



Executive Committee Meeting
Friday, October 6, 2017
12:00 P.M.

The Barbara George Conference Room
1125 Tamalpais Avenue, San Rafael, CA 94901

Kathrin Sears, Chair
County of Marin

Tom Butt, Vice Chair
City of Richmond

Bob McCaskill
City of Belvedere

Alan Schwartzman
City of Benicia

Sloan C. Bailey
Town of Corte Madera

Greg Lyman
City of El Cerrito

Barbara Coler
Town of Fairfax

Don Tatzin
City of Lafayette

Kevin Haroff
City of Larkspur

Sashi McEntee
City of Mill Valley

Brad Wagenknecht
County and Cities of Napa

Denise Athas
City of Novato

Rupert Russell
Town of Ross

Ford Greene
Town of San Anselmo

Arturo Cruz
City of San Pablo

Andrew McCullough
City of San Rafael

Ray Withy
City of Sausalito

Emmett O'Donnell
Town of Tiburon

Kevin Wilk
City of Walnut Creek

1125 Tamalpais Avenue
San Rafael, CA 94901

1 (888) 632-3674
mceCleanEnergy.org

Marten Law, PLLC
555 Montgomery Street, Suite 820
San Francisco, CA 94111-2560

City of Concord
Garden Room Conference Center
1950 Parkside Drive, Wing A
Concord, CA

Agenda Page 1 of 2

1. Board Announcements (Discussion)
2. Public Open Time (Discussion)
3. Report from Chief Executive Officer (Discussion)
4. Consent Calendar (Discussion/Action)
 - C.1 9.1.17 Meeting Minutes
 - C.2 Authorize Amendment to First Agreement with SDG Architects, Inc.
5. Monthly Budget Update (Discussion)
6. Customer Programs Building Energy Optimization Grant Update and Proposed First Agreement with TerraVerde Renewable Partners, LLC (Discussion/Action)



Agenda material can be inspected at 1125 Tamalpais Avenue, San Rafael, CA 94901 on the Mission Avenue side of the building. The meeting facilities are in accessible locations. If you are a person with a disability and require this document in an alternate format (example: Braille, Large Print, Audiotape, CD-ROM), you may request it by using the contact information below. If you require accommodation (example: ASL Interpreter, reader, note taker) to participate in any MCE program, service or activity, you may request an accommodation by calling (415) 464-6032 (voice) or 711 for the California Relay Service or by e-mail at djackson@mceCleanEnergy.org not less than four work days in advance of the event.



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7. MCE Call Center Training and Office in Pittsburg (Discussion)
8. CalCCA Participation (Discussion/Action)
9. New MCE Staff Positions (Discussion/Action)
10. MCE Contra Costa Office Update (Discussion)
11. Review Draft 10.19.17 Board Agenda (Discussion)
12. Committee Member & Staff Matters (Discussion)
13. Adjourn



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DRAFT

MCE

EXECUTIVE COMMITTEE MEETING

Friday, September 1, 2017

12:00 P.M.

**The Barbara George Conference Room
1125 Tamalpais Avenue, San Rafael, CA 94901**

**Marten Law, PLLC
55 Montgomery Street, Suite 820
San Francisco, CA 94111-2560**

Roll Call

Present: Denise Athas, City of Novato
Sloan Bailey, Town of Corte Madera
Tom Butt, Chair, City of Richmond
Barbara Coler, Town of Fairfax
Ford Greene, Town of San Anselmo
Kevin Haroff, City of Larkspur
Bob McCaskill, City of Belvedere
Kate Sears, County of Marin

Absent: None

Staff: Nicole Busto, Deputy Director, Marketing Communications
Carol Dorsett, Operations Associate
Sarah Estes-Smith, Director of Internal Operations
Jenna Famular, Community Development Manager
Jesica Flores-Brooks, Power Resources Assistant
Katie Gaier, Manager of Human Resources
David McNeil, Manager of Finance
Shalini Swaroop, Deputy General Counsel
Dawn Weisz, CEO (Dial in)

Action Taken:

Agenda Item #4 – Consent Calendar (Discussion/Action)

- C.1 7.7.17 Meeting Minutes
- C.2 Monthly Budget Update
- C.3 MCE New Staff Positions
- C.4 Second Amendment to the Fifth Agreement with Frontier Energy (formerly Bevilacqua-

- Knight, Inc.)
- C.5. First Amendment to the Sixth Agreement with Community Energy Services Corporation (CESC)
 - C.6. Second Amendment to the First Agreement with Free Range
 - C.7. Memorandum of Understanding with Strategic Energy Innovations for Temporary Climate Corps Fellows

ACTION: It was M/S/C (Bailey/Greene) to **approve Consent Calendar items C.1. and C.2.** Motion carried by unanimous vote. (Abstain - C.1: Director Bailey).

Item C.3A was pulled and the Committee will, after further review, consider the item at the October 6, 2017 meeting.

It was M/S/C (Bailey/Athas) to **approve Consent Calendar item C.3B.** Motion carried by unanimous vote.

It was M/S/C (Bailey/Greene) to **approve Consent Calendar items C.4-C.6.** Motion carried by unanimous vote.

It was M/S/C (Coler/Bailey) to **approve Consent Calendar item C.7** with amended staff report language and without budget amendment. Motion carried by unanimous vote.

Agenda Item #5 – Amendment to FY 2017/18 Operating Fund Budget (Discussion/Action)

ACTION: It was M/S/C (McCaskill/Bailey) to **recommend approval of the proposed Amendment to FY 2017/18 Operating Fund Budget to Board at the Board Retreat in September.** Motion carried by unanimous vote.

Agenda Item #6 – Update on MCE Naming (Discussion)

ACTION: No action was required.

Agenda Item #7 – Best Practices for Office Growth (Discussion)

ACTION: No action was required.

Agenda Item #8 – Review Draft 9.22.17 Board Retreat Agenda (Discussion)

ACTION: No action was required.

The meeting was adjourned to the next scheduled Executive Committee Meeting on October 6, 2017.

Tom Butt, Executive Committee Chair

ATTEST:

Dawn Weisz, Chief Executive Officer



October 6, 2017

TO: MCE Executive Committee

FROM: Sarah Estes-Smith, Director of Internal Operations

RE: Authorize Amendment to First Agreement with SDG Architects, Inc.
(Agenda Item #04-C.2)

ATTACHMENTS: A. First Agreement with SDG Architects, Inc.
B. First Amendment to First Agreement with SDG Architects, Inc.

Dear Executive Committee Members:

SUMMARY:

In March 2017, MCE entered into the First Agreement with SDG Architects, Inc. ("Agreement", "Contractor") for architectural consulting services regarding the planning and construction of solar carport structures and electric vehicle ("EV") charging stations at MCE's office in San Rafael. The Agreement included project startup costs including scope, schedule, and budget determination, as well as preliminary site design and architectural programming services, for a total contract amount of \$9,880.

MCE staff coordinated with the Contractor to prepare and submit site plans to the City of San Rafael Planning Department ("Planning"). Planning requested additional information, which resulted in the execution of the attached First Amendment to the First Agreement with SDG Architects, Inc. The First Amendment increased the total contract amount to \$25,000 and expanded the scope of services to include communication between the Contractor and Planning, coordination with a licensed landscape architect to produce landscape and irrigation plans as required, and additional preparation, submittal, and revision of site plans and related exhibits.

At this time, Planning has requested further information regarding the impact of the solar carport structures and EV charging stations on nearby landscape and parking. In order for MCE and the Contractor to provide an adequate response, a second amendment is needed to increase the total contract value. Additionally, due to the nature and frequency of the requests from Planning, the need for and timing of additional information gathering, site plan revision, and submittals is unknown. So that MCE, the Contractor, and its sub-contractors can respond in a timely manner to the current and any future requests, and avoid project delays, staff are requesting the approval of a \$15,000 allocation for architectural consulting services from this vendor for a total contract amount not to exceed \$40,000. The second amendment and any future amendments

would provide contract increases in incremental steps to avoid providing more contract allocation than is necessary.

Fiscal Impact: Expenditures related to the architectural services outlined in the Agreement are included in the FY 2017/18 Budget.

Recommendation: Authorize MCE's CEO to amend the First Agreement with SDG Architects, Inc. to increase the total not to exceed contract amount to \$40,000, at the discretion of the CEO.

**MARIN CLEAN ENERGY
STANDARD SHORT FORM CONTRACT**

**FIRST AGREEMENT
BY AND BETWEEN
MARIN CLEAN ENERGY AND SDG ARCHITECTS, INC.**

THIS FIRST AGREEMENT ("Agreement") is made and entered into this day **March 2, 2017** by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and SDG ARCHITECTS, INC., hereinafter referred to as "Contractor."

RECITALS:

WHEREAS, MCE desires to retain a person or firm to provide the following services: architectural consulting services for the construction project at MCE Headquarters;

WHEREAS, Contractor warrants that it is qualified and competent to render the aforesaid services;

NOW, THEREFORE, for and in consideration of the agreement made, and the payments to be made by MCE, the parties agree to the following:

1. SCOPE OF SERVICES:

Contractor agrees to provide all of the services described in **Exhibit A** attached hereto and by this reference made a part hereof

2. FURNISHED SERVICES:

MCE agrees to make available all pertinent data and records for review, subject to MCE Policy 001 - Confidentiality

3. FEES AND PAYMENT SCHEDULE; INVOICING:

The fees and payment schedule for furnishing services under this Agreement shall be based on the rate schedule which is attached hereto as **Exhibit B** and by this reference incorporated herein. Said fees shall remain in effect for the entire term of the Agreement. Contractor shall provide MCE with his/her/its Federal Tax I.D. number prior to submitting the first invoice. Contractor is responsible for billing MCE in a timely and accurate manner. Contractor shall email invoices to MCE on a monthly basis for any services rendered or expenses incurred hereunder. Fees and expenses invoiced beyond 90 days will not be reimbursable. The final invoice must be submitted within 30 days of completion of the stated scope of services or termination of this Agreement.

4. MAXIMUM COST TO MCE:

In no event will the cost to MCE for the services to be provided herein exceed the maximum sum of **\$9,880**.

5. TIME OF AGREEMENT:

This Agreement shall commence on **March 2, 2017**, and shall terminate on **December 31, 2017**. Certificate(s) of Insurance must be current on the day the Agreement commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Contractor.

6. INSURANCE AND SAFETY:

All required insurance coverages shall be substantiated with a certificate of insurance and must be signed by the insurer or its representative evidencing such insurance to MCE. The general liability policy shall be endorsed naming Marin Clean Energy and its employees, officers and agents as additional insureds. The certificate(s) of insurance and required endorsement shall be furnished to MCE prior to commencement of work. Each certificate shall provide for thirty (30) days advance written notice to MCE of any cancellation or reduction in coverage. Said policies shall remain in force through the life of this Agreement and shall be payable on a per occurrence basis only, except those required by paragraph 6.4 which may be provided on a claims-made basis consistent with the criteria noted therein.

Nothing herein shall be construed as a limitation on Contractor's obligations under paragraph 16 of this Agreement to indemnify, defend and hold MCE harmless from any and all liabilities arising from the Contractor's negligence, recklessness or willful misconduct in the performance of this Agreement. MCE agrees to timely notify the Contractor of any negligence claim.

Failure to provide and maintain the insurance required by this Agreement will constitute a material breach of the agreement. In addition to any other available remedies, MCE may suspend payment to the Contractor for any services provided during any time that insurance was not in effect and until such time as the Contractor provides adequate evidence that Contractor has obtained the required coverage.

6.1 GENERAL LIABILITY

The Contractor shall maintain a commercial general liability insurance policy in an amount of no less than one million dollars (\$1,000,000) with a two million dollar (\$2,000,000) aggregate limit. MCE shall be named as an additional insured on the commercial general liability policy and the Certificate of Insurance shall include an additional endorsement page. (see sample form: ISO - CG 20 10 11 85).

6.2 AUTO LIABILITY

Where the services to be provided under this Agreement involve or require the use of any type of vehicle by Contractor in order to perform said services, Contractor shall also provide comprehensive business or commercial automobile liability coverage including non-owned and hired automobile liability in the amount of one million dollars combined single limit (\$1,000,000.00).

6.3 WORKERS' COMPENSATION

The Contractor acknowledges the State of California requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code. If Contractor has employees, a copy of the certificate evidencing such insurance or a copy of the Certificate of Consent to Self-Insure shall be provided to MCE prior to commencement of work.

6.4 PROFESSIONAL LIABILITY INSURANCE (REQUIRED IF CHECKED ☒)

Coverages required by this paragraph may be provided on a claims-made basis with a "Retroactive Date" either prior to the date of the Agreement or the beginning of the contract work. If the policy is on a claims-made basis, coverage must extend to a minimum of twelve (12) months beyond completion of contract work. If coverage is cancelled or non-renewed, and not replaced with another claims made policy form with a "retroactive date" prior to the Agreement effective date, the contractor must purchase "extended reporting" coverage for a minimum of twelve (12) months after completion of contract work. Contractor shall maintain a policy limit of not less than \$1,000,000 per incident. If the deductible or self-insured retention amount exceeds \$100,000, MCE may ask for evidence that contractor has segregated amounts in a special insurance reserve fund or contractor's general insurance reserves are adequate to provide the necessary coverage and MCE may conclusively rely thereon.

Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Agreement. Contractor shall monitor the safety of the job site(s) during the project to comply with all applicable federal, state, and local laws, and to follow safe work practices.

7. NONDISCRIMINATORY EMPLOYMENT:

Contractor and/or any permitted subcontractor, shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, age or condition of disability. Contractor and/or any permitted subcontractor understands and agrees that Contractor and/or any permitted subcontractor is bound by and will comply with the nondiscrimination mandates of all federal, state and local statutes, regulations and ordinances.

8. SUBCONTRACTING:

The Contractor shall not subcontract nor assign any portion of the work required by this Agreement without prior written approval of MCE except for any subcontract work identified herein. If Contractor hires a subcontractor under this Agreement, Contractor shall require subcontractor to provide and maintain insurance coverage(s) identical to what is required of Contractor under this Agreement and shall require subcontractor to name Contractor as additional insured under this Agreement. It shall be Contractor's responsibility to collect and maintain current evidence of insurance provided by its subcontractors and shall forward to MCE evidence of same. Nothing contained in this Agreement or otherwise stated between the parties shall create any legal or contractual relationship between MCE and any subcontractor, and no subcontract shall relieve Contractor of any of its duties or obligations under this Agreement. Contractor shall be solely responsible for ensuring its subcontractors' compliance with the terms and conditions of this Agreement. Contractor's obligation to pay its subcontractors is an independent obligation from MCE's obligation to make payments to Contractor. As a result, MCE shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor.

9. ASSIGNMENT:

The rights, responsibilities and duties under this Agreement are personal to the Contractor and may not be transferred or assigned without the express prior written consent of MCE.

10. RETENTION OF RECORDS AND AUDIT PROVISION:

Contractor and any subcontractors authorized by the terms of this Agreement shall keep and maintain on a current basis full and complete documentation and accounting records, employees' time sheets, and correspondence pertaining to this Agreement. Such records shall include, but not be limited to, documents supporting all income and all expenditures. MCE shall have the right, during regular business hours, to review and audit all records relating to this Agreement during the Contract period and for at least five (5) years from the date of the completion or termination of this Agreement. Any review or audit may be conducted on Contractor's premises or, at MCE's option,

Contractor shall provide all records within a maximum of fifteen (15) days upon receipt of written notice from MCE. Contractor shall refund any monies erroneously charged. Contractor shall have an opportunity to review and respond to or refute any report or summary of audit findings, and shall promptly refund any overpayments made by MCE based on undisputed audit findings.

11. WORK PRODUCT:

All project specific finished and unfinished reports, plans, studies, documents and other writings prepared by and for Contractor, its officers, employees and agents in the course of implementing this Agreement shall become the sole property of MCE upon payment to Contractor for such work. MCE shall have the exclusive right to use such materials in its sole discretion without further compensation to Contractor or to any other party. Contractor shall, at MCE's expense, provide such reports, plans, studies, documents and writings to MCE or any party MCE may designate, upon written request. Contractor may keep file reference copies of all documents prepared for MCE. Consultants standard details, CAD libraries, and proprietary CAD system and methodologies shall remain the property of the Contractor.

12. TERMINATION:

- A. If the Contractor fails to provide in any manner the services required under this Agreement or otherwise fails to comply with the terms of this Agreement or violates any ordinance, regulation or other law which applies to its performance herein, MCE may terminate this Agreement by giving five business days' written notice to the party involved.
- B. The Contractor shall be excused for failure to perform services herein if such services are prevented by acts of God, strikes, labor disputes or other forces over which the Contractor has no control.
- C. Either party hereto may terminate this Agreement for any reason by giving 30 calendar days' written notice to the other party. Notice of termination shall be by written notice to the other parties and be sent by registered mail or by email to the email address listed in Section 19 Invoices; Notices.
- D. In the event of termination not the fault of the Contractor, the Contractor shall be paid for services performed to the date of termination in accordance with the terms of this Agreement so long as proof of required insurance is provided for the periods covered in the Agreement or Amendment(s).
- E. MCE may terminate this Agreement if funding for this Agreement is reduced or eliminated by a third-party funding source.

13. AMENDMENT:

This Agreement may be amended or modified only by written agreement of all parties.

14. ASSIGNMENT OF PERSONNEL:

The Contractor shall not substitute any personnel for those specifically named in its proposal unless personnel with substantially equal or better qualifications and experience are provided, acceptable to MCE, as is evidenced in writing.

15. JURISDICTION AND VENUE:

This Agreement shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue shall be in Marin County, California.

16. INDEMNIFICATION:

Contractor agrees to indemnify, and hold MCE, its employees, officers, and agents, harmless from any and all liabilities including, but not limited to, litigation costs and attorney's fees arising from any and all claims and losses to anyone who may be injured or damaged by reason of Contractor's negligence, recklessness or willful misconduct in the performance of this Agreement.

17. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF MCE:

MCE is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to the Joint Powers Agreement and is a public entity separate from its constituent members. MCE shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Contractor shall have no rights and shall not make any claims, take any actions or assert any remedies against any of MCE's constituent members in connection with this Agreement.

18. COMPLIANCE WITH APPLICABLE LAWS:

The Contractor shall comply with any and all applicable federal, state and local laws and resolutions (including, but not limited to the County of Marin Nuclear Free Zone, Living Wage Ordinance, and Resolution #2005-97 of the Marin County Board of Supervisors prohibiting the off-shoring of professional services involving employee/retiree medical and financial data) affecting services covered by this Agreement.

19. INVOICES; NOTICES

This Agreement shall be managed and administered on MCE's behalf by the Contract Manager named below. All invoices shall be submitted by email to:

Email Address: invoices@mcecleanenergy.org

All other notices shall be given to MCE at the following location:

Contract Manager: Catalina Murphy

MCE Address: 1125 Tamalpais Avenue

San Rafael, CA 94901

Email Address: contracts@mcecleanenergy.org

Telephone No.: (415) 464-6014

Notices shall be given to Contractor at the following address:

Contractor: Lance Crannell

Address: 3361 Walnut Blvd. Suite 120

Brentwood, CA 94513

Email Address: lcrannell@straussdesign.com

Telephone No.: (925) 634-7000

20. ACKNOWLEDGEMENT OF EXHIBITS

In the event of a conflict between the Terms of this Agreement and the terms in any of the following Exhibits, the terms in this Agreement will govern.

	<input checked="" type="checkbox"/>	<u>Check applicable Exhibits</u>	<u>CONTRACTOR'S INITIALS</u>
<u>EXHIBIT A.</u>	<input checked="" type="checkbox"/>	<u>Scope of Services</u>	<u>JS</u>
<u>EXHIBIT B.</u>	<input checked="" type="checkbox"/>	<u>Fees and Payment</u>	<u>JS</u>

21. SEVERABILITY

Should any provision of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, such invalidity will not invalidate the whole of this Agreement, but rather, the remainder of the Agreement which can be given effect without the invalid provision, will continue in full force and effect and will in no way be impaired or invalidated.

22. COMPLETE AGREEMENT

This Agreement along with any attached Exhibits constitutes the entire Agreement between the parties. No modification or amendment shall be valid unless made in writing and signed by each party. Failure of either party to enforce any provision or provisions of this Agreement will not waive any enforcement of any continuing breach of the same provision or provisions or any breach of any provision or provisions of this Agreement.

23. COUNTERPARTS

This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement.

24. PERFORMANCE AND PAYMENT BOND (REQUIRED IF CHECKED ☐)

Contractor shall furnish, concurrently with signing the contract, a Performance & Payment Bond for a sum not less than 100 percent (100%) of the total amount of the contract. The bond shall be in the form of a bond and not a deposit in lieu of a bond. The bond shall be executed by an admitted surety insurer. The bond shall guarantee payment by Contractor of all materials, provisions, provender, supplies, and equipment used in, upon, for, or about the performance of said construction, and protect MCE from any liability, losses, or damages arising therefrom.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

APPROVED BY

Marin Clean Energy:

By: [Signature]
CEO
Date: 3-2-17

CONTRACTOR:

By: [Signature]
Name: Jonathan Strauss, CFO
Date: 3/6/17

MODIFICATIONS TO STANDARD SHORT FORM

☒ Standard Short Form Content Has Been Modified

List sections affected: Sections 11, 16

Approved by MCE Counsel: [Signature] Date: 3/2/17

EXHIBIT A
SCOPE OF SERVICES (required)

Contractor shall provide the following architectural consulting services for the construction project at MCE Headquarters, as requested and directed by MCE staff, up to the maximum time/fees allowed under this Agreement:

Tenant Improvements

Phase I: Project Startup (12 Hours)

- Determine goals, scope, preliminary administration, schedule, and budget
 - Possible projects to include trash enclosure relocation, patio expansion and enclosure, bike storage enclosure, and solution to pooling water at southeast building corner
 - Contractor may also be asked to assess feasibility of faux window installation, exterior window replacement, and possible ADA upgrades per inspection report (to be provided to Contractor by MCE)
- Code and zoning review

Phase II: Preliminary Site Design and Architectural Programming (24 Hours)

- Review scopes of work with MCE staff and develop Initial Architectural Programming per MCE direction
- Design Site Plan Concepts (up to two) per MCE direction, code, and zoning

MCE PV/EV Project

Phase I: Project Startup (12 Hours)

- Provide consulting services for the Solar Carport/Electric Vehicle Project, including:
 - Participation in kick-off meeting with MCE staff and solar company to discuss coordination, timeline, and potential conflicts and opportunities as they relate to the proposed Tenant Improvements and ADA codes
 - Participation in 2-3 follow-up phone calls
 - Participation in follow-up meeting

Material and Reimbursable Expenses

Expenses may include:

- Plotting
- Printing and reproduction services
- Travel expenses and mileage outside Contra Costa County
- Delivery services and Express Mail/Federal Express

EXHIBIT B
FEES AND PAYMENT SCHEDULE

For services provided under this Agreement, MCE shall pay Contractor in accordance with the hourly rates and phase maximum amounts as specified below.

Tenant Improvements

Phase I: Project Startup

12 Hours = \$2,220

Phase II: Preliminary Site Design and Architectural Programming

24 Hours = \$4,440

MCE Solar Carport/Electric Vehicle Project

Not to Exceed \$2,220

Billed on a Time & Materials basis

Material and Reimbursable Expenses

Not to Exceed \$1,000

Mark-up: 15%

Mileage: \$0.535 per mile

Hourly Rate Schedule

Effective January 2017

Founder/President	\$225
Sr. Principal	\$205
Principal	\$185
Associate	\$165
Sr. Project Manager	\$150
Project Manager	\$140
Project Architect	\$135
Sr. Designer	\$130
Designer	\$120
Jr. Designer	\$95
Job Captain	\$120
Intern Architect III	\$120
Intern Architect II	\$110
Intern Architect	\$100
Draftsman III	\$115
Draftsman II	\$105
Draftsman	\$95
Clerical	\$85

Contractor invoices shall include the phase number, a breakdown of hours including a description of the work completed, and the title and hourly rate of the person performing the work. The number of hours allocated to each phase is an estimate. Contractor may transfer hours between phases as necessary to produce the project, with advance written notice and approval by MCE.

In no event shall the total cost to MCE for the services provided herein exceed the maximum sum of **\$9,880** for the term of the agreement.

**FIRST AMENDMENT TO FIRST AGREEMENT
BY AND BETWEEN
MARIN CLEAN ENERGY AND SDG ARCHITECTS, INC.**

This FIRST AMENDMENT is made and entered into on JULY 5, 2017, by and between MARIN CLEAN ENERGY, (hereinafter referred to as "MCE") and SDG ARCHITECTS, INC. (hereinafter referred to as "Contractor").

RECITALS

WHEREAS, MCE and the Contractor entered into an agreement to provide architectural consulting services for the construction project at MCE Headquarters as directed by MCE staff dated MARCH 2, 2017 ("Agreement"); and

WHEREAS, Section 4 and Exhibit B to the Agreement obligated Contractor to be compensated an amount not to exceed ~~\$9,880~~ for the architectural consulting services described within the scope therein; and ~~\$10,000~~ *75 7/11/17*

WHEREAS the parties desire to amend the Agreement to increase the contract amount by \$15,120 for a total not to exceed \$25,000, and expand the scope of services to include response to Planning Department comments;

NOW, THEREFORE, the parties agree to modify Section 4 and Exhibits A and B as set forth below.

AMENDED AGREEMENT

1. Section 4 is hereby amended to read as follows:

MAXIMUM COST TO MCE:

In no event will the cost to MCE for the services to be provided herein exceed the maximum sum of **\$25,000**.

2. Exhibit A is hereby replaced in its entirety as follows:

Contractor shall provide the following architectural consulting services for the construction project at MCE Headquarters, including the MCE solar carport/electric vehicle installation and general tenant improvements, as requested and directed by MCE staff, up to the maximum time/fees allows under this Agreement:

- Participate in solar/EV project kick-off meeting with MCE staff and solar company to discuss coordination, timeline, and potential conflicts and opportunities as they relate to ADA codes and proposed tenant improvements
- Participate in follow-up phone calls, meetings, and site visits
- Communicate and consult with City of San Rafael Planning Department staff
- Review applicable code and zoning regulations
- Conduct preliminary site design and architectural programming activities
- Prepare, submit, and revise site plans and related exhibits

- Coordinate with a licensed landscape architect to produce landscape and irrigation plans as required by the City of San Rafael Planning Department, ensuring maximum efficiency and avoiding any duplicative or unnecessary services or deliverables.
- Determinate goals, scope, preliminary administration, schedule, and budget for tenant improvements

Possible tenant improvements include trash enclosure relocation, patio expansion and enclosure, bike storage enclosure, and solution to pooling water at southeast building corner. Contractor may also be asked to assess feasibility of faux window installation, exterior window replacement, and possible ADA upgrades per inspection report (to be provided to Contractor by MCE).

Allowable material and other reimbursable expenses may include: plotting, printing and reproduction services, travel expenses and mileage outside Contra Costa County, delivery services, and Express Mail/Federal Express.

3. Exhibit B is hereby replaced in its entirety as follows:

For services provided under this Agreement, MCE shall pay Contractor in accordance with the following hourly rates:

Hourly Rate Schedule

Effective January 2017

Founder/President	\$225
Sr. Principal	\$205
Principal	\$185
Associate	\$165
Sr. Project Manager	\$150
Project Manager	\$140
Project Architect	\$135
Sr. Designer	\$130
Designer	\$120
Jr. Designer	\$95
Job Captain	\$120
Intern Architect III	\$120
Intern Architect II	\$110
Intern Architect	\$100
Draftsman III	\$115
Draftsman II	\$105
Draftsman	\$95
Clerical	\$85

Contractor shall ensure that any sub-contractor expenses do not exceed \$8,676, reflecting the landscape architecture budget and Contractor mark-up.

Contractor invoices shall include a breakdown of hours including a description of the work completed and the title and hourly rate of the person performing the work. Contractor agrees to include itemization on invoices of any hours and expenses related to landscaping, irrigation, fencing, and parking lot resurfacing or striping.

Material and Reimbursable Expenses (as described in Exhibit A)

- Reimbursement for materials is subject to a 15% mark-up.
- Mileage shall be reimbursed at a rate of \$0.535 per mile.
- Other allowable travel expenses shall be billed at cost.

Total reimbursement to Contractor for materials and other allowable expenses shall not exceed \$1,000 without MCE's advance written approval.

In no event shall the total cost to MCE for the services provided herein exceed the maximum sum of **\$25,000** for the term of the Agreement.

4. Except as otherwise provided herein all terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment on the day first written above.

CONTRACTOR:

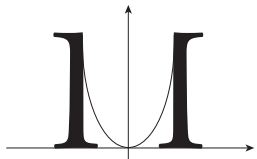
By: 

Date: 7/11/17

MARIN CLEAN ENERGY:

By: 

Date: 7-7-17

**ACCOUNTANTS' COMPILATION REPORT**

Board of Directors
Marin Clean Energy

Management is responsible for the accompanying special purpose statement of Marin Clean Energy (a California Joint Powers Authority) which comprise the budgetary comparison schedule for the period ended August 31, 2017, and for determining that the budgetary basis of accounting is an acceptable financial reporting framework. We have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the accompanying statement nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by management. Accordingly, we do not express an opinion, a conclusion, nor provide any assurance on this special purpose budgetary comparison statement.

The special purpose statement is prepared in accordance with the budgetary basis of accounting, which is a basis of accounting other than accounting principles generally accepted in the United States of America. This report is intended for the information of the Board of Directors of MCE.

Management has elected to omit substantially all of the disclosures required by accounting principles generally accepted in the United States of America. If the omitted disclosures were included in the special purpose budgetary comparison statement, they might influence the user's conclusions about the Authority's results of operations. Accordingly, this special purpose budgetary comparison statement is not designed for those who are not informed about such matters.

The supplementary information contained on page 4 is presented for purposes of additional analysis. The supplementary information has been compiled from information that is the representation of management. We have not audited or reviewed the supplementary information and, accordingly, do not express an opinion or provide any assurance on such supplementary information.

We are not independent with respect to the Authority because we performed certain accounting services that impaired our independence.

Maher Accountancy

San Rafael, CA
September 19, 2017



**MARIN CLEAN ENERGY
OPERATING FUND
BUDGETARY COMPARISON SCHEDULE
April 1, 2017 through August 31, 2017**

	Actual - from April 1 through August 31		YTD Budget (Amended)	YTD Budget Variance (Under) Over	YTD Budget Variance (Under)Over %	Annual Budget (Amended)	Budget Remaining
	2016/17	2017/18	2017/18	2017/18	2017/18	2017/18	2017/18
ENERGY REVENUE							
Revenue - Electricity (net of allowance)	\$ 64,873,093	\$ 91,527,675	\$ 95,065,175	\$ (3,537,500)	-3.72%	\$ 209,162,000	\$ 117,634,325
Other revenue	300,103	32,130	4,167	27,963	671.12%	10,000	(22,130)
TOTAL ENERGY REVENUE	<u>65,173,196</u>	<u>91,559,805</u>	<u>95,069,341</u>	<u>(3,509,536)</u>	-3.69%	<u>209,172,000</u>	<u>117,612,195</u>
ENERGY EXPENSES							
Cost of energy	55,537,673	79,844,831	79,681,075	163,756	0.21%	183,194,000	103,349,169
Service fees- PG&E	380,523	573,031	618,852	(45,821)	-7.40%	1,487,000	913,969
TOTAL ENERGY EXPENSES	<u>55,918,196</u>	<u>80,417,862</u>	<u>80,299,928</u>	<u>117,934</u>	0.15%	<u>184,681,000</u>	<u>104,263,138</u>
NET ENERGY EXPENSES	<u>9,255,000</u>	<u>11,141,943</u>	<u>14,769,413</u>	<u>(3,627,470)</u>		<u>24,491,000</u>	
OPERATING EXPENSES							
Personnel	1,721,900	2,132,479	2,743,333	(610,854)	-22.27%	6,584,000	4,451,521
Data manager	1,218,308	1,502,012	1,578,952	(76,940)	-4.87%	3,794,000	2,291,988
Technical and scheduling services	228,915	337,293	319,862	17,431	5.45%	806,000	468,707
Legal counsel	258,386	202,806	335,000	(132,194)	-39.46%	804,000	601,194
Communications services and related expenses	573,419	269,067	821,250	(552,183)	-67.24%	1,971,000	1,701,933
Other services	207,743	191,318	617,083	(425,765)	-69.00%	1,481,000	1,289,682
General and administration	162,655	222,578	282,500	(59,922)	-21.21%	678,000	455,422
Occupancy	154,652	196,211	287,083	(90,872)	-31.65%	689,000	492,789
Integrated demand-side pilot programs	6,500	118,283	89,583	28,700	32.04%	215,000	96,717
Marin County green business program	-	-	10,000	(10,000)	0.00%	10,000	10,000
Low income solar programs	22,100	20,000	16,667	3,333	20.00%	40,000	20,000
TOTAL OPERATING EXPENSES	<u>4,554,578</u>	<u>5,192,047</u>	<u>7,101,314</u>	<u>(1,909,267)</u>	-26.89%	<u>17,072,000</u>	<u>11,879,953</u>
OPERATING INCOME (LOSS)	<u>4,700,422</u>	<u>5,949,896</u>	<u>7,668,100</u>	<u>(1,718,204)</u>		<u>7,419,000</u>	
NONOPERATING REVENUES							
Grant Income			-	-	0.00%	713,000	713,000
Interest income	26,004	101,367	54,167	47,200	87.14%	130,000	28,633
TOTAL NONOPERATING REVENUES	<u>26,004</u>	<u>101,367</u>	<u>54,167</u>	<u>47,200</u>		<u>843,000</u>	<u>741,633</u>
NONOPERATING EXPENSES							
Interest expense and financing costs	32,515	-	-	-	0.00%	168,000	168,000
Depreciation (supplemental)	36,888	45,326	50,417	(5,091)	-10.10%	121,000	75,674
TOTAL NONOPERATING EXPENSES	<u>69,403</u>	<u>45,326</u>	<u>50,417</u>	<u>(5,091)</u>		<u>289,000</u>	<u>243,674</u>
TOTAL NONOPERATING INCOME (EXPENSES)	<u>(43,399)</u>	<u>56,041</u>	<u>3,750</u>	<u>52,291</u>	1394.43%	<u>554,000</u>	
CHANGE IN NET POSITION	<u>4,657,023</u>	<u>6,005,937</u>	<u>7,671,850</u>	<u>(1,665,913)</u>		<u>7,973,000</u>	
CAPITAL EXPENDITURES, INTERFUND TRANSFERS & OTHER							
Capital outlay	70,228	124,565	310,000	(185,435)	-59.82%	744,000	619,435
Depreciation (supplemental)	(36,888)	(45,326)	(50,417)	5,091	-10.10%	(121,000)	(75,674)
Transfer to Renewable Energy Reserve	1,000,000	-	-	-		-	-
Transfer to Local Renewable Development Fund	173,000	186,000	186,000	-	0.00%	186,000	-
TOTAL CAPITAL EXPENDITURES, INTERFUND TRANSFERS & OTHER	<u>1,206,340</u>	<u>265,239</u>	<u>445,583</u>	<u>(180,344)</u>	-40.47%	<u>809,000</u>	<u>543,761</u>
Net increase (decrease) in available fund balance	<u>\$ 3,450,683</u>	<u>\$ 5,740,698</u>	<u>\$ 7,226,266</u>	<u>\$ (1,485,568)</u>		<u>\$ 7,164,000</u>	

**MARIN CLEAN ENERGY
ENERGY EFFICIENCY PROGRAM FUND
BUDGETARY COMPARISON SCHEDULE
April 1, 2017 through August 31, 2017**

	<u>Amended Budget</u>	<u>Actual</u>	<u>Budget Remaining</u>	<u>Actual/ Budget</u>
REVENUE AND OTHER SOURCES:				
Public purpose energy efficiency program	\$ 1,691,000	\$ 485,239	\$ 1,205,761	28.70%
Public purpose Low Income Families and Tenants pilot program	<u>1,750,000</u>	<u>58,217</u>	<u>1,691,783</u>	<u>3.33%</u>
TOTAL REVENUE AND OTHER SOURCES:	<u>3,441,000</u>	<u>543,456</u>	<u>2,897,544</u>	
EXPENDITURES AND OTHER USES:				
Public purpose energy efficiency program	1,691,000	485,239	1,205,761	28.70%
Public purpose Low Income Families and Tenants pilot program	<u>1,750,000</u>	<u>58,217</u>	<u>1,691,783</u>	<u>3.33%</u>
TOTAL EXPENDITURES AND OTHER USES:	<u>3,441,000</u>	<u>543,456</u>	<u>2,897,544</u>	
Net increase (decrease) in fund balance	<u>\$ -</u>	<u>\$ -</u>		

**LOCAL RENEWABLE ENERGY DEVELOPMENT FUND
BUDGETARY COMPARISON SCHEDULE
April 1, 2017 through August 31, 2017**

	<u>Budget</u>	<u>Actual</u>	<u>Budget Remaining</u>	<u>Actual/ Budget</u>
REVENUE AND OTHER SOURCES:				
Transfer from Operating Fund	\$ 186,000	\$ 186,000	\$ -	100.00%
EXPENDITURES AND OTHER USES:				
Capital Outlay and related	<u>186,000</u>	<u>16,772</u>	<u>169,228</u>	<u>9.02%</u>
Net increase (decrease) in fund balance	<u>\$ -</u>	169,228		
Fund balance at beginning of period		<u>-</u>		
Fund balance at end of period		<u>169,228</u>		

**RENEWABLE ENERGY RESERVE FUND
BUDGETARY COMPARISON SCHEDULE
April 1, 2017 through August 31, 2017**

	<u>Budget</u>	<u>Actual</u>	<u>Budget Remaining</u>	<u>Actual/ Budget</u>
REVENUE AND OTHER SOURCES:				
Other proceeds *	\$ 800,000	\$ 777,962	\$ 761,350	97.25%
Transfer from Operating Fund	<u>-</u>	<u>-</u>	<u>-</u>	N/A
Total revenue and other sources	\$ 800,000	\$ 777,962	\$ 761,350	
EXPENDITURES AND OTHER USES:	<u>225,000</u>	<u>-</u>	<u>225,000</u>	0.00%
Net increase (decrease) in fund balance	<u>\$ 575,000</u>	777,962		
Fund balance at beginning of period		443,721		
Fund balance at end of period		<u>\$ 1,221,683</u>		

*Other proceeds relate to the transfer of the Solar One project.

MARIN CLEAN ENERGY
BUDGETARY SUPPLEMENTAL SCHEDULE

April 1, 2017 through August 31, 2017

	<u>Actual</u>
Other services	
Audit	\$ 36,496
Accounting	61,860
IT Consulting	36,000
Human resources & payroll fees	3,452
Miscellaneous professional fees	53,510
	<u> </u>
Other services	<u><u>\$ 191,318</u></u>
 General and administration	
Data and telephone service	\$ 14,796
Meeting room rentals	1,067
Office equipment lease	2,388
Dues and subscriptions	85,503
Conferences and professional education	20,208
Travel	27,299
Business meals	4,423
Interest and late fees	1,143
Miscellaneous administration	44,977
Office supplies and postage	20,774
	<u> </u>
General and administration	<u><u>\$ 222,578</u></u>



October 6, 2017

TO: MCE Executive Committee

FROM: Paul Liotsakis, Customer Programs Manager

RE: Customer Programs Building Energy Optimization Grant Update and
Proposed First Agreement with TerraVerde Renewable Partners, LLC
(Agenda Item #06)

ATTACHMENT: First Agreement with TerraVerde Renewable Partners, LLC

Dear Executive Committee Members:

SUMMARY:

In March 2017, your Executive Committee authorized staff to apply for the California Energy Commission ("CEC") Grant Funding Opportunity GFO-16-404, Local Government Challenge. In April 2017, the CEC approved MCE's grant application. In May 2017, your Board approved an amendment to the Fiscal Year 2017/18 Operating Fund Budget that would authorize MCE to receive and expend funds pursuant to the pending CEC Grant Agreement. In June 2017, your Executive Committee authorized the execution of the CEC Grant Agreement for MCE's Building Energy Optimization Project ("BEO Project").

Staff now requests approval of the proposed First Agreement with TerraVerde Renewable Partners LLC ("TerraVerde Agreement"), to enable MCE to carry out the BEO Project as approved for funding by the CEC.

Purpose of the TerraVerde Agreement

The Building Energy Optimization ("BEO") Project aims to optimize the energy used in buildings across MCE's service territory by developing tools to quickly analyze and evaluate the suitability for Distributed Energy Resources ("DERs"), such as energy efficiency, demand response, rooftop solar, energy storage, electric vehicles, and water-energy conservation. Additionally, the BEO Project includes three committed demonstration projects to validate the proposed DER solutions. These projects would show the viability of utilizing locally-created energy projects to help offset some of MCE's load procurement costs while also reducing greenhouse gas ("GHG") emissions. The proposed TerraVerde Agreement would provide MCE with necessary project management, data collection and analysis, program design, implementation and related technical support services to successfully carry out the BEO Project. The BEO Project is intended to create a replicable model for other CCAs to leverage in the development and implementation of their own DER programs and the work product would be shared through the California Community Choice Association (CalCCA).

FISCAL IMPACT: Expenditures relating to the proposed TerraVerde Agreement would be funded entirely by CEC Local Government Challenge grant funds. Expenditures associated with the proposed TerraVerde Agreement that would occur prior to March 31, 2018 are included in the FY

2017/18 Operating Fund Budget. Revenues and expenditures that would occur after March 31, 2018 would be included in Operating Fund Budgets for subsequent fiscal years.

RECOMMENDATION: Approve the proposed First Agreement with TerraVerde Renewable Partners, LLC in amount of \$1,417,349 and authorize MCE staff to make any necessary technical or non-material revisions to provisions to the Agreement as needed.

**MARIN CLEAN ENERGY
CEC GRANT CONTRACT**

**FIRST AGREEMENT
BY AND BETWEEN MARIN CLEAN ENERGY
AND
TERRAVERDE RENEWABLE PARTNERS, LLC**

THIS FIRST AGREEMENT ("Agreement") is made and entered into this day **October __, 2017** by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE," and TERRAVERDE RENEWABLE PARTNERS, LLC, a California limited liability company, hereinafter referred to as "Contractor;" collectively referred to as "the parties."

RECITALS:

WHEREAS, MCE requires a firm to provide project management, data collection and analysis, program design, implementation and related services for purposes of a "Building Efficiency Optimization" project ("BEO Project") by the California Energy Commission's ("CEC") Local Government Challenge grant program;

WHEREAS, Contractor warrants that it is qualified and competent to render the aforesaid services;

NOW, THEREFORE, for and in consideration of the agreement made, and the payments to be made by MCE, the parties agree to the following:

1. **SCOPE OF SERVICES AND STANDARD OF PERFORMANCE; CONFLICTS OF INTEREST:**
Contractor agrees to perform and/or to ensure performance of all of the services described in **Exhibit A** attached hereto and by this reference made a part hereof. Contractor shall be responsible for meeting the "Standard of Performance" requirements in Section 2 of the General Terms and Conditions attached hereto as Exhibit D and incorporated herein by this reference. MCE expressly acknowledges that Contractor may provide similar services to the California Energy Commission or any other party; provided that Contractor's provision of such services to another party or parties does not conflict with Contractor's ability to comply with the terms and conditions of this Agreement and its obligation to fully perform the services herein described with sufficient staff and resources necessary for Contractor's timely performance. Contractor shall not knowingly undertake any other contractual obligation(s) that would potentially interfere with, harm, or damage any legal or financial interest of MCE pertaining to this BEO Project and/or MCE's procurement of electricity on behalf of customers in its service area. Contractor shall comply with the Conflict of Interest provisions in Section 25 of Exhibit D "CEC Grant Agreement Terms and Conditions," attached hereto and incorporated by this reference. In the event that Contractor becomes aware of any potential or actual conflict of interest it may have with regard to performance of this Agreement, Contractor shall immediately notify MCE in writing and a determination shall be made in accordance with CEC requirements as provided in Exhibit D.
2. **FURNISHED SERVICES:**
MCE agrees to make available all pertinent data and records for review, subject to MCE Policy 001 - Confidentiality.
3. **VENDOR DATA ELEMENTS; FEES, INVOICING AND PAYMENTS:**
3.1 ARRA-Required Vendor Data Elements

Pursuant to paragraph 2 of Exhibit E, "**Federal Provisions Incorporated By Reference, Special Provisions Governing Work Funded Under the American Recovery and Reinvestment Act of 2009, and General Federal Provisions,**" attached hereto and incorporated by this reference, as this Agreement requires the Contractor to complete projects or activities funded under the American Recovery and Reinvestment Act of 2008 (ARRA), Contractor must provide the following "Vendor Data Elements" for their constituent contractors and subcontractors. This information must be provided to MCE so that it may fulfill its ARRA reporting obligations: Dun and Bradstreet Data Universal Numbering System (DUNS) Number (<http://www.dnb.com>) or name and zip code of headquarters.

3.2 Fees, Invoicing and Payments

The fees and allowable expenses for services and under this Agreement shall be based on the provisions, not-to-exceed total amount, and budgets attached hereto in Exhibit B, and applicable federal and state requirements as set forth and attached hereto in Exhibits C, D and E, by this reference incorporated. Contractor shall provide MCE with its Federal Tax I.D. number prior to submitting the first invoice. Invoices for services rendered and allowable expenses incurred hereunder shall include a level of detail and such supporting documentation as is reasonably necessary to verify amounts charged, and shall be paid in accordance with the conditions and requirements for set forth in Exhibit B. On a monthly basis or as otherwise requested by MCE, Contractor shall prepare, and submit to MCE for review and approval, authorized payment requests for submittal to the CEC. Upon MCE approval, Contractor shall submit authorized payment requests to the CEC. Payment requests shall be itemized and shall include eligible expenses incurred by MCE, Contractor and subcontractors for the payment period, in addition to any supporting documentation as necessary to verify amounts charged. Contractor shall maintain accurate billing and accounting records for all costs and expenditures under this Agreement, interface with the CEC and manage the CEC billing process. Upon completion of the Scope of Services or termination of this Agreement, Contractor shall ensure that all outstanding allowable expenses are submitted for MCE review and approval within 30 days, or as otherwise agreed in writing between the parties.

4. MAXIMUM COST TO MCE:

In no event will the cost to MCE for the services to be provided herein exceed the maximum sum of **\$1,417,349**.

5. TIME OF AGREEMENT:

This Agreement shall commence on **October __, 2017**, and shall terminate on **June 30, 2020**. Certificate(s) of Insurance must be current on the day the Agreement commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Contractor.

6. INSURANCE AND SAFETY:

All required insurance coverages shall be substantiated with a certificate of insurance and must be signed by the insurer or its representative evidencing such insurance to MCE. The general liability policy shall be endorsed naming Marin Clean Energy and its employees, officers and agents as additional insureds. The certificate(s) of insurance and required endorsement shall be furnished to MCE prior to commencement of work. Each certificate shall provide for thirty (30) days advance written notice to MCE of any cancellation or reduction in coverage. Said policies shall remain in force through the life of this Agreement and shall be payable on a per occurrence basis only, except those required by paragraph 6.4 which may be provided on a claims-made basis consistent with the criteria noted therein.

Nothing herein shall be construed as a limitation on Contractor's obligation under paragraph 16 of this Agreement to indemnify, defend and hold MCE harmless from any and all liabilities arising from Contractor's performance of this Agreement. MCE agrees to timely notify the Contractor of any claim(s).

Failure to provide and maintain the insurance required by this Agreement will constitute a material breach of the agreement. In addition to any other available remedies, MCE may suspend payment(s) to the Contractor for any services provided during any time that insurance was not in effect and until such time as the Contractor provides adequate evidence that it has obtained the required coverage.

6.1 General Liability

Contractor shall maintain commercial general liability insurance policies in an amount of no less than one million dollars (\$1,000,000) with a two million-dollar (\$2,000,000) aggregate limit. MCE shall be listed as an additional insured on the commercial general liability policies and the Certificates of Insurance shall include an additional endorsement page. (see sample form: ISO - CG 20 10 11 85).

6.2 Auto Liability

Where the services to be provided under this Agreement involve or require the use of any type of vehicle by Contractor in order to perform said services, Contractor shall also provide comprehensive business or commercial automobile liability coverage including non-owned and hired automobile liability in the amount of one million dollars combined single limit (\$1,000,000.00).

6.3 Workers' Compensation

The Contractor acknowledges that the State of California requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code. If Contractor has employees, a copy of the certificates evidencing such insurance or a copy of the Certificates of Consent to Self-Insure shall be provided to MCE prior to commencement of work.

Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Agreement. Contractor shall monitor the safety of the job site(s) during the project to comply with all applicable federal, state, and local laws, and to follow safe work practices.

7. NONDISCRIMINATORY EMPLOYMENT:

Contractor and/or any permitted subcontractor, shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, age or condition of disability. Contractor and/or any permitted subcontractor understand and agree that Contractor and/or any permitted subcontractors are bound by and will comply with the nondiscrimination mandates of all federal, state and local statutes, regulations and ordinances.

8. SUBCONTRACTING:

The parties agree and acknowledge that certain administrative functions, tasks, deliverables and other services under this Agreement shall be carried out by subcontractors. All subcontracts must be reviewed by MCE and approved by the CEC prior to execution. Contractor shall require all subcontractors to provide and maintain insurance coverage(s) identical to what is required of the Contractor under this Agreement and shall require the subcontractor to name the Contractor as an additional insured. The Contractor shall be responsible to collect and maintain current

evidence of insurance provided by subcontractors and shall forward to MCE evidence of same. Nothing contained in this Agreement or otherwise stated between the parties shall create any legal or contractual relationship between MCE and any subcontractor, and no subcontract shall relieve Contractor of any of its duties or obligations under this Agreement. Contractor shall be solely responsible for subcontractors' compliance with the terms and conditions of this Agreement, including all vendor flow-down provisions required under federal and state law. Contractor's obligation to pay subcontractors is an independent obligation from MCE's obligation to make payments to Contractor. As a result, MCE shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor.

9. ASSIGNMENT:

The rights, responsibilities and duties of Contractor under this Agreement are personal to the Contractor and be transferred or assigned only with the express prior written consent of MCE.

10. RETENTION OF RECORDS AND AUDIT PROVISIONS:

Contractor and any subcontractors authorized by the terms of this Agreement shall keep and maintain on a current basis full and complete documentation and accounting records, employees' time sheets, and correspondence pertaining to this Agreement. Such records shall include, but not be limited to, documents supporting all income and all expenditures, cancelled checks, paid bills, payrolls, time and attendance records, and subcontracting documents. MCE shall have the right, during regular business hours, to review and audit all records relating to this Agreement during the Contract period and for at least five (5) years from the date of the completion or termination of this Agreement. Any review or audit may be conducted on the Contractor's premises or, at MCE's option, Contractor shall provide digital access to all records within a maximum of fifteen (15) days upon receipt of written notice from MCE. Contractor shall refund any monies erroneously charged. Contractor shall have an opportunity to review and respond to or refute any report or summary of audit findings, and shall promptly refund any overpayments made by MCE based on undisputed audit findings.

10.1 ARRA Funding Audit Requirements

In accordance with Sections 902, 1514 and 1515 of the American Recovery and Reinvestment Act of 2009 (ARRA), Contractor agrees that it shall permit the State of California, the United States Comptroller General or his representative, or the appropriate Inspector General appointed under Section 3 or 8G of the United States Inspector General Act of 1978 or his representative to: (1) examine any records that directly pertain to, and involve transactions relating to, this Agreement; and (2) interview any officer or employee of MCE or Contractor or any subcontractors regarding the activities funded with funds appropriated or otherwise made available by ARRA.

11. WORK PRODUCT:

A. Except as otherwise provided in Section 11 of Exhibit D – CEC Grant Agreement Terms and Conditions, and Exhibit E Attachment 5 - FEDERAL INTELLECTUAL PROPERTY PROVISIONS, attached hereto and incorporated by this reference, all finished and unfinished reports, plans, studies, data, databases and database designs, documents and other writings prepared by and for Contractor, its officers, employees and agents in the course of implementing this Agreement, shall become the sole property of MCE upon payment to Contractor for such work. Contractor shall, at MCE's expense, provide such reports, plans, studies, documents and writings to MCE or any party MCE may designate, upon written request. Contractor may keep file reference copies of all documents prepared for MCE. MCE shall have the right to use such materials in its sole discretion without further

compensation to Contractor or to any other party, subject to the reserved rights of the CEC to copyright any work that is subject to copyright and was developed, or for which ownership was purchased, with CEC-administered grant funds. The United States Department of Energy ("DOE") reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use the work for Federal purposes and to authorize others to do so. Upon prior written consent of MCE, subject to the conditions stated in this paragraph, Contractor may reuse or repurpose work product prepared by and for Contractor, its officers, employees and agents in the course of implementing this Agreement, to the extent that such use: i) does not impair MCE's performance of its obligations to maintain and assure all rights reserved by the CEC or the DOE; and ii) does not infringe upon or conflict with any rights reserved by the CEC or the DOE. Contractor shall be solely liable for any damage resulting from any infringement of copyrights or other proprietary rights. Notwithstanding the foregoing, the parties expressly acknowledge that Contractor's pre-existing intellectual property, including all proprietary software and source code ("Background I.P."), shall remain Contractor's property. To the extent that portion(s) or elements of Contractor's Background I.P. are incorporated or embedded into any products developed under this Agreement and/or funded in whole or in part by CEC-administered grant funds, Contractor grants to MCE, the CEC and DOE a royalty-free, non-exclusive and irrevocable license to use and/or to share for use by other public agencies, *solely for non-commercial or governmental and public agency purposes*, any work products containing Contractor's embedded Background I.P.

- B. **Legally Required Disclosures.** If MCE is requested or required to disclose any information or materials that Contractor deems proprietary or confidential, in connection with litigation or any regulatory proceeding or investigation, or pursuant to any applicable law, order, regulation or ruling, MCE shall immediately notify Contractor of the request or requirement in order to allow Contractor an opportunity to i) seek an appropriate protective order or other remedy; or (ii) consult MCE with respect to appropriate steps to resist or narrow the scope of the request. In the event that such protective order or other remedy or waiver is not timely obtained, MCE shall disclose only such portion of Confidential Information which is legally required to be disclosed to the party seeking disclosure, and shall require to the extent possible that any confidential information so disclosed will be accorded confidential treatment.

12. TERMINATION:

- A. If Contractor is determined by MCE, or any state or federal agency having authority to enforce the terms and conditions of the CEC Grant Agreement as applicable to this Agreement, is found to be in breach or default of any material provisions hereof, or in violation of any applicable local, state or federal law or regulation, MCE shall, unless otherwise prohibited by federal or state law or CEC Grant Agreement requirements, provide written notice to Contractor to cure such breach or deficiency within thirty (30) calendar days from the date of the notice. Contractor shall immediately notify all subcontractors of any notice of breach or default. In the event that Contractor fails to cure such breach or deficiency within the cure period, as determined by MCE in its sole discretion, MCE may then terminate this Agreement by giving five (5) business days' written notice to Contractor.
- B. Contractor shall be excused for failure to perform services herein if such services are prevented by acts of God, strikes, labor disputes or other forces over which the Contractor has no control.
- C. MCE may terminate this Agreement without cause by giving 90 calendar days' written notice to Contractor by U.S. mail to the addresses listed in Section 21 Invoices; Notices.

D. In the event of termination not the fault of the Contractor, the Contractor shall be paid for services performed to the date of termination in accordance with the terms of this Agreement so long as proof of required insurance is provided for the periods covered in the Agreement or Amendment(s).

E. **THIRD PARTY FUNDING CONTINGENCY.** MCE may terminate this Agreement, and/or limit the scope and consideration set forth herein, if funding for this Agreement is reduced or eliminated by any third-party funding source.

13. AMENDMENT:

This Agreement may be amended or modified only by written agreement of the parties.

14. ASSIGNMENT OF PERSONNEL:

The Contractor shall not substitute any personnel for those specifically named in its original proposal unless personnel with substantially equal or better qualifications and experience are provided, acceptable to MCE, as is evidenced in writing.

15. JURISDICTION AND VENUE:

This Agreement shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue shall be in Marin County, California.

16. INDEMNIFICATION:

The Contractor agrees to indemnify, defend and hold harmless MCE, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, 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 Contractor in the performance of this Agreement to the extent that such claims and losses are not directly due to MCE's negligence and willful misconduct. MCE agrees to indemnify, defend, and hold harmless the Contractor, its employees, officers, directors, and agents, harmless from any and all claims and losses to anyone who may be injured or damaged as a result of MCE's gross negligence, recklessness or willful misconduct with regard to performance of this Agreement.

17. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF MCE:

MCE is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to the Joint Powers Agreement and is a public entity separate from its constituent members. MCE shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Contractor shall have no rights and shall not make any claims, take any actions or assert any remedies against any of MCE's constituent members in connection with this Agreement.

18. COMPLIANCE WITH APPLICABLE LAWS:

The Contractor shall comply with any and all applicable federal, state and local laws and resolutions (including, but not limited to the County of Marin Nuclear Free Zone, Living Wage Ordinance, and Resolution #2005-97 of the Marin County Board of Supervisors prohibiting the off-shoring of professional services involving employee/retiree medical and financial data) affecting services covered by this Agreement.

19. CONFIDENTIALITY:

Neither MCE, its employees, or Contractor or any of its subcontractors may disclose any record that has been designated as confidential or is the subject of a pending application of confidentiality, except as provided in 20 California Code of Regulations (CCR), Sections 2506 and 2507, unless disclosure is ordered by a court of competent jurisdiction (20 CCR Sections 2501, et seq.). At the election of the CEC Contract Manager, MCE, its employees, and Contractor shall execute a "Confidentiality Agreement," supplied by the CEC Contract Manager or Contract Officer.

20. **INVOICES; NOTICES**

This Agreement shall be managed and administered on MCE's behalf by its Contract Manager named below. All invoices shall be submitted by email to:

Email Address:	invoices@mcecleanenergy.org
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All other notices shall be given to MCE at the following location:

Contract Manager:	Troy Nordquist
MCE Address:	1125 Tamalpais Avenue San Rafael, CA 94901
Email Address:	contracts@mcecleanenergy.org
Telephone No.:	(415) 464-6027

Notices shall be given to Contractor at the following address:

Name:	Charles Monk
Address:	1100 Larkspur Landing Circle, Suite 155 Larkspur, CA 94939
Email Address:	Charles.Monk@tvrpllc.com
Telephone No.:	(410) 627-6295

21. **ACKNOWLEDGEMENT OF EXHIBITS; CONFLICTING PROVISIONS**

In the event of a conflict between any terms of this Agreement and the terms and conditions in Exhibits C, D, E and Exhibit E attachments, the terms of such Exhibits and attachment terms will govern; in all other instances, the terms of this Agreement will govern. Any provisions contained in Exhibits C, D, E and Exhibit E attachments that are inapplicable to this Agreement appear in strikethrough, for purposes of maintaining the numeration and structure of the standard state and federal Exhibits. Any apparent inconsistency between federal statutes and regulations, state contracting requirements, and the terms and conditions contained in this Agreement must be referred to MCE. MCE will refer the matter to the CEC for guidance.

Exhibit F. The parties acknowledge that any documents, plans, deadlines, or other provisions attached hereto as Exhibit F have been added solely for the parties' reference and convenience, and shall not constitute enforceable terms, conditions or obligations of this Agreement, except to

the extent that such terms, conditions and obligations are set forth elsewhere in the Agreement. The parties further agree that Exhibit F documents may be revised, updated and amended by agreement of the parties as needed without triggering or requiring an amendment to this Agreement, provided that the revisions are wholly consistent with all of the requirements of this Agreement.

	<input checked="" type="checkbox"/>	<u>Check applicable Exhibits</u>	<u>CONTRACTOR INITIALS</u>
<u>EXHIBIT A.</u>	<input checked="" type="checkbox"/>	Scope of Services	
<u>EXHIBIT B.</u>	<input checked="" type="checkbox"/>	Fees and Payment	
<u>Exhibit C.</u>	<input checked="" type="checkbox"/>	State Standard Contract Language (GTC 04/2017)	
<u>Exhibit D.</u>	<input checked="" type="checkbox"/>	Special Terms and Conditions	
<u>Exhibit E. (with Attachments)</u>	<input checked="" type="checkbox"/>	Federal Provisions; Attachments 1- 7	
<u>Exhibit F</u>	<input checked="" type="checkbox"/>	Project Management Document(s) (Reference Purposes Only)	

22. SEVERABILITY

Should any provision of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, such invalidity will not invalidate the whole of this Agreement, but rather, the remainder of the Agreement which can be given effect without the invalid provision, will continue in full force and effect and will in no way be impaired or invalidated.

23. COMPLETE AGREEMENT

This Agreement along with any attached Exhibits constitutes the entire Agreement between the parties. No modification or amendment shall be valid unless made in writing and signed by each party. Failure of either party to enforce any provision or provisions of this Agreement will not waive any enforcement of any continuing breach of the same provision or provisions or any breach of any provision or provisions of this Agreement.

24. COUNTERPARTS

This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

APPROVED BY
Marin Clean Energy:

By: _____
CEO

Date: _____

By: _____
Chairperson

Date: _____

CONTRACTOR:

For TerraVerde Renewable Partners, LLC:

By: _____

Name: _____

Date: _____



EXHIBIT A SCOPE OF SERVICES

Contractor agrees to timely perform and/or manage successful performance and completion of the tasks and deliverables set forth in this Scope of Services, within the BEO Project budget and fees allowed under this Agreement. As further stipulated in this Scope, a fundamental requirement of the BEO Project is to enable MCE, other CCAs, local government entities and other stakeholders to fully utilize all deliverables under this Agreement based on both publicly-available software and a comprehensive program manual. Contractor commits in good faith to meeting this requirement in full for the BEO project.

TABLE OF BEO PROJECT TASKS AND KEY DELIVERABLES*

Task No.	Due Dates	Task/Subtask Title
1	Oct. 2017, ongoing	Administration and Reporting
<i>Admin subtasks compressed</i>	Ongoing	Monthly and Quarterly Reports; CEC Meetings
	June 2020	Final Report
2		Identification of Optimal Locations and Projects
2.1	March 2018	Establish Baseline and Success Metrics
2.2	June 2018	Development of Database Enabling Quantified Analysis of Optimal Locations
2.3	Oct. 2018	Development of Data Analysis Tools
3		Deployment of Demonstration Projects
3.1	May 2018	Finalize Demonstration Project Deployment Plans
3.2	July 2019	Deploy Demonstration Projects
3.3	Nov. 2019	Development of Measurement & Verification (M&V) Protocols to Monitor Impact on CAGB
4	Sept. 2018	Evaluate Above Tasks to Align with Climate Action/GHG Reduction Goals and Relevant State Policies
5	April 2019	Define Replicable and Scalable Procurement Models and Programs; Develop Program Manual
6	Jan. 2020	Public Outreach/Broadcast Results

**See separate reference attachment at Exhibit F: "BEO Project Plan Timeline"*

GLOSSARY

Specific terms and acronyms used throughout this Scope of Services are defined for purposes of this Agreement as follows:

Term/ Acronym	Definition
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Term/ Acronym	Definition
AB 802	<i>Assembly Bill 802 (2015): establishes new building energy use benchmarking and public disclosure program; promotes use of meter-based energy savings approaches</i>
CAM	<i>Commission Agreement Manager</i>
CCA	<i>Community Choice Aggregation or Aggregator</i>
CAGB	<i>Climate Action Goal Baseline</i>
CPR	<i>Critical Project Review</i>
CPR	<i>Critical Project Review</i>
DER	<i>Distributed Energy Resource(s). Distributed Energy Resources are “distributed renewable generation resources, energy efficiency, energy storage, electric vehicles, and demand response technologies.” For the purposes of this project, an optimized DER portfolio may also include “fuel switching,” or “fuel substitution,” which is defined as switching a fuel source of an appliance or other fuel consumption device from a non-electric source to a clean electric source.</i>
DER Location Opportunity Database	<i>A functional database with populated data enabling automated analysis of a service territory to facilitate identifying optimal locations for DER deployment.</i>
DER Location Opportunity Map	<i>A visual representation of the identification of optimal DER locations utilizing the DER Location Opportunity Database.</i>
DER Matrix	<i>A matrix of data elements that adequately captures and organizes the GHG reduction impact of various DER project types and technologies across all energy consumer types in a service territory, including average market statistics on project implementation and operating costs.</i>
DER Success Metrics	<i>Metrics that measure and rank various DER options and portfolio combinations in terms of their ability to accelerate achievement of CCA climate action and GHG reduction goals, advance the state towards SB 350 and AB 802 goals, and factor in the cost effectiveness, economic viability/scalability and customer acquisition costs for underlying projects.</i>
ED	<i>Efficiency Division</i>
EIC	<i>Energy Innovation Challenge</i>
EBEE Action Plan	<i>Existing Buildings Energy Efficiency Action Plan and 2016 Plan Update</i>
Electric Vehicles (EV)	<i>Electric Vehicles (EV) means plug-in electric vehicles, electric vehicle supply equipment and related processes and systems to manage electric vehicle load.</i>
Energy Commission (CEC)	<i>California Energy Commission</i>
Energy Star Portfolio Manager	<i>Online tool created by the EPA that can be used to measure and track energy and water consumption along with greenhouse gas emissions, enabling the benchmarking of the performance of one building or a whole portfolio of buildings, all in a secure online environment.</i>
GHG	<i>Greenhouse Gas</i>
JPA	<i>Joint Powers Authority</i>

Term/ Acronym	Definition
SB 350	<i>Senate Bill 350 (2015): requires the Energy Commission, in collaboration with the Public Utilities Commission, to establish annual targets for statewide energy efficiency and demand reduction that will achieve a cumulative doubling of statewide energy efficiency savings by 2030.</i>
SGLC	<i>Small Government Leadership Challenge</i>
UI	<i>User Interface</i>

I. BEO Project Goals and Objectives

Goal #1: *Provide compelling evidence demonstrating that CCAs are ideally structured and situated, as local government/independent energy entities, to overcome current barriers to broad and rapid deployment of targeted DERs that deliver substantial improvements in building efficiency and GHG reductions.*

Goal #2: *Deliver an innovative and replicable CCA program solution that enables targeted and optimized DER portfolios to be deployed rapidly across CCA service territories, thus accelerating state and local climate action and GHG reduction goals.*

BEO Project Objectives:

Contractor shall have primary responsibility to ensure that all of the following project objectives are met, to achieve the overall goal of enabling MCE to utilize and share BEO Project deliverables based on publicly available software and a comprehensive program manual:

a. Establish Climate Action Goal Baseline (CAGB): Identify CCA baseline forecast for reaching Climate Action Goals utilizing wholesale renewable energy procurement alone (i.e. in the absence of programmatic DER procurement solution). Climate action goals will incorporate climate action and GHG reduction goals of CCAs (and the constituent local governments within their service territories), while helping advance the state towards SB 350, AB 802, and the Existing Buildings Energy Efficiency Action Plan (EBEE Action Plan)

b. Establish DER Success Metrics: Create metrics to measure and rank various DER options and portfolio combinations in terms of their ability to accelerate achievement of Climate Action Goals. DER Success Metrics shall factor cost effectiveness, economic viability/scalability as well as customer acquisition costs.

c. Create Functional Database: Identify and prioritize data sets needed to measure and rank DER options as described in B. Gather and organize data in a fashion that allows users to run high volumes of multi-variable/multi-objective simulations of DER portfolios.

d. Produce Optimal DER Portfolio: Using the Functional Data base and related tools, analyze the impact of optimal DERs on the CABG and identify the highest value target customers/buildings/sites for DER deployment. Identify location and mix of DER to maximize DER Success Metrics, thus producing the “Optimal DER Portfolio”.

e. Execute Demonstration Projects: Deploy up to three committed demonstration projects within the CCA’s Optimal DER Portfolio that validate the proposed solution; measure and analyze the

deployed demonstration projects in terms of achieving and validating the project objectives and impact on CAGB.

f. Design Replicable and Scalable Programs & Procurement Models: Define specific procurement, financing and price-signal solutions for CCAs, based on findings collected from the demonstration projects, to accelerate and broaden building owner adoption of optimal DER portfolios.

g. Develop Measurement & Verification Protocols to Monitor Impact on CAGB: To establish the CCA as a centralized, independent performance monitoring agent, implement gateways to access the multiple data types relevant to DER design and deployment (e.g. customer load data, system load profile data, DER portfolio performance data) and Measurement & Verification (M&V) protocols to aggregate and analyze asset performance data in real time, at portfolio scale. Design processes and systems that utilize DER asset performance data in feedback loop to refine future DER programs to maximize future outcomes and course-correct existing asset performance as needed.

h. Organize Solution/Best Practices into Comprehensive Technical Manual – Promote to Others: Develop straightforward, user-focused “Program Manual” which describes required data, database design, DER optimization tools and logic, program designs, findings and document templates in a package that can be transferred and repurposed by other CCAs and constituent local governments to accelerate their own climate action and building efficiency goals. Promote the Program Manual and schedule opportunities for knowledge sharing to maximize adoption of our solution and approach.

II. BEO Project Tasks and Deliverables

a. Administrative Tasks

TASK 1 – ADMINISTRATION AND REPORTING

Contractor shall designate a project lead or leads, who will coordinate and manage performance of all related project management tasks and products, include maintaining and updating the project management tools (e.g., Gantt chart/timeline) attached for reference and example purposes only as Exhibit F to this Agreement.

1.1 Attend Kick-off Meeting

Contractor shall attend a project kick-off meeting at the CEC offices in early October, 2017 at a date and time to be determined by the CEC and MCE.

1.2 Critical Project Review (CPR) Meetings

The goal of this task is to have periodic discussions, as directed and scheduled by the CEC, to determine if the BEO Project should continue to receive CEC funding to complete this Agreement, and to identify any needed modifications to the tasks, products, schedule or budgets. Contractor shall prepare for and attend CPR Meetings as requested.

Contractor shall:

- Prepare and/or coordinate preparation of CPR reports, subject to MCE review and approval, to be submitted to the CEC at least 15 working days in advance of a scheduled CPR meeting. The CPR reports shall discuss progress made to-date in completing deliverables and achieving BEO Project objectives, and make recommendations and conclusions

regarding continued work on the Project. Contractor may be asked to present and discuss the report at each CPR meeting.

- MCE may request additional follow-up activities or adjustments to the project management timeline to be performed by Contractor based on the CEC's written determination(s) after each CPR meeting.

Summary of Task 1.2 Deliverables:

- CPR Reports
- Additional follow-up activities and modifications to project elements as directed.

1.3 Final Meeting(s)

The goal of this task is closeout of the BEO Project and CEC Grant Agreement.

Contractor shall:

- Meet with CEC staff to present the findings, conclusions, and recommendations. The final meeting(s) shall be completed during the closeout of the Grant Agreement between MCE and the CEC. The technical and administrative aspects of closeout will be discussed at the meeting(s), which may be two separate meetings at the discretion of the CEC.
- The technical portion of the meeting shall present an assessment of the degree to which project and task goals and objectives were achieved, findings, conclusions, recommended next steps (if any) for the Agreement, and recommendations for improvements. The Commission Agreement Manager will determine the appropriate meeting participants.
- The administrative portion of the meeting shall be a discussion with the Commission Agreement Manager and the Grants Officer about the following Agreement closeout items:
 - What to do with any equipment purchased with CEC funds (Options)
 - CEC's request for specific "generated" data (not already provided in Agreement deliverables)
 - Documenting disclosure of any "subject inventions" developed in the course of the project
 - "Surviving" CEC Grant Agreement provisions
 - Final invoicing and release of retention amounts
- Assist MCE in preparing a schedule for completing the closeout activities for this Agreement.

Summary of Task 1.3 Deliverables:

- Meeting attendance and participation
- Assistance with closeout activity schedule

1.4 Monthly Progress Reports

The goal of this task is to verify that satisfactory and continued progress is made towards achieving the objectives of this Agreement on time and within budget, and to enable MCE to fulfill CEC reporting requirements.

Contractor shall:

- Prepare and/or coordinate preparation of monthly progress reports which summarize all BEO Project activities conducted during the reporting period, including an assessment of the Contractor and subcontractors' ability to complete deliverables within corresponding budget allotments, and any anticipated cost overruns.
- Monthly reports shall include a statement to-date of costs and expenditures per task that can be tied to Contractor's invoices. Each progress report is due to MCE within five days from the end of the monthly reporting period, in order for MCE to meet its reporting

obligations to the CEC. MCE may provide further specifications for monthly progress reports as needed.

1.5 Quarterly Progress Reports

The goal of this task is to periodically verify that satisfactory and continued progress is made towards achieving the objectives of this Agreement on time and within budget, and to enable MCE to fulfill CEC reporting requirements.

Contractor shall:

- Prepare Quarterly Progress Reports with fields to be specified by MCE in accordance with CEC reporting requirements. Each progress report is due to MCE within five days of the end of the quarterly reporting period.

1.6 Final Report

The goal of the Final Report is to assess the BEO Project's success in achieving its purposes, goals and objectives.

Contractor shall:

- Following guidelines to be provided by MCE as directed by the CEC, prepare a draft Final Report which clearly and completely: 1) describes the BEO Project's purpose, approach, activities performed, results, and advancements in science and technology; 2) presents a public assessment of the success of the project as measured by the degree to which goals and objectives were achieved; 3) makes insightful observations based on results obtained; 3) draws conclusions; and 4) makes recommendations for further projects and improvements to the project management process. The Final Report shall be a public document.
- Assist MCE in preparation of the final version of the Final Report which shall address any written comments provided by the CEC. The Final Report must be completed at least 60 days before the end of the CEC Grant Agreement term.

1.7 Identify and Obtain Required Permits

The goal of this task is to obtain all permits required for work to be performed under the BEO Project in advance of the date they are needed to keep the project schedule on track.

Contractor shall:

- List in writing permits required to carry out the BEO Project tasks and deliverables, and shall submit the list of permits to MCE at least 5 working days prior to the kick-off meeting. Contractor shall indicate in writing if no permits are required at the start of the BEO Project, or if it is known at the beginning of the Project that permits will be required at a later stage.
The list of permits shall identify:
 - Type of permit
 - Name, address and telephone number of the permitting jurisdictions or lead agencies
 - The schedule Contractor will follow in applying for and obtaining these permits.
- Be prepared to discuss the list of permits and the schedule for obtaining them at the kick-off meeting and develop a timetable for submitting the updated list, schedule and the copies of the permits. If applicable, permits will be included as a line item in the Progress Reports and will be a topic at CPR meetings.

- If during the course of the BEO Project additional permits become necessary, Contractor shall promptly provide the appropriate information on each permit and an updated schedule to MCE.
- As permits are obtained, Contractor shall send a copy of each approved permit to MCE or directly to the CEC Contract Manager, as directed by MCE.
- If during the course of the Agreement permits are not obtained on time or are denied, Contractor shall notify MCE within three (3) working days. Contractor shall be responsible for costs associated with obtaining permits. Permits must be identified in writing and obtained before Contractor can make any expenditure for which a permit is required.

b. Technical Tasks

Stage gates. Technical Tasks shall include “stage gates,” defined for purposes of this Agreement as points of **critical project review** between MCE and Contractor that must be satisfactorily completed for acceptance of deliverables and payment of invoices. At each stage gate, MCE shall review Contractor’s completed draft and/or final deliverables, and shall either approve and accept the deliverables, or direct Contractor to further iterate and make adjustments as needed to satisfactorily complete the deliverables. The parties shall work in good faith to timely submit, review and return draft products and deliverables reasonably in advance of deadlines to allow adequate time for necessary iteration of the deliverables. Upon approval and acceptance of final deliverable(s) at each stage gate, Contractor may request payment of invoice(s) for all work performed and expenses pertaining to the deliverables.

TASK 2 - IDENTIFICATION OF OPTIMAL LOCATIONS AND PROJECTS

2.1 Establish Baseline and Success Metrics

The goal of this task is to quantify and clearly define MCE’s projected achievement statistics for climate action goals, in the absence of the programmatic Distributed Energy Resources (DER) solution proposed herein. This forecast shall be referred to as the Climate Action Goal Baseline (CAGB) and will serve as the foundation for measurement and comparison of future DER deployments under the proposed solution. In addition, it is the goal of this task to create DER Success Metrics to measure and rank various DER options and portfolio combinations in terms of their ability to accelerate achievement of CCA climate action and GHG reduction goals, advance the state towards SB 350 and AB 802 goals, as well as factor in the cost effectiveness, economic viability/scalability and customer acquisition costs for underlying projects.

Contractor shall:

- Quantify and clearly define the GHG reduction impact of planned wholesale electricity resources through 2025 (including bundled renewable energy, unbundled renewable energy, other GHG-free energy, and conventional energy contracts).
- Quantify and clearly define the GHG reduction impact of existing and planned MCE-sponsored DERs within the service territory through 2025.
- Combine statistics gathered in previous two activities on an annual basis to establish the CAGB.
- In consultation with MCE, define the components of a DER Matrix that adequately captures and organizes the GHG reduction impact of various DER project types and technologies across all energy consumer types in the service territory, including average market statistics on project implementation and operating costs.

- Develop DER Matrix to capture and organize the GHG reduction impact of various DER project types across all energy consumer types in the service territory, including average market statistics on project implementation and operating costs.
- Identify and clearly define DER Success Metrics, including specific performance results based on the previous baseline definition, DER optimization analysis, and scoring protocols utilizing the DER Matrix, to allow MCE to adequately prioritize projects and sites through the evaluation of impact vs. viability.

Summary of Task 2.1 Deliverables:

- Climate Action Goal Baseline (CAGB)
- Define GHG impact of wholesale resources through 2025
- Define GHG impact of planned DER through 2025
- DER Success Metrics
- Develop DER Matrix to capture GHG project impacts
- Define DER Success Metrics

Stage Gate 1: Task 2.1 Review, Iteration, and Approval

MCE shall review Contractor's CAGB, DER Matrix and DER Success Metrics, and approve the deliverables or direct Contractor to iterate them as required.

2.2 Develop Database Enabling Quantified Analysis of Optimal Locations

The goal of this task is to design, develop and populate a functional database enabling automated analysis of a service territory to facilitate identifying optimal locations for DER deployment, identified hereinafter as the Location Opportunity Database. This database will support queries and multi-objective simulations of potential DER portfolios at optimal building sites, based on criteria that include system peak areas, individual site load analysis and potential optimal DER impacts, DER characteristics including the operating performance of multiple DER types into an optimal portfolio for sites, and PG&E Integration Capacity Analysis data. The database enables quantification of the locational value of individual sites with regards to efficiency and local generation potential.

Contractor shall:

- Design, develop and populate database, including but not limited to grid level and customer/building load level data, in a fashion that allows users to run high volumes of multi-variate/multi-objective simulations of DER portfolios with the intent of identifying optimal combinations with the highest impact on DER Success Metrics, as defined in Task 2.1. This includes capturing additional information for building efficiency optimizations that are not provided at a granular enough level today to be useful for CCAs.
- Capture building/site specific data, utilizing various existing and planned mechanisms, that enables the identification of the following opportunities per location: 1) physical site upgrade opportunities such as lighting retrofits, occupancy sensors, HVAC upgrades, windows, building envelope, insulation, etc.; 2) generation potential, focused primarily on site potential for solar generation including rooftops, parking lots, and brownfield areas; 3) fuel switching, e.g. from gas to electricity HVAC or domestic hot water to match local solar generation potential and provide potential thermal storage and from gasoline to electricity; 4) building energy management system opportunities including load shifting to optimize the potential of the local generation profile; 5) energy storage, including the opportunity to integrate higher penetrations of solar PV generation based on the support of energy storage to store surplus solar generation and discharge the electricity during evening load ramps, thus further reducing net system load and fossil fuel consumption; and 6) electric vehicle (EV) opportunities.

- Capture and integrate PG&E Integration Capacity Analysis data (as available) and create relationships with individual site locations to enable cross-referencing analysis.
- Capture and create a database of DER operating characteristics as they relate to the achievement of Climate Action Goals.

Summary of Task 2.2 Deliverables:

- Database Design – Use Cases and Requirements:
 - Identify, select, and correlate data sources
 - Collect data samples
- Develop Business Requirements for the database and define questions to be answered using data
 - Define database schema/specification
 - Select database technology
 - Database creation and data load
 - Data acquisition
 - Iterate schema

Stage Gate 2a (Database Design): Task 2.2 Review, Iteration, and Approval

MCE shall review Task 2.2 deliverables for database design and data acquisition plans and shall approve or direct Contractor to iterate as needed. MCE's review and approval is required in order to proceed to Stage Gate 2b final database creation/population deliverables.

Stage Gate 2b (Database Creation/Population): Task 2.2 Review, Iteration, and Approval

MCE shall review Task 2.2 final deliverables for database creation/population and shall approve or direct Contractor to iterate as needed.

2.3 Develop Data Analysis Tools to Simulate DER Location/Portfolio Optimization

The goal of this task is to deliver a comprehensive analysis of the MCE service territory to identify optimal locations for deploying optimal DER portfolios while reducing energy imported from the grid. Specifically, this task aims to simulate the impact of DER on the CABG by creating portfolio optimization tools (and underlying algorithms and business logic) to identify the highest value target customers/buildings/sites for DER deployment. Using these tools, Contractor will identify the locations and ideal mix of DER projects/solutions that maximize DER Success Metrics, thus producing an optimal DER deployment plan across the service territory.

Contractor shall:

- Analyze individual customer loads and load shapes within the service territory, utilizing the Location Opportunity Database to identify locations with maximum potential for energy efficiency, local generation, storage and electric vehicles (EV). This includes identifying locations causing feeder, substation and system peaks as well as low-load factor client load profiles. Utilize analysis that leverages the PG&E Integration Capacity Analysis (ICA) data within the Location Opportunity Database to identify, on a per-feeder segment basis, the locations from the above analysis that will benefit from accelerated Interconnection via available hosting capacity, and/or identifiable cost deferrals of distribution and/or transmission upgrades, to maximize the potential for future net-new revenue streams to project participants.
- Define the integrated software architecture that incorporates both the selected existing technologies and the additional development as required, to ensure interoperability and seamless operations of the technical deliverables.

- Conduct a Stage Gate meeting with MCE and other stakeholders to serve as a critical design review that: 1) ensures that the design and architecture of the data analysis and DER portfolio optimization tools and resulting 'user interface' (UI) approach will satisfy all previously-determined requirements, and 2) that the DER Success Metrics will be achieved. MCE's review and approval is required in order to proceed with subsequent deliverables.
- Codify and display findings visually through the development of a DER Location Opportunity Map (utilizing ArcGIS or other publicly available third-party mapping platform).
- Deliver all data model, database, and analytics tools software and specifications as stipulated in Task 2, as publicly-available, open source code and products that can be used by MCE, other Community Choice Aggregators (CCAs), or other appropriate entities.

Summary of Task 2.3 Deliverables

- Software analysis components:
 - Definition of required analysis components
 - Analysis of software libraries and tools
 - Specification of required development and architecture
 - Development of analysis components
 - Creation of developer documentation and hosting plan
- Visual web tool
 - Definition of visual interfaces and reporting capability
 - Specification of required development and architecture
 - Development of web UI components
 - Creation of user and developer documentation (and hosting plan)
- Identification of locations for DER that will realize maximum benefits under the DER Success Metrics
- Creation of DER Location Opportunity Map

Stage Gate 3a (Software Analysis): Task 2.3 Review, Iteration, and Approval

MCE shall review Task 2.3 software analysis architecture and functionality deliverables, and approve or direct Contractor to iterate as needed to ensure that DER Success Metrics will be achieved. MCE's review and approval is required in order to proceed to Stage Gate 3b visual web tool deliverables.

Stage Gate 3b (Visual Web Tool): Task 2.3 Review, Iteration, and Approval

MCE shall review Task 2.3 visual web tool deliverables, and direct Contractor to iterate DER Location Opportunity Map functionality as directed. MCE's review and approval is required in order to proceed with subsequent tasks.

TASK 3 - DEPLOY DEMONSTRATION PROJECTS

3.1 Finalize Demonstration Project Deployment Plans

The goal of this task is to finalize the demonstration project deployment plans in the service territory that will provide input to and validate the methods and data utilized in the above Tasks.

Contractor shall:

- Finalize deployment plans for the three committed demonstration projects within the service territory that fit the criteria from the above, enabling a deployment of an optimal DER portfolio to achieve maximum impact on the CAGB via energy efficiency and local generation, while maximizing value to the service territory and to the grid. The committed deployment projects are listed below.
 - Monterey Pines Apartments. 680 S. 37th St, Richmond, CA 94804 NOTE: This is a disadvantaged community site.

- Marin Sanitary Service. 1050 Andersen Drive, San Rafael, CA 94901
 - Novato Sanitary District. 500 Davidson St., Novato, CA 94945
- Gather customer load data and site conditions data.
- Conduct detailed energy efficiency audits and produce an Energy Audit Report for each demonstration project site, to be reviewed by the property owners, which may include one or more of the following:
 - Energy/GHG reduction calculations per DER
 - Building eQuest models (as necessary)
 - Cost savings analysis including energy and maintenance cost projections
 - Populated and validated Energy Star Portfolio Manager in compliance with AB 802 requirements
 - Building energy use index (EUI) with comparison to building peer group
- Develop Building Use Plan to promote behavioral change strategies to building occupants/users, leading to energy use reduction and energy use shifting in compliance with AB 802 requirements.
- Conduct detailed economic feasibility analyses for each demonstration project based on the information in the Energy Audit Report for each site. This Project Feasibility Report is separate from the Energy Audit Report and covers the economics of the proposed DER portfolio for the site including a cash flow pro forma. The Project Feasibility Reports will be presented to the property owners.
- Create a preliminary design of optimal DER portfolios for each demonstration site and deliver a Project Scope Inventory to the property owners, including a portfolio matrix of proposed DERs, DER locations, and ranked by success metrics including customer benefits. Acquire final approval from building owners.
- Fulfill all NEPA/CEQA requirements, if required.
- Conduct analysis of alignment between the demonstration projects with Task 2.3.

Summary of Task 3.1 Deliverables:

- Project Deployment Plans
- Energy Audit Reports for each site
- Building Use Plans for each site
- Project Feasibility Reports (include NEPA/CEQA requirements, if applicable)
- Project Scope Inventory, including preliminary DER portfolio plan
- Final deployment plan for demonstration sites including DER Success Metrics results

Stage Gate 4: Task 3.1 Review, Iteration and Approval

MCE shall review deliverables for Task 3.1 and approve or direct Contractor to iterate reports, use plans, Project Scope Inventory and preliminary DER portfolio plan, and deployment plans as needed.

3.2 Deploy Demonstration Projects

The goal of this task is to deploy the three committed demonstration projects in the service territory that will provide input to and validate the methods and data utilized in the above Tasks. This task will reinforce the goal of the BEO Project to establish a replicable and scalable model across CCAs and other local government entities for deploying building efficiency solutions.

Contractor shall:

- Coordinate all stakeholders to ensure successful completion of the demonstration projects. MCE will lead collaboration with the cities/towns where the demonstration projects are located.

- Assist building owners in creating, launching and managing the request for offers or proposals (RFO) process to secure qualified DER implementation vendors and financing solutions (as needed). RFO documents and protocols shall be repurposed later in program development sequence and shall include:
 - RFO Template (i.e. DER vendor solicitation documents).
 - Value Engineering Matrix to identify opportunities for cost savings and efficiencies in design, engineering, construction and or scheduling.
- Assist building owners in managing the contracting and pricing negotiations process with DER vendors and supply document templates to ensure a balanced procurement process.
- Manage the deployment and implementation of the optimal DER portfolios at the demonstration sites.
- Satisfy all permitting requirements as required in Task 1.8 for the deployment locations and ensure compliance with Title 24.
- Monitor construction through weekly status meetings; and generate Weekly Project Status Reports for building owners.
- Oversee DER commissioning and ensure compliance to RFP and Project Scope Inventory specifications; validate DER vendor closeout and punch lists.
- Provide measured and analyzed results of the demonstration projects (and as part of the deliverables for Task 6). This will include evaluation of the DER Success Metrics in terms of support for meeting the goals of SB 350 and AB 802 and projected impact on the CAGB.

Summary of Task 3.2 Deliverables:

- Deployed Demonstration Projects
- DER vendor procurement and contracting templates; i.e. design-build or design-bid-build contract documents
- Execution of any necessary contracts between building owners and DER vendors, or identification of alternatives for successful deployment
- Report on status and results of deployed projects: description, DER portfolio designs, Success Metrics measured, projected impact on CAGB, as-built Cash Flow Pro Forma

Stage Gate 5: Task 3.2 Review, Iteration and Approval

MCE shall review deliverables for Task 3.2 and approve or direct Contractor to iterate or revise DER vendor procurement templates and documentation of deployment processes and outcomes as needed.

3.3 Develop Measurement & Verification (M&V) Protocols to Monitor Impact on CAGB

The goals of this task are: 1) to identify the technology and develop the protocols required to aggregate operational data from the deployed demonstration projects to enable real-time M&V of asset-level performance; and 2) to demonstrate the value of establishing the CCA as the centralized, independent performance monitoring agent utilizing M&V protocols for DER assets at portfolio scale.

Contractor shall:

- Identify, secure and manage the implementation of real-time monitoring technologies and M&V Reporting Dashboard at demonstration sites.
- Analyze performance data from the operational demonstration projects over a required period of time to validate forecasted DER Success Metrics, forecasted impact on CAGB, forecasted achievement of SB 350 and AB 802 goals, and forecasted advancement towards the state's EBEE Action Plan.

- Create M&V Impact Report template with replicable design, inputs and outputs. The M&V Impact Report will be designed such that it can be utilized for and across multiple government entities, thereby enabling a more targeted, scalable, automated, and accelerated engagement model for EE and DER vendors within service territories across the state.
- Provide ongoing real-time M&V support to operational demonstration projects and utilize performance data in feedback loop to improve future DER programs and refine DER Success Metrics.
- Maximize impact on CAGB through communication of preventative asset management measures to building owners, and facilitate corrective measures as required.
- Update Energy Star Portfolio Manager with project performance data.

Summary of Task 3.3 Deliverables:

- Web based M&V Reporting Dashboard (live viewing capabilities) linked to operational data at demonstration projects
- M&V Impact Report and documentation of M&V protocols.
- Energy Star Portfolio Manager updated to include project performance data.

Stage Gate 6: Task 3.3 Review, Iteration and Approval

MCE shall review deliverables for Task 3.3 and approve or direct Contractor to iterate or adjust M&V Reporting Dashboard functionality, Impact Report and protocols documentation, and updated Energy Star Portfolio Manager as needed.

TASK 4 - EVALUATE THE ABOVE TASKS TO ALIGN WITH CLIMATE ACTION / GHG REDUCTION GOALS AND RELEVANT STATE POLICIES

The goal of this task is to evaluate MCE's local climate action plan(s) and GHG reduction goals and the relevant state policies to achieve close alignment with the design and results of the previous tasks.

Contractor shall:

- Analyze existing climate plans and GHG reduction goals from MCE, and in collaboration with the other local government entities within the MCE service territory (key city governments within Marin, Napa, Contra Costa, and Solano counties) in the context of the results and proposed designs from the previous tasks.
- Evaluate the results and metrics from the above tasks in support of SB 350, AB 802, and EBEE Action Plan goals. This includes aligning quantified DER impacts on metered savings with the goals of AB 802, and/or the potential for optimal DER portfolios to support the SB 350 mandate to double statewide energy efficiency savings.
- Recommend modifications to the existing climate plans, GHG reduction goals, and previous BEO Project tasks to maximize Project effectiveness and alignment with statewide energy efficiency and GHG reduction mandates.

Summary of Task 4 Deliverables:

- Evaluation of Tasks
 - Revisions to existing relevant climate plans and GHG reduction goals that reflect the outcome and designs of the above tasks
 - Modifications to the above tasks as needed to further achieve climate plan goals and GHG reduction goals and meet the goals of SB 350 and AB 802

Stage Gate 7: Task 4 Review, Iteration and Approval

MCE shall review Contractor's evaluation of task results and metrics, revisions of climate plans, and recommendations, and shall approve deliverables for Task 4, or direct Contractor to further iterate as needed.

TASK 5 - DEFINE REPLICABLE AND SCALABLE PROCUREMENT MODELS AND PROGRAMS; DEVELOP PROGRAM AND OPERATIONS MANUAL

The goal of this task is to design replicable and scalable procurement and financing models and program concepts such that CCAs (and other local government entities) can accelerate and broaden building owner adoption of these DER solutions to rapidly achieve optimal building efficiency and net load reduction within service territories. This task also includes development of a comprehensive program and operations manual to facilitate adoption of the technical tools across CCAs, and to describe the procurement and financing models and program concepts developed pursuant to this task.

Contractor shall:

- Develop replicable program concepts incorporating planning, targeting, financing, customer acquisition, building owner compensation, and deployment that can be readily utilized by CCAs or other local government entities to simplify deployment of optimal DER portfolios and targeting building owners within service territories, to achieve climate action and GHG reduction goals.
- Design a financing and/or procurement solution specifically for CCAs that explores the value streams associated with DERs and appropriate procurement and / or financing models for capturing or distributing this value stream to optimize DER deployment at building locations (including rooftops, parking lots, and brownfield areas) within a service territory. The procurement models or financing solutions shall be designed to optimize scalable deployments of DERs and achieve climate action goals.
- Develop a straightforward, user-focused CCA DER Procurement "Program and Operations Manual" ("DER Manual") that organizes the knowledge, tools, program designs, findings and document templates in a package that can be transferred and repurposed by other CCAs and local governments to accelerate their own climate action and GHG reduction goals. The DER Manual will include:
 - Description of how CCAs can utilize a targeted and optimal DER resource portfolio to achieve climate action and GHG reduction goals
 - Explanation of where the values of DER can be optimized, including the avoided cost of electricity through building efficiency, as key attributes of a successful program
 - A complete technical operations manual detailing how a CCA or similar entity can operate, support, and/or modify the database and analytic tools technologies.
- Ensure that the DER Manual stipulates all of the business and operational requirements, standards and specifications needed for any third-party to use the technical deliverables.
- Ensure that all code developed shall be hosted on an open source platform and deployable at scale for use by third parties.

Summary of Task 5 Deliverables:

- Definition of Replicable and Scalable Program Concepts and Procurement Models
- Comprehensive report on replicable, scalable program concepts for simplifying CCAs' deployment of optimal DER portfolios including financing and / or procurement models to scale DER adoption.
- Completed CCA DER Procurement Program and Operations Manual

Stage Gate 8: Task 5 Review, Iteration and Approval

MCE shall review deliverables for Task 5 and approve or direct Contractor to iterate the comprehensive report, financing solutions, and DER Manual as needed.

TASK 6 - PUBLIC OUTREACH/BROADCAST RESULTS

The goal of this task is to develop a plan for packaging and sharing the CCA program and project results, including knowledge gained, results, and lessons learned from BEO Project tasks. The BEO Project results will be shared widely with stakeholders including, without limitation, local governments, CCAs and affiliated organizations, other load-serving entities.

Contractor shall:

- Prepare a Public Outreach/Technology Transfer Plan (“Outreach Plan”) identifying any public outreach actions proposed during the term of the BEO Project and how the knowledge gained from Project tasks will be made available to other agencies and stakeholders. Key elements from this report shall be included in the BEO Project Final Report.
- Implement the Outreach Plan and broadcast results, using most effective channels and leveraging BEO Project team networks, to ensure that the BEO Project results, recommendations and technical materials can be widely and readily adopted by other CCAs statewide.

Summary of Task 6 Deliverables:

- Implementation of the Outreach Plan including distribution of the CCA DER Procurement Program Manual and presentation of key elements to CCAs and other government entities
- Draft Outreach Plan
- Final Outreach Plan

Stage Gate 9: Task 6 Review, Iteration, and Approval

MCE shall review deliverables for Task 6 and approve or direct Contractor to iterate/revise the draft and final Outreach Plan(s) and/or the Outreach Plan implementation as needed.

EXHIBIT B

BUDGET, FEES AND PAYMENT PROVISIONS

For services provided under this Agreement, MCE shall pay Contractor in accordance with the following provisions:

1. MONTHLY STATEMENTS AND BUDGET:

Contractor shall be responsible for ensuring that all BEO Project tasks and deliverables thereunder are completed within allocated budget amounts set forth in the budget tables below. On a monthly basis, Contractor shall provide MCE with a statement of time and materials cost totals to-date for all Tasks and their deliverables, including all reimbursable expenses and costs for work performed by Contractor and all subcontractors. Contractor shall not be responsible for the payment of any direct costs incurred by MCE or any other party for procuring, implementing, or maintaining equipment, software, third-party data sets, data management infrastructure, or for any other fees or costs incurred by MCE or any other party for professional services that may arise during the fulfillment of the tasks and deliverables under the Scope of Work in Exhibit A unless expressly provided for herein. Budget allocations per task and/or cost categories as identified below may only be adjusted by amendment of the CEC Grant Agreement.

In no event shall the total cost to MCE for all services provided herein exceed the maximum sum of **\$1,417,349** for the term of the Agreement. Modifications to budget amounts allocated for each Task (or Subtask) as set forth herein may require prior approval by the CEC and amendment of this Agreement in writing executed by both parties.

2. INVOICING AND REQUIREMENTS FOR PAYMENT:

Contractor shall submit all invoices on a cost reimbursement basis, upon completion and MCE's review and acceptance of deliverables pertaining to each stage gate as identified in Exhibit A. Contractor shall attach documentation, such as time sheets, subcontractor invoices, receipts, or other materials in support of all invoiced amounts. Invoiced amounts for deliverables should match monthly statement information. MCE shall notify Contractor when it has approved invoices and submitted a request for payment to the CEC, in accordance with the terms of the CEC Grant Agreement. MCE shall issue payments to Contractor within 30 days of CEC's approval of Contractor's invoice. Contractor agrees to provide any additional supporting documentation as requested by MCE or the CEC for validation of invoices and confirming allowability of costs.

Table 1: BEO Project Budget by Task (including all cost categories)

Task No.	Budget
1	\$117,505
2	\$532,256
3	\$438,189
4	\$79,282
5	\$177,903
6	\$72,214
Total	\$1,417,349

Table 2: BEO Project Budget for Contractor by Cost Category

Category	Budgeted Totals
Direct Labor	\$570,712
Fringe Benefits	\$142,678
Total Labor	\$713,390
Travel	\$2,500
Equipment	-
Materials/Miscellaneous	-
Subcontractors (inclusive of all cost categories)	\$643,750
Total Other Direct Costs	\$646,250
Indirect Costs and Profit	\$57,709
Total Indirect and Profit	\$57,709
Grand Total	\$1,417,349

EXHIBIT C
STATE OF CALIFORNIA STANDARD CONTRACT LANGUAGE (GTC 04/2017)

I. GENERAL TERMS AND CONDITIONS

1. **APPROVAL**: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
2. **AMENDMENT**: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. **ASSIGNMENT**: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. **AUDIT**: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. **INDEMNIFICATION**: Contractor 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 any and all contractors, subcontractors, suppliers, 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 Contractor in the performance of this Agreement.
6. **DISPUTES**: Contractor shall continue with the responsibilities under this Agreement during any dispute.
7. **TERMINATION FOR CAUSE**: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.
8. **INDEPENDENT CONTRACTOR**: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.
9. **RECYCLING CERTIFICATION**: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post-consumer material as defined in the

Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).

10. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors shall not deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, §11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code §§11135-11139.5), and the regulations or standards adopted by the awarding state agency to implement such article. Contractor shall permit access by representatives of the Department of Fair Employment and Housing and the awarding state agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause. Contractor 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. (See Cal. Code Regs., tit. 2, §11105.)

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

II. CERTIFICATION CLAUSES: The **CONTRACTOR CERTIFICATION CLAUSES** contained in the document CCC 04/2017 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

III. TIMELINESS: Time is of the essence in this Agreement.

IV. COMPENSATION: The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

V. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

VI. ANTITRUST CLAIMS: The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

- a. The Government Code Chapter on Antitrust claims contains the following definitions:

- i. "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
 - ii. "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.
- b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.
 - c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.
 - d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

VII. CHILD SUPPORT COMPLIANCE ACT: For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:

- a. The contractor 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
- b. The contractor, 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.

VIII. 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.

IX. PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in

positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

X. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

- a. If for this Contract Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)
- b. If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

XI. LOSS LEADER: If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)

EXHIBIT D
CEC GRANT AGREEMENT TERMS AND CONDITIONS

1. CONTRACT MANAGEMENT

- ~~A. The Contractor's Project Manager is responsible for the day-to-day project status, decisions, and communications with the Energy Commission's Contract Manager. The Contractor may change its Project Manager by giving written notice to the Energy Commission, but the Energy Commission reserves the right to approve any substitution of the Project Manager.~~
- ~~B. The Energy Commission may change its Contract Manager at any time by giving written notice to the Contractor. The Energy Commission's Contract Officer will sign the written notice.~~
- ~~C. Energy Commission staff may work side by side with the Contractor's staff, to the extent and under conditions that may be directed by the Energy Commission's Contract Manager. In this connection, the Energy Commission staff will be given access to all data, working papers, etc., that the Contractor may seek to utilize.~~
- ~~D. The Contractor will not be permitted to utilize Energy Commission personnel for the performance of services that are the Contractor's responsibility, unless the Energy Commission's Contract Manager agrees to such utilization in writing and an appropriate adjustment in price is made. No charge will be made to the Contractor for the services of Energy Commission employees while performing, coordinating or monitoring functions.~~

2. STANDARD OF PERFORMANCE

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

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

~~3.~~ **PROCUREMENT**

~~When procuring property and services with funds awarded under this Agreement, the Contractor and subawardees shall follow the following procurement policies and procedures of 10 Code of Federal Regulations (CFR) Part 600: DOE Financial Assistance Regulations (<http://ecfr.gpoaccess.gov>), which are incorporated by reference in Exhibit E:~~

- ~~A. State governments shall follow the same policies and procedures they use for procurements from their non-Federal funds.~~
- ~~B. Local governments shall follow 10 CFR Section 600.236(b) through (i).~~
- ~~C. Institutions of higher education, hospitals, and other nonprofit organizations shall follow 10 CFR Sections 600.140 through 600.149.~~
- ~~D. For-profit organizations shall follow 10 CFR Section 600.331.~~

~~4.~~ **SUBAWARDS**

~~The Contractor may enter into agreements with the other firms and/or individuals, and shall manage their performance.~~

AND

- ~~A. Nothing contained in this Agreement or otherwise, shall create any contractual relationship between the Energy Commission and any subawardees or vendors, and no subaward shall relieve the Contractor of its responsibilities and obligations under this Agreement. The Contractor agrees to be as fully responsible to the Energy Commission for the acts and omissions of its subawardees or vendors and/or persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's obligation to pay its subawardees or vendors is an independent obligation from the Energy Commission's obligation to make payments to the Contractor. As a result, the Energy Commission shall have no obligation to pay or to enforce the payment of any monies to any subawardee or vendor.~~
- ~~B. The Contractor shall be responsible for establishing and maintaining contractual agreements with and the reimbursement of each of the subawardees or vendors for work performed in accordance with the terms of this Agreement. The Contractor shall be responsible for: (1) scheduling and assigning subawardees or vendors to specific tasks in the manner described in this Agreement; (2) coordinating subawardee or vendor accessibility to Energy Commission staff; and (3) submitting completed products to the Contract Manager.~~
- C. Required Subaward Provisions

All subawards shall contain the following:
 - 1) The provisions of Exhibit E. Vendor subawards shall only contain the provisions in Attachment 7 of Exhibit E (Exhibit E Vendor Flow-Down Provisions).
 - 2) The provisions required by 10 CFR Section 600.236(i).

- 3) The "Recordkeeping and Inspection of Records" paragraph of this Exhibit (Exhibit D).
- 4) A provision that further assignments shall not be made to any third or subsequent tier subawardee without additional written consent of the Contract Manager.
- 5) The confidentiality provisions in the "Reports" paragraph of this Exhibit (Exhibit D).
- 6) The audit rights, indemnification, and non-discrimination provisions stated in the General Terms and Conditions (Exhibit C);
- 7) Provisions recognizing the applicability of the funding limitations of 10 CFR Section 420.18, as modified by Section 9.7 of Exhibit 1 of the U.S. Department of Energy Funding Opportunity Announcement DE-FOA-0000052.
- 8) A provision that directs subawardees to submit copies of executed subawards and applicable prevailing wage determinations to the Contract Manager, pursuant to the "Subaward Documentation" paragraph of this Exhibit (Exhibit D).
- 9) A provision that the Energy Commission must approve of executed subawards and prevailing wage determinations prior to the commencement of any work under a subaward, pursuant to the "Subaward Documentation" paragraph of this Exhibit (Exhibit D).

D. Prevailing Wages

- 1) The Contractor must ensure that any subawardees or vendors under this Agreement are paid in compliance with federal prevailing wage law as provided in Paragraph 2.M of Exhibit E ("Davis-Bacon Act and Contract Work Hours and Safety Standards Act"), and with state prevailing wage law as provided below. When advertising for a public contract opportunity, the Contractor and its subawardees or vendors must attach the applicable wage determinations to the solicitation, assistance agreement, and resulting contract or grant.
- 2) The Contractor agrees to pay not less than the specified general prevailing wage rates to all workers employed in the execution of the Agreement subject to the requirements of California Labor Code Section 1770 et seq. The Contractor is responsible for ascertaining and complying with all current general prevailing wage requirements and rates for crafts and any rate changes that occur during the life of the Agreement. Information on all prevailing wage rates and all rate changes are to be posted at the job site for all workers to view. The Contractor is further responsible to keep accurate payroll records and comply with all other administrative requirements provided in the California Labor Code.

E. Subaward Documentation

- 1) Subawards and Prevailing Wage Determinations
 - (a) The Contractor must submit the following to the Contract Manager within thirty (30) days or less of execution of any subaward under this Agreement:
 - (1) The complete, executed subaward; and
 - (2) The applicable wage determinations for all labor and mechanic work to be performed under the subaward.

The Energy Commission must approve the executed subaward and applicable wage determinations prior to the commencement of any work under the subaward. Execution of this Agreement does not constitute the Energy Commission's approval of prevailing wage rates identified by the Contractor prior to execution of the Agreement. The Energy Commission will review executed subawards and prevailing wage determinations after this Agreement has been approved and executed. Installation costs incurred by the Contractor prior to the Energy Commission's approval of the subaward and wage determinations are not reimbursable under this Agreement.

- (b) The Contractor must include provisions in all subawards that:
 - (1) Direct its subawardees to submit copies of executed subawards and applicable wage determinations to the Contract Manager; and
 - (2) State that the Energy Commission must approve the executed subawards and applicable wage determinations prior to the commencement of any work under the subaward.
- (c) The requirements specified in (a) and (b) above apply to subawards funded in whole or in part with cost share funds, where the purpose of such subawards is to carry out or support any portion of this Agreement.

2) Certified Payrolls

The Contractor must submit to the Energy Commission on a weekly basis a copy of all certified payrolls prepared in accordance with 29 CFR Section 5.5 (a)(3)(ii) for all subawardees that are subject to the Davis-Bacon Act. See Paragraph 2.M of Exhibit E, "Davis-Bacon Act and Contract Work Hours and Safety Standards Act."

~~3) Solicitations and Proposals/Bids~~

~~The Contractor shall maintain the following subaward documentation and provide it to the Contract Manager or Contract Officer, upon request:~~

- ~~(a) All solicitations for services or products required to carry out the terms of this Agreement.~~
- ~~(b) Copies of solicitation proposals or bids received.~~
- ~~(c) If the Contractor is a local government that has issued a noncompetitive proposal, justification and cost analysis for noncompetitive proposals in accordance with 10 CFR Section 600.236(d)(4) specifying why competitive procurement was infeasible and which of the following circumstances applies:~~
 - ~~(1) The item is available only from a single source;~~
 - ~~(2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;~~
 - ~~(3) The U.S. Department of Energy authorizes noncompetitive proposals; or~~
 - ~~(4) After solicitation of a number of sources, competition is determined inadequate.~~

F. Assignment of Subawards

The Contractor shall not allow any subawardees or vendors to assign any portion of a subaward related to this Agreement to a third party or subsequent tier subawardees or vendors without first obtaining the written consent of the Contract Manager and following the procedures below in the

“Process for Additions, Removal or Substitutions of Subawardees or Vendors” paragraph of this Exhibit.

G. Bureau of State Audits

All subawards entered into pursuant to this Agreement shall be subject to examination and audit by the Bureau of State Audits for a period of three (3) years after final payment under the Agreement.

H. Notification of Subaward Termination

Upon the termination of any subaward, the Contractor shall notify the Contract Manager and Contract Officer immediately in writing.

I. Process for Offering Work; Process for Adding or Substituting People Listed in the Agreement

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

- 1) First offer the work to qualified persons already listed in this Agreement (either an employee of the Contractor or a subawardee or vendor).
- 2) If there is no available person listed in this Agreement who can perform the work, then the Contractor shall provide documentation from all the persons who were offered and declined the work to the Contract Manager. Then, the Contractor may request to add a new person to the Agreement. A person added to the Agreement is thereafter treated as a person listed in this Agreement and can be offered future work without first offering it to originally listed people.
- 3) If the person added is an employee of the Contractor or an existing subawardee or vendor, the Contractor shall provide the added employee's pay rate, classification and resume to the Contract Manager, and the Contract Manager may approve the new person and rate. The Contract Manager approval is only valid if made in writing. In addition, any added person must fit within a classification and corresponding rate already listed in the Agreement. Adding classifications and/or higher rates requires a formal amendment and cannot be accomplished through this process.
- 4) If the person to be replaced or substituted was identified in the Agreement as a Disabled Veteran Business Enterprise (DVBE) firm, refer to the “Disabled Veteran Business Enterprise (DVBE) Requirements” paragraph below for changes to DVBEs.
- 5) If the person added is a new subawardee or vendor, the Contractor shall use the process outlined below.

J. Process for Additions, Removal or Substitutions of Subawardees or Vendors

The Energy Commission reserves the right to replace a subawardee or vendor, request additional subawardees or vendors, and approve additional subawardees or vendors requested by the Contractor. Such changes shall be subject to the following conditions:

- 1) If the Energy Commission or Contractor requires the replacement, substitution or addition of a subawardee or vendor, the subawardee or vendor shall be selected using either: (a) A competitive bid process with written evaluation criteria by obtaining three (3) or more bids and advertising the work to a suitable pool of subawardees or vendors including without limitation: California Contracts Register; the Contractor's mailing lists; mass media; professional papers or journals; posting on websites; and telephone or email solicitations; or (b) Non-competitive bid (sole source) process with a specific subawardee or vendor.

- 2) The Contractor may also need to comply with Disabled Veteran Business Enterprise requirements for the proposed subawardees or vendors.
- 3) When a subawardee or vendor is proposed to be added, under either a competitive or non-competitive process, the Contract Manager shall complete and submit to the Contracts Officer a "Subawardee or Vendor Add" form. This form identifies the new subawardee or vendor, resumes, what bidding method was used to obtain the subawardee or vendor (competitive or non-competitive), and rates. The proposed subaward can be executed only after the Contract Officer approves the "Subawardee or Vendor Add" form.

5. ~~**DISABLED VETERAN BUSINESS ENTERPRISE (DVBE) REQUIREMENTS**~~

A. ~~Reporting~~

~~If the Contractor made a commitment to achieve DVBE participation for this Agreement, the Contractor must within sixty (60) days of receiving final payment under this Agreement, certify in a report to the Contract Officer: (1) the total amount the Contractor received under this Agreement; (2) the name and address of the DVBE(s) that participated in the performance of the Agreement; (3) the amount each DVBE received from the Contractor; (4) that all payments under the Agreement have been made to the DVBE(s); and (5) the actual percentage of DVBE participation that was achieved. Pursuant to California Military and Veterans Code Section 999.5(d), a person or entity that knowingly provides false information shall be subject to a civil penalty for each violation.~~

B. ~~Substitution of DVBE~~

~~The Contractor shall use each DVBE identified in its proposal or listed in this Agreement. The Contractor understands and agrees that if DVBEs were identified in its proposal or listed in this Agreement, award of this Agreement is based in part on its commitment to use the DVBE subcontractor(s). If the Contractor believes an identified DVBE must be replaced or substituted, the Contractor shall inform the Contract Manager and Contract Officer in writing of the reason for the DVBE replacement. Pursuant to California Military and Veterans Code Section 999.5 (e), a DVBE subcontractor may only be replaced by another DVBE subcontractor and must be approved by the Department of General Services. The Contractor shall complete revised DVBE certification forms (provided by the Contract Officer) identifying the new DVBE.~~

C. ~~Amendment~~

~~This Agreement shall be amended if: a DVBE must be substituted and DGS has given approval; or there are changes to the scope of work that impact the DVBE subcontractor(s) identified in the proposal or listed in this Agreement.~~

D. ~~Grounds for Termination; Damages; Penalties~~

~~Failure of the Contractor to seek substitution and adhere to the DVBE participation level identified in the proposal or listed in this Agreement may be cause for: (1) termination of this Agreement; (2) recovery of damages under rights and remedies due to the State; and (3) penalties as outlined in California Military and Veterans Code Section 999.9 and California Public Contract Code Section 10115.10.~~

6. **RECORDKEEPING AND INSPECTION OF RECORDS**

The Contractor shall retain backup source documentation for audit purposes, and make the documentation available to the Energy Commission and the Federal government upon request. In accordance with 10 CFR Part 600, the Contractor's accounting records must be supported by documentation that includes but is not limited to cancelled checks, paid bills, payrolls, time and attendance records, and contract and subgrant award documents. Pursuant to 10 CFR Section 600.242, the Contractor agrees to maintain records that directly pertain to, and involve transactions relating to, this Agreement for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. The Contractor shall include appropriate provisions in each of its subawards to secure adequate backup documentation to verify all subawardee and vendor services and expenses invoiced for payment under this Agreement.

In accordance with Sections 902, 1514 and 1515 of the American Recovery and Reinvestment Act of 2009 (ARRA), the Contractor agrees that it shall permit the State of California, the United States Comptroller General or his representative, or the appropriate Inspector General appointed under Section 3 or 8G of the United States Inspector General Act of 1978 or his representative to: (1) examine any records that directly pertain to, and involve transactions relating to, this Agreement; and (2) interview any officer or employee of the Contractor or any of its subawardees or vendors regarding the activities funded with funds appropriated or otherwise made available by ARRA. The Contractor shall include this provision in all of its agreements with its subawardees, and vendors from whom it acquires goods or services in its execution of ARRA-funded work.

7. **DISCRIMINATION AND HARASSMENT TRAINING**

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

8. **PERFORMANCE EVALUATION**

Consistent with California Public Contract Code Sections 10367 through 10371, the Energy Commission shall, upon completion of this Agreement, prepare a performance evaluation of the Contractor. Upon filing an unsatisfactory evaluation with the Department of General Services, Office of Legal Services (DGS) the Energy Commission shall notify and send a copy of the evaluation to the Contractor within fifteen (15) days. The Contractor shall have thirty (30) days to prepare and send statements to the Energy Commission and DGS defending its performance. The Contractor's statement shall be filed with the evaluation in the Energy Commission's Contract file and with DGS for a period of thirty-six (36) months and shall not be a public record.

9. **REPORTS**

A. ~~**Federal Reporting Requirements:** The Contractor shall submit progress reports to the Energy Commission in accordance with Exhibits A and E.~~

B. ~~**Additional Reporting Requirements:**~~

1) ~~**Progress and Final Reports:** The Contractor shall prepare progress reports summarizing all activities conducted by the Contractor to date on a schedule as provided in Exhibit A. At the conclusion of this Agreement, the Contractor shall prepare a comprehensive Final Report, on a schedule as provided in Exhibit A.~~

2) ~~**Title:** The Contractor's name shall only appear on the cover and title page of reports as follows:~~

~~California Energy Commission
Project Title
Contractor Number
By (Contractor)~~

3) ~~**Ownership:** Each report shall become the property of the Energy Commission.~~

4) ~~**Non-disclosure:** The Contractor will not disclose data or disseminate the contents of the final or any progress report without written permission of the Contract Manager, except as provided in 6, below. Permission to disclose information on one occasion or at public hearings held by the Energy Commission relating to the same shall not authorize the Contractor to further disclose and disseminate the information on any other occasion. The Contractor will not comment publicly to the press or any other media regarding its report, or the Commission's actions on the same, except to Commission staff, the Contractor's own personnel involved in the performance of this Contract, or at a public hearing, or in response to questions from a legislative committee. Notwithstanding the foregoing, in the event any public statement is made by the Energy Commission or any other party, based on information received from the Energy Commission as to the role of the Contractor or the content of any preliminary or final report, the Contractor may, if it believes the statement to be incorrect, state publicly what it believes is correct.~~

5) ~~**Confidentiality:** Neither the Contractor, its employees, or any tier of subawardees may disclose any record that has been designated as confidential or is the subject of a pending application of confidentiality, except as provided in 20 California Code of Regulations (CCR), Sections 2506 and 2507, unless disclosure is ordered by a court of competent jurisdiction (20 CCR Sections 2501, et seq.). At the election of the Contract Manager, the Contractor, the Contractor's employees, and any subawardee shall execute a "Confidentiality Agreement," supplied by the Contract Manager or Contract Officer. Each subaward shall contain provisions similar to the foregoing related to the confidentiality and nondisclosure of data.~~

6) ~~**Disclosure:** Ninety (90) days after any document submitted by the Contractor is deemed by the Contract Manager to be a part of the public records of the State, the Contractor may, if it wishes to do so at its own expense, publish or utilize a report or written document but shall include the following acknowledgement and disclaimer:~~

~~"This material is based upon work supported by the California Energy Commission and the U.S. Department of Energy under Award Number(s) DE-0000221."~~

~~*Disclaimer:* "This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the California Energy Commission, the United States Government, nor any agency thereof, nor any employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the California Energy Commission, the United States Government, or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the California Energy Commission, the United States Government, or any agency thereof."~~

~~10. **PURCHASE OF EQUIPMENT**~~

- ~~A. Equipment identified in this Agreement is approved for purchase.~~
- ~~B. Equipment not identified in this Agreement shall be subject to prior written approval from the Contract Manager.~~
- ~~C. All equipment purchased with Federal funds shall be subject to the provisions of Title 10 CFR Part 600.~~
- ~~D. All equipment purchased with Energy Commission funds shall be subject to the following terms and conditions:~~
 - ~~1) Title to all non-expendable equipment purchased in whole or in part with Energy Commission funds shall remain with the Commission. Non-expendable equipment is defined in accordance with Section 7.29 of the State Contract Manual as items of equipment that have a normal life expectancy of one year or more and an approximate unit price of \$5,000 or more.~~
 - ~~2) The Contractor shall maintain an inventory record of each piece of non-expendable equipment purchased or built with Energy Commission funds. The inventory record shall include the date the equipment was acquired, total cost, serial number, model identification, and any other information or description necessary to identify the equipment.~~
 - ~~3) The Contractor shall assume all risk for maintenance, repair, destruction, and damage to the equipment while it is in the Contractor's possession or subject to its control. The Contractor is not expected to repair or replace equipment intended to undergo significant modification or testing to the point of damage or destruction as part of the work described in Exhibit A, Scope of Work.~~
- ~~E. Upon termination or completion of this Agreement, the Energy Commission's Executive Director may:~~
 - ~~1) Authorize the continued use of such equipment.~~
 - ~~2) By mutual agreement with the Contractor, allow the Contractor to purchase equipment for an amount not to exceed the residual value of the equipment as of the date of termination or completion of this Agreement.~~

- 3) ~~Request delivery of the equipment to the Energy Commission, with any costs incurred for such return to be borne by the Energy Commission.~~

11. **INTELLECTUAL PROPERTY RIGHTS OF PARTIES**

If intellectual property will be used or developed under this Agreement, the following provisions apply.

- A. Exhibit E, Attachment 5 contains the intellectual property rights between the Energy Commission and the U.S. Department of Energy (DOE), which has funded this Agreement. The Contractor shall obtain the same rights for the Energy Commission and DOE from all subawardees, vendors, and others who produce copyrightable material, data, works of art, works of fine art or subject inventions under this Agreement.

The Contractor shall incorporate these paragraphs, modified appropriately, into its agreements with subawardees and vendors. No subaward shall be entered into without these rights being assured to the Energy Commission and DOE from the subawardee or vendor.

- B. Rights to DOE. The Energy Commission and Contractor acknowledge that they are still in the process of discussing the provisions of this Section and the rights of the DOE under this Agreement. The Energy Commission has referred to the DOE certain questions regarding these matters and, to date, has not received a complete response back from the DOE. Because the parties are pressed to sign this Agreement quickly, Contractor has agreed to execute the Agreement with this Section J (regarding DOE rights) unchanged. The parties agree that, after the DOE responds to the Energy Commission they will promptly meet and negotiate in good faith amendments that address Contractor's concerns regarding the DOE's response and this Section J.

- 1) Except as provided in paragraph 3 of Section I above, the Contractor grants to DOE for all copyrightable work a royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use the work for Federal purposes, and to authorize others to do so.

- 2) The Contractor acknowledges and agrees that DOE has the right to:

- (a) Obtain, reproduce, publish or otherwise use the data first produced under the Agreement; and
(b) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

- C. Rights to Energy Commission.

- 1) The Contractor grants to the Energy Commission for all copyrightable material, work of art and original work of authorship first produced, composed or authored in the performance of this Agreement other than Pre-Existing Materials or Contractor-Owned Deliverables (which are licensed only in connection of a release of Source Materials under Section 11(H)), a royalty-free, paid-up, non-exclusive, irrevocable, nontransferable, worldwide license to produce, translate, publish, use, dispose of, reproduce, prepare derivative works based on, distribute copies of, publicly perform, or publicly display a work of art or fine art, and to authorize others to produce, translate, publish, use, dispose of, reproduce, prepare derivative works based on, distribute copies of, publicly perform, or publicly display a work of art or fine art only for State of California governmental purposes.

- 2) The Contractor grants to the Energy Commission a no-cost, nonexclusive, nontransferable, irrevocable license to use or have practiced for or on behalf of the State of California any subject invention(s) first produced in the performance of this Agreement only for State of California governmental purposes.

- 3) The Contractor grants to the Energy Commission the no-cost use of any technical data first produced or specifically used in the performance of this Agreement only for State of California governmental purposes.
 - 4) The Contractor grants to the Energy Commission, for all marks developed and first used under this Agreement, a no-cost, irrevocable license to use the marks for purposes of furthering programs funded under this Agreement or other related or successor programs implemented by the Energy Commission. For purposes of this paragraph, "marks" include logos, symbols, service marks, trademarks, registered marks, or other indicia of origin, whether or not registered.
- D. "Data" as used in this Agreement means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research or experimental, developmental or engineering work, or be usable or be used to define a design or process, or to support a premise or conclusion asserted in any deliverable document required by this Agreement. The data may be graphic or pictorial delineations in media, such as drawings or photographs, data or information, etc. It may be in machine form, such as punched cards, magnetic tape or computer printouts, or may be retained in computer memory.
- E. "Deliverable data" is that data which, under the terms of this Agreement, is required to be delivered to the Energy Commission and shall belong to the Energy Commission.
- F. "Proprietary data" is such data as the Contractor has identified in a satisfactory manner as being under the Contractor's control prior to commencement of performance of this Agreement, and which the Contractor has reasonably demonstrated as being of a proprietary nature either by reason of copyright, patent or trade secret doctrines in full force and effect at the time when performance of this Contract is commenced. Proprietary data shall be deemed Pre-Existing Technology and, as such, title to "proprietary data" and all intellectual property rights therein shall remain with the Contractor throughout the term of this Agreement and thereafter. The extent of the Energy Commission access to, and the testimony available regarding, the proprietary data to that reasonably necessary to demonstrate, in a scientific manner to the satisfaction of scientific persons, the validity of any premise, postulate or conclusion referred to or expressed in any deliverable for this Agreement.
- G. "Generated data" is that data, which a Contractor has collected, collated, recorded, deduced, read out or postulated for utilization in the performance of this Agreement. Any electronic data processing program, model or software system solely developed in the performance of this Agreement at the Energy Commission's expense, together with complete documentation thereof, subject to Contractor's right and license set forth below, shall be deemed "generated data." Subject to Contractor's right and license set forth below, "generated data" shall be the property of the Energy Commission, unless and only to the extent that it is specifically provided otherwise in this Agreement.
- H. As to "generated data" which is reserved to the Contractor by the express terms hereof, and as to any pre-existing or "proprietary data" which has been utilized to support any premise, postulate or conclusion referred to or expressed in any deliverable hereunder, the Contractor shall preserve the same in a form which may be introduced as evidence in a court of law at the Contractor's own expense for a period of not less than three (3) years after receipt by the Energy Commission of the Final Report herein.
- I. Before the expiration of the three (3) years, and before changing the form of or destroying any data, the Contractor shall notify the Energy Commission of any contemplated action and the Energy Commission may, within thirty (30) days after notification, determine whether it desires the data to be preserved. If the Energy Commission so elects, the expense of further preserving data shall be paid for by the Energy Commission. The Contractor agrees that the Energy Commission may at its own expense, have reasonable access to data throughout the time during which data is preserved. The Contractor agrees to use its best efforts to furnish

competent witnesses or to identify competent witnesses to testify in any court of law regarding data.

- J. Herein the Contractor agrees that it shall not use or allow subcontractors or other third parties to use any deliverable or generated data owned by the Energy Commission and in the possession or control of the Contractor, subcontractor, or third party during or after termination of this Agreement. The Contractor, subcontractors, and other third parties do not have a license to use the deliverable or generated data during or after termination of this Agreement. Except as expressly permitted in Exhibit D of this Agreement, the Contractor, subcontractor, and other third parties may use deliverable data or generated data to the same extent as other members of the public if the Energy Commission makes such data publicly available during or after termination of this Agreement.

12. **PUBLIC HEARINGS**

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

13. **DISPUTES**

~~In the event of a Contract dispute or grievance between the Contractor and the Energy Commission, both parties shall follow the following procedure. The Contractor shall continue with the responsibilities under this Agreement during any dispute.~~

~~Commission Dispute Resolution~~

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

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

14. **TERMINATION**

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

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

A. With Cause

In the event of any breach by the Contractor of the conditions set forth in this Agreement, the Energy Commission may, without prejudice to any of its legal remedies, terminate this Agreement for cause upon five (5) days written notice to the Contractor. In such event, the Energy Commission shall pay the Contractor only the reasonable value of the services rendered by the Contractor prior to termination, as may be agreed upon by the parties or determined by a court of law, but not in excess of the contract maximum payable. "Cause" includes without limitation:

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

B. Without Cause

The Energy Commission may, at its option, terminate this Agreement without cause in whole or in part, upon giving thirty (30) days advance notice in writing to the Contractor. In such event, the Contractor agrees to use all reasonable efforts to mitigate its expenses and obligations

hereunder. Also, in such event, the Energy Commission shall pay the Contractor for all satisfactory services rendered and expenses incurred within thirty (30) days after notice of termination which could not by reasonable efforts of the Contractor have been avoided, but not in excess of the maximum payable under this Agreement.

15. **ENFORCEABILITY**

The Contractor agrees that if it or one of its subawardees or vendors fails to comply with all applicable Federal and State requirements governing the use of ARRA funds, the State may withhold or suspend, in whole or in part, funds awarded under the program, or recover misspent funds following an audit. This provision is in addition to all other remedies available to the State under all applicable Federal and State laws.

16. **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, meaning in addition to every other remedy provided therein or by law. The failure of the Energy Commission to enforce at any time any of the provisions of this Agreement, or to require at any time performance by the Contractor of any of the provisions, shall in no way be construed to be a waiver of those provisions, nor in any way affect the validity of this Agreement or any part of it or the right of the Energy Commission to thereafter enforce each and every such provision.

17. **CAPTIONS**

The clause headings appearing in this Agreement have been inserted for the purpose of convenience and ready reference and do not define, limit, or extend the scope or intent of the clauses.

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

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

19. **NOTICE**

~~This paragraph applies to situations where notice is required to be given by this Agreement, or the parties are asserting their legal rights and remedies. This paragraph is not intended to apply to normal, daily communication between the parties related to progress of the work.~~

~~The parties to the Agreement must give legal notice using U.S. Mail, overnight mail, or personal delivery, providing evidence of receipt to the person identified in Exhibit F of this Agreement for legal notices. Delivery by fax or e-mail is not considered legal notice for the purpose of this paragraph.~~

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

20. **STOP WORK**

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

- A. Compliance. Upon receipt of such stop work order, the Contractor shall immediately take all necessary steps to comply therewith and to minimize the incurrence of costs allocable to work stopped.
- B. Equitable Adjustment. The Commission shall make an equitable adjustment based upon the Contractor's written request. The Contractor must make such adjustment request within thirty (30) days from the date of receipt of the stop work notice.
- C. Revoking a Stop Work Order. The Contractor shall resume the stopped work only upon receipt of written instructions from the Energy Commission's Contract Officer canceling the stop work order.

21. **INTERPRETATION OF TERMS**

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

22. **AMENDMENTS**

- A. This Agreement may be amended pursuant to the terms of this Section 22 to make changes, including without limitation: additional funds, additional time, additional or modified tasks, and additional or modified terms. Amendments may be made without competitively bidding, so long as the amendment is exempt from competitive bidding pursuant to California Public Contract Code Section 10335, California Government Code Section 11010.5, and the State Contract Manual. Amendments may require prior written approval from DOE.
- B. The Contractor acknowledges that provisions included in this Agreement pursuant to Federal or State law, regulation, or policy are subject to change. The Contractor agrees to comply with any amendments that the Energy Commission makes to this Agreement to comply with Federal or State law, regulation, or policy.

~~C. Formal Amendments~~

~~Significant changes to this Agreement must be approved at an Energy Commission business meeting through a formal amendment, and must be approved in writing by Contractor. Significant changes include, but are not limited to:~~

- ~~1) Change of the Contractor;~~
- ~~2) Changes to Exhibit A that significantly modify the Agreement's purpose;~~
- ~~3) Changes to Exhibit A that extend the due dates beyond the term of the Agreement;~~

4) ~~Changes to Exhibit B that increase the amount of the Agreement; and~~

5) ~~Changes to Exhibit B that increase rates or fees.~~

D. ~~Informal Amendments~~

~~Certain changes to this Agreement, including certain changes required to comply with Federal or State law, regulation, or policy, may be approved by the Commission through its applicable internal processes other than business meeting approval.~~

23. ~~**BONDING AND INSURANCE REQUIREMENTS**~~

A. ~~The Contractor shall follow its own bonding and insurance requirements relating to bid guarantees, performance bonds, and payment bonds without regard to the dollar value of the subcontract(s) as long as they reflect applicable state and local laws and regulations and are not in conflict with the minimum standards specified in the federal provisions incorporated by reference in Exhibit E, including OMB Circulars.~~

B. ~~The Contractor 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 Contract Manager satisfactory evidence of this insurance at any time the Contract Manager may request.~~

C. ~~If the Contractor 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 Contract Manager satisfactory evidence of this insurance at any time the Contract Manager may request.~~

24. ~~**CONFIDENTIALITY**~~

A. ~~Information Considered Confidential~~

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

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

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

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

~~The Contractor and the Energy Commission agree that during this Agreement, it is possible that the Contractor may develop additional data or information not originally anticipated as a confidential deliverable. In this case, the Contractor shall follow the procedures for a request for designation of Confidential Information specified in 20 California Code of Regulations (CCR)~~

~~Section 2505. The Energy Commission's Executive Director makes the determination of confidentiality. Such subsequent determinations may be added to the list of confidential deliverables in the Attachment to this Exhibit.~~

~~D. Disclosure of Confidential Information~~

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

25. **CONFLICT OF INTEREST**

- A. The Contractor agrees to continuously review new and upcoming projects in which members of the Contractor's team may be involved for potential conflicts of interest. The Contractor shall inform the Contract Manager as soon as a question arises about whether a potential conflict may exist. The Contract Manager and Energy 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. The Contractor shall submit an economic interest statement (Fair Political Practices Commission's Form 700) from each employee or subcontractor whom the Energy Commission's Chief Counsel's Office, in consultation with the Contract Manager, determines is a consultant under the Political Reform Act and, thus, subject to the requirements and restrictions of the Act. Such determination will be based on the nature and duration of the work to be performed by the employee or subcontractor. The determination as to who is a consultant under the Political Reform Act shall be requested by the Contract Manager before work by the employee or subcontractor begins. Each employee and subcontractor determined to be a consultant under the Political Reform Act shall be subject to the same disclosure category or categories applicable to the Commission staff who perform the same nature and scope of work as the consultant.
- C. No person, firm, or subsidiary thereof who has been awarded a consulting services contract may submit a bid to the Energy Commission for, nor be awarded a contract with the Energy Commission for, the provision of services, procurement of goods or supplies, or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract. This does not apply to any person, firm, or subsidiary thereof who is awarded a subcontract of a consulting services contract which amounts to no more than ten (10) percent of the total monetary value of the consulting services contract.

26. **RECOGNITION OF ARRA FUNDING**

~~The Contractor shall publicly recognize ARRA as a source of funding for project(s) funded under this Agreement. The Contract Manager shall provide the Contractor with instructions on how to publicly recognize ARRA funding. Such instructions will include any DOE requirements on the proper notice and branding to publicize the use of ARRA funding.~~

27. **"ENERGY UPGRADE CALIFORNIA" IDENTITY MARK AND LOGO**

It is important for all ARRA-funded programs administered by the Energy Commission to provide consistent and clear messaging and branding for the State of California's consumers. A single identifying brand lends authority and reliability to the multiple statewide programs offered

by various private and public local, regional, and state entities. The Energy Commission is implementing a statewide branding effort called "Energy Upgrade California". The branding effort will include development of a statewide ARRA Energy Upgrade California Identity Mark and Logo (Identity Mark/Logo) for use in conjunction with marketing, promotional, and educational materials, and development of a central Energy Upgrade California website portal for purposes of disseminating program information and interconnecting program participants. No portion of any website developed by the Contractor under this Agreement shall overlap, contradict, or supplant any portion of the Energy Upgrade California Program website portal. Energy Upgrade California is being developed in conjunction with the statewide branding efforts of the California Public Utilities Commission.

The Contractor shall participate in the Energy Commission's statewide branding effort as specified in this section.

A. Identity Mark/Logo

The Contractor shall use the Identity Mark/Logo on all marketing, promotional, and informational materials for programs and projects funded through this Agreement, including any printed or electronic collateral, websites, signage, or clothing.

Coordinating Use of Identity Mark/Logo

- 1) The Contractor shall coordinate its required use of the Identity Mark/Logo with the Energy Commission before using the Identity Mark/Logo. This coordination may include the Contractor's submission of its proposed marketing, promotional, and informational materials and websites to the Energy Commission for its review to ensure the Identity Mark/Logo is being used appropriately. If the Energy Commission requires the Contractor to submit such materials and websites for its review, the Energy Commission will use its best efforts to approve all proposed uses of the Identity Mark/Logo in an expeditious manner. The Energy Commission may prohibit the Contractor from using the Identity Mark/Logo if any of the proposed uses breach the terms of this Agreement.
- 2) Upon reasonable prior written notice, the Contractor shall provide the Energy Commission unrestricted access to its websites, so the Energy Commission may review the Contractor's use of the Identity Mark/Logo.

Authorized Uses

- 1) The Contractor may use, reproduce, display, and publish the Identity Mark/Logo only for purposes of marketing or promoting the ARRA-funded program or project(s) funded through this Agreement. The Contractor may not use the Identity Mark/Logo for other purposes. The Contractor may not use any other Energy Commission mark or logo obtained from the Energy Commission's website, promotional materials, or any other source.
- 2) The Contractor may use, reproduce, and display the Identity Mark/Logo on its website as a link to the Energy Commission's website. The Contractor may not use the Identity Mark/Logo to link to any other website.

D. Unauthorized Uses

- 1) The Contractor may not use the Identity Mark/Logo in a manner that expresses or implies the Energy Commission's endorsement, approval, favoring, or sponsorship of the Contractor or its products, services, or websites. Except to identify itself as a contractor of the Energy Commission, the Contractor may not use the Identity Mark/Logo in a manner that implies the Energy Commission's affiliation with the Contractor or its products, services, or websites.

- 2) The Contractor may not use the Identity Mark/Logo in a manner that suggests the Contractor's products, services, or websites are the Energy Commission's products, services, or websites.
- 3) The Contractor may not use the Identity Mark/Logo in a manner that damages, disparages, or diminishes the Energy Commission or its ARRA-funded programs or projects, including but not limited to uses that could be deemed obscene or that encourage unlawful activities.
- 4) The Contractor may not authorize any other party to use the Identity Mark/Logo.
- 5) The Contractor may not use the Identity Mark/Logo as a feature or design element of any other logo. The Contractor may not use the Identity Mark/Logo in any trademark, service mark, service name, or other indicia of origin.
- 6) The Contractor may not alter the Identity Mark/Logo in any manner, including proportions, colors, or elements, except as otherwise permitted by the Energy Commission.
- 7) The Contractor may not use the Identity Mark/Logo on any materials in which the Contractor's name, logo, or product name does not also appear.

E. Ownership of Identity Mark/Logo

- 1) As between the Energy Commission and the Contractor, the Energy Commission is the exclusive owner of the Identity Mark/Logo. The Energy Commission retains all rights and title to, and interest in, the Identity Mark/Logo. This Agreement does not transfer to the Contractor the Energy Commission's service marks, copyrights, or other intellectual property interests.
- 2) The Contractor may not register, adopt, or use any corporate name, trade name, trademark, domain name, service mark, certification mark, or other designation that violates the Energy Commission's rights in the Identity Mark/Logo.

28. **SURVIVAL**

~~Certain Agreement provisions survive the completion or termination of this Agreement for any reason. The provisions include, but are not limited to, the following:~~

~~Recordkeeping and Inspection of Records~~

~~Purchase of Equipment~~

~~Intellectual Property Rights of Parties~~

~~Disputes~~

~~Confidentiality~~

~~F. Indemnification (applicable only to Contractors other than state agencies; see state provisions incorporated by reference in Exhibit C)~~

EXHIBIT E

Federal Provisions Incorporated By Reference, Special Provisions Governing Work Funded Under the American Recovery and Reinvestment Act of 2009, and General Federal Provisions

Sections of this Exhibit E that are inapplicable to this Agreement are indicated in strikethrough to maintain cross-references to applicable provisions in the document.

1. FEDERAL REGULATIONS/ GUIDELINES/ OMB CIRCULARS INCORPORATED BY REFERENCE

The Office of Management and Budget (OMB) Circulars, Federal regulations, and guidelines checked below are incorporated as part of this Agreement. OMB Circulars may be accessed on the OMB website at www.whitehouse.gov/omb/circulars/index.html or by calling the Office of Administration, Publications Office, at (202) 395-7332. Federal Regulations may be accessed at <http://www.ecfr.gov/cgi-bin/ECFR?page=browse>.

The Contractor must include in its subawards only the provisions below that apply to the particular organization concerned.

- ☒ Title 10 Code of Federal Regulations (CFR) Part 600: DOE Financial Assistance Regulations
- ☒ Title 48 Code of Federal Regulations (CFR), Ch. 1, Subpart 31.2: Contracts with Commercial Organizations (Supplemented by 48 CFR, Ch. 9, Subpart 931.2 for Department of Energy grants) (commercial firms and certain non-profit organizations)
- ☒ Title 10 Code of Federal Regulations (CFR) Part 420: State Energy Program
- ☒ State Energy Program Funding Opportunity Announcement DE-FOA-0000052, CDFA Number 81.041 (<https://www.fedconnect.net/FedConnect/>)
- ☒ OMB Circular A-102: Common Rule for Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments
- ☒ OMB Circular A-110: Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (also applicable to private entities)
- ☒ OMB Circular A-87: Cost Principles for State, Local and Tribal Governments
- ☐ OMB Circular A-21: Cost Principles for Educational Institutions
- ☐ OMB Circular A-122: Cost Principles Applicable to Grants, Contracts, and Other Agreements with Non-Profit Organizations (non-profit organizations and individuals, except for those specifically exempted)
- ☐ OMB Circular A-133: Audits of States, Local Governments, and Non-Profit Organizations
- ☐ Other:

☐ None

2. SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

A. ARRA-FUNDED PROJECT

Funding for this Agreement has been provided through the American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. 111-5, and is dependent on a Federal agreement (DE-EE0000221) authorized by the State Energy Program, CFDA Number 81.041. The Contractor and all of its subawardees and vendors are subject to audit by appropriate Federal and State of California (State) entities. The State has the right to cancel, terminate, or suspend this Agreement if the Contractor or any subawardee or vendor fails to comply with the reporting and operational requirements contained in this Agreement.

B. SEGREGATION OF COSTS

The Contractor, its subawardees, and its vendors must segregate the obligations and expenditures related to funding under ARRA. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams. No part of the funds from ARRA shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for ARRA projects.

C. PROHIBITION ON USE OF FUNDS

None of the funds provided under this Agreement derived from ARRA may be used by the Contractor or any of its subawardees or vendors for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

D. ACCESS TO RECORDS

With respect to each contract or grant awarded utilizing at least some of the funds appropriated or otherwise made available by ARRA, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1988 (5 U.S.C. App.) or of the Comptroller General is authorized –

- 1) To examine any records of the Contractor, any of its subawardees or vendors, or any State or local agency administering such contract that pertain to, and involve transactions related to, the contract, subcontract, grant, or subgrant; and
- 2) To interview any officer or employee of the Contractor, subawardee, vendor, or agency regarding such transactions.

~~E. PUBLICATION~~

F. PROTECTING STATE AND LOCAL GOVERNMENT AND CONTRACTOR WHISTLEBLOWERS

The Contractor agrees that both it and its subawardees and vendors shall comply with Section 1553 of ARRA, which prohibits all non-Federal employers, including the State, and all

contractors of the State, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of: (1) gross mismanagement of a contract relating to ARRA funds; (2) a gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (4) an abuse of authority related to implementation or use of ARRA funds; or (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) awarded or issued relating to ARRA funds. The Contractor agrees that it and its subawardees and vendors shall post notice of the rights and remedies available to employees under Section 1553 of Title XV of Division A of ARRA.

The requirements of Section 1553 of ARRA are summarized below. They include, but are not limited to:

Prohibition on Reprisals: An employee of any non-Federal employer receiving covered funds under ARRA may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee believes is evidence of:

- Gross management of an agency contract or grant relating to covered funds;
- A gross waste of covered funds;
- A substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- An abuse of authority related to the implementation or use of covered funds; or
- A violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

Agency Action: Not later than thirty (30) days after receiving an inspector general report of an alleged reprisal, the head of the agency shall determine whether there is sufficient basis to conclude that the non-Federal employer has subjected the employee to a prohibited reprisal. The agency shall either issue an order denying relief in whole or in part or shall take one or more of the following actions:

- Order the employer to take affirmative action to abate the reprisal.
- Order the employer to reinstate the person to the position that the person held before the reprisal, together with compensation including back pay, compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.
- Order the employer to pay the employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the employee for or in connection with, bringing the complaint regarding the reprisal, as determined by the head of a court of competent jurisdiction.

Non-enforceability of Certain Provisions Waiving Rights and Remedies or Requiring Arbitration: Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or

condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

Requirement to Post Notice of Rights and Remedies: Any employer receiving covered funds under ARRA shall post notice of the rights and remedies as required therein. (Refer to section 1553 of ARRA located at www.recovery.gov, for specific requirements of this section and prescribed language for the notices.)

G. FALSE CLAIMS ACT

The Contractor shall promptly notify the State and refer to an appropriate Federal inspector general any credible evidence that a principal, employee, agent, subawardee, vendor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving ARRA funds.

H. INFORMATION IN SUPPORT OF ARRA REPORTING

The Contractor may be required to submit backup documentation for expenditures of funds under ARRA including such items as timecards and invoices. The Contractor shall provide copies of backup documentation at the request of DOE's Contracting Officer or designee, or the Energy Commission's Contract Manager or designee.

~~I. AVAILABILITY OF FUNDS~~

J. REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF ARRA

See page 1, Section 3.1 of this Agreement for applicable Vendor Data Elements.

K. REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS (COVERED UNDER INTERNATIONAL AGREEMENTS) — SECTION 1605 OF ARRA

The Contractor agrees that in accordance with ARRA, Section 1605, neither the Contractor nor its subawardees or vendors will use ARRA funds for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel and manufactured goods used in the project are produced in the United States in a manner consistent with United States obligations under international agreements. The Contractor understands that this requirement may only be waived by the applicable Federal agency in limited situations as set out in ARRA, Section 1605.

1) Definitions. As used in this award term and condition—

- a) Manufactured good means a good brought to the construction site for incorporation into the building or work that has been—
 - (i) Processed into a specific form and shape; or
 - (ii) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.
- b) Public building and public work means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or

interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

- c) Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

2) Domestic preference.

- a) This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111-5), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph (b)(3) and (b)(4) of this section and condition.

- b) This requirement does not apply to the material listed by the Federal Government as follows:

— None

- c) The award official may add other iron, steel, and/or manufactured goods to the list in paragraph (b)(2) of this section and condition if the Federal Government determines that—

- (i) The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;
- (ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
- (iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

3) Request for determination of inapplicability of Section 1605 of the Recovery Act.

- a)
 - (i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(3) of this section shall include adequate information for Federal Government evaluation of the request, including—
 - (A) A description of the foreign and domestic iron, steel, and/or manufactured goods;
 - (B) Unit of measure;
 - (C) Quantity;
 - (D) Cost;
 - (E) Time of delivery or availability;
 - (F) Location of the project;
 - (G) Name and address of the proposed supplier; and
 - (H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(3) of this section.
- (ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.

- (iii) The cost of iron, steel, and/or manufactured goods material shall include all delivery costs to the construction site and any applicable duty.
- (iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.
- b) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds by at least the differential established in 2 CFR 176.110(a).
- c) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods is noncompliant with section 1605 of the American Recovery and Reinvestment Act.
- 4) **Data.** To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the Recipient shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Items Cost Comparison
 Description Unit of measure Quantity Cost
 (dollars)*

Item 1:

Foreign steel, iron, or manufactured good _____
 Domestic steel, iron, or manufactured good _____

Item 2:

Foreign steel, iron, or manufactured good _____
 Domestic steel, iron, or manufactured good _____

[List name, address, telephone number, email address, and contact for suppliers surveyed.
 Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[*Include all delivery costs to the construction site.]

L. WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF ARRA

In accordance with ARRA Section 1606, the Contractor assures that it and its subawardees and vendors shall fully comply with said Section and notwithstanding any other provision of law and in a manner consistent with other provisions of ARRA, all laborers and mechanics employed by

contractors and subawardees or vendors on projects funded directly by or assisted in whole or in part by and through the Federal government pursuant to ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the United States Secretary of Labor in accordance with Subchapter IV of Chapter 31 of Title 40, United States Code (Davis-Bacon Act). It is understood that the Secretary of Labor has the authority and functions set forth in Reorganization Plan Numbered 14 or 1950 (64 Stat. 1267; 5 U.S.C. App.) and Section 3145 of Title 40, United States Code.

1) Section 1606 of ARRA requires that all laborers and mechanics employed by contractors and subawardees or vendors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section. Federal agencies providing grants, cooperative agreements, and loans under ARRA shall ensure that the standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant covered contracts that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating).

When advertising for a public contract opportunity, the Contractor and its subrecipients and vendors must attach the applicable wage determinations to the solicitation, assistance agreement, and resulting contract or grant.

M. DAVIS-BACON ACT AND CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

- 1) **Definitions.** For purposes of this Section, Davis Bacon Act and Contract Work Hours and Safety Standards Act, the following definitions are applicable:
- a) Award means any grant, cooperative agreement or technology investment agreement made with Recovery Act funds by the Department of Energy (DOE) to a Recipient. Such Award must require compliance with the labor standards clauses and wage rate requirements of the Davis-Bacon Act (DBA) for work performed by all laborers and mechanics employed by Recipients (other than a unit of State or local government whose own employees perform the construction) Subrecipients, Contractors and subcontractors.
 - b) Contractor means an entity that enters into a Contract. For purposes of these clauses, Contractor shall include (as applicable) prime contractors, Recipients, Subrecipients, and Recipients' or Subrecipients' contractors, subcontractors, and lower-tier subcontractors. "Contractor" does not mean a unit of State or local government where construction is performed by its own employees.
 - d) Contract means a contract executed by a Recipient, Subrecipient, prime contractor or any tier subcontractor for construction, alteration, or repair. It may also mean (as applicable) (i) financial assistance instruments such as grants, cooperative agreements, technology investment agreements, and loans; and, (ii) Sub awards, contracts and subcontracts issued under financial assistance agreements. "Contract" does not mean a financial assistance instrument with a unit of State or local government where construction is performed by its own employees.
 - e) Contracting Officer means the DOE official authorized to execute an Award on behalf of DOE and who is responsible for the business management and non-program aspects of the financial assistance process.

- f) Recipient means any entity other than an individual that receives an Award of Federal funds in the form of a grant, cooperative agreement or technology investment agreement directly from the Federal Government and is financially accountable for the use of any DOE funds or property, and is legally responsible for carrying out the terms and conditions of the program and Award.
- g) Subaward means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a Recipient to an eligible Subrecipient or by a Subrecipient to a lower- tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include the Recipient's procurement of goods and services to carry out the program nor does it include any form of assistance which is excluded from the definition of "Award" above.
- h) Subrecipient means a non-Federal entity that expends Federal funds received from a Recipient to carry out a Federal program, but does not include an individual that is a beneficiary of such a program.

2) Davis-Bacon Act

a) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR Section 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Section 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR Section 5.5(a)(1)(ii)) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- (ii) (a) The Contracting Officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- i. The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- ii. The classification is utilized in the area by the construction industry; and
- iii. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
 - (b) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
- (c) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
- (d) The wage rate (including fringe benefits where appropriate) determined pursuant to 29 CFR Section 5.5(a)(1)(ii)(B) or (C), shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.
- (iii) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
 - b) Withholding. The Department of Energy or the Recipient or Subrecipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, the Department of Energy, Recipient, or Subrecipient, may, after written notice to the

Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

c) Payrolls and basic records.

- (i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR Section 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- (ii) (a) The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the Department of Energy if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit the payrolls to the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner, as the case may be, for transmission to the Department of Energy. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR Section 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <https://www.dol.gov/whd/programs/dbra/wh347.htm> or its successor site. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Department of Energy if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit them to the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner, as the case may be, for transmission to the Department of Energy, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner).
- (b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:
 - i. That the payroll for the payroll period contains the information

required to be provided under Section 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under Section 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

ii. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

iii. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

- (c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by 29 CFR Section 5.5(a)(3)(ii)(B).
- (d) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 3729 of title 31 of the United States Code.
- (iii) The Contractor or subcontractor shall make the records required under 29 CFR Section 5.5 (a)(3)(i) available for inspection, copying, or transcription by authorized representatives of the Department of Energy or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR Section 5.12.
- c) Apprentices and trainees--
 - (i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination.

Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (ii) Trainees. Except as provided in 29 CFR Section 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

- d) Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Contract.
- e) Contracts and Subcontracts. The Recipient, Subrecipient, the Recipient's and Subrecipient's contractors and subcontractor shall insert in any Contracts the clauses contained in 29 CFR Section 5.5(a)(1) through (10) and such other clauses as the Department of Energy may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of the paragraphs in this clause.
- f) Contract termination: debarment. A breach of the Contract clauses in 29 CFR Section 5.5 may be grounds for termination of the Contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR Section 5.12.

g) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.

h) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Recipient, Subrecipient, the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

i) Certification of eligibility.

(i) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR Section 5.12(a)(1).

(ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR Section 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. Section 1001.

j) Requirement to submit copies of certified payrolls

The Contractor must submit to the Energy Commission on a weekly basis a copy of all certified payrolls prepared in accordance with 29 CFR Section 5.5 (a)(3)(ii) for all lower tier contractors.

k) Requirement to notify the Energy Commission of any non-compliance

The Contractor must notify the Energy Commission of any non-compliance with Davis-Bacon prevailing wage requirements by any lower tier contractors.

l) Applicable wage determinations

Pursuant to the SEP award agreement between DOE and the Energy Commission (DE-EE0000221), the following wage determinations are hereby incorporated into this Agreement: CA1, CA2, CA5, CA9, CA11, CA19, CA23, CA25, CA27, CA29, CA31, CA33, CA34, CA35, CA36, and CA37.

The wage determinations are available at:
<https://www.wdol.gov/>.

3) Contract Work Hours and Safety Standards Act. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

a) Overtime requirements. No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such

work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

- b) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in 3(a) of this paragraph the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in 29 CFR Section 5.5(b)(1), in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in 29 CFR Section 5.5 (b)(1).
- c) Withholding for unpaid wages and liquidated damages. The Department of Energy or the Recipient or Subrecipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in 29 CFR Section 5.5(b)(2).
- d) Contracts and Subcontracts. The Recipient, Subrecipient, and Recipient's and Subrecipient's contractor or subcontractor shall insert in any Contracts, the clauses set forth in 29 CFR Section 5.5 (b)(1) through (4) and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.
- e) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Energy and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

N. ARRA TRANSACTIONS LISTED IN SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS

1) To maximize the transparency and accountability of funds authorized under ARRA as required by Congress and in accordance with 2 CFR 215.21 "Uniform Administrative Requirements for Grants and Agreements" and OMB Circular A-102 Common Rules provisions, the Contractor agrees to maintain records that identify adequately the source and application of Recovery Act funds. OMB Circular A-102 is available at: <http://www.whitehouse.gov/omb/circulars/a102/a102.html>.

2) If the Contractor is covered by the Single Audit Act Amendments of 1996 and

OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," the Contractor agrees to separately identify the expenditures for Federal awards under ARRA on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. OMB Circular A-133 is available at https://www.whitehouse.gov/omb/circulars/a133_compliance_supplement_2016. This shall be accomplished by identifying expenditures for Federal awards made under ARRA separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA-" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

3) The Contractor agrees to separately identify to each subawardee and vendor, and document at the time of subaward and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of ARRA funds. When the Contractor awards ARRA funds for an existing program, the information furnished to subawardees and vendors shall distinguish the subawards of incremental ARRA funds from regular subawards under the existing program.

4) The Contractor agrees to require its subawardees and vendors to include on their SEFA information to specifically identify ARRA funding similar to the requirements for the Contractor SEFA described above. This information is needed to allow the Energy Commission and the Contractor to properly monitor subawardee and vendor expenditure of ARRA funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.

~~O. ADVANCED UNDERSTANDING CONCERNING PUBLICLY FINANCED ENERGY IMPROVEMENT PROGRAMS (FOR MUNICIPAL FINANCING PROJECTS ONLY):~~

~~P. STATE ARRA GUIDELINES FOR STATE ENERGY PROGRAM~~

3) ADDITIONAL FEDERAL PROVISIONS

A. SITE VISITS

The Energy Commission, the Federal awarding agency, and/or their 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. The Contractor must provide and must require subawardees and vendors to provide reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

B. NON-DISCRIMINATION CLAUSE

This award is subject to the provisions of 10 Code of Federal Regulations (CFR) 1040.1 *et seq.*, Nondiscrimination in Federally Assisted Programs.

The Contractor will complete and certify by signature on the DOE Form 1600.5, U.S. DOE "Assurance of Compliance," (Exhibit E, Attachment 1 of this Agreement) its commitment to comply with this law and return it to the Energy Commission Contracts Officer.

C. CERTIFICATIONS REGARDING LOBBYING AND DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

This award is subject to the provisions of 10 CFR Part 601, 2 CFR Part 180, and 2 CFR Part 901.

(a) The Contractor will complete and certify by signature on the Form "Certifications Regarding Lobbying and Debarment, Suspension and Other Responsibility Matters" (Exhibit E, Attachment 2 of this Agreement) its commitment to comply with these requirements and return it to the Energy Commission's Contracts Officer.

D. LOBBYING RESTRICTIONS

The Contractor agrees that none of the funds obligated under this Agreement shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

The Contractor will disclose lobbying activities by completing and signing the Standard Form LLL (Exhibit E, Attachment 3 of this Agreement) and return it to the Energy Commission's Contracts Officer.

E. NATIONAL POLICY ASSURANCES

The Contractor agrees to adhere to and include in all subawards the requirements set forth in the attached "National Policy Assurances" (Exhibit E, Attachment 4 of this Agreement).

~~F. PUBLICATIONS~~

G. FEDERAL INTELLECTUAL PROPERTY PROVISIONS AND CONTACT INFORMATION

1) The Federal intellectual property provisions applicable to this award are provided in Exhibit E, Attachment 5 to this award. A list of all intellectual property provisions may be found at: http://www.gc.energy.gov/financial_assistance_awards.htm.

2) Questions regarding intellectual property matters should be referred to the DOE DOE Award Administrator and the Patent Counsel designated as the service provider for the DOE office that issued the award. The IP Service Providers List is found at: <https://energy.gov/gc/downloads/intellectual-property-ip-service-providers-acquisition-and-assistance-transactions-0>.

~~H. PRESERVATION OF OPEN COMPETITION AND GOVERNMENT NEUTRALITY TOWARDS CONTRACTORS' LABOR RELATIONS ON FEDERALLY FUNDED CONSTRUCTION PROJECTS~~

I. DECONTAMINATION AND/OR DECOMMISSIONING (D&D) COSTS

Notwithstanding any other provisions of this Agreement, the Government shall not be responsible for or have any obligation to the Contractor or its subawardees for (i) Decontamination and/or Decommissioning (D&D) of any of the Contractor's or subawardee's

facilities, or (ii) any costs which may be incurred by the Contractor or its subawardees in connection with the D&D of any of its facilities due to the performance of the work under this Agreement, whether said work was performed prior to or subsequent to the effective date of this Agreement.

~~J. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) COMPLIANCE~~

K. NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS – SENSE OF CONGRESS

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

~~L. HISTORIC PRESERVATION~~

M. WASTE MANAGEMENT PLAN

Prior to the proposed project activities generating any waste, the Contractor and its subrecipients and vendors must each submit a Waste Management Plan to the Energy Commission's Contract Manager. The Waste Management Plan must describe the Contractor/subrecipient/vendor's plan to dispose of any sanitary or hazardous waste generated by the proposed project activities. Sanitary and hazardous waste includes, but is not limited to, construction and demolition debris, old light bulbs, lead ballasts, piping, roofing material, discarded equipment, debris, and asbestos.

The Waste Management Plan must comply with all Federal, state, and local laws and regulations governing waste disposal.

N. FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS

The Contractor must obtain any required permits and comply with all applicable Federal, state, and municipal laws, codes, and regulations for work performed under this Agreement.

~~O. STATEMENT OF FEDERAL STEWARDSHIP~~

P. RESOLUTION OF CONFLICTING CONDITIONS

Any apparent inconsistency between federal statutes and regulations and the terms and conditions contained in this award must be referred to MCE. MCE will refer the matter to the CEC's Contract Manager for guidance.

**EXHIBIT E
ATTACHMENT 5**

FEDERAL INTELLECTUAL PROPERTY PROVISIONS

**Intellectual Property Provisions (NRD-1003)
Nonresearch and Development**

Grant #DE-EE0000221

Under federal grant #DE-EE0000221, the following intellectual property provisions apply to the rights of the Energy Commission and the U.S. Department of Energy (DOE).

Nonprofit organizations are subject to the intellectual property requirements at 10 CFR 600.136(a), (c) and (d). All other organizations are subject to the intellectual property requirements at 10 CFR 600.136(a) and (c).

10 CFR 600.136 Intangible property.

- (a) The Energy Commission may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. DOE reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use the work for Federal purposes, and to authorize others to do so.
 - (c) DOE has the right to:
 - (1) Obtain, reproduce, publish or otherwise use the data first produced under an award; and
 - (2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.
- (d)
 - (1) In addition, in response to a Freedom of Information act (FOIA) request for research data relating to published research findings produced under an award that were used by the Federal Government in developing an agency action that has the force and effect of law, the DOE shall request, and the Energy Commission shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the DOE obtains the research data solely in response to a FOIA request, the agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect the costs incurred by the agency, the Energy Commission, and applicable subrecipients. This fee is in addition to any fees the agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

**EXHIBIT E
ATTACHMENT 7**

EXHIBIT E VENDOR FLOW-DOWN PROVISIONS

The provisions below must be included in all contracts with vendors that receive ARRA funding. The term “vendor” as used below refers to those entities defined as such by Office of Management and Budget (OMB) Circular A-133, Subpart A, Section .105 and Subpart B, Section .210.

A. Federal Regulations/Guidelines/OMB Circulars Incorporated by Reference (Exhibit E, Paragraph 1)

Title 10 CFR Part 600

Additional provisions that apply to the vendor

B. Special Provisions Relating to Work Funded under the American Recovery and Reinvestment Act of 2009 (Exhibit E, Paragraph 2)

ARRA-Funded Project

Segregation of Costs

Prohibition on Use of Funds

Access to Records

Protecting State and Local Government and Contractor Whistleblowers

False Claims Act

Information in Support of ARRA Reporting

10. Reporting and Registration Requirements under Section 1512 of ARRA (*Applicable only if payment to the vendor is \$25,000 or more. Please use the following language in vendor subcontracts, rather than the language in the “Reporting and Registration Requirements” paragraph in Exhibit E*)

As this award requires [name of vendor] to complete projects or activities funded under ARRA, [name of vendor] must provide the following “Vendor Data Elements” to [name of Contractor, or name of other entity that entered into contract with vendor]. This information must be provided to [name of Contractor], so that it may fulfill its ARRA reporting obligations:

- Dun and Bradstreet Data Universal Numbering System (DUNS) Number (<http://www.dnb.com>) or name and zip code of headquarters

Required Use of American Iron, Steel, and Manufactured Goods (Covered Under International Agreements) — Section 1605 of ARRA

Wage Rate Requirements Under Section 1606 of ARRA

Davis-Bacon Act and Contract Work Hours and Safety Standards Act

ARRA Transactions Listed in Schedule of Expenditures of Federal Awards

C. Additional Federal Provisions (Exhibit E, Paragraph 3)

Site Visits

Non-Discrimination Clause

17. Certifications Regarding Lobbying and Debarment, Suspension and Other Responsibility Matters

18. Lobbying Restrictions

19. National Policy Assurances
20. Federal Intellectual Property Provisions and Contact Information
21. Preservation of Open Competition and Government Neutrality Towards Contractors' Labor Relations on Federally Funded Construction Projects (*Construction Contracts Only*)
22. Decontamination and/or Decommissioning (D&D) Costs
23. Notice Regarding the Purchase of American-Made Equipment and Products—Sense of Congress
24. Waste Management Plan
25. Federal, State, and Municipal Requirements
26. Resolution of Conflicting Conditions (*Please use the following language in vendor subcontracts, rather than the language in the "Resolution of Conflicting Conditions" paragraph in Exhibit E*)

Any apparent inconsistency between federal statutes and regulations and the terms and conditions contained in this award must be referred to [name of Contractor, or name of other entity that entered into contract with vendor]. [Name of Contractor] will refer the matter to the Energy Commission's Contract Manager for guidance.

D. Exhibit E Attachments

Attachment 2 – Certifications Regarding Lobbying and Debarment, Suspension, and Other Responsibility Matters

Attachment 3 – Standard Form LLL, Disclosure of Lobbying Activities

Attachment 4 – National Policy Assurances (*Applicable provisions*)

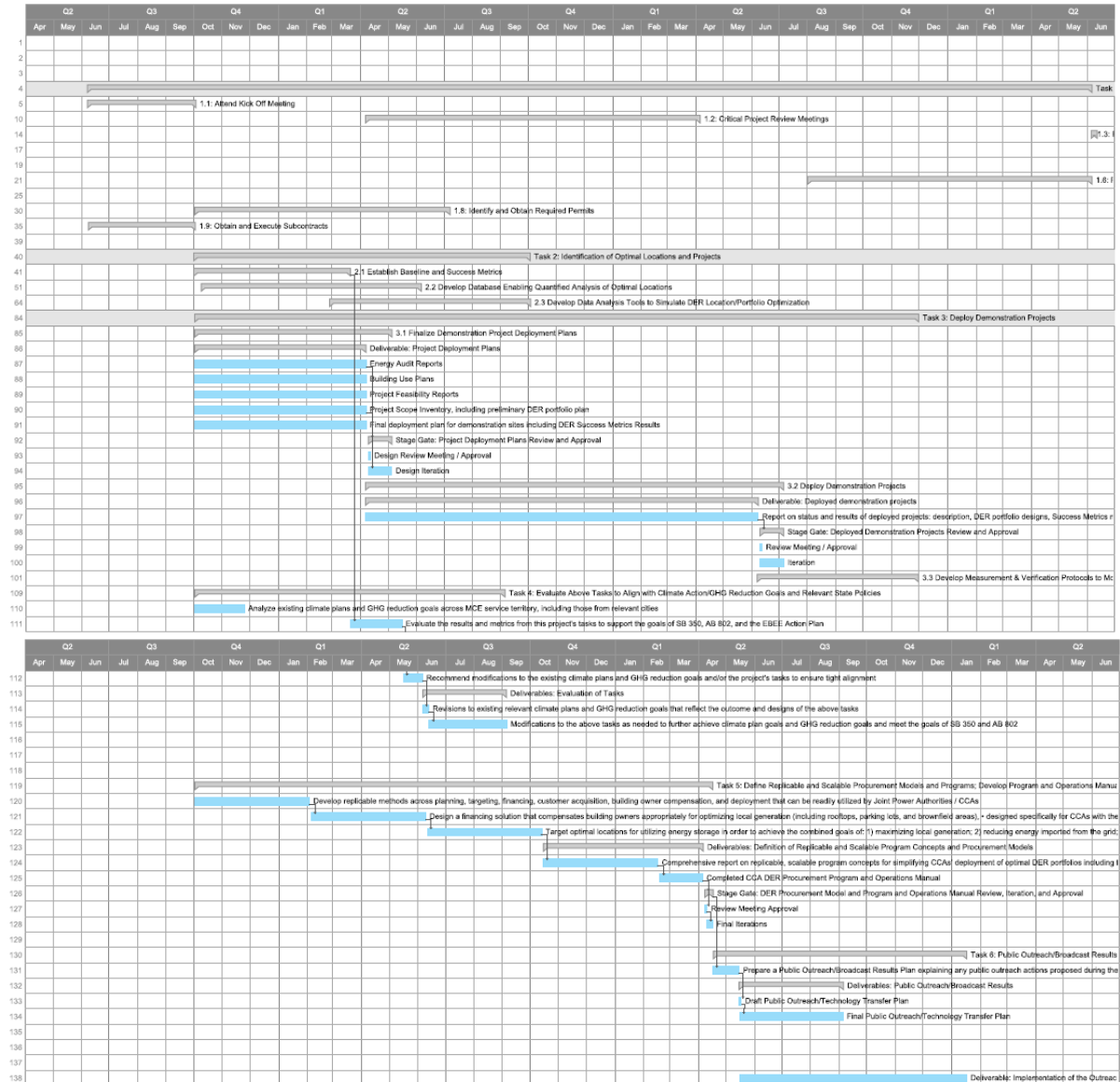
Attachment 5 – Federal Intellectual Property Provisions

Exhibit F

Project Management Documents for Reference Only

For reference only. Project management documents may be modified upon agreement of both parties. The below documents are images of working electronic documents that will be shared with the contractor.

MCE BEO Project Plan Gantt Chart



MCE/Calpine Pittsburg Future Build Curriculum Overview - November 13-17, 2017
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Date		11/13/2017	
Session	Time	Monday	MCE Staff Presenter
Morning 1		CCA History & Regulations	PA Team or Regulatory
Quiz		Quiz 1 - CCA History	
Morning 2		Account Services	PA Team/Account Services
Quiz		Quiz 2 - Existing CCAs	
Break		Break	
Afternoon 1		Renewables	Procurement Team
Quiz		Quiz 3 - Renewables	
Afternoon 2		Energy Procurement	Procurement Team
Quiz		Quiz 4 - Energy Procurement	

Monday 11/13
Notes
What is Community Choice Aggregation? How did it start? How does it work? What regulations and regulatory bodies govern it?
How do CCAs serve customers? What are electricity rates? What is the relationship with PG&E? What are the different products MCE offers to customers? What is net energy metering and MCE's program for rooftop solar customers?
Break
What is renewable energy? What are the different types of renewable energy? What is the Renewable Portfolio Standard? Why is Renewable Energy important?
How do CCAs procure energy for customers? What is the CAISO?

Date		11/14/2017	
Session	Time	Tuesday	MCE Staff Presenter
Morning 1		Procurement (Trip to Solar One)	David Potovsky
Quiz			
Morning 2			
Quiz			
Break		Break	
Afternoon 1		MCE Community Development & Outreach	PA Team
Quiz		Quiz 5 - Community Development & Outreach	
Afternoon 2		Overview of Energy Efficiency & MCE Customer Programs	CP Team
Quiz		Quiz 6 - Energy Efficiency & MCE Customer Programs	

Tuesday 11/14
Notes
Trainees will see largest publicly owned solar array and how it was built and will operate.
Break
How does MCE engage with communities pre/during/post enrollment?
What is energy efficiency? What programs does MCE offer around energy efficiency?

Date		11/15/2017	
Session	Time	Wednesday	Calpine Staff Presenter
Morning		Customer Relationship Management (CRM) System	Holt Mettam Amber Olinghouse
Quiz		Quiz 4 - CRM Systems	

Wednesday 11/15
Notes
What is CRM? What can you do with a CRM system? Who uses CRM? What are the popular options for CRM systems?

AI #07: MCE/Calpine Pittsburgh FutureBuild Curriculum Overview 11/13/17 - 11/17/17

Break		Break	
Afternoon 1		IVR Systems and Options	Holt Mettam Amber Olinghouse
Quiz		Quiz 5 - IVR System	
Afternoon 2		Energy Data & Customer Billing	
Quiz		Quiz 6 - Energy Data & Customer Billing	

Break
What is an IVR system? What can an IVR system do? Who uses an IVR system?
How is electricity measured and billed? Activity: Review and explain customer bill Activity: Determine cost differences

AI #07: MCE/Calpine Pittsburg FutureBuild Curriculum Overview 11/13/17 - 11/17/17

Date		11/16/2017	
Session	Time	Thursday	Calpine Staff Presenter
Morning		Call Center - Basics	Amber Olinghouse
Quiz		Quiz 7 - Call Center - Basics	
Break		Break	
Afternoon		Call Center - Call Handling & Customer Outreach	Amber Olinghouse
Quiz		Quiz 8 - Call Handling & Customer Outreach	

Thursday 11/16
Notes
<p>What are the common purposes of a call center? What does a call center rep do? What do you need to know to work in a call center? What type of person does well as a CSR?</p>
Break
<p>What types of calls do CCA call centers receive? What other methods of outreach do CCA teams do? How do the call centers and other teams collaborate on customer messaging? Activity: Mock Calls</p>

Date		11/17/2017	
Session	Time	Friday	Calpine Staff Presenter
Morning		Call Center - Common Mistakes & Best Practices	Amber Olinghouse
Quiz		Quiz 9 - Call Center Best Practices	
Break		Break	
Afternoon		Team Project	Amber Olinghouse
Presentation		Team Project Presentation	

Friday 11/17
Notes
<p>Common Mistakes: What not to do Best Practices: How to provide customers with "white glove" service How to defuse a difficult situation Activity: Personality Types Activity/Group Discussion: Best/Worst Experiences</p>
Break
<p>Team Project: Put the items covered into action. Provide us with an overview of how you would handle sample situations and how CRM/IVR could help you resolve customer concerns</p>



AI #07: Potential Call Center - Pittsburg



October 6, 2017

TO: MCE Executive Committee
FROM: Dawn Weisz, CEO
RE: CalCCA Participation (Agenda Item #08)

Dear Executive Committee Members:

SUMMARY:

The California Community Choice Association (CalCCA), launched in 2016, is a trade association that represents the interests of California's community choice electricity providers in the legislature and at the relevant regulatory agencies, including the California Public Utilities Commission, California Energy Commission and California Air Resources Board. CalCCA's voting members are the operating programs in California. Local governments interested in community choice may join as affiliate members.

On Wednesday, September 7, 2016, your Executive Committee authorized payment of dues to the California Community Choice Association (CalCCA) for \$50,000 for CalCCA's Fiscal Year 2016-2017 (July 1, 2016 – June 30-2017).

As a result of the increased level of services to be provided by CalCCA in CalCCA's Fiscal Year 2017-2018 (July 1, 2017 – June 30, 2018), CalCCA base operation dues for MCE will be approximately \$75,000. In the next month, CalCCA will determine the amount needed as supplemental dues from each CCA to allocate directly for CCA support on regulatory and/or legislative issues.

Fiscal Impact

Proposed CalCCA dues that accrue to MCE's 2017/18 fiscal year (\$54,750) are included in the FY 2017/18 Operating Fund Budget. Proposed dues that accrue to the period April 1, 2018 to June 30, 2018 (\$18,250) will be included in the FY 2018/19 Operating Fund Budget that will be presented to your Board in February, 2018.

Recommendation

Authorize payment of base dues to CalCCA for CalCCA's Fiscal Year 2017-2018 in an amount not to exceed \$75,000.



October 6, 2017

TO: MCE Executive Committee

FROM: Katie Gaier, Manager of Human Resources

RE: New MCE Staff Position (Agenda Item #09A.)

ATTACHMENT: Job Description – Chief Operating Officer

Dear Executive Committee Members:

SUMMARY:

During the past several years, MCE has grown in both service area and number of employees. With the recent addition of unincorporated Contra Costa County and eight of its towns and cities, the MCE service area has doubled. Currently, MCE has 45 regular, full-time employees. In the next several months, MCE plans to add a number of new staff positions, fellows, and interns to accommodate a growing workload, including expansion-related activities.

Due to this growth in agency and staff size there is a need for a senior-level position to manage some of the day-to-day activities of the agency. Staff has studied various positions in similarly situated agencies and determined that the best fit to fill the current and future needs is a Chief Operating Officer (COO), who would report to the CEO. The COO would manage the Directors of Power Resources, Customer Programs, and Internal Operations, as well as the Manager of Finance. The COO would have responsibility for ensuring efficiency of operations for the agency by providing oversight and direction for the fiscal, administrative, and managerial operations. The addition of a COO would allow the CEO to continue to provide strategic direction to the agency, be the public face of the agency to stakeholders, member-communities as well as non-members, report to the Board of Directors and the Executive Committee, and be an active participant in the California Community Choice Association (CalCCA).

A survey of the salaries of MCE's comparable agencies was conducted and the results indicate that a range of \$163,713 – \$272,695 for the COO position would be appropriate and in line with the compensation direction from the Board of Directors and the Executive Committee. A survey of other CCAs was also completed and there are no comparable positions.

Fiscal Impact: Approval of the proposed job description and salary range does not have a fiscal impact. Expenditures related to hiring for the proposed position are included in the FY 2017/18 Budget.

Recommendation: Approve the proposed job description and salary range for Chief Operating Officer.



JOB DESCRIPTION CHIEF OPERATING OFFICER

Summary

The Chief Operating Officer (COO) reports directly to the Chief Executive Officer (CEO) of MCE and has responsibility for ensuring efficiency of operations for the agency.

Class Characteristics

The COO provides oversight and direction for the fiscal, administrative, and managerial operations of MCE as well as support and coordination of various MCE directors and teams. The position operates with a high level of autonomy, and the COO may occasionally be called upon to represent the agency before the Board of Directors or other external entities. The COO position oversees the work of the senior managerial team at MCE and interfaces directly with the CEO. The COO is expected to exercise critical thinking and detail oriented oversight in ensuring that MCE operations are smooth, efficient, and compliant, with responsibility for results including costs, methods, and staffing. The COO leads operations of the organization to ensure customer satisfaction and to retain competitive advantage.

Supervisory Responsibilities

The COO oversees the operations of the agency as a whole. The COO also has specific supervisory and support responsibilities for the Directors of Internal Operations, Power Resources, Customer Programs, and the Manager of Finance. The COO provides regular feedback, conducts performance appraisals, and reviews and approves professional development opportunities.

Essential Duties and Responsibilities (Illustrative Only)

- Ensures that MCE operations activities are consistent with MCE's mission, vision, values, goals, and policy objectives.
- Ensures strategic, efficient, and consistent implementation of MCE goals and objectives and other key performance indicators.
- Coordinates the preparation of periodic and ad-hoc reports as required by MCE's Board of Directors and Committees, funding agencies, or other interested parties.

- Ensures that MCE work products are accurate, comprehensive, timely, well documented, and maintain MCE credibility.
- Provides consistent operational support, guidance, tools, and feedback to the Directors of Internal Operations, Power Resources, Customer Programs, and the Manager of Finance.
- Oversees and completes multiple projects simultaneously, often within stringent time constraints.
- As needed, communicates with persons outside the organization, representing MCE to customers, the public, government officials, and other external entities in person, in writing, and by telephone and email.

Operations/IT/Risk Management

- Analyzes the current technology infrastructure and researches the next level of information technology, human resources, and financial systems that support the growth and efficiency of specific programs and the organization overall.
- Develops and implements systems for reporting, measurement, and supporting sound fiscal policy.
- Stays current on data security best practices.

Organization/Team Development

- Coaches and develops the leadership team using a supportive and collaborative approach: assigns accountabilities, sets objectives, establishes priorities, and monitors and evaluates results.
- Provides regular, consistent, direct, fact-based, specific feedback to individuals to instill a strong sense of teamwork and success.
- In coordination with members of MCE's senior managerial team, ensures individual divisions of MCE are meeting objectives and operating within agency expectations.
- Develops and maintains documentation for operations processes and policies.
- Oversees relationships with property managers and landlords for MCE offices.
- Assists with ensuring:
 - MCE's financial operations are robust and meet agency financial objectives;
 - compliance with internal controls and financial procedures;
 - revisions made to financial policies and procedures comply with all required regulations, including federal, state and local;
 - MCE's procurement activities are consistent with an approved Integrated Resources Plan and result in meeting agency objectives;
 - Customer Programs are meeting targets, operating efficiently, and meeting all compliance obligations;
 - MCE's Strategic Plan is continuously and consistently implemented and evaluated;

- consistent implementation of employment practices across the organization.

Employment Standards

Experience/Education

This position requires a bachelor's degree or equivalent in economics, business, planning, public administration, or a field directly related to the work and at least ten years' experience in operations, five of which must have been at the senior management level. Experience in the operational division of an electric utility and/or utility experience that includes energy markets, contracts, rates and tariffs, information technology, and customer service is strongly preferred. A master's degree in a related field and previous work in a public agency are desirable as well as any combination of education and experience that provide the knowledge and abilities required to perform the functions of the position including:

- Demonstrated experience managing people and leading teams;
- Demonstrated success in customer service; ability to promote quality customer service practices;
- Demonstrated experience in negotiating and consensus building;
- Demonstrated experience in developing new and improving existing work processes;
- Demonstrated ability to collaborate on, test, and implement system and process changes to meet new program requirements and improve existing processes;
- Strong interpersonal skills with ability to interact effectively with employees, stakeholders, and external parties.

Required Knowledge of:

- MCE's mission, vision, values, and goals
- Principles and practices of public administration, including supervision, strategic planning, goal setting, program development, implementation, and evaluation
- Principles and practices of finance and budgeting consistent with MCE's mission and goals
- Principles of good utility practice
- Principles of financial modeling and customer data analysis
- Principles and practices of contract development and management

Desired Knowledge of:

- Regulatory compliance filing requirements
- Principles related to negotiation with power producers to achieve costs consistent with MCE's pro forma budget
- CPUC and legislative proceedings and advocacy filings
- Electricity program rates and rate structures, project development, and resource procurement

- State and federal employment laws and regulations and their application to a public agency
- Power generation, balancing area operations, distribution, and transmission planning
- Scheduling and settlement protocols and market operations of the California Independent System Operator
- Facility construction and operations
- Environmental review and permitting of renewable and distributed energy systems
- Energy efficiency and demand side management
- Electric and alternative fuel vehicles
- Emerging technologies
- Revenue collection
- Marketing and customer outreach

Ability to:

- Oversee progress towards achievement of agency goals, including directing and expediting the work of assigned personnel, consultants, and independent contractors
- Document new and existing processes clearly and accurately, and explain work processes and process changes to others
- Recognize deficiencies, issues, or challenges and work with staff to propose timely solutions
- Appear before the Board of Directors and at other public and private agency meetings
- Represent MCE before regulatory agencies, legislative bodies, other service providers, and the public as needed
- Communicate effectively both verbally and in writing
- Establish and maintain positive and constructive working relationships with persons encountered during the performance of duties

Physical Demands

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. While performing the duties of this job, the employee is required to use hands to finger, handle or feel and reach with hands and arms. The employee is occasionally required to stand. The employee must occasionally lift and/or move up to 20 pounds.

Work Environment

The work environment described here are representative of those an employee may encounter while performing the essential duties of the job. The noise level in the work environment is usually moderate. The work at times may be fast-paced with multiple critical deadlines.

An incumbent in this job class must be able to work at any MCE office and travel between offices, as assigned.

The job may require travel to off-site meetings as well as attend evening and occasionally weekend events.

ADA Compliance

MCE will make reasonable accommodation of the known physical or mental limitations of a qualified applicant with a disability upon request.



October 6, 2017

TO: MCE Executive Committee

FROM: Katie Gaier, Manager of Human Resources

RE: New MCE Staff Position (Agenda Item # 09B.)

ATTACHMENT: Job Description – Data Analyst

Dear Executive Committee Members:

SUMMARY:

The proposed Data Analyst job description addresses staffing needs that have been identified on the Customer Programs and Public Affairs teams:

Customer Programs Assignment

In spring 2017, MCE engaged a consulting firm to analyze current and future data tracking needs within the agency. The focus was primarily on the Customer Programs team and its needs. As part of the consultant's report, it was recommended that MCE implement a data management system to streamline data tracking and reporting activities, and that an external contractor be engaged in the role of project manager to initiate and maintain the system before handoff to MCE staff. It was also recommended that a Data Analyst staff position be created and filled in the next fiscal year (FY 18/19) to take over the ongoing tasks associated with the new data management system.

Public Affairs Assignment

A more immediate need for a Data Analyst was identified for the Public Affairs team. Due to the increase in customers as a result of the expansion into unincorporated Contra Costa County and its towns and cities, this assignment would be responsible for analysis of customer electric usage and billing data, among other tasks. Additionally, this assignment would provide support to the Public Affairs team as well as other MCE teams in analyzing customer trends. If approved, this position would be filled during the current fiscal year (FY 17/18), ideally by the end of 2017.

The duties and minimum qualifications were reviewed and compared to similarly situated positions within MCE, and it was determined that an appropriate salary be set at \$76,699 - \$119,188.

Fiscal Impact: Approval of the proposed job description and salary range does not have a fiscal impact. Expenditures related to hiring for the Public Affairs team assignment are

included in the FY 2017/18 Budget. Expenditures related to hiring for the Customer Programs team assignment will be included in the FY 2018/19 Budget.

Recommendation: Approve the proposed Data Analyst job description and salary range.



Job Description Data Analyst

Summary

Customer Programs Assignment

Under general direction of the Manager of Customer Programs Policy and Planning, the Data Analyst is responsible for managing and maintaining the MCE's Program Management Platform (PMP), including providing training, ensuring that the platform develops over time to meet MCE needs, and pulling data from the tool to provide useful analysis for program management and reporting needs.

Public Affairs Assignment

Under general direction of the Manager of Account Services, the Data Analyst is responsible for the analysis of customer electric usage and billing data, and transforming raw data into meaningful aggregations and trends for use in support of the Public Affairs, Power Resources, Legal and Policy, and Customer Programs Departments.

All Assignments

The position requires expertise working with data analysis platforms, customer information systems, and a creativity in applying those skills to meet complex business objectives. Knowledge of how to utilize data analysis software and business intelligence visualizations is required, as is a familiarity with energy industry operations, objectives, terminology, and standards.

Class Characteristics

Customer Programs Assignment

The Data Analyst performs assignments under the general direction of the Manager of Customer Programs Policy and Planning. The Data Analyst also interfaces directly with MCE Customer Programs staff, program implementation partners, and the PMP implementation partner.

Public Affairs Assignment

The Data Analyst performs assignments under the general direction of the Manager of Account Services. The Data Analyst also interfaces directly with MCE's contracted data management, billing agent, and accountancy services.

Supervisory Responsibilities

Depending upon the assignment, this position may have supervisory or lead worker responsibilities.

Essential Duties and Responsibilities (Illustrative Only)

All Assignments

- Develop standards for receipt of periodic data extracts or database connectivity
- Validate data received, identifying and resolving irregularities where necessary
- Aggregate or otherwise summarize large sets of data into meaningful and organized summaries, reports, crosstabs, or charts to support MCE business operations
- Identify opportunities to improve standard reports and data management practices where possible
- Provide technical analysis as requested by management, accountants, and/or staff
- Assist with performance monitoring for services performed by third parties under contract
- Assist with tracking metrics related to MCE's power supply and load for reporting purposes
- Assist with preparation of compliance reports related to MCE power supply as needed for regulatory bodies, counterparties, and partner agencies
- As assigned, assist with the implementation of MCE's Strategic Plan

Customer Programs Assignment

- Manage contract with Program Management Platform (PMP) vendor
- Serve as the primary staff responsible for maintenance and use of the PMP, extracting information when requested and facilitating in the development of canned reports or dashboards
- Assist in the identification and tracking of key performance metrics to inform the implementation and refinement of Customer Programs
- Interface with formal program evaluation activities, including developing or extracting program performance data to facilitate evaluations
- Work with Program Managers and program implementation partners to ensure that program data is input into the PMP in a timely manner
- Facilitate training and provide process documentation for MCE Staff and program implementation partners on the use of the PMP
- Ensure that the capabilities of the PMP evolve over time to support team objectives and reporting requirements

Public Affairs Assignment

- Perform customer cost comparisons and rate comparisons
- Maintain ongoing analysis and reporting on customer behavior and trends (e.g., customer database crosstabs for programs, cities, rate class, etc.; creation of ongoing trendlines for enrollment, opt-out, opt-up, etc.)
- Identify discrepancies and anomalies in customer behavior to inform ongoing operational concerns
- Assist in creation and review of customer groups and mailing lists for outreach

Break-down of Time Spent on Various Work Areas – Customer Programs Assignment

- | | |
|--|-----|
| • Vendor Management | 25% |
| • Customer Programs Team and Partner Support | 55% |
| • Reporting | 20% |

Break-down of Time Spent on Various Work Areas – Public Affairs Assignment

- | | |
|--|-----|
| • Finance Planning and Tracking | 25% |
| • Accounting Analysis and Reconciliation | 20% |
| • Procurement Support | 20% |
| • Customer Accounts Support | 20% |
| • Energy Efficiency Tracking Support | 15% |

Experience/Education

Any combination of education and experience that would provide the knowledge and skills listed. Typically, a Bachelor's degree in business systems analysis, design, or management, or a closely related field and at least two (2) years of experience working with analysis of customer rates, usage, program management data, or systems implementation. Energy industry experience is required. Experience working directly with or managing clients or vendors is preferred.

Knowledge of:

All Assignments:

- Data analysis platforms (Excel, Access, etc.), Word, and PowerPoint
- Data visualization tools, such as Tableau or similar software
- Communicating data with internal teams and/or businesses
- Basic principles of supervision in a public agency
-

Customer Programs Assignment:

- Basic principles of energy efficiency and distributed energy resource programs
- Database construction and management

Public Affairs Assignment:

- Utility data formatting and rules
- Utility rate structures and program implementation

Ability to:

- Provide technical assistance to staff, vendors, customers, and government affiliates
- Critically evaluate data provided and streamline processes where possible
- Transform raw data into meaningful summaries understandable by staff with limited familiarity with data
- Identify areas of concern and involve other team members in problem-solving as needed
- Develop useful and consistent strategies for responding to requests for information
- Maintain sound time management to meet requests and expectations from multiple internal teams and inform appropriate parties when priorities change or work products may be delayed
- Manage multiple priorities and quickly adapt to changing priorities in a fast-paced, dynamic environment
- Take responsibility and work independently, as well as coordinate team efforts
- Communicate effectively both verbally and in written form
- Be thorough and detail-oriented

- Work accurately and swiftly under pressure
- Demonstrate patience, tact, and courtesy
- Establish and maintain effective working relationships with persons encountered during the performance of duties

Language and Reasoning Skills

- Exercise sound judgment, creative problem solving, and commercial awareness
- Develop high-quality work products with consistent attention to detail
- Communicate in written and verbal form clearly and succinctly
- Interact professionally and effectively with customers, commercial partners, consultants, MCE staff, and Board of Directors
- Apply strong analytical and problem-solving skills
- Manage multiple projects with diverse and variable timelines efficiently

Mathematical Skills

Ability to add, subtract, multiply, and divide in all units of measure, using whole numbers, common fractions, and decimals. Ability to compute rate, ratio, and percent and to create and interpret bar graphs. Competency with statistics is desirable.

Physical Demands

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job.

While performing the duties of this job, the employee is frequently required to use hands to finger, handle, or feel and reach with hands and arms. The employee is occasionally required to stand. The employee must occasionally lift and/or move up to 20 pounds.

Work Environment

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. The noise level in the work environment is usually moderate.

ADA Compliance

MCE will make reasonable accommodation of the known physical or mental limitations of a qualified applicant with a disability upon request.



October 6, 2017

TO: MCE Executive Committee

FROM: Katie Gaier, Manager of Human Resources

RE: New MCE Staff Position (Agenda Item #09C.)

ATTACHMENT: Job Description – Manager of Compliance Operations

Dear Executive Committee Members:

SUMMARY:

With MCE's growth over the past several years, the agency's reporting and compliance obligations in all areas of operations have increased. Due to current bandwidth of staff, senior-level management finds it necessary to create the proposed Manager of Compliance Operations position. The position would report to the General Counsel and work closely with all departments. The incumbent in this position would develop and manage processes and systems required to ensure that compliance obligations are met across the agency.

The duties and minimum qualifications were reviewed and compared to similarly situated positions within MCE, and it was determined that an appropriate salary be set at \$83,876 - \$119,997.

Fiscal Impact: Approval of the proposed job description and salary range does not have a fiscal impact. Expenditures related to hiring for the proposed position are included in the FY 2017/18 Budget.

Recommendation: Approve the proposed Manager of Compliance Operations job description and salary range.



Job Description

Manager of Compliance Operations

Summary

Under direction of the General Counsel, the Manager of Compliance Operations is responsible providing project management and operational support that enables MCE to meet its compliance obligations. The incumbent may receive direction from the Chief Executive Officer and the Chief Operating Officer, and will work closely with Directors and senior-level managers on department-specific compliance requirements. The Manager of Compliance Operations will also work with consultants and contractors, and perform other duties as assigned.

Class Characteristics

The Manager of Compliance Operations works under the direction of the MCE General Counsel and may receive direction from the Chief Executive Officer and the Chief Operating Officer to assist in MCE's compliance obligations and operations. The position works closely with other MCE departments and MCE consultants and contractors. The incumbent will develop and manage processes and systems required to ensure that compliance obligations are met across the entire agency.

Supervisory Responsibilities

This position is responsible for the supervision of administrative support staff.

Essential Duties and Responsibilities (Illustrative Only)

- Develop systems and processes to ensure programs and undertakings of MCE comply with applicable laws, regulations, and mandates, and develop policies and compliance protocols as applicable
- Support Directors, consultants and staff to develop and implement systems that ensure compliance with internal policies, guidelines and contractual obligations
- Oversee and manage MCE's reporting obligations
- Oversee and manage responses to public record requests
- Oversee and manage work of the Legal and Policy Team administrative support staff, as assigned
- Develop, implement, improve and oversee processes and systems for front-end and back-end contract compliance
- Manage projects across teams that support the compliance obligations of MCE
- Support Directors, consultants and staff in developing and maintaining internal documentation, and develop systems for retaining institutional knowledge associated with compliance requirements, procedures and policies

- Contribute information, analysis, and recommendations to strategic thinking and direction for MCE's compliance and organizational needs
- Anticipate emerging compliance needs and trends and design improvements to internal controls
- In coordination with Directors, consultants and staff, evaluate MCE's proposed programs and undertakings to identify possible compliance needs
- Prepare reports for CEO, Directors and external regulatory bodies as appropriate
- Assist in the development of MCE policies related to compliance
- As assigned, assist with the implementation of MCE's Strategic Plan

Break-Down of Time Spent on Various Work Areas

Compliance Operations	90%
Other	10%

Minimum Qualifications

To perform this job successfully, an individual must be able to perform the essential duties satisfactorily. The requirements listed below are representative of the knowledge, skill, and/or ability required.

Experience/Education

Education and experience equal to a Bachelor's degree and the knowledge, skills, and ability to perform the essential functions of the position and a minimum of five years of coordination and management work with an emphasis on compliance operations, preferably for a public utility or other public or not for profit agency. A Master's degree in business administration, public policy, finance, or a related field is desirable.

Knowledge of

- Standards, laws, regulations, mandates and internal processes applicable to Community Choice Aggregation (CCA), the California electric utility market, regulatory agencies, and public agencies
- Effective project management techniques
- Efficient and effective process and operations management
- Principles and practices of supervision in a public agency
- Regulations and laws governing compliance and public records act requests in a public agency
- Risk management requirements of a public agency
- Practices and principles of data analysis
- Information systems management
- Energy and environmental issues, especially in key CCA knowledge areas
- Microsoft Office Suite, including Word, Outlook and PowerPoint

Ability to

- Self-start and work independently with minimal oversight
- Communicate effectively both verbally and in written form
- Research and analyze data

- Organize work in an efficient and time-sensitive manner
- Be commercial while being dedicated to legality
- Manage multiple priorities and adapt to changing priorities in a fast-paced environment
- Be thorough and detail-oriented
- Maintain confidentiality over sensitive items
- Operate standard office equipment
- Establish and maintain effective working relationships with those encountered during the performance of duties

Language and Reasoning Skills

- Exercise analytical skills, sound judgment, creative problem-solving, and commercial awareness
- Analyze and interpret information quickly and accurately
- Develop high-quality writing, research, and communication work products
- Deliver clear oral communication
- Interact effectively with MCE stakeholders
- Manage projects and time efficiently

Mathematical Skills

Ability to add, subtracts, multiply, and divide in all units of measure, using whole numbers, common fractions, and decimals. Ability to compute rate, ratio, and percent and create and interpret bar graphs.

Physical Demands

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. While performing the duties of this job, the employee is frequently required to use hands to finger, handle, or feel and reach with hands and arms. The employee must occasionally lift and/or move up to 20 pounds.

Work Environment

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. The noise level in the work environment is usually moderate.

ADA Compliance

MCE will make reasonable accommodation of the known physical or mental limitations of a qualified applicant with a disability upon request.