via the Office of Scientific and Technical Information's Energy Link system. STI submitted under this Award will be disseminated via DOE's OSTI.gov website subject to approved access limitations. Citations for journal articles produced under the Award will appear on the DOE PAGES website. STI submitted to E-Link must not contain any Protected Personal Identifiable Information (PII), limited rights data (proprietary data), classified information, information subject to export control classification, or other information not subject to release.

9. **Stewardship**

CEC and the Office of State and Community Energy Programs (SCEP) within DOE will exercise normal stewardship in overseeing the project activities performed under this federal grant agreement. Stewardship Activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing technical assistance and/or temporary intervention in unusual circumstances to address deficiencies that develop during the project; assuring compliance with terms and conditions; and reviewing technical performance after project completion to ensure that the project objectives have been accomplished.

10. **Site Visits**

The CEC and DOE's authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. The Subrecipient must provide, and must require its lower tier subrecipients to provide, reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the United States Government and CEC representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

11. **Audits**

a. Subrecipient and its lower tier subrecipients, contractors, and subcontractors must provide any information, documents, site access, or other assistance requested by DOE or Federal auditing agencies (e.g., DOE Inspector General, Government Accountability Office) for the purpose of audits and investigations. Such assistance may include, but is not limited to, reasonable access to records of the Subrecipient and its lower tier subrecipients, contractors, and subcontractors relating to this Agreement.

b. Consistent with 2 CFR part 200 as amended by 2 CFR part 910, DOE may audit the financial records or administrative records of the Subrecipient and its lower tier subrecipients, contractors, and subcontractors relating to this Agreement at any time. Government-initiated audits are generally paid for by DOE.

c. DOE may conduct a final audit at the end of the project period (or the termination of the Award, if applicable). Upon completion of the audit, the Subrecipient and its lower tier subrecipients, contractors, and subcontractors are required to refund to DOE any payments for costs that were determined to be unallowable. If the audit has not been performed or completed prior to the closeout of the award, DOE retains the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

12. **Refund Obligation**

Subrecipient must refund any excess payments, received from CEC, including any interest. This obligation to refund excess payment also applies to any Subrecipient costs determined unallowable by CEC or DOE

13. **Foreign Travel**

Subrecipient must obtain the prior written approval of CEC for any foreign travel costs.

14. **Program Income**

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

15. **National Environmental Policy Act (NEPA)**

a. SCEP has made a NEPA determination by issuing a categorical exclusion for all activities listed in the Activity File approved by the Contracting Officer and the DOE NEPA Determination. Subrecipient is thereby authorized to use Federal funds for the defined project activities, subject to this Section 15 and the restrictions set forth elsewhere in the Award.
b. Activities not listed under "Allowable Activities" within this NEPA determination are subject to additional NEPA review and approval by DOE. For activities requiring additional NEPA review, Subrecipient may be required to complete the environmental questionnaire found at https://www.eere-pmc.energy.gov/NEPA.aspx and receive notification from DOE that the NEPA review has been completed and approved by DOE's Contracting Officer prior to initiating the project or activities.
c. This NEPA Determination only applies to activities funded by the Administrative and Legal Requirements Documents (ALRD) for the State Energy Program Energy Efficiency Revolving Loan Fund Capitalization Grant Program.
d. Activities not listed under "Allowable Activities" including ground disturbing activities, activities on tribal properties older than forty-five (45) years old and tree removal or tree trimming, are subject to additional NEPA review and approval by DOE. and without ground disturbance. For proposed activities on tribal homes/buildings forty-five (45) years and older and/or with ground disturbance, For activities requiring additional NEPA review, Subrecipient must provide advance written notice to CEC and Subrecipient may not begin such activities without prior written approval from CEC. Subrecipient may be required to complete the environmental questionnaire found at https://www.eere-pmc.energy.gov/NEPA.aspx and receive notification from DOE that the NEPA review has been completed and approved by DOE's Contracting Officer prior to initiating the project or activities.
e. This authorization does not include activities where the following elements exist: extraordinary circumstances; cumulative impacts or connected actions that may lead to significant effects on the human environment; or any inconsistency with the "integral elements" (as contained in 10 CFR Part 1021, Appendix B) as they relate to project activities.
f. Subrecipient must identify and promptly notify CEC of extraordinary circumstances, cumulative impacts or connected actions that may lead to significant effects on the human environment, or any inconsistency with the "integral elements" (as contained in 10 CFR Part 1021, Appendix B) as they relate to project activities.
g. Subrecipient must adhere to the terms and restrictions of California's DOE executed Historic Preservation Programmatic Agreement. DOE executed historic preservation programmatic agreements are available on the Weatherization and Intergovernmental Programs website: https://www.energy.gov/eere/wipo/historic-preservation-executed-programmatic-agreements.
h. Subrecipients are responsible for completing the online NEPA and Historic preservation training at http://www.energy.gov/node/4816816 and contacting NEPA with any questions GONEPA@ee.doe.gov.
i. Most activities listed under "Allowable Activities" are more restrictive than the Categorical Exclusion. The restrictions listed in the "Allowable Activities" must be followed.
j. This authorization excludes any activities that are otherwise subject to a restriction set forth elsewhere in the Award.

16. **Historic Preservation**

a. DOE must comply with the requirements of Section 106 of the National Historic Preservation Act prior to authorizing the use of Federal funds. Section 106 applies to historic properties that are listed in or eligible for listing in the National Register of Historic Places.

b. Subrecipient must comply with all the Stipulations of California's DOE executed historic preservation Programmatic Agreement (PA). All DOE executed PAs are available on the Office of State and Community Energy Programs website: https://www.energy.gov/scep/historic-preservation-executed-programmatic-agreements.

c. In addition to the Stipulations in their PAs, Subrecipients must notify CEC, who will in turn DOE via GONEPA@ee.doe.gov whenever:

i. Subrecipient or the State Historic Preservation Office (SHPO)/Tribal Historic Preservation Office (THPO) believes that the Criteria of Adverse Effect pursuant to 36 CFR § 800.5, apply to the proposal under consideration by DOE;

ii. There is a disagreement between an applicant, or its authorized representative, and the SHPO/THPO about the scope of the area of potential effects, identification and evaluation of historic properties and/or the assessment of effects;

iii. There is an objection from a consulting party or the public regarding their involvement in the review process established by 36 CFR Part 800, Section 106 findings and determinations, or implementation of agreed upon measures; or

iv. There is the potential for a foreclosure situation or anticipatory demolition as defined under 36 CFR § 800.9 (b) and 36 CFR § 800.9 (c).

17. **Intellectual Property**

a. Intellectual property rights are subject to 2 CFR 200.315 (e.g. institution of higher education or nonprofit organizations) or 2 CFR 910.362 (e.g., for-profit).

b. Rights in Technical Data: Normally, the government has unlimited rights in technical data created under a DOE agreement. Delivery or third-party licensing of proprietary software or data developed solely at private expense will not normally be required except as specifically negotiated in a particular agreement to satisfy DOE's own needs or to ensure the commercialization of technology developed under a DOE agreement.

18. **Post-Award Due Diligence Review**

During the life of the Award, DOE may conduct ongoing due diligence reviews, through United States Government resources, to identify potential risks of undue foreign influence. In the event a risk is identified, DOE may require risk mitigation measures, including but not limited to, requiring an individual or entity not participate in the Award.

19. **Construction**

Subrecipient must obtain written authorization from CEC and the DOE Contracting Officer before incurring any major construction costs.

20. **Davis-Bacon Act Requirements**

a. This Agreement is funded under Division D of the Bipartisan Infrastructure Law (BIL). All laborers and mechanics employed by the Subrecipient, its lower tier subrecipients, contractors or subcontractors in the performance of construction, alteration, or repair work in excess of $2,000 on an award funded directly by or assisted in whole or in part by funds made available under this Award shall be paid wages at rates not less than those prevailing on similar projects in the locality, as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code commonly referred to as the “Davis-Bacon Act”.

b. The Subrecipient shall provide written assurances acknowledging the Davis-Bacon Act requirements for the Award and confirming that all of the laborers and mechanics performing construction, alteration, or repair work in excess of $2,000 on projects funded directly by or assisted in whole or in part by and through funding under the Award are paid or will be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by Subchapter IV of Chapter 31 of Title 40, United States Code (Davis-Bacon Act).

c. The Subrecipient must comply with all of the Davis-Bacon Act requirements, including but not limited to:

  i. ensuring that the wage determination(s) and appropriate Davis-Bacon clauses and requirements are flowed down to and incorporated into any applicable lower tier subcontracts or lower tier subrecipient awards.

  ii. ensuring that if wage determination(s) and appropriate Davis-Bacon clauses and requirements are improperly omitted from lower tier contracts and lower tier subrecipient awards, the applicable wage determination(s) and clauses are retroactively incorporated to the start of performance.

  iii. being responsible for compliance by any lower tier subcontractor or subrecipient with the Davis-Bacon labor standards.

  iv. receiving and reviewing certified weekly payrolls submitted by all lower tier subcontractors and subrecipients for accuracy and to identify potential compliance issues.

  v. maintaining original certified weekly payrolls for 3 years after the completion of the project and must make those payrolls available to the CEC, DOE or the Department of Labor upon request, as required by 29 CFR 5.6(a)(2).

  vi. conducting payroll and job-site reviews for construction work, including interviews with employees, with such frequency as may be necessary to assure compliance by its lower tier subcontractors and subrecipients and as requested or directed by the CEC and/or DOE.

  vii. cooperating with any authorized representative of the Department of Labor in their inspection of records, interviews with employees, and other actions undertaken as part of a Department of Labor investigation.

  viii. posting in a prominent and accessible place the wage determination(s) and Department of Labor Publication: WH-1321, Notice to Employees Working on Federal or Federally Assisted Construction Projects.

  ix. notifying the CEC CAM, who will in turn notify the DOE Contracting Officer, of all labor standards issues, including all complaints regarding incorrect payment of prevailing wages and/or fringe benefits, received from the Subrecipient, lower tier subrecipient, contractor, or subcontractor employees; significant labor standards violations, as defined in 29 CFR 5.7; disputes concerning labor standards pursuant to 29 CFR parts 4, 6, and 8 and as defined in FAR 52.222-14; disputed labor standards determinations; Department of Labor investigations; or legal or judicial proceedings related to the labor standards under this Contract, a lower tier subcontract, or subrecipient award.

  x. preparing and submitting to the CEC CAM, who will in turn submit to the DOE Contracting Officer, the Office of Management and Budget Control Number 1910-5165, Davis Bacon Semi-Annual Labor Compliance Report, by April 21 and October 21 of each year. Form submittal will be administered through the iBenefits system (https://doeibenefits2.energy.gov) or its successor system.

d. The Subrecipient must undergo Davis-Bacon Act compliance training and must maintain competency in Davis-Bacon Act compliance. The CEC CAM and/or DOE's Contracting Officer will notify the Subrecipient of any DOE sponsored Davis-Bacon Act compliance trainings. The

U.S. Department of Labor ("DOL") offers free Prevailing Wage Seminars several times a year that meet this requirement, at https://www.dol.gov/agencies/whd/government-contracts/construction/seminars/events.

e. The DOE has contracted with, a third-party Davis-Bacon Act electronic payroll compliance software application. The Subrecipient must ensure the timely electronic submission of weekly certified payrolls as part of its compliance with the Davis-Bacon Act unless a waiver is granted to a particular lower tier contractor or subcontractor because they are unable or limited in their ability to use or access the software.

f. Davis Bacon Act Electronic Certified Payroll Submission Waiver - A waiver must be granted before the award starts. The applicant does not have the right to appeal DOE's decision concerning a waiver request.

g. For additional guidance on how to comply with the Davis-Bacon provisions and clauses, see https://www.dol.gov/agencies/whd/government-contracts/construction and https://www.dol.gov/agencies/whd/government-contracts/protections-for-workers-in-construction.

21. **Buy America Requirements for Infrastructure Projects**

a. Definitions. For purposes of the Buy America requirements, the following definitions apply:

i. *Components* are defined as articles, materials, or supplies, whether manufactured or unmanufactured, incorporated directly into: a manufactured product; or, where applicable, an iron or steel product.

ii. *Construction Materials* includes an article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives—that is, or consists primarily of:

- Non-ferrous metals;
- Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- Glass (including optic glass);
- Lumber;
- Drywall.

To the extent one of the items listed above contains as inputs other items than those listed above, it is nonetheless a construction material.

Minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of the construction material.

iii. *Construction material standards*

1. The Buy America Preference applies to the following construction materials incorporated into infrastructure projects. Each construction material is followed by a standard for the material to be considered "produced in the United States."

   - Non-ferrous metals. All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.
   - Plastic and polymer-based products. All manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, occurred in the

United States.

- Glass. All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.
- Fiber optic cable (including drop cable). All manufacturing processes, from the initial ribboning (if applicable), through buffering, fiber stranding and jacketing, occurred in the United States. All manufacturing processes also include the standards for glass and optical fiber, but not for non-ferrous metals, plastic and polymer-based products, or any others.
- Optical fiber. All manufacturing processes, from the initial preform fabrication stage through the completion of the draw, occurred in the United States.
- Lumber. All manufacturing processes, from initial debarking through treatment and planning, occurred in the United States.
- Drywall. All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.
- Engineered wood. All manufacturing processes from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States.

2. Except as specifically provided, only a single standard under paragraph (a) of this section should be applied to a single construction material.

iv. *Domestic content procurement preference requirement* means a requirement that no amounts made available through a program for federal financial assistance may be obligated for an infrastructure project unless—

1. all iron and steel used in the project are produced in the United States;
2. the manufactured products used in the project are produced in the United States; or
3. the construction materials used in the project are produced in the United States.

Also referred to as the Buy America Requirement.

v. *Infrastructure* includes, at a minimum, the structures, facilities, and equipment for, in the United States:

- Roads, highways, and bridges;
- Public transportation;
- Dams, ports, harbors, and other maritime facilities;
- Intercity passenger and freight railroads;
- Freight and intermodal facilities;
- Airports;
- Water systems, including drinking water and wastewater systems;
- Electrical transmission facilities and systems;
- Utilities;
- Broadband infrastructure;
- Buildings and real property; and
- Facilities that generate, transport, and distribute energy, including electric vehicle (EV) charging

The term “infrastructure” should be interpreted broadly, and the definition provided above should be considered as illustrative and not exhaustive.

In addition to the above, the infrastructure in question must be publicly owned or must serve a public function; privately owned infrastructure that is solely utilized for private use is not considered “infrastructure” for purposes of Buy America applicability. DOE will have the final say as to whether a given project includes infrastructure, as defined herein.

For this Award specifically, all projects subject to the Award are considered "infrastructure" within the Buy America provision of BIL.

vii. *Manufactured Products* are items used for an infrastructure project made up of components that are not primarily of iron or steel; construction materials; cement and cementitious materials' aggregates such as stone, sand, or gravel; or aggregate binding agents or additives.

viii. *Primarily of iron or steel* means greater than 50% iron or steel, measured by cost.

vi. *Project* means the construction, alteration, maintenance, or repair of infrastructure in the United States.

vi. *Public*- The Buy America Requirement does not apply to non-public infrastructure. For purposes of this guidance,

1. infrastructure should be considered "public" if it is: (1) publicly owned or (2) privately owned but utilized
2. primarily for a public purpose. Infrastructure should be considered to be "utilized primarily for a public purpose"
3. if it is privately operated on behalf of the public or is a place of public accommodation.

b. Buy America Requirement

In accordance with section 70914 of the BIL, none of the project funds (includes federal share and Subrecipient cost share) may be used for a project for infrastructure unless:

i. All iron and steel used in the project are produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;

ii. All manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and

iii. All construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America Requirement only applies to articles, materials, and supplies that are consumed in, incorporated into, or permanently affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought into the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America Requirement apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

The Subrecipient is responsible for administering its Award in accordance with the terms and conditions, including the Buy America Requirement. The Subrecipient must ensure that the Buy America Requirement flows down to all lower tier subawards and that the lower tier subrecipients, contractors, and subcontractors comply with the Buy America Requirement. The

Buy America Requirement term and condition must be included all lower tier subawards, contracts, subcontracts, and purchase orders for work performed under the infrastructure project.

c. Certification of Compliance

The Subrecipient must certify or provide equivalent documentation for proof of compliance that a good faith effort was made to solicit bids for domestic products used in the infrastructure project under this Award.

The Subrecipient must also maintain certifications or equivalent documentation for proof of compliance that those articles, materials, and supplies that are consumed in, incorporated into, affixed to, or otherwise used in the infrastructure project, not covered by a waiver or exemption, are produced in the United States. The certification or proof of compliance must be provided by the suppliers or manufacturers of the iron, steel, manufactured products and construction materials and flow up from all lower tier subrecipients, contractors, subcontractors and vendors to the Subrecipient. The Subrecipient must keep these certifications with the award/project files and be able to produce them upon request from CEC, DOE, auditors or Office of Inspector General.

d. Flow down

These requirements must flow down to all lower tier subrecipients, contractors, and subcontractors, and purchase orders for work performed under the proposed project. Based on guidance from OMB Memorandum M-24-02, the Buy America requirements of the BIL do not apply to DOE projects in which the prime recipient is a for-profit entity; the requirements only apply to projects whose prime recipient is a State, local government, Indian tribe, Institution of Higher Education, or nonprofit organization.

For additional information related to the implementation of these Buy America requirements, please see OMB Memorandum M-24-02, dated October 25, 2023: https://www.whitehouse.gov/wp-content/uploads/2023/10/M-24-02-Buy-America-Implementation-Guidance-Update.pdf.

e. Waivers

In limited circumstances, DOE may waive the application of the Buy America requirements where DOE determines that:

i. Public Interest - Applying the Buy America Requirement would be inconsistent with the public interest;

ii. Non-Availability - The types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or

iii. Unreasonable Cost - The inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

Requests to waive the Buy America Requirement must include the following:

- Waiver type (Public Interest, Nonavailability, or Unreasonable Cost);
- Award information (Federal Award Identification Number, Assistance Listing number);
- A detailed justification for the use of “non-domestic” iron, steel, manufactured products,

or construction materials to include an explanation as to how the non-domestic item(s) is/are essential to the project;

- A certification that the Subrecipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and non-proprietary communications with potential suppliers;
- Subrecipient name and Unique Entity Identifier (UEI)
- Total estimated project cost, with estimated Federal share and Subrecipient cost share breakdowns;
- Total estimated infrastructure costs, with estimated Federal share and Subrecipient and cost-share breakdowns;
- A brief project description, its location (to the extent known) and the specific infrastructure involved;
- List and description of iron or steel item(s), manufactured goods, and/or construction material(s) the Subrecipient seeks to waive from the Buy America Requirement, including name, cost, quantity(ies), country(ies) of origin (if known), and relevant Product Services Code (PSC) and North America Industry Classification System (NAICS) codes for each;
- Waiver justification statement—based on one of the applicable justifications outlined above—as to why the items in question cannot be procured domestically, including the due diligence performed (e.g., market research, industry outreach, cost analysis, cost benefit analysis) by the Subrecipient to attempt to avoid the need for a waiver. This justification may cite, if applicable, the absence of any Buy America-compliant bids received for domestic products in response to a solicitation; and
- Anticipated impact to the project if no waiver is issued.

The Subrecipient should consider using the following principles as minimum requirements contained in their waiver request:

- Time-limited: Consider a waiver constrained principally by a length of time, rather than by the specific project/award to which it applies. Waivers of this type may be appropriate, for example, when an item that is "non-available" is widely used in the project. When requesting such a waiver, the Subrecipient should identify a reasonable, definite time frame (e.g., no more than one to two years) designed so that the waiver is reviewed to ensure the condition for the waiver ("non-availability") has not changed (e.g., domestic supplies have become more available).
- Targeted: Waiver requests should apply only to the item(s), product(s), or material(s) or category(ies) of item(s), product(s), or material(s) as necessary and justified. Waivers should not be overly broad as this will undermine domestic preference policies.
- Conditional: The Subrecipient may request a waiver with specific conditions that support the policies of IIJA/BABA and Executive Order 14017

DOE may require additional information before considering the waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office. There may be instances where an award qualifies, in whole or in part, for an existing waiver described at https://www.energy.gov/management/build-america-buy-america.

DOE may reject or grant waivers in whole or in part depending on its review, analysis, and/or feedback from OMB or the public. The DOE's final determination regarding approval or rejection of the waiver request may not be appealed. Waiver requests may take up to 90 calendar days to process.

The Subrecipient does not have the right to appeal DOE's decision concerning a waiver request.

22. **Performance of Work in United States**

a. All work performed under this Award must be performed in the United States. Subrecipient must flow down these requirements to all lower tier subrecipients. This requirement does not apply to the purchase of supplies and equipment, however, the Subrecipient should make every effort to purchase supplies and equipment within the United States. The Subrecipient must flow down this requirement to its lower tier subrecipients and subcontractors.

b. If the Subrecipient fails to comply with the Performance of Work in the United States requirement, CEC and/or DOE may deny reimbursement for the work conducted outside the United States and such costs may not be recognized as allowable cost share. The Subrecipient is responsible should any work under this Award be performed outside the United States, absent a waiver, regardless of whether the work is performed by the Subrecipient, or its lower tier subrecipients, contractors, vendors, or other project partners.

c. In limited circumstances where it is in the interest of the project to perform a portion of the work outside the United States, the Subrecipient must submit a written foreign work waiver request to the CEC, which will in turn submit it to the DOE. The waiver from the DOE Contracting Officer must be obtained prior to conducting any work outside the US. Appendix B to the FOA lists the necessary information that must be included in a foreign work waiver request. The Subrecipient must demonstrate to the satisfaction of DOE that a waiver would further the purposes of the project and is in the economic interests of the United States. DOE may require additional information before considering a waiver request. A foreign work waiver applicant does not have the right to appeal the DOE's decision concerning a waiver request.

23. **Foreign National Involvement**

Subrecipient and its lower tier subrecipients and contractors who anticipate involving foreign nationals in the performance of an award, may be required to provide CEC and DOE with specific information about each foreign national to satisfy requirements for foreign national participation. A foreign national is defined as any person who is not a U.S. citizen by birth or naturalization. The volume and type of information collected may depend on various factors associated with the award.

24. **Foreign Collaboration**

a. Consideration of new collaborations with foreign organizations and governments. The Subrecipient must provide CEC and DOE with advanced written notification of any potential collaboration with foreign entities, organizations or governments in connection with its DOE-funded award scope. The Subrecipient must await further guidance from CEC and DOE prior to contacting the proposed foreign entity, organization or government regarding the potential collaboration or negotiating the terms of any potential agreement.

b. Existing collaborations with foreign entities, organizations and governments. The Subrecipient must provide CEC and DOE with a written list of all existing foreign collaborations in which has entered in connection with its DOE-funded award scope.

c. Description of collaborations that should be reported: In general, a collaboration will involve some provision of a thing of value to, or from, the Subrecipient. A thing of value includes but may not be limited to all resources made available to, or from, the Subrecipient in support of and/or related to the Award, regardless of whether or not they have monetary value. Things of value also may include in-kind contributions (such as office/laboratory space, data, equipment, supplies, employees, students). In-kind contributions not intended for direct use on the Award but resulting in provision of a thing of value from or to the Award must also be reported. Collaborations do not include routine workshops, conferences, use of the Subrecipient's services and facilities by foreign investigators resulting from its standard published process for evaluating requests for access, or the routine use of foreign facilities by awardee staff in accordance with the Subrecipient's standard policies and procedures.

25. **Foreign National Participation**

During the term of the Award, the Subrecipient must notify the CEC CAM, who will in turn notify the DOE Contracting Officer, within fifteen (15) business days of learning of the following circumstances in relation to the Subrecipient or its lower tier subrecipients:

a. Any current or pending subsidiary, foreign business entity, or offshore entity that is based in or funded by any foreign country of risk or foreign entity based in a country of risk;

b. Any current or pending contractual or financial obligation or other agreement specific to a business arrangement, or joint venture-like arrangement with an enterprise owned by a country of risk or foreign entity based in a country of risk;

c. Any current or pending change in ownership structure of the Subrecipient or its lower tier subrecipients that increases foreign ownership related to a country of risk. Each notification shall be accompanied by a complete and up-to-date capitalization table showing all equity interests held including limited liability company (LLC) and partnership interests, as well as derivative securities. Include both the number of shares issued to each equity holder, as well as the percentage of that series and of all equity on fully diluted basis. For each equity holder, provide the place of incorporation and the principal place of business, as applicable. If the equity holder is a natural person, identify the citizenship(s);

d. Any current or pending venture capital or institutional investment by an entity that has a general partner or individual holding a leadership role in such entity who has a foreign affiliation with any foreign country of risk;

e. Any current or pending technology licensing or intellectual property sales to a foreign country of risk; and

f. Any changes to the subrecipient or the lower tier subrecipients' board of directors, including additions to the number of directors, the identity of new directors, as well as each new director's citizenship, shareholder affiliation (if applicable); each notification shall include a complete up-to-date list of all directors (and board observers), including their full name, citizenship and shareholder affiliation, date of appointment, duration of term, as well as a description of observer rights as applicable.

g. Any proposed changes to the equipment used on the project that would result in:

    i. Equipment originally made or manufactured in a foreign country of risk (including relabeled or rebranded equipment).

    ii. Coded equipment where the source code is written in a foreign country of risk.

    iii. Equipment from a foreign country of risk that will be connected to the internet or other remote communication system.

    iv. Any companies from a foreign country of risk that will have physical or remote access to any part of the equipment used on the project after delivery.

h. Should DOE determine the connection poses a risk to economic or national security, DOE will require measures to mitigate or eliminate the risk.

i. DOE has designated the following countries as foreign countries of risk: Iran, North Korea, Russia, and China. This list is subject to change.

j. Recognizing the disclosures may contain business confidential information, subrecipients may submit their disclosures directly to DOE.

26. **Budget Changes**

a. Budget Changes Generally

Any increase in the total project cost must be approved in advance and in writing by the CEC and the DOE Contracting Officer.

Any change that alters the program design, project scope, milestones or deliverables requires prior writing approval from the CEC and the DOE Contracting Officer. SCEP may deny reimbursement for any failure to comply with the requirements in this term.

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27. **Reporting Subrecipient Executive Compensation**

a. *Applicability and what to report*. The Subrecipient must report the names and total compensation of each of its five most highly compensated executives for the preceding completed fiscal year, if:

i. In the Subrecipient's preceding fiscal year, the Subrecipient received;

1. 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

2. $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards)

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

b. *Where and when to report*. The Recipient must report executive total compensation:

i. As part of the Recipient's registration profile at https://www.sam.gov.

ii. By the end of the month following the month in which this award is made, and annually thereafter.

28. **Continued Use of Real Property and Equipment**

a. Real property and equipment purchased with project funds (federal share and Subrecipient cost share) under this Agreement are subject to the requirements at 2 CFR 200.311, 200.313, and 200.316 (non-Federal entities, except for-profit entities) and 2 CFR 910.360 (for-profit entities). The Subrecipient may continue to use the real property and equipment after the conclusion of the award period of performance so long as the Subrecipient:

i. Continues to use the property for the authorized project purposes;

ii. Complies with the applicable reporting requirements and regulatory property standards;

iii. As applicable to for-profit entities, UCC filing statements are maintained; and

iv. Submits a written Request for Continued Use to CEC CAM, who will in turn submit it to DOE for authorization, which is approved by the DOE Contracting Officer.

b. The Subrecipient must request authorization from the DOE Contracting Officer, through the CEC CAM, to continue to use the property for the authorized project purposes beyond the Award period of performance ("Request for Continued Use"). The Subrecipient's written Request for Continued Use must identify the property and include: a summary of how the property will be used (must align with the authorized project purposes); a proposed use period (e.g., perpetuity, until fully depreciated, or a calendar date where the Subrecipient expects to submit disposition instructions); acknowledgement that the Subrecipient shall not sell or encumber the property or permit any encumbrance without prior written DOE approval; current fair market value of the property; and an Estimated Useful Life or depreciation schedule for equipment.

c. When the property is no longer needed for authorized project purposes, the Subrecipient must request disposition instructions from DOE. For-profit entity disposition requirements are set forth at 2 CFR 910.360. Property disposition requirements for other non-federal entities are set forth in 2 CFR 200.310-200.316.

29. **Interim Conflict of Interest Policy for Financial Assistance**

a. The DOE interim Conflict of Interest Policy for Financial Assistance (COI Policy) can be found at https://www.energy.gov/management/department-energy-interim-conflict-interest-policy-requirements-financial-assistance. This policy is applicable to all non-Federal entities applying for, or that receive, DOE funding by means of a financial assistance award (e.g., a grant, cooperative agreement, or technology investment agreement) and, through the implementation of this policy by the entity, to each Investigator who is planning to participate in, or is participating in, the project funded wholly or in part under this Award. The term "Investigator" means the Principal Investigator and any other person, regardless of title or position, who is responsible for the purpose, design, conduct, or reporting of a project funded by DOE or proposed for funding by DOE.

b. Subrecipient must flow down the requirements of the interim COI Policy to any lower tier subrecipient non-Federal entities, with the exception of DOE National Laboratories.

c. Further, the Subrecipient must identify all financial conflicts of interests (FCOI), i.e., managed and unmanaged/ unmanageable, in its initial and ongoing FCOI reports. It is understood that non-Federal entities and individuals receiving DOE financial assistance awards will need sufficient time to come into full compliance with DOE's interim COI Policy. To provide some flexibility, DOE allows for a staggered implementation. **Specifically, prior to award, the Subrecipient selected for award negotiations must: ensure all Investigators on this Award complete their significant financial disclosures; review the disclosures; determine whether a FCOI exists; develop and implement a management plan for FCOIs; and provide CEC, which will in turn provide DOE, with an initial FCOI report that includes all FCOIs (i.e., managed and unmanaged/ unmanageable)**. The Subrecipient will have 180 days from the date of the award to come into full compliance with the other requirements set forth in DOE's interim COI Policy. **Prior to award, the Subrecipient must certify that it is, or will be within 180 days of the award, compliant with all requirements in the COI Policy.**

30. **Organization Conflict of Interest**

Organizational conflicts of interest are those where, because of relationships with a parent company, affiliate, or subsidiary organization, the Subrecipient is unable or appears to be unable to be impartial in conducting procurement action involving a related organization (2 CFR 200.318(c)(2)).

The Subrecipient must disclose in writing any potential or actual organizational conflict of interest to the CEC and it will be shared with the DOE Contracting Officer. The Subrecipient must provide the disclosure prior to engaging in a procurement or transaction using project funds with a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe. For a list of the information that must be included the disclosure, see Section VI. of the DOE interim Conflict of Interest Policy for Financial Assistance at https://www.energy.gov/management/department-energy-interim-conflict-interest-policy-requirements-financial-assistance.

If the effects of the potential or actual organizational conflict of interest cannot be avoided, neutralized, or mitigated, the Subrecipient must procure goods and services from other sources when using project funds. Otherwise, DOE may terminate the Award in accordance with 2 CFR 200.340 unless continued performance is determined to be in the best interest of the federal government.

The Subrecipient must flow down the requirements of the interim COI Policy to any lower tier subrecipients non-federal entities, with the exception of DOE National Laboratories. The Subrecipient is responsible for ensuring lower tier subrecipient compliance with this term.

31. **Publication of Information on the Internet**

[Reserved and waiting for further requirements from DOE]

32. **Requirement to Report Potentially Duplicative Funding**

If the Subrecipient has or receives any other award of federal funds for activities that potentially overlap with the activities funded under this Agreement, the Subrecipient must promptly notify CEC in writing, which will in turn notify DOE, of the potential overlap and state whether project funds (i.e., Subrecipient cost share and federal funds) from any of those other federal awards have been, are being, or are to be used (in whole or in part) for one or more of the identical cost items under this Agreement. If there are identical cost items, the Subrecipient must promptly notify the CEC Commission Agreement Manager (CAM) in writing, who will in turn notify the DOE Contracting Officer of the potential duplication and eliminate any inappropriate duplication of funding.

33. **Flood Resilience**

Subrecipient must indicate whether its project location(s) is within a floodplain, how the floodplain was defined, and how future flooding will factor into the project's design. The base floodplain used for planning has been the 100-year floodplain, that is, a floodplain with a 1.0 percent chance of flooding in any given year. As directed by Executive Order 13690, Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input (2015), Federal agencies, including DOE, continue to avoid development in a floodplain to the extent possible. When doing so is not possible, Federal agencies are directed to "expand management from the current base flood level to a higher vertical elevation and corresponding horizontal floodplain to address current and future flood risk and ensure that projects funded with taxpayer dollars last as long as intended." The higher flood elevation is based on one of three approaches: climate-informed science (preferred), freeboard value, or 0.2 percent annual flood change (500-year floodplain). EO 13690 and related information is available at https://www.energy.gov/nepa/articles/eo-13690-establishing-federal-flood-risk-management standard-and-process-further.

34. **Indemnity**

a. The CEC shall indemnify the United States Government and its officers, agents, or employees for any and all liability, including litigation expenses and attorneys' fees, arising from suits, actions, or claims of any character for death, bodily injury, or loss of or damage to property or to the environment, resulting from the project, except to the extent that such liability results from the direct fault or negligence of United States Government officers, agents or employees, or to the extent such liability may be covered by applicable allowable costs provisions.

b. The Subrecipient shall indemnify the CEC, the State of California and its officers, agents, or employees for any and all liability, including litigation expenses and attorneys' fees, arising from suits, actions, or claims of any character for death, bodily injury, or loss of or damage to property or to the environment, resulting from the project, except to the extent that such liability results from the direct fault or negligence of CEC officers, agents or employees, or to the extent such liability may be covered by applicable allowable costs provisions.

35. **Rebudgeting and Recovery of Indirect Costs**

a. If actual allowable indirect costs are less than those budgeted and funded under the Award, the Subrecipient may use the difference to pay additional allowable direct costs during the project period. If at the completion of the Award, the United States Government's share of total allowable costs (i.e., direct and indirect), is less than the total costs reimbursed, the Subrecipient must refund the difference.

b. Subrecipients are expected to manage their indirect costs. DOE or CEC will not amend an award solely to provide additional funds for changes in indirect cost rates. DOE or CEC recognizes that the inability to obtain full reimbursement for indirect costs means the Subrecipient must absorb the under-recovery. Such under-recovery may be allocated as part of the organization's required cost sharing.

36. **Real Property**

Subject to the conditions set forth in 2 CFR 200.311, title to real property acquired or improved under a Federal award will conditionally vest upon acquisition in the non-Federal entity. The non-Federal entity cannot encumber this property and must follow the requirements of 2 CFR 200.311 before disposing of the property.

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

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

37. **Signage**

The Subrecipient is encouraged to display DOE standard infrastructure investment signage, available for download from DOE (https://www.energy.gov/branding), during construction of the project. Expenditures for such signage shall be a permitted eligible cost of the project.

38. **Cybersecurity Plan**

Be advised that under Section 40126 of the BIL, the Secretary of Energy has determined that this Program required CEC to submit a Cybersecurity Plan to the DOE prior to the issuance of an award. The CEC will notify the Subrecipient if any information, cybersecurity plan, or other input is needed from the Subrecipient regarding cybersecurity.

39. **Reporting, Tracking, and Segregation of Incurred Costs**

BIL funds can be used in conjunction with other funding, as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the BIL and related Office of Management and Budget (OMB) Guidance. The Subrecipient must keep separate records for BIL funds and must ensure those records comply with the requirements of the BIL. Funding provided through the BIL that is supplemental to an existing grant or cooperative agreement is one-time funding.

40. **Notice Regarding the Purchase of American-Made Equipment and Products – Sense of Congress**

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

Subpart B. General Provisions

1. **Compliance with Federal, State, and Municipal Law**

   a. The Subrecipient is required to comply with applicable federal, state, and municipal laws and regulations, for all work performed under this Agreement.

   b. The Subrecipient is required to obtain all necessary federal, state, and municipal permits, authorizations, and approvals for all work performed under this Agreement.

   c. Any apparent inconsistency between federal and state laws and regulations and the terms and conditions of this Award must be referred to CEC's CAM for guidance.

2. **Record Retention**

   Subrecipient is required to retain records relating to this Award consistent with 2 CFR 200.334 through 200.338.

3. **Allowable costs**

   a. Allowable costs are determined in accordance with 2 CFR part 200 as amended by 2 CFR part 910. All expenditures must be allowable, allocable, and reasonable in accordance with the applicable federal cost principles. Pursuant to 2 CFR 910.352, the cost principles in the Federal Acquisition Regulations (48 CFR Part 31.2) apply to for-profit entities. The cost principles contained in 2 CFR Part 200, Subpart E apply to all entities other than for-profits. Costs to support or oppose union organizing, whether directly or as an offset for other funds, are unallowable.

   b. The Subrecipient must document and maintain records of all project costs, including, but not limited to, the costs paid by Federal funds, costs claimed by its lower tier subrecipients and project costs that the Subrecipient claims as cost sharing, including in-kind contributions. The Subrecipient is responsible for maintaining records adequate to demonstrate that costs claimed have been incurred, are reasonable, allowable and allocable, and comply with the cost principles. Upon request, the Subrecipient is required to provide such records. Such records are subject to audit. Failure to provide adequate supporting documentation may result in a determination that those costs are unallowable.

   c. Payments made for costs determined to be unallowable by either DOE, cognizant agency for indirect costs, or pass-through entity, either as direct or indirect costs, must be refunded (including interest) to the Federal Government in accordance with instructions from the Federal agency that determined the costs are unallowable unless Federal statute or regulation directs otherwise. See also 2 CFR 200.300 through 200.309.

4. **Indirect Costs**

   Subrecipient's indirect costs must be appropriately managed, be allowable, and comply with the requirements of the Award and 2 CFR Part 200 as amended by 2 CFR Part 910.

5. **Property Standards**

   See 2 CFR 200.310 through 200.316 for requirements. Also see 2 CFR 910.360 for additional requirements for real property and equipment for For-Profit recipients.

6. **Insurance Coverage**

   See 2 CFR 200.310 for insurance requirements for real property and equipment acquired or improved with Federal funds. Also see 2 CFR 910.360(d) for additional requirements for real property and equipment for For-Profit recipients.

7. **Equipment**

   a. Subject to the conditions provided in 2 CFR 200.313, title to equipment (property) acquired under a Federal award will vest conditionally with the non-Federal entity.

   b. The non-Federal entity cannot encumber this property and must follow the requirements of 2 CFR 200.313 before disposing of the property.

   c. States must use equipment acquired under a Federal award by the state in accordance with state laws and procedures.

   d. Equipment must be used by the non-Federal entity in the program or project for which it was acquired as long as it is needed, whether or not the project or program continues to be supported by the Federal award. When no longer needed for the originally authorized purpose, the equipment may be used by programs supported by DOE in the priority order specified in 2 CFR 200.313(c)(1)(i) and (ii).

   e. Management requirements, including inventory and control systems, for equipment are provided in 2 CFR 200.313(d).

   f. When equipment acquired under a Federal award is no longer needed, the non-Federal entity must obtain disposition instructions from DOE or CEC.

   g. Disposition will be made as follows: (a) items of equipment with a current fair market value of $5,000 or less may be retained, sold, or otherwise disposed of with no further obligation to DOE; (b) Non-Federal entity may retain title or sell the equipment after compensating DOE as described in 2 CFR Part 200.313(e)(2); or (c) transfer title to DOE or to an eligible third Party as specified in CFR Part 200.313(e)(3).

   h. See 2 CFR 200.439 Equipment and other capital expenditures. Also see 2 CFR Part 200.439 Equipment and other capital expenditures.

   i. See 2 CFR Part 910.360 for amended requirements for Equipment for For-Profit recipients.

8. **Supplies**

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

9. **Property Trust Relationship**

   Real property, equipment, and intangible property, that are acquired or improved with a Federal award must be held in trust by the non-Federal entity as trustee for the beneficiaries of the project or program under which the property was acquired or improved. See 2 CFR 200.316 for additional requirements pertaining to real property, equipment, and intangible property acquired or improved under a Federal award.

10. **Uniform Commercial Code (UCC) Financing Statements**

Per 2 CFR 910.360 (Real Property and Equipment), when applicable, requires that when Subrecipient purchases with federal funds, and federal share of the financial assistance agreement is more than $1,000,000, Subrecipient must: properly record, and consent to the DOE's ability to properly record if the Recipient or Subrecipient, as applicable, fails to do so, UCC financing statement(s) for all equipment in excess of $5,000 purchased with project funds. These financing statement(s) must be approved in writing by the DOE Contracting Officer prior to the recording, and they shall provide notice that the Recipient's or Subrecipient's title, as applicable, to all equipment (not real property) purchased with federal funds under the financial assistance agreement is conditional pursuant to the terms of this section, and that the government retains an undivided reversionary interest in the equipment. The UCC financing statement(s) must be filed before the DOE Contracting Officer may reimburse the Recipient or Subrecipient, as applicable, for the federal share of the equipment unless otherwise provided for in the relevant financial assistance agreement. The Recipient or Subrecipient, as applicable, shall further make any amendments to the financing statements or additional recordings, including appropriate continuation statements, as necessary or as the DOE Contracting Officer may direct.

11. **Conference Spending**

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

12. **Lobbying**

a. By accepting funds under this Award, the Subrecipient agrees that it must not use, directly or indirectly, any federal funds to influence or attempt to influence, directly or indirectly, congressional action on any legislative or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913 This restriction is in addition to those prescribed elsewhere in statute and regulation.

b. If the Subrecipient receives an award exceeding $100,000, the Subrecipient must complete and submit SF-LLL, "Disclosure of Lobbying Activities" (https://www.grants.gov/web/grants/forms/sf-424-individual-family.html) to ensure that non-federal funds have not been paid and will not be paid to any person for influencing or attempting to influence any of the following in connection with the application for this Program.

13. **Telecommunications and Video Surveillance Services or Equipment Prohibition**

As set forth in 2 CFR 200.216, the Subrecipient is prohibited from obligating or expending project funds (Federal funds and Subrecipient cost share) to:

a. Procure or obtain;

b. Extend or renew a contract to procure or obtain; or

c. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE

Corporation (or any subsidiary or affiliate of such entities).

i. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

ii. Telecommunications or video surveillance services provided by such entities or using such equipment.

iii. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

See Public Law 115-232, section 889, 2 CFR 200.216, and 2 CFR 200.471 for additional information.

14. **Affirmative Action and Pay Transparency Requirements**

All federally assisted construction contracts exceeding $10,000 annually will be subject to the requirements of Executive Order 11246:

a. Subrecipient and its lower tier subrecipients, contractors and subcontractors are prohibited from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identity or national origin.

b. Subrecipient and its lower tier subrecipients, contractors and subcontractors are required to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment. This includes flowing down the appropriate language to all lower tier subrecipients, contractors and subcontractors.

c. Subrecipient and its lower tier subrecipients, contractors and subcontractors are prohibited from taking adverse employment actions against applicants and employees for asking about, discussing, or sharing information about their pay or, under certain circumstances, the pay of their co-workers.

The Department of Labor's (DOL) Office of Federal Contractor Compliance Programs (OFCCP) uses a neutral process to schedule contractors for compliance evaluations. OFCCP's Technical Assistance Guide[1] should be consulted to gain an understanding of the requirements and possible actions the Subrecipient and its lower tier subrecipients, contractors and subcontractors must take. Additionally, for construction projects valued at $35 million or more and lasting more than one year, the Subrecipient and its lower tier subrecipients, contractors and subcontractors may be selected by OFCCP as a mega construction project. If selected, DOE, under relevant legal authorities including Sections 205 and 303(a) of Executive Order 11246, will require participation as a condition of the award. This program offers extensive compliance assistance with EO 11246. For more information regarding this program, see https://www.dol.gov/agencies/ofccp/construction/mega-program.

[1] See OFCCP's Technical Assistance Guide at: https://www.dol.gov/sites/dolgov/files/ofccp/Construction/files/ConstructionTAG.pdf?msclkid=9e397d68c4b111ec9d8e6fecb6c710ec. Also see the National Policy Assurances at http://www.nsf.gov/awards/managing/rtc.jsp.

15. **Nondiscrimination**

By signing this Agreement or accepting funds under this Agreement, Subrecipient assures that it will comply with applicable provisions of the following, national policies prohibiting discrimination:

a. On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.), as implemented by DOE regulations at 10 CFR part 1040.

b. On the basis of race, color, religion, sex, or national origin, in Executive Order 11246 [3 CFR, 1964-1965 Comp., p. 339], as implemented by Department of Labor regulations at 41 CFR part 60.

c. On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.), as implemented by DOE regulations at 10 CFR parts 1041 and 1042.

d. On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR part 90 and DOE at 10 CFR part 1040.

e. On the basis of handicap, in (1) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DOE regulations at 10 CFR part 1041 and (2) The Architectural Barriers Act of 1968 (42 U.S.C. 4151, et seq.).

16. **Americans with Disabilities Act of 1990**

Subrecipient shall comply with: (i) section 504 of the Rehabilitation Act of 1973 which prohibits discrimination on the basis of disability in federally assisted programs; (ii) the Americans with Disabilities Act (ADA) of 1990 which prohibits discrimination on the basis of disability irrespective of funding; and (iii) all applicable regulations and guidelines issued pursuant to both the Rehabilitation Act and the ADA.

17. **Promoting Free Speech and Religious Liberty**

States, local governments, or other public entities may not condition sub-awards in a manner that would discriminate, or disadvantage sub-recipients based on their religious character.

18. **Nondisclosure and Confidentiality Agreement Assurances**

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

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

"These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General or any investigative or law enforcement representative of a Federal department or agency of a suspected violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations,

rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this Agreement and are controlling.''

c. The limitation above shall not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

d. Notwithstanding the provision listed in paragraph (a), a nondisclosure or confidentiality policy form or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or officer of the United States Government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement shall, at a minimum, require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government. Such nondisclosure or confidentiality forms shall also make it clear that they do not bar disclosures to Congress, or to an authorized official of an executive agency or the Department of Justice, that are essential to reporting a substantial violation of law.

19. **Export Control**

a. The United States Government regulates the transfer of information, commodities, technology, and software considered to be strategically important to the U.S. to protect national security, foreign policy, and economic interests without imposing undue regulatory burdens on legitimate international trade. There is a network of federal agencies and regulations that govern exports that are collectively referred to as "Export Controls". The Subrecipient is responsible for ensuring compliance with all applicable U.S. Export Control laws and regulations relating to any work performed under this Award, at the Subrecipient level.

b. The Subrecipient must immediately report to CEC, which will in turn report to the DOE, any export control violations related to the project funded under this Award, at the Subrecipient or a lower tier subrecipient level, and provide the corrective actions to prevent future violations.

20. **Corporate Felony Conviction and Federal Tax Liability Assurances**

a. By entering into this Agreement, the Subrecipient attests that it has not been convicted of a felony criminal violation under Federal law in the 24 months preceding the date of signature.

b. The Subrecipient further attests that it does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

c. For purposes of these assurances, the following definitions apply:

A Corporation includes any entity that has filed articles of incorporation in any of the 50 states, the District of Columbia, or the various territories of the United States [but not foreign corporations]. It includes both for-profit and non-profit organizations.

21. **Insolvency, Bankruptcy or Receivership**

a. The Subrecipient shall immediately notify the CEC, which will in turn notify the DOE of the occurrence of any of the following events:

i. the Subrecipient, or its parent's filing of a voluntary case seeking liquidation or reorganization under the Bankruptcy Act;

ii. the Subrecipient's consent to the institution of an involuntary case under the Bankruptcy Act against the Subrecipient, or its parent;

iii. the filing of any similar proceeding for or against the Subrecipient, or its parent, or its consent to, the dissolution, winding-up or readjustment of the Subrecipient's debts, appointment of a receiver, conservator, trustee, or other officer with similar powers over the Subrecipient under any other applicable state or federal law; or

iv. the Subrecipient's insolvency due to its inability to pay its debts generally as they become due.

b. Such notification shall be in writing and shall:

i. specifically set out the details of the occurrence of an event referenced in paragraph (a);

ii. provide the facts surrounding that event; and

iii. provide the impact such event will have on the project being funded by this Award.

c. Upon the occurrence of any of the four events described in the paragraph a., CEC or DOE reserves the right to conduct a review of the Subrecipient's, award to determine the Subrecipient's compliance with the required elements of the Award (including such items as cost share, progress towards technical project objectives, and submission of required reports). If the CEC or DOE review determines that there are significant deficiencies or concerns with the Subrecipient's performance under the Award, the CEC or DOE reserves the right to impose additional requirements, as needed, including:

i. change the Subrecipient's payment method; or

ii. institute payment controls.

d. Failure of the Subrecipient to comply with this term may be considered a material noncompliance of this financial assistance award by the CEC CAM or DOE Contracting Officer.

22. **Contract Provisions for Non-Federal Entity Contracts Under Federal Awards**

a. In accordance with Appendix II to 2 CFR Part 200, in addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by a non-Federal entity under the Federal award must contain provisions covering the following, as applicable:

b. Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

c. All contracts in excess of $10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement.

d. Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

e. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the CEC, which will in turn report to the DOE. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the CEC, which will in turn report to the DOE.

f. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

g. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the Recipient or Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the Recipient or Subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

h. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended - Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the CEC, which will in turn report to the DOE and the Regional Office of the Environmental Protection Agency (EPA).

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

j. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

k. See § 200.323.

l. See § 200.216.

m. See § 200.322.

23. **Final Incurred Cost Audit**

In accordance with 2 CFR Part 200 as amended by 2 CFR Part 910, the CEC and DOE reserve the right to initiate a final incurred cost audit on this Award. If the audit has not been performed or completed prior to the closeout of the award, the CEC and DOE retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

24. **Required Reporting under the Federal Funding and Transparency Act of 2006**

a. Public Law 109-282, the Federal Funding Accountability and Transparency Act of 2006 as amended (FFATA), requires certain disclosures of entities and organizations receiving federal funds. The administrative requirements for complying with FFATA are contained in 2 CFR Part 170. Subrecipient must comply, as applicable, with all FFATA requirements including but not limited to providing CEC with any required data within the timeframe requested by CEC.

b. Unless an exemption applies, CEC must report each action that equals or exceeds $30,000 in Federal funds for a subaward to an “non-federal entity” as defined in 2 CFR Part 170 to https://www.fsrs.gov.

c. Unless an exemption applies, CEC must report the names and total compensation of each of Subrecipient’s five most highly compensated executives for the preceding fiscal year by the end of the month following the month during which CEC made the subaward if:

    i. In Subrecipient's preceding fiscal year, Subrecipient received: (a) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and (b) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards)

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

d. Additional definitions relevant to this Section are contained in 2 CFR Part 170.

25. **Unique Entity Identifier**

a. No entity may receive a subaward under this Program from CEC until the Subrecipient entity has provided its Unique Entity Identifier to CEC. CEC may not make a subaward to an entity unless the entity has provided its Unique Entity Identifier number to CEC.

b. Unique Entity Identifier refers to the identifier assigned by the Federal repository, System for Award Management (SAM), to uniquely identify business entities.

c. Entity includes non-Federal entities as defined at 2 CFR 200.1 and also includes all of the following for purposes of this Section:

i. A foreign organization;
ii. A foreign public entity;
iii. A domestic for-profit organization; and
iv. A Federal agency.
v. Subaward has the meaning given in 2 CFR 200.1.
vi. Subrecipient has the meaning given in 2 CFR 200.1.

26. **Annual Independent Audits**

a. The Subrecipient and its lower tier subrecipients, contractors, and subcontractors must comply with the annual independent audit requirements in 2 CFR 200.500 through 2 CFR 200.521 for institutions of higher education, nonprofit organizations, and state and local governments (Single audit), and 2 CFR 910.500 through 2 CFR 910.521 for for-profit entities (Compliance audit).

b. The annual independent audits are separate from Government-initiated audits and must be paid for by the Subrecipient and its lower tier subrecipients, contractors, and subcontractors. To minimize expense, the Subrecipient and its lower tier subrecipients, contractors, and subcontractors may have a Compliance audit in conjunction with its annual audit of financial statements. The financial statement audit is **not** a substitute for the Compliance audit. If the audit (Single audit or Compliance audit, depending on Subrecipient or lower tier subrecipient, contractor, and subcontractor entity type) has not been performed or completed prior to the closeout of the award, DOE may impose one or more of the actions outlined in 2 CFR 200.338, Remedies for Noncompliance.

27. **Integrity and Performance Matters**

a. Subrecipient must immediately notify CEC of any civil, criminal, or administrative proceedings as described in part b. of this Section, below.

b. Subrecipient must submit information as directed by CEC about each proceeding that (1) is in connection with the award or performance of a Financial Assistance, cooperative agreement, or procurement contract from the Federal Government; (2) reached its final disposition during the most recent five-year period; and (3) is one of the following:

i. A criminal proceeding that resulted in a conviction (judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of *nolo contendere*).

ii. A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of $5,000 or more.

iii. An administrative proceeding, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of $5,000 or more or reimbursement, restitution, or damages in excess of $100,000. An administrative proceeding is a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or Financial Assistance awards. It does not include audits, site visits, corrective plans, or inspection of deliverables.

iv. Any other criminal, civil, or administrative proceeding if (1) it could have led to an outcome described in paragraph i., ii., or .iii., above; (2) it had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and (3) the requirement in this Section to disclose information about the proceeding does not conflict with applicable laws and regulations.

28. **Fraud, Waste, and Abuse**

a. The mission of the DOE Office of Inspector General (OIG) is to strengthen the integrity, economy and efficiency of DOE's programs and operations including deterring and detecting fraud, waste, abuse, and mismanagement. The OIG accomplishes this mission primarily through investigations, audits, and inspections of Department of Energy activities to include grants, cooperative agreements, loans, and contracts. The OIG maintains a Hotline for reporting allegations of fraud, waste, abuse, or mismanagement. To report such allegations, please visit https://www.energy.gov/ig/ig-hotline.

b. The Subrecipient must disclose, in a timely manner, in writing to the DOE and the CEC all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Award.

c. Failure to make the required disclosures can result in any of the remedies described in 2 CFR 200.339. (See also 2 CFR part 180, 31 U.S.C. 3321, and 41 U.S.C. 2313.)