EXHIBIT C
ZERO-EMISSION VEHICLE INFRASTRUCTURE (ZVI) BLOCK GRANT TERMS AND CONDITIONS

TABLE OF CONTENTS

SECTION **PAGE NO.**

1. Grant Agreement 3
2. Documents Incorporated by Reference 4
3. Funding Limitations 5
4. Due Diligence 5
5. Products 5
6. Reports 5
7. Publications - Legal Statement on Reports 7
8. Changes to the Agreement 7
9. Contracting and Procurement Procedures 9
10. Bonding and Insurance 13
11. Permits and Clearances 13
12. Equipment 13
13. Termination 14
14. Stop Work 15
15. Travel and Per Diem 15
16. Standard of Performance 15
17. Payment of Funds 16
18. Fiscal Accounting Requirements 22
19. Indemnification 25
20. Workers' Compensation Insurance 25
21. General Provisions 25
22. Certifications and Compliance 27
23. Site Visits 29
24. Confidential Recipient Information 29
25. Receipt of Confidential Information and Personal Information 30
26. Budget Contingency Clause 31
27. Public Works -- Payment of Prevailing Wages 32
28. Intellectual Property 34
29. Commission Remedies for Recipient's Non-Compliance 34
30. Assembly Bill 841 (2020) 35
31. Conflicts of Interest 35
32. Enforcement of Operations Requirements 36

1. Decoupling Products from Invoices 39
2. Quarterly Instead of Monthly Reports 39
3. New Requirement for Monthly Calls with the CAM 40
4. Amendments and Other Changes 40
5. Budgets and Payment of Funds 42
6. Incurred Costs 46
7. Subrecipients and Vendors 46
8. Match Fund Timing 49

TERMS AND CONDITIONS

1. Grant Agreement

This project is being funded with a grant from the California Energy Commission's (Energy Commission) Zero-emission Vehicle Infrastructure (ZVI) Program.

Under this grant Agreement ("Agreement"), the Recipient shall develop and implement the California Electric Vehicle Infrastructure Project 2.0 (CALeVIP 2.0). Recipient understands that the Energy Commission currently only has **$14,200,000** ~~$9,400,000~~ of the potential $21,000,000 maximum possible funding for administrative costs under this Agreement and **$150,600,000** ~~$95,600,000~~ of the potential $229,000,000 for incentives awarded under this Agreement. Therefore, upon execution of this Agreement, Recipient only has authority to spend up to **$14,200,000** ~~$9,400,000~~ in administrative costs, which includes the $1,000,000 in start-up costs, and up to **$150,600,000** ~~$95,600,000~~ for incentives. In the future, the Energy Commission reserves the right to allocate any portion of the remaining funds, up to a maximum of **$5,800,000** ~~$11,600,000~~ for administrative expenses and **$78,200,000** ~~$133,400,000~~ for incentives. The Recipient will only be permitted to exceed the current limits of **$14,200,000** ~~$9,400,000~~ in administrative costs and **$150,600,000** ~~$95,600,000~~ in incentives after an amendment to this Agreement is executed, granting authorization to use additional funds.

For the first two Targeted Incentive Projects, the maximum possible administrative costs Recipient may receive is 8% of the amendment 2 Agreement amount.

- For Targeted Incentive Projects 1 and 2, maximum administrative costs of 8% of $75 million, is $6 million.

For Targeted Incentive Project**s** 3**-5**, the maximum possible administrative costs the Recipient may receive, **for each TIP,** is based on the total dollar amount of incentive funds paid out to the ~~Targeted Incentive Project 3~~ incentive recipients **in each TIP**, based on the $27.6 million in ~~new~~ incentive funds allocated to each of TIP 3, 4, & 5. ~~the Agreement as part of amendment 3.~~

- For Targeted Incentive Project**s** 3**-5**, **each TIP's maximum** administrative costs of 8% ~~of the $30 million amendment~~, if all $27.6 million in new incentive funds**, from each TIP,** are paid out, is $2.4 million**, per TIP.**
- For Targeted Incentive Project**s** 3**-5**, **each TIP's** minimum administrative costs of 5.8% ~~of $30 million~~, in the unlikely event that $0 in new incentive funds are paid out **in each TIP**, is $1,740,000 **per TIP**.

The Recipient, as implementer of the CALeVIP 2.0 Program, is a conduit of the grant-funded incentives that will be awarded to provide assistance to incentive recipients, and the incentives do not result in the performance of services by the incentive recipients to the Energy Commission, but the Energy Commission is a real party in interest to the agreements between the Recipient and incentive recipients. The Energy Commission will not take title to equipment, copyrights, or patents acquired by the incentive recipients; and the performance under the

incentive projects is not controlled by the Energy Commission. The incentive recipients are being provided assistance to carry out their own projects and are not providing services to the Energy Commission or Recipient. The incentives directly benefit each incentive recipient's project. The products produced by the incentive recipients are a by-product of the main purpose of the incentives. The products are used to monitor the use of incentive funds and do not result in a service to the Energy Commission or Recipient.

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

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

The term of this Agreement or the Agreement Period is the length of this Agreement between the Energy Commission and the Recipient. Project means Recipient's specific project that is funded in whole or in part by this Agreement. The Recipient's project may coincide with or extend outside the Agreement Period.

All reimbursable work and/or the expenditure of funds must occur within the approved term of this Agreement. No payment is authorized by the Energy Commission until this Agreement has been signed by all involved parties.

2. Documents Incorporated by Reference

The documents listed below are incorporated by reference into this Agreement. These terms and conditions will govern in the event of a conflict with the documents below, with the exception of the documents in subsection (f). Where this Agreement or California laws and regulations are silent or do not apply, the Energy Commission will use the federal cost principles and acquisition regulations listed below as guidance in determining whether reimbursement of claimed costs is allowable. Documents incorporated by reference include:

Solicitation Documents (if award is made through a competitive solicitation)

a. The funding solicitation under which this Agreement was awarded

b. The Recipient's proposal submitted in response to the solicitation

Federal Cost Principles (applicable to state and local governments, Indian tribes, institutions of higher education, and nonprofit organizations)

c. 2 Code of Federal Regulations (CFR) Part 200, Subpart E (Sections 200.400 et seq.)

Federal Acquisition Regulations (applicable to commercial organizations)

d. 48 CFR, Ch.1, Subchapter E, Part 31, Subpart 31.2: Contracts with Commercial Organizations (supplemented by 48 CFR, Ch. 9, Subchapter E, Part 931, Subpart 931.2 for Department of Energy grants)

Nondiscrimination

e. 2 California Code of Regulations, Section 11099 et seq.: Contractor Nondiscrimination and Compliance

General Laws

f. Any federal, state, or local laws or regulations applicable to the project that are not expressly listed in this Agreement

3. Funding Limitations

Any federal, State, and local laws and regulations applicable to the 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 Energy Commission Agreement Manager (CAM) will periodically evaluate the Schedule of Products and Due Dates for completion of the Scope of Work tasks. If the CAM determines (1) the Recipient is not being diligent in completing the tasks in the Scope 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 Energy Commission's remedies, be terminated.

5. Products

Products are defined as any tangible item specified in the Scope of Work. Unless otherwise directed, draft copies of all products identified in the Scope of Work 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 Terms and Conditions or Scope of Work. At a minimum, each progress report shall include the following:

Scope of Work: This section shall include a brief restatement of the approved tasks in the Scope of Work 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 shall include a discussion of any problems encountered, proposed changes to the tasks in the Scope of Work, and anticipated accomplishments in the upcoming quarter.

Financial Status: This section shall include a narrative report comparing costs incurred to date with the approved Budget. The report shall 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 Scope of Work or Special Terms and Conditions.

b. Final Reports

A draft final report shall be submitted to the CAM in accordance with the currently approved Scope of Work and Schedule of Products and Due Dates. 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 Recipient to maintain or further develop the project.
- A consolidated list of subcontractors funded in whole or in part by the Recipient. Include the name, address, concise scope of work done, period, and value of each.
- Additional information as specified in this Agreement or as directed by the CAM.

The CAM will review the draft report. The Recipient will incorporate applicable comments and submit the final report to the CAM.

c. Rights in Reports

The Energy 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 Energy Commission.

d. Failure to Comply with Reporting Requirements

Failure to submit a product required in the Scope of Work may be considered material noncompliance with the Agreement terms. Without prejudice to any other remedies, noncompliance may result in actions such as the withholding of future payments or awards, or the suspension or termination of the Agreement.

7. Publications - Legal Statement on Reports

The Recipient is encouraged to publish or otherwise make publicly available the results of the work conducted under the award.

No report produced as a result of work funded by this program shall be represented to be endorsed by the Energy Commission, and all such 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 Energy 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.

Program websites developed as a result of work funded by this program shall include the following statement:

LEGAL NOTICE

This website was prepared as a result of work sponsored by the California Energy Commission. It does not necessarily represent the views of the Energy Commission, its employees, or the State of California. The Energy Commission, the State of California, its employees, contractors, and subcontractors make no warranty, express or implied, and assume no legal liability for the information provided on, or available through, this website.

8. Changes to the Agreement

a. Procedure for Requesting Changes

The Recipient must submit a written request to the CAM for any change to the Agreement. The request must include:

- A brief summary of the proposed change;

- A brief summary of the reason(s) for the change;
- Justification for the change; and
- The revised section(s) of the Agreement, with changes made in underline/ strikethrough format.

b. Approval of Changes

No amendment or variation of this Agreement shall be valid unless made in writing and signed by both of the parties except for the Commission's termination rights in Section 13 of these terms. No oral understanding or agreement is binding on any of the parties. Changes to the Agreement must be approved at a Commission business meeting or by the Executive Director (or his/her designee).

The CAM or Commission Agreement Officer will provide the Recipient with guidance regarding the level of Commission approval required for a proposed change.

c. Personnel or Subcontractor Changes

All changes below require advance written approval by the CAM, in addition to the appropriate level of Commission approval as described in subsection (b).

1) Replacement of Key Personnel, Subcontractors, and Vendors

The CAM must provide advance written approval of the replacement of personnel, subcontractors, and vendors who are identified in the Agreement and are critical to the outcome of the project, such as the Project Manager.

2) Assignment of New Personnel to an Existing Job Classification

If the Recipient or a subcontractor seeks to assign new personnel to a job classification identified in Exhibit B, the Recipient or subcontractor must submit the individual's resume and proposed job classification and rate to the CAM for approval. The proposed rate may not exceed the maximum rate identified for the job classification. Neither the Recipient nor any subcontractor may use the job classifications or rates of their subcontractors for personnel.

If the individual performs any work prior to the effective date of the amendment documenting the change, the Recipient will bear the expense of the work.

3) Promotion of Existing Personnel (Applies to Recipients and major subcontractors)

Promotion of existing Recipient and major subcontractor personnel to rates higher than those listed for their current classification in Exhibit B will not be approved. If the actual rates (e.g., direct labor rates, fringe benefit rates, and indirect rates) exceed the approved rates in the Budget, the difference may be charged to the agreement as a match share expenditure.

4) Addition of job classifications and changes in hours.

5) Increased direct operating expenses and rates that exceed the expenses and rates identified in Exhibit B.

9. Contracting and Procurement Procedures

This section provides general requirements for an agreement between the Recipient and a subcontractor ("subcontract") and for an agreement between the Recipient and an incentive recipient ("incentive agreement"). Where these terms require the Recipient to flow down terms to subcontracts, the Recipient shall ensure the subcontracts and incentive agreements also require the subcontractor and incentive recipient to flow down terms to any lower-tiered level of subcontractor.

A subcontractor (also "subrecipient") is any person or entity that receives grant funds directly from the Recipient and is entrusted by the Recipient to make decisions about how to conduct some of the block grant project's activities. A subcontractor's role involves discretion over grant activities and is not merely just selling goods or services. A subcontractor cannot also be an incentive recipient.

An incentive recipient is any person or entity that receives an incentive awarded under this Agreement. An incentive recipient cannot also be a subcontractor.

For subcontracts that are listed as "to be determined" in the Budget, the Recipient must submit a revised Budget to the CAM, identifying the subcontractor and specific items of cost expected to be incurred by that subcontractor. In addition, Recipient must have a fully executed subcontract before the subcontractor can incur any costs for which the Recipient will seek reimbursement.

Unless otherwise allowed in a CAM-approved Implementation Manual, Recipient must have a fully executed incentive agreement before the incentive recipient can incur any costs for which the incentive recipient will seek reimbursement.

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.

The Recipient shall develop and implement controls to prevent incentive recipients from coordinating with affiliated companies to manipulate a single-applicant cap, if any such cap is applicable to distribution of block grant funds.

The Recipient shall develop and implement controls to prevent subrecipients and

incentive recipients from artificially increasing the price claimed for equipment and materials to pass state funds through to partners or affiliates. In implementing this block grant, the Recipient shall include terms where appropriate giving CEC and the Recipient the right to refuse payment to or disqualify an incentive applicant or subrecipient for anything the CEC or the Recipient, in their sole discretion, determine violates the spirit of the program under which the block grant is implemented.

The Energy 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.

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.

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, and language conforming to the “Termination” provision related to Executive Order N-6-22 – Russia Sanctions.
- Language conforming to the "Nondiscrimination" provision 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.
- “Publications- Legal Statements on Reports” provisions specified in this Agreement
- Language conforming to the “Travel and Per Diem” provision in this Agreement
- Language conforming to the “Equipment” provision in this Agreement.
- Language conforming to the “Indemnification” provision in this Agreement.

- Language conforming to the “Change in Business” provision in this Agreement.
- Language conforming to the “Receipt of Confidential Information and Personal Information” provision in this Agreement.
- Public Work -- Payment of Prevailing Wages Generally Required by Law provisions in this Agreement.
- Assembly Bill 841 (2020) provision specified in this Agreement.
- Conflicts of Interest provision specified in this Agreement.
- Survival of the following provisions:
    - Retention of Records provisions specified in this Agreement.
    - Audits provisions specified in this Agreement.
    - Language conforming to the “Equipment” provision in this Agreement.
    - Language conforming to the “Indemnification” provision in this Agreement.
    - Language conforming to the “Receipt of Confidential Information and Personal Information” 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.

Without limiting any of the Commission’s other remedies, failure to comply with the above requirements may result in the termination of this Agreement.

Incentive agreements funded in whole or in part by this Agreement must incorporate all of the following:

- A clear and accurate description of the project.
- Provisions that allow for administrative, contractual, or legal remedies in instances where incentive recipients 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, and language conforming to the “Termination” provision related to Executive Order N-6-22 – Russia Sanctions.

- Provisions allowing the Recipient, at any time, by written notice to the incentive recipient, to require the incentive recipient to stop all or any part of the work tasks in the incentive agreement.
- Language conforming to the "Nondiscrimination" provision 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.
- “Publications- Legal Statements on Reports” provisions specified in this Agreement.
- Language conforming to the “Travel and Per Diem” provision in this Agreement.
- Language conforming to the “Equipment” provision in this Agreement.
- Language conforming to the “Indemnification” provision in this Agreement.
- Language conforming to the “Change in Business” provision in this Agreement.
- Language conforming to the “Site Visits” provision in this Agreement.
- Language conforming to the “Receipt of Confidential Information and Personal Information” provision in this Agreement.
- Public Work -- Payment of Prevailing Wages Generally Required by Law provisions in this Agreement.
- Assembly Bill 841 (2020) provision(s) specified in this Agreement.
- Language requiring all installed charging ports to maintain an uptime of at least 97 percent for each year for six years after the beginning of operation (“operations requirements”), and uptime and downtime calculation methods, as described in Exhibit A of this Agreement.
- Language to enforce operations requirements, as described in the “Enforcement of Operations Requirements” provision in this Agreement.
- Survival of the following provisions:
    - Retention of Records provisions specified in this Agreement.
    - Audits provisions specified in this Agreement.
    - Language conforming to the “Equipment” provision in this

Agreement.

- Language conforming to the "Indemnification" provision in this Agreement.
- Language conforming to the "Receipt of Confidential Information and Personal Information" provision in 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.

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

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 in whole or in part with grant funds. Electric vehicle supply equipment purchased in whole or in part with grant funds shall be considered "equipment" for purposes of this Agreement regardless of whether it has an acquisition cost of at least $5,000. 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 grant funds. The Energy Commission may determine the normal useful life of such equipment.

Title to equipment acquired by the Recipient in whole or in part with grant funds shall vest in the Recipient. The Recipient shall not encumber the property (e.g. transfer equipment title, allow a lien to be placed on the equipment, etc.) without CAM written approval. Title to equipment acquired by an incentive recipient in whole or in part with grant funds shall vest in the incentive recipient. The incentive recipient shall not encumber the property without Recipient approval. Recipient shall follow criteria approved by the CAM when determining whether to approve an incentive recipient's equipment encumbrance request.

The equipment title holder 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. When no longer needed for the original project or program, the title holder shall contact the CAM for disposition instructions.

13. Termination

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

a. With Cause

The Energy Commission may, for cause, terminate this Agreement upon giving five (5) calendar days advance written notice to the Recipient. In this event, the Recipient will use all reasonable efforts to mitigate its expenses and obligations.

The term "for cause" includes but is not limited to the following:

- Partial or complete loss of match funds;
- Reorganization to a business entity unsatisfactory to the Energy Commission;
- Retention or hiring of subcontractors, or replacement or addition of personnel, that fail to perform to the standards and requirements of this Agreement;
- The Recipient's inability to pay its debts as they become due and/or the Recipient's default of an obligation that impacts its ability to perform under this Agreement; or
- Significant change in state or Energy Commission policy such that the work or product being funded would not be supported by the Commission.

b. Without Cause

The Energy Commission may terminate this Agreement without cause upon giving thirty (30) days advance written notice to the Recipient. In this event, the Recipient will use all reasonable efforts to mitigate its expenses and obligations.

c. Executive Order N-6-22 – Russia Sanctions

On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions **imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under state law. The EO directs state agencies to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should the State determine Recipient is a target of Economic Sanctions or is conducting** prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this agreement. The State shall

provide
Recipient advance written notice of such termination, allowing Recipient at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the State.

14. Stop Work

Energy Commission staff 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 stop the incurrence of costs allocable to the Energy Commission.

b. Canceling a Stop Work Order. Recipient shall resume the work only upon receipt of written instructions from Energy Commission staff.

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 Commission's Web Site at: 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.

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 Commission Agreement 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 payment requests 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 Energy Commission. The failure of a project to achieve the performance goals and objectives stated in the Scope of Work is not a basis for requesting re-performance unless the work conducted by Recipient and/or its subcontractors is deemed by the Energy Commission to have failed the foregoing standard of performance.

It is the Recipient's duty to ensure that grant funds are not misspent by incentive recipients. For example, Recipient must ensure grant funds are used to reimburse or otherwise pay for allowable costs that are actually incurred. This includes that it is the Recipient's duty to develop internal controls to detect fraud, waste, and abuse.

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

a. 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 Energy Commission;

b. The Energy 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

c. The Energy 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 (a) and (b) above. In the event the Energy Commission directs Recipient/subcontractor not to re-perform a task, the Energy Commission and Recipient shall negotiate a reasonable settlement for satisfactory work performed. No previous payment shall be considered a waiver of the Energy Commission's right to reimbursement.

17. Payment of Funds

a. Advance funds for incentives

This Agreement is for the Recipient to administer a block grant program. Under Health and Safety Code section 44272(n)(3)(D), the CEC has authority to advance funds to block grant administrators. This can prevent block grant administrators from having to front large sums of funds before seeking reimbursement from the CEC.

Under this Agreement, the Recipient can request but is not guaranteed to receive advance funds for incentives. Funds will not be advanced for other project expenditures. It is solely within the CEC's discretion to allow advance funds. The Recipient shall establish a separate ledger account or fund for receipt and disbursement of advance funds for incentives under this Agreement.

Because the CEC earns interest on the funds in its accounts, the CEC can lose interest if it advances funds long before Recipient actually pays out the funds (i.e., the funds sit in Recipient's account instead of the CEC's interest-earning account).

Accordingly, the Recipient, if allowed to receive advance funds for incentives, shall take reasonable efforts to minimize the time from receiving advance funds and paying them out. The CEC can request at any time that the Recipient repay any funds advanced to Recipient that the Recipient has not paid out, and the Recipient shall repay the unspent advanced funds within 10 days of receiving the CEC's request.

The Recipient shall pay to the CEC any interest it earns on advanced funds that cumulatively total more than $200. This means over the life of this Agreement, if the Recipient cumulatively earns more than $200 on advanced funds, any additional interest amounts after that shall be paid to the CEC. Alternatively, the CEC in its sole discretion, can instead subtract the interest amount over $200 from the amount paid to Recipient as requested in Recipient's future invoices.

In addition to other documentation the Recipient must provide under this Agreement, upon request by the CEC, the Recipient shall provide all documents related to advanced funds received and paid out and any interest earned on the funds.

b. Reimbursement for all other project expenditures

The CEC agrees to reimburse the Recipient for actual allowable expenditures incurred in accordance with this Agreement for all other project expenditures besides incentives. 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 rates not to exceed the rates specified in the Budget (e.g., direct labor rates, fringe benefit rates, and indirect rates). For example, if the Budget includes an employee's hourly rate of $50/hour but the employee is only paid $40/hour, the Recipient can only bill for $40/hour. Under the same example, if the employee earned $70/hour but the Budget only lists $50/hour, the Recipient can only bill for $50. Another example is if the maximum fringe benefit rate listed in the Budget is 20% but the Recipient's actual fringe benefit rate is only 15%, the Recipient can only bill at 15%. If the actual rates (e.g., direct labor rates, fringe benefit rates, and indirect rates) exceed the approved

rates in the Budget, the difference may be charged to the agreement as a match share expenditure.

c. Administrative Costs

Similar to all project expenditures other than incentives, the CEC agrees to reimburse the Recipient for actual allowable expenditures for administrative costs. Recipient only has authority to spend up to a maximum of **$14,200,000** ~~$9,400,000~~ in administrative costs, which includes the $1,000,000 in start-up costs.

For Targeted Incentive Projects 1 and 2, the maximum administrative cost is 8% of $75 million = $6 million. For Targeted Incentive Project 3, the maximum administrative cost is based on the total dollar amount of incentive funds paid out to ~~Targeted Incentive Project 3~~ incentive recipients, based on the $27.6 million in new incentive funds allocated to the Agreement as part of amendment 3. Therefore, for Targeted Incentive Project 3, maximum administrative costs is 8% of the $30 million amendment, if all $27.6 million in new incentive funds are paid out = $2.4 million and minimum administrative costs is 5.8% of the $30 million amendment, if $0 in new incentive funds are paid out = $1,740,000. **For Targeted Incentive Projects 4 and 5, the maximum administrative cost is based on the total dollar amount of incentive funds paid out to Targeted Incentive Project 4 and 5 incentive recipients, based on the $55.2 million in new incentive funds allocated to the Agreement as part of amendment 4. Therefore, for Targeted Incentive Projects 3 and 4, the maximum administrative costs is 8% of the $30 million allocated to each Targeted Incentive Project, if all $27.6 million in new incentive funds are paid out, in each Targeted Incentive Project, = $2.4 million and minimum administrative costs is 5.8% of the $30 million allocated to each Targeted Incentive Project, if $0 in new incentive funds are paid out = $1,740,000**.

d. Payment Requests

The Recipient may request payment from the Energy Commission at any time during the term of this Agreement. The final payment request must be received by either (1) the approved Agreement end term date, or (2) the date specified in the Special Terms and Conditions of this Agreement (if any), whichever is earlier.

Payments for all allowable project expenditures except advance funds for incentives will be made on a cost reimbursement basis, 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 be incurred within the approved term of this Agreement.

e. Documentation

All payment requests must be submitted using a completed Payment Request form. This form must be accompanied by an itemized list of all charges and copies of all proper supporting documentation, such as receipts or invoices necessary to document these charges for both Energy 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 or the proper supporting documentation will not be authorized for reimbursement. If the itemization or documentation is incomplete, inadequate, or inaccurate, the CAM will inform the Recipient via a Dispute Notification Form (Std. 209) 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 the itemization.

f. Certification

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

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

Additional certification required related to the payment of prevailing wages. Refer to section 27 of these terms and conditions for more information.

g. 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.

h. 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.

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

Indirect cost rates must be developed in accordance with generally accepted accounting principles (GAAP). 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 Energy Commission Agreement, and the rates must be representative of the portion of costs benefiting the Energy Commission Agreement. For example, if the federal rate is for manufacturing overhead at the Recipient's manufacturing facility and the Energy Commission Agreement is for research and development at their research facility, the federal indirect overhead rate would not be applicable to the Energy Commission Agreement.
- The federal rate must be adjusted to exclude any costs that are specifically prohibited in the Energy 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.

j. Retention

It is the Energy Commission's policy to retain 10 percent of any payment request or 10 percent of the total Energy 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.

Retention shall be held for all project expenditures other than incentives.

(1) Early Release of Retention for Completed Project Startup Phase

The CEC may choose to release retention if the project startup phase is completed. In order to consider release of retention early for the completed project startup phase, Recipient must complete the following Task deliverables and activities associated with the project startup phase to the satisfaction of the CAM:

- Task 1: All Products in subtasks 1.1; 1.7; 1.8; and 1.9
- Task 2: Internal Controls, Processes, and Procedures Report (as needed) and Updated Policies and Procedures Compendium (as needed);
- Task 3: Website Design and Content and Branding Guidelines Report;
- Task 4: Overall Project Plan;
- Task 5: All Products;
- Task 6: Outreach and Advertisement Plan for the Overall Project, Technical Assistance Offering Report; and
- Task 8: Initial Overall Project Fact Sheet.

(2) Early Release of Retention for a Completed Targeted Incentive Project

The CEC may choose to release retention prior to the end of the project if certain project milestones are completed. In order to consider release of retention early for a completed Targeted Incentive Project, the Recipient must complete the following Task deliverables and activities associated with that Targeted Incentive Project to the satisfaction of the CAM:

- Task 1: Quarterly Progress Reports, Draft and Final Subcontracts;
- Task 2: Updated Internal Controls, Processes, and Procedures (as needed) and Updated Policies and Procedures Compendium (as needed);
- Task 4: Updated Overall Project Plan;
- Task 5: Design Recommendations for each Targeted Incentive Project, Community Engagement Strategy Plan (updated as needed), Advisory Council Strategic Plan (updated as needed),

Design Package for each TIP;

- Task 6: Updated Outreach and Advertisement Plan for Overall Project, Updated Technical Assistance Offering Report for each TIP, Incentive Funds Forecast Reports;
- Task 7: Data Summary Report, Collected Data;
- For Tasks 9, 10, and any similar Targeted Incentive Project tasks added through an amendment to this Agreement: complete disbursement of incentive funds to all completed and verified incentive projects, and provide an Implementation Manual for Targeted Incentive Project, Schedule for Targeted Incentive Project, AB 841 Certifications, Initial Fact Sheet, Final Fact Sheet, Process and Implementation Improvement Recommendations, at least (6) six High Quality Digital Photographs, and Targeted Incentive Project Report.

k. State Controller's Office

Payments are made by the State Controller's Office.

18. Fiscal Accounting Requirements

a. Accounting and Financial Methods

The Recipient shall establish a separate ledger account or fund for receipt and disbursement of grant funds under this Agreement. The Recipient shall also establish a separate ledger account or fund for receipt and disbursement of advance funds for incentives under this Agreement. 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 Energy Commission, the Recipient shall provide detailed documentation of all expenses at any time throughout the project. In addition, the Recipient agrees to allow the Energy 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 Energy 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. Match Share Requirements

Match Share means cash or in-kind (non-cash) contributions provided by Recipient, subcontractors or third parties that will be used in performance of this Agreement.

The Recipient agrees to provide the Minimum Match Share Percentage of Total Allowable Project Costs, even if the Agreement is terminated early or otherwise ends before project completion. The Minimum Match Share Percentage is the Minimum Match Share Required (as specified on the CEC-146) divided by the Total of Reimbursable Amount and Minimum Match Share Required (as specified on the CEC-146). Total Allowable Project Costs is the sum of all actual, allowable costs incurred in performance of the Agreement and approved by the Energy Commission.

For example, if the CEC-146 specifies the following,

Reimbursable Amount $200,000
Minimum Match Share Required $50,000
Total of Reimbursable Amount and Minimum Match Share Required $250,000
Minimum Match Share Percentage of Total Allowable Project Costs 20%

the Recipient agrees to be liable for a minimum of 20% ($50,000 divided by $250,000) of Total Allowable Project Costs. In this example and at the end of the agreement, if Total Allowable Project Costs is $125,000, the Recipient shall have provided a minimum of $25,000 ($125,000 times 20%) as match share.

Without limiting any of the Energy Commission's other rights or remedies, the Recipient agrees that if it fails to provide the Minimum Match Share Percentage of Total Allowable Project Costs, and if requested by the Energy Commission, the Recipient shall repay an amount to ensure the Recipient provides, at a minimum, the Minimum Match Share Percentage of Total Allowable Project Costs.

For example, and building upon the previous example, if:

A. Grant funds disbursed = $110,000

B. Match Share Documented and Approved = $15,000

C. Total Allowable Project Costs = $125,000 (Line A plus Line B)

D. Minimum Match Share Percentage of Total Allowable Project Costs = 20%

E. Minimum Match Share Amount Required = $25,000 (Line C multiplied by Line D)

the Energy Commission may request, and the Recipient would be required to repay upon such request, $10,000 (Line E minus Line B) to the Energy Commission.

The maximum amount to be reimbursed by the Energy Commission under this Agreement is the Reimbursable Amount specified on the CEC-146. The Energy Commission award amount is fixed and will not be augmented. If actual Total Allowable Project Costs exceed estimated Total Allowable Project Costs, the Recipient is responsible for those additional costs.

The Recipient must maintain accounting records detailing the expenditure of the Match Share and provide documentation of expenditures as described in this Agreement (e.g., under this Exhibit C "Payment of Funds" and "Fiscal Accounting Requirements").

In the event of any conflict or inconsistency between the Minimum Match Share Required specified on the CEC-146 and the Match Share specified on other Exhibits to this Agreement, the Minimum Match Share Required specified on the CEC-146 shall control.

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, the Energy Commission, and to any and all contractors, subcontractors, incentive recipients, vendors, 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.

This includes repayment to CEC for funds advanced which were not spent, either by the Recipient or an incentive recipient, in accordance with the terms of this Agreement.

20. 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.

21. 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 Energy 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 Energy 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 Energy 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 Energy 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 Energy 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 Energy Commission is not satisfied that the new entity can perform as the original Recipient, the Energy 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:

- Data collection requirements described in Exhibit A Scope of Work
- “Payments of Funds”
- “Equipment”
- “Change in Business”
- “Termination”
- “Audit”
- “Indemnification”
- “Fiscal Accounting Requirements”
- “Receipt of Confidential Information and Personal Information”

22. 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 11000 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4.1 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part of it as if set forth in full. 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 Energy 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.

23. Site Visits

The 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 subcontractors and incentive recipients 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.

24. Confidential Recipient Information

a. Identification of Confidential Recipient Information

For the purposes of this Section, “Confidential Recipient Information” refers to information belonging to the Recipient that the Recipient has satisfactorily identified as confidential and the Energy Commission has agreed to designate as confidential under Title 20 California Code of Regulations Section 2505. If applicable, all Recipient information considered confidential at the commencement of this Agreement is designated in an Attachment to this Exhibit.

b. Confidential Deliverables: Labeling and Submitting Confidential Recipient Information

Prior to the commencement of this Agreement, if applicable, the parties have identified in the Attachment to this Exhibit, specific Confidential Recipient 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 Recipient Information and presented in a sealed package to the Commission Agreement Officer. (Non-confidential deliverables are submitted to the Accounting Office.) All Confidential Recipient Information will be contained in the "confidential" volume: no Confidential Recipient Information will be in the "public" volume.

c. Submittal of Unanticipated Confidential Recipient Information as a Deliverable

The Recipient and the Energy Commission agree that during this Agreement, it is possible that the Recipient may obtain or develop additional data or information not originally identified 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 an Attachment to this Exhibit.

d. Disclosure of Confidential Recipient Information

Disclosure of Confidential Recipient 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.

25. Receipt of Confidential Information and Personal Information

a. For the purposes of this Section, "confidential information" refers to information the Energy Commission has designated as confidential pursuant to Title 20 CCR Section 2505 et seq., information the Energy Commission has otherwise deemed or stated to be confidential, and other information exempt from public disclosure under the provisions of the California Public Records Act or other applicable state or federal laws.

b. For the purposes of this Section, "personal information" refers to information that meets the definition of "personal information" in California Civil Code section 1798.3(a) or one of the data elements set forth in California Civil Code section 1798.29(g)(1) or (g)(2). Personal information is a type of confidential information and is therefore subject to all requirements for confidential information provided in this Agreement and applicable law. However, there are additional requirements specific to personal information.

c. For the purposes of this Section, "special terms for confidential information" refers to the Energy Commission's special terms and conditions for the receipt of confidential information and personal information. The Energy Commission's special terms for confidential information include, but are not limited to, having in place an Information Security Program Plan and obtaining nondisclosure agreements from all individuals who will be

provided access to confidential information or personal information.

d. If the Recipient will receive confidential information or personal information from the Energy Commission or a third-party for the performance of this Agreement, the Recipient must first agree to and comply with the Energy Commission's special terms for confidential information.

e. If any other individual or entity participating in any way with this Agreement, including but not limited to subcontractors, incentive recipients, vendors, and other project partners, will receive confidential information or personal information from the CEC or a third-party for the performance of this Agreement, that individual or entity must first agree to and comply with the CEC's special terms for confidential information. The Recipient must flow-down the CEC's special terms for confidential information into each subcontract, incentive agreement, vendor agreement, or other project partner agreement that will be provided access to confidential information or personal information before the individual or entity has access to any such information. Recipient must also require all individuals and entities to flow-down this Section to any lower tier subcontractors, incentive recipients, vendors, project partners, and other individual or entity participating in any way with this Agreement that will be provided access to Confidential Information or Personal Information before the individual or entity has access to any such information.

f. If this Agreement does not include the Energy Commission's special terms for confidential information and the Energy Commission determines the Recipient or any other individual or entity participating in any way with this Agreement will receive confidential information or personal information from the Energy Commission or a third-party for the performance of this Agreement, the Energy Commission reserves the option to amend this Agreement to add its special terms for confidential information.

g. Except as provided in Title 20 CCR Sections 2506, 2507, and 2508, and the Energy Commission's special terms for confidential information, Recipient or any other individual or entity participating in any way with this Agreement may not disclose any information provided to it by the Energy Commission or a third party for the performance of this Agreement if the information has been designated as confidential or is the subject of a pending application for confidential 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 the Scope of Work. 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.

27. Public Works -- Payment of Prevailing Wages

Generally Required by Law

Projects that receive an award of public funds from the Energy Commission often involve construction, alteration, demolition, installation, repair or maintenance work over $1,000.

NOTE: Projects that receive an award of public funds from the Energy Commission are likely to be considered public works under the California Labor Code. See Chapter 1 of Part 7 of Division 2 of the California Labor Code, commencing with Section 1720 and Title 8, California Code of Regulations, Chapter 8, Subchapter 3, commencing with Section 16000.

Accordingly, the Energy Commission assumes that all projects it funds are public works. Projects deemed to be public works require among other things the payment of prevailing wages.

NOTE: Prevailing wage rates can be significantly higher than non-prevailing wage rates.

By accepting this Agreement, Recipient as a material term of this Agreement shall be fully responsible for complying with all California public works requirements including but not limited to payment of prevailing wage. Therefore, as a material term of this Agreement, Recipient must either:

(a) Proceed on the assumption that the project is a public work and ensure that:

(i) prevailing wages are paid; and

(ii) the project budget for labor reflects these prevailing wage requirements; and

(iii) the project complies with all other requirements of prevailing wage law including but not limited to keeping accurate payroll records, and complying with all working hour requirements and apprenticeship obligations;

or,

(b) Timely obtain a legally binding determination from DIR or a court of competent jurisdiction before work begins on the project that the proposed project is not a

public work.

NOTE: Only the California Department of Industrial Relations (DIR) and courts of competent jurisdiction have jurisdiction to issue legally binding determinations that a particular project is or is not a public work.

If the Recipient is unsure whether the project receiving this award is a "public work" as defined in the California Labor Code, it may wish to seek a timely determination from the California Department of Industrial Relations (DIR) or an appropriate court.

NOTE: Such processes can be time consuming and therefore it may not be possible to obtain a timely determination before the date for performance of the award commences.

If the Recipient does not timely obtain a binding determination from DIR or a court of competent jurisdiction that the project is not a public work, before this Agreement from the Energy Commission is executed, the Recipient shall assume that the project is a public work and that payment of prevailing wages is required and shall pay prevailing wages unless and until such time as the project is subsequently determined to not be a public work by DIR or a court of competent jurisdiction.

NOTE: California Prevailing Wage law provides for substantial damages and financial penalties for failure to pay prevailing wages when payment of prevailing wages is required.

Subcontractors and Flow-down Requirements. Recipient shall ensure that its subcontractors and incentive recipients, if any, also comply with above requirements with respect to public works/prevailing wage. Recipient shall ensure that all agreements with its contractors/subcontractors and incentive recipients to perform work related to this Project contain the above terms regarding payment of prevailing wages on public works projects. Recipient shall be responsible for any failure of Recipient's subcontractors and incentive recipients to comply with California prevailing wage and public works laws.

Indemnification and Breach. Any failure of Recipient or its subcontractors or incentive recipients to comply with the above requirements shall constitute a breach of this Agreement that excuses the Energy Commission's performance of this Agreement at the Energy Commission's option, and shall be at Recipient's sole risk. In such a case, Energy Commission may refuse payment to, or request repayment by Recipient of any amount under this Agreement and Energy Commission shall be released, at its option, from any further performance of this award or any portion thereof. By accepting this Agreement, and as a material term of this Agreement, Recipient agrees to indemnify the Energy Commission and hold the Energy Commission harmless for any and all financial consequences arising out of or resulting from the failure of Recipient and/or any of Recipient's subcontractors or incentive recipients to pay prevailing wages or to otherwise comply with the requirements of prevailing wage law.

Budget. Budgets on public works projects must indicate which job classifications are subject to prevailing wage. For detailed information about prevailing wage and the process to determine if the proposed project is a public work, Recipient may wish to contact the California Department of Industrial Relations (DIR) or a qualified labor attorney of their choice for guidance.

Covered Trades. For public works projects, Recipient may contact DIR for a list of covered trades and the applicable prevailing wage.

Questions. If Recipient has any questions about this contractual requirement or the wage, record keeping, apprenticeship or other significant requirements of California prevailing wage law, it is recommended that Recipient consult DIR and/or a qualified labor attorney of its choice before accepting this Agreement.

Certification. Recipient shall certify to the Energy Commission on each Payment Request Form, either that (1) prevailing wages were paid to eligible workers who provided labor for work covered by the payment request and that the Recipient and all contractors and subcontractors otherwise complied with all California prevailing wage laws, or (2) that the project is not a public work requiring the payment of prevailing wages. In the latter case, Recipient shall provide competent proof of a DIR or court determination that the project is not a public work requiring the payment of prevailing wages.

Prior to the release of any retained funds under this Agreement, the Recipient shall submit to the Energy Commission the above-described certificate signed by the Recipient and all contractors and subcontractors performing public works activities on the project. Absent such certificate, Recipient shall have no right to any funds under this Agreement, and Energy Commission shall be relieved of any obligation to pay said funds.

28. Intellectual Property

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

29. Commission Remedies for Recipient's Non-Compliance

Without limiting any of its other remedies, the Commission may, for Recipient's noncompliance of any Agreement requirement, withhold future payments, demand and be entitled to repayment of past reimbursements, or suspend or terminate this Agreement. The tasks in the Scope of Work are non-severable, and completion of all of them is material to this Agreement. Thus, the Commission, without limiting its other remedies, is entitled to repayment of all funds paid to Recipient if the Recipient does not timely complete all tasks in the Scope of Work.

Further, if any penalty, fine, or other assessment is issued against the CEC or the CEC and other parties as a result of the Recipient, its subcontractors, or its incentive recipients' failure to comply with Agreement requirements, the Recipient

shall pay all assessment amounts with its own, non-grant funds, including any assessment against CEC. Should the Recipient fail to pay the penalty, fine, or other assessment, Recipient acknowledges that such monies may be paid out of retention.

30. Assembly Bill 841 (2020)

By signing this Agreement, Recipient as a material term of this Agreement shall be fully responsible for complying with this section. AB 841 (Ting, 2020) added Public Utilities Code (PUC) section 740.20, which requires Electric Vehicle Infrastructure Training Program (EVITP) certification to install electric vehicle charging infrastructure and equipment for work performed on or after January 1, 2022, subject to certain exceptions. As a policy matter, the CEC is applying the EVITP certification requirements to project work funded under this Agreement, regardless of whether it might be performed prior to January 1, 2022, unless an exception applies.

Therefore, applying PUC 740.20 EVITP requirements to this Agreement means that all electric vehicle charging infrastructure and equipment located on the customer side of the electrical meter shall be installed by a contractor with the appropriate license classification, as determined by the Contractors' State License Board, and at least one electrician on each crew, at any given time, who holds an EVITP certification. Projects that include installation of a charging port supplying 25 kilowatts or more to a vehicle must have at least 25 percent of the total electricians working on the crew for the project, at any given time, who hold EVITP certification. One member of each crew may be both the contractor and an EVITP certified electrician. The requirements stated in this paragraph do not apply to any of the following:

(1) Electric vehicle charging infrastructure installed by employees of an electrical corporation or local publicly owned electric utility.

(2) Electric vehicle charging infrastructure funded by moneys derived from credits generated from the Low Carbon Fuel Standard Program (Subarticle 7 (commencing with Section 95480) of Article 4 of Subchapter 10 of Chapter 1 of Division 3 of Title 17 of the California Code of Regulations).

(3) Single-family home residential electric vehicle chargers that can use an existing 208/240-volt outlet.

31. Conflicts of Interest

a. Recipient agrees to continuously review new and upcoming projects in which Recipient, its subcontractors or other project partners may be involved for potential conflicts of interest (e.g., Gov. Code § 81000 et seq., and Gov. Code § 1090 et seq.). Recipient shall inform the Commission Agreement Manager as soon as a question arises about whether a potential conflict may exist or as

soon as the Recipient knows a conflict exists. The Commission Agreement Manager and Commission's Chief Counsel's Office shall determine what constitutes a potential conflict of interest. The Energy Commission reserves the right to redirect work and funding on a project if the Commission's Chief Counsel's Office determines that there is a potential conflict of interest.

b. Appearances of Conflicts of Interest

The Recipient acknowledges that in governmental agreements even the appearance of a conflict of interest can be harmful to the interest of the State. Thus, the Recipient, its subcontractors and project partners shall refrain from any practices, activities, or relationships that appear to conflict with their obligations under this Agreement, unless the Recipient receives prior written approval of the Commission. In the event the Recipient is uncertain whether the appearance of a conflict of interest may exist, the Recipient shall submit to the Commission Agreement Manager a written description of the relevant details.

c. Prohibition on Participating in Energy Commission Funding Opportunities

Under this Agreement, the Recipient and its subcontractors and project partners will, with oversight from the Commission, develop and implement a block grant program to provide grant-funded incentives. Accordingly, the Recipient and its subcontractors and project partners are prohibited from participating and agree not to participate in any manner (e.g., as an applicant, subcontractor, or match-funding partner) in any incentive project awarded under this Agreement.

d. Possible amendment of conflicts of interest provisions

The Recipient acknowledges that, if amendments to this Agreement are made to develop and fund financial incentive programs or otherwise expand the scope of work, the role of employees of the Recipient, subcontractors and project partners may become more defined. As those responsibilities and tasks are defined, the Commission Agreement Manager and Commission's Chief Counsel's Office reserve the right to determine if it is appropriate to designate certain individuals who are participating in the making of government decisions as "consultants" under the Political Reform Act and therefore require the disclosure of economic interests pursuant to Government Code section 87300 and the CEC's Conflict of Interest Code at California Code of Regulations, title 20, sections 2401-2402. Upon such determination, this Agreement shall be amended to include the specific procedural requirements applicable to the Recipient, subcontractors and project partners, and any designated consultants.

32. Enforcement of Operations Requirements

Exhibit A of this Agreement contains certain operations requirements for charging ports installed as part of incentive agreements. If an incentive recipient fails to meet the operations requirements, the CEC, as a real party in interest to the incentive agreements, may attempt to seek repayment of incentive funds.

In order to facilitate CEC's enforcement of operations requirements, the Recipient shall include the following paragraph in all incentive agreements:

> This agreement contains certain operations requirements for EV charging stations and charging ports installed under this agreement. By signing this agreement, and as a material term of this agreement, the incentive recipient agrees to be fully responsible for complying with the operations requirements. Accordingly, if incentive recipient fails to meet the operations requirements, incentive recipient agrees that Recipient is entitled to (1) repayment of incentive funds, and/or (2) withholding release of retention. The amount repaid or withheld shall be an amount Recipient deems reasonable to compensate for the harm done.

In the event the CEC adopts regulations that include operations requirements, for example as required by AB 2061 (Ting, Chapter 345, Statutes of 2022) and/or AB 126 (Reyes, Chapter 319, Statutes of 2023), those requirements shall supersede the requirements contained in this Agreement wherever, as determined by the CAM, they conflict or are redundant.

EXHIBIT C- APPENDIX 1

STREAMLINING GRANT TERMS AND CONDITIONS

The California Energy Commission (CEC) has undergone a significant effort to improve its grant agreements across its programs. Until the CEC is able to revise all of its standard terms and conditions templates to implement these improvements, the CEC is adding this Exhibit C Appendix to new grant agreements. The CEC acknowledges that terms in this Appendix will conflict with some of the terms and other requirements in the grant agreement. Accordingly, where there is a conflict, the CEC and Recipient agree that this Appendix controls. Outside of the changes made by this Appendix, all other grant terms and requirements remain unchanged.

Acronyms and Terms Used in this Document and Their Meaning

Acronym/ Term	**Meaning**
Agreement	The grant agreement executed between the CEC and the Recipient.
Budget Categories	Means the following categories in Exhibit B, Budget: Direct Labor, Fringe Benefits, Travel, Equipment, Materials and Miscellaneous, Subrecipients and Vendors (formerly Subcontractors), and Indirect Costs and Profit.
CAM	Commission Agreement Manager
CEC	California Energy Commission
Existing Terms	The terms that might be found in any of the CEC grant agreements in any of its programs, including the terms for this Agreement.
Incentive recipient	An incentive recipient is any person or entity that receives an incentive awarded under this Agreement. An incentive recipient cannot also be a subrecipient.
Incurred Costs	An expense for which the Recipient has become liable (legally obligated) to pay.
MTDC	Modified Total Direct Costs, which means all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first $25,000 of each subaward (regardless of the period of performance of the subawards under the award). MTDC excludes equipment, capital expenditures, rental costs, tuition remission, scholarships and fellowships, and the portion of each subaward in excess of $25,000.
Paid Costs	An expense for which the Recipient has already made payment.

Acronym/ Term	Meaning
Recipient	The entity that executed this Agreement with the CEC.
Subaward	For the Recipient, a Subaward means all agreements it has with Subrecipients and Vendors. For a Subrecipient, a Subaward means all agreements it has with Sub-Subrecipients and Vendors. For any lower-tiered level of Sub-Subrecipient, a Subaward means all agreements it has with its own Sub-Subrecipients and Vendors.
Subcontract	An agreement between the Recipient and a Subrecipient.
Subrecipient (also Subcontractor)	A person or entity that receives grant funds directly from the Recipient and is entrusted by the Recipient to make decisions about how to conduct some of the block grant project's activities. A Subrecipient's role involves discretion over grant activities and is not merely just selling goods or services. A subrecipient cannot also be a incentive recipient.
Sub-Subrecipient	Has the same meaning as a Subrecipient except that it receives grant funds from a Subrecipient or any lower tier level of a Sub-Subrecipient.
Vendor	A person or entity that sells goods or services to the Recipient, Subrecipient, or any lower-tiered level of Sub-Subrecipient, in exchange for some of the grant funds, and does not make decisions about how to perform the grant's activities. The Vendor's role is ministerial and does not involve discretion over grant activities.
These Terms	The terms in this document titled "Streamlining Grant Terms and Conditions."

1. Decoupling Products from Invoices

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

2. Quarterly Instead of Monthly Reports

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

3. New Requirement for Monthly Calls with the CAM

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

4. Amendments and Other Changes

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

A. Budget Reallocations

No CEC approval is needed for a Recipient, Subrecipient, or any lower-tiered level of Sub-Subrecipient to move funds **within** each of the following Budget Categories listed in the Exhibit B: Direct Labor, Fringe Benefits, Travel, Equipment, Materials and Miscellaneous, Subrecipients, and Indirect Costs. (However, please note that per section 4.B. below, any new M&M, Equipment, Subrecipient or Vendor not listed in the budget does need to be approved prior to reimbursement.) However, funds allocated to incentives cannot be moved or reallocated without an amendment to the agreement. If the Recipient wants to move funds between Budget Categories or submits an invoice that if paid would exceed a Budget Category, the Recipient has at least the following choices:

1. Request an amendment from the CEC. The CEC will not pay the invoice if and until an amendment is approved, except possibly for the final invoice per section 4.A.3 below. In its sole discretion, the CEC might pay the portion of the invoice that does not involve the amount that goes beyond the Budget Category.

2. Retract the invoice and resubmit a corrected one that keeps within Budget Categories. The Recipient can treat the amount paid beyond the Budget Category as match funds if the expenditure meets all of the applicable Agreement requirements for match funds.

3. If there is a Budget Category overage on the final invoice, the Recipient can discuss with the CAM if the invoice can be approved without needing the amendment in section 4.A.1 above. The CAM will require a written justification for the budget category overage to determine if the invoice can be approved.

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

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

B. New Items under Materials and Miscellaneous, and Equipment

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

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

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

Existing Terms typically require Recipients and their Subrecipients to obtain advance written approval, sometimes through a formal written amendment, before the Recipient added or replaced key or other personnel, or added or removed job classifications. Now, except when replacing "key personnel" the Recipient and its Subrecipients and any lower-tiered level of Sub-Subrecipient, can make change related to their respective personnel without written approval. Although changes to "key personnel" do require written approval, that approval can be requested and granted simply through an e-mail communication or other form of written communication.

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

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

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

D. Assignment of New Personnel to an Existing Job Classification

Existing Terms might require Recipients to submit a resume and other information to the

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

E. Promotion of Existing Personnel to an Existing Job Classification

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

5. Budgets and Payment of Funds

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

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

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

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

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

B. Options for Indirect Costs

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

The following options may be available to any Recipient who has not yet invoiced for indirect costs at the time of this amendment. These options are not available to any

Recipient that has opted not to claim indirect. A Recipient may not use these options to increase a current indirect rate on which the Recipient was scored in the application process. Once a Recipient has been reimbursed for indirect costs, they may not switch among options.

1. De Minimis Option

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

   MTDC is defined for purposes of These Terms as all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first $25,000 of each subaward (regardless of the period of performance of the subawards under the award). MTDC excludes equipment, capital expenditures, rental costs, tuition remission, scholarships and fellowships, and the portion of each subaward in excess of $25,000. This is the same definition used in federal grants. Keeping this the same as the federal definition should make this easy for recipients with both federal and CEC grants that elect this option.

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

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

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

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

increase as Match Funds.

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

C. Travel and Per Diem

1. Travel not listed in Exhibit B, Budget, can be added without an amendment via CAM approval. CAM approval can come in one of two forms: written authorization from the CAM prior to the Recipient taking the trip, or through the invoice review. Outside of a budget reallocation, additional travel requests are submitted using the CEC's Travel Form. Recipient understands, however, that any travel taken that is not listed in Exhibit B, the Budget, or not pre-approved by the CAM in writing, is at the Recipient's own financial risk. The CAM might not approve the trip as part of invoice review. Please note that the Recipient cannot invoice and be paid for more than the total amount in the Travel Budget Category without an amendment (please see section 4.A. above in These Terms), or for more than the total Agreement amount.

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

3. Lodging

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

4. Airfare

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

5. Rental Car

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

6. Bus/Train

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

for upgrades.

7. Per Diem

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

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

   The CEC will not reimburse any expenses under this Agreement for alcoholic beverages. In addition, the daily per diem is for the individual expenses of those traveling and working on the Agreement only. It cannot be used to pay for expenses of others (e.g., it cannot be used to buy a meal for someone else).

D. Payment Request Format

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

E. Rounding

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

F. New Certification for Payment Requests

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

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

Existing Terms may require the CEC to use a Dispute Notification Form, Std. 209 Form, or other specific form when disputing invoices. These requirements no longer apply.

Under These Terms, the CEC can now dispute an invoice in any manner it chooses as long as it is provided in writing to the Recipient.

6. Incurred Costs

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

The Recipient shall pay ALL Incurred Costs for which it has invoiced the CEC within 14 calendar days of receiving payment under this Agreement for the Incurred Costs. For example, if the Recipient invoices the CEC and then receives payment on September 15 for an Incurred Cost of $10,000, the Recipient shall pay the entire $10,000 by September 29. This requirement is needed to prevent Recipient from creating long lead times for Incurred Costs (e.g., invoicing and receiving payment from the CEC but not paying for the Incurred Costs for weeks or months).

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

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

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

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

7. Subrecipients and Vendors

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

suppliers of goods and services.

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

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

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

(1) Has its performance measured in relation to whether objectives of a CEC program were met;

(2) Has responsibility for programmatic decision-making;

(3) Is responsible for adherence to applicable CEC program requirements specified in the CEC award agreement;

(4) In accordance with its agreement, uses the grant funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the recipient or subrecipient; or,

(5) Provides match share funding contributions to the CEC-funded project.

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

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

(1) Provides the goods and services within normal business operations;

(2) Provides similar goods or services to many different purchasers;

(3) Normally operates in a competitive environment;

(4) Provides goods or services that are ancillary to the operation of the CEC program; and

(5) may not be subject to compliance with all of the requirements of the CEC program as a result of the agreement, though similar requirements may apply for other reasons.

A. Subrecipient**,** ~~and~~ Sub-Subrecipient, and Incentive Recipient Flow-Down Terms

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

1. The Publications Legal Statements on Reports term does not have to be included if the Subrecipient or Incentive Recipient will not generate any Products.

2. The Travel and Per Diem term does not have to be included if the Subrecipient or Incentive Recipient will not be reimbursed for travel with ~~CEC~~ grant funds.

3. The Equipment term does not have to be included if the Subrecipient or Incentive Recipient will not be reimbursed for equipment with CEC funds.

4. The Receipt of Confidential Information and Personal Information term does not have to be included if the Subrecipient or Incentive Recipient will receive Confidential or Personal Information as defined in Section 25.

B. Vendor Requirements

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

The Recipient does not have to include in its Vendor agreements CEC-created terms, such as Equipment, Confidential Recipient Information, Travel and Per Diem, Retention of Records, and Audits, if the Recipient does not need them to fulfill its obligations to the CEC. An example where the Recipient might need to include a CEC-created term in a Vendor agreement is intellectual property. The Recipient must ensure the CEC has the intellectual property rights required under this Agreement. If a Vendor creates intellectual property that the Recipient provides to the CEC as part of the Agreement, the Recipient shall ensure its Vendor agreement secures the appropriate rights. Another example is the receipt of confidential information of personal information. If a vendor will have access to confidential information of personal information provided by the Energy Commission or a third-party for the performance of this Agreement, the Recipient must ensure its agreement with the vendor includes the Energy Commission's special terms and conditions for the receipt of confidential information and personal information before the vendor has access to any such information.

C. Replacing Subrecipients or Vendors

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

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

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

8. Match Fund Timing

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

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