

**Meeting Date: 5/28/2013**

**Report Type:** Consent

**Report ID:** 2013-00381

**Title: Design-Build: Meadowview City Service Complex-LNG Fueling Station Upgrade (2/3 vote required)**

**Location:** Meadowview Service Center

**Issue:** The liquefied natural gas (LNG) fueling infrastructure at the Meadowview City Service Complex (MCSC) is over 10 years old and inadequate to support the current fueling demand.

**Recommendation:** Pass a Resolution: 1) suspending competitive bidding in the best interests of the City and approving the use of the design-build alternative project delivery method for the Meadowview City Service Complex Liquefied Natural Gas Fueling Station Upgrade project (C13000100); 2) transferring existing funding in the amount of \$420,000 from the Solid Waste Facility Repair and Rehabilitation project (Y14000900, Solid Waste Fund, Fund 6007) to C13000100; 3) authorizing the City Manager or the City Manager's designee to accept and execute a California Energy Commission Natural Gas Fueling Infrastructure grant (ARV-12-047) in the amount of \$600,000; and 4) establishing revenue and expenditure budgets in the amount of \$600,000 in C13000100.

**Contact:** Keith Leech, Fleet Manager, (916) 808-5869, Yadi Kavakebi, Facilities & Real Property Superintendent, (916) 808-8432, James Christensen, Senior Engineer, (916) 808-5863

**Presenter:** None

**Department:** General Services

**Division:** Fleet Management Admin

**Dept ID:** 13001311

**Attachments:**

1-Description/Analysis

2-Signed CA Energy Commission Grant-ARV-12-047-05152012

---

**City Attorney Review**

Approved as to Form  
Kourtney Burdick  
5/16/2013 2:43:21 PM

**City Treasurer Review**

Reviewed for Impact on Cash and Debt  
Russell Fehr  
5/8/2013 11:50:06 AM

**Approvals/Acknowledgements**

Department Director or Designee: Reina Schwartz - 5/16/2013 9:55:07 AM

## Description/Analysis

**Issue Detail:** The majority of the City's liquefied natural gas (LNG) fleet, comprised of nearly 100 refuse trucks, obtain fuel at the Meadowview City Service Complex (MCSC). However, the LNG fuel infrastructure at the MCSC is over 10 years old and inadequate to support the current fueling demand. The proposed project will double the current fueling capacity by installing two new LNG modular fuel stations at MCSC and refurbishing the two existing LNG modular fuel stations.

**Policy Considerations:** The recommendations in this report are in accordance with City Code Chapter 3.60 and Administrative Policy 4002 regarding exceptions to competitive bidding.

**Economic Impacts:** None

### Environmental Considerations:

**California Environmental Quality Act (CEQA):** The Community Development Department has determined that this project is categorically exempt from CEQA pursuant to CEQA Guidelines Class 1 and 3, Sections 15301 and 15303. The project consists of the operation, repair, and minor alteration of existing LNG fuel dispenser tanks involving their removal, renovation, and replacement at their existing location. In addition, the project consists of installing two new modular LNG fuel dispenser tanks at the site of the existing fuel dispenser tanks. The project will have no significant effect on the environment.

**Sustainability:** The expansion and refurbishment of the LNG fueling infrastructure at the MCSC supports the City's Fleet Sustainability Policy goal of utilizing alternative fuels wherever practical to reduce petroleum use and associated emissions.

**Commission/Committee Action:** None

**Rationale for Recommendation:** The MCSC LNG fueling infrastructure is over 10 years old and needs to be upgraded in order to meet the current fueling demand.

Suspending competitive bidding is recommended to use the design-build project delivery method, which is an alternative to the typical design-bid-build approach in which contractors are selected on the basis of lowest qualified bid. The design-build approach is an industry best practice to maximize project scope when working within a limited budget. Using a design-build team will allow the LNG fuel infrastructure manufacturer and site improvement installation contractor(s) to advise on constructability, and provide technical review and value engineering throughout the design phase.

Accepting grant funding in the amount of \$600,000 from the California Energy Commission (CEC) Natural Gas Fueling Infrastructure grant (ARV-12-047) will cover approximately 42 percent of the project cost.

**Financial Considerations:** The estimated cost for the MCSC LNG Fueling System Upgrade Project is \$1.44 million. On behalf of the City, Fleet Management has been awarded a CEC grant in the amount of \$600,000 that will cover approximately 42 percent of the project cost. The grant requires matching funds from the City of at least 50 percent of the project cost. The City will provide matching funds from the Fleet Fund (Fund 6501) and from the Solid Waste Facility Repair and Rehabilitation project (Y14000900, Solid Waste Fund, Fund 6007) equal to 58 percent of the estimated project cost. The project funding will be provided as follows:

Fleet Fund (Fund 6501)	\$ 420,000
Solid Waste Fund (Fund 6007)	420,000
CEC grant funds	<u>600,000</u>
Estimated project cost	\$1,440,000

**Emerging Small Business Development (ESBD):** At this time no goods or services are being purchased as a result of this report.



RECIPIENT <b>City of Sacramento</b>	AGREEMENT NUMBER <b>ARV-12-047</b>
ADDRESS <b>5730 24<sup>th</sup> Street, Bldg. 1                  Sacramento, CA 95822</b>	AGREEMENT TERM <b>(See CEC Signature date below) to 7/31/2014</b> The effective date of this Agreement is either the start date or the approval date by the California Energy Commission, whichever is later. The California Energy Commission shall be the last party to sign. No work is authorized, nor shall any work begin, until on or after the effective date.

**PROJECT DESCRIPTION**  
 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.

<b>Exhibit A – Scope of Work</b>	Page(s): <u>13</u>
Exhibit A-1 – Attachment	Page(s): <u>2</u>
<b>Exhibit B – Budget</b>	Page(s): <u>6</u>
<b>Exhibit C – General Terms and Conditions</b>	Page(s): <u>25</u>
Exhibit C-1 – Attachment	Page(s): <u>25</u>
<b>Exhibit D – Special Terms and Conditions</b>	Page(s): <u>2</u>
<b>Exhibit E - Contacts</b>	Page(s): <u>1</u>
<b>Exhibit F - Definitions</b>	Page(s): <u>4</u>

REIMBURSABLE AMOUNT <b>\$ 600,000.00</b>
MATCH SHARE <b>\$ 600,000.00</b>
TOTAL <b>\$1,200,000.00</b>

*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 <b>Rachel L. Grant Kiley</b>		NAME	
TITLE <b>Contracts, Grants and Loans Office Manager</b>		TITLE	
CALIFORNIA ENERGY COMMISSION ADDRESS <b>1516 9th Street, MS 1, Sacramento, CA 95814</b>			

**APPROVED AS TO FORM:**  
  
**CITY ATTORNEY**



RECIPIENT City of Sacramento	AGREEMENT NUMBER ARV-12-047
ADDRESS 5730 24 <sup>th</sup> Street, Bldg. 1 Sacramento, CA 95822	AGREEMENT TERM (See CEC Signature date below) to 7/31/2014 The effective date of this Agreement is either the start date or the approval date by the California Energy Commission, whichever is later. The California Energy Commission shall be the last party to sign. No work is authorized, nor shall any work begin, until on or after the effective date.

**PROJECT DESCRIPTION**  
 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.

<b>Exhibit A – Scope of Work</b>	Page(s): 13
Exhibit A-1 – Attachment	Page(s): 2
<b>Exhibit B – Budget</b>	Page(s): 6
<b>Exhibit C – General Terms and Conditions</b>	Page(s): 25
Exhibit C-1 – Attachment	Page(s): 25
<b>Exhibit D – Special Terms and Conditions</b>	Page(s): 2
<b>Exhibit E - Contacts</b>	Page(s): 1
<b>Exhibit F - Definitions</b>	Page(s): 4

REIMBURSABLE AMOUNT \$ 600,000.00
MATCH SHARE \$ 600,000.00
TOTAL \$1,200,000.00

*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 Rachel L. Grant Kiley		NAME	
TITLE Contracts, Grants and Loans Office Manager		TITLE	
CALIFORNIA ENERGY COMMISSION ADDRESS 1516 9th Street, MS 1, Sacramento, CA 95814			

APPROVED AS TO FORM:

*Kourtney C. Boudick*

CITY ATTORNEY

## Exhibit A SCOPE OF WORK

### TECHNICAL TASK LIST

Task #	Task Name
1	Administration
2 X	Site Preparation for New Skids
3	Equipment Installation of New Skids
4 X	Commission and Operate LNG Fueling Infrastructure (New Skids)
5	Refurbish, Commission, and Reinstall Existing LNG Fueling Skids
6	Data Collection and Analysis

### KEY NAME LIST

Task #	Key Personnel	Key Subcontractor(s)	Key Partner(s)
1	Keith Leech		
2	Peter Jensen	TBD	
3	James Christensen, PE	TBD	
4		TBD	
5		TBD	
6		TBD	

### GLOSSARY

*Specific terms and acronyms used throughout this scope of work are defined as follows:*

Term/ Acronym	Definition
ARFVTP	Alternative and Renewable Fuel and Vehicle Technology Program
CAM	Commission Agreement Manager
CPR	Critical Project Review
Energy Commission	California Energy Commission
FTD	Fuels and Transportation Division
Recipient	City of Sacramento
LNG	Liquefied Natural Gas
Meadowview	Meadowview Corporation Yard
NACY	North Area Corporation Yard
LCFS	Low Carbon Fuel Standard
REET Model	Greenhouse Gases, Regulated Emissions, and Energy Use in Transportation Model developed by the Argonne National Laboratory.
GHG	Greenhouse Gas Emissions (CO <sub>2</sub> e)

## **BACKGROUND**

*Assembly Bill 118 (Núñez, Chapter 750, Statutes of 2007), created the Alternative and Renewable Fuel and Vehicle Technology (ARFVT) Program. The statute, subsequently amended by AB 109 (Núñez Chapter 313, Statutes of 2008), authorizes the Energy Commission to develop and deploy alternative and renewable fuels and advanced transportation technologies to help attain the state's climate change policies. The Energy Commission has an annual program budget of approximately \$100 million and provides financial support for projects that:*

- *Develop and improve alternative and renewable low-carbon fuels;*
- *Optimize alternative and renewable fuels for existing and developing engine technologies;*
- *Produce alternative and renewable low-carbon fuels in California;*
- *Decrease, on a full fuel cycle basis, the overall impact and carbon footprint of alternative and renewable fuels and increase sustainability;*
- *Expand fuel infrastructure, fueling stations, and equipment;*
- *Improve light-, medium-, and heavy-duty vehicle technologies;*
- *Retrofit medium- and heavy-duty on-road and non-road vehicle fleets;*
- *Expand infrastructure connected with existing fleets, public transit, and transportation corridors; and*
- *Establish workforce training programs, conduct public education and promotion, and create technology centers.*

The California Energy Commission issued solicitation PON-12-605 to provide funding opportunities under the ARFVT Program for projects to support installation of new natural gas fueling infrastructure and upgrades to existing natural gas fueling infrastructure.

In response to PON-12-605, the recipient submitted application #37 which was proposed for funding in the Energy Commission's Notice of Proposed Awards released March 18, 2013. Recipient's application #37 and solicitation PON-12-605 are incorporated by reference into this agreement in their entirety.

In the event of any conflict or inconsistency between the terms of the Solicitation and the terms of the Recipient's Application, the Solicitation shall control. In the event of any conflict or inconsistency between the Recipient's Application and the terms of the Energy Commission's Award, the Commission's Award shall control. Similarly, in the event of any conflict or inconsistency between the terms of this Agreement and the Recipient's Application, the terms of this Agreement shall control.

### **Problem Statement:**

A key problem for market penetration by alternative fuels is low adoption. Increased market demand and volumes of production would reduce production costs and would drive vehicle manufacturers and fuel providers to invest more resources into research and development in these segments. The culmination of better technology, lower cost,

and greater demand would allow potential consumers to see the product as a strong option rather than as just an environmentally friendly luxury. A key problem facing renewable natural gas and/or natural gas today is the lack of significant precedent.

As the State of California moves forward with implementing goals as detailed in sections 3101 and 3101.5 of the "Final Regulation Language Alternative and Renewable Fuels and Technologies Program", renewable natural gas has significant potential to help achieve listed goals. In preliminary calculations of the City of Sacramento's liquefied natural gas (LNG) fuel use using the GREET Model, the current fossil source of natural gas accounts for a reduction of GHG emissions by approximately 11% over diesel. To juxtapose existing benefits with the potential impact of renewable natural gas, a blend of 30% landfill-sourced LNG and the balance conventional LNG would allow for a reduction in GHG emissions over diesel by about one third. Large fuel consumption by the city's fleet would have a significant impact on establishing market precedent for use of renewable-sourced biomethane and would serve as an example for the successful application of liquefied natural gas.

**Goals of the Agreement:**

The goal of this Agreement is to support the California Energy Commission's desired outcomes of the ARFVTP through replacing old LNG infrastructure and switching from the existing supply of fossil natural gas to fuel with a renewable natural gas content. Anticipated outcomes include a significant reduction in emissions, increased operational and economic efficiency for the city's fleet and thus more efficient use of taxpayer dollars, and support for the increased adoption of renewable natural gas through the city's large scale of fuel consumption.

**Objectives of the Agreement:**

The objectives of this Agreement are to install two new LNG fueling skids and to refurbish two LNG fueling skids currently being used by the City of Sacramento.

**TASK 1 ADMINISTRATION**

**Task 1.1 Attend Kick-off Meeting**

The goal of this task is to establish the lines of communication and procedures for implementing this Agreement. The CAM shall designate the date and location of this meeting and provide an agenda to the Recipient prior to the meeting.

**The Recipient shall:**

- Attend a "Kick-Off" meeting with the CAM, the Grants Officer, and a representative of the Accounting Office. The Recipient shall bring its Project Manager, Agreement Administrator, Accounting Officer, and others designated by the CAM to this meeting.
- Discuss the following administrative and technical aspects of this Agreement:

- Agreement Terms and Conditions
- Critical Project Review (Task 1.2)
- Match fund documentation (Task 1.6) No reimbursable work may be done until this documentation is in place.
- Permit documentation (Task 1.7)
- subcontracts needed to carry out project (Task 1.8)
- The CAM's expectations for accomplishing tasks described in the Scope of Work
- An updated Schedule of Products and Due Dates
- Monthly Progress Reports (Task 1.4)
- Technical Products (Product Guidelines located in Section 5 of the Terms and Conditions)
- Final Report (Task 1.5)

**Recipient Products:**

- Updated Schedule of Products
- Updated List of Match Funds
- Updated List of Permits

**CAM Product:**

- Kick-Off Meeting Agenda

**Task 1.2 Critical Project Review (CPR) Meetings**

CPRs provide the opportunity for frank discussions between the Energy Commission and the Recipient. The goal of this task is to determine if the project should continue to receive Energy Commission funding to complete this Agreement and to identify any needed modifications to the tasks, products, schedule or budget.

The CAM may schedule CPR meetings as necessary, and meeting costs will be borne by the Recipient.

Meeting participants include the CAM and the Recipient and may include the Energy Commission Grants Officer, the Fuels and Transportation Division (FTD) natural gas fuel lead, other Energy Commission staff and Management as well as other individuals selected by the CAM to provide support to the Energy Commission.

**The CAM shall:**

- Determine the location, date, and time of each CPR meeting with the Recipient. These meetings generally take place at the Energy Commission, but they may take place at another location.
- Send the Recipient the agenda and a list of expected participants in advance of each CPR. If applicable, the agenda shall include a discussion on both match funding and permits.

- Conduct and make a record of each CPR meeting. Prepare a schedule for providing the written determination described below.
- Determine whether to continue the project, and if continuing, whether or not modifications are needed to the tasks, schedule, products, and/or budget for the remainder of the Agreement. Modifications to the Agreement may require a formal amendment (please see section 8 of the Terms and Conditions). If the CAM concludes that satisfactory progress is not being made, this conclusion will be referred to the Lead Commissioner for Transportation for his or her concurrence.
- Provide the Recipient with a written determination in accordance with the schedule. The written response may include a requirement for the Recipient to revise one or more product(s) that were included in the CPR.

**The Recipient shall:**

- Prepare a CPR Report for each CPR that discusses the progress of the Agreement toward achieving its goals and objectives. This report shall include recommendations and conclusions regarding continued work of the projects. This report shall be submitted along with any other products identified in this scope of work. The Recipient shall submit these documents to the CAM and any other designated reviewers at least 15 working days in advance of each CPR meeting.
- Present the required information at each CPR meeting and participate in a discussion about the Agreement.

**CAM Products:**

- Agenda and a list of expected participants
- Schedule for written determination
- Written determination

**Recipient Product:**

- CPR Report(s)

**Task 1.3 Final Meeting**

The goal of this task is to closeout this Agreement.

**The Recipient shall:**

- Meet with Energy Commission staff to present the findings, conclusions, and recommendations. The final meeting must be completed during the closeout of this Agreement.

This meeting will be attended by, at a minimum, the Recipient, the Energy Commission Grants Office Officer, and the CAM. The technical and administrative aspects of Agreement closeout will be discussed at the meeting, which may be two separate meetings at the discretion of the CAM.

The technical portion of the meeting shall present an assessment of the degree to which project and task goals and objectives were achieved, findings, conclusions, recommended next steps (if any) for the Agreement, and recommendations for improvements. The CAM will determine the appropriate meeting participants.

The administrative portion of the meeting shall be a discussion with the CAM and the Grants Officer about the following Agreement closeout items:

- What to do with any equipment purchased with Energy Commission funds (Options)
- Energy Commission's request for specific "generated" data (not already provided in Agreement products)
- Need to document Recipient's disclosure of "subject inventions" developed under the Agreement
- "Surviving" Agreement provisions
- Final invoicing and release of retention
- Prepare a schedule for completing the closeout activities for this Agreement.

**Products:**

- Written documentation of meeting agreements
- Schedule for completing closeout activities

**Task 1.4 Monthly Progress Reports**

The goal of this task is to periodically verify that satisfactory and continued progress is made towards achieving the objectives of this Agreement on time and within budget.

The objectives of this task are to summarize activities performed during the reporting period, to identify activities planned for the next reporting period, to identify issues that may affect performance and expenditures, and to form the basis for determining whether invoices are consistent with work performed.

**The Recipient shall:**

- Prepare a Monthly Progress Report which summarizes all Agreement activities conducted by the Recipient for the reporting period, including an assessment of the ability to complete the Agreement within the current budget and any anticipated cost overruns. Each progress report is due to the CAM within 10 days of the end of the reporting period. The recommended specifications for each progress report are contained in Section 6 of the Terms and Conditions of this Agreement.
- In the first Monthly Progress Report and first invoice, document and verify match expenditures and provide a synopsis of project progress, if match

funds have been expended or if work funded with match share has occurred after the notice of proposed award but before execution of the grant agreement. If no match funds have been expended or if no work funded with match share has occurred before execution, then state this in the report. All pre-execution match expenditures must conform to the requirements in the Terms and Conditions of this Agreement.

**Product:**

- Monthly Progress Reports

**Task 1.5 Final Report**

The goal of the Final Report is to assess the project's success in achieving the Agreement's goals and objectives, advancing science and technology, and providing energy-related and other benefits to California.

The objectives of the Final Report are to clearly and completely describe the project's purpose, approach, activities performed, results, and advancements in science and technology; to present a public assessment of the success of the project as measured by the degree to which goals and objectives were achieved; to make insightful observations based on results obtained; to draw conclusions; and to make recommendations for further projects and improvements to the FTD project management processes.

The Final Report shall be a public document. If the Recipient has obtained confidential status from the Energy Commission and will be preparing a confidential version of the Final Report as well, the Recipient shall perform the following activities for both the public and confidential versions of the Final Report.

**The Recipient shall:**

- Prepare an Outline of the Final Report, if requested by the CAM.
- Prepare a Final Report following the latest version of the Final Report guidelines which will be provided by the CAM. The CAM shall provide written comments on the Draft Final Report within fifteen (15) working days of receipt. The Final Report must be completed at least 60 days before the end of the Agreement Term.
- Submit one bound copy of the Final Report with the final invoice.

**Products:**

- Outline of the Final Report, if requested
- Draft Final Report
- Final Report

**Task 1.6 Identify and Obtain Matching Funds**

The goal of this task is to ensure that the match funds planned for this Agreement are obtained for and applied to this Agreement during the term of this Agreement.

The costs to obtain and document match fund commitments are not reimbursable through this Agreement. Although the Energy Commission budget for this task will be zero dollars, the Recipient may utilize match funds for this task. Match funds shall be spent concurrently or in advance of Energy Commission funds for each task during the term of this Agreement. Match funds must be identified in writing and the associated commitments obtained before the Recipient can incur any costs for which the Recipient will request reimbursement.

**The Recipient shall:**

- Prepare a letter documenting the match funding committed to this Agreement and submit it to the CAM at least 2 working days prior to the kick-off meeting. If no match funds were part of the proposal that led to the Energy Commission awarding this Agreement and none have been identified at the time this Agreement starts, then state such in the letter. If match funds were a part of the proposal that led to the Energy Commission awarding this Agreement, then provide in the letter a list of the match funds that identifies the:
  - Amount of each cash match fund, its source, including a contact name, address and telephone number and the task(s) to which the match funds will be applied.
  - Amount of each in-kind contribution, a description, documented market or book value, and its source, including a contact name, address and telephone number and the task(s) to which the match funds will be applied. If the in-kind contribution is equipment or other tangible or real property, the Recipient shall identify its owner and provide a contact name, address and telephone number, and the address where the property is located.
- Provide a copy of the letter of commitment from an authorized representative of each source of cash match funding or in-kind contributions that these funds or contributions have been secured. For match funds provided by a grant a copy of the executed grant shall be submitted in place of a letter of commitment.
- Discuss match funds and the implications to the Agreement if they are reduced or not obtained as committed, at the kick-off meeting. If applicable, match funds will be included as a line item in the progress reports and will be a topic at CPR meetings.
- Provide the appropriate information to the CAM if during the course of the Agreement additional match funds are received.
- Notify the CAM within 10 days if during the course of the Agreement existing match funds are reduced. Reduction in match funds must be approved through a formal amendment to the Agreement and may trigger an additional CPR meeting.

**Products:**

- A letter regarding match funds or stating that no match funds are provided
- Copy(ies) of each match fund commitment letter(s) (if applicable)
- Letter(s) for new match funds (if applicable)
- Letter that match funds were reduced (if applicable)

**Task 1.7 Identify and Obtain Required Permits**

The goal of this task is to obtain all permits required for work completed under this Agreement in advance of the date they are needed to keep the Agreement schedule on track.

Permit costs and the expenses associated with obtaining permits are not reimbursable under this Agreement. Although the Energy Commission budget for this task will be zero dollars, the Recipient shall budget match funds for any expected expenditures associated with obtaining permits. Permits must be identified in writing and obtained before the Recipient can make any expenditure for which a permit is required.

**The Recipient shall:**

- Prepare a letter documenting the permits required to conduct this Agreement and submit it to the CAM at least 2 working days prior to the kick-off meeting. If there are no permits required at the start of this Agreement, then state such in the letter. If it is known at the beginning of the Agreement that permits will be required during the course of the Agreement, provide in the letter:
  - A list of the permits that identifies the:
    - Type of permit
    - Name, address and telephone number of the permitting jurisdictions or lead agencies
  - The schedule the Recipient will follow in applying for and obtaining these permits.
- Discuss the list of permits and the schedule for obtaining them at the kick-off meeting and develop a timetable for submitting the updated list, schedule and the copies of the permits. The implications to the Agreement if the permits are not obtained in a timely fashion or are denied will also be discussed. If applicable, permits will be included as a line item in the Progress Reports and will be a topic at CPR meetings.
- If during the course of the Agreement additional permits become necessary, provide the appropriate information on each permit and an updated schedule to the CAM.
- As permits are obtained, send a copy of each approved permit to the CAM.
- If during the course of the Agreement permits are not obtained on time or are denied, notify the CAM within 5 working days. Either of these events may trigger an additional CPR.

**Products:**

- Letter documenting the permits or stating that no permits are required
- A copy of each approved permit (if applicable)
- Updated list of permits as they change during the term of the Agreement (if applicable)
- Updated schedule for acquiring permits as changes occur during the term of the Agreement (if applicable)

**Task 1.8 Obtain and Execute Subcontracts**

The goal of this task is to ensure quality products and to procure subcontractors required to carry out the tasks under this Agreement consistent with the Agreement Terms and Conditions and the Recipient's own procurement policies and procedures. It will also provide the Energy Commission an opportunity to review the subcontracts to ensure that the tasks are consistent with this Agreement, and that the budgeted expenditures are reasonable and consistent with applicable cost principles.

**The Recipient shall:**

- Manage and coordinate subcontractor activities.
- Submit a draft of each subcontract required to conduct the work under this Agreement to the CAM for review.
- Submit a final copy of the executed subcontract.
- If Recipient decides to add new subcontractors, then the Recipient shall notify the CAM.

**Products:**

- Draft subcontracts
- Final subcontracts

**TECHNICAL TASKS****TASK 2 SITE PREPARATION FOR NEW SKIDS**

The goal of this task is to prepare the project site for installation of two new LNG fueling skids.

**The Recipient shall:**

- Complete design work for proposed facility.
- Complete necessary facility modifications and construction.
- Carry out fueling equipment testing and start-up activities.
- Prepare and submit a Site Preparation Report documenting the readiness of the site for equipment installation.

**Products:**

- Site Preparation Report

[CPR WILL OCCUR DURING THIS TASK. SEE TASK 1.2 FOR DETAILS.]

**TASK 3 EQUIPMENT INSTALLATION OF NEW SKIDS**

The goal of this task is to purchase and install two LNG fueling skids.

**The Recipient shall:**

- Procure and install LNG fueling equipment.
- Prepare and submit an Equipment Installation Report that summarizes work performed, any problems encountered and how they were solved, and includes photographs of the new fueling infrastructure.

**Products:**

- Equipment Installation Report

**TASK 4 COMMISSION AND OPERATE LNG FUELING INFRASTRUCTURE (NEW SKIDS)**

The goal of this task is to operate and provide fueling to LNG vehicles, with the new LNG skids, at the LNG fueling facility.

**The Recipient shall:**

- Run appropriate tests on installed equipment to ensure proper operation.
- Troubleshoot any issues that arise during testing.
- Obtain any appropriate local agency inspections and approvals for the LNG fueling facility.
- Begin operating fueling facility for LNG vehicles.
- Prepare and submit a Commissioning Report that summarizes the results of tests performed on equipment, actions taken to troubleshoot any issues that arose during testing, documentation of agency approvals, if any, and confirmation that the LNG fueling facility has commenced operating with new equipment.

**Products:**

- Commissioning Report

[CPR WILL OCCUR DURING THIS TASK. SEE TASK 1.2 FOR DETAILS.]

## **TASK 5 REMOVE, REFURBISH, AND REINSTALL EXISTING LNG FUELING SKIDS**

The goal of this task is to refurbish and reinstall the two existing fueling skids at the Meadowview Corporate Yard.

### **The Recipient shall:**

- Remove the existing LNG fueling skids
- Refurbish the LNG fueling skids.
- Reinstall and commission the refurbished LNG fuelling skids at the Meadowview Corporate Yard.
- Prepare and submit a Refurbishment Report that summarizes work performed, any problems encountered and how they were solved, and includes photographs of the refurbished fueling infrastructure.

### **Products:**

- Refurbishment Report

## **Task 6 DATA COLLECTION AND ANALYSIS**

The goal of this task is to collect operational data from the project, to analyze that data for economic and environmental impacts, and to include the data and analysis in the Final Report.

### **The Recipient shall:**

- Develop data collection test plan.
- Collect 6 months of throughput, usage, and operations data from the project including, but not limited to:
  - Number of vehicles fueled per day per station
  - Number of days or hours per year that fueling skids were inoperative
  - Maximum capacity of the new fueling system
  - Electricity required to power LNG equipment on a daily basis
  - Gallons of gasoline and/or diesel fuel displaced by using LNG (with associated mileage information)
  - Expected air emissions reduction, for example:
    - Non-methane hydrocarbons
    - Oxides of nitrogen
    - Non-methane hydrocarbons plus oxides of nitrogen
    - Particulate Matter
    - Formaldehyde
  - Duty cycle of the current fleet and the expected duty cycle of future vehicle acquisitions
  - Specific jobs and economic development resulting from this project
- Identify any current and planned use of renewable energy at the facility.

- Identify the amount and percentage of renewable LNG and the source of the renewable LNG.
- Describe any energy efficiency measures used in the facility that may exceed Title 24 standards in Part 6 of the California Code Regulations.
- Provide a quantified estimate of the project's carbon intensity values for life-cycle greenhouse gas emissions.
- Compare any project performance and expectations provided in the proposal to Energy Commission with actual project performance and accomplishments.

**Products:**

Data collection information and analysis will be included in the Final Report.

## Schedule of Products and Due Dates

Task Number	Task Name	Product(s)	Due Date	
1.1	<b>Attend Kick-off Meeting</b>	Updated Schedule of Products	2 days before the kick-off meeting	
		Updated List of Match Funds	2 days before the kick-off meeting	
		Updated List of Permits	2 days before the kick-off meeting	
		Kick-Off Meeting Agenda (CEC)	Commission	
1.2	<b>Critical Project Review Meetings</b>	CPR Report	12/13/2013	
		1st CPR Meeting	Agenda and a list of expected participants (CEC)	Commission
			Schedule for written determination (CEC)	Commission
			Written determination (CEC)	Commission
		2ND CPR Meeting	CPR Report	7/15/2014
			Agenda and a list of expected participants (CEC)	Commission
	Schedule for written determination (CEC)	Commission		
	Written determination (CEC)	Commission		
1.3	<b>Final Meeting</b>	Written documentation of meeting agreements	10/1/2015	
		Schedule for completing closeout activities	10/15/2015	
1.4	<b>Monthly Progress Reports</b>			
		Monthly Progress Reports	The 10th calendar day after each month during the approved term of this Agreement	
1.5	<b>Final Report</b>	Draft Outline of the Final Report	3/1/2016	
		Final Outline of the Final Report	4/1/2016	
		Draft Final Report	5/2/2016	
		Final Report (no less than 60 days before the end term of the agreement)	7/1/2016	
1.6	<b>Identify and Obtain Match Funds</b>	A letter regarding match funds or stating that no match funds are provided	2 days before the kick-off meeting	
		Copy(ies) of each match fund commitment letter(s) (if applicable)	2 days before the kick-off meeting	
		Letter(s) for new match funds (if applicable)	Within 10 days of identifying new match funds	
		Letter that match funds were reduced (if applicable)	Within 10 days of identifying reduced match funds	
1.7	<b>Identify and Obtain Required Permits</b>	Letter documenting the permits or stating that no permits are required	2 days before the kick-off meeting	

EXHIBIT A-1

	A copy of each approved permit (if applicable)	Within 10 days of receiving each permit
	Updated list of permits as they change during the term of the Agreement (if applicable)	Within 10 days of change in list of permits
	Updated schedule for acquiring permits as changes occur during the term of the Agreement (if applicable)	Within 10 days of change in schedule for obtaining permits
<b>1.8</b>	<b>Obtain and Execute Subcontracts</b>	
	Letter describing the subcontracts needed, or stating that no subcontracts are required	2 days before the kick-off meeting
	Draft subcontracts	15 days before the scheduled date of execution
	Final subcontracts	Within 10 days of execution
<b>2</b>	<b>SITE PREPARATION FOR NEW SKIDS</b> Site Preparation Report	11/29/2013
<b>3</b>	<b>EQUIPMENT INSTALLATION OF NEW SKIDS</b> Equipment Installation Report	4/2/2014
<b>4</b>	<b>COMMISSION AND OPERATE LNG FUELING INFRASTRUCTURE (NEW SKIDS)</b> Commissioning Report	6/30/2014
<b>5</b>	<b>REMOVE, REFURBISH, AND REINSTALL EXISTING LNG FUELING SKIDS</b> Refurbishment Report	12/30/2014
<b>6</b>	<b>DATA COLLECTION AND ANALYSIS</b> Information shall be included in Final Report.	N/A

## Schedule of Products and Due Dates

Task Number	Task Name	Product(s)	Due Date	
1.1	<b>Attend Kick-off Meeting</b>	Updated Schedule of Products	2 days before the kick-off meeting	
		Updated List of Match Funds	2 days before the kick-off meeting	
		Updated List of Permits	2 days before the kick-off meeting	
		Kick-Off Meeting Agenda (CEC)	Commission	
1.2	<b>Critical Project Review Meetings</b>	CPR Report	12/13/2013	
		1st CPR Meeting	Agenda and a list of expected participants (CEC)	Commission
			Schedule for written determination (CEC)	Commission
			Written determination (CEC)	Commission
		2ND CPR Meeting	CPR Report	7/15/2014
			Agenda and a list of expected participants (CEC)	Commission
			Schedule for written determination (CEC)	Commission
	Written determination (CEC)	Commission		
1.3	<b>Final Meeting</b>	Written documentation of meeting agreements	10/1/2015	
		Schedule for completing closeout activities	10/15/2015	
1.4	<b>Monthly Progress Reports</b>	Monthly Progress Reports	The 10th calendar day after each month during the approved term of this Agreement	
1.5	<b>Final Report</b>	Draft Outline of the Final Report	3/1/2016	
		Final Outline of the Final Report	4/1/2016	
		Draft Final Report	5/2/2016	
		Final Report (no less than 60 days before the end term of the agreement)	7/1/2016	
1.6	<b>Identify and Obtain Match Funds</b>	A letter regarding match funds or stating that no match funds are provided	2 days before the kick-off meeting	
		Copy(ies) of each match fund commitment letter(s) (if applicable)	2 days before the kick-off meeting	
		Letter(s) for new match funds (if applicable)	Within 10 days of identifying new match funds	
		Letter that match funds were reduced (if applicable)	Within 10 days of identifying reduced match funds	
1.7	<b>Identify and Obtain Required Permits</b>	Letter documenting the permits or stating that no permits are required	2 days before the kick-off meeting	

EXHIBIT A-1

	A copy of each approved permit (if applicable)	Within 10 days of receiving each permit
	Updated list of permits as they change during the term of the Agreement (if applicable)	Within 10 days of change in list of permits
	Updated schedule for acquiring permits as changes occur during the term of the Agreement (if applicable)	Within 10 days of change in schedule for obtaining permits
<b>1.8</b>	<b>Obtain and Execute Subcontracts</b>	
	Letter describing the subcontracts needed, or stating that no subcontracts are required	2 days before the kick-off meeting
	Draft subcontracts	15 days before the scheduled date of execution
	Final subcontracts	Within 10 days of execution
<b>2</b>	<b>SITE PREPARATION FOR NEW SKIDS</b> Site Preparation Report	11/29/2013
<b>3</b>	<b>EQUIPMENT INSTALLATION OF NEW SKIDS</b> Equipment Installation Report	4/2/2014
<b>4</b>	<b>COMMISSION AND OPERATE LNG FUELING INFRASTRUCTURE (NEW SKIDS)</b> Commissioning Report	6/30/2014
<b>5</b>	<b>REMOVE, REFURBISH, AND REINSTALL EXISTING LNG FUELING SKIDS</b> Refurbishment Report	12/30/2014
<b>6</b>	<b>DATA COLLECTION AND ANALYSIS</b> Information shall be included in Final Report.	N/A

**Exhibit B  
Att B-1a Task Summary**

Summary Task Budget		Prime Recipient Reimbursable Costs	Major Subcontractor #1 Reimbursable Costs	Major Subcontractor #2 Reimbursable Costs	Commission Reimbursable Costs	Match Funding	Totals
1.0	Administration				\$ -	\$ -	\$ -
2.0	Site Preparation for New Skids				\$ -	\$ -	\$ -
3.0	Equipment Installation of New Skids	\$ 600,000			\$ 600,000	\$ 440,000	\$ 1,040,000
4.0	Commission and Operate LNG Fueling Infrastructure (New Skids)				\$ -	\$ -	\$ -
5.0	Remove, Refurbish, and Reinstall Existing LNG Fueling Skids				\$ -	\$ 160,000	\$ 160,000
6.0	Data Collection and Analysis	\$ -			\$ -	\$ -	\$ -
	<b>Grand Totals</b>	<b>\$ 600,000</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 600,000</b>	<b>\$ 600,000</b>	<b>\$ 1,200,000</b>

For these boxes, be sure to include all costs: labor (unloaded rates) and non-labor costs (fringe, overhead, general & administrative, and other direct operating costs). The totals are total costs to perform each task.

## Exhibit B Att B-1b Category Summary

Summary Category Budget	Prime Recipient Reimbursable Costs	Major Subcontractor #1 Reimbursable Costs	Major Subcontractor #2 Reimbursable Costs	Major Subcontractor #3 Reimbursable Costs	Commission Reimbursable Costs	Match Funding	Totals
	City of Sacramento	TBD	Company Name	Company Name			
Direct Labor					\$ -		\$ -
Fringe Benefits					\$ -		\$ -
Travel					\$ -		\$ -
Equipment	\$ 600,000.00				\$ 600,000.00	\$ 240,000.00	\$ 840,000.00
Materials/Misc.					\$ -		\$ -
Major Subcontractors*		\$ -			\$ -	\$ 360,000.00	\$ 360,000.00
Minor Subcontractors**					\$ -		\$ -
<b>Total Direct</b>	<b>\$ 600,000.00</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 600,000.00</b>	<b>\$ 600,000.00</b>	<b>\$ 1,200,000.00</b>
Indirect Overhead					\$ -		\$ -
General & Administrative					\$ -		\$ -
<b>Total Indirect</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
<b>Grand Total</b>	<b>\$ 600,000.00</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 600,000.00</b>	<b>\$ 600,000.00</b>	<b>\$ 1,200,000.00</b>

Direct Labor = unloaded rates X number of hours (worksheet Att B-3)

\* A major subcontractor is defined as any subcontractor receiving at least 25% of the Energy Commission funds or \$100,000 (whichever is less).

\*\* A Minor Subcontractor is any subcontractor receiving less than \$100,000 or 25% (whichever is less) of the Energy Commission Funds.







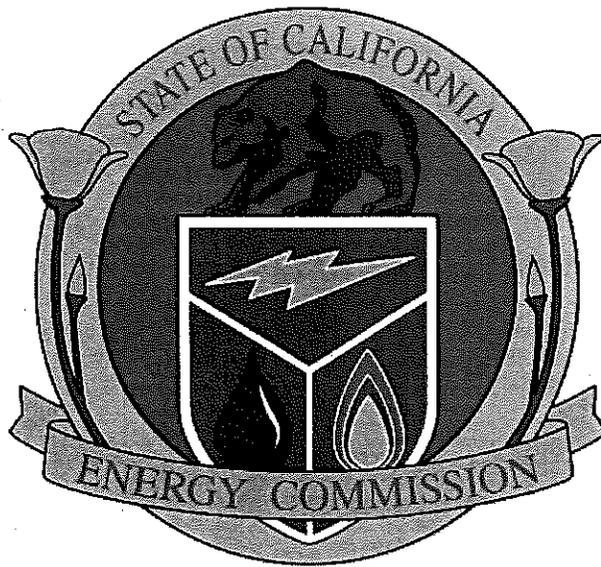
**Exhibit B  
Att B-5 Match Funding Sources**

Task Match Funding Budget		Prime Contractor Match Contribution	Major Subcontractor #1 Match Contribution	Major Subcontractor #2 Match Contribution	Match Funding
		City of Sacramento	TBD	TBD	
1.0	Administration				\$ -
2.0	Site Preparation for New Skids				\$ -
3.0	Equipment Installation of New Skids	\$ 440,000			\$ 440,000
4.0	Commission and Operate LNG Fueling Infrastructure (New Skids)				\$ -
5.0	Remove, Refurbish, and Reinstall Existing LNG Fueling Skids	\$ 160,000			\$ 160,000
6.0	Data Collection and Analysis				\$ -
<b>Grand Totals</b>		<b>\$ 600,000</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 600,000</b>

**EXHIBIT C**

**TERMS AND CONDITIONS**

**AWARD # ARV-12-047**



**TERMS AND CONDITIONS  
TABLE OF CONTENTS**

<b>SECTION</b>	<b>PAGE NO.</b>
1. Grant Agreement .....	1
2. Attachments and References .....	1
3. Funding Limitations .....	3
4. Due Diligence .....	3
5. Products .....	3
6. Reports .....	3
7. Publications - Legal Statement on Reports and Products.....	5
8. Changes to the Agreement.....	5
9. Contracting and Procurement Procedures .....	8
10. Bonding and Insurance .....	9
11. Permits and Clearances .....	9
12. Equipment.....	9
13. Termination .....	10
14. Stop Work.....	10
15. Travel and Per Diem .....	11
16. Standard of Performance .....	11
17. Payment of Funds.....	12
18. Fiscal Accounting Requirements .....	15
19. Indemnification .....	16
20. Disputes .....	17
21. Workers' Compensation Insurance.....	19
22. General Provisions .....	19
23. Certifications and Compliance .....	21
24. Site Visits .....	23
25. Confidentiality .....	23
26. Budget Contingency Clause .....	24

## TERMS AND CONDITIONS

### 1. **Grant Agreement**

This project is being funded with a grant from the California Energy Commission (Commission). Funding for this project was authorized by the Budget Act of 2011, Chapter 712, Statute of 2010, and consists of funds from Alternative and Renewable Fuel and Vehicle Technology Program Awards.

This Agreement is comprised of the grant funding award, the Terms and Conditions, and all attachments. These Terms and Conditions are standard requirements for grant awards. The Commission may impose additional special conditions in this grant Agreement that address the unique circumstances of this project. Special conditions that conflict with these standard provisions take precedence.

The Recipient's authorized representative shall sign all copies of this Agreement and return all signed packages to the Commission's Grants and Loans Office within 30 days. Failure to meet this requirement may result in the forfeiture of this award. When all required signatures are obtained, an executed copy will be returned to the Recipient.

All work and/or the expenditure of funds must occur within the approved term of this Agreement. The Commission cannot authorize any payments until all parties sign this Agreement.

### 2. **Attachments and References**

The following are attached and hereby expressly incorporated into this Agreement.

- Payment Request Form.
- Work Statement.
- Budget.
- Resolution of the Recipient or Local Jurisdiction Governing Body (if applicable).
- Resolution of the California Energy Commission (if applicable).
- Special Conditions (if applicable).

The Office of Management and Budget (OMB) Circulars and/or federal regulations identified below are incorporated by reference as part of this Agreement. These Terms and Conditions and any Special Conditions take precedence over the circulars and/or regulations. The OMB Circulars and federal regulations are used to help guide the administration of the award when questions arise during the course of performance of the award. The Commission reserves the right to use as much or as little of each circular or regulation it deems necessary to administer the award in good faith and consistent with prudent fiscal management of public funds.

OMB Circulars may be accessed on the OMB web site at [www.whitehouse.gov/omb/circulars/index.html](http://www.whitehouse.gov/omb/circulars/index.html) or by calling the Office of Administration, Publications Office, at (202) 395-7332.

- Title 10 Code of Federal Regulations (CFR) Part 600: Department of energy (DOE) Financial Assistance Regulations
- Title 10 Code of Federal Regulations (CFR) Part 420: State Energy Program
- Title 48 Code of Federal Regulations (CFR), Ch. 1, Subpart 31.2: Contracts with Commercial Organizations (Supplemented by 48 CFR, Ch. 9, Subpart 931.2 for Department of Energy grants) (commercial firms and certain non-profit organizations)
- State Energy Program Funding Opportunity Announcement DE-FOA-000052, CDFA Number 81.041, State Energy Program (<https://www.fedconnect.net/FedConnect/>)
- OMB Circular A-102: Common Rule for Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments
- OMB Circular A-110: Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (also applicable to private entities)
- OMB Circular A-87: Cost Principles for State, Local and Tribal Governments
- OMB Circular A-21: Cost Principles for Educational Institutions
- OMB Circular A-122: Cost Principles Applicable to Grants, Contracts, and Other Agreements with Non-Profit Organizations (non-profit organizations and individuals, except for those specifically exempted)
- OMB Circular A-133: Audits of States, Local Governments, and Non-Profit Organizations
- Other: \_\_\_\_\_
- None

### 3. **Funding Limitations**

Any federal, State, and local laws and regulations applicable to your project not expressly listed in this Agreement are incorporated herein as part of this Agreement.

### 4. **Due Diligence**

The Recipient is required to take timely actions which, taken collectively, move this project to completion. The Commission Agreement Manager (CAM) will periodically evaluate the Schedule of Products and Due Dates for completion of the Statement of Work tasks. If the CAM determines (1) the Recipient is not being diligent in completing the tasks in the Statement of Work or (2) the time remaining in this Agreement is insufficient to complete all project work tasks by the approved Agreement end term date, the CAM may recommend that this Agreement be terminated, and the Agreement may, without prejudice to any of the Commission's remedies, be terminated.

### 5. **Products**

Products are defined as any tangible item specified in the Statement of Work. Unless otherwise directed, draft copies of all products identified in the Work Statement shall be submitted to the CAM for review and comment. The Recipient will submit an original and two copies of the final version of all products to the CAM.

### 6. **Reports**

#### a. Progress Reports

The Recipient shall submit progress reports to the CAM as indicated in the Special Conditions or Work Statement. At a minimum, each progress report shall include the following:

**Work Statement:** This section should include a brief restatement of the approved tasks in the Work Statement and a report on the status of each, including a discussion of any products due and whether or not the project is progressing according to schedule. This section also should include a discussion of any problems encountered, proposed changes to the tasks in the Work Statement, and anticipated accomplishments in the upcoming quarter.

**Financial Status:** This section should include a narrative report comparing costs incurred to date with the approved Budget. The report should state

whether or not the project is progressing within the approved Budget and discuss any proposed changes.

**Additional Information:** Additional information may be required in the progress reports as specified in the Work Statement or Special Conditions.

b. Final Reports

A draft final report shall be submitted to the CAM no later than 60 days prior to the end of the Agreement term. At a minimum, the report shall include:

- Table of Contents.
- Abstract.
- A brief summary of the objectives of the project and how these objectives were accomplished.
- Any findings, conclusions, or recommendations for follow-up or ongoing activities that might result from the successful completion of the project.
- A statement of future intent of the grant Recipient to maintain or further develop the project.
- A Payment Request form for the final payment (including any retention).
- A consolidated list of subcontractors funded in whole or in part by the grant Recipient. Include the name, address, concise statement of work done, period, and value of each.
- Additional information specified in the Work Statement or Special Conditions.

The CAM will review the draft report. The Recipient will incorporate applicable comments and submit the final report (the original and two copies) to the CAM.

Upon receipt of the final report, the CAM shall ensure that all work has been satisfactorily completed.

c. Rights in Reports

The Commission reserves the right to use and reproduce all reports and data produced and delivered pursuant to this Agreement, and reserves the

right to authorize others to use or reproduce such materials. Each report becomes the property of the Commission.

d. **Failure to Comply with Reporting Requirements**

Failure to comply with the reporting requirements contained in this Agreement will be considered a material noncompliance with the terms of this Agreement. Noncompliance may result in withholding of future payments, suspension or termination of the current award, and withholding of future awards. A willful failure to perform, a history of failure to perform, or unsatisfactory performance of this and/or other financial assistance awards, may also result in a debarment action to preclude future awards.

**7. Publications - Legal Statement on Reports and Products**

You are encouraged to publish or otherwise make publicly available the results of the work conducted under the award.

No product or report produced as a result of work funded by this program shall be represented to be endorsed by the Commission, and all such products or reports shall include the following statement:

**LEGAL NOTICE**

This document was prepared as a result of work sponsored by the California Energy Commission. It does not necessarily represent the views of the Energy Commission, its employees, or the State of California. The Commission, the State of California, its employees, contractors, and subcontractors make no warranty, express or implied, and assume no legal liability for the information in this document; nor does any party represent that the use of this information will not infringe upon privately owned rights.

**8. Changes to the Agreement**

a. **Significant Changes**

Significant changes to this Agreement must be approved by the Commission through a formal amendment. Significant changes include, but are not limited to:

- Change of Recipient's legal name,
- Change of Recipient,
- Changes in order to disencumber funds,
- Changes to the Work Statement that reasonably modify the purpose of the Agreement,
- Changes to the Schedule of Products that extend the due dates beyond the term of the Agreement,

- Changes to the Budget that increase the amount of the Agreement,
- Changes to the Budget that increase rates or fees.

The Recipient shall submit a request in writing to the CAM with a copy to the Commission Grants and Loans Officer for any significant change. The CAM will notify the Recipient Project Manager of the appropriate Commission action within ten (10) working days.

b. Nonsignificant Changes

Changes that are not significant to the Agreement do not need to be approved at a Commission business meeting through a formal amendment. These changes shall be documented in a Letter of Agreement, signed by both parties.

c. Schedule of Products and Due Dates

If the Schedule of Products and Due Dates needs to be revised after the execution of the Agreement, the revised dates cannot extend beyond the term end date of the Agreement without a formal amendment. Recipient shall work with the CAM to agree on the new product due dates. The CAM will issue the revised Schedule of Products and Due Dates to the Recipient and the Grants and Loans Office.

d. Budget Reallocations

(1) The Commission, through its CAM and Grants and Loans Officer, and the Recipient can agree upon and make certain budget reallocations without a formal amendment to this Agreement as long as ALL of the following conditions are met:

(a) The total of all budget reallocations cannot exceed ten percent (10%) with a cap amount of \$75,000 of the Agreement Amount. For purposes of this provision, "Agreement Amount" means the total amount of Commission funds being paid to the Recipient under this Agreement. It does not include any match funds provided by the Recipient.

For example, if under an agreement the Commission agrees to pay a recipient \$100,000 and the recipient is supplying \$500,000 in match funding, the ten percent (10%) limitation applies to the \$100,000. Only up to \$10,000 of Commission funds could be reallocated without a formal amendment. If under an agreement the Commission agrees to pay a recipient \$800,000, ten percent would be \$80,000, but the cap is \$75,000, so the most that could be reallocated without a formal amendment is \$75,000.

- (b) The budget reallocation cannot substantially change the scope of work. Examples of budget reallocations that do not substantially change the scope of work include, but are not limited to, the following:
- Increasing or decreasing the overall travel budget. This does not mean an increase to the allowed per diem rates under this Agreement.
  - Increasing or decreasing the equipment budget.
  - Increasing or decreasing the number of personnel assigned to complete tasks. This does not include increasing the hourly rates of the personnel and classifications listed in the budget. Increasing hourly rates requires a formal amendment. The addition of personnel also requires a formal amendment unless there is already an identified classification of rates in the budget that the new personnel will be filling.
- (c) The budget reallocation only involves moving funds between tasks and categories. Movement of funds is considered cumulatively. For example, if one reallocation moves funds between categories and a subsequent reallocation moves funds between tasks, then the total amount moved must be less than 10% or \$75,000, whichever is less. The total Agreement Amount must remain unchanged. Increasing the total amount of the Agreement requires a formal amendment.
- (d) The budget reallocation does not increase the percentage rate of Indirect Overhead, Fringe Benefits, General and Administrative Costs, or any other rates listed in the budget. For example, if an agreement budget lists the Indirect Overhead percentage rate as 25% of Direct Labor, the 25% cannot be changed without a formal amendment.
- (2) To effectuate a budget reallocation under this section, the Recipient must make a request in writing to both the CAM and the Grants and Loans Officer. Both the CAM and the Grants and Loans Officer will then approve or disapprove the request in writing; the approval or disapproval is not effective or binding unless signed by both the CAM and the Grants and Loans Officer. Oral communications cannot be used or relied upon. If the request is approved, the CAM shall revise the Budget Attachments to reflect the changes and send them to the Grants and Loans Officer and the Recipient.
- (3) Any desired budget reallocations that do not meet the four criteria in this section must be made through a formal amendment.
- (4) Attempted budget reallocations that do not meet the requirements of this section are not legally binding upon the parties.

e. Amendments

This Agreement may be amended to make changes, including without limitation, additional funds, additional time, additional or modified tasks, and additional or modified terms.

**9. Contracting and Procurement Procedures**

This section provides general requirements for an agreement between the Recipient and a third party ("subcontractor").

All subcontracts must be submitted to the CAM for review prior to execution, pursuant to the administrative task.

The Recipient is required, where feasible, to employ contracting and procurement practices that promote open competition for all goods and services needed to complete this project. Recipient shall obtain price quotes from an adequate number of sources for all subcontracts.

Subcontracting criteria are specified in the applicable OMB Circulars and/or federal regulations incorporated by reference in this Agreement. The Commission will defer to the Recipient's own regulations and procedures as long as they reflect applicable state and local laws and regulations and are not in conflict with the minimum standards specified in this Agreement and any OMB Circulars and/or federal regulations incorporated by reference in this Agreement.

Upon request, the Recipient must submit to the CAM a copy of all solicitations for services or products required to carry out the terms of this Agreement and copies of the proposals or bids received. If a specific subcontractor was identified in the original grant application and the grant was evaluated based in part on this subcontractor's qualifications, then prior written approval from the CAM is required before substituting a new subcontractor.

The Recipient is responsible for handling all contractual and administrative issues arising out of or related to any subcontracts it enters into under this Agreement.

All subcontracts must incorporate all of the following:

- A clear and accurate description of the material, products, or services to be procured as well as a detailed budget and timeline.
- Provisions that allow for administrative, contractual, or legal remedies in instances where subcontractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.

- Provisions for termination by the Recipient, including termination procedures and the basis for settlement.
- Language conforming to the "Nondiscrimination" provision in this Agreement.
- Any additional requirements specified in the OMB Circulars incorporated by reference in this Agreement.
- The Standard of Performance provisions specified in this Agreement.
- Retention of Records provisions specified in this Agreement.
- Audits provisions specified in this Agreement.
- Language conforming to the "Indemnification" provision in this Agreement.

Recipients who are subcontracting with University of California (UC) may use the terms and conditions negotiated by the Energy Commission with UC for their subcontracts. Recipients who are subcontracting with the Department of Energy (DOE) national laboratories may use the terms and conditions negotiated with DOE.

Failure to comply with the above requirements may result in the termination of this Agreement.

#### **10. *Bonding and Insurance***

The Recipient will follow its own bonding and insurance requirements relating to bid guarantees, performance bonds, and payment bonds without regard to the dollar value of the subcontract(s) as long as they reflect applicable state and local laws and regulations and are not in conflict with the minimum standards specified in the OMB Circulars and/or federal regulations incorporated by reference in this Agreement.

#### **11. *Permits and Clearances***

The Recipient is responsible for ensuring all necessary permits and environmental documents are prepared and clearances are obtained from the appropriate agencies.

#### **12. *Equipment***

Title to equipment acquired by the Recipient with grant funds shall vest in the Recipient. The Recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program

continues to be supported by grant funds, and the Recipient shall not encumber the property without CAM approval. When no longer needed for the original project or program, the Recipient shall contact the CAM for disposition instructions.

Recipient should refer to the applicable OMB circulars and/or federal regulations incorporated by reference in this Agreement for additional equipment requirements.

### **13. Termination**

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

#### **a. With Cause**

In the event of any breach by the Recipient of the conditions set forth in this Agreement, this Agreement may be terminated for cause upon five (5) days written notice to the Recipient, without prejudice to any of the Commission's legal remedies.

#### **b. Without Cause**

This Agreement may, at the Commission's option, be terminated without cause in whole or in part, upon giving thirty (30) days advance notice in writing to the Recipient by certified mail, return receipt requested. In such event, the Recipient agrees to use all reasonable efforts to mitigate the Recipient's expenses and obligations hereunder. Also in such event, the Commission shall pay the Recipient for all satisfactory work performed and expenses incurred within 30 days after such notice of termination which could not by reasonable efforts of the Recipient have been avoided, but not in excess of the maximum payable under this Agreement.

### **14. Stop Work**

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

- a. **Compliance.** Upon receipt of such stop work order, Recipient shall immediately take all necessary steps to comply therewith and to minimize the incurrence of costs allocable to work stopped.
- b. **Equitable Adjustment.** An equitable adjustment shall be made by Energy Commission based upon a written request by Recipient. Such adjustment request must be made by Recipient within thirty (30) days from the date of the stop work order.

- c. Canceling a Stop Work Order. Recipient shall resume the work only upon receipt of written instructions from the Commission Grants Officer.

**15. Travel and Per Diem**

- a. The Recipient shall be reimbursed for travel and per diem expenses using the same rates provided to non-represented State employees. The Recipient must pay for travel in excess of these rates. The Recipient may obtain current rates from the Energy Commissions Web Site at: [http://www.energy.ca.gov/contracts/TRAVEL PER DIEM.PDF](http://www.energy.ca.gov/contracts/TRAVEL_PER_DIEM.PDF).
- b. For purposes of payment, Recipient's headquarters shall be considered the location of the Recipient's office where the employees' assigned responsibilities for this award are permanently assigned. Travel expenditures not listed in this section cannot be reimbursed.
- c. Travel identified in the Budget section of this Agreement is approved and does not require further authorization.
- d. Travel that is not included in the Budget section of this Agreement shall require written authorization from the CAM and Grants and Loans Officer prior to travel departure. The Energy Commission will reimburse travel expenses from the Recipient's office location.
- e. The Recipient must retain documentation of travel expenses in its financial records. The documentation must be listed by trip and include dates and times of departure and return, departure and destination cities. Travel receipts, including for travel meals and incidentals, shall be submitted with invoices requesting reimbursement from the Energy Commission.

**16. Standard of Performance**

Recipient, its subcontractors and their employees, in the performance of Recipient's work under this Agreement shall be responsible for exercising the degree of skill and care required by customarily accepted good professional practices and procedures used in the Recipient's field.

Any costs for failure to meet the foregoing standard or to correct otherwise defective work that requires re-performance of the work, as directed by CAM, shall be borne in total by Recipient and not the Commission. The failure of a project to achieve the performance goals and objectives stated in the Work Statement is not a basis for requesting re-performance unless the work conducted by Recipient and/or its subcontractors is deemed by the Commission to have failed the foregoing standard of performance.

In the event Recipient/subcontractor fails to perform in accordance with the above standard:

- Recipient/subcontractor will re-perform, at its own expense, any task which was not performed to the reasonable satisfaction of the CAM. Any work re-performed pursuant to this paragraph shall be completed within the time limitations originally set forth for the specific task involved. Recipient/subcontractor shall work any overtime required to meet the deadline for the task at no additional cost to the Commission;
- The Commission shall provide a new schedule for the re-performance of any task pursuant to this paragraph in the event that re-performance of a task within the original time limitations is not feasible; and
- The Commission shall have the option to direct Recipient/subcontractor not to re-perform any task which was not performed to the reasonable satisfaction of the CAM pursuant to application of (1) and (2) above. In the event the Commission directs Recipient/subcontractor not to re-perform a task, the Commission and Recipient shall negotiate a reasonable settlement for satisfactory work performed. No previous payment shall be considered a waiver of the Commission's right to reimbursement.

Nothing contained in this section is intended to limit any of the rights or remedies which the Commission may have under law.

## **17. Payment of Funds**

The Energy Commission agrees to reimburse the Recipient for actual allowable expenditures incurred in accordance with the Budget. The rates in the Budget are rate caps, or the maximum amount allowed to be billed. The Recipient can only bill for actual expenses incurred at the Recipient's actual direct labor rate(s), fringe benefit rate(s), and indirect rate(s), not to exceed the rates specified in the Budget.

### **a. Payment Requests**

The Recipient may request payment from the Commission at any time during the term of this Agreement although it is preferred that payment requests be submitted with the progress reports. The final payment request must be received by the Energy Commission along with the draft Final Report 60 days prior to the end of the Agreement term.

Payments will generally be made on a reimbursement basis for Recipient expenditures, i.e., after the Recipient has incurred the cost for a service, product, supplies, or other approved budget item. No reimbursement for food or beverages shall be made other than allowable per diem charges.

Funds in this Agreement have a limited period in which they must be expended. All Recipient expenditures must occur within the approved term of this Agreement.

b. Documentation

All payment requests must be submitted using a completed Payment Request form (Exhibit C, Attachment 1). This form must be accompanied by an itemized list of all charges and copies of all receipts or invoices necessary to document these charges for both Commission and match share, including backup documentation for actual expenditures, such as time cards, vendor invoices, and proof of payment. Any payment request that is submitted without the itemization will not be authorized. If the itemization or documentation is incomplete, inadequate, or inaccurate, the CAM will inform the Recipient and hold the invoice until all required information is received or corrected. Any penalties imposed on the Recipient by a subcontractor because of delays in payment will be paid by the Recipient.

Any documentation in foreign currency must be converted to dollars, and the conversion rate must be included in your itemization.

c. Certification

The following certification shall be included on each Payment Request form and signed by the Recipient's authorized officer:

***I certify to the best of my knowledge and belief that this report is correct and complete and all outlays and obligations are for the purposes set forth in the funding Agreement and that the reimbursement of these costs has not and will not be received under other sources including, but not limited to, a Government Entity contract, subcontract or other procurement method.***

d. Government Entity

Government Entity is defined as a governmental agency from California or any state or a state college or state university from California or any state; a local government entity or agency, including those created as a Joint Powers Authority; an auxiliary organization of the California State University or a California community college; the Federal Government; a foundation organized to support the Board of Governors of the California Community Colleges or an auxiliary organization of the Student Aid Commission established under Education Code 69522.

e. Release of Funds

The CAM will not process any payment request during the Agreement term until the following conditions have been met:

- All required reports have been submitted and are satisfactory to the CAM.
- All applicable special conditions have been met.
- All appropriate permits or permit waivers from governmental agencies have been issued to the Recipient and copies have been received by the CAM.
- All products due have been submitted and are satisfactory to the CAM.
- Other prepayment conditions as may be required by the CAM have been met. Such conditions will be specified in writing ahead of time, if possible.

f. Fringe Benefits, Indirect Overhead, and General and Administrative (G&A),

Indirect cost rates must be developed in accordance with generally accepted accounting principles and the applicable OMB circulars or federal acquisition regulations. If the Recipient has an approved fringe benefits or indirect cost rate (indirect overhead or G&A) from their cognizant Federal Agency, the Recipient may bill at the federal rate up to the Budget rate caps if the following conditions are met:

- The Recipient may bill at the federal provisional rate but must adjust annually to reflect their actual final rates for the year in accordance with the Labor, Fringe, and Indirect Invoicing Instructions which can be accessed in this agreement.
- The cost pools used to develop the federal rates must be allocable to the Commission Agreement, and the rates must be representative of the portion of costs benefiting the Commission Agreement. For example, if the federal rate is for manufacturing overhead at the Recipient's manufacturing facility and the Commission Agreement is for research and development at their research facility, the federal indirect overhead rate would not be applicable to the Commission Agreement.
- The federal rate must be adjusted to exclude any costs that are

specifically prohibited in the Commission Agreement.

- The Recipient may only bill up to the Agreement Budget rate caps unless and until an amendment to the Agreement Budget is approved.

g. Retention

It is the Commission's policy to retain 10 percent of any payment request or 10 percent of the total Commission award at the end of the project. After the project is complete the Recipient must submit a completed payment request form requesting release of the retention. The CAM will review the project file and, when satisfied that the terms of the funding Agreement have been fulfilled, will authorize release of the retention.

h. State Controller's Office

Payments are made by the State Controller's Office.

**18. Fiscal Accounting Requirements**

The Recipient shall review and comply with the administrative requirements outlined in the applicable sections of the OMB circulars and/or federal regulations incorporated as part of the funding Agreement. The OMB circulars and/or federal regulations are supplemented with the following requirements:

a. Accounting and Financial Methods

The Recipient shall establish a separate ledger account or fund for receipt and disbursement of Commission funds for each project funded by the Commission. Expenditure details must be maintained in accordance with the approved budget details using appropriate accounting practices.

b. Retention of Records

The Recipient shall retain all project records (including financial records, progress reports, and payment requests) for a minimum of three (3) years after the final payment has been received or three years after the federal grant term, whichever is later, unless otherwise specified in the funding Agreement.

Records for nonexpendable personal property acquired with grant funds shall be retained for three years after its final disposition or three years after the federal grant term, whichever is later.

c. Audits

Upon written request from the Commission, the Recipient shall provide detailed documentation of all expenses at any time throughout the project. In addition, the Recipient agrees to allow the Commission or any other agency of the State, or their designated representative, upon written request, to have reasonable access to and the right of inspection of all records that pertain to the project during the term of this Agreement and for a period of three (3) years thereafter or three years after the federal grant term, whichever is later, unless the Commission notifies the Recipient, prior to the expiration of such three-year period, that a longer period of record retention is necessary. Further, the Recipient agrees to incorporate an audit of this project within any scheduled audits, when specifically requested by the State. Recipient agrees to include a similar right to audit in any subcontract.

Recipients are strongly encouraged to conduct annual audits in accordance with the single audit concept. The Recipient should provide two copies of the independent audit report and any resulting comments and correspondence to the CAM within 30 days of the completion of such audits.

d. **Cost or Match Share**

If the grant Budget includes cost or match share under this Agreement, the Recipient agrees to be liable for the percentage of cost or match share identified in this Agreement of the total allowable project costs incurred even if the project is terminated early or is not funded to its completion.

*Total allowable project cost* is the sum of the Agreement share and Recipient share of the project costs. *Cost share* percentage is calculated by dividing Recipient cost share amount by the total allowable project cost. *Match share* percentage is calculated by dividing Recipient match share by the Agreement share of the project costs.

Failure to provide the minimum required cost or match share may result in the subsequent recovery of some or all of the funds provided under this Agreement.

The Recipient must maintain accounting records detailing the expenditure of the match (actual cash and in-kind services) and provide complete documentation of expenditures as described under "Payment of Funds."

**19. Indemnification**

The Recipient agrees to indemnify, defend, and save harmless the State, its officers, agents, and employees from any and all claims and losses accruing or

resulting to Recipient and to any and all contractors, subcontractors, materialmen, laborers, and any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the Recipient in the performance of this Agreement.

## **20. Disputes**

In the event of a dispute or grievance between Recipient and the Commission regarding this Agreement, the following two-step procedure shall be followed by both parties. Recipient shall continue with responsibilities under this Agreement during any dispute.

### **a. Commission Dispute Resolution**

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

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

b. Mutual Agreement for Arbitration

Should the Commission's Dispute Resolution procedure described above fail to resolve a dispute or grievance to the satisfaction of the Recipient, either party may seek to have the dispute or grievance resolved through binding arbitration. Both parties must consent before submitting the dispute to arbitration. The arbitration proceeding shall take place in Sacramento County, California, and shall be governed by the commercial arbitration rules of the American Arbitration Association (AAA) in effect on the date the arbitration is initiated. The dispute or grievance shall be resolved by one (1) arbitrator who is an expert in the particular field of the dispute or grievance. The arbitrator shall be selected in accordance with the aforementioned commercial arbitration rules. If arbitration is mutually decided by the parties, arbitration is in lieu of any court action and the decision rendered by the arbitrator shall be final (not appealable to a court through the civil process). However, judgment may be entered upon the arbitrator's decision and is enforceable in accordance with the applicable law in any court having jurisdiction over this Agreement. The demand for arbitration shall be made no later than six (6) months after the date of the termination of this Agreement, irrespective of when the dispute or grievance arose, and irrespective of the applicable statute of limitations for a suit based on the dispute or grievance.

The cost of arbitration shall be borne by the parties as follows:

- The AAA's administrative fees shall be borne equally by the parties;
- The expense of a stenographer shall be borne by the party requesting a stenographic record;
- Witness expenses for either side shall be paid by the party producing the witness;
- Each party shall bear the cost of its own travel expenses;
- All other expenses shall be borne equally by the parties, unless the arbitrator apportions or assesses the expenses otherwise as part of his or her award.

At the option of the parties, any or all of these arbitration costs may be deducted from any balance of Agreement funds. Both parties must agree, in writing, to utilize Agreement funds to pay for arbitration costs.

If the parties do not mutually agree to binding arbitration, the sole forum to resolve the dispute is State court.

**21. Workers' Compensation Insurance**

- a. Recipient hereby warrants that it carries Worker's Compensation Insurance for all of its employees who will be engaged in the performance of this Agreement, and agrees to furnish to the CAM satisfactory evidence of this insurance at any time the CAM may request.
- b. If Recipient is self-insured for worker's compensation, it hereby warrants such self-insurance is permissible under the laws of the State of California and agrees to furnish to the CAM satisfactory evidence of this insurance at any time the CAM may request.

**22. General Provisions**

- a. Governing Law

It is hereby understood and agreed that this Agreement shall be governed by the laws of the State of California as to interpretation and performance.

- b. Independent Capacity

The Recipient, and the agents and employees of the Recipient, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the Energy Commission.

- c. Assignment

Without the written consent of the Commission in the form of a formal written amendment, this Agreement is not assignable or transferable by Recipient either in whole or in part.

- d. Timeliness

Time is of the essence in this Agreement.

- e. Unenforceable Provision

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.

f. Waiver

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

g. Assurances

The Commission reserves the right to seek further written assurances from the Recipient and its team that the work of the project under this Agreement will be performed consistent with the terms of the Agreement.

h. Change in Business

(1) Recipient shall promptly notify the Commission of the occurrence of each of the following:

- (a) A change of address.
- (b) A change in the business name or ownership.
- (c) The existence of any litigation or other legal proceeding affecting the project.
- (d) The occurrence of any casualty or other loss to project personnel, equipment or third parties of a type commonly covered by insurance.
- (e) Receipt of notice of any claim or potential claim against Recipient for patent, copyright, trademark, service mark and/or trade secret infringement that could affect the Commission's rights.

(2) Recipient shall not change or reorganize the type of business entity under which it does business except upon prior written notification to the Commission. A change of business entity or name change requires an amendment assigning or novating the Agreement to the changed entity. In the event the Commission is not satisfied that the new entity can perform as the original Recipient, the Commission may terminate this Agreement as provided in the termination paragraph.

i. Survival of Terms

It is understood and agreed that certain provisions shall survive the completion or termination date of this Agreement for any reason. The provisions include, but are not limited to:

- "Payments of Funds"
- "Equipment"
- "Change in Business"
- "Disputes"
- "Termination"
- "Audit"
- "Indemnification"
- "Fiscal Accounting Requirements"

**23. Certifications and Compliance**

a. Federal, State and Municipal Requirements

Recipient must obtain any required permits and shall comply with all applicable federal, State, and municipal laws, rules, codes, and regulations for work performed under this Agreement.

b. Nondiscrimination Statement of Compliance

During the performance of this Agreement, Recipient and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. Recipient and its subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. Recipient and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Sections 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part of it as if set forth in full. Recipient 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 Recipient shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

c. Drug-Free Workplace Certification

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

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

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both, and the Recipient may be ineligible for any future State awards if the Commission determines that any of the following has occurred: (1) the

Recipient has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above.

d. **Child Support Compliance Act (Applicable to California Employers)**

For any Agreement in excess of \$100,000, the Recipient acknowledges that:

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

e. **Americans with Disabilities Act**

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

**24. Site Visits**

The California Energy Commission and/or its designees 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. Recipient must provide and must require subawardees to provide reasonable facilities 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.

**25. Confidentiality**

A. **Information Considered Confidential**

Confidential information is information designated confidential pursuant to the procedures specified in 20 CCR 2505. If applicable, all Recipient

information considered confidential at the commencement of this Agreement is designated in the Attachment to this Exhibit.

**B. Confidential Deliverables: Labeling and Submitting Confidential Information**

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

**C. Submittal of Unanticipated Confidential Information as a Deliverable**

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

**D. Disclosure of Confidential Information**

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

**26. Budget Contingency Clause**

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

If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the Energy Commission shall have the option to either:

- 1) cancel this Agreement with no liability occurring to the Energy Commission; or
- 2) offer an Agreement Amendment to the Recipient to reflect the reduced amount.

**Invoice Cover Page**

This is a sample document.  
For an electronic version please visit:  
<http://www.energy.ca.gov/contracts/>

**Contractor/Recipient Company Name or Logo**

**INVOICE**

Send Invoice to: California Energy Commission  
Accounting, MS-2  
1516 9th Street  
Sacramento, CA 95814

Please reference the invoice number on your check and  
send with a copy of this invoice to:

[Insert Contractor/Recipient Company Name]  
[Insert Contractor/Recipient Address]  
[Insert Contractor/Recipient City, State and Zip]  
[Insert Contractor/Recipient Attention XXXXXXXX]

**Commission Agreement #:** [Insert Contract or Grant #]  
**Invoice Number:** [Insert Invoice #]

**Invoice Date:** [Insert Date]  
**Billing Period:** [Insert Billing Period]

<b>Total Billed \$ Amount:</b>	\$	-
<b>Retention \$ Amount:</b>	\$	-
<b>Total Adjustment:</b>	\$	-
<b>Total to Pay this Invoice:</b>	\$	-
<b>Total Match this Invoice</b>	\$	-

**Federal Tax I.D.:** [Insert Contractor/Recipient Fed. Tax I.D.]

**Contractor/Recipient Project Manager:** [Insert Name]  
**Telephone No.:** [Insert Telephone #]  
**Commission Agreement Manager, MS No.:** [Insert Commission Agreement Manager]  
**Telephone No.:** [Insert Commission Telephone #]  
**Project Title:** [Insert Project Title]

**This request for payment consists of:**

- 1) Invoice (Original and 1 Copy)
- 2) Progress Report(s) for Applicable Period(s) (Original and 1 Copy)
- 3) Deliverable(s) listed by name & task (Submit to Commission Agreement Manager Electronically)
  - a)
  - b)
  - c)

The documents included in this request for payment are true and correct to the best of my knowledge and I, as an agent of [Company Name] have authority to submit this request. I certify that reimbursement for these costs has not and will not be received from any other sources, including but not limited to a Government entity contract, subcontract, or other procurement method.

**Signature of Authorized Agent:** \_\_\_\_\_  
[Insert Name and Title Here]

**Date:** \_\_\_\_\_

This is a sample document.  
 For an electronic version please visit:  
<http://www.energy.ca.gov/contracts/>

# Prime Billed Summary

Commission Agreement #: [Insert Contract or Grant #]

Invoice Number: [Insert Invoice #]

Billing Period: [Insert Billing Period]

Total Commission Reimbursable Expenses This Billing Period												
TASK	A	B	C	D	E	F	G	H	I	J	K	L
	Direct Labor	Fringe Benefits	Materials/ Misc.	Travel	Minor Subs	Major Subs	Indirect Overhead	G&A	Profit*	Subtotal Subject to 10% Retention	Equipment	Commission Reimbursable Total
1.0	[insert task title]											
2.0	[insert task title]											
3.0	[insert task title]											
4.0	[insert task title]											
5.0	[insert task title]											
6.0	[insert task title]											
7.0	[insert task title]											
8.0	[insert task title]											
9.0	[insert task title]											
10.0	[insert task title]											
11.0	[insert task title]											
12.0	[insert task title]											
13.0	[insert task title]											
14.0	[insert task title]											
15.0	[insert task title]											
<b>Total</b>												

\*For grants, no profit may be taken. For contracts and interagency agreements, no profit may be taken on subcontractor invoices.

Total Billed Including Equipment (Column L, Total): \$ -  
 Less Retention (10% X Column J, Total): \$ -  
 Total Amount to Pay on this Invoice: \$ -

This is a sample document.  
 For an electronic version please visit:  
<http://www.energy.ca.gov/contracts/>

# Prime Match Summary

Commission Agreement #: [Insert Contract or Grant #]  
 Invoice Number: [Insert Invoice #]  
 Billing Period: [Insert Billing Period]

<i>Total Match Expenses This Billing Period</i>												
TASK	A	B	C	D	E	F	G	H	I	J	K	
	Direct Labor	Fringe Benefits	Materials/ Misc.	Travel	Minor Subs	Major Subs	Indirect Overhead	G&A	Profit	Equipment	Match Total	
1.0 [insert task title]												
2.0 [insert task title]												
3.0 [insert task title]												
4.0 [insert task title]												
5.0 [insert task title]												
6.0 [insert task title]												
7.0 [insert task title]												
8.0 [insert task title]												
9.0 [insert task title]												
10.0 [insert task title]												
11.0 [insert task title]												
12.0 [insert task title]												
13.0 [insert task title]												
14.0 [insert task title]												
15.0 [insert task title]												
<b>Total</b>												







This is a sample document.  
For an electronic version please visit:  
<http://www.energy.ca.gov/contracts/>

# Prime Billed Travel

(t#)

Billed to Date

# Prime Match Travel

This is a sample document.  
 For an electronic version please visit:  
<http://www.energy.ca.gov/contracts/>

Commission Agreement #: [Insert Contract or Grant #]  
 Invoice Number: [Insert Invoice #]  
 Billing Period: [Insert Billing Period]

D												
Match Travel (to support Prime Match Summary, Column D) Lodging, Meals and Incidentals												
Task #	(1) Date	(2) Time	(3) Departure & Destination	(4) Participants	(5) Purpose	(6) Lodging	(7) Meals			(8) Incidentals	Match Sub Total	
							Breakfast	Lunch	Dinner			
Total:												

E											
Match Travel (to support Prime Match Summary, Column D) Transportation											
Task #	(1) Date	(2) Time	(3) Departure & Destination	(4) Participants	(5) Purpose	(9) Cost of Trans.	(10) Type Used	(11) Private Car Use		Match Sub Total	
								# of Miles	Mileage Rate		
Total:											

Total Travel Matched This Invoice	-
-----------------------------------	---

All costs must be accompanied by receipts.





This is a sample document.  
 For an electronic version please visit:  
<http://www.energy.ca.gov/contracts/>

# Maj Sub Billed Summary

Commission Agreement #: [Insert Contract or Grant #]  
 Invoice Number: [Insert Invoice #]  
 Billing Period: [Insert Billing Period]

[Insert Subcontractor Name]

Total Commission Reimbursable Expenses This Billing Period For Major Sub 1												
TASK	A	B	C	D	E	F	G	H	I	J	K	L
	Direct Labor	Fringe Benefits	Materials/ Misc.	Travel	Minor Subs	Major Subs	Indirect Overhead	G&A	Profit*	Subtotal Subject to 10% Retention	Equipment	Commission Reimbursable Total
1.0	[insert task title]											
2.0	[insert task title]											
3.0	[insert task title]											
4.0	[insert task title]											
5.0	[insert task title]											
6.0	[insert task title]											
7.0	[insert task title]											
8.0	[insert task title]											
9.0	[insert task title]											
10.0	[insert task title]											
11.0	[insert task title]											
12.0	[insert task title]											
13.0	[insert task title]											
14.0	[insert task title]											
15.0	[insert task title]											
<b>Total</b>												

\*For grants, no profit may be taken. For contracts and interagency agreements, no profit may be taken on subcontractor invoices.

Total Billed Including Equipment (Column L, Total): \$ -  
 Less Retention (10% X Column J, Total): \$ -  
 Total Amount to Pay on this Invoice: \$ -

This is a sample document.  
 For an electronic version please visit:  
<http://www.energy.ca.gov/contracts/>

# Maj Sub Match Summary

Commission Agreement #: [Insert Contract or Grant #]  
 Invoice Number: [Insert Invoice #]  
 Billing Period: [Insert Billing Period]

Total Match Expenses This Billing Period For Major Sub 1											
TASK	A	B	C	D	E	F	G	H	I	J	K
	Direct Labor	Fringe Benefits	Materials/ Misc.	Travel	Minor Subs	Major Subs	Indirect Overhead	G&A	Profit	Equipment	Match Total
1.0 [insert task title]											
2.0 [insert task title]											
3.0 [insert task title]											
4.0 [insert task title]											
5.0 [insert task title]											
6.0 [insert task title]											
7.0 [insert task title]											
8.0 [insert task title]											
9.0 [insert task title]											
10.0 [insert task title]											
11.0 [insert task title]											
12.0 [insert task title]											
13.0 [insert task title]											
14.0 [insert task title]											
15.0 [insert task title]											
<b>Total</b>											













# Task Billed to Date

Commission Agreement #: [Insert Contract or Grant #]

Invoice Number: [Insert Invoice #]

Billing Period: [Insert Billing Period]

Commission Reimbursable Expenses Billed to Date						
Task	Total Billed this Invoice	Total Previously Billed	Billed to Date	Budget Amt.	Remaining Balance	% Funds Expended to Date
1.0 [insert task title]	-	-	-	-	-	#DIV/0!
2.0 [insert task title]	-	-	-	-	-	#DIV/0!
3.0 [insert task title]	-	-	-	-	-	#DIV/0!
4.0 [insert task title]	-	-	-	-	-	#DIV/0!
5.0 [insert task title]	-	-	-	-	-	#DIV/0!
6.0 [insert task title]	-	-	-	-	-	#DIV/0!
7.0 [insert task title]	-	-	-	-	-	#DIV/0!
8.0 [insert task title]	-	-	-	-	-	#DIV/0!
9.0 [insert task title]	-	-	-	-	-	#DIV/0!
10.0 [insert task title]	-	-	-	-	-	#DIV/0!
11.0 [insert task title]	-	-	-	-	-	#DIV/0!
12.0 [insert task title]	-	-	-	-	-	#DIV/0!
13.0 [insert task title]	-	-	-	-	-	#DIV/0!
14.0 [insert task title]	-	-	-	-	-	#DIV/0!
15.0 [insert task title]	-	-	-	-	-	#DIV/0!
16.0 [insert task title]	-	-	-	-	-	#DIV/0!
17.0 [insert task title]	-	-	-	-	-	#DIV/0!
18.0 [insert task title]	-	-	-	-	-	#DIV/0!
19.0 [insert task title]	-	-	-	-	-	#DIV/0!
20.0 [insert task title]	-	-	-	-	-	#DIV/0!
21.0 [insert task title]	-	-	-	-	-	#DIV/0!
22.0 [insert task title]	-	-	-	-	-	#DIV/0!
23.0 [insert task title]	-	-	-	-	-	#DIV/0!
<b>Total</b>						#DIV/0!

# Match to Date

Commission Agreement #: [Insert Contract or Grant #]  
 Invoice Number: [Insert Invoice #]  
 Billing Period: [Insert Billing Period]

Task	Match Expenditures To Date										Match Funding Budget	% of Match Funds Expended
	Match This Invoice Source 1	Match This Invoice Source 2	Match This Invoice Source 3	Match This Invoice Source 4	Match This Invoice Source 5	Total Matched This Invoice	Total Previously Matched	Matched to Date				
1.0 [insert task title]						0	0	0	0	0		#DIV/0!
2.0 [insert task title]						0	0	0	0	0		#DIV/0!
3.0 [insert task title]						0	0	0	0	0		#DIV/0!
4.0 [insert task title]						0	0	0	0	0		#DIV/0!
5.0 [insert task title]						0	0	0	0	0		#DIV/0!
6.0 [insert task title]						0	0	0	0	0		#DIV/0!
7.0 [insert task title]						0	0	0	0	0		#DIV/0!
8.0 [insert task title]						0	0	0	0	0		#DIV/0!
9.0 [insert task title]						0	0	0	0	0		#DIV/0!
10.0 [insert task title]						0	0	0	0	0		#DIV/0!
11.0 [insert task title]						0	0	0	0	0		#DIV/0!
12.0 [insert task title]						0	0	0	0	0		#DIV/0!
13.0 [insert task title]						0	0	0	0	0		#DIV/0!
14.0 [insert task title]						0	0	0	0	0		#DIV/0!
15.0 [insert task title]						0	0	0	0	0		#DIV/0!
16.0 [insert task title]						0	0	0	0	0		#DIV/0!
17.0 [insert task title]						0	0	0	0	0		#DIV/0!
18.0 [insert task title]						0	0	0	0	0		#DIV/0!
19.0 [insert task title]						0	0	0	0	0		#DIV/0!
20.0 [insert task title]						0	0	0	0	0		#DIV/0!
21.0 [insert task title]						0	0	0	0	0		#DIV/0!
22.0 [insert task title]						0	0	0	0	0		#DIV/0!
23.0 [insert task title]						0	0	0	0	0		#DIV/0!
<b>Total</b>	0	0	0	0	0	0	0	0	0	0	0	#DIV/0!

## Invoice Review Checklist

1	Use current Energy Commission Invoice Template.
2	Verify math. Make sure any formulas built into the invoice template are not causing rounding issues (even to the penny).
3	Names of Personnel must be identified on invoice, even if not included in budget.
4	Labor classifications/ titles of personnel must be identified in budget.
5	Labor rates (unloaded or loaded as identified in the budget) billed must be same or lower than the agreement budget.
6	Non-Labor rates (Fringe Benefits, Overhead, G&A and Profit as included in budget) billed must be same or lower than the agreement budget and follow the base calculation provided in the agreement budget.
7	Any travel not identified in agreement, must have prior written approval from Agreement Manager and, in some cases, Agreement Officer as well.
a.	Follow travel guidelines (times of departure and return) when reimbursing for per diem expenses for meals, lodging, private car mileage and incidentals.
	<a href="http://www.energy.ca.gov/contracts/TRAVEL_PER_DIEM.PDF">http://www.energy.ca.gov/contracts/TRAVEL_PER_DIEM.PDF</a>
b.	Lodging establishment receipts must accompany invoice (not third party receipts).
c.	Airline receipts must accompany invoice (Orbitz, Priceline, etc. are not acceptable).
d.	Rental car receipts required.
e.	Reimbursement rates are maximums, not allowances. Contractor/ Recipient may claim only their actual expense and must submit receipts substantiating the amount claimed when invoicing the Energy Commission
8	Charges for food are only allowed when traveling and applicable per diem rules apply.
9	Make sure all minor subcontractor invoices are attached as back-up to Contractor/ Recipient invoice.
10	Make sure all major subcontractor invoice sheets are completed and submitted with the Contractor/ Recipient invoice sheets.
11	Make sure all subcontractor (major and minor) certifications (Small Business, Micro Business, and/or DVBE) are documented on Contractor/ Recipient invoice.
12	If requesting reimbursement for equipment, materials or miscellaneous items, must have receipt.
13	Contractor/ Recipient must sign invoice.
14	Invoice billing period must be the same as the progress report timeframe
15	Contractor/ Recipient progress report must be included w/invoice.
16	Any deliverables/ products due during the billing period must be submitted.

# Rate Adjustment Form

This is a sample document.  
 For an electronic version please visit:  
<http://www.energy.ca.gov/contracts/>

Instructions: Complete the yellow cells on this form for a rate adjustment and attach to Agreement invoice. Blue and Green cells are locked and do not require input as they automatically calculate from other cells.

Commission Agreement #: [Insert Contract or Grant #]  
 Attached to Invoice Number: [Insert Invoice #]  
 Adjustment Period: [Insert Adjustment Period]

Table 1 Billable for Adjustment Period:

Invoice Number:	Direct Labor	Fringe Benefits	Materials/Misc.	Travel	Equipment	Minor Subs	Major Subs	Indirect Overhead	G&A	Profit	Retention	Paid Invoice Totals
	0	0	0	0	0	0	0	0	0	0	0	0
<b>Totals:</b>	0	0	0	0	0	0	0	0	0	0	0	0

Table 2 Billable for Adjustment Period:

Invoice Number:	Direct Labor	Fringe Benefits	Materials/Misc.	Travel	Equipment	Minor Subs	Major Subs	Indirect Overhead	G&A	Profit	Retention	Invoice Totals
	0	0	0	0	0	0	0	0	0	0	0	0
<b>Totals:</b>	0	0	0	0	0	0	0	0	0	0	0	0

(Billable = Lower of Agreement Rate or Actual Rate)

**Total Adjustment:** \$ -  
**Check Details** \$ -

(Table 1 Total - Table 2 Total)  
 (Sum of Over/Unders from Details Below)

<Overbilled (owed to the Commission) will be a positive number and Underbilled (owed by the Commission) will be a negative number.>

# Rate Adjustment Form

## Details to Support Tables 1 and 2

Table 3 Direct Labor (DL) Adjustment						
Relevant Employee Name	Classification	Rate Billed	# Hours Billed	Relevant Total Billed	Billable Rate	# Billable Hours
			0	0		0
<b>Totals</b>						

Relevant Billed DL: \$ - (From Table 3)  
 Relevant Billable DL: \$ - (From Table 3)

**Direct Labor Amount Over or Under Billed:**

Fringe Benefits (FB) Adjustment:	
Billed FB Rate:	0.00%
Billed Base Costs (DL)	(DL From Table 1 Billed for Adjustment Period)
Billed FB Amount:	(Total FB from Table 1)
Billable FB Rate:	0.00%
Billable Base Costs (Billable DL)	(DL From Table 2 Billable for Adjustment Period)
Billable FB:	(Billable DL x Billable FB Rate)
<b>Fringe Benefits Amount Over or Under Billed:</b>	(Billed \$FB - Billable \$FB)

Table 4 Other Direct Costs/ODC (Materials, Miscellaneous, Travel, Equipment and Subs) Adjustment:			
Relevant ODC Item	Invoice #	Billed Amount	Billable Amount
<b>Totals</b>			

Relevant Billed ODC: (From Table 4)  
 Relevant Billable ODC: (From Table 4)

**Other Direct Costs Amount Over or Under Billed:** (Relevant Billed \$ODC - Relevant Billable \$ODC)

# Rate Adjustment Form

<b>Indirect Overhead Adjustment (IOH):</b>	
Billed IOH Rate:	0.00%
Billed Base Costs \$	-
Billed IOH: \$	(IOH Total From Table 1)
Billable IOH Rate:	0.00%
Billable Base Costs \$	-
Billable IOH: \$	(Billable IOH Rate x Billable Base Costs)
<b>Indirect Overhead Over or Under Billed:</b>	(Billed \$IOH - Billable \$IOH)

<b>General &amp; Administrative Adjustment (G&amp;A):</b>	
Billed G&A Rate:	0.00%
Billed Base Costs \$	-
Billed G&A: \$	(Total G&A from Table 1)
Billable G&A Rate:	0.00%
Billable Base Costs \$	-
Billable G&A: \$	(Billable G&A Rate x Billable Base Costs)
<b>General &amp; Administrative Over or Under Billed:</b>	(Billed \$G&A - Billable \$G&A)

<b>Profit Adjustment (P):</b>	
Billed P Rate:	0.00%
Billed Base Costs \$	-
Billed P: \$	(Total P From Table 1)
Billable P Rate:	0.00%
Billable Base Costs \$	-
Billable P: \$	(Billable P Rate x Billable Base Costs)
<b>Profit Over or Under Billed:</b>	(Billed \$P - Billable \$P)

<b>Retention Adjustment (RET):</b>	
Billed RET Rate:	10.00% (-10% is standard)
Billed Base Costs \$	-
Billed RET: \$	(Total RET From Table 1)
Billable RET Rate:	10.00% (-10% is standard)
Billable Base Costs \$	-
Billable RET: \$	(Billable P Rate x Billable Base Costs)
<b>Retention Over or Under Billed:</b>	(Billed \$P - Billable \$P)

Special Terms and Conditions

**1. Public Works and Payment of Prevailing Wage**

If state prevailing wage laws apply to the project funded under this Agreement, then the requirements contained in this special condition shall apply:

**A. Recipient/General Requirements**

1. Recipient shall comply with state prevailing wage law, Chapter 1 of Part 7 of Division 2 of the Labor Code, commencing with Section 1720 and Title 8, California Code of Regulations, Chapter 8, Subchapter 3, commencing with Section 16000, for any "public works" (as that term is defined in the statutes) performed on the Project funded by this Agreement. For purpose of compliance with prevailing wage law, the Recipient shall comply with provisions applicable to an awarding body. Compliance with state prevailing wage law includes without limitation: payment of at least prevailing wage as applicable; overtime and working hour requirements; apprenticeship obligations; payroll recordkeeping requirements; and other obligations as required by law.
2. Recipient shall certify to the Energy Commission on each Payment Request Form, that prevailing wages were paid to eligible workers who provided labor for work covered by the payment request and that the Recipient and all contractors complied with prevailing wage laws.
3. Prior to the release of any retained funds under this Agreement, the Recipient shall submit to the Energy Commission a certificate signed by the Recipient and all contractors performing public works activities stating that prevailing wages were paid as required by law. The required certificate will be provided by the Commission Project Manager at the Final Meeting.

**B. Flowdown Requirements**

Recipient shall ensure that all agreements with its contractors to perform work related to this Project contain the following provisions:

1. Contractor shall comply with state prevailing wage law, Chapter 1 of Part 7 of Division 2 of the Labor Code, commencing with Section 1720; and Title 8, California Code of Regulations, Chapter 8, Subchapter 3, commencing with Section 16000, for all construction, alteration, demolition, installation, repair or maintenance work over \$1,000 performed under the contract. Contractor's obligations under prevailing wage laws include without limitation: pay at least

## Exhibit D

### Special Terms and Conditions

the applicable prevailing wage for public works activities performed on the Project; comply with overtime and working hour requirements; comply with apprenticeship obligations; comply with payroll recordkeeping requirements; and comply with other obligations as required by law.

2. Contractor shall ensure that the above requirements are included in all its contracts and any layer of subcontracts for activities for the Project.

## 2. Intellectual Property

- A. The Energy Commission makes no claim to intellectual property developed under this Agreement that is not specified for delivery, except as expressly provided herein.

**EXHIBIT E  
Contacts List**

<p><b>Commission Agreement Manager:</b></p> <p>John Mathias California Energy Commission 1516 Ninth Street, MS - 27 Sacramento, CA 95814 Phone: (916) 651-9525 Fax: (916) 654-4676 e-mail: <a href="mailto:John.Mathias@energy.state.ca.us">John.Mathias@energy.state.ca.us</a></p>	<p><b>Recipient Project Manager:</b></p> <p>Keith Leech City of Sacramento 5730 24<sup>th</sup> Street, Building 1 Sacramento, CA 95822 Phone: (916) 808-5869 Fax: (916) 399-9263 e-mail: <a href="mailto:KLeech@cityofsacramento.org">KLeech@cityofsacramento.org</a></p>
<p><b>Commission Grant's Officer:</b></p> <p>Chris Craig California Energy Commission 1516 Ninth Street, MS - 1 Sacramento, CA 95814 Phone: (916) 654-4397 Fax: (916) 654-4423 e-mail: <a href="mailto:Christopher.Craig@energy.ca.gov">Christopher.Craig@energy.ca.gov</a></p>	<p><b>Recipient Administrator:</b></p> <p>Reina Schwartz City of Sacramento 5730 24<sup>th</sup> Street, Building 1 Sacramento, CA 95822 Phone: (916) 808-7195 Fax: (916) 399-9263 e-mail: <a href="mailto:RSchwartz@cityofsacramento.org">RSchwartz@cityofsacramento.org</a></p>
<p><b>Commission Accounting Officer:</b></p> <p>Kathy Jones California Energy Commission 1516 Ninth Street, MS - 2 Sacramento, CA 95814 Phone: (916) 654-4377 Fax: (916) 653-1435 e-mail: <a href="mailto:kathy.jones@energy.ca.gov">kathy.jones@energy.ca.gov</a></p>	<p><b>Recipient's Accounting Officer:</b></p> <p>Peter Jensen City of Sacramento 5730 24<sup>th</sup> Street, Building 1 Sacramento, CA 95822 Phone: (916) 808-3135 Fax: (916) 399-9263 e-mail: <a href="mailto:PJensen@cityofsacramento.org">PJensen@cityofsacramento.org</a></p>
<p><b>Commission Legal Notice:</b></p> <p>Tatyana Yakshina Grants and Loans Manager 1516 9th Street, MS-18 Sacramento, CA 95814-5512 Phone: (916) 654-4204 Fax: (916) 654-4076 e-mail: <a href="mailto:tatyana.yakshina@energy.ca.gov">tatyana.yakshina@energy.ca.gov</a></p>	

## EXHIBIT F Definitions

1. **Affiliate of the Recipient** means any natural person, corporation, partnership, joint venture, sole proprietorship or other business entity directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the Recipient. The term "control" (including the terms "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by agreement, or otherwise. For purposes of this Agreement, it is presumed that ownership or control of the voting power of more than fifty percent (50%) of the voting stock or partnership interests in an entity constitutes control of that entity.
2. **Agreement Period** is the length of this Agreement between the Energy Commission and the Recipient. The Recipient's Project may coincide with or extend outside the Agreement Period.
3. **Confidential Information** is information Recipient has submitted to the Energy Commission and has satisfactorily identified and which the Energy Commission has agreed to designate as confidential pursuant to Title 20 CCR 2501 and following (and amendments).
4. **Economic Benefit** for a Project co-funded using Energy Commission funds means the realization of economic gain or other tangible benefits by the Recipient or Affiliate of the Recipient (except bona fide third party purchasers of Recipient's commercial products) through the use of Project-Related Products and Rights, including but not limited to, operation, sale, distribution or manufacturing; or by any other transaction, including but not limited to, grant, rent, loan, equity, option, transfer, license or other fee; or by Otherwise Disposing of the Project-Related Products and Rights. The Energy Commission may rely upon professional accounting opinion in making a final determination of the dollar value of Gross Revenues, and such determination shall be the basis for calculating the royalty payment due the Energy Commission.
5. **Equipment** is defined as having a useful life of at least one year, having an acquisition unit cost of at least \$5,000, and purchased with Energy Commission funds. Equipment means any products, objects, machinery, apparatus, implements or tools purchased, used or constructed within the Project, including those products, objects, machinery, apparatus, implements or tools from which over thirty percent (30%) of the equipment is composed of Materials purchased for the Project. For purposes of determining depreciated value of equipment used in the Agreement, the Project shall terminate at the end of the normal useful life of the equipment purchased, funded and/or developed with Energy Commission funds. The Energy Commission may determine the normal useful life of such equipment.

6. **Gross Revenues** means the gross Sales Price, rentals and other amounts received by Recipient from or on account of the Sale, lease, or other transfer or use of Project-Related Products and Rights, less sales tax paid. Gross Revenues shall be determined as above and in accordance with appropriate Federal cost principles and any Economic Benefit.
7. **Match Funds** means cash or in-kind (non-cash) contributions provided by Recipient, subcontractors or other parties that will be used in performance of this Agreement.
8. **Materials** means the substances used in constructing a finished object, commodity, device, article or product.
9. **Otherwise Disposing Of** means (1) Project-Related Products and Rights not sold but delivered by the Recipient or Affiliate of the Recipient to others regardless of the basis for compensation, if any; and (2) Project-Related Products and Rights put into use by the Recipient or any third party for any purpose other than testing or evaluation of the Project-Related Products and Rights.
10. **Project** refers to the entire effort undertaken and planned by the Recipient and consisting of the work co-funded by the Energy Commission. The project may coincide with or extend beyond the Agreement Term.
11. **Project-Related Products and Rights** means any and all inventions, discoveries, machines, designs, computer software, products, devices, mechanisms, methods, protocols, processes, algorithms, flowcharts, diagrams, trade secrets, data, copyrights, patents, trademarks, proprietary rights, and the like created or made or discovered or first reduced to practice by the Recipient or other third party as a result, in whole or in part, of the Agreement award(s) and any and all updates, revisions, modification, enhancements, derivations, variations, additions, continuations, renewals, and extensions thereto and all proceeds and products therefrom.
12. **Sale** is sale, license, lease, gift or other transfer of Project-Related Product and Rights.
13. **Sales Price** means Gross Revenues, excluding normal returns and allowances such as sales tax, freight and insurance, if applicable, derived from a Sale.
14. **Subject Invention** means any and all invention or discovery conceived, or first actually reduced to practice in the course of or under the Energy Commission-funded portion of this Agreement (i.e., that portion of this Agreement for which Recipient has invoiced the Energy Commission and received reimbursement) and includes any art, method, process, machine, manufacture design or composition of matter, or any new and useful improvement thereof, whether patented or

unpatented, under the patent laws of the United States of America or any foreign country.

15. **Technology** refers to the general subject area where the product or innovation will be used. For example, solar thermal electric generation is a Technology area; direct steam generation is an innovation in this Technology area.

### **Terms Relating to Data**

16. **Technical Data** or **Data** as used throughout this Agreement means recorded information regardless of form or characteristic, of a scientific or technical nature and used in the performance of this Agreement. It may, for example, document research; document experimental, developmental, demonstration, or engineering work; or be usable or used to define a design or process; or to procure, produce, support, maintain, or operate material. The data may be graphic or pictorial delineations in media such as drawings or photographs, test specifications or related performance or design type documents or computer software (including computer programs, computer software data bases, and computer software documentation). Examples of Technical Data include manufacturing techniques and methods, machinery, devices such as tools, products, or components, research and engineering data, engineering drawings and associated lists, specifications, engineering calculations, standards, process sheets, manuals, technical reports, catalog item identification, and related information. Technical Data as used herein does not include financial reports, cost analyses and other information incidental to administration of this Agreement.
17. **Proprietary Data** is such data as Recipient has identified in a satisfactory manner as being under Recipient's control prior to commencement of performance of this Agreement, and which Recipient has reasonably demonstrated as being of a proprietary nature either by reason of copyright, patent or trade secret doctrines in full force and effect at the time when performance of this Agreement is commenced. Proprietary Data also includes data of a proprietary nature produced during the course of this Agreement that is produced by Recipient or its subcontractors at their own expense.
18. **Generated Data** is that data that the Recipient collects, collates, records, deduces, reads out or postulates for use in the performance of this Agreement. In addition, any electronic data processing program, model or software system developed or substantially modified by the Recipient in the performance of this Agreement at Energy Commission expense, together with complete documentation thereof, shall be treated as Generated Data.
19. **Product Data** is that data which, under the terms of this Agreement, is required to be delivered to the Energy Commission.

20.A **Trade Secret** is any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented and which is generally known only to certain individuals with a commercial concern and are using it to fabricate, produce or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

## RESOLUTION NO. 2013-

Adopted by the Sacramento City Council

May 28, 2013

### **SUSPENDING COMPETITIVE BIDDING, TRANSFERRING FUNDING, AND ACCEPTING AND EXECUTING A GRANT AGREEMENT FOR THE MEADOWVIEW CITY SERVICE COMPLEX LIQUEFIED NATURAL GAS FUELING STATION UPGRADE PROJECT (C13000100)**

#### **BACKGROUND**

- A. The liquefied natural gas ("LNG") fueling infrastructure at the Meadowview City Service Complex is over 10 years old and inadequate to support the City fleet's current fueling demand. To increase capacity, the Meadowview City Service Complex Liquefied Natural Gas Fueling Station Upgrade Project (C13000100) ("Project") will refurbish the two existing LNG modular fuel stations and add two new stations.
- B. The City Code authorizes the City Council to suspend competitive bidding when, upon a two-thirds vote, the City Council determines it is in the best interests of the City to do so. Suspending competitive bidding for construction of the Project is recommended to allow the use the design-build project delivery method. The design-build method will allow the infrastructure manufacturer to work with the site-improvement contractor so as to enable both to advise on constructability and provide technical review and value engineering throughout the design phase of the Project.
- C. On behalf of the City, Fleet Management has been awarded a California Energy Commission grant in the amount of \$600,000 that will cover approximately 42 percent of the C13000100 project cost. To meet the grant matching requirement of at least 50 percent of the project cost, the City will provide funding equal to 58 percent of the project cost from the Fleet Fund (Fund 6501) and Solid Waste Fund (Fund 6007).

#### **BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:**

- Section 1. Competitive bidding is suspended, in the best interests of the City, for the Meadowview City Service Complex Liquefied Natural Gas Fueling Station Upgrade Project so that the City can utilize the design-build project delivery approach to upgrade the fueling infrastructure.
- Section 2. Transferring existing funding in the amount of \$420,000 from the Solid Waste Facility Repair and Rehabilitation project (Y14000900, Solid Waste Fund, Fund 6007) to C13000100 is approved.

- Section 3. The City Manager or the City Manager's designee is authorized to accept and execute a California Energy Commission Natural Gas Fueling Infrastructure grant (ARV-12-047) in the amount of \$600,000.
- Section 4. Establishing revenue and expenditure budgets in the amount of \$600,000 in C13000100 is approved.