



THE CITY OF SAN DIEGO

M E M O R A N D U M

DATE: June 29, 2020

TO: James Nagelvoort, Director & City Engineer, Engineering & Capital Projects

FROM: Claudia C. Abarca, Deputy Director, Engineering & Capital Projects *C. Abarca*

SUBJECT: Sole Source Agreement with Cypress Envirosystems, Inc. for the Smart City Open Urban Platform (SCOUP)

Estimated Amount: \$500,000 (Not-to-Exceed)

Contractor: Cypress Envirosystems, Inc.

Estimated Completion: December 31, 2022

Recommended Action: Approve Sole Source Request

Pursuant to SDMC §22.3016 (a), "Exceptions to Advertisement and Competitive Award of Public Works Contracts", this is to certify that a sole source agreement with the contractor named above is necessary and that strict compliance with a competitive process would be unavailing or would not produce an advantage, and soliciting bids or proposals would be undesirable, impractical or impossible for the following reasons:

JUSTIFICATION:

The Environmental Services Department (ESD), Energy & Sustainability Division submitted a grant application for the Smart City Open Urban Platform (SCOUP) through the California Energy Commission on behalf of the City of San Diego (City). The application period was open for a three-month period, and a requirement of the application was that the applicant list the specific contractor who would perform the work should the grant be awarded.

In September of 2018, the City's Purchasing & Contracting Department (P&C) authorized the Energy & Sustainability Division to enter into a sole source with Cypress Envirosystems, Inc. for work authorized under the SCOUP grant. After further review by the City Attorney's Office, it was determined that the delivery of this sole source contract should be derived through the Engineering & Capital Projects (E&CP) Department as the scope for the contract is considered a public work.

This request authorizes the sole source contract to be procured via E&CP based on the

Page 2
James Nagelvoort, Director & City Engineer
June 29, 2020

previous sole source approval by P&C.

Additional information related to this request can be found in Enclosure 1.

AGREEMENT VALUE & DURATION:

Unless a modification to the agreement and this sole-source request is issued, the total fee for these services shall not exceed the amount noted above. The term of the agreement will be in effect from date of the agreement execution and shall not exceed the contract completion date noted above.

APPROVED BY:



James Nagelvoort, Director & City Engineer
Engineering & Capital Projects

Date: 7/01/2020

Enclosure: 1. Memorandum from Lindsey Hawes to Claudia C. Abarca dated
May 7, 2020.

cc: Myrna Dayton, Assistant Director, Engineering & Capital Projects
Heather Werner, Deputy Director, Sustainability Department
Catherine Dungca, Senior Civil Engineer, Sustainability Department
Shannon Sales, Senior Civil Engineer, Sustainability Department
Stephen Samara, Principal Contract Specialist, Engineering & Capital Projects



THE CITY OF SAN DIEGO

M E M O R A N D U M

DATE: May 7, 2020

TO: Claudia C. Abarca, Deputy Director, Public Works Contracts

FROM: Lindsey Hawes, Program Manager, Sustainability Department

SUBJECT: Request for Sole Source Agreement with Cypress Envirosystems, Inc. to provide Design-Build services for the Smart City Open Urban Platform (SCOUP)

This memorandum requests authorization for a Sole Source Agreement with Cypress Envirosystems, Inc. (Cypress) to support implementation of the Smart City Open Urban Platform (SCOUP). Cypress is a partner on the grant that funds the SCOUP project (Grant LGC-16-002, awarded by the California Energy Commission to the City of San Diego on February 5, 2018, valued at \$1,991,444). The project supports achievement of the City's Climate Action Plan, specifically the greenhouse gas reductions required in municipal facilities.

The SCOUP project will establish a platform for measuring and monitoring energy consumption at ten City facilities. The sole source agreement will allow Cypress to purchase and install Direct Digital Control thermostats (DDC controls) at the individual buildings that comprise Civic Center Complex. Currently, the entire Complex has pneumatic thermostats that require physical adjustment by Facilities staff. Cypress will replace all existing pneumatic thermostats with DDC controls, allowing for integration into the SCOUP platform. Further, DDC controls will allow for integration with a grant-required display dashboard that shows how much energy the heating, ventilation, and air-conditioning systems consume in real time.

SCOUP was funded under the Energy Innovation Challenge (EIC) grant funding opportunity issued by the California Energy Commission in January 2017 with applications due March 6, 2017. The short deadline between the grant opportunity release and application due date would have made advertising the grant opportunity to potential partners impractical, or impossible. The CEC required all applicants to list the specific contractors proposed to perform the work if a grant was to be made. However, it was not possible for the City to conduct a bid for construction services where there was no appropriated funding, no plans and specifications, and no certainty a grant would be made. The City had to submit the application and list the proposed contractor(s) in order to obtain the grant.

The Environmental Services Department, Energy & Sustainability Division worked with Shadpour Consulting Engineers (SC Engineers) in the development of the grant application based on SC Engineers existing agreement as an As-Needed Energy Engineering Consultant

contract (by way of RFP #H176815) as indicated in a selection letter sent January 21, 2017. SC Engineers worked with the City to scope what would become the Smart City Open Urban Platform (SCOUP) grant application and listed a project team including Cypress.

Cypress was identified as a key contractor because of the company's experience in enabling older facilities with dated mechanical systems to adopt the latest building automation technologies. Cypress spent the time leading up to the grant application deadline researching a technical solution that would work with the existing equipment and central plant. Cypress' solution was preliminarily vetted through stakeholder departments within the City prior to submitting the grant application. Because of the CEC requirements to list all project partners in the grant application, per San Diego Municipal Code section §22.3016, strict compliance with a competitive process would have been impractical and unavailing.

Cypress was instrumental in the development of the SCOUP project articulated in the application which was later awarded as Grant LGC-16-002 on February 5, 2018 by the CEC. The grant authorizes the City to contract only with the sub awardee firms listed on the application; the listed firms have allocations of the grant budget and the CEC has deemed the firms (including Cypress) qualified grant participants and sub awardees.

This grant was approved by the City Council on October 31, 2017 per resolution number R-311384. Staff believes that strict compliance with the competitive bidding requirements will not produce any advantage to the City because there would be no grant award and no SCOUP project unless the approved firms are utilized. It is therefore requested that you approve this sole source request under San Diego Municipal Code section 22.3016.

If this work is not performed or is delayed, the City will lose \$1,991,444 awarded by the grant, the greenhouse gas reductions, and the energy and cost savings resulting from implementation of the project. More importantly, the City will also risk the delay in achieving our legally binding Climate Action Plan Goals.

Therefore, it is requested that a sole source contract in the amount not to exceed \$500,000.00 be awarded to Cypress for the aforementioned services.

Should you have any questions or need further details, please contact me at (858) 627-3352.

Sincerely,

Lindsey Hawes

Lindsey Hawes

cc: Heather Werner, Deputy Director, Sustainability Department
Shannon Sales, Senior Civil Engineer, Sustainability Department

Purchasing and Contracting Department
City of San Diego

PURCHASING & CONTRACTING DEPT.

REQUEST AND CERTIFICATION FOR SOLE SOURCE PROCUREMENT

To: Purchasing and Contracting Director or Designee

From:	Bryan Olson	Senior Civil Engineer	Environmental Services
	Name	Title	Department

Date: April 30, 2018

1. Describe goods or service(s) to be purchased. Include vendor's cost, City stock number if applicable, name, and telephone number:

This request includes Direct Digital Control (DDC) Thermostats and installation associated with the Smart City Open Urban Platform Grant (SCOUP), LGC-16-002. Cypress Envirosystems, Inc. will integrate DDC thermostats in the City's CAB Complex (City Operations Building, Plaza Hall, the Civil Theatre, the City Concourse Building and the Central Plant) to replace all existing pneumatic thermostats. These DDC thermostats integrate with a displayed dashboard to show how much energy the HVAC system is consuming in real time.

2. Explain why strict compliance with a competitive process would be unavailing or would not produce an advantage, and why soliciting bids or proposals would therefore be undesirable, impractical, or impossible:

The short deadline between the grant release and application due date would have made advertising the grant opportunity impractical, or impossible. The California Energy Commission issued the Energy Innovation Challenge (EIC) in January, 2017 with the applications due March 6, 2017.

The Environmental Services Department, Energy & Sustainability Division did elect to utilize Shadpour Consulting Engineers (SC Engineers) in the development of the Grant Application and Scope of Work. At this time, between January 2017 and March 2017, Shadpour Consulting Engineers (SC Engineers) had been notified of the intent to award as the As-Needed Energy Engineering Consultant contract (by way of RFP #H176815) through a selection letter, sent January 21, 2017.

SC Engineers worked with the City to scope what would become the Smart City Open Urban Platform (SCOUP) and assembled a project team including Cypress Envirosystems. Cypress Envirosystems was identified as a key subcontractor because of their previous experience. Cypress Envirosystems spent the time leading up to the grant application due date researching a technical solution that would work with the existing equipment and central plant. Cypress Envirosystems' solution was preliminarily vetted through stakeholder departments within the City. Cypress Envirosystems was instrumental in the development of the SCOUP project which

was later awarded as Grant LGC-16-002 on February 5, 2018 by the California Energy Commission.


The City of San Diego had no match funding requirements associated with this Grant. Because of the challenging timeframe, the City's intent to award RFP #H176815, and the California Energy Commission's requirements, per §22.3016, strict compliance with a competitive process would have been unavailing. This grant was approved by council on October 31, 2017 per resolution number R-311384.

3. This sole source procurement is necessary because:

- Goods are available from only one source
- The requested goods are replacement parts or components for existing City equipment or required by warranty and/or insurance coverage
- The contract is necessary for the reasons explained in San Diego Municipal Code (SDMC) section 22.3208(d) (explain) As referenced by San Diego Municipal Code (SDMC) section 22.3208(d), (SDMC) section 22.3016 is applicable and is described above in Section 2.
- Other (describe) Click here to enter text.

4. Goods and services evaluated (add additional pages, if needed):

A.	<u>Direct Digital Control Thermostats & Installation</u> Good/Service <u>Harry Sim</u> Person Contacted	<u>Cypress Envirosystems, Inc.</u> Name of Vendor <u>800-544-5411</u> Telephone Number	<u>\$357,446.00</u> Bid Amount <u>Click here to enter text.</u> SLBE Status
B.	<u>Click here to enter text.</u> Good/Service <u>Click here to enter text.</u> Person Contacted	<u>Click here to enter text.</u> Name of Vendor <u>Click here to enter text.</u> Telephone Number	<u>Click here to enter text.</u> Bid Amount <u>Click here to enter text.</u> SLBE Status
C.	<u>Click here to enter text.</u> Good/Service <u>Click here to enter text.</u> Person Contacted	<u>Click here to enter text.</u> Name of Vendor <u>Click here to enter text.</u> Telephone Number	<u>Click here to enter text.</u> Bid Amount <u>Click here to enter text.</u> SLBE Status

REVIEWED:  5/2/18
 Department Director or Designee Date

APPROVED: _____

Paul D. Homing
Deputy Chief Operating Officer

5/3/18
Date

DENIED:

Deputy Chief Operating Officer

Date

Reason for denial: _____

5. Purchasing Department Comments: SC Engineering, Dynatec and Cypress
Enviro systems all named in CEC grant. CEC grant approved
via R-311384. I recommend approval of this sole source for
these reasons.

Buyer: Lisa Hoffman

9/26/18
Date

Given the information in your memorandum, I certify that strict compliance with a competitive process would be unavailing or would not produce an advantage, and that soliciting bids or proposals would therefore be undesirable, impracticable, or impossible. My approval is valid for ~~one~~ (1) year from the signature date below. The requesting department must submit a purchase requisition and a copy of this certification to Purchasing and Contracting in order for a Purchase Order to be issued.

term
thru
12/31/2021

APPROVED:

[Signature]
Purchasing Director/Designee under SDMC §22.3016

9/27/2018
Date

DENIED:

Purchasing Director/Designee under SDMC §22.3016

Date

Reason(s) for denial: _____

City of San Diego

CONTRACTOR'S NAME: Cypress Envirosystems, Inc.

ADDRESS: 5883 Rue Ferrari, Suite 100, San Jose, CA 95138

TELEPHONE NO.: (408) 307-0922

FAX NO.:

CITY CONTACT: Ron McMinn, Contract Specialist, Email: RMcMinn@sandiego.gov

Phone No. (619) 533-4681

S. Sales / E. Wildberger / R. Dinjotian

CONTRACT DOCUMENTS FOR

FINAL



PURCHASE AND INSTALLATION OF DDC THERMOSTATS AT CIVIC CENTER COMPLEX

PROJECT NO.: K-21-2007-SLS-2

SAP NO. (WBS/IO/CC): 21004856

CLIENT DEPARTMENT: 2112

COUNCIL DISTRICT: Citywide

PROJECT TYPE: BT

FEDERAL AID PROJECT NO.: LGC-16-002

TABLE OF CONTENTS

DESCRIPTION	PAGE NUMBER
1. General	3
2. Agreement	11
3. Performance Bond and Labor and Materialmen’s Bond.....	14
4. Exhibit A - Drug – Free Workplace Certification	16
5. Exhibit B - ADA Compliance Certification.....	18
6. Exhibit C - Contractors Standards – Pledge of Compliance.....	20
7. Exhibit D - Equal Benefits Ordinance Certification	22
8. Exhibit E - Affidavit of Disposal	24
9. Exhibit F - Non-Collusion Affidavit	26
10. Exhibit G - Contractors Certification of Pending Actions	28
11. Exhibit H - Mandatory Disclosure of Business Interest Form.....	30
12. Exhibit I - Forms.....	32
13. Exhibit J - Supplementary Special Provisions (SSP)	37
14. Exhibit K - Proposal	57
15. Exhibit L - Notice of Exemption.....	63
16. Exhibit M - Sample City Invoice with Cash Flow	66
17. Exhibit N – California Energy Commission Grant No. LGC-16-002.....	69
18. Exhibit O – Scope of Work	207
19. Exhibit P – ACM Building List.....	212
20. Exhibit Q – County Department of Health Assesment Tool	217
21. Exhibit R - Asbestos, Lead and other Hazadous Materials	220

GENERAL

1. DESCRIPTION OF WORK:

- 1.1. General. The Work involves furnishing all labor, materials, equipment, services, and other incidental works and appurtenances for the purpose of designing and constructing this project at the direction of the City Engineer.
- 1.2. Purpose: The Work consists of the Smart Cities Open Urban Platform (SCOUP) project establishing a platform for measuring and monitoring energy consumption at 9 City facilities. The parties agree that the purpose of the Work is to partially fulfill the requirements of the SCOUP grant made by the California Energy Commission to the City as Grant No. 16-002 (Grant”), incorporated herein as **Exhibit N**. Cypress Envirosystems (“Cypress”) is an identified subcontractor in the Grant, is knowledgeable of the Grant requirements, and accepts its role as a subcontractor to City as prime grantee under the Grant. By this Contract Cypress Envirosystems -shall fulfill its requirements as a subcontractor under the Grant and will purchase and install Direct Digital Control thermostats (DDC controls) at the individual buildings that comprise Civic Center Complex. Currently, the entire Complex has pneumatic thermostats that require physical adjustment by Facilities staff. Cypress will replace all existing pneumatic thermostats with DDC controls, allowing for integration into the SCOUP platform. Further, DDC controls will allow for integration with a grant- required display dashboard that shows how much energy the heating, ventilation, and air- conditioning systems consume in real time. See **Exhibit O** – Scope of Work for additional information. Cypress shall perform this Contract in accordance with the requirements of the Grant. Cypress shall comply with **Exhibit P** – ACM Building List and **Exhibit Q** – County Department of Health Assessment Tool and **Exhibit R** - Asbestos, Lead and other Hazardous Materials.
- 1.3. This contract is for a firm price not to exceed \$366,384.00. Lump Sum and Unit Price items shall be paid in accordance with SECTION 7, “MEASUREMENT AND PAYMENT” of the Specifications.

2. CONTRACTOR REGISTRATION AND ELECTRONIC REPORTING SYSTEM:

- 2.1. **Prior** to the Award of the Contract or each Task Order, the Contractor must comply with the following registration requirements:
 - 2.1.1. This project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations (DIR). **Contractor and Subcontractor Registration Requirements** for compliance with those requirements are outlined in are outlined in paragraph 7.9 of these “General Instructions”.
 - 2.1.2. In addition, prior to the Contract taking effect, the Contractor and its Subcontractors and Suppliers **must** register with Prism®, the City’s web-based contract compliance portal at:
<https://pro.prismcompliance.com/default.aspx>.
 - 2.1.3. This Contract shall not be effective until registration of all subcontractors and suppliers is complete.

3. **EQUAL OPPORTUNITY.** For the City's Equal Opportunity Program requirements see Part 0 of the City of San Diego 2018 Whitebook and Exhibit I - Forms.
4. **CONTRACT TIME:** The Work, including the device and equipment testing and establishment of proper functionality, shall be completed within **500 Calendar Days** from the date of issuance of the NTP unless extended by the Engineer.
5. **CONTRACT PRICE:** The Contract Price is **\$366,384**. The Contractor shall not perform Work that exceeds this amount, excluding Allowances, without prior written notice from the Engineer that sufficient additional funding has been secured and the work is approved. The amount of \$357,448 is to be reimbursed by the CEC Grant Agreement LGC-016-002 and the amount of \$8,937 shall be City funded for the payment of the performance bond.
6. **LICENSE REQUIREMENT:** To be eligible for award of this contract, Prime contractor must possess the following licensing classification: **C-7** and **C-20**
7. **PREVAILING WAGE RATES:** Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed under this Contract is subject to State prevailing wage laws. For construction work performed under this Contract cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under this Contract cumulatively exceeding \$15,000, the Contractor and its subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below.
 - 7.1. **Compliance with Prevailing Wage Requirements.** Pursuant to sections 1720 through 1861 of the California Labor Code, the Contractor and its subcontractors shall ensure that all workers who perform work under this Contract are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.
 - 7.1.1. Copies of such prevailing rate of per diem wages are on file at the City and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Contractor and its subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.
 - 7.1.2. The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of this Contract. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Contract in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of this Contract, each successive predetermined wage rate shall apply to this Contract on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of this Contract, such wage rate shall apply to the balance of the Contract.

- 7.2. Penalties for Violations.** Contractor and its subcontractors shall comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed. This shall be in addition to any other applicable penalties allowed under Labor Code sections 1720 – 1861.
- 7.3. Payroll Records.** Contractor and its subcontractors shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. Contractor shall require its subcontractors to also comply with section 1776. Contractor and its subcontractors shall submit weekly certified payroll records online via the City’s web-based Labor Compliance Program. Contractor is responsible for ensuring its subcontractors submit certified payroll records to the City.
- 7.3.1.** Contractor and their subcontractors shall also furnish records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required by Labor Code section 1771.4.
- 7.4. Apprentices.** Contractor and its subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Contractor is held responsible for the compliance of their subcontractors with sections 1777.5, 1777.6 and 1777.7.
- 7.5. Working Hours.** Contractor and their subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specify penalties to be imposed on contractors and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.
- 7.6. Required Provisions for Subcontracts.** Contractor shall include at a minimum a copy of the following provisions in any contract they enter into with a subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.
- 7.7. Labor Code Section 1861 Certification.** Contractor in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing this Contract, Contractor certifies that “I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Contract.”
- 7.8. Labor Compliance Program.** The City has its own Labor Compliance Program authorized in August 2011 by the DIR. The City will withhold contract payments when payroll records are delinquent or deemed inadequate by the City or other governmental entity, or it has been established after an investigation by the City or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the City of San Diego’s Prevailing Wage Unit at 858-627-3200.
- 7.9. Contractor and Subcontractor Registration Requirements.** This project is subject to compliance monitoring and enforcement by the DIR. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid or proposal, subject to the requirements of

section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, unless currently registered and qualified to perform public work pursuant to Labor Code section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

7.9.1. A Contractor's inadvertent error in listing a subcontractor who is not registered pursuant to Labor Code section 1725.5 in response to a solicitation shall not be grounds for filing a bid protest or grounds for considering the bid non-responsive provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered subcontractor pursuant to Public Contract Code section 4107.

7.9.2. Contractor shall ensure that he or she has verified that all subcontractors used on this public work project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and Contractor shall provide proof of registration for themselves and all listed subcontractors to the City at the time of bid or proposal due date or upon request.

7.10. Stop Order. For Contractor or its subcontractors engaging in the performance of any public work contract without having been registered in violation of Labor Code sections 1725.5 or 1771.1, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered contractors or unregistered subcontractor(s) on ALL public works until the unregistered contractor or unregistered subcontractor(s) is registered. Failure to observe a stop order is a misdemeanor.

7.11. List of all Subcontractors. The Contractor shall provide the list of subcontractors (regardless of tier), along with their DIR registration numbers, utilized on this Contract prior to any work being performed; and the Contractor shall provide a complete list of all subcontractors with each invoice. Additionally, Contractor shall provide the City with a complete list of all subcontractors (regardless of tier) utilized on this contract within ten working days of the completion of the contract, along with their DIR registration numbers. The City shall withhold final payment to Construction Management Professional until at least thirty (30) days after this information is provided to the City

7.12. Exemptions for Small Projects. There are limited exemptions for installation, alteration, demolition, or repair work done on projects of \$25,000 or less. The Contractor shall still comply with Labor Code sections 1720 et. seq. The only recognized exemptions are listed below:

7.12.1. Registration. The Contractor will not be required to register with the DIR for small projects. (Labor Code section 1771.1)

7.12.2. Certified Payroll Records. The records required in Labor Code section 1776 shall be required to be kept and submitted to the City of San Diego, but will not be required to be submitted online with the DIR directly. The Contractor will need to keep those records for at least three years following the completion of the Contract. (Labor Code section 1771.4).

7.12.3.List of all Subcontractors. The Contractor shall not be required to hire only registered subcontractors and is exempt from submitting the list of all subcontractors that is required in section 7.11 above. (Labor code section 1773.3).

8. REFERENCE STANDARDS: The terms of the Grant (Exhibit N) shall take precedence over any reference standard to the extent there is any conflict. Except as otherwise noted or specified, the Work shall be completed in accordance with the following standards:

Title	Edition	Document Number
Standard Specifications for Public Works Construction ("The GREENBOOK") http://www.greenbookspecs.org/	2018	PWPI010119-01
City of San Diego Standard Specifications for Public Works Construction ("The WHITEBOOK")* https://www.sandiego.gov/ecp/edocref/greenbook	2018	PWPI010119-02
City of San Diego Standard Drawings* https://www.sandiego.gov/ecp/edocref/standarddraw	2018	PWPI010119-03
Citywide Computer Aided Design and Drafting (CADD) Standards https://www.sandiego.gov/ecp/edocref/drawings	2018	PWPI010119-04
California Department of Transportation (CALTRANS) Standard Specifications https://dot.ca.gov/programs/design/ccs-standard-plans-and-standard-specifications	2018	PWPI030119-05
CALTRANS Standard Plans https://dot.ca.gov/programs/design/ccs-standard-plans-and-standard-specifications	2018	PWPI030119-06
California Manual on Uniform Traffic Control Devices Revision 5 (CA MUTCD 2014 Rev 5) http://www.dot.ca.gov/programs/safety-programs/camutcd/camutcd-rev5	2014	PWPI042220-09
<p>NOTE: *Available online under Engineering Documents and References at: https://www.sandiego.gov/ecp/edocref/ *Electronic updates to the Standard Drawings may also be found in the link above</p>		

9. INSURANCE REQUIREMENTS:

9.1. All certificates of insurance and endorsements required by the contract are to be provided upon issuance of the City's Notice of Intent to Award letter.

9.2. Refer to sections 5-4, "INSURANCE" of the Supplementary Special Provisions (SSP) for the insurance requirements which must be met.

10. SUBCONTRACTOR INFORMATION:

10.1. LISTING OF SUBCONTRACTORS. In accordance with the requirements provided in the "Subletting and Subcontracting Fair Practices Act" of the California Public Contract Code, the Bidder shall provide the **NAME** and **ADDRESS** of each Subcontractor who will perform work, labor, render services or who specially fabricates and installs a portion [type] of the work or improvement, in an amount in excess of 0.5% of the Contractor's total Bid. The Bidder shall also state within the description, whether the subcontractor is a

CONSTRUCTOR, CONSULTANT or SUPPLIER. The Bidder shall state the **DIR REGISTRATION NUMBER** for all subcontractors and shall further state within the description, the **PORTION** of the work which will be performed by each subcontractor under this Contract. The Contractor shall list only one Subcontractor for each portion of the Work. The **DOLLAR VALUE** of the total Bid to be performed shall be stated for all subcontractors listed. The Bidder's attention is directed to the Special Provisions - General; Paragraph 3-2, "SELF-PERFORMANCE", which stipulates the percent of the Work to be performed with the Bidders' own forces. The Bidder shall list all SLBE, ELBE, DBE, DVBE, MBE, WBE, OBE, SDB, WoSB, HUBZone, and SDVOSB Subcontractors for which Bidders are seeking recognition towards achieving any mandatory, voluntary (or both) subcontracting participation goals.

Additionally, pursuant to California Senate Bill 96 and in accordance with the requirements of Labor Code sections 1771.1 and 1725.5, by submitting a bid or proposal to the City, Contractor is certifying that he or she has verified that all subcontractors used on this public work project are registered with the California Department of Industrial Relations (DIR). **The Bidder shall provide the name, address, license number, DIR registration number of any Subcontractor – regardless of tier** - who will perform work, labor, render services or specially fabricate and install a portion [type] of the work or improvement pursuant to the contract.

- 10.2. LISTING OF SUPPLIERS.** Any Bidder seeking the recognition of Suppliers of equipment, materials, or supplies obtained from third party Suppliers towards achieving any mandatory or voluntary (or both) subcontracting participation goals shall provide, at a minimum, the **NAME, LOCATION (CITY), DIR REGISTRATION NUMBER** and the **DOLLAR VALUE** of each supplier. The Bidder will be credited up to 60% of the amount to be paid to the Suppliers for materials and supplies unless vendor manufactures or substantially alters materials and supplies, in which case, 100% will be credited. The Bidder is to indicate within the description whether the listed firm is a supplier or manufacturer. If no indication is provided, the listed firm will be credited at 60% of the listed dollar value for purposes of calculating the Subcontractor Participation Percentage.
- 11. SUBMITTAL OF "OR EQUAL" ITEMS:** See 4-6, "Trade Names or Equals."
- 12. SUBCONTRACT LIMITATIONS:** The Bidder's attention is directed to Standard Specifications for Public Works Construction, Section 3-2, "SELF-PERFORMANCE", which requires the Contractor to perform not less than the amount therein stipulated with its own forces. Failure to comply with these requirements shall render the Bid non-responsive and ineligible for award.
- 13. PLANS AND SPECIFICATIONS:** When provided by the City, questions about the meaning or intent of the Contract Documents relating to the scope of Work and technical nature shall be directed to the City's Project Manager prior to commencement of work. Interpretations or clarifications considered necessary by the City in response to such questions will be issued in writing. Oral and other interpretations or clarifications will be without legal effect. Any questions related to this proposal shall be addressed to the, Engineering & Capital Projects Department, Contracts Division, 525 B Street, Suite 750, San Diego, California, 92101, Telephone No. (619) 533-3450.
- 14. SAN DIEGO BUSINESS TAX CERTIFICATE:** All Contractors, including Subcontractors, not already having a City of San Diego Business Tax Certificate for the work contemplated shall secure the appropriate certificate from the City Treasurer, Civic Center Plaza, first floor, before the Contract can be executed.

- 15. PROPOSAL FORMS:** The signature of each person signing may be in longhand or in electronic format as specified by the City. The Contractor shall furnish evidence of its corporate existence and evidence that the officer signing the Contract and bond for the corporation is duly authorized to do so.
- 15.1.** The Bidder, by submitting electronically, agrees to and certifies under penalty of perjury under the laws of the State of California, that the certification, forms and affidavits submitted as part of this contract are true and correct.
- 16. CITY'S RIGHTS RESERVED:** The City reserves the right to cancel this request for proposal at any time, and further reserves the right to reject submitted proposals, without giving any reason for such action, at its sole discretion and without liability. Costs incurred by the Contractor as a result of preparing its proposal shall be the sole responsibility of the Contractor.
- 17. AWARD OF CONTRACT:**
- 17.1.** Pursuant to San Diego Municipal Code § 22.3016, this contract may be awarded to a contractor without competitive bidding when strict compliance with a competitive process would be unavailing or would not produce an advantage, and when soliciting bids or proposals would therefore be undesirable, impractical, or impossible.
- 17.2.** The City of San Diego reserves the right to reject the proposal from the contractor when such rejection is in the best interest of the City.
- 18. THE CONTRACT:** The Contractor shall execute a written contract with the City of San Diego and furnish good and approved bonds and insurance documents specified in 1-7.2, "CONTRACT BONDS," 5-4.2, "GENERAL LIABILITY INSURANCE," and 5-4.3 "WORKERS' COMPENSATION INSURANCE" within **3 Working Days** after receipt by the Contractor of a form of contract for execution unless an extension of time is granted to the Contractor in writing. Bonds shall be in amount of the Contract Price for the Work included in the Bid.
- The Contract shall be made in the form adopted by the City, which includes the provision that no claim or suit whatsoever shall be made or brought by Contractor against any officer, agent, or employee of the City for or on account of anything done or omitted to be done in connection with this contract, nor shall any such officer, agent, or employee be liable hereunder. If the Contractor fails to enter into the contract as herein provided, the award may be annulled. An award may be made to the next contractor on the shortlist who shall fulfill every stipulation embraced herein as if it were the party to whom the first award was made.
- The Contractor shall furnish evidence of its corporate existence and evidence that the officer signing the Contract and bond for the corporation is duly authorized to do so.
- 19. EXAMINATION OF PLANS, SPECIFICATIONS AND SITE OF WORK:** The Contractor shall examine carefully the Project Site, the Plans and Specifications, other materials as described in the Special Provisions, Section 3-9 "TECHNICAL STUDIES AND SUBSURFACE DATA", and the proposal forms. The signing of the Contract shall be conclusive evidence that the Contractor has investigated and is satisfied as to the conditions to be encountered, as to the character, quality, and scope of Work, the quantities of materials to be furnished, and as to the requirements of the Contract Documents.

- 20. CITY STANDARD PROVISIONS.** This contract is subject to the following standard provisions. See The WHITEBOOK for details.
- 20.1.** The City of San Diego Resolution No. R-277952 adopted on May 20, 1991 for a Drug-Free Workplace.
 - 20.2.** The City of San Diego Resolution No. R-282153 adopted on June 14, 1993 related to the Americans with Disabilities Act.
 - 20.3.** The City of San Diego Municipal Code §22.3004 for Pledge of Compliance.
 - 20.4.** The City of San Diego's Labor Compliance Program and the State of California Labor Code §§1771.5(b) and 1776.
 - 20.5.** Sections 1777.5, 1777.6, and 1777.7 of the State of California Labor Code concerning the employment of apprentices by contractors and subcontractors performing public works contracts.
 - 20.6.** The City's Equal Benefits Ordinance (EBO), Chapter 2, Article 2, Division 43 of The San Diego Municipal Code (SDMC).
 - 20.7.** The City's Information Security Policy (ISP) as defined in the City's Administrative Regulation 90.63.

AGREEMENT

**FOR
CONSTRUCTION SERVICES
BETWEEN
THE CITY OF SAN DIEGO
AND
CYPRESS ENVIROSYSTEMS, INC.**

This sole-source construction contract is made and entered into between THE CITY OF SAN DIEGO, a municipal corporation, herein called "City" and **CYPRESS ENVIROSYSTEMS, INC.**, herein called "Contractor" for the purpose of designing (when required) AND **PURCHASE AND INSTALLATION OF DDC THERMOSTATS AT CIVIC CENTER COMPLEX, CEC** Grant No. **LGC-16-002**, in the amount of **\$366,384.00** at the direction of the City Engineer. The City and the Contractor are referred to herein as the "Parties."

RECITALS

- A. The City desires to construct the project identified in Section 1, Description of Work.
- B. The City desires to contract with a single entity for Construction Services, as set forth in this agreement.
- C. The City has selected the Sole-Source Contractor to perform, either directly or with Subcontracts hereinafter defined, the design, engineering, and construction services set forth in this agreement and the Contract Documents.
- D. The Contractor is ready, willing, and able to perform the construction services required as specified in the Scope of Work and Services section of this agreement and in accordance with the terms and conditions of this agreement and under the direction of the Engineer.
- E. The parties intend that the Work be completed in complete compliance with the requirements of CEC Grant No. 2016-002 (Exhibit N).

In consideration of the above recitals and the mutual covenants and conditions set forth herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby set forth their mutual covenants and understandings as follows:

AGREEMENT

- A. The above referenced recitals are true and correct and are incorporated into this agreement by this reference.
- B. Exhibits referenced in this agreement are incorporated into the Agreement by this reference.

- C. For such performances, the City shall pay to Contractor the amounts set forth at the times and in the manner and with such additions or deductions as are provided for in this contract, and the Contractor shall accept such payment in full satisfaction of all claims incident to such performances.
- D. This agreement incorporates the Standard Specifications for Public Works Construction (The 2018 GREENBOOK), including those amendments set forth in the City of San Diego Supplement (The 2018 WHITEBOOK). All changes, additions, or both are stated herein and all other provisions remain unchanged.
- E. The Contractor shall comply with City's Equal Opportunity Contracting Program Requirements set forth in the Contract Documents. See The WHITEBOOK Part 0.
- F. The Contractor, including Subcontractors, not already having a City of San Diego Business Tax Certificate for the work contemplated shall secure the appropriate certificate from the City Treasurer, Civic Center Plaza, first floor, before the Agreement can be executed.
- G. Upon award, amendment, renewal, or extension of such contracts, the Contractors shall complete a Pledge of Compliance attesting under penalty of perjury that they complied with the requirements of City Municipal Code §22.3004.
- H. The Contractor shall ensure that all Subcontractors complete a Pledge of Compliance attesting under penalty of perjury that they complied with the requirements of this section. The Contractor shall include in each subcontract agreement, language which requires Subcontractors to abide by the provisions of City Municipal Code §22.3004.
- I. The Contractor's attention is directed to the provisions of the State of California Labor Code §1776 (Stats. 1978, Ch. 1249). The Contractor shall be responsible for the compliance with these provisions by Subcontractors.
- J. This contract is effective as of the date all conditions precedent have been fulfilled (registration with the Department of Industrial Relations, provision of insurance and bond) and the City issues the Contractor a written notice to proceed (NTP).
- K. The Contractor shall complete the work to be performed under this agreement and shall achieve Acceptance within the specified number of Working Days stated in Section 3 herein, from the NTP unless authorized otherwise by the Engineer. Time is of essence for the completion of the Work and the Project has critical milestones to be met as described herein.
- L. This contract is for a firm price including Lump Sum and Unit Price items. The City shall pay the Contractor for performance of the Work in accordance with Section 7, "Measurement and Payment" of the specifications.
- M. During the final design process (if any), if the Contractor modifies the Project such that a revision of the environmental document is required, the Contractor shall be responsible for all work required for implementing a revision, including preparation of revised documentation and coordination with City staff. Work shall not proceed on the project until the environmental requirements are met to

the satisfaction of the City. There shall be no additional time allowed in the contract for processing and approval of revised permit documents.

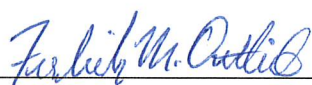
- N. Prior to the issuance of the NTP, or as required by the City, the Contractor shall:
- a) file surety bonds with the City to be approved by the City in the amounts and for the purposes noted herein or as may be specified in the Supplemental Special Provisions, and
 - b) Obtain the required insurance in accordance with 5-4, "INSURANCE", and any additional insurance as may be specified in the Supplemental Special Provisions.

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by and through its Mayor or designee, pursuant to the contract provisions of City Charter §94 authorizing such execution, and by the Contractor.

THE CITY OF SAN DIEGO

APPROVED AS TO FORM

By 

Mara W. Elliott, City Attorney
By 

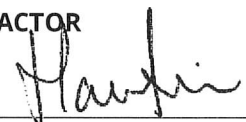
Print Name: Stephen Samara
Principal Contract Specialist
Engineering & Capital Projects Department

Print Name: FREDERICK M. ORTLIEB
Deputy City Attorney

Date: 2/24/2021

Date: FEBRUARY 24, 2021

CONTRACTOR

By 

Print Name: Harry Sim

Title: CEO

Date: 5 February, 2021

City of San Diego License No.: Applied for on 2/5/2021

State Contractor's License No.: 1000640

PERFORMANCE BOND AND LABOR AND MATERIALMEN'S BOND

FAITHFUL PERFORMANCE BOND AND LABOR AND MATERIALMEN'S BOND:

Cypress Envirosystems, Inc. _____, a corporation, as principal, and Harco National Insurance Company _____, a corporation authorized to do business in the State of California, as Surety, hereby obligate themselves, their successors and assigns, jointly and severally, to The City of San Diego a municipal corporation in the sum of Three Hundred Sixty Six Thousand Three Hundred Eighty Four Dollars and Zero Cents (\$366,384.00) for the faithful performance of the annexed contract, and in the sum of Three Hundred Sixty Six Thousand Three Hundred Eighty Four Dollars and Zero Cents (\$366,384.00), for the benefit of laborers and materialmen designated below.

Conditions:

If the Principal shall faithfully perform the annexed contract with the City of San Diego, California, then the obligation herein with respect to a faithful performance shall be void; otherwise it shall remain in full force.

If the Principal shall promptly pay all persons, firms and corporations furnishing materials for or performing labor in the execution of this contract, and shall pay all amounts due under the California Unemployment Insurance Act then the obligation herein with respect to laborers and materialmen shall be void; otherwise it shall remain in full force.

The obligation herein with respect to laborers and materialmen shall inure to the benefit of all persons, firms and corporations entitled to file claims under the provisions of Article 2. Claimants, (iii) public works of improvement commencing with Civil Code Section 9100 of the Civil Code of the State of California.

Changes in the terms of the annexed contract or specifications accompanying same or referred to therein shall not affect the Surety's obligation on this bond, and the Surety hereby waives notice of same.

The Surety shall pay reasonable attorney's fees should suit be brought to enforce the provisions of this bond.

The Surety expressly agrees that the City of San Diego may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Principal.

The Surety shall not utilize Principal in completing the improvements and work specified in the Agreement, nor shall Surety accept a bid from Principal for completion of the improvements and work specified in the Agreement if the City of San Diego, when declaring the Principal in default, notifies Surety of the City of San Diego's objection to Principal's further participation in the completion of the improvements and work specified in the Agreement.

PERFORMANCE BOND AND LABOR AND MATERIALMEN'S BOND (Continued)

Dated February 10, 2021

Approved as to Form

Cypress Envirosystems, Inc.

By Principal
Harry Sim

Harry Sim

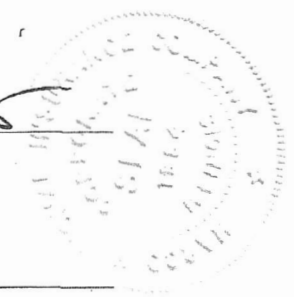
Printed Name of Person Signing for Principal

Mara W. Elliott, City Attorney

By Faith M. Cantale
Deputy City Attorney

Harco National Insurance Company

By Surety
Nancy L. Wallis
Attorney-in-fact



Approved:

By Stephen Samara
Stephen Samara
Principal Contract Specialist
Engineering & Capital Projects Department

2999 Oak Road, STE 820

Local Address of Surety

Walnut Creek, CA 94597

Local Address (City, State) of Surety

925-256-8760

Local Telephone No. of Surety

Premium \$ \$4,961.00

Bond No. 0789801

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of Sonoma)

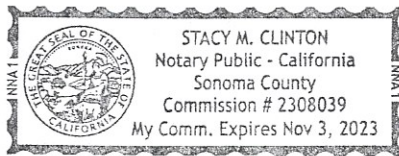
On February 10, 2021 before me, Stacy M. Clinton, Notary Public,
Date Here Insert Name and Title of the Officer

personally appeared Nancy L. Wallis
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Handwritten Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

Corporate Officer — Title(s): _____

Partner — Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer Is Representing: _____

Signer's Name: _____

Corporate Officer — Title(s): _____

Partner — Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer Is Representing: _____

Bond # 0789801

POWER OF ATTORNEY
HARCO NATIONAL INSURANCE COMPANY
INTERNATIONAL FIDELITY INSURANCE COMPANY

Member companies of IAT Insurance Group, Headquartered: 702 Oberlin Road, Raleigh, North Carolina 27605

KNOW ALL MEN BY THESE PRESENTS: That **HARCO NATIONAL INSURANCE COMPANY**, a corporation organized and existing under the laws of the State of Illinois, and **INTERNATIONAL FIDELITY INSURANCE COMPANY**, a corporation organized and existing under the laws of the State of New Jersey, and having their principal offices located respectively in the cities of Rolling Meadows, Illinois and Newark, New Jersey, do hereby constitute and appoint

NATALIE ANN HORDER, TAMMY CARPENTER, K. DIXON WRIGHT, NANCY L. WALLIS, MARK W. STOKES,
CATHERINE A. PINNEY, STACY M. CLINTON, KENNETH A. KEENEY, LACEY TORKELESON SMITH
Petaluma, CA

their true and lawful attorney(s)-in-fact to execute, seal and deliver for and on its behalf as surety, any and all bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof, which are or may be allowed, required or permitted by law, statute, rule, regulation, contract or otherwise, and the execution of such instrument(s) in pursuance of these presents, shall be as binding upon the said **HARCO NATIONAL INSURANCE COMPANY** and **INTERNATIONAL FIDELITY INSURANCE COMPANY**, as fully and amply, to all intents and purposes, as if the same had been duly executed and acknowledged by their regularly elected officers at their principal offices.

This Power of Attorney is executed, and may be revoked, pursuant to and by authority of the By-Laws of **HARCO NATIONAL INSURANCE COMPANY** and **INTERNATIONAL FIDELITY INSURANCE COMPANY** and is granted under and by authority of the following resolution adopted by the Board of Directors of **INTERNATIONAL FIDELITY INSURANCE COMPANY** at a meeting duly held on the 13th day of December, 2018 and by the Board of Directors of **HARCO NATIONAL INSURANCE COMPANY** at a meeting held on the 13th day of December, 2018.

"RESOLVED, that (1) the Chief Executive Officer, President, Executive Vice President, Senior Vice President, Vice President, or Secretary of the Corporation shall have the power to appoint, and to revoke the appointments of, Attorneys-in-Fact or agents with power and authority as defined or limited in their respective powers of attorney, and to execute on behalf of the Corporation and affix the Corporation's seal thereto, bonds, undertakings, recognizances, contracts of indemnity and other written obligations in the nature thereof or related thereto; and (2) any such Officers of the Corporation may appoint and revoke the appointments of joint-control custodians, agents for acceptance of process, and Attorneys-in-fact with authority to execute waivers and consents on behalf of the Corporation; and (3) the signature of any such Officer of the Corporation and the Corporation's seal may be affixed by facsimile to any power of attorney or certification given for the execution of any bond, undertaking, recognizance, contract of indemnity or other written obligation in the nature thereof or related thereto, such signature and seals when so used whether heretofore or hereafter, being hereby adopted by the Corporation as the original signature of such officer and the original seal of the Corporation, to be valid and binding upon the Corporation with the same force and effect as though manually affixed."

IN WITNESS WHEREOF, **HARCO NATIONAL INSURANCE COMPANY** and **INTERNATIONAL FIDELITY INSURANCE COMPANY** have each executed and attested these presents on this 31st day of December, 2018



STATE OF NEW JERSEY
County of Essex

STATE OF ILLINOIS
County of Cook



Kenneth Chapman
Executive Vice President, Harco National Insurance Company
and International Fidelity Insurance Company

On this 31st day of December, 2018, before me came the individual who executed the preceding instrument, to me personally known, and, being by me duly sworn, said he is the therein described and authorized officer of **HARCO NATIONAL INSURANCE COMPANY** and **INTERNATIONAL FIDELITY INSURANCE COMPANY**; that the seals affixed to said instrument are the Corporate Seals of said Companies; that the said Corporate Seals and his signature were duly affixed by order of the Boards of Directors of said Companies.



IN TESTIMONY WHEREOF, I have hereunto set my hand affixed my Official Seal, at the City of Newark, New Jersey the day and year first above written.

Shirelle A. Outley a Notary Public of New Jersey
My Commission Expires April 04, 2023

CERTIFICATION

I, the undersigned officer of **HARCO NATIONAL INSURANCE COMPANY** and **INTERNATIONAL FIDELITY INSURANCE COMPANY** do hereby certify that I have compared the foregoing copy of the Power of Attorney and affidavit, and the copy of the Sections of the By-Laws of said Companies as set forth in said Power of Attorney, with the originals on file in the home office of said companies, and that the same are correct transcripts thereof, and of the whole of the said originals, and that the said Power of Attorney has not been revoked and is now in full force and effect.

IN TESTIMONY WHEREOF, I have hereunto set my hand on this day, February 10, 2021

Irene Martins, Assistant Secretary

AGREEMENT

**FOR
CONSTRUCTION SERVICES
BETWEEN
THE CITY OF SAN DIEGO
AND
CYPRESS ENVIROSYSTEMS, INC.**

This sole-source construction contract is made and entered into between THE CITY OF SAN DIEGO, a municipal corporation, herein called "City" and **CYPRESS ENVIROSYSTEMS, INC.**, herein called "Contractor" for the purpose of designing (when required) AND **PURCHASE AND INSTALLATION OF DDC THERMOSTATS AT CIVIC CENTER COMPLEX, CEC Grant No. LGC-16-002**, in the amount of **\$366,384.00** at the direction of the City Engineer. The City and the Contractor are referred to herein as the "Parties."

RECITALS

- A. The City desires to construct the project identified in Section 1, Description of Work.
- B. The City desires to contract with a single entity for Construction Services, as set forth in this agreement.
- C. The City has selected the Sole-Source Contractor to perform, either directly or with Subcontracts hereinafter defined, the design, engineering, and construction services set forth in this agreement and the Contract Documents.
- D. The Contractor is ready, willing, and able to perform the construction services required as specified in the Scope of Work and Services section of this agreement and in accordance with the terms and conditions of this agreement and under the direction of the Engineer.
- E. The parties intend that the Work be completed in complete compliance with the requirements of CEC Grant No. 2016-002 (Exhibit N).

In consideration of the above recitals and the mutual covenants and conditions set forth herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby set forth their mutual covenants and understandings as follows:

AGREEMENT

- A. The above referenced recitals are true and correct and are incorporated into this agreement by this reference.
- B. Exhibits referenced in this agreement are incorporated into the Agreement by this reference.
- C. For such performances, the City shall pay to Contractor the amounts set forth at the times and in the manner and with such additions or deductions as are provided for in this contract, and the Contractor shall accept such payment in full satisfaction of all claims incident to such performances.

- D. This agreement incorporates the Standard Specifications for Public Works Construction (The 2018 GREENBOOK), including those amendments set forth in the City of San Diego Supplement (The 2018 WHITEBOOK). All changes, additions, or both are stated herein and all other provisions remain unchanged.
- E. The Contractor shall comply with City's Equal Opportunity Contracting Program Requirements set forth in the Contract Documents. See The WHITEBOOK Part 0.
- F. The Contractor, including Subcontractors, not already having a City of San Diego Business Tax Certificate for the work contemplated shall secure the appropriate certificate from the City Treasurer, Civic Center Plaza, first floor, before the Agreement can be executed.
- G. Upon award, amendment, renewal, or extension of such contracts, the Contractors shall complete a Pledge of Compliance attesting under penalty of perjury that they complied with the requirements of City Municipal Code §22.3004.
- H. The Contractor shall ensure that all Subcontractors complete a Pledge of Compliance attesting under penalty of perjury that they complied with the requirements of this section. The Contractor shall include in each subcontract agreement, language which requires Subcontractors to abide by the provisions of City Municipal Code §22.3004.
- I. The Contractor's attention is directed to the provisions of the State of California Labor Code §1776 (Stats. 1978, Ch. 1249). The Contractor shall be responsible for the compliance with these provisions by Subcontractors.
- J. This contract is effective as of the date all conditions precedent have been fulfilled (registration with the Department of Industrial Relations, provision of insurance and bond) and the City issues the Contractor a written notice to proceed (NTP).
- K. The Contractor shall complete the work to be performed under this agreement and shall achieve Acceptance within the specified number of Working Days stated in Section 3 herein, from the NTP unless authorized otherwise by the Engineer. Time is of essence for the completion of the Work and the Project has critical milestones to be met as described herein.
- L. This contract is for a firm price including Lump Sum and Unit Price items. The City shall pay the Contractor for performance of the Work in accordance with Section 7, "Measurement and Payment" of the specifications.
- M. During the final design process (if any), if the Contractor modifies the Project such that a revision of the environmental document is required, the Contractor shall be responsible for all work required for implementing a revision, including preparation of revised documentation and coordination with City staff. Work shall not proceed on the project until the environmental requirements are met to the satisfaction of the City. There shall be no additional time allowed in the contract for processing and approval of revised permit documents.
- N. Prior to the issuance of the NTP, or as required by the City, the Contractor shall:
 - a) file surety bonds with the City to be approved by the City in the amounts and for the purposes noted herein or as may be specified in the Supplemental Special Provisions, and
 - b) Obtain the required insurance in accordance with 5-4, "INSURANCE", and any additional insurance as may be specified in the Supplemental Special Provisions.

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego, acting by and through its Mayor or designee, pursuant to the contract provisions of City Charter §94 authorizing such execution, and by the Contractor.

THE CITY OF SAN DIEGO

APPROVED AS TO FORM

Mara W. Elliott, City Attorney

By _____

By _____

Print Name: _____

Print Name: _____

Mayor or designee

Deputy City Attorney

Date: _____

Date: _____

CONTRACTOR

By _____

Print Name: _____

Title: _____

Date: _____

City of San Diego License No.: _____

State Contractor's License No.: _____

EXHIBIT A

DRUG-FREE WORKPLACE CERTIFICATION

CONTRACTOR CERTIFICATION

DRUG-FREE WORKPLACE

I hereby certify that I am familiar with the requirements of San Diego City Council Policy No. 100-17 regarding Drug-Free Workplace as outlined in the WHITEBOOK, Section 5-1.3, "Drug-Free Workplace", of the project specifications, and that;

This company has in place a drug-free workplace program that complies with said policy. I further certify that each subcontract agreement for this project contains language which indicates the subcontractor's agreement to abide by the provisions of subdivisions a) through c) of the policy as outlined.

EXHIBIT B

AMERICANS WITH DISABILITIES ACT (ADA) COMPLIANCE CERTIFICATION

CONTRACTOR CERTIFICATION

AMERICANS WITH DISABILITIES ACT (ADA) COMPLIANCE CERTIFICATION

I hereby certify that I am familiar with the requirements of San Diego City Council Policy No. 100-4 regarding the Americans With Disabilities Act (ADA) outlined in the WHITEBOOK, Section 5-1.2, "California Building Code, California Code of Regulations Title 24 and Americans with Disabilities Act", of the project specifications, and that:

This company has in place workplace program that complies with said policy. I further certify that each subcontract agreement for this project contains language which indicates the subcontractor's agreement to abide by the provisions of the policy as outlined.

EXHIBIT C

CONTRACTORS STANDARDS – PLEDGE OF COMPLIANCE

CONTRACTOR CERTIFICATION

CONTRACTOR STANDARDS – PLEDGE OF COMPLIANCE

I declare under penalty of perjury that I am authorized to make this certification on behalf of the company submitting this bid/proposal, that as Contractor, I am familiar with the requirements of City of San Diego Municipal Code § 22.3004 regarding Contractor Standards as outlined in the WHITEBOOK, Section 5-1.4, ("Contractor Standards and Pledge of Compliance"), of the project specifications, and that Contractor has complied with those requirements.

I further certify that each of the Contractor's subcontractors has completed a Pledge of Compliance attesting under penalty of perjury of having complied with City of San Diego Municipal Code § 22.3004.

EXHIBIT D

EQUAL BENEFITS ORDINANCE CERTIFICATION

CONTRACTOR CERTIFICATION

EQUAL BENEFITS ORDINANCE CERTIFICATION

I declare under penalty of perjury that I am familiar with the requirements of and in compliance with the City of San Diego Municipal Code § 22.4300 regarding Equal Benefits Ordinance.

EXHIBIT E

AFFIDAVIT OF DISPOSAL

AFFIDAVIT OF DISPOSAL

(To be submitted upon completion of Construction pursuant to the contracts Certificate of Completion)

WHEREAS, on the _____ DAY OF _____, 2_____ the _____ undersigned entered into and executed a contract with the City of San Diego, a municipal corporation, for:

Purchase and Installation of DDC Thermostats at Civic Center Complex

(Project Title)

as particularly described in said contract and identified as Bid No. **K-21-2007-SLS-2**; SAP No. **IO 21004856**; and **WHEREAS**, the specification of said contract requires the Contractor to affirm that "all brush, trash, debris, and surplus materials resulting from this project have been disposed of in a legal manner"; and **WHEREAS**, said contract has been completed and all surplus materials disposed of:

NOW, THEREFORE, in consideration of the final payment by the City of San Diego to said Contractor under the terms of said contract, the undersigned Contractor, does hereby affirm that all surplus materials as described in said contract have been disposed of at the following location(s)

and that they have been disposed of according to all applicable laws and regulations.

Dated this _____ DAY OF _____, _____.

By: _____
Contractor

ATTEST:

State of _____ County of _____

On this _____ DAY OF _____, 2_____, before the undersigned, a Notary Public in and for said County and State, duly commissioned and sworn, personally appeared _____ known to me to be the _____ Contractor named in the foregoing Release, and whose name is subscribed thereto, and acknowledged to me that said Contractor executed the said Release.

Notary Public in and for said County and State

EXHIBIT F

**NON-COLLUSION AFFIDAVIT TO BE EXECUTED BY BIDDER AND SUBMITTED WITH
BID UNDER 23 UNITED STATES CODE 112 AND PUBLIC CONTRACT CODE 7106**

**NON-COLLUSION AFFIDAVIT TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID
UNDER 23 UNITED STATES CODE 112 AND PUBLIC CONTRACT CODE 7106**

State of California

County of San Diego

The bidder, being first duly sworn, deposes and says that he or she is authorized by the party making the foregoing bid that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

EXHIBIT G

CONTRACTOR'S CERTIFICATION OF PENDING ACTIONS

CONTRACTOR'S CERTIFICATION OF PENDING ACTIONS

As part of its bid or proposal (Non-Price Proposal in the case of Design-Build contracts), the Bidder shall provide to the City a list of all instances within the past 10 years where a complaint was filed or pending against the Bidder in a legal or administrative proceeding alleging that Bidder discriminated against its employees, subcontractors, vendors or suppliers, and a description of the status or resolution of that complaint, including any remedial action taken.

CHECK ONE BOX ONLY.

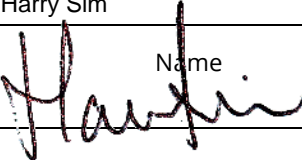
- The undersigned certifies that within the past 10 years the Bidder has NOT been the subject of a complaint or pending action in a legal administrative proceeding alleging that Bidder discriminated against its employees, subcontractors, vendors or suppliers.

- The undersigned certifies that within the past 10 years the Bidder has been the subject of a complaint or pending action in a legal administrative proceeding alleging that Bidder discriminated against its employees, subcontractors, vendors or suppliers. A description of the status or resolution of that complaint, including any remedial action taken and the applicable dates is as follows:

DATE OF CLAIM	LOCATION	DESCRIPTION OF CLAIM	LITIGATION (Y/N)	STATUS	RESOLUTION/REMEDIAL ACTION TAKEN

Contractor Name: Cypress Envirosystems, Inc.

Certified By Harry Sim Title CEO

 Name _____ Date 2/5/2021
Signature

USE ADDITIONAL FORMS AS NECESSARY

EXHIBIT H

MANDATORY DISCLOSURE OF BUSINESS INTERESTS FORM

Mandatory Disclosure of Business Interests Form

BIDDER/PROPOSER INFORMATION

Legal Name		DBA	
Cypress Envirosystems, Inc.			
Street Address	City	State	Zip
5883 Rue Ferrari, Suite 100		CA	95138
Contact Person, Title		Phone	Fax
Harry Sim, CEO		(408) 307-0922	

Provide the name, identity, and precise nature of the interest* of all persons who are directly or indirectly involved** in this proposed transaction (SDMC § 21.0103).

* The precise nature of the interest includes:

- the percentage ownership interest in a party to the transaction,
- the percentage ownership interest in any firm, corporation, or partnership that will receive funds from the transaction,
- the value of any financial interest in the transaction,
- any contingent interest in the transaction and the value of such interest should the contingency be satisfied, and
- any philanthropic, scientific, artistic, or property interest in the transaction.

** Directly or indirectly involved means pursuing the transaction by:

- communicating or negotiating with City officers or employees,
- submitting or preparing applications, bids, proposals or other documents for purposes of contracting with the City, or
- directing or supervising the actions of persons engaged in the above activity.

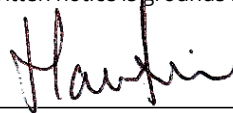
Name	Title/Position
Please see attached sheet	
City and State of Residence	Employer (if different than Bidder/Proposer)
Interest in the transaction	

Name	Title/Position
City and State of Residence	Employer (if different than Bidder/Proposer)
Interest in the transaction	

* Use Additional Pages if Necessary *

Under penalty of perjury under the laws of the State of California, I certify that I am responsible for the completeness and accuracy of the responses contained herein, and that all information provided is true, full and complete to the best of my knowledge and belief. I agree to provide written notice to the Mayor or Designee within five (5) business days if, at any time, I learn that any portion of this Mandatory Disclosure of Business Interests Form requires an updated response. Failure to timely provide the Mayor or Designee with written notice is grounds for Contract termination.

Harry Sim, CEO



2/5/2021

Print Name, Title

Signature

Date

Failure to sign and submit this form with the bid/proposal shall make the bid/proposal non-responsive. In the case of an informal solicitation, the contract will not be awarded unless a signed and completed Mandatory Disclosure of Business Interests Form is submitted.

EXHIBIT I

FORMS

LIST OF SUBCONTRACTORS

In accordance with the requirements of the "Subletting and Subcontracting Fair Practices Act", Section 4100, of the California Public Contract Code (PCC), the Bidder is to list below the name, address and license number of each Subcontractor who will perform work, labor, render services or specially fabricate and install a portion [type] of the work or improvement, in an amount of or in excess of 0.5% of the Contractor's total Bid. Failure to comply with this requirement may result in the Bid being rejected as non-responsive. The Contractor is to list only one Subcontractor for each portion of the Work. The Bidder's attention is directed to the Special Provisions - Section 3-2, "SELF-PERFORMANCE", which stipulates the percentage of the Work to be performed with the Bidder's own forces. The Bidder is to also list all SLBE, ELBE, DBE, DVBE, MBE, WBE, OBE, SDB, WoSB, HUBZone, and SDVOSB Subcontractors for which the Bidders are seeking recognition towards achieving any mandatory, voluntary, or both subcontracting participation percentages.

NAME, ADDRESS AND TELEPHONE NUMBER OF SUBCONTRACTOR	CONSTRUCTOR OR DESIGNER	DIR REGISTRATION NUMBER	SUBCONTRACTOR LICENSE NUMBER	TYPE OF WORK	DOLLAR VALUE OF SUBCONTRACT	MBE, WBE, DBE, DVBE, OBE, ELBE, SLBE, SDB, WoSB, HUBZone, OR SDVOSB [ⓐ]	WHERE CERTIFIED [ⓑ]	CHECK IF JOINT VENTURE PARTNERSHIP
Name: _____ Address: _____ City: _____ State: _____ Zip: _____ Phone: _____ Email: _____	not applicable							
Name: _____ Address: _____ City: _____ State: _____ Zip: _____ Phone: _____ Email: _____								

[ⓐ] As appropriate, Bidder shall identify Subcontractor as one of the following and shall include a valid proof of certification (except for OBE, SLBE and ELBE):

Certified Minority Business Enterprise	MBE	Certified Woman Business Enterprise	WBE
Certified Disadvantaged Business Enterprise	DBE	Certified Disabled Veteran Business Enterprise	DVBE
Other Business Enterprise	OBE	Certified Emerging Local Business Enterprise	ELBE
Certified Small Local Business Enterprise	SLBE	Small Disadvantaged Business	SDB
Woman-Owned Small Business	WoSB	HUBZone Business	HUBZone
Service-Disabled Veteran Owned Small Business	SDVOSB		

[ⓑ] As appropriate, Bidder shall indicate if Subcontractor is certified by:

City of San Diego	CITY	State of California Department of Transportation	CALTRANS
California Public Utilities Commission	CPUC		
State of California's Department of General Services	CADoGS	City of Los Angeles	LA
State of California	CA	U.S. Small Business Administration	SBA

The Bidder will not receive any subcontracting participation percentages if the Bidder fails to submit the required proof of certification.

NAMED EQUIPMENT/MATERIAL SUPPLIER LIST

NAME, ADDRESS AND TELEPHONE NUMBER OF VENDOR/SUPPLIER	MATERIALS OR SUPPLIES	DOLLAR VALUE OF MATERIAL OR SUPPLIES (MUST BE FILLED OUT)	SUPPLIER (Yes/No)	MANUFACTURER (Yes/No)	MBE, WBE, DBE, DVBE, OBE, ELBE, SLBE, SDB, WoSB, HUBZone, OR SDVOSB ^①	WHERE CERTIFIED ^②
Name: <u>Cypress Envirosystems, Inc.</u> Address: <u>5883 Rue Ferrari, Ste 100</u> City: <u>San Jose</u> State: <u>CA</u> Zip: <u>95138</u> Phone: <u>800-544-5411</u> Email: <u>harry.sim@cypressenvirosystems.com</u>	Thermostats and related wireless communication components	\$227,754	Yes	Yes	n/a	
Name: _____ Address: _____ City: _____ State: _____ Zip: _____ Phone: _____ Email: _____						

- ① As appropriate, Bidder shall identify Vendor/Supplier as one of the following and shall include a valid proof of certification (except for OBE,SLBE and ELBE):
- | | | | |
|---|--------|--|---------|
| Certified Minority Business Enterprise | MBE | Certified Woman Business Enterprise | WBE |
| Certified Disadvantaged Business Enterprise | DBE | Certified Disabled Veteran Business Enterprise | DVBE |
| Other Business Enterprise | OBE | Certified Emerging Local Business Enterprise | ELBE |
| Certified Small Local Business Enterprise | SLBE | Small Disadvantaged Business | SDB |
| Woman-Owned Small Business | WoSB | HUBZone Business | HUBZone |
| Service-Disabled Veteran Owned Small Business | SDVOSB | | |

- ② As appropriate, Bidder shall indicate if Vendor/Supplier is certified by:
- | | | | |
|--|--------|--|----------|
| City of San Diego | CITY | State of California Department of Transportation | CALTRANS |
| California Public Utilities Commission | CPUC | | |
| State of California's Department of General Services | CADoGS | City of Los Angeles | LA |
| State of California | CA | U.S. Small Business Administration | SBA |

The Bidder will not receive any subcontracting participation percentages if the Bidder fails to submit the required proof of certification.

DEBARMENT AND SUSPENSION CERTIFICATION

EFFECT OF DEBARMENT OR SUSPENSION
To promote integrity in the City's contracting processes and to protect the public interest, the City shall only enter into contracts with responsible bidders and contractors. In accordance with San Diego Municipal Code §22.0814 (a): <i>Bidders</i> and <i>contractors</i> who have been <i>debarred</i> or <i>suspended</i> are excluded from submitting bids, submitting responses to requests for proposal or qualifications, receiving <i>contract</i> awards, executing <i>contracts</i> , participating as a <i>subcontractor</i> , employee, agent or representative of another <i>person</i> contracting with the City.

As part of its bid or proposal (Non-Price Proposal in the case of Design-Build contracts), the Bidder shall provide to the City a list of Names of the Principal Individual owner(s)

The names of all persons interested in the foregoing proposal as Principals are as follows:

NAME	TITLE
Harry Sim	CEO

IMPORTANT NOTICE: If Bidder or other interested person is a corporation, state secretary, treasurer, and manager thereof; if a co-partnership, state true name of firm, also names of all individual co-partners composing firm; if Bidder or other interested person is an individual, state first and last names in full.

The Bidder, under penalty of perjury, certifies that, except as noted below, he/she or any person associated therewith in the capacity of owner, partner, director, officer, manager:

- Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal, State or local agency;
- has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal, State or local agency within the past 3 years;
- does not have a proposed debarment pending; and
- has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years.

If there are any exceptions to this certification, insert the exceptions in the following space.

Exceptions will be considered in determining bidder responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

Contractor Name: Cypress Envirosystems, Inc.

Certified By Harry Sim Title CEO


 Name _____
 Signature _____ Date 2/5/2021

NOTE: Providing false information may result in criminal prosecution or administrative sanctions.

Names of the Principal individual owner(s)
FOR SUBCONTRACTORS/SUPPLIERS/MANUFACTURERS

As part of its bid or proposal (Non-Price Proposal in the case of Design-Build contracts), the Bidder shall provide to the City a list of Names of the Principal Individual owner(s) for their subcontractor/supplier/manufacturers.

Please indicate if principal owner is serving in the capacity of **subcontractor, supplier, and/or manufacturer**:

SUBCONTRACTOR SUPPLIER MANUFACTURER

NAME	TITLE
Harry Sim	CEO

SUBCONTRACTOR SUPPLIER MANUFACTURER

NAME	TITLE

SUBCONTRACTOR SUPPLIER MANUFACTURER

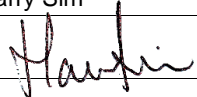
NAME	TITLE

SUBCONTRACTOR SUPPLIER MANUFACTURER

NAME	TITLE

Contractor Name: Cypress Envirosystems, Inc.

Certified By Harry Sim Name Title CEO

 Signature Date 2/5/2021

USE ADDITIONAL FORMS AS NECESSARY

EXHIBIT J

SUPPLEMENTARY SPECIAL PROVISIONS (SSP)

SUPPLEMENTARY SPECIAL PROVISIONS

The following Supplementary Special Provisions (SSP) modifies the following documents:

1. The **2018 Edition** of the Standard Specifications for Public Works Construction (The "GREENBOOK").
2. The **2018 Edition** of the City of San Diego Standard Specifications for Public Works Construction (The "WHITEBOOK"), including the following:
 - a) General Provisions (A) for all Construction Contracts.

PART 0 – EQUAL OPPORTUNITY CONTRACTING PROGRAM (EOCP)

SECTION A – GENERAL REQUIREMENTS

0-12 CONTRACT RECORDS AND REPORTS. To the "WHITEBOOK", DELETE in its entirety and SUBSTITUTE with the following:

1. You shall maintain records of all subcontracts and invoices from your Subcontractors and Suppliers for work on this project. Records shall show name, telephone number including area code, and business address of each Subcontractor, Supplier, and joint venture partner, and the total amount actually paid to each firm. Project relevant records, regardless of tier, may be periodically reviewed by the City.
2. You shall retain all records, books, papers, and documents pertinent to the Contract for a period of not less than 5 years after Notice of Completion and allow access to said records by the City's authorized representatives.
3. You shall submit the following reports using the City's web-based contract compliance (Prism® portal):
 - a) **Monthly Payment.** You shall submit Monthly Payment Reporting by the 10th day of the subsequent month. Incomplete and/or delinquent reporting may cause payment delays, non-payment of invoices, or both.
4. The records maintained under item 1, described above, shall be consolidated into a Final Summary Report, certified as correct by an authorized representative of the Contractor. The Final Summary Report shall include all subcontracting activities and be sent to the EOCP Program Manager prior to Acceptance. Failure to comply may result in assessment of liquidated damages or withholding of retention. The City will review and verify 100% of subcontract participation reported in the Final Summary Report prior to approval and release of final retention to you. In the event your Subcontractors are owed money for completed Work, the City may authorize payment to subcontractor via a joint check from the withheld retention.

SECTION 1 – GENERAL, TERMS, DEFINITIONS, ABBREVIATIONS, UNITS OF MEASURE, AND SYMBOLS

1-2 TERMS AND DEFINITIONS. To the "WHITEBOOK", items 43, 56, 69, and 102, DELETE in their entirety and SUBSTITUTE with the following:

43. **Field Order** - A Field Order is a written agreement by the Engineer to compensate you for Work items in accordance with 2-8, "EXTRA WORK" or 2-9, "CHANGED CONDITIONS". A Field Order does not change the Contract Price, Contract Time, or the scope intent of the Contract. The unused portion of the Field Order shall revert to the City upon Acceptance.
56. **Notice of Completion (NOC)** - A document recorded with the County of San Diego to signify that the Contract Work has been completed and accepted by the City.
69. **Punchlist** - A list of items of Work or corrections generated after a Walk-through that is conducted when you consider that the Work and Services are complete, and as verified by the Owner. The Punchlist may be completed in phases if defined in the Contract.
102. **Walk-through** - An inspection the City uses to verify the completion of the Project or phase of the Project and to generate a Punchlist prior to Acceptance.

To the "WHITEBOOK", item 54, "Normal Working Hours", ADD the following:

The **Normal Working Hours** are **7:00 AM** to **4:00 PM**.

To the "WHITEBOOK", ADD the following:

108. **Acceptance** – When all of the Contract Work, including all Punchlist items, is deemed officially complete by the City Asset Owning Department or Deputy City Engineer.
109. **Occupancy** – When the Owner deems a building is ready for use, the Owner will issue a certificate of Occupancy in writing.
110. **Substantial Completion** – When all Contract Work is deemed complete by the Contractor in writing, and as verified by the Owner. Substantial Completion may be completed in phases if defined in the Contract.

1-7.1.3 Requests for Information (RFI). To the "WHITEBOOK", DELETE in its entirety and SUBSTITUTE with the following:

9. Should You discover a conflict, omission, errors in the Contract Documents, differences with existing field conditions, or have any questions concerning interpretation or clarification of Contract Documents, or when you propose deviations to the standards or design, you shall submit a Request for Information (RFI) to the City regarding your question or clarification within **1 Working Day**.

10. Your RFI shall meet the following requirements:
 - a) All RFIs, whether by You or your Subcontractor or supplier at any tier, shall be submitted by You to the City.
 - b) RFIs shall be numbered sequentially.
 - c) You shall clearly and concisely set forth the single issue for which interpretation or clarification is sought, indicate Specification Section numbers, Contract Drawing numbers, and details, or other items involved, and state why a response is required from the City.
 - d) RFIs shall be submitted within **1 Working Day** in order that they may be adequately researched and answered before the response affects any critical activity of the Work.
 - e) Should You believe that a response to an RFI causes a change to the requirements of the Contract, You shall, before proceeding, give written notice to the City, indicating that You believe that City response to the RFI to be a Change Order. Failure to give such written notice within **5 Working Days** of receipt of the City's response to the RFI shall waive Your right to seek additional time or cost.
11. The City will respond to RFIs within **5 Working Days** unless the City notifies You in writing that a response will take longer. The **5 Working Days** shall begin when the RFI is received and dated by the City. Responses from the City will not change any requirement of the Contract unless so noted by the City in the response to the RFI. The City will not issue a Change Order for Extra Work or additional time when the issue raised in the RFI was due to your fault, neglect, or any unauthorized deviations from the project design or specifications.
12. If You proceed in resolving a conflict, omission, or any error in the Contract Documents without sending the City an RFI in accordance with the requirements stated above, the City may require You to remove such work at Your cost or back charge You the cost to remove this work.

1-7.2 Contract Bonds. To the "WHITEBOOK", item 1, DELETE in its entirety and SUBSTITUTE with the following:

1. Before execution of the Contract, file payment and performance bonds with the City to be approved by the Board in the amounts and for the purposes noted. Bonds shall be executed by a responsible surety as follows:
 - a) If the Work is being funded with state or local money, consistent with California Code of Civil Procedure §995.670, the Surety shall be an "admitted surety" authorized by the State of California Department of Insurance to transact surety insurance in the State.
 - b) If the Work is being funded with federal money, the Surety shall be listed in the U.S. Treasury Department Circular 570 and shall be in conformance with the specified Underwriting Limitations.

To the "WHITEBOOK", item 2, subsection "a", subsection "i", DELETE in its entirety and SUBSTITUTE with the following:

- i. A "Payment Bond" (Materials and Labor Bond) is optional. If no bond is submitted, no payment shall be made until 35 Calendar Days after Acceptance and any lien requirements have been fulfilled. If a bond is submitted, progress payments shall be made in accordance with these Specifications.

To the "WHITEBOOK", item 2, subsection "d", DELETE in its entirety and SUBSTITUTE with the following:

- d) For Contracts over \$100,000:
 - i. A "Payment Bond" (Materials and Labor Bond) for 100% of the Contract Price to satisfy claims of material Suppliers and of mechanics and laborers employed on the Work. You shall maintain the bond in full force and effect until Acceptance and until all claims for materials and labor are paid and shall otherwise comply with the Government Code.
 - ii. A "Faithful Performance Bond" for 100% of the Contract Price to guarantee faithful performance of Work, within the time prescribed and in a manner satisfactory to the City, that materials and workmanship shall be free from original or developed defects.

To the "WHITEBOOK", item 7, DELETE in its entirety and SUBSTITUTE with the following:

7. You shall require the Surety to mail its standard "Bond Status" form to the Engineer at the following address:

City of San Diego, Sustainability Department
Attn: Arwa Sayed
1200 Third Avenue, Floor 18
San Diego, CA 92101

SECTION 3 – CONTROL OF THE WORK

3-3 SUBCONTRACTORS. To the "WHITEBOOK", ADD the following:

6. When a Subcontractor fails to prosecute a portion of the Work in a manner satisfactory to the City, you shall remove such Subcontractor immediately upon written request of the City, and shall request approval of a replacement Subcontractor to perform the Work in accordance with California Public Contract Code (PCC), Subletting and Subcontracting, Section 4107, at no added cost to the City.

3-10 SURVEYING. To the "GREENBOOK" and "WHITEBOOK", DELETE in its entirety and SUBSTITUTE with the following:

3-10 SURVEYING (DESIGN-BID-BUILD).

3-10.1 General.

1. You shall provide all required site layout and general grade checking work not specified in 3-10.2, "Survey Services Provided by City".
2. Notify the City, in writing, at least 2 Working Days prior to requesting survey services provided by the City.

3-10.2 Survey Services Provided by City.

1. Monument Perpetuation, including mark-outs. You are responsible for requesting the coordination of these services.
 - a) If at any time a monument will be destroyed or covered, such monument shall be perpetuated in accordance with state law. Inform the City Engineering Support & Technical Services Division's Land Survey Section (LSS), via project Resident Engineer, if any monument will be destroyed or covered during any construction activity.
2. The following surveying services (including construction staking), as defined in California Business & Professions Code §8726, shall be provided by the City:
 - a) Locating or establishing alignment or elevations of all features or structures shown on project Plans.
 - b) Locating or establishing geodetic control points for all site feature or structure locations.
 - c) Produce topographic as-built data.
 - d) Locating, establishing, or re-establishing monuments, property lines, right-of-way lines, or easement lines.
 - e) Verifying structure finish grade elevations.
3. All construction survey stakes, control points, and other survey related marks provided by the City shall be preserved for the duration of the Project. If any construction survey stakes, control points, or other survey related marks are lost or disturbed and need to be replaced, such replacement shall be performed at your expense.

3-10.3 Payment.

1. The payment for site layout and general grade checking Work, coordination, and preservation of all survey related marks shall be included in the Contract Price.

3-13.1 Completion. To the "GREENBOOK", DELETE in its entirety and SUBSTITUTE with the following:

1. You shall submit a written assertion that the Work has been completed and is ready for Owner Acceptance. If, in the Engineer's judgment, the Work has been completed in accordance with the Contract Documents, the Engineer will set forth in writing the date the Work was completed. This will be the date that you are relieved from responsibility to protect and maintain the Work and to which liquidated damages will be computed.

3-13.1.1 Requirements Before Requesting a Walk-through. To the "WHITEBOOK", DELETE in its entirety and SUBSTITUTE with the following:

3-13.1.1 Requirements Before Requesting Substantial Completion.

1. The following items are required prior to requesting a Substantial Completion:
 - a) Remove temporary facilities from the Site.

- b) Thoroughly cleaning the Site and removing all mark outs and construction staking.
- c) Provide completed and signed Red-lines in accordance with 3-7.3 "Redlines and Record Documents".
- d) Provide all material and equipment maintenance and operation instructions and/or manuals.
- e) Provide all tools which are permanent parts of the equipment installed in the Project.
- f) Provide and properly identify all keys for construction and all keys for permanent Work.
- g) Provide all final Special Inspection reports required by the applicable building Code.
- h) Provide all items specified to be supplied as extra stock. Wrap, seal, or place in a container all items as necessary to allow for storage by the City for future use. Verify the specified quantities.
- i) Ensure that all specified EOCP and certified wage rate documentations covering the Contract Time have been submitted.
- j) If the Work includes installing an irrigation system, provide the spare parts for the proposed irrigation system as specified in the Special Provisions.
- k) If the Work includes sewer and storm drain installations, the inspection shall include televising in accordance with 306-18, "VIDEO INSPECTION".
- l) If the Work includes a Plant Establishment Period, Work in accordance with 801-6, "MAINTENANCE AND PLANT ESTABLISHMENT" shall be completed prior to requesting Substantial Completion, unless approved otherwise by the Owner.
- m) Notify the Engineer to arrange a final inspection of any permanent BMPs installed.

3-13.1.2 Walk-through and Punchlist Procedure. To the "WHITEBOOK", DELETE in its entirety and SUBSTITUTE with the following:

1. You shall notify the Engineer 15 Working Days in advance of date of anticipated Substantial Completion to allow time for Engineer to schedule a Walk-through. After you complete the requirements in 3-13.1.1, "Requirements Before Requesting Substantial Completion" and when you consider that the Work is Substantially Complete, you will notify the Engineer in writing that the Project is Substantially Complete. The Engineer will review your request and determine if the Project is ready for a Walk-through, by verifying whether you have completed all items as required by 3-13.1.1, "Requirements Before Requesting Substantial Completion". Within 7 Working Days, the City will either reject your request of a Walk-through in writing or schedule a Walk-through inspection. The Engineer shall facilitate the Walk-through.
2. The following documents shall be provided at the time of your Walk-through request: As-Built markup, Plans, specifications, technical data such as submittals and equipment manuals, draft final payment, warranties, material certifications, bonds, guarantees, maintenance service agreements, and maintenance and operating manuals.

3. Written warranties, except manufacturer's standard printed warranties, shall be on a letterhead addressed to you. Warranties shall be submitted in the format described in this section, modified as approved by the City, to suit the conditions pertaining to the warranty. Lack of submitting these items will delay start of Walk-through.
4. The Engineer will provide you with the Punchlist within 15 Working Days after the date of the Walk-through. The City shall not provide a preliminary Punchlist.
5. If the Engineer finds that the Project is not Substantially Complete as defined herein, the Engineer will terminate the Walk-through and notify you in writing.
6. If, at any time during the Engineer's evaluation of the corrective Work required by the Punchlist, the Engineer discovers that additional corrective Work is required, the Engineer may include that corrective Work in the Punchlist.
7. You shall remain solely responsible for the Project Site until the Project is completely operational, all Punchlist items have been corrected, and all operation and maintenance manuals have been accepted by the City.
8. The Engineer shall meet with you within 5 Working Days of notification that all Punchlist items are corrected. You shall complete the Punchlist within 30 Working Days, and Working Days will continue to be counted until Acceptance of the Project.

3-13.2 Acceptance. To the "WHITEBOOK", DELETE in its entirety and SUBSTITUTE with the following:

1. You shall provide the completed, signed, and stamped DS-563 to the Engineer prior to Acceptance.
2. You shall deliver the final As-builts and final billing prior to Acceptance.
3. You shall assemble and deliver to the Engineer a Final Summary Report and Affidavit of Disposal prior to Acceptance.
4. Acceptance shall occur after all of the requirements contained in the Contract Documents have been fulfilled. If, in the Engineer's judgment, you have fully performed the Contract, the Engineer will recommend to the City Engineer that your performance of the Contract be accepted. You shall receive notification of Acceptance in writing from the Owner and counting of working days shall cease and Warranty begins.
5. Retention can be released 35 Calendar Days after NOC. Submit your request for retention to the Resident Engineer and they will mail to you a "Release of Claims" form which shall be completed and returned before the retention will be released.

3-13.3 Warranty. To the "WHITEBOOK", DELETE in its entirety and SUBSTITUTE with the following:

1. You shall warranty and repair all defective materials and workmanship for a period of 1 year. This call back warranty period shall start on the date the Work was accepted by the City unless the City has Beneficial Use or takes Occupancy of the project earlier (excluding water, sewer, and storm drain projects).
2. You shall warranty the Work free from all latent defects for 10 years and patent defects for a period of 4 years.

3. The warranty period for specific items covered under manufacturers' or suppliers' warranties shall commence on the date they are placed into service at the direction of the Engineer in writing.
4. All express warranties from Subcontractors, manufacturers', or Suppliers', of any tier, for the materials furnished and Work performed shall be assigned, in writing, to the City, and shall be delivered to the Engineer prior to the Acceptance of your performance of the Contract.
5. Replace or repair defective materials and workmanship in a manner satisfactory to the Engineer after notice to do so from the Engineer and within the time specified in the notice. If you fail to make such replacements or repairs within the time specified in the notice, the City may perform the replacement or repairs at your expense. If you fail to reimburse the City for the actual costs, your Surety shall be liable for the cost
6. Items that shall be warranted free from defective workmanship and materials for a period longer than 1 year are as follows:

Specified Item	Minimum Warranty Period
Detectable Warning Tile Construction	3 Years of Manufacturer's Warranty
All Work Under SECTION 500 – PIPELINE REHABILITATION	3 Years
Fiber Optic Interconnect Cables	2 Years
Luminaires*	10 Years of Manufacturer's Warranty
LED Signal Modules	3 Years of Manufacturer's Warranty
Field Devices Associated with 700-6.3, "Adaptive Control Note"	See 700-6.3.9, "Warranty"

* Provide documentation verifying that the induction luminaire models being offered for the Project are covered by the 10-year warranty.

7. If installed, you shall provide the City and property owner a copy of the manufacturer's warranty for private sewer pumps, including the alarm panel and all other accessories.
 - a) You shall involve the manufacturer in the installation and startup as needed to secure any extended warranty required.
 - b) Nothing in here is intended to limit any manufacturer's warranty which provides the City with greater warranty rights than set forth in this section or the Contract Documents.
 - c) The warranty shall include all components. The form of the warranty shall be approved by the Engineer in accordance with 3-13.3.2, "Warranty Format Requirements".
8. If, during the warranty period, any item of the Work is found to be Defective Work, you shall correct it promptly after receipt of written notice from the City to do so. The warranty period shall be extended with respect to portions of the Work corrected as part of the warranty requirements.

3-13.3.1 Defective Work. To the "WHITEBOOK", item 6, DELETE in its entirety and SUBSTITUTE with the following:

6. For Building Projects which require a certificate of occupancy, not including sewer and water facilities, if you fail to correct the defective Work listed on the City's Punchlist within 90 Working Days after the Contract Time, you shall reimburse the City for all costs to provide inspection services required to monitor Work beyond the 90 Working Days. The City shall bill you for the additional inspection at the City's established rates.

3-15.2 Integration of the Work with Separate Contractors. To the "WHITEBOOK", ADD the following:

2. The list of Separate Contractors includes:
 - a) Joseph Kilcoyne (SC Engineers) (858) 946-0333
 - b) Brian Bressette (Dynaelectric) (619) 954-4725

SECTION 4 - CONTROL OF MATERIALS

4-3.6 Preapproved Materials. To the "WHITEBOOK", ADD the following:

3. You shall submit in writing a list of all products to be incorporated in the Work that are on the AML.

SECTION 5 – LEGAL RELATIONS AND RESPONSIBILITIES

5-4 INSURANCE. To the "GREENBOOK", DELETE in its entirety and SUBSTITUTE with the following:

5-4 INSURANCE.

1. The insurance provisions herein shall not be construed to limit your indemnity obligations contained in the Contract.

5-4.1 Policies and Procedures.

1. You shall procure the insurance described below, at its sole cost and expense, to provide coverage against claims for loss including injuries to persons or damage to property, which may arise out of or in connection with the performance of the Work by you, your agents, representatives, officers, employees or Subcontractors.
2. Insurance coverage for property damage resulting from your operations is on a replacement cost valuation. The market value will not be accepted.
3. You shall maintain this insurance for the duration of this Contract and at all times thereafter when you are correcting, removing, or replacing Work in accordance with this Contract. Your liabilities under the Contract, e.g., your indemnity obligations, is not deemed limited to the insurance coverage required by this Contract.
4. The payment for insurance shall be included in the Contract Price as bid by you. Except as specifically agreed to by the City in writing, you are not entitled to any

additional payment. Do not begin any Work under this Contract until you have provided, and the City has approved all required insurance.

5. Policies of insurance shall provide that the City is entitled to 30 Days (10 Days for cancellation due to non-payment of premium) prior written notice of cancellation or non-renewal of the policy. Maintenance of specified insurance coverage is a material element of the Contract. Your failure to maintain or renew coverage or to provide evidence of renewal during the term of the Contract may be treated by the City as a material breach of the Contract.

5-4.2 Types of Insurance.

5-4.2.1 Commercial General Liability Insurance.

1. Commercial General Liability Insurance shall be written on the current version of the ISO Occurrence form CG 00 01 07 98 or an equivalent form providing coverage at least as broad.
2. The policy shall cover liability arising from premises and operations, XCU (explosions, underground, and collapse), independent contractors, products/completed operations, personal injury and advertising injury, bodily injury, property damage, and liability assumed under an insured’s contract (including the tort liability of another assumed in a business contract).
3. There shall be no endorsement or modification limiting the scope of coverage for either “insured vs. insured” claims or contractual liability. You shall maintain the same or equivalent insurance for at least 10 years following completion of the Work.
4. All costs of defense shall be outside the policy limits. Policy coverage shall be in liability limits of not less than the following:

<u>General Annual Aggregate Limit</u>	<u>Limits of Liability</u>
Other than Products/Completed Operations	\$2,000,000
Products/Completed Operations Aggregate Limit	\$2,000,000
Personal Injury Limit	\$1,000,000
Each Occurrence	\$1,000,000

5-4.2.2 Commercial Automobile Liability Insurance.

1. You shall provide a policy or policies of Commercial Automobile Liability Insurance written on the current version of the ISO form CA 00 01 12 90 or later version or equivalent form providing coverage at least as broad in the amount of \$1,000,000 combined single limit per accident, covering bodily injury and property damage for owned, non-owned, and hired automobiles (“Any Auto”).
2. All costs of defense shall be outside the limits of the policy.

5-4.3 Rating Requirements. Except for the State Compensation Insurance Fund, all insurance required by this Contract as described herein shall be carried only by responsible insurance companies with a rating of, or equivalent to, at least “A-, VI” by A.M. Best Company, that are authorized by the California Insurance Commissioner to do business in the State, and that have been approved by the City.

5-4.3.1 Non-Admitted Carriers. The City will accept insurance provided by non-admitted, “surplus lines” carriers only if the carrier is authorized to do business in the State and is included on the List of Approved Surplus Lines Insurers (LASLI list).

All policies of insurance carried by non-admitted carriers shall be subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

5-4.4 Evidence of Insurance. Furnish to the City documents e.g., certificates of insurance and endorsements evidencing the insurance required herein and furnish renewal documentation prior to expiration of this insurance. Each required document shall be signed by the insurer or a person authorized by the insurer to bind coverage on its behalf. We reserve the right to require complete, certified copies of all insurance policies required herein.

5-4.5 Policy Endorsements.

5-4.5.1 Commercial General Liability Insurance.

5-4.5.1.1 Additional Insured.

1. You shall provide at your expense policy endorsement written on the current version of the ISO Occurrence form CG 20 10 11 85 or an equivalent form providing coverage at least as broad.
2. To the fullest extent allowed by law e.g., California Insurance Code §11580.04, the policy shall be endorsed to include the City and its respective elected officials, officers, employees, agents, and representatives as additional insured.
3. The additional insured coverage for projects for which the Engineer’s Estimate is \$1,000,000 or more shall include liability arising out of:
 - a) Ongoing operations performed by you or on your behalf,
 - b) your products,
 - c) your Work, e.g., your completed operations performed by you or on your behalf, or
 - d) premises owned, leased, controlled, or used by you.
4. The additional insured coverage for projects for which the Engineer’s Estimate is less than \$1,000,000 shall include liability arising out of:
 - a) Ongoing operations performed by you or on your behalf,
 - b) your products, or
 - c) premises owned, leased, controlled, or used by you.

5-4.5.1.2 Primary and Non-Contributory Coverage. The policy shall be endorsed to provide that the coverage with respect to operations, including the completed operations, if appropriate, of the Named Insured is primary to any insurance or self-insurance of the City and its elected officials, officers, employees, agents and representatives. Further, it shall provide that any insurance maintained by the City and its elected officials, officers, employees, agents and representatives shall be in excess of your insurance and shall not contribute to it.

5-4.5.1.3 Project General Aggregate Limit. The policy or policies shall be endorsed to provide a Designated Construction Project General Aggregate Limit that will apply only to the Work. Only claims payments which arise from the Work shall reduce the Designated Construction Project General Aggregate Limit. The Designated Construction Project General Aggregate Limit shall be in addition to the aggregate limit provided for the products-completed operations hazard.

5-4.5.2 Commercial Automobile Liability Insurance.

5-4.5.2.1 Additional Insured. Unless the policy or policies of Commercial Auto Liability Insurance are written on an ISO form CA 00 01 12 90 or a later version of this form or equivalent form providing coverage at least as broad, the policy shall be endorsed to include the City and its respective elected officials, officers, employees, agents, and representatives as additional insured, with respect to liability arising out of automobiles owned, leased, hired or borrowed by you or on your behalf. This endorsement is limited to the obligations permitted by California Insurance Code §11580.04.

5-4.6 Deductibles and Self-Insured Retentions. You shall pay for all deductibles and self-insured retentions. You shall disclose deductibles and self-insured retentions to the City at the time the evidence of insurance is provided.

5-4.7 Reservation of Rights. The City reserves the right, from time to time, to review your insurance coverage, limits, deductibles and self-insured retentions to determine if they are acceptable to the City. The City will reimburse you, without overhead, profit, or any other markup, for the cost of additional premium for any coverage requested by the Engineer but not required by this Contract.

5-4.8 Notice of Changes to Insurance. You shall notify the City 30 Days prior to any material change to the policies of insurance provided under this Contract.

5-4.9 Excess Insurance. Policies providing excess coverage shall follow the form of the primary policy or policies e.g., all endorsements.

5-4.11 Workers' Compensation Insurance and Employers Liability Insurance.

1. In accordance with the provisions of §3700 of the California Labor Code, you shall provide at your expense Workers' Compensation Insurance and Employers Liability Insurance to protect you against all claims under applicable state workers compensation laws. The City, its elected officials, and employees will not be responsible for any claims in law or equity occasioned by your failure to comply with the requirements of this section.

2. Limits for this insurance shall be not less than the following:

<u>Workers' Compensation</u>	<u>Statutory Employers Liability</u>
Bodily Injury by Accident	\$1,000,000 each accident
Bodily Injury by Disease	\$1,000,000 each employee
Bodily Injury by Disease	\$1,000,000 policy limit

3. By signing and returning the Contract you certify that you are aware of the provisions of §3700 of the Labor Code which requires every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code and you shall comply with such provisions before commencing the Work as required by §1861 of the California Labor Code.

5-4.11.1 Waiver of Subrogation. The policy or policies shall be endorsed to provide that the insurer will waive all rights of subrogation against the City and its respective elected officials, officers, employees, agents, and representatives for losses paid under the terms of the policy or policies and which arise from Work performed by the Named Insured for the City.

5-15.1 General. To the "WHITEBOOK", item 10, DELETE in its entirety and SUBSTITUTE with the following:

10. If your construction activities have encountered flammable liquids or other hazardous substances, you shall ensure that construction staff have the required Hazardous Waste Operations and Emergency Response (HAZWOPER) certification. Construction staff shall include: City Engineers, City Laboratory Technicians, and City staff that perform onsite inspections.
 - a) If your Work encounters flammable liquids or other hazardous substances, you shall be responsible for scheduling training for all construction staff to attend and for submitting verification to the Engineer that construction staff have the required HAZWOPER certification prior to continuing that Work in that area. You shall maintain the HAZWOPER certifications annually until the construction activities triggering the requirement is complete, as approved by the Resident Engineer.

SECTION 6 – PROSECUTION AND PROGRESS OF THE WORK

6-1.1 Construction Schedule. To the "WHITEBOOK", item 1, subsection "e" and "s", DELETE in their entirety and SUBSTITUTE with the following:

- e) Monthly progress payments are contingent upon the submittal of an updated Schedule to the Engineer. The Engineer may refuse to process the whole or part of any monthly payment if you refuse or fail to provide an acceptable schedule.
- s) Submit an updated cash flow forecast with every pay request (for each Project ID or WBS number provided in the Contract) showing periodic and cumulative construction billing amounts for the duration of the Contract Time. If there has been any Extra Work since the last update, include only the approved amounts.
 - b) Refer to the Sample City Invoice materials in **Exhibit M – Sample City Invoice with Cash Flow Forecast** and use the format shown.
 - c) See also the "Cash Flow Forecast Example" at the location below:

<https://www.sandiego.gov/ecp/edocref/>

6-1.5.2 Excusable Non-Compensable Delays. To the "WHITEBOOK", DELETE in its entirety and SUBSTITUTE with the following:

6-1.5.2 Excusable Non-Compensable and Concurrent Delays.

1. The City shall only issue an extension of time for Excusable Delays that meet the requirements of 6-4.2, "Extensions of Time" for the following circumstances:
 - a) Delays resulting from Force Majeure.
 - b) Delays caused by weather.
 - c) Delays caused by changes to County, State, or Federal law.
2. When a non-excusable delay is concurrent with an Excusable Delay, you shall not be entitled to an extension of Contract Time for the period the non-excusable delay is concurrent with the Excusable Delay.
3. When an Excusable Non-Compensable Delay is concurrent with an Excusable Compensable Delay, you shall be entitled to an extension of Contract Time, but shall not be entitled to compensation for the period the Excusable Non-Compensable Delay is concurrent with the Excusable Compensable Delay.

6-4.2 Extensions of Time. To the "WHITEBOOK", DELETE in its entirety and SUBSTITUTE with the following:

1. The Contract Time shall not be modified except by Change Order.
2. You shall notify the City in writing within **1 Working Day** after the occurrence and discovery of an event that impacts the Project Schedule.
 - a) If you believe this event requires a Change Order, you shall submit a **written Change Order request with a report to** the City that explains the request for Change Order within **5 Working Days**. The Change Order request must include supporting data, a general description of the discovery, the basis for extension, and the estimated length of extension. The City may grant an extension of time, in writing, for the Change Order request if you require more time to gather and analyze data.
3. The Engineer shall not grant an extension of Contract Time in accordance with 6-1.5, "Excusable Delays" unless you demonstrate, through an analysis of the critical path, the following:
 - a) The event causing the delay impacted the activities along the Project's critical path.
 - b) The increases in the time to perform all or part of the Project beyond the Contract Time arose from unforeseeable causes beyond your control and without your fault or negligence and that all project float has been used.
4. Any modifications to the Contract Time will be incorporated into the weekly document that the Engineer issues that stipulates the Contract Time. If you do not agree with this document, submit to the Engineer for review a written protest supporting your objections to the document within **30 Calendar Days** after

receipt of the statement. Your failure to file a timely protest shall constitute your acceptance of the Engineer's weekly document.

- a) Your protest will be considered a claim for time extension and shall be subject to 2-10.1, "Claims".

6-4.4 Written Notice and Report. To the "WHITEBOOK", DELETE in its entirety and SUBSTITUTE with the following:

1. Your failure to notify the Resident Engineer within **1 Working Day** OR provide a Change Order request within **5 Working Days** after the event, in accordance with 6-4.2, "Extensions of Time", will be considered grounds for refusal by the City to consider such request if your failure to notify prejudices the City in responding to the event.

ADD:

6-6.1.1 Environmental Document.

1. The City of San Diego has prepared a **Notice of Exemption for (Local Government Challenge Grant) for (9) City Facilities System Control Upgrades**, Project No. N/A, as referenced in the Contract Exhibit. You shall comply with all requirements of the **Notice of Exemption** as set forth in **Exhibit L**.
2. Compliance with the City's environmental document shall be included in the Contract Price, unless separate bid items have been provided.

SECTION 7 – MEASUREMENT AND PAYMENT

7-3.1 General. To the "GREENBOOK" and "WHITEBOOK", paragraph (8), DELETE in its entirety and SUBSTITUTE with the following:

If, within the time fixed by law, a properly executed notice to stop payment is filed with the City, due to your failure to pay for labor or materials used in the Work, all money due for such labor or materials will be withheld from payment in accordance with applicable laws.

To the "WHITEBOOK", ADD the following:

1. Unless specified otherwise, the Contract Price includes use, consumer, and other taxes mandated by applicable legal requirements.
2. As provided in §7105 of the California Public Contract Code, if the Contract is not financed by revenue bonds, you are not responsible for the cost of repairing or restoring damage to the Project when damage was proximately caused by an act of God, in excess of 5% of the Contract Price, if the following occur:
 - a) The Project damaged was built in accordance with the Contract requirements.
 - b) There are no insurance requirements in the Contract for the damages.

7-3.2

Partial and Final Payment. To the "WHITEBOOK", item 1, DELETE in its entirety and SUBSTITUTE with the following:

1. The Final Payment, which is the release of Retention, shall be paid to you after you have successfully submitted the following required documents:
 - a) An affidavit that payrolls and bills for materials, equipment, and other indebtedness connected with the Work for which the City or the City's property might be responsible for or encumbered by.
 - b) A certificate evidencing that insurances required by the Contract Documents shall remain in force after Final Payment is currently in effect and shall not be canceled or allowed to expire until at least a 30 Calendar Days prior written notice has been given to the Engineer.
 - c) Consent of Surety to Final Payment.
 - d) If required by the Engineer, other data establishing payment or satisfaction of obligations such as receipts, releases and waivers of liens, claims, and security interests or encumbrances arising out of the Contract Documents. If a Subcontractor refuses to furnish a release or waiver required by the City, you may furnish a bond satisfactory to the Engineer to indemnify the City against such lien.
 - e) If required in the Contract Documents, the successful completion and submittal of the required reports such as construction demolition, waste recycling, and hydrostatic discharge reports.
 - f) Required EOCP Final Summary Report in accordance with Section 0-12, "Contract Records and Reports", record drawings, operations manuals, test reports, warranty documentation, and UL labels shall be submitted before requesting the release of retention.
 - g) Acceptance of the completed Project by the asset owning Department.

To the "WHITEBOOK", ADD the following:

2. Submit an invoice for payment after you successfully complete the required documents and the City will pay the invoice within 30 Calendar Days. The City will pay 6% annually for late retention payments.

7-3.2.1

Application for Progress Payment. To the "WHITEBOOK", item 3, DELETE in its entirety and SUBSTITUTE with the following:

3. The City shall not pay progress or partial payments until you submit to the Engineer an acceptable updated Schedule. It is solely your responsibility to prepare and submit the Schedule updates.

7-3.2.2

Amount of Progress Payments. To the "WHITEBOOK", DELETE in its entirety and SUBSTITUTE with the following:

1. The City will pay 6% annually for late progress payments.

2. Progress payments will be considered "late" if the following occur:
 - a) The City does not pay the contractor within 30 Calendar Days from receipt of an undisputed and properly submitted invoice. A properly submitted payment invoice means that the City has approved for payment the entire invoice amount or if the Resident Engineer has not disputed any portion of the application within 7 Calendar Days of the date of submission.
 - b) The application for payment does not require signing of a Contract Change Order.

3. The Engineer may withhold payment for any of the following reasons:
 - a) Defective or incomplete Work.
 - b) Not providing an updated and accurate Cost Loaded Construction Schedule in accordance with 6-1.1, "Construction Schedule".
 - c) Stop notices, wage orders, or other withholdings required by Applicable Law. Your failure to comply with 5-3.3, "Payroll Records" and the Contractor Registration and Electronic Reporting System requirements of the Contract Documents.

4. The Engineer may back charge the contract for any of the following reasons:
 - a) Defective or incorrect Work not remedied.
 - b) Damage to City property or a third party's property that was caused by you.
 - c) Liquidated Damages.

7-3.2.3 Waiver of Claims at Final Payment. To the "WHITEBOOK", DELETE in its entirety and SUBSTITUTE with the following:

1. Your acceptance of Final Payment constitutes a waiver of affirmative Claims by you, except those previously made in writing and identified as unsettled at the time of Final Payment.

7-3.2.4 Withholding of Payment and Back Charge. To the "WHITEBOOK", DELETE in its entirety.

7-3.5.1 General. To the "WHITEBOOK", DELETE in its entirety and SUBSTITUTE with the following:

1. Unit Bid prices shall not be subject to adjustment regardless of quantity used, or if none is used, for the following Bid items:
 - a) imported backfill
 - b) shoring
 - c) water services
 - d) house connection sewers
 - e) water pollution control items

2. Upon discovery and prior to the Work, you shall notify the Resident Engineer if there is a change in Bid item quantity that increases the total Contract Price by 5% or \$100,000 or more, whichever is less.

7-3.9 Field Orders. To the "WHITEBOOK", DELETE in its entirety and SUBSTITUTE with the following:

1. If the cumulative total of Field Order items of Work does not exceed the "Field Orders" Bid Item, the City shall pay those Field Orders as shown below:

**TABLE 7-3.9
FIELD ORDER LIMITS**

Contract Price	Maximum Field Order Work Amount
Less than \$100,001	\$2,500
\$100,001 to \$1,000,000	\$5,000
\$1,000,001 to \$5,000,000	\$10,000
\$5,000,001 to \$15,000,000	\$20,000
\$15,000,001 to \$30,000,000	\$40,000
Greater than \$30,000,000	\$50,000

2. Field Order items of Work for contracts greater than \$15,000,000 will require additional approvals from the City prior to its approval by the Resident Engineer.
3. The City will issue a Field Order only after the City's acceptance of the cost of the field order amount.
4. Field Orders shall not be used to add scope or to include extensions of time related to changes in work.
5. If in the event there is a change related to the critical path on the project which necessitates an extension of time and the change amount is within the Field Order limits shown on Table 7-3.9, then a Field Order can be issued to compensate you for the approved costs. Any extensions of time associated with the change shall be included in a subsequent Change Order and no additional compensation shall be granted as part of the change order for the extension of time.
6. The unused portions of Field Orders Bid item shall revert to the City upon Acceptance.

7-4.3 Markup. To the "WHITEBOOK", item 4, DELETE in its entirety and SUBSTITUTE with the following:

1. When a Subcontractor is performing Extra Work, the allowance for overhead and profit shall be applied to the labor, materials, and equipment costs of the Subcontractor as follows:
 - a) Regardless of the number of a Subcontractor's tasks for Extra Work, you may only apply 10% for the first \$50,000 of the Subcontractor's portion of accumulated total cost then 5% for any remaining costs. You shall not

apply 10% to any costs after the first \$50,000 of accumulated total costs from performing Extra Work.

- b) If the accumulated costs of single or subsequent tasks exceed the \$50,000 threshold, you shall instead only apply 5% to any amounts in excess of the \$50,000.
- c) Regardless of the number of hierarchical tiers of Subcontractors, you may only markup a Subcontractor's Work once.

SECTION 302 – ROADWAY SURFACING

302-4.5 Scheduling, Public Convenience and Traffic Control. To the "GREENBOOK", paragraphs (1) and (2), DELETE in their entirety and SUBSTITUTE with the following:

- 1. In addition to the requirements of Part 6, you shall comply with the following:
 - a) At least 5 Working Days prior to commencing the Work, you shall submit your proposed Schedule to the Engineer for approval.
 - b) Based upon the approved schedule, you shall notify residents and businesses of the Work and post temporary "No Parking" signs 72 hours in advance.
 - c) Requests for changes in the approved Schedule shall be submitted to the Engineer for approval at least 3 Working Days before the street is scheduled to be sealed.

SECTION 303 – CONCRETE AND MASONRY CONSTRUCTION

303-5.1.1 General. To the "WHITEBOOK", ADD the following:

- 7. For the purposes of this section, the terms "walk" and "access ramp" shall be synonymous with "sidewalk" and "curb ramp and pedestrian ramp", respectively.
-

EXHIBIT K

PROPOSAL

PROPOSAL

To the City of San Diego:

In accordance with the Contractors proposal, the specifications and requirements on file with the City Clerk and the Contract documents, and subject to all provisions of the Charter and Ordinances of the City of San Diego and applicable laws and regulations of the United States and the State of California, the undersigned hereby proposes to furnish to the City of San Diego, complete at the prices stated herein, the items or services hereinafter mentioned. The undersigned further warrants that this bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the contractor has not directly or indirectly induced or solicited any other contractor to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any contractor or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the contractor has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the contractor or any other contractor, or to fix any overhead, profit, or cost element of the bid price, or of that of any other contractor, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the contractor has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

The undersigned contractor(s) further warrants that contractor(s) has thoroughly examined and understands the entire Contract Documents (plans and specifications) and the Bidding Documents therefore, and that by submitting said Bidding Documents as its bid proposal, contractor(s) acknowledges and is bound by the entire Contract Documents, including any addenda issued thereto, as such Contract Documents incorporated by reference in the Bidding Documents.

IF A SOLE OWNER OR SOLE CONTRACTOR SIGN HERE:

- (1) Name under which business is conducted _____
- (2) Signature (Given and surname) of proprietor _____
- (3) Place of Business (Street & Number) _____
- (4) City and State _____ Zip Code _____
- (5) Telephone No. _____ Facsimile No. _____

IF A PARTNERSHIP, SIGN HERE:

- (1) Name under which business is conducted _____

(2) Name of each member of partnership, indicate character of each partner, general or special (limited):

(3) Signature (Note: Signature must be made by a general partner)

Full Name and Character of partner

(4) Place of Business (Street & Number) _____

(5) City and State _____ Zip Code _____

(6) Telephone No. _____ Facsimile No. _____

IF A CORPORATION, SIGN HERE:

(1) Name under which business is conducted _____

(2) Signature, with official title of officer authorized to sign for the corporation:

(Signature)

(Printed Name)

(Title of Officer)

(Impress Corporate Seal Here)

(3) Incorporated under the laws of the State of _____

(4) Place of Business (Street & Number) _____

(5) City and State _____ Zip Code _____

(6) Telephone No. _____ Facsimile No. _____

THE FOLLOWING SECTIONS MUST BE FILLED IN

The Contractor holds a California State Contractor's license for the following classification(s) to perform the work described in these specifications:

LICENSE CLASSIFICATION _____

LICENSE NO. _____ EXPIRES _____, _____

DEPARTMENT OF INDUSTRIAL RELATIONS (DIR) REGISTRATION NUMBER: _____

TAX IDENTIFICATION NUMBER (TIN): _____

E-Mail Address: _____

THIS PROPOSAL MUST BE NOTARIZED BELOW:

I certify, under penalty of perjury, that the representations made herein regarding my State Contractor's license number, classification and expiration date are true and correct.

Signature _____ Title _____

SUBSCRIBED AND SWORN TO BEFORE ME, THIS _____ DAY OF _____, _____.

Notary Public in and for the County of _____, State of _____

(NOTARIAL SEAL)

PROPOSAL

The contractor agrees to the construction of **Purchase and Installation of DDC Thermostats at Civic Center Complex**, for the City of San Diego, in accordance with these contract documents for the prices listed below. This contract is for fair price of lump sum not to exceed \$357,488 (CEC funded) plus the (\$8,936.19) of City funded bond.

ITEM	QUANTITY	UNIT	NAICS CODE	2018 PAYMENT REFERENCE	DESCRIPTION	UNIT PRICE	EXTENSION
1	1	LS	524126	1-7.2.1	Bonds (Payment and Performance)	\$8,936.19	\$8,936.19
2	1	LS	334512	EXHIBIT O	Material: WPT Wireless Repeater	XXXXXX	
3	1	LS	334512	EXHIBIT O	Material: WPT Green Box Controller	XXXXXX	
4	1	LS	334512	EXHIBIT O	Material: WPT USB HUB	XXXXXX	
5	1	LS	334512	EXHIBIT O	Material: Wireless Pneumatic Thermostat: Two-pipe direct acting with pressure sensor dead band	XXXXXX	
6	1	LS	335931	EXHIBIT O	Material: Misc. Electrical Materials, cable, transformer, enclosures etc.	XXXXXX	
7	1	LS	492110	EXHIBIT O	Shipping for Materials	XXXXXX	
8	1	LS	238220	EXHIBIT O	Direct Labor: Thermostat Installation	XXXXXX	
9	1	LS	238220	EXHIBIT O	Direct Labor: Fringe Benefits	XXXXXX	
10	1	LS	238220	EXHIBIT O	Travel Costs	XXXXXX	
11	1	LS	238210	EXHIBIT O	Electrical Contractor for power supply to repeaters and Green Boxes	XXXXXX	
12	1	LS	238220	EXHIBIT O	Indirect Costs	XXXXXX	
13	1	LS	238220	EXHIBIT O	Profit	XXXXXX	
TOTAL BASE PRICE							\$366,384.00

TOTAL PRICE (Items 1 through 13 inclusive) amount written in words:

The names of all persons interested in the foregoing proposal as principals are as follows:

IMPORTANT NOTICE: If contractor or other interested person is a corporation, state secretary, treasurer, and manager thereof; if a co-partnership, state true name of firm, also names of all individual co-partners composing firm; if contractor or other interested person is an individual, state first and last names in full.

Contractor: _____

Title: _____

Business Address: _____

Place of Business: _____

Place of Residence: _____

Signature: _____

- A. Unit prices shall be entered for all unit price items. Unit prices shall not exceed two (2) decimal places. If the Unit prices entered exceed two (2) decimal places, the City will only use the first two digits after the decimal points without rounding up or down.
- B. All extensions of the unit prices will be subject to verification by the City. In the case of inconsistency or conflict between the product of the Quantity x Unit Price and the Extension, the product shall govern.
- C. In the case of inconsistency or conflict, between the sums of the Extensions and the total, the sum of the Extensions shall govern.

EXHIBIT L

NOTICE OF EXEMPTION

NOTICE OF EXEMPTION

TO: X Recorder County Clerk
P.O. Box 1750, MS-A-33
1600 Pacific Hwy, Room 260
San Diego, CA 92101-2422

FROM: City of San Diego
Planning Department
9485 Aero Drive, M.S. 413
San Diego, CA 92123

____ Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814

PROJECT TITLE: Local Government Challenge Grant for (9) City Facilities System Control Upgrades

PROJECT LOCATION-SPECIFIC: 202 C Street, San Diego, CA 92101; 330 Park Boulevard, San Diego, CA 92101; 1222 1st Ave, San Diego, CA 92101; 202 W C St, San Diego, CA 92101; 1100 Third Ave, San Diego, CA 92101; 1101 1st Ave, San Diego, CA 92101; 3901 Landis St, San Diego, CA 92105; 215 W Washington St, San Diego, CA 92103; and 4235 Beyer Blvd, San Ysidro, CA 92173. The project is located in the Community Planning Areas of City Heights, Downtown, San Ysidro, and Uptown within Council Districts 3, 8, and 9.

PROJECT LOCATION-CITY/COUNTY: San Diego/San Diego

DESCRIPTION OF NATURE AND PURPOSE OF THE PROJECT:

Mayoral Approval to apply for a Local Government Challenge Grant, and if received, accept and expend funds to allow the City of San Diego to install upgrades designed to benchmark energy use, monitor energy use, control systems and equipment, and optimize operations at nine (9) City facilities. These upgrades include a building automation platform, energy efficiency retrofits, and integrated wireless monitoring and control technologies. The project will also include data collection to monitor the efficiency of the project, and information sharing.

NAME OF PUBLIC AGENCY APPROVING PROJECT: City of San Diego

NAME OF PERSON OR AGENCY CARRYING OUT PROJECT: Shannon Sales, Associate Engineer – Civil, Sustainability Department, 1200 Third Avenue Ste 1800, M.S. 1101B, San Diego, CA 92101 (858) 627-3306

EXEMPT STATUS:

- MINISTERIAL
- DECLARED EMERGENCY
- EMERGENCY PROJECT
- CATEGORICAL EXEMPTION: CEQA Guidelines Sections 15301 (Existing Facilities), 15306 (Information Collection), 15307 (Actions by Regulatory Agencies for Protection of Natural Resources), 15308 (Actions by Regulatory Agencies for Protection of the Environment), and 15322 (Educational or Training Programs Involving No Physical Changes).
- STATUTORY EXEMPTION
- COMMON SENSE EXEMPTION:

REASONS WHY PROJECT IS EXEMPT:

The City of San Diego conducted an environmental review which determined that these services meet the criteria set forth in State CEQA Guidelines Section 15301(Existing Facilities) which allows for the operation, repair, maintenance, permitting, leasing, licensing or minor alterations of existing public or private structures or facilities involving negligible or no expansion of use; Section 15306 (Information Collection) which consists of basic data collection to monitor the energy efficiency of the project; Section 15307 (Actions by Regulatory Agencies for Protection of Natural Resources) which consists of procedures for protection of natural resources; Section 15308 (Actions by Regulatory Agencies for Protection of the Environment) which consists of procedures for protection of the environment; and Section 15322 (Education or Training Programs Involving No Physical Changes) which consists of the development of training methods.

As to the exception for hazardous materials, there are locations listed on GeoTracker and EnviroStor within 1,000 feet of the public right-of-way. While these locations are listed, the proposed project would not involve ground disturbance which would expose potential hazardous materials, and as such would not preclude the use of a CEQA exemption pursuant to Section 65962.5 of the Government Code.

CONTACT PERSON: Tara Ash-Reynolds, Junior Planner
City of San Diego Planning Department
9485 Aero Drive, M.S. 413
San Diego, CA 92123

TELEPHONE: 619-446-5371

IF FILED BY APPLICANT:

1. ATTACH CERTIFIED DOCUMENT OF EXEMPTION FINDING
2. HAS A NOTICE OF EXEMPTION BEEN FILED BY THE PUBLIC AGENCY APPROVING THE PROJECT?
(X) YES () NO

IT IS HEREBY CERTIFIED THAT THE CITY OF SAN DIEGO HAS DETERMINED THE ABOVE ACTIVITY TO BE EXEMPT FROM CEQA.



10/21/2020

Rebecca Malone, Senior Planner, Planning Department

DATE

CHECK ONE:

- (X) SIGNED BY LEAD AGENCY DATE RECEIVED FOR FILING WITH COUNTY CLERK OR OPR:
() SIGNED BY APPLICANT

EXHIBIT M

SAMPLE CITY INVOICE WITH CASH FLOW

WBS #:	B18108
Date Submitted:	10/10/2018
NTP Date:	3/23/2018
Final Statement of WD Date:	5/23/2020
Contract #:	K-XX-XXXX-XXX-X
Contract Amount:	\$5,617,000

Construction Cash Flow Forecast
 "Sewer and Water Group Job 965 (W)"

Year	January	February	March	April	May	June	July	August	September	October	November	December
2018				15,000	25,000	52,000	52,000	100,000	10,000	100,000	100,000	100,000
2019	10,000	10,000	85,000	58,000	100,000	100,000	100,000	100,000	100,000	100,000	1,000,000	1,000,000
2020	100,000	100,000	100,000	1,000,000	1,000,000							
2021												
2022												
2023												
2024												
2025												

SAMPLE REFERENCE

EXHIBIT N

**CALIFORNIA ENERGY COMMISSION
GRANT NO. LGC-16-002**

CALIFORNIA ENERGY COMMISSION

ADMINISTRATIVE AND FINANCIAL MANAGEMENT SERVICES DIVISION
CONTRACTS, GRANTS, AND LOANS
1516 NINTH STREET, MS-18
SACRAMENTO, CA 95814-5512
(916) 654-4381
www.energy.ca.gov



February 5, 2018

Jack Clark
The City of San Diego Environmental Services Dept.
9601 Ridgehaven Court, Ste. 120, MS 1101B
San Diego, CA 92123

Dear Mr Clark:

GRANT AWARD NUMBER: LGC-16-002

Enclosed for your records is a fully executed copy of the above-referenced agreement.

Should you have any questions, please feel free to contact the Commission Agreement Officer at (916) 653-6110 or Crystal.Presley-Willis@energy.ca.gov

Sincerely,

A handwritten signature in blue ink, appearing to read "Pamela Redlew".

Pamela Redlew
Office Technician

Enclosure

cc: Daniel Johnson, Commission Agreement Manager, MS-26
Accounting, MS-2
File



RECIPIENT The City of San Diego Environmental Services Department	AGREEMENT NUMBER LGC-16-002
ADDRESS 9601 Ridgehaven Court, Suite 120, MS 1101B San Diego, California 92123	AGREEMENT TERM 06/30/2017 to 03/31/2021 The effective date of this Agreement is either the start date or the approval date by the California Energy Commission, whichever is later. The California Energy Commission shall be the last party to sign. No work is authorized, nor shall any work begin, until on or after the effective date.

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

Exhibit A – Scope of Work	Page(s): 16
Exhibit A – Attachments	Page(s): 4
Exhibit B – Budget	Page(s): 32
Exhibit B – Attachments	Page(s): 0
Exhibit C – General Terms and Conditions	Page(s): 28
Exhibit C – Attachment	Page(s): 2
Exhibit D – Federal Provisions	Page(s): 29
Exhibit D – Attachments	Page(s): 23
Exhibit E – Compliance and Certification Forms:	
Exhibit E – Attachments	Page(s): 0
Exhibit F - Contacts	Page(s): 2

REIMBURSABLE AMOUNT <h2 style="margin: 0;">\$ 1,991,444</h2>
MATCH SHARE <h2 style="margin: 0;">\$ 0.00</h2>
TOTAL <h2 style="margin: 0;">\$ 1,991,444</h2>

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

CALIFORNIA ENERGY COMMISSION		RECIPIENT	
AUTHORIZED SIGNATURE 	DATE 2/4/18	AUTHORIZED SIGNATURE 	DATE 12/1/17
NAME Rachel L. Grant Kiley		NAME PAE GOMEZ	
TITLE Contracts, Grants and Loans Office Manager		TITLE DEPUTY CHIEF OPERATING OFFICER, INFRASTRUCTURE/PUBLIC WORKS	
CALIFORNIA ENERGY COMMISSION ADDRESS 1516 9th Street, MS 18, Sacramento, CA 95814			

DOCUMENT NO. **RR-311384**
 FILED **OCT 31 2017**
 OFFICE OF THE CITY CLERK
 SAN DIEGO, CALIFORNIA

Exhibit A SCOPE OF WORK

TECHNICAL TASK LIST

Task #	Task Name
1	Administration
2	Building Energy Benchmarking
3	Integration of Web-Service Energy Data into SCoup Platform
4	Wireless Pneumatic-to-DDC System in the CAB Complex
5	Sub-metering of Level 3 Pilot Projects
6	Full SEMMS Integration and Level 3 Dashboards with Analytics
7	Public Outreach/Broadcast Results

KEY NAME LIST

Task #	Key Personnel	Key Subcontractor(s)	Key Partner(s)
1	Jack Clark – City of San Diego Lorie Cosio-Azar – City of San Diego	Joseph Kilcoyne – SC Engineers	
2	Aaron Lu – City of San Diego	Geoff Wilkins – SC Engineers	
3	Lorie Cosio-Azar – City of San Diego Aaron Lu – City of San Diego	Bob Riel – Dynalectric Joseph Kilcoyne – SC Engineers	
4	Lorie Cosio-Azar – City of San Diego	Harry Sim – Cypress EnviroSystems Bob Riel – Dynalectric	
5	Lorie Cosio-Azar – City of San Diego	Bob Riel – Dynalectric Joseph Kilcoyne – SC Engineers	
6	Lorie Cosio-Azar – City of San Diego Aaron Lu – City of San Diego	Bob Riel – Dynalectric Joseph Kilcoyne – SC Engineers	
7	Lorie Cosio-Azar – City of San Diego	Kate Meis – LGC Kif Scheuer - LGC	

GLOSSARY

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

Term/ Acronym	Definition
CAM	Commission Agreement Manager
Challenge	Local Government Challenge
CPR	Critical Project Review
ED	Efficiency Division
EIC	Energy Innovation Challenge
Energy Commission	California Energy Commission
Recipient	Challenge Grant Recipient
SGLC	Small Government Leadership Challenge
SCOUP	Smart City Open Urban Platform
SEMMS	Smart Energy Management & Monitoring System
City	City of San Diego
CAP	Climate Action Plan
DDC	Direct Digital Controls
AB	Assembly Bill
SB	Senate Bill
GHG	Greenhouse Gas
HVAC	Heating, Ventilation, and Air Conditioning
SDG&E	San Diego Gas and Electric Company
SOQ	Sequence of Operations

Problem Statement:

The City of San Diego (City) is currently not equipped to meet the energy reduction goals of Senate Bill 350, the benchmarking requirements of Assembly Bill 802, or the energy and GHG reduction goals of the City's Climate Action Plan (CAP). The City's existing municipal building infrastructure lacks integrated instrumentation, automation, and control. The City is currently operating under an isolated systems model; unable to share data related to multiple facilities between departments. By implementing the Smart City Open Urban Platform (SCOUP), the City will have an integrated and open platform from which to make data-driven energy-related decisions and investments on a broad scale. The City is not alone in facing these challenges. In fact, many municipalities throughout California face similar internal barriers when identifying necessary building control and communication protocol updates in establishing a comprehensive energy management framework.

In an era of smart phones and smart cars with intelligent and intuitive dashboard displays and easily accessible performance information, the implementation of intuitive and intelligent building control dashboards is relatively new and underutilized. While building control systems and manual measurements have long been used by specialists to monitor building performance, the prerequisite knowledge required to assess a building's efficiency has been a long standing barrier to the average building owner. Recent conformity by control manufacturers to open-source communication protocols is now allowing many different building systems to communicate to central monitoring and control stations that can be accessed anywhere through a web browser. This integration of data from many sources is allowing for increased ease of use by building operators as well as interconnected control of multiple building systems through a single intelligent control server and data analytics engine. These central controllers can automatically identify opportunities for energy savings and make adjustments to implement energy saving and greenhouse gas emission reduction strategies. Utilization of these advanced control and monitoring systems provide a significant opportunity for improved sustainability and allow for measurement and verification of these energy savings to meet both local and statewide sustainability targets.

Goals of the Agreement:

The goal of this project is to use available EIC grant funding to establish an advanced SCOUP network which will automatically track, benchmark, and reduce greenhouse gas emissions and energy use associated with the City's municipal facilities. This platform will help the City meet its Climate Action Plan target to reduce municipal building energy consumption by 15% by 2020 and by another additional 25% by 2035, as well as its CAP action to create a Municipal Energy Strategy and Implementation Plan. The platform will also reduce the City's energy demands and make it easier for the City to reach its other CAP goal to achieve 100% renewable energy city-wide by 2035. In addition, this web-based platform provides a publically available resource for City residents and other local governments to track CAP progress and learn more about the City's sustainability-related efforts. This goal of the platform is to be 100% open-sourced technology and scalable so that other local governments of any size may benefit from this Smart City proof-of-concept model.

Objectives of the Agreement:

The objectives of this project are to:

- 1) Establish the proposed SCOUP network with automated energy tracking and benchmarking applications for approximately 750 municipal facility properties, and make these components of the SCOUP network publically available.

- 2) Reduce energy consumption in the five buildings contained in the 720,000 square foot downtown City Administration Building Complex by 13% through the installation of approximately 400 wireless pneumatic retrofit thermostats.
- 3) Reduce the energy consumption in five pilot municipal sites by 15% through the integration of the facility HVAC and lighting control systems into the SCOUN Smart Energy Management & Monitoring System (SEMMS) and application of advanced fault detection and diagnostic analytics to the integrated systems.
- 4) Establish a network of intercommunicating smart buildings as a baseline to measure and verify the proposed energy project investments and savings.
- 5) Conduct public outreach and education to share results and lessons learned from the proposed project with other local governments across California and lead by example as a demonstration to City staff, elected officials, residents, and visitors.

TASK 1 ADMINISTRATION

Task 1.1 Attend Kick-off Meeting

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

The Recipient shall:

- Attend a "Kick-Off" meeting with the CAM, the Commission Agreement Officer (CAO), and a representative of the Energy Commission Accounting Office. The Recipient shall bring their Project Manager, Agreement Administrator, Accounting Officer, and any others determined necessary by the Recipient or specifically requested by the CAM to this meeting.
- Discuss the following administrative and technical aspects of this Agreement:
 - Agreement Terms and Conditions
 - Critical Project Review (Task 1.2)
 - Match fund documentation (Task 1.7) No reimbursable work may be done until this documentation is in place.
 - Permit documentation (Task 1.8)
 - Subcontracts needed to carry out project (Task 1.9)
 - The CAM's expectations for accomplishing tasks described in the Scope of Work
 - An updated Schedule of Products and Due Dates
 - Monthly Progress Reports (Task 1.4)
 - Quarterly Progress Reports (Task 1.5)
 - Technical Products
 - Final Report (Task 1.6)

Recipient Products:

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

Commission Agreement Manager Product:

- Kick-Off Meeting Agenda

Task 1.2 Critical Project Review (CPR) Meetings

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

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

Meeting participants include the CAM and the Recipient and may include the Commission Agreement Officer, the Efficiency Division (ED) program lead, other Energy Commission staff and Management as well as other individuals selected by the CAM to provide support to the Energy Commission.

The CAM shall:

- Determine the location, date, and time of each CPR meeting with the Recipient. These meetings generally take place at the Energy Commission, but they may take place at another location.
- Send the Recipient the agenda and a list of expected participants in advance of each CPR. If applicable, the agenda shall include a discussion on both match funding and permits.
- Conduct and make a record of each CPR meeting. Prepare a schedule for providing the written determination described below.
- Determine whether to continue the project, and if continuing, whether or not modifications are needed to the tasks, schedule, products, and/or budget for the remainder of the Agreement. Modifications to the Agreement may require a formal amendment (please see section 8 of the Terms and Conditions). If the CAM concludes that satisfactory progress is not being made, this conclusion will be referred to the Lead Commissioner for Efficiency for his or her concurrence.
- Provide the Recipient with a written determination in accordance with the schedule. The written response may include a requirement for the Recipient to revise one or more product(s) that were included in the CPR.

The Recipient shall:

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

CAM Products:

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

Recipient Product:

- CPR Report(s)

Task 1.3 Final Meeting

The goal of this task is to closeout this Agreement.

The Recipient shall:

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

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

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 Energy Commission funds (Options)
- Energy Commission's request for specific "generated" data (not already provided in Agreement products)
- Need to document Recipient's disclosure of "subject inventions" developed under the Agreement

- "Surviving" Agreement provisions
- Final invoicing and release of retention
- Prepare a schedule for completing the closeout activities for this Agreement.

Products:

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

Task 1.4 Monthly Progress Reports

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

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

The Recipient shall:

- Prepare a Monthly Progress Report which summarizes all Agreement activities conducted by the Recipient for the reporting period, including an assessment of the ability to complete the Agreement within the current budget and any anticipated cost overruns. Each progress report is due to the Commission Agreement Manager within 10 days of the end of the reporting period. The recommended specifications for each progress report are contained in Section 6 of the Terms and Conditions of this Agreement.
- In the first Monthly Progress Report and first invoice, document and verify match expenditures and provide a synopsis of project progress, if match funds have been expended or if work funded with match share has occurred after the notice of proposed award but before execution of the grant agreement. If no match funds have been expended or if no work funded with match share has occurred before execution, then state this in the report. All pre-execution match expenditures must conform to the requirements in the Terms and Conditions of this Agreement.

Product:

- Monthly Progress Reports

Task 1.5 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.

The objectives of this task are to summarize activities performed during the reporting period and to report them to the Energy Commission's Commission Agreement Manager, which meets federal reporting requirements.

The Recipient shall:

- Prepare a Quarterly Progress Report with the required fields, as determined by the Energy Commission. Each progress report is due to the Commission Agreement Manager within 10 days of the end of the reporting period.

Product:

- Quarterly Progress Reports

Task 1.6 Final Report

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

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

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

The Recipient shall:

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

Products:

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

Task 1.7 Identify and Obtain Matching Funds

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

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

The Recipient shall:

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

Products:

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

Task 1.8 Identify and Obtain Required Permits

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

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

The Recipient shall:

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

Products:

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

- Updated schedule for acquiring permits as changes occur during the term of the Agreement (if applicable)
- A copy of each final approved permit (if applicable)

Task 1.9 Obtain and Execute Subcontracts

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

The Recipient shall:

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

Products:

- Letter describing the subcontracts needed, or stating that no subcontracts are required
- Draft subcontracts
- Final subcontracts

TECHNICAL TASKS

TASK 2 BUILDING ENERGY BENCHMARKING

The goal of this task is to integrate all of the City's municipal buildings into building performance profiles within the Department Of Energy's ENERGY STAR Portfolio Manager. This task will provide the City with a tool to benchmark the energy usage of its buildings against similar buildings throughout the nation and allow the City to identify opportunities for future energy efficiency projects to help meet its CAP targets and the goals of AB 802.

The Recipient shall:

- Integrate existing municipal building electricity meters into ENERGY STAR Portfolio Manager. This task shall include, but is not limited to, integrating 623 existing electricity meters.
- Integrate existing municipal building natural gas meters into ENERGY STAR Portfolio Manager. This task shall include, but is not limited to, integrating 298 existing natural gas meters.
- Validate the data of the City's existing 750 municipal properties already entered into ENERGY STAR Portfolio Manager. Backfill energy use statistics were required for each facility through January, 2016.

June 14, 2017

Page 11 of 16

LGC-16-002
The City of San Diego
Environmental Services Department

- Coordinate with San Diego Gas and Electric (SDG&E), the City's local utility, to receive monthly energy consumption data for all municipal buildings in ENERGY STAR Portfolio Manager for continuous benchmarking.
- Provide a written notification regarding Building Energy Benchmarking Integration, to the Commission Project Manager. The letter shall include, but is not limited to, written documentation that the ENERGY STAR Portfolio Manager Building Profiles are ready for viewing and the date such viewing shall begin, and shall include photographs.
- Share ENERGY STAR Portfolio Manager access to the benchmarked facilities with the Energy Commission.

Products:

- Written Notification regarding Building Energy Benchmarking Integration.
- ENERGY STAR Portfolio Manager access granted to the Energy Commission.

TASK 3 INTEGRATION OF BENCHMARKING/GREEN BUTTON DATA INTO SCOUP PLATFORM

The goal of this task is to integrate energy consumption and benchmarking data through web services into a SCOUP building energy dashboard application for the City's municipal buildings and meters. These dashboards will utilize monthly ENERGY STAR Portfolio Manager benchmarking data and hourly SDG&E Green Button energy consumption data to allow for continuous performance monitoring of all municipal facilities and provide to the City a method to identify opportunities to develop energy conservation measures and prioritize investments.

The Recipient shall:

- Design the SCOUP network architecture and server components.
- Prepare SCOUP network and server Equipment Submittals for the Level 1 Building Dashboards. This set of documents shall include, but is not limited to, the following:
 - a list of all items purchased and installed;
 - shop drawings; and
 - sample graphics.
- Procure, install, and commission the SCOUP server.
- Create Level 1 digital graphic energy display dashboards for each municipal building. These dashboards shall include, but are not limited to, graphic displays for ENERGY STAR Portfolio Manager benchmarking data and Green Button energy consumption data.
- Integrate Energy Star Portfolio Manager Benchmarking data into Level 1 Building Dashboards for each municipal building through web services. These displays shall be provided for, but are not limited to, 591 existing municipal buildings.

- Integrate SDG&E Green Button data into Level 1 Building Dashboards for each municipal facility's utility meter through web services. These displays shall be provided for, but are not limited to, 921 existing municipal meters.
- Provide a written notification regarding Level 1 Building Dashboards to the CAM. The letter shall include, but is not limited to, written documentation that the Level 1 Building Dashboards are ready for viewing and the date such viewing shall begin, and shall include photographs.

Products:

- SCOUP network architecture and server design documents.
- Equipment Submittals and Shop Drawings for the Level 1 Building Dashboards.
- Written Notification regarding Level 1 Building Dashboards to CAM.

TASK 4 WIRELESS PNEUMATIC-TO-DDC CONTROLS SYSTEM IN CITY ADMINISTRATIVE BUILDING (CAB) COMPLEX

The goal of this task is to install and integrate approximately 400 wireless Direct Digital Controls (DDC) thermostats in the City's CAB Complex to replace the existing pneumatic thermostats. This replacement will permit the use of advanced HVAC control strategies and result in reduced energy consumption throughout the CAB Complex.

The Recipient shall:

- Prepare System Product Data and Shop Drawing Submittals. This set of documents shall include, but is not limited to, the following:
 - a list of all items purchased and installed;
 - hardware and software product data; and
 - shop drawings.
- Remove all existing pneumatic thermostats within the City's CAB Complex and replace with Cypress EnviroSystems DDC thermostats.
- Integrate the newly installed Cypress EnviroSystems DDC thermostats into the City's CAB Complex's DDC controls system.
- Implement a revised Sequence of Operations (SOO) including modern control techniques to optimize zone level control within the CAB Complex. The SOO control strategies shall include, but are not limited to, the following:
 - programmable Schedule setbacks at zone level for unoccupied periods;
 - dead-band set-point control;
 - enforcement of set-point policy;
 - duct static pressure optimization; and
 - supply temperature optimization.
- Provide performance test checklists for each replacement thermostat.

Product:

- Product Data and Shop Drawing Submittals
- Completed Performance Test Checklists

TASK 5 SUB-METERING OF LEVEL 3 PILOT PROJECTS

The goal of this task is to install and integrate multiple sub-meters within each building in the CAB Complex and two recreation centers receiving Level 3 dashboards. Installing sub-meters to monitor energy consumed by specific building operations will allow the City to measure and verify energy savings and greenhouse gas emission reductions associated with future efficiency upgrade projects.

The Recipient shall:

- Design and permit the proposed energy meters.
- Prepare System Product Data and Shop Drawing Submittals. This set of documents shall include, but is not limited to, the following:
 - a list of all items purchased and installed;
 - hardware and software product data; and
 - shop drawings.
- Install energy meters on the chilled water piping of each building within the CAB Complex to monitor each building's cooling load. The metered buildings shall include the City Administration Building, the City Operations Building, Plaza Hall, the Civic Theatre, the City Concourse Building, and the Central Plant.
- Install energy meters on the heating hot water piping of each building within the CAB Complex to monitor each building's heating load. The metered buildings shall include the City Administration Building, the City Operations Building, Plaza Hall, the Civic Theatre, the City Concourse Building, and the Central Plant.
- Install natural gas sub-meters to monitor natural gas consumed to heat municipal swimming pools. These sub-meters shall be installed to monitor the swimming pool heating equipment at the City Heights Recreation Center and the Martin Luther King Jr. Recreation Center.
- Integrate the installed energy meters into the SCoup network.

Product:

- Energy Meter Design Documents
- Product Data and Shop Drawing Submittals

TASK 6 FULL SEMMS INTEGRATION AND LEVEL 3 DASHBOARDS WITH ANALYTICS

The goal of this task is to create and integrate a Smart Energy Management & Monitoring System (SEMMS) controls platform with Level 3 building dashboards for ten City buildings contained in five pilot sites. These level 3 dashboards will include all of the features of the Level 1 dashboards described in Task 3, while also integrating all of the building's HVAC, lighting, and renewable energy system controls, as well as the sub-meters described in Task 5. The facilities receiving integrated Level 3 dashboards are expected to reduce building energy consumption by 15% and will be considered "Smart City" pilot projects to act as case studies for future CoSD Smart City Open Urban Platform (SCOUP) projects.

The Recipient shall:

- Design the network architecture and integration performance requirements for each of the five pilot sites.
- Prepare Equipment Submittals and Shop Drawings for the Five Pilot Sites SEMMS implementation. This set of documents shall include, but is not limited to, the following:
 - a list of all items purchased and installed;
 - shop drawings;
 - sample graphics
- Develop digital graphic displays dashboards for ten CoSD buildings, including the City Heights Recreation Center, the Martin Luther King Jr. Recreation Center, the Park de la Cruz Recreation Center and Gymnasium, the Central Library, and each of the five CoSD CAB Complex buildings. These graphic displays are to include energy benchmarking and consumption graphics, city building graphics, HVAC and lighting floor plans, HVAC and lighting equipment graphics, and central plant overview graphics as applicable.
- Tag each integrated system with open-source Project Haystack and integrate the DDC building system controls for each building into its respective Level 3 dashboard.
- Incorporate fault detection and diagnostics (FD&D) within the Level 3 dashboard analytics for each building. Fault detection and diagnostics shall be provided through SkySpark or an equivalent analytics engine.
- Integrate analytics to measure and verify energy savings and greenhouse gas emission reductions associated with each of the HVAC and lighting efficiency projects.
- Provide a written notification regarding Level 3 Digital Building Dashboards to the CAM. The letter shall include, but is not limited to, written documentation that the Level 3 Building Dashboards are ready for viewing and the date such viewing shall begin.
- Prepare the Integrated SEMMS Savings Report. This report shall include, but is not limited to, the following:
 - the goal of the task or subtask;
 - the description of the approach used;

June 14, 2017

Page 15 of 16

LGC-16-002
The City of San Diego
Environmental Services Department

- list of activities performed;
- description of the energy savings results and to what degree the goal was achieved;
- significant issues encountered and how they were addressed;
- a discussion of the implications regarding the success or failure of the results, and the effect on the budget and the overall objectives of the project; and
- photographs as appropriate.

Products:

- Design Documents.
- Equipment Product Data and Shop Drawing submittals.
- Written Notification regarding Level 3 Digital Building Dashboards
- Draft Integrated SEMMS Savings Report
- Final Integrated SEMMS Savings Report

Task 7 PUBLIC OUTREACH/BROADCAST RESULTS

The goal of this task is develop and implement a plan for broadcasting and showcasing the project implementation, results, and lesson learned from Agreement tasks available to City residents, visitors, and other local governments.

The Recipient shall:

- Prepare a Public Outreach/Broadcast Results Plan explaining any public outreach actions proposed during the term of the Agreement and how the knowledge gained from Agreement tasks will be made available to other local governments. Key elements from this report shall be included in the Final Report for this Agreement.

Products:

- Draft Public Outreach/Technology Transfer Plan
- Final Public Outreach/Technology Transfer Plan

Exhibit A SOW Project Schedule

Task Number	Task Name	Products	Due Date
1.1	Attend Kick-off Meeting	Updated Schedule of Products	
		Updated List of Match Funds	8/31/2017
		Updated List of Permits	8/31/2017
		Kick-Off Meeting Agenda (CEC)	8/31/2017
1.2	Critical Project Review Meetings	1st CPR Meeting	
		CPR Report Written determination (CEC)	N/A
1.3	Final Meeting	Written documentation of meeting agreements	
		Schedule for completing closeout activities	10/12/2020
1.4	Monthly Progress Reports	Monthly Progress Reports	
			The 10th calendar day of each month during the approved term of this Agreement
1.5	Quarterly Progress Reports	Quarterly Progress Reports	
			The 10th calendar day of each quarter during the approved term of this Agreement
1.6	Final Report	Final Outline of the Final Report	
		Draft Final Report (no less than 60 days before the end term of the agreement)	12/17/2020
		Final Report	1/7/2021
1.7	Identify and Obtain Match Funds	A letter regarding match funds or stating that no match funds are provided	
		Copy(ies) of each match fund commitment letter(s) (if applicable)	8/31/2017
		Letter(s) for new match funds (if applicable)	8/31/2017
		Letter that match funds were reduced (if applicable)	Within 10 days of identifying new match funds
1.8	Identify and Obtain Required Permits	Letter documenting the permits or stating that no permits are required	
		A copy of each approved permit (if applicable)	8/31/2017
		Updated list of permits as they change during the term of the Agreement (if applicable)	Within 10 days of receiving each permit
		Updated schedule for acquiring permits as changes occur during the term of the Agreement (if applicable)	Within 10 days of change in list of permits
1.9	Obtain and Execute Subcontracts	Letter describing the subcontracts needed, or stating that no subcontracts are required	
		Draft subcontracts	8/31/2017
		Final subcontracts	15 days prior to the scheduled execution date
			Within 10 days of execution

2	BUILDING ENERGY BENCHMARKING	
	Written Notification regarding Building Energy Benchmarking Integration	1/30/2018
	Portfolio Manager access granted to CEC	1/30/2018
3	INTEGRATION OF BENCHMARKING/GREEN BUTTON DATA INTO SCOUP PLATFORM	
	SCOUP network architecture and server design documents	11/29/2017
	Equipment Submittals and Shop Drawings for the Level 1 Building Dashboards	1/30/2018
	Written Notification regarding Level 1 Building Dashboards	7/2/2018
4	WIRELESS PNEUMATIC-TO-DDC CONTROLS SYSTEM IN CITY ADMINISTRATIVE BUILDING (CAB) COMPLEX	
	Product Data and Shop Drawing Submittals	11/29/2017
	Completed Performance Task Checklists	11/30/2018
5	SUB-METERING OF LEVEL 3 PILOT PROJECTS	
	Energy Meter Design Documents	11/29/2017
	Product Data and Shop Drawing Submittals	12/29/2017
6	FULL SEMMS INTEGRATION AND LEVEL 3 DASHBOARDS WITH ANALYTICS	
	Design Documents	12/29/2017
	Equipment Product Data and Shop Drawings submittals	3/15/2018
	Written Notification regarding Level 3 Digital Building Dashboards	12/31/2018
	Draft Integrated SEMMS Savings Report	3/7/2019
	Final Integrated SEMMS Savings Report	4/15/2019
7	PUBLIC OUTREACH/BROADCAST RESULTS	
	Draft Public Outreach/Technology Transfer Plan	2/15/2019
	Final Public Outreach/Technology Transfer Plan	5/15/2019

**EXHIBIT A, ATTACHMENT A-2
CONTENT AND FORMAT OF PROGRESS REPORTS**

**PROGRESS REPORT for
Project Title, Agreement Number
Month, Year**

Recipient Project Manager:
Commission Agreement Manager:

What we planned to accomplish this period

[This is taken directly from the section on "What we expect to accomplish during the next period" from the last progress report]

What we actually accomplished this period

[Concise description of major activities and accomplishments.]

How we are doing compared to our plan

[Explain the differences, if any, between the planned and the actual accomplishments. Describe what needs to be done, if anything, to get back on track.]

Significant problems or changes

[Describe any significant technical or fiscal problems. Request approval for significant changes in work scope, revised milestone due dates, changes in key personnel assigned to the project, or reallocation of budget cost categories. If none, include the following statement: "Progress and expenditures will result in project being completed on time and within budget."]

What we expect to accomplish during the next period

[Concise description of major activities and accomplishments expected. This will be transferred to the next progress report]]

Status of Milestones and Products:

[This should be the complete list as contained in the revised scope of work and Exhibit B. Highlight differences between actual and planned.]

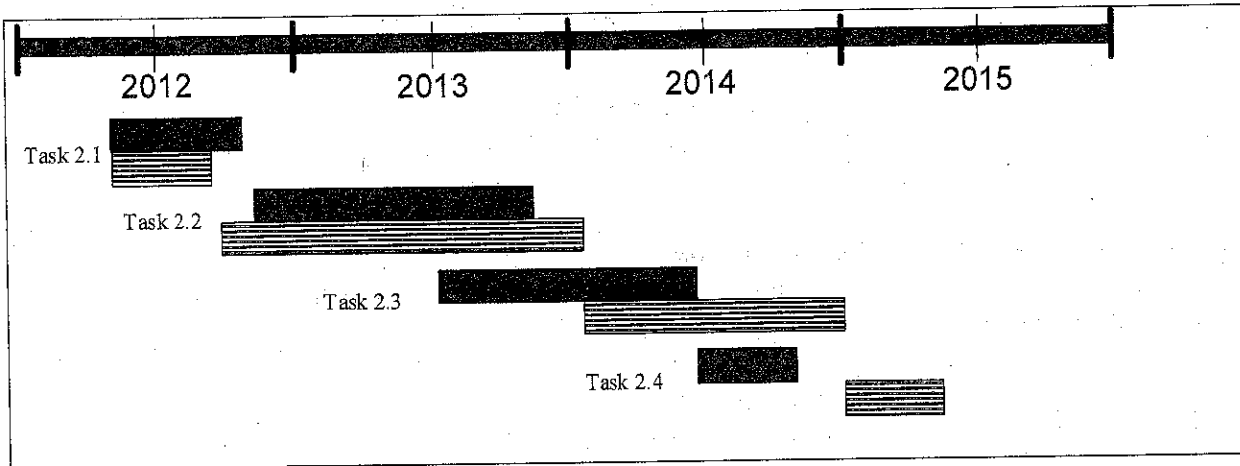
Description	Start Date		Due Date		Status (%)
	Planned	Actual	Planned	Actual	
Identify top 3 assessment candidates	4/15/12	4/15/12	5/1/12	5/1/12	Ontime 100%
Develop test plan	4/20/12	4/10/12	7/7/12	6/10/12	Ahead 100%
Analyze experimental data	5/1/12	6/1/12	1/1/13	2/1/13	Delayed 25%

June 14, 2017

Exhibit A, Attachment A-2
Page 1 of 2

LGC-16-002
The City of San Diego
Environmental Services Department

**EXHIBIT A, ATTACHMENT A-2
CONTENT AND FORMAT OF PROGRESS REPORTS**



Overall schedule for the _____ project.

[Planned is solid blue, actual is red striped. This work flow diagram needs to correlate with the schedule in Exhibit B. This example has been prepared as a Word Picture, but a comparable Excel diagram or Gantt chart is fine.]

Overview of Fiscal Status: (See invoices for detail.)

[It is useful to track the rate of expenditure of project funds. The most useful way to do this is to compare the actual expenditure rate with the planned expenditure rate. You get the planned rate at the beginning of the project, so it becomes a baseline. If you change course at a critical project review, you should show the original and the modified baseline, and then track against the new one.]

Photographs:

[Include photographs where appropriate to document progress.] The photos shall be shot with color print film or be very high quality digital photos (at least 300 dpi).

Evidence of Progress:

If there is a long time between interim products, then attach evidence of the progress being made (e.g., test data, product mock-ups, field site descriptions, preliminary analyses) to the progress reports to allow the Commission Project Manager to review progress and gauge the quality of research results.

The progress report on each project should be 1-2 pages long (plus photographs) and take about 1 hour to prepare for each reporting period.

Category Budget

Name of Organization

The City of San Diego Environmental Services Department

Cost Category	Energy Commission Reimbursable Share	Match Share	Total
Direct Labor	\$ 132,941	\$ -	\$ 132,941
Fringe Benefits	\$ 57,168	\$ -	\$ 57,168
Total Labor	\$ 190,109	\$ -	\$ 190,109
Travel	\$ 10,000	\$ -	\$ 10,000
Equipment	\$ -	\$ -	\$ -
Materials/Miscellaneous	\$ 1,200	\$ -	\$ 1,200
Subcontractors	\$ 1,705,186	\$ -	\$ 1,705,186
Total Other Direct Costs	\$ 1,716,386	\$ -	\$ 1,716,386
Indirect Costs	\$ 84,949	\$ -	\$ 84,949
Profit (not allowed for grant recipients)	\$ -	\$ -	\$ -
Total Indirect and Profit	\$ 84,949	\$ -	\$ 84,949
Grand Totals	\$ 1,991,444	\$ -	\$ 1,991,444

The City of San Diego Environmental Services Department

Hourly Rates

Employee Name	Job Classification / Title	Maximum Labor Rate (\$ per hour)	# of Hours	Energy Commission Funds	Match Share	Total
Jack Clark	Deputy Director	\$ 62.50	200	\$ 12,500	\$ -	\$ 12,500
Lorie Cosio Azar	Program Manager	\$ 48.08	630	\$ 30,290	\$ -	\$ 30,290
(Aaron) YiChen Lu	Program Coordinator	\$ 52.88	210	\$ 11,105	\$ -	\$ 11,105
Nancy Adachi	Supervising Mgmt Analyst	\$ 38.89	200	\$ 7,778	\$ -	\$ 7,778
Brian Henry	Senior Mgmt Analyst	\$ 34.50	100	\$ 3,450	\$ -	\$ 3,450
Valli Clark	Associate Mgmt Analyst	\$ 31.41	100	\$ 3,141	\$ -	\$ 3,141
Bryan Olson	Sr. Civil Engineer	\$ 44.64	400	\$ 17,856	\$ -	\$ 17,856
TBD	Info Sys Anlyst 4	\$ 38.89	1,204	\$ 46,820	\$ -	\$ 46,820
				\$ -	\$ -	\$ -
Hourly Direct Labor Totals				\$ 132,941	\$ -	\$ 132,941

Monthly Salary Rates

Employee Name	Job Classification / Title	Labor Rate (\$ per month)	# of Months	Energy Commission Funds	Match Share	Total
		\$ -		\$ -	\$ -	\$ -
		\$ -		\$ -	\$ -	\$ -
		\$ -		\$ -	\$ -	\$ -
		\$ -		\$ -	\$ -	\$ -
		\$ -		\$ -	\$ -	\$ -
		\$ -		\$ -	\$ -	\$ -
Monthly Direct Labor Totals				\$ -	\$ -	\$ -

	Energy Commission Funds	Match Share	Total
Direct Labor Grand Totals	\$ 132,941	\$ -	\$ 132,941

Fringe Benefits

The City of San Diego Environmental Services Department

Fringe Benefit Base Description (Employee or Job Classification/Title)	Max. Fringe Benefit Rate (%)	Direct Labor Costs (\$)	Energy Commission Funds	Match Share	Total
Deputy Director	30.00%	\$ 12,500	\$ 3,750	\$ -	\$ 3,750
Program Manager	75.00%	\$ 30,290	\$ 15,218	\$ -	\$ 15,218
Program Coordinator	30.00%	\$ 11,105	\$ 3,332	\$ -	\$ 3,332
Supervising Mgmt Analyst	75.00%	\$ 7,778	\$ 5,834	\$ -	\$ 5,834
Senior Mgmt Analyst	75.00%	\$ 3,450	\$ 2,588	\$ -	\$ 2,588
Associate Mgmt Analyst	75.00%	\$ 3,141	\$ 2,356	\$ -	\$ 2,356
Sr. Civil Engineer	75.00%	\$ 17,856	\$ 10,044	\$ -	\$ 10,044
Info Sys Anlyst 4	30.00%	\$ 46,820	\$ 14,046	\$ -	\$ 14,046
	0.00%	\$ -	\$ -	\$ -	\$ -
Fringe Benefit Totals		\$ 132,940	\$ 57,168	\$ -	\$ 57,168

Travel

The City of San Diego Environmental Services Department

Task No.	Traveler's Name and/or Classification	Departure and Destination	Trip Purpose	Energy Commission Funds	Match Share	Total
1	Jack Clark	San Diego to Sacramento	Attendance at Kickoff Meeting, Critical Project Review Meeting and Final Meeting; cost includes air fare, car rental, lodging and meals.	\$ 5,000	\$ -	\$ 5,000
1	Lorie Cosio Azar	San Diego to Sacramento	Attendance at Kickoff Meeting, Critical Project Review Meeting and Final Meeting; cost includes air fare, car rental, lodging and meals.	\$ 5,000	\$ -	\$ 5,000
				\$ -	\$ -	\$ -
Total:				\$ 10,000	\$ -	\$ 10,000

Equipment

The City of San Diego Environmental Services Department

Task No.	Description	Purpose	# Units	Unit Cost	Energy Commission Funds	Match Share	Total
				\$ -	\$ -	\$ -	\$ -
Total:					\$	\$	\$

Materials & Miscellaneous

The City of San Diego Environmental Services Department

Task No	Description	Purpose	# Units	Unit Cost	Energy Commission Funds	Match Share	Total
5,7	Flat Screen Monitor	Display dashboard to view energy consumption at various Municipal facilities	1	\$ 1,200	\$ 1,200	\$ -	\$ 1,200
				\$ -	\$ -	\$ -	\$ -
Total:					\$ 1,200	\$ -	\$ 1,200

Subcontracts

The City of San Diego Environmental Services Department

Task No.	Subcontractor Name	Purpose	CA Business Certifications DVBE/ SB/MB/None	Energy Commission Funds	Match Share	Total
2,3,4,5,6	SC Engineers, Inc.	Provide technical support and advising on technical tasks	SB	\$ 216,114	\$ -	\$ 216,114
2,3,4,5	Cypress EnviroSystems, Inc	Provide control and equipment installations	SB	\$ 357,448	\$ -	\$ 357,448
3,4,5,6	Dynalectric Company	Provide hardware and equipment installations	None	\$ 1,037,624	\$ -	\$ 1,037,624
7	Local Government Commission	Support public outreach/broadcast results activities	None	\$ 94,000	\$ -	\$ 94,000
				\$ -	\$ -	\$ -
Total:				\$ 1,705,186	\$ -	\$ 1,705,186

The City of San Diego Environmental Services Department

Indirect Cost(s)

Name of Indirect Cost	Maximum Rate	Indirect Cost Base Description	Indirect Cost Base Amount	Energy Commission Funds	Match Share	Total
Indirect Recoverable Cost Rate	63.90%	Environmental Services Department Federal Overhead Rate (Direct Labor)	\$ 132,941	\$ 84,949	\$ -	\$ 84,949
	0.00%		\$ -	\$ -	\$ -	\$ -
Total:				\$ 84,949	\$ -	\$ 84,949

Profit

(Profit is not allowed for Grant Recipients)

Profit Rate	Profit Base Description	Profit Base Amount	Energy Commission Funds	Match Share	Total
0.00%		\$ -	\$ -	\$ -	\$ -
Total:			\$ -	\$ -	\$ -

Category Budget

Name of Organization

Shadpour Consulting Engineers, Inc.
dba SC Engineers, Inc.

Cost Category	Energy Commission Reimbursable Share	Match Share	Total
Direct Labor	\$ 213,000	\$ -	\$ 213,000
Fringe Benefits	\$ -	\$ -	\$ -
Total Labor	\$ 213,000	\$ -	\$ 213,000
Travel	\$ 2,400	\$ -	\$ 2,400
Equipment	\$ -	\$ -	\$ -
Materials/Miscellaneous	\$ 714	\$ -	\$ 714
Subcontractors	\$ -	\$ -	\$ -
Total Other Direct Costs	\$ 3,114	\$ -	\$ 3,114
Indirect Costs	\$ -	\$ -	\$ -
Profit (not allowed for grant recipients)	\$ -	\$ -	\$ -
Total Indirect and Profit	\$ -	\$ -	\$ -
Grand Totals	\$ 216,114	\$ -	\$ 216,114

** NOTE: For purposes of this grant, SC Engineers (a commercial A&E company) is proposing and intends to invoice at its standard commercial price list rates less a 15% discount.*

Direct Labor (Unloaded)*

Shadpour Consulting Engineers, Inc. dba SC Engineers, Inc.

Hourly Rates*

Employee Name	Job Classification / Title	Maximum Labor Rate (\$ per hour) *	# of Hours	Energy Commission Funds	Match Share	Total
TBD	Principal	\$ 165.75	257	\$ 42,600	\$ -	\$ 42,600
TBD	Project Engineer	\$ 114.75	557	\$ 63,900	\$ -	\$ 63,900
TBD	Designer	\$ 106.25	301	\$ 31,950	\$ -	\$ 31,950
TBD	Engineering Assistant	\$ 97.75	545	\$ 53,250	\$ -	\$ 53,250
TBD	Accounting	\$ 80.75	79	\$ 6,390	\$ -	\$ 6,390
TBD	Administrator	\$ 63.75	234	\$ 14,910	\$ -	\$ 14,910
Hourly Direct Labor Totals				\$ 213,000	\$ -	\$ 213,000

Monthly Salary Rates

Employee Name	Job Classification / Title	Maximum Labor Rate (\$ per month)	# of Months	Energy Commission Funds	Match Share	Total
		\$ -		\$ -	\$ -	\$ -
		\$ -		\$ -	\$ -	\$ -
		\$ -		\$ -	\$ -	\$ -
		\$ -		\$ -	\$ -	\$ -
		\$ -		\$ -	\$ -	\$ -
		\$ -		\$ -	\$ -	\$ -
Monthly Direct Labor Totals				\$ -	\$ -	\$ -

	Energy Commission Funds	Match Share	Total
Direct Labor Grand Totals	\$ 213,000	\$ -	\$ 213,000

Fringe Benefits
(see instructions)

Shadpour Consulting Engineers, Inc. dba SC Engineers, Inc.

Fringe Benefit Base Description (Employee or Job Classification/Title)	Max. Fringe Benefit Rate (%)	Direct Labor Costs (\$)	Energy Commission Funds	Match Share	Total
	0.00%	\$ -	\$ -	\$ -	\$ -
Fringe Benefit Totals		\$ -	\$ -	\$ -	\$ -

Travel

Shadpour Consulting Engineers, Inc. dba SC Engineers, Inc.

Task No.	Traveler's Name and/or Classification	Departure and Destination	Trip Purpose	Energy Commission Funds	Match Share	Total
1	Principal	San Diego to Sacramento, CA	Kick-off Meeting (1)	\$ 300	\$ -	\$ 300
1	Project Engineer	San Diego to Sacramento, CA	Kick-off Meeting (1)	\$ 300	\$ -	\$ 300
1	Principal	San Diego to Sacramento, CA	Critical Project Review Meeting (1)	\$ 600	\$ -	\$ 600
1	Project Engineer	San Diego to Sacramento, CA	Critical Project Review Meeting (1)	\$ 600	\$ -	\$ 600
1	Principal	San Diego to Sacramento, CA	Final Meeting (1)	\$ 300	\$ -	\$ 300
1	Project Engineer	San Diego to Sacramento, CA	Final Meeting (1)	\$ 300	\$ -	\$ 300
				\$ -	\$ -	\$ -
Total:				\$ 2,400	\$ -	\$ 2,400

Equipment

Shadpour Consulting Engineers, Inc dba SC Engineers, Inc

Task No.	Description	Purpose	# Units	Unit Cost	Energy Commission Funds	Match Share	Total
				\$ -	\$ -	\$ -	\$ -
Total:					\$ -	\$ -	\$ -

Materials & Miscellaneous *

Shadpour Consulting Engineers, Inc. dba SC Engineers, Inc.

Task No.	Description	Purpose	# Units	Unit Cost *	Energy Commission Funds	Match Share	Total
1	Color Prints		600	\$ 0.30	\$ 180	\$ -	\$ 180
1	Blueline Prints		250	\$ 1.02	\$ 255	\$ -	\$ 255
1	11"x17" Half size Drawings and Sheets		200	\$ 0.44	\$ 88	\$ -	\$ 88
1	Shipping and Handling		5	\$ 38.25	\$ 191	\$ -	\$ 191
Total:					\$ 714	\$ -	\$ 714

Subcontracts

Shadpour Consulting Engineers, Inc. dba SC Engineers, Inc.

Task No.	Subcontractor Name	Purpose	CA Business Certifications DVBE/SB/MB/None	Energy Commission Funds	Match Share	Total
				\$ -	\$ -	\$ -
Total:				\$ -	\$ -	\$ -

Indirect Cost(s)

Name of Indirect Cost	Maximum Rate	Indirect Cost Base Description	Indirect Cost Base Amount	Energy Commission Funds	Match Share	Total
	0.00%		\$ -	\$ -	\$ -	\$ -
Total:				\$ -	\$ -	\$ -

Profit

(Profit is not allowed for Grant Recipients)

Profit Rate	Profit Base Description	Profit Base Amount	Energy Commission Funds	Match Share	Total
0.00%		\$ -	\$ -	\$ -	\$ -
Total:			\$ -	\$ -	\$ -

Name of Organization

Dynalectric Company

Contractor/Recipient

Subcontractor

Cost Category	Energy Commission Reimbursable Share	Match Share	Total
Direct Labor	\$ 443,175	\$ -	\$ 443,175
Fringe Benefits	\$ 276,868	\$ -	\$ 276,868
Total Labor	\$ 720,043	\$ -	\$ 720,043
Travel	\$ -	\$ -	\$ -
Equipment	\$ -	\$ -	\$ -
Materials/Miscellaneous	\$ 159,867	\$ -	\$ 159,867
Subcontractors	\$ 18,000	\$ -	\$ 18,000
Total Other Direct Costs	\$ 177,867	\$ -	\$ 177,867
Indirect Costs	\$ 71,832	\$ -	\$ 71,832
Profit (not allowed for grant recipients)	\$ 67,882	\$ -	\$ 67,882
Total Indirect and Profit	\$ 139,714	\$ -	\$ 139,714
Grand Totals	\$ 1,037,624	\$ -	\$ 1,037,624

Dynalectric Company

Hourly Rates

Employee Name	Job Classification / Title	Maximum Labor Rate (\$ per hour)	# of Hours	Energy Commission Funds	Match Share	Total
Bob Riel	Project Executive	\$ 85.00	150	\$ 12,750	\$ -	\$ 12,750
Brian Bresssette	Project Manager	\$ 53.00	350	\$ 18,550	\$ -	\$ 18,550
Daniel Hanuska	Project Engineer	\$ 48.00	200	\$ 9,600	\$ -	\$ 9,600
Steve Randall	Lead Programmer	\$ 51.50	2,100	\$ 108,150	\$ -	\$ 108,150
TBD	Assistant Programmer	\$ 46.50	4,000	\$ 186,000	\$ -	\$ 186,000
TBD	Electrician	\$ 43.25	2,500	\$ 108,125	\$ -	\$ 108,125
Hourly Direct Labor Totals				\$ 443,175	\$ -	\$ 443,175

Monthly Salary Rates

Employee Name	Job Classification / Title	Labor Rate (\$ per month)	# of Months	Energy Commission Funds	Match Share	Total
		\$ -		\$ -	\$ -	\$ -
		\$ -		\$ -	\$ -	\$ -
		\$ -		\$ -	\$ -	\$ -
		\$ -		\$ -	\$ -	\$ -
		\$ -		\$ -	\$ -	\$ -
		\$ -		\$ -	\$ -	\$ -
Monthly Direct Labor Totals				\$ -	\$ -	\$ -

	Energy Commission Funds	Match Share	Total
Direct Labor Grand Totals	\$ 443,175	\$ -	\$ 443,175

Fringe Benefits

Dynalectric Company

Fringe Benefit Base Description (Employee or Job Classification/Title)	Max. Fringe Benefit Rate (%)	Direct Labor Costs (\$)	Energy Commission Funds	Match Share	Total
Bob Riel	60.00%	\$ 12,750	\$ 7,650	\$ -	\$ 7,650
Brian Bresssette	62.00%	\$ 18,550	\$ 11,501	\$ -	\$ 11,501
Daniel Haruska	64.00%	\$ 9,600	\$ 6,144	\$ -	\$ 6,144
Steve Randall	62.00%	\$ 108,150	\$ 67,053	\$ -	\$ 67,053
TBD	62.00%	\$ 186,000	\$ 115,320	\$ -	\$ 115,320
TBD	64.00%	\$ 108,125	\$ 69,200	\$ -	\$ 69,200
	0.00%	\$ -	\$ -	\$ -	\$ -
Fringe Benefit Totals		\$ 443,175	\$ 276,868	\$ -	\$ 276,868

Travel

Dynalectric Company

Task No.	Traveler's Name and/or Classification	Departure and Destination	Trip Purpose	Energy Commission Funds	Match Share	Total
				\$ -	\$ -	\$ -
Total:				\$ -	\$ -	\$ -

Equipment

Dynalectric Company

Task No.	Description	Purpose	# Units	Unit Cost	Energy Commission Funds	Match Share	Total
				\$ -	\$ -	\$ -	\$ -
Total:					\$ -	\$ -	\$ -

Materials & Miscellaneous

Dynalectric Company

Task No.	Description	Purpose	# Units	Unit Cost	Energy Commission Funds	Match Share	Total
3	Computer Hardware	Provide Server, Screen	1	\$ 6,500	\$ 6,500	\$ -	\$ 6,500
3	Misc	Conduit, Wire, etc	1	\$ 2,000	\$ 2,000	\$ -	\$ 2,000
3	Network Jace box	Network interface to IP network and existing control networks	1	\$ 7,000	\$ 7,000	\$ -	\$ 7,000
3	Software/Licenses	Graphical front end and Licenses	25000	\$ 1.03	\$ 25,750	\$ -	\$ 25,750
3	Building Kiosk Screen	Public awareness as to the savings	8	\$ 3,000	\$ 24,000	\$ -	\$ 24,000
4	Hardware Routers	Communication HW	5	\$ 541	\$ 2,704	\$ -	\$ 2,704
4	Software/Licenses	Graphical front end and Licenses	3200	\$ 1.03	\$ 3,296	\$ -	\$ 3,296
5	Meter (BTU & Natural Gas))	Measure Gas, Chilled or HHW Energy usage	12	\$ 2,468	\$ 29,617	\$ -	\$ 29,617
5	Network box	Network interface to IP network and new meters	6	\$ 1,483	\$ 8,897	\$ -	\$ 8,897
5	Software/Licenses	Graphical front end and Licenses	100	\$ 1.03	\$ 103	\$ -	\$ 103
6	Misc	Conduit, Wire, etc	1	\$ 10,300.40	\$ 10,300	\$ -	\$ 10,300
6	Hardware/Licenses	Communication HW and Licenses	15000	\$ 1.03	\$ 15,450	\$ -	\$ 15,450
6	Network Jace box	Network interface to IP network and existing control networks	6	\$ 4,042	\$ 24,250	\$ -	\$ 24,250
				\$ -	\$ -	\$ -	\$ -
Total:					\$ 159,867	\$ -	\$ 159,867

Subcontracts

Dynalectric Company

Task No.	Subcontractor Name	Purpose	CA Business Certifications DVBE/ SB/MB/None	Energy Commission Funds	Match Share	Total
5	TBD	Install Mechanical probes and meters in piping	None	\$ 18,000	\$ -	\$ 18,000
				\$ -	\$ -	\$ -
Total:				\$ 18,000	\$ -	\$ 18,000

Indirect Costs and Profit

Dynalectric Company

Indirect Cost(s)

Name of Indirect Cost	Maximum Rate	Indirect Cost Base Description	Indirect Cost Base Amount	Energy Commission Funds	Match Share	Total
Indirect Job Cost	4.00%	(Warehouse, drivers, Purchasing, etc) Indirect costs: For all construction companies there are certain shared resources that can't efficiently be directly charged to a job. For example, the costs of purchasing material which include a purchasing agent and staff. To get the best pricing for our customers, many times we combine orders and/or leverage our national accounts to receive the most favorable pricing. Since this effort (cost) is a direct result of actual projects under construction, GAP (General Accounting Practices) requires it to be indirectly costed to the job. However, it would be impractical to try to allocate the time spent by the purchasing department to each job (there are over 200 jobs running at any one time). Therefore, we allocate this type of cost based upon the ratio of the actual annual cost (in this case purchasing department) to the total costs for all jobs during the year. This is also true for other cost items such as; a warehouse with its staff of stockers and drivers, general supervision of labor, and any other costs that are a direct result of performing construction work. It should be noted that costs like estimating and general administration, including office rental and operational costs are not included in this category but come under the heading of overhead. Only items that are required because of work being performed are included in the indirect costs. Last year, our indirect cost to job cost ratio was approximately 4%, which is what we are charging on this form. (Direct Labor, Fringe Benefits, and Material and Miscellaneous)	\$ 897,910	\$ 35,916	\$ -	\$ 35,916
Overhead	4.00%	San Diego Office Overhead	\$ 897,910	\$ 35,916	\$ -	\$ 35,916
	0.00%		\$ -	\$ -	\$ -	\$ -
Total:			\$ 71,832	\$ 71,832	\$ -	\$ 71,832

Profit

(Profit is not allowed for Grant Recipients)

Profit Rate	Profit Base Description	Profit Base Amount	Energy Commission Funds	Match Share	Total
7.00%		\$ 969,743	\$ 67,882	\$ -	\$ 67,882
Total:			\$ 67,882	\$ -	\$ 67,882

Category Budget

Name of Organization

Cypress Envirosystems, Inc.

Cost Category	Energy Commission Reimbursable Share	Match Share	Total
Direct Labor	\$ 47,080	\$ -	\$ 47,080
Fringe Benefits	\$ 18,018	\$ -	\$ 18,018
Total Labor	\$ 65,098	\$ -	\$ 65,098
Travel	\$ 10,910	\$ -	\$ 10,910
Equipment	\$ -	\$ -	\$ -
Materials/Miscellaneous	\$ 227,774	\$ -	\$ 227,774
Subcontractors	\$ 26,000	\$ -	\$ 26,000
Total Other Direct Costs	\$ 264,684	\$ -	\$ 264,684
Indirect Costs	\$ 17,465	\$ -	\$ 17,465
Profit (not allowed for grant recipients)	\$ 10,201	\$ -	\$ 10,201
Total Indirect and Profit	\$ 27,666	\$ -	\$ 27,666
Grand Totals	\$ 357,448	\$ -	\$ 357,448

Direct Labor (Unloaded)

Cypress Envirosystems, Inc.

Hourly Rates

Employee Name	Job Classification / Title	Maximum Labor Rate (\$ per hour)	# of Hours	Energy Commission Funds	Match Share	Total
Steve Kim	VP Operations	\$ 205.00	80	\$ 16,400	\$ -	\$ 16,400
David Racine	Senior Project Manager	\$ 85.00	160	\$ 13,600	\$ -	\$ 13,600
Javier Caballero	Network/Thermostat Installation and commissioning	\$ 42.70	160	\$ 6,832	\$ -	\$ 6,832
Matt Pummill	Network/Thermostat Installation and commissioning	\$ 42.70	160	\$ 6,832	\$ -	\$ 6,832
Erik Smith	Network/Thermostat Installation and commissioning	\$ 42.70	80	\$ 3,416	\$ -	\$ 3,416
		\$ -		\$ -	\$ -	\$ -
Hourly Direct Labor Totals				\$ 47,080	\$ -	\$ 47,080

	Energy Commission Funds	Match Share	Total
Direct Labor Grand Totals	\$ 47,080	\$ -	\$ 47,080

Fringe Benefits

Cypress Envirosystems, Inc.

Fringe Benefit Base Description (Employee or Job Classification/Title)	Max. Fringe Benefit Rate (%)	Direct Labor Costs (\$)	Energy Commission Funds	Match Share	Total
Steve Kim	26.00%	\$ 16,400	\$ 4,264	-	\$ 4,264
David Racine	28.89%	\$ 13,600	\$ 3,929	-	\$ 3,929
Javier Caballero	57.52%	\$ 6,832	\$ 3,930	-	\$ 3,930
Matt Pummill	57.52%	\$ 6,832	\$ 3,930	-	\$ 3,930
Erik Smith	57.52%	\$ 3,416	\$ 1,965	-	\$ 1,965
Fringe Benefit Totals		\$ 47,080	\$ 18,018	-	\$ 18,018

Travel

Cypress Envirosystems, Inc.

Task No.	Traveler's Name and/or Classification	Departure and Destination	Trip Purpose	Energy Commission Funds	Match Share	Total
2	Steve Kim	San Jose to San Diego (see detail breakdown)	Project Management, Training, Documentation	\$ 1,410	\$ -	\$ 1,410
2	David Racine	San Jose to San Diego (see detail breakdown)	Project Management, Training, Documentation	\$ 2,990	\$ -	\$ 2,990
3	Javier Caballero	San Jose to San Diego (see detail breakdown)	Installation and Commissioning	\$ 2,990	\$ -	\$ 2,990
4	Matt Pummill	San Jose to San Diego (see detail breakdown)	Installation and Commissioning	\$ 1,790	\$ -	\$ 1,790
5	Erik Smith	San Jose to San Diego (see detail breakdown)	Installation and Commissioning	\$ 1,730	\$ -	\$ 1,730
Total:				\$ 10,910	\$ -	\$ 10,910

Equipment

Cypress Envirosystems, Inc.

Task No.	Description	Purpose	# Units	Unit Cost	Energy Commission Funds	Match Share	Total
Total:					\$	\$	\$

Materials & Miscellaneous

Cypress Envirosystems Inc.

Task No.	Description	Purpose	# Units	Unit Cost	Energy Commission Funds	Match Share	Total
2	WPT Wireless Repeater	Part of wireless network	40	\$ 343	\$ 13,738	\$ -	\$ 13,738
2	WPT Green Box Controller	Central Network Controller, two req'd in COB, four in CAB	6	\$ 3,474	\$ 20,844	\$ -	\$ 20,844
3	WPT USB HUB	Part of wireless network	6	\$ 343	\$ 2,061	\$ -	\$ 2,061
4	Two-pipe direct acting with pressure sensor deadband	Wireless thermostats	407	\$ 456	\$ 185,466	\$ -	\$ 185,466
5	Misc. Electrical Materials, cable, transformer, enclosures etc.	For power supply to repeaters and Green Boxes	40	\$ 120	\$ 4,800	\$ -	\$ 4,800
6	Shipping for Materials	Ship from San Jose factory to San Diego job site	1	\$ 865	\$ 865	\$ -	\$ 865
Total:					\$ 227,774	\$ -	\$ 227,774

Subcontracts

Cypress EnviroSystems, Inc

Task No.	Subcontractor Name	Purpose	CA Business Certifications DVBE/ SB/MB/None	Energy Commission Funds	Match Share	Total
2	Dave's Electrical	Electrical Contractor for power supply to repeaters and Green Boxes	SB	\$ 26,000	\$ -	\$ 26,000
Total:				\$ 26,000	\$ -	\$ 26,000

Indirect Costs and Profit

Cypress EnviroSystems, Inc

Indirect Cost(s)

Name of Indirect Cost	Maximum Rate	Indirect Cost Base Description	Indirect Cost Base Amount	Energy Commission Funds	Match Share	Total
Overhead for Labor	20.00%	Direct Labor and Fringe Cost	\$ 65,098	\$ 13,019	\$ -	\$ 13,020
Overhead for sub-contractors	15.00%	Sub-contractor Cost	\$ 26,000	\$ 3,900	\$ -	\$ 3,900
Overhead for travel	5.00%	Travel Cost	\$ 10,910	\$ 546	\$ -	\$ 546
Total:				\$ 17,465	\$ -	\$ 17,465

Profit

(Profit is not allowed for Grant Recipients)

Profit Rate	Profit Base Description	Profit Base Amount	Energy Commission Funds	Match Share	Total
10.00%	Direct labor, fringe, travel and subcontract costs	\$ 102,008	\$ 10,201	\$ -	\$ 10,201
Total:			\$ 10,201	\$ -	\$ 10,201

Exhibit C
General Terms and Conditions

1. AGREEMENT MANAGEMENT

- A. The Recipient's Project Manager is responsible for the day-to-day project status, decisions, and communications with the Energy Commission's Agreement Manager. The Recipient 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 Agreement Manager at any time by giving written notice to the Recipient. The Energy Commission's Agreement Officer will sign the written notice.

2. STANDARD OF PERFORMANCE

The Recipient shall be responsible in the performance of its 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, shall be borne in total by the Recipient/subawardee/vendor and not the Energy Commission.

3. PROCUREMENT

When procuring property and services with funds awarded under this Agreement, the Recipient 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 Recipient may enter into agreements with the other firms and/or individuals, and shall manage their performance.

- 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 Recipient of its responsibilities and obligations under this Agreement. The Recipient 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 Recipient. The Recipient's obligation to pay its subawardees or vendors is an independent obligation from the Energy Commission's obligation to make payments to the Recipient. 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 Recipient 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 Recipient 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 Agreement Manager.
- C. Required Subaward Provisions

All subawards shall contain the following in addition to any other requirements of this Agreement:

- 1) The provisions of Exhibit D. Vendor subawards shall only contain the provisions in Attachment 7 of Exhibit D (Exhibit D Vendor Flow-Down Provisions).
- 2) The provisions required by 10 CFR Section 600.236(i).
- 3) Section 6 "Recordkeeping and Inspection of Records" in this Exhibit C.
- 4) A provision that further assignments shall not be made to any third or subsequent tier subawardee without additional written consent of the Energy Commission.

- 5) 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.
- 6) A provision that directs subawardees to submit copies of executed subawards and applicable prevailing wage determinations to the Agreement Manager, pursuant to the "Subaward Documentation" provision in this Section 4 of this Exhibit C.
- 7) 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" provision in this Section 4 of this Exhibit C.
- 8) Section 7 "Reports" in this Exhibit C.
- 9) Section 8 "Purchase of Equipment" in this Exhibit C.
- 10) Section 9 "Intellectual Property" in this Exhibit C.
- 11) Section 19 "Confidentiality" in this Exhibit C.
- 12) Section 21 "Indemnification" in this Exhibit C.
- 13) Section 22 "Fiscal Accounting Requirements" in this Exhibit C.
- 14) Section 23 "Certifications and Compliance" in this Exhibit C.
- 15) Section 30 "Survival" in this Exhibit C.
- 16) Section 31 "Recipient and All Subcontractors Shall Comply with the Information Practices Act" in this Exhibit C.

D. Prevailing Wages

- 1) The Recipient must ensure that any subawardees or vendors under this Agreement are paid in compliance with federal prevailing wage law as provided in Section 2.M. of Exhibit D ("Davis-Bacon Act and Contract Work Hours and Safety Standards Act"), and with California state prevailing wage law. When advertising for a public contract opportunity, the Recipient and its subawardees or vendors must attach the applicable wage determinations to the solicitation, assistance agreement, and resulting contract or grant.

- 2) The Recipient 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 Recipient is responsible for ascertaining and complying with all public work requirements, including current 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 Recipient is further responsible to keep accurate payroll records and comply with all other applicable requirements, including those provided in the California Labor Code.

E. Subaward Documentation

- 1) Subawards and Prevailing Wage Determinations

- (a) The Recipient must submit the following to the Agreement 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 Recipient 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 Recipient prior to the Energy Commission's approval of the subaward and wage determinations are not reimbursable under this Agreement.

- (b) The Recipient must include provisions in all subawards that:

- (1) Direct its subawardees to submit copies of executed subawards and applicable wage determinations to the Agreement 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 also 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 Recipient 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 Section 2.M. of Exhibit D, "Davis-Bacon Act and Contract Work Hours and Safety Standards Act."

3) Solicitations and Proposals/Bids

The Recipient shall maintain the following subaward documentation and provide it to the Agreement Manager or Agreement 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 Recipient 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 Recipient 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 Agreement Manager and following the procedures below in the "Process for Additions, Removal or Substitutions of Subawardees or Vendors" provision of this Section 4 in this Exhibit C.

G. Notification of Subaward Termination

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

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

If the Energy Commission or Recipient 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 Recipient shall:

- 1) First offer the work to qualified persons already listed in this Agreement (either an employee of the Recipient or a subawardee or vendor).
- 2) If there is no available person listed in this Agreement who can perform the work, then the Recipient shall provide documentation from all the persons who were offered and declined the work to the Agreement Manager. Then, the Recipient 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 Recipient or an existing subawardee or vendor, the Recipient shall provide the added employee's pay rate, classification and resume to the Agreement Manager, and the Agreement Manager may approve the new person and rate. The Agreement 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 Recipient shall use the process outlined below.

I. 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 Recipient. Such changes shall be subject to the following conditions:

- 1) If the Energy Commission or Recipient 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 Recipient'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 Recipient 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 Agreement Manager shall complete and submit to the Agreement 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 Agreement Officer approves the "Subawardee or Vendor Add" form.

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

A. Reporting

If the Recipient made a commitment to achieve DVBE participation for this Agreement, the Recipient must within sixty (60) days of receiving final payment under this Agreement, certify in a report to the Agreement Officer: (1) the total amount the Recipient 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 Recipient; (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 Recipient shall use each DVBE identified in its proposal or listed in this Agreement. The Recipient 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 Recipient believes an identified DVBE must be replaced or substituted, the Recipient shall inform the Agreement Manager and Agreement 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 Recipient shall complete revised DVBE certification forms (provided by the Agreement Officer) identifying the new DVBE.

C. Amendment

This Agreement shall be amended if: a DVBE must be substituted; 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 Recipient to seek substitution and adhere to the DVBE participation level identified in the proposal or listed in this Agreement may be cause for, along with any other rights and remedies: (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 Recipient 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 Recipient accounting records must be supported by documentation that includes but is not limited to cancelled checks, paid bills, payrolls, time and attendance records, and Agreement and subgrant award documents. Pursuant to 10 CFR Section 600.242, the Recipient 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 Recipient 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.

Further, the Recipient agrees to incorporate an audit of this project within any scheduled audits, when specifically requested by the State. Recipient agrees to include a similar right to audit in any subcontract. Recipient is solely responsible for its costs of an audit.

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

In accordance with Sections 902, 1514 and 1515 of the American Recovery and Reinvestment Act of 2009 (ARRA), the Recipient 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 Recipient or any of its subawardees or vendors regarding the activities funded with funds appropriated or otherwise made available by ARRA. The Recipient 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. REPORTS

A. **Federal Reporting Requirements:** The Recipient shall submit progress reports to the Energy Commission in accordance with Agreement requirements.

B. **Additional Reporting Requirements:**

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

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

California Energy Commission
Project Title
Agreement Number
By (Recipient)

3) **Non-disclosure:** During the Agreement, the Recipient must receive approval from the Commission Agreement Manager prior to disclosing to a third party the contents of any draft product.

4) **Disclaimer:** To the extent the Recipient has a right under this Agreement to publish or utilize an Agreement product (e.g., report or written document), the Recipient 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."

8. **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. For all equipment purchased with funds under this Agreement, Recipient shall adhere to all the provisions of Title 10 CFR Part 600, including 600.134, and any other applicable requirements. Subject to these requirements, as between the Energy Commission and the Recipient, title to equipment vests with the Recipient. However, the Recipient may not sell, lease, or encumber the property (i.e., place a legal burden on the property such as a lien) during the Agreement term without the Commission Agreement Manager's prior written approval.

9. **INTELLECTUAL PROPERTY RIGHTS OF PARTIES**

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

- A. Exhibit D, Attachment 5 contains the intellectual property rights between the Energy Commission and the U.S. Department of Energy (DOE), which has funded this Agreement.
- B. 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.

C. Rights to DOE

- 1) 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.

D. 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 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.
- 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 for governmental purposes any subject invention(s) first produced in the performance of this Agreement.
- 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.
- 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.

E. "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.

- F. "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.
- G. "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. The title to "proprietary data" shall remain with the Contractor throughout the term of this Agreement and thereafter. The extent of the Energy Commission's access to, and the testimony available regarding, the proprietary data shall be limited 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.
- H. "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 developed or substantially modified by the Contractor in the performance of this Agreement at the Energy Commission's expense, together with complete documentation thereof, shall be treated in the same manner as "generated data." "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.
- I. 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.
- J. 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.

- K. 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 after termination of this Agreement. Neither the Contractor, subcontractors, nor other third parties have a license to use the data after termination of this Agreement. The Contractor, subcontractor, and other third parties may use the data to the same extent as other members of the public if the Energy Commission makes the data publicly available after termination of this Agreement.
- L. The Contractor agrees that it shall return all deliverable and generated data owned by the Energy Commission to the Commission within thirty (30) days of termination of this Agreement, including any backup copies of the data. The Contractor shall destroy the data if its return is infeasible. "Destroy" means to physically or electronically eliminate or ruin the data beyond all possible recovery.

Destruction of the data is subject to the Energy Commission's approval. The Contractor must provide the Contract Manager written notice of its intent to destroy any deliverable or generated data owned by the Energy Commission within fifteen (15) days of termination of this Agreement. The notice of intent must identify the data and specify the reason that its return is infeasible. The Contract Manager will notify the Contractor of the Energy Commission's decision regarding destruction of the data within thirty (30) days of receipt of the notice of intent. The Contractor shall provide the Contract Manager with a written certification of destruction within five (5) days of destruction of the data.

The Contractor agrees to indemnify the Energy Commission in the event of breach of its agreement not to use the data and to destroy data for which return is infeasible.

10. 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 Recipient, and to proceed with the work required under the Agreement in any manner the Energy Commission deems proper. The Recipient 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 Recipient 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 Recipient 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 Recipient of the conditions set forth in this Agreement, the Energy Commission may, without prejudice to any of its legal actions or remedies, terminate this Agreement for cause upon five (5) days written notice to the Recipient. "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 Recipient to pay its debts as they become due and/or the Recipient's default of an obligation that impacts its ability to perform under this Agreement;
- 3) Determination by the Energy Commission or the Executive Director after notice and hearing that the Recipient or any agent or representative of the Recipient 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 Recipient. In such event, the Recipient agrees to use all reasonable efforts to mitigate its expenses and obligations hereunder.

11. **ENFORCEABILITY**

The Recipient 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 the Agreement funds, the State may withhold or suspend, in whole or in part, funds awarded under the Agreement, or recover misspent funds. This provision is in addition to all other actions and remedies available to the Energy Commission and the State under this Agreement's terms and all applicable Federal and State laws.

12. **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 Recipient 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.

13. **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.

14. **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.

15. **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.

16. **STOP WORK**

The Agreement Officer may, at any time, by written notice to the Recipient, require the Recipient to stop all or any part of the work tasks in this Agreement. Stop Work Orders may be issued for reasons such as a project exceeding budget, 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 Recipient shall immediately take all necessary steps to comply therewith and to minimize the incurrence of costs allocable to work stopped.

- C. Revoking a Stop Work Order. The Recipient shall resume the stopped work only upon receipt of written instructions from the Energy Commission's Agreement Officer canceling the stop work order.

17. **INCORPORATION OF DOCUMENTS**

This Agreement was awarded under solicitation GFO 16-404 ("Solicitation") to which Recipient submitted a proposal ("Proposal"). Except for Solicitation Attachments 16, 17, and 18 (respectively Budget Detail and Payment Provisions, General Terms and Conditions, and Special Terms and Conditions), the Solicitation and Recipient's Proposal are not attached, but are expressly incorporated by reference into this Agreement. In the event of conflict or inconsistency between other parts of this Agreement and the Solicitation and Proposal, the other parts of this Agreement shall control. In the event of conflict or inconsistency between the Solicitation and Proposal, the Solicitation shall control.

18. **AMENDMENTS**

A. Procedure for Requesting Changes

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

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

B. Approval of Changes

Certain changes to the Agreement (e.g., changes that increase the Agreement amount or substitute one Recipient for another) must be approved at a Commission business meeting or by the Executive Director (or his/her designee). Generally, changes that are not significant to the Agreement may be documented in a Letter of Agreement signed by both parties (electronic signatures are acceptable).

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

19. **CONFIDENTIALITY**

A. Information Considered Confidential

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

B. Confidential Deliverables: Labeling and Submitting Confidential Information

Prior to the commencement of this Agreement, if applicable, the parties have identified in the Attachment to this Exhibit, specific Confidential Information to be provided as a deliverable. All such confidential deliverables shall be marked, by the Recipient, as "Confidential" on each page of the document containing the Confidential Information and presented in a sealed package to the Commission'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 Recipient and the Energy Commission agree that during this Agreement, it is possible that the Recipient may develop additional data or information not originally anticipated as a confidential deliverable. In this case, the Recipient 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.

20. **RECOGNITION OF ARRA FUNDING**

The Recipient shall publicly recognize ARRA as a source of funding for project(s) funded under this Agreement. The Agreement Manager shall provide the Recipient 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.

21. **INDEMNIFICATION**

The Recipient agrees to indemnify, defend, and save harmless the Energy Commission and State, their officers, agents, and employees from any and all claims and losses accruing or resulting from Recipient and any and all of its subcontractors, vendors, materialmen, laborers, and any other person, firm, or corporation (collectively referred to in this section as "Recipient") furnishing or supplying anything, including work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the Recipient in the performance of this Agreement.

22. **FISCAL ACCOUNTING REQUIREMENTS**

A. Accounting and Financial Methods

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

B. Cost or Match Share

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

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

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

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

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

23. **CERTIFICATIONS AND COMPLIANCE**

A. Federal, State and Municipal Requirements

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

B. Nondiscrimination Statement of Compliance

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

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

C. Drug-Free Workplace Certification

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

- (1) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations as required by Government Code Section 8355(a)(1).
- (2) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(a)(2) to inform employees about all of the following:
 - The dangers of drug abuse in the workplace;
 - The person's or organization's policy of maintaining a drug-free workplace;

- Any available counseling, rehabilitation, and employee assistance programs; and
 - Penalties that may be imposed upon employees for drug abuse violations.
- (3) Provide, as required by Government Code Section 8355(a)(3), that every employee who works on the proposed project:
- Will receive a copy of the company's drug-free policy statement;
 - Will agree to abide by the terms of the company's statement as a condition of employment on the project.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both, and the Recipient may be ineligible for any future State awards if the Energy Commission determines that any of the following has occurred: (1) the Recipient has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above.

D. Child Support Compliance Act (Applicable to California Employers)

The Recipient acknowledges that:

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

E. Americans with Disabilities Act

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

24. ALLOWABLE COSTS

- A. Allowable costs shall be determined in accordance with the provisions incorporated by reference in Exhibit D of this Agreement.
- B. The Recipient recognizes that Title 10 of Code of Federal Regulations (CFR) Section 420.18 places limitations on the use of funds available under this Agreement, and the Recipient shall comply with these limitations. The parties

recognize and acknowledge that the funds available under this Agreement may be used for the purchase and installation of equipment and materials for energy efficient measures and renewable energy measures, including reasonable design costs, in accordance with 10 CFR Section 420.18(e). The parties further recognize and acknowledge that the 50 percent funding limitations of 10 CFR Section 420.18(e)(2) do not apply to the use of American Recovery and Reinvestment Act of 2009 (ARRA) funds under this Agreement. (Refer to Section 9.7 of Exhibit 1 of the U.S. Department of Energy Funding Opportunity Announcement DE-FOA-0000052.)

25. **INVOICING PROCEDURES**

- A. For services satisfactorily rendered, and upon receipt and approval of invoices, the Energy Commission agrees to compensate the Recipient for actual allowable expenditures incurred in accordance with Exhibit B. **All** of the rates in Exhibit B are rate caps, or the maximum amount allowed to be billed. For example, the Recipient can only bill for actual expenses incurred for hours worked at the Recipient's actual direct labor, fringe, and indirect rates, not to exceed the rates specified in Exhibit B.
- B. Invoices shall be submitted in duplicate not more frequently than monthly. In addition to any other certification that may be on the invoice form, the following certification shall be included on each invoice and signed by an authorized official of the Recipient:

I certify that this invoice is correct and proper for payment, and that reimbursement for these costs has not exceeded 20% of administrative costs, including office supplies, library materials, and other equipment, or is otherwise in compliance with 10 Code of Federal Regulations (CFR) Section 420.18, and will not be received through any other procurement method or from any other sources, including but not limited to a Government Entity contract, grant, or subcontract.

Send invoices to:

California Energy Commission
Accounting Office, MS-2
1516 Ninth Street
Sacramento, California 95814

C. Payment Request Format

The Energy Commission will accept computer generated or electronically transmitted invoices, provided the Recipient sends a paper copy the same day to the Energy Commission. The date of "invoice receipt" shall be the date the Energy Commission receives the paper copy.

The Recipient shall comply with 10 CRF Part 600: DOE Financial Assistance Regulations, including retaining backup source documentation for audit purposes, and shall make the documentation available to the Energy Commission upon request. In accordance with 10 CFR Part 600, the Recipient's accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, and Agreement and subcontractor and vendor documents. Pursuant to 10 CFR Section 600.242, the Recipient shall retain records for three (3) years or as otherwise required.

The Recipient 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.

D. A request for payment shall reference the Agreement number and shall consist of, but not be limited to the following:

- 1) Agreement number, date prepared, and billing period.
- 2) The Recipient's actual unloaded hourly labor rates by individual.
- 3) Operating expenses, including equipment, travel, miscellaneous, and materials.
- 4) Subawardee or vendor expenditures.
- 5) An indication of whether a subawardee or vendor is a California Certified Small Business or a Certified Disabled Veteran Business Enterprise.
- 6) Fees (fringe, direct and indirect overheads, general and administrative, profit, etc.). Identify actual, agreement, and billed amounts.
- 7) Leverage fund expenditures, if applicable; and
- 8) By task or category (as specified in Budget Detail): cumulative amounts, budgeted per agreement, billed to date, current billing, and balance of funds.

E. All invoices must be accompanied by the following material to support the expenditure:

- 1) Subawardee or vendor invoices.
- 2) Receipts for travel, including departure and return times.
- 3) Receipts for materials, miscellaneous, and/or equipment.

- 4) A report that documents the progress of the work during the billing period; and
- 5) Any other deliverables due during the billing period.

26. **BUDGET CONTINGENCY CLAUSE**

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

If funding for any fiscal year is reduced or deleted by the Budget Act or federal government for purposes of this program, the Energy Commission shall have the option to either: (1) cancel this Agreement with no liability occurring to the Energy Commission; or (2) offer an Agreement Amendment to the Recipient to reflect the reduced amount.

- B. It is mutually agreed that funding for this Agreement is dependent upon a federal agreement that is subject to the following provisions:
- 1) This Agreement is subject to any additional restrictions, limitations or conditions enacted by Congress or any statute enacted by Congress that may affect the provisions, terms or funding of this Agreement.
 - 2) Funding for this Agreement is subject to the approval of the U.S. Department of Energy (DOE) and to any additional restrictions, limitations, or conditions imposed by DOE, federal law, federal court judgments, and/or federal agency orders which may affect the provisions or terms of this Agreement.
 - 3) If Congress does not appropriate sufficient funds for the program or the federal government requests the return of the funds, in addition to any other rights and actions available to the Energy Commission, this Agreement can be amended to reflect any reduction in funds.
- C. The Energy Commission shall notify the Recipient if any funding for this Agreement is reduced or deleted as described above as soon as the Energy Commission becomes aware of such reductions or deletions, so that the Recipient may take steps to minimize the risk of any unfunded work under this Agreement.

27. **TRAVEL AND PER DIEM RATES**

The Recipient shall be reimbursed for travel and per diem expenses using the same rates provided to non-represented state employees. The Recipient must pay for travel in excess of these rates. The Recipient may obtain current rates from the Energy Commission's Web Site at: http://energynet/Admin/fsb/Accounting/Travel%20Summary_1-09.pdf.

Travel identified in Exhibit B, Pre-Approved Travel List, as approved does not require further authorization.

- A. Travel that is not included in Exhibit B, Pre-Approved Travel List, or that is included and listed in a manner such as "tbd" or "to be determined," shall require written authorization from the Commission Agreement Manager prior to travel departure. The Energy Commission will reimburse travel expenses from the Recipient's office location.
- B. The Recipient must retain documentation of travel expenses in its financial records. The documentation must be listed by trip and include dates and times of departure and return. Travel receipts, except for travel meals and incidentals, shall be submitted with invoices requesting reimbursement from the Energy Commission.

28. **RETENTION**

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

Retention may be released upon completion of tasks that are considered separate and distinct (i.e., the task is a stand-alone piece of work and could be completed without the other tasks). Tasks for administration or management of the Agreement and/or subcontractors are not considered separate and distinct tasks. The tasks for which retention may be released prior to the end of the Agreement must be identified in Exhibit B (budget).

The Commission will not withhold retention from equipment expenditures.

29. **PAYMENT TERMS AND CONDITIONS**

Check all that apply:

- Monthly
- Quarterly
- Itemized
- Flat Rate
- In Arrears

- A. Payment shall only be made in accordance with this Exhibit B.

- B. The Recipient is not allowed to profit from its subawardee and vendors' costs. Subawardees and vendors are not allowed to profit from their subawardee and vendors' costs
- C. Each request for payment is subject to the Agreement Manager's approval.
- D. The Recipient shall use the salary and wage rates commensurate with approved personnel status and level of expertise.
- E. Payments will be made to the Recipient for undisputed invoices. An undisputed invoice is an invoice submitted by the Recipient for services rendered and for which additional evidence is not required to determine its validity. The invoice will be disputed if all deliverables due for the billing period have not been received and approved, if the invoice is inaccurate, or if it does not comply with the terms of this Agreement. The Recipient will be notified via a Dispute Notification Form, within fifteen (15) working days of receipt of an invoice, if the Energy Commission disputes the submitted invoice. On any disputed invoice, the Energy Commission shall withhold payment only on the disputed portion of the invoice.
- F. The Recipient agrees that it has reviewed the applicable CMIA rules and regulations, and will follow their requirements in handling funds received pursuant to this Agreement. The Recipient also agrees that it will provide written notification to each of its subawardees or vendors, if any, of the CMIA and the need for each subawardee or vendor to comply with all applicable CMIA provisions and regulations.
- G. The Energy Commission must receive the final invoice no later than thirty (30) calendar days after the Agreement termination date. If Recipient does not comply with this requirement, it might not receive payment because the Energy Commission only has certain timeframes in which to use the Agreement funds.
- H. The Energy Commission will pay for State or local sales or use taxes on the services rendered or equipment, or parts to the Energy Commission pursuant to this Agreement. The State of California is exempt from Federal excise taxes, and no payment will be made for any excise taxes levied on employees' wages.
- I. No payment will be made for costs identified in the Recipient's invoices that have or will be reimbursed by any other source, including but not limited to a government entity contract or subcontract or other procurement agreement.

30. **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:

- A. Section 6 "Recordkeeping and Inspection of Records" in this Exhibit C.
- B. Section 8 "Purchase of Equipment" in this Exhibit C.

- C. Section 9 "Intellectual Property" in this Exhibit C.
- D. Section 11 "Enforceability" in this Exhibit C.
- E. Section 12 "Waiver" in this Exhibit C.
- F. Section 15 "Notice" in this Exhibit C.
- G. Section 19 "Confidentiality" in this Exhibit C.
- H. Section 20 "Recognition of ARRA Funding" in this Exhibit C.
- I. Section 21 "Indemnification" in this Exhibit C.
- J. Section 22 "Fiscal Accounting Requirements" in this Exhibit C.
- K. Section 24 "Allowable Costs" in this Exhibit C.
- L. Section 31 "Recipient and All Subcontractors Shall Comply with the Information Practices Act" in this Exhibit C.
- M. Exhibit D and its Attachments.

31. **RECIPIENT AND ALL SUBCONTRACTORS SHALL COMPLY WITH THE INFORMATION PRACTICES ACT**

The Information Practices Act ("IPA") is codified at California Civil Code sections 1798 et seq. Personal Information is defined in the IPA at Civil Code section 1798.3(a). Recipient shall comply and ensure that all of its subcontractors and project partners shall comply with the IPA relative to the activities under this Agreement. This includes but is not limited to complying with Section 1798.16 (Personal Information; maintaining sources of information) and Section 1798.17 (Notice; periodic provision; contents). For example:

- Sources of information. Recipient, and Recipient's subcontractors and project partners, shall maintain a record of the source of an individual's Personal Information in accordance with § 1798.16. Per IPA § 1798.16, this requirement does not apply if the data subject is the source of the Personal Information.
- Use of information. Pursuant to IPA § 1798.14, the Recipient, and Recipient's subcontractors and project partners shall only use Personal Information for the purposes of this Agreement. Recipient, and Recipient's subcontractors and project partners shall not disclose any Personal Information to any person or entity other than the Energy Commission and Energy Commission employees.
- Security. Pursuant to IPA § 1798.21, Recipient, and Recipient's subcontractors and project partners, shall employ appropriate and reasonable safeguards to ensure the security and confidentiality of Personal Information and to protect against anticipated threats or hazards to their security or integrity which could result in any injury.

- Notice. On or with any form used to collect Personal Information from individuals, the Recipient, and Recipient's subcontractors and project partners, shall provide the notice required in § 1798.17. At the time of executing this agreement, § 1798.17 requires the following:
 - (a) The name of the agency and the division within the agency that is requesting the information.
 - (b) The title, business address, and telephone number of the agency official who is responsible for the system of records and who shall, upon request, inform an individual regarding the location of his or her records and the categories of any persons who use the information in those records.
 - (c) The authority, whether granted by statute, regulation, or executive order which authorizes the maintenance of the information.
 - (d) With respect to each item of information, whether submission of such information is mandatory or voluntary.
 - (e) The consequences, if any, of not providing all or any part of the requested information.
 - (f) The principal purpose or purposes within the agency for which the information is to be used.
 - (g) Any known or foreseeable disclosures which may be made of the information pursuant to subdivision (e) or (f) of Section 1798.24.
 - (h) The individual's right of access to records containing personal information which are maintained by the agency.

- A. The Recipient has, and the Recipient shall ensure that its subcontractors and project partners have, no ownership, license, or other rights in Personal Information or in any form in which it is used (e.g., Products). In this regard, the Personal Information shall NOT be treated like Data, Products, Intellectual Property, or other provisions in the Agreement that may indicate that Recipient has ownership, license, or other rights.
- B. To the extent that the Recipient uses Personal Information to derive anonymized information that no longer meets the definition of Personal Information, the rights to derived anonymized information follow the rights in other provisions in this Agreement.
- D. Some terms in this Agreement Require the Recipient (and Subcontractors via flow-down provisions) to maintain certain information for a specified period of time after this Agreements ends (referred to in this part as "Archived Timeframe"). Upon the request of the Energy Commission, or at the end of the Archived Timeframe, whichever is earlier, the Recipient and all subcontractors and project partners shall promptly deliver to the Energy Commission or destroy all Personal Information, regardless of form (e.g., written or electronic) and all copies, abstracts, media, and backups thereof, however stored in Recipient's and all of its subcontractors' and project partners' possession. No Personal Information shall remain with Recipient, its subcontractors, or its project partners upon request of the Energy Commission or after the Archived Timeframe, whichever occurs first.

E. In the event of a conflict between this Section 31 and other terms in this Agreement, this Section 31 shall control.

EXHIBIT C ATTACHMENT 1 Confidential Products

1. Instructions

Identification of Confidential Information

- **Prior to the effective date of the Agreement**, the Recipient must identify in Section 2 of this attachment any products (or information contained within products) that it considers to be confidential. If the Energy Commission agrees that the information is confidential, it will not disclose it except as provided in Section 19 (Confidentiality) of these terms and conditions.
- **During the Agreement**, if the Recipient develops additional information not originally anticipated as confidential, it must follow the procedures for a request for designation of confidential information specified in Title 20 California Code of Regulations (CCR) Section 2505.

The Energy Commission's Executive Director will make the confidentiality determination. Following this determination, the confidential information may be added to this attachment through a Letter of Agreement (see Section 6 (Amendments) and Attachment 2 (Sample Letter of Agreement)). The Energy Commission will not disclose information subject to an application for confidential designation except as provided in Section 19.

- **When submitting products containing confidential information**, the Recipient must mark each page of any document containing confidential information as "confidential" and present it in a sealed package to the Contracts, Grants, and Loans Office.

The Commission Agreement Manager may require the Recipient to submit a non-confidential version of the product, if it is feasible to separate the confidential information from the non-confidential information.

2. Confidential Products and/or Confidential Information Contained within Products

The Energy Commission designates the following products (or information contained within products) as confidential, in accordance with Title 20 California Code of Regulations Section 2505(c)(2)(B).

Product name	None.
Task/subtask number	
Information to be kept confidential	<input type="checkbox"/> Entire product <input type="checkbox"/> Selected information within product (<i>describe below; be as specific as possible</i>):
Legal basis for confidentiality designation	<input type="checkbox"/> California Public Records Act, located in California Government Code Sections 6250 et seq. (<i>identify the relevant section(s) and subsections(s) below</i>): <input type="checkbox"/> Other law (<i>identify below, including the relevant section(s) and subsections(s)</i>):
Term of confidentiality	N/A
<p>Trade secrets only</p> <p>Answer the following questions if the product/information described above is considered a trade secret (i.e., confidential business information that provides the business with a competitive advantage):</p> <ol style="list-style-type: none"> 1. What is the nature of the competitive advantage provided by the product/information? 2. How would the competitive advantage be lost by disclosure? (generally describe the value of the product/information and the ease or difficulty with which it may be legitimately acquired or duplicated by others). 	

EXHIBIT D

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

The Contractor must include in its agreements with subawardees all of the provisions in this Exhibit D and in Exhibit D Attachments 1 through 6. The Contractor must include in its agreements with vendors only the provisions in Attachment 7 of this Exhibit (Exhibit D Vendor Flow-Down Provisions). Exhibit C, Section 4 Subawards contains additional provisions that the Contractor must include in subawards.

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://ecfr.gpoaccess.gov>.

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

Information about this Agreement will be published on the Internet and linked to the website www.recovery.gov, maintained by the Accountability and Transparency Board. The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

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 reinstatement 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

Funds appropriated under ARRA and obligated to this award are available for reimbursement of costs until April 30, 2012.

J. REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF ARRA

- 1) This award requires the Contractor to complete projects or activities which are funded under ARRA and to report on use of ARRA funds provided through this award. Information from these reports will be made available to the public.
- 2) The reports are due monthly by the third of the following month. For example, the January progress report is due on February 3. The reports must be submitted in accordance with the "Monthly Progress Reports" section of Exhibit A of this Agreement.
- 3) The Contractor must maintain current registrations in the Central Contractor Registration (<http://www.ccr.gov>) at all times during which it has an active award funded with ARRA funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (<http://www.dnb.com>) is one of the requirements for registration in the Central Contractor Registration.
- 4) The Contractor shall report the information described in section 1512(c) of ARRA, in addition to any information reasonably requested by the Energy Commission or required by Federal law, regulation, or policy. Standard data elements and federal reporting instructions will be provided online at <http://www.FederalReporting.gov>. The Contractor will not register at [FederalReporting.gov](http://www.FederalReporting.gov), but will provide the information to the Energy Commission in a manner specified by the Commission.
- 5) The Contractor must provide information including, but not limited to, the following:
 - a) **ARRA Section 1512 Report**
 - Direct jobs created (i.e., new positions created and filled or unfilled positions that are filled) and jobs retained (i.e., previously existing filled positions that are retained as a result of ARRA funds). Only include jobs

that are directly funded by ARRA funds. The number shall be expressed as "full-time equivalent" (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule.

- Description of jobs created. Provide a brief description of impact on the Contractor's workforce and include the types of jobs created and retained. Include time base (full-time or part-time) and duration (1 year, 1-2 years, 2-5 years, or more than 5 years).
- The Contractor will be required to calculate direct jobs created and retained by all subrecipients and many vendors. The requirement to calculate vendor jobs does not apply to subcontracts with material suppliers or central service providers ("indirect" jobs), or to jobs created by the re-spending of worker income within the local community ("induced" jobs). Job calculations will be captured on the FTE Calculator tab of the Subrecipient 1512 reporting spreadsheet. Per the Single Audit Act Amendments of 1996, the Contractor should be able to substantiate subrecipient/ vendor job hours reported by retaining payroll and project records for a minimum of three (3) years after the final payment has been received, unless a longer period of records retention is stipulated.
- Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number.
- Central Contractor Registration (CCR) number.
- Award number.
- Name (legal name as registered in CCR or D&B).
- The Doing-Business-As (DBA) name as registered in CCR or D&B.
- Address (physical location as listed in the CCR).
- Congressional district (based on physical location address).
- Type of entity (this is the "Business Type" in the CCR).
- Amount awarded (total amount of the Commission agreement).
- Amount received (total cumulative amount of Commission agreement funds received as of the reporting period).
- Date of award (date the Commission agreement was signed).
- Award period (term of the Commission agreement).
- Place of performance (the physical location of primary place of performance, including street address, city, state, zip code+4, country, congressional district, state senate district, and state assembly district).
- Area of benefit (e.g., state, county, city, special district).
- Names and total compensation of five most highly compensated officers for the calendar year in which the agreement is awarded if,
 - In the Contractor's preceding fiscal year, the Contractor received—
 - 80 percent or more of its annual gross revenues from federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

- \$25,000,000 or more in annual gross revenues from federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements
- The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or section 6104 of the Internal Revenue Code of 1986.
- Vendor Data Elements (purchases \$25,000 or above)
 - DUNS or name.
 - Zip code of Headquarters.
 - Description of the product and/or service provided by the vendor.
 - The amount invoiced from the vendor (aggregated) that will be paid with ARRA funds.

b) U.S. Department of Energy SEP Progress Report

- A comparison of the actual accomplishments with the goals and objectives established for the period and reasons why the established goals were not met.
- A discussion of what was accomplished under these goals during this Reporting period, including major activities, significant results, major findings or conclusions, key outcomes or other achievements. This section should not contain any proprietary data or other information not subject to public release. If such information is important to reporting progress, do not include the information, but include a note in the report advising the reader to contact the Principal Investigator or the Project Director for further information.
- Cost Status. Show approved budget by budget period and actual costs incurred. Separate costs by project activities, administration, and evaluation.
- Schedule Status. List milestones, anticipated completion dates, and actual completion dates.
- Any changes in approach or aims, and reasons for change.
- Actual or anticipated problems or delays, and actions taken or planned to resolve them.
- Any absence or changes of key personnel or changes in consortium/teaming arrangement.
- A description of any product produced or technology transfer activities accomplished during this reporting period, such as:
 - Publications (list journal name, volume, issue); conference papers; or other public releases of results.
 - Web site or other Internet sites that reflect the results of this project.
 - Networks or collaborations fostered.
 - Technologies/techniques.

- Inventions/patent applications.
- Other products, such as data or databases, physical collections, audio or video, software or netware, models, educational aid or curricula, instruments or equipment.
- Performance Metrics
 - Energy savings (kWh, therms, gallons, Btu, etc.).
 - Renewable energy capacity and generation.
 - GHG and criteria pollutant emissions reductions (tons) (CO2 equivalents, tons).
 - Energy cost savings.
- Project type metrics. The key metrics to be reported will vary by project type. See Exhibit D, Attachment 6, Project Type Metrics.

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 <http://www.dol.gov/esa/whd/forms/wh347instr.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:

<http://www.wdol.gov/dba.aspx#14>.

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 <http://www.whitehouse.gov/omb/circulars/a133/a133.html>. 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):

The parties recognize that the Contractor may use funds under this award for Property-Assessed Clean Energy (PACE) loans, Sustainable Energy Municipal Financing, Clean Energy Assessment Districts, Energy Loan Tax Assessment Programs (ELTAPS), or any other form or derivation of Special Taxing District whereby taxing entities collect payments through increased tax assessments for energy efficiency and renewable energy building improvements made by their constituents. The Department of Energy (DOE) intends to publish “Best Practices” or other guidelines pertaining to the use of funds made available to the Energy Commission under DOE award number DE-EE-0000221 pertaining to the programs

identified herein. By accepting this award, the Contractor agrees to incorporate, to the maximum extent practicable, those Best Practices and other guidelines into any such program(s) within a reasonable time after notification by DOE that the Best Practices or guidelines have been made available. The Contractor also agrees, by its acceptance of this award, to require its subawardees and vendors to incorporate to the maximum extent practicable the best practices and other guideline into any such program used by the subawardee or vendor.

P. STATE ARRA GUIDELINES FOR STATE ENERGY PROGRAM

The Commission's *Guidelines for the State Energy Program*, dated September 30, 2009, (publication number CEC-150-2009-004-F) are hereby incorporated by reference and made a part of this Agreement. The Contractor warrants that it has read and understands the *Guidelines* and acknowledges that requirements specified therein apply to the Contractor and the funding provided under this Agreement. The Contractor acknowledges that the *Guidelines* are subject to change pursuant to California Public Resources Code Section 25462 and that any changes made to the *Guidelines* shall apply to the Contractor and the funding provided under this Agreement.

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 D, 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.

The Contractor will complete and certify by signature on the Form "Certifications Regarding Lobbying and Debarment, Suspension and Other Responsibility Matters" (Exhibit D, 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 D, 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 D, Attachment 4 of this Agreement).

F. PUBLICATIONS

- 1) The Contractor is encouraged to publish or otherwise make publicly available the results of the work conducted under this Agreement.
- 2) An acknowledgment of Energy Commission and Federal support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, as follows:

Acknowledgment. "This material is based upon work supported by the California Energy Commission and the U.S. Department of Energy [add name(s) of other agencies, if applicable] under Award Number(s) [enter the award number(s)]."

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."

G. FEDERAL INTELLECTUAL PROPERTY PROVISIONS AND CONTACT INFORMATION

- 1) The Federal intellectual property provisions applicable to this award are provided in Exhibit D, 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](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: [http://www.gc.doe.gov/documents/Intellectual Property \(IP\) Service Providers for Acquisition.pdf](http://www.gc.doe.gov/documents/Intellectual_Property_(IP)_Service_Providers_for_Acquisition.pdf).

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

Unless in conflict with State or local laws, the Contractor must ensure that bid specifications, project agreement, or other controlling documents in construction contracts awarded pursuant to this Agreement, or pursuant to a subaward to this Agreement, do not:

- 1) Require or prohibit bidders, offerors, contractors, or subawardees or vendors to enter into or adhere to agreements with one or more labor organizations, on the same or other related construction project(s); or
- 2) Otherwise discriminate against bidders, offerors, contractors, or subawardees or vendors for becoming or refusing to become or remain signatories or otherwise to adhere to agreements with one or more labor organizations, on the same or other related construction project(s).

Part 800. SHPO contact information is available at the following link: <http://www.ncshpo.org/find/index.htm>. THPO contact information is available at the following link: <http://www.nathpo.org/map.html>.

Section 110(k) of the NHPA applies to DOE-funded activities. The Contractor shall avoid taking any action that results in an adverse effect to historic properties pending compliance with Section 106.

The Energy Commission executed a Programmatic Agreement on May 24, 2010 with the SHPO DOE, and the California Department of Community Services and Development to streamline the Section 106 consultation process and to categorically exclude some projects from the SHPO's direct review and consultation. Because of their nature, these categorically excluded projects cannot impact historic resources. The categorically excluded projects are identified in the Programmatic Agreement and include: (1) undertakings for planning, training and educational purposes; (2) undertakings to replace equipment on existing buildings or structures that result in no building or structure changes or ground disturbances; and (3) undertakings on buildings or structures less than 45 years of age that will result in no ground disturbances. Projects that are categorically excluded from the SHPO's direct review and consultation will be deemed to have satisfied Section 106 of NHPA without further review or involvement by the SHPO.

The Energy Commission will evaluate projects to determine whether they are categorically excluded from the SHPO's direct review and consultation under the Programmatic Agreement. If projects are categorically excluded, the Energy Commission will issue the project applicant a clearance letter on the SHPO's behalf. In order for the Energy Commission to determine whether a given project is categorically excluded from the SHPO's direct review and consultation, the Contractor must prepare a Consultation Package, as provided in the Programmatic Agreement, for each building or structure upon which the project will be undertaken.

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

DOE will exercise normal federal stewardship in overseeing the project activities performed under this award. Stewardship activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing technical assistance and/or temporary intervention in unusual circumstances to correct deficiencies which develop during the project; assuring compliance with terms and conditions; and reviewing technical performance after project completion to ensure that the award objectives have been accomplished.

P. RESOLUTION OF CONFLICTING CONDITIONS

Any apparent inconsistency between Federal statutes and regulations and the terms and conditions contained Exhibits A through D must be referred to the Energy Commission's Contract Manager for guidance.

**EXHIBIT D
ATTACHMENT 1**

ASSURANCE OF COMPLIANCE

*DOE F 1600.5
(06-94)
All Other Editions are
Obsolete*

**U.S. Department of Energy
Assurance of Compliance**

OMB Control No.
1910-0400

Nondiscrimination in Federally Assisted Programs

OMB Burden Disclosure Statement

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Office of Information Resources Management Policy, Plans, and Oversight, Records Management Division, HR-422 - GTN, Paperwork Reduction Project (1900-0400), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585; and to the Office of Management and Budget (OMB), Paperwork Reduction Project (1900-0400), Washington, DC 20503.

(Hereinafter called the "Applicant")

HEREBY AGREES to comply with Title VI of the Civil Rights Act of 1964 (Pub. L.88-352), Section 16 of the Federal Energy Administration Act of 1974 (Pub.L.93-275), Section 401 of the Energy Reorganization Act of 1974 (Pub.L.93-438), Title IX of the Education Amendments of 1972, as amended (Pub.L.92-318, Pub.L.93-568, and Pub.L.94-482), Section 504 of the Rehabilitation Act of 1973 (Pub.L.93-112), the Age Discrimination Act of 1975 (Pub.L.94-135), Title VIII of the Civil Rights Act of 1968 (Pub.L.90-284), the Department of Energy Organization Act of 1977 (Pub.L.95-91), and the Energy Conservation and Production Act of 1976, as amended (Pub.L.94-385) and Title 10, Code of Federal Regulations, Part 1040. In accordance with the above laws and regulations issued pursuant thereto, the Applicant agrees to assure that no person in the United States shall, on the ground of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity in which the Applicant receives Federal assistance from the Department of Energy.

Applicability and Period of Obligation

In the case of any service, financial aid, covered employment, equipment, property, or structure provided, leased, or improved with Federal assistance extended to the Applicant by the Department of Energy, this assurance obligates the Applicant for the period during which Federal assistance is extended. In the case of any transfer of such service, financial aid, equipment, property, or structure, this assurance obligates the transferee for the period during which Federal assistance is extended. If any personal property is so provided, this assurance obligates the Applicant for the period during which it retains ownership or possession of the

property. In all other cases, this assurance obligates the Applicant for the period during which the Federal assistance is extended to the Applicant by the Department of Energy.

Employment Practices

Where a primary objective of the Federal assistance is to provide employment or where the Applicant's employment practices affect the delivery of services in programs or activities resulting from Federal assistance extended by the Department, the Applicant agrees not to discriminate on the ground of race, color, national origin, sex, age, or disability, in its employment practices. Such employment practices may include, but are not limited to, recruitment advertising, hiring, layoff or termination, promotion, demotion, transfer, rates of pay, training and participation in upward mobility programs; or other forms of compensation and use of facilities.

Subrecipient Assurance

The Applicant shall require any individual, organization, or other entity with whom it subcontracts, subgrants, or subleases for the purpose of providing any service, financial aid, equipment, property, or structure to comply with laws cited above. To this end, the subrecipient shall be required to sign a written assurance form, however, the obligation or both recipient and subrecipient to ensure compliance is not relieved by the collection or submission of written assurance forms.

Data Collection and Access to Records

The Applicant agrees to compile and maintain information pertaining to programs or activities developed as a result of the Applicant's receipt of Federal assistance from the Department of Energy. Such information shall include, but is not limited to, the following: (1) the manner in which services are or will be provided and related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination; (2) the population eligible to be served by race, color, national origin, sex, age, and disability; (3) data regarding covered employment including use or planned use of bilingual public contact employees serving beneficiaries of the program where necessary to permit effective participation by beneficiaries unable to speak or understand English; (4) the location of existing or proposed facilities connected with the program and related information adequate for determining whether the location has or will have the effect of unnecessarily denying access to any person on the basis of prohibited discrimination; (5) the present or proposed membership by race, color, national origin, sex, age, and disability, in any planning or advisory body which is an integral part of the program; and (6) any additional written data determined by the Department of Energy to be relevant to its obligation to assure compliance by recipients with laws cited in the first paragraph of this assurance.

The Applicant agrees to submit requested data to the Department of Energy regarding programs and activities developed by the Applicant from the use of Federal assistance funds extended by the Department of Energy, Facilities of the Applicant (including the physical plants, building, or other structures) and all records, books, accounts, and other sources of information pertinent to the Applicant's compliance with the civil rights laws shall be made available for inspection during normal business hours on request of an officer or employee of the Department of Energy specifically authorized to make such inspections. Instructions in this regard will be provided by the Director, Office of Civil Rights, U.S. Department of Energy.

This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts (excluding procurement contracts), property, discounts or other Federal assistance extended after the date hereto, to the Applicants by the Department of Energy, including installment payments on account after such date of application for Federal assistance which are approved before such date. The Applicant recognizes and agrees that such Federal assistance will be extended in reliance upon the representation and agreements made in this assurance and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, the successors, transferees, and assignees, as well as the person(s) whose signature appears below and who are authorized to sign this assurance on behalf of the Applicant.

DOE F 1600.5

(06-94)

All Other Editions are Obsolete

OMB Control No.
1910-0400

Applicant Certification

The Applicant certifies that it has complied, or that, within 90 days of the date of the grant, it will comply with all applicable requirements of 10 C.F.R. § 1040.5 (a copy will be furnished to the Applicant upon written request to DOE).

Designated Responsible Employee

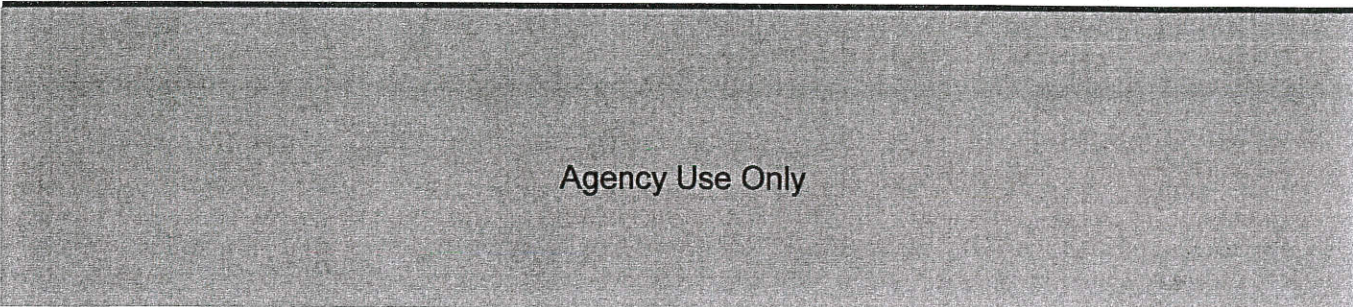
PAZ GOMEZ, DEPUTY CHIEF OPERATING OFFICER (619) 236-6959
Name and Title (Printed to Typed) OFFICER Telephone Number

Paz Gomez 12/1/17
Signature Date

CITY OF SAN DIEGO (858) 627-3352
Applicant's Name Telephone Number

9601 RIDGEHAVEN CT, STE. 120, MS 1101 B 12/1/17
Address: Date

SAN DIEGO, CA 92123



**EXHIBIT D
ATTACHMENT 2**

**CERTIFICATIONS REGARDING LOBBYING AND
DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 10 CFR Part 601 "New Restrictions on Lobbying," 2 CFR Part 180 "OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)" and 2 CFR Part 901 "Nonprocurement Debarment and Suspension." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Energy determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

2. ADDITIONAL LOBBYING REPRESENTATION

Applicant organizations which are described in section 501(c)(4) of the Internal Revenue Code of 1986 and engage in lobbying activities after December 31, 1995, are not eligible for the receipt of Federal funds constituting an award, grant, or loan.

As set forth in section 3 of the Lobbying Disclosure Act of 1995 as amended, (2 U.S.C. 1602), lobbying activities are defined broadly to include, among other things, contacts on behalf of an organization with specified employees of the Executive Branch and Congress with regard to Federal legislative, regulatory, and program administrative matters.

Check the appropriate block:

The applicant is an organization described in section 501(c)(4) of the Internal Revenue Code of 1986?
 Yes No

If you checked "Yes" above, check the appropriate block:

The applicant represents that after December 31, 1995 it has has not engaged in any lobbying activities as defined in the Lobbying Disclosure Act of 1995, as amended.

3. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery; falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.


(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**EXHIBIT D
ATTACHMENT 3**

**STANDARD FORM LLL
DISCLOSURE OF LOBBYING ACTIVITIES**

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure)

1. Type of Federal Action: <input checked="" type="checkbox"/> a. contract <input checked="" type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	2. Status of Federal Action: <input checked="" type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	3. Report Type: <input checked="" type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change For material change only: Year _____ quarter _____ Date of last report _____
4. Name and Address of Reporting Entity: <input checked="" type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if Known: CITY OF SAN DIEGO 9601 RIDGEHAVEN COURT, SUITE 120 SAN DIEGO, CA 92123 Congressional District, if known: 52	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: N/A Congressional District, if known:	
6. Federal Department/Agency: US DEPARTMENT OF ENERGY	7. Federal Program Name/Description: CFDA Number, if applicable: <u>81.041</u>	
7. Federal Action Number, if known: FEDERAL AGREEMENT DE-EE0000221	9. Award Amount, if known: \$ 1,991,444	
10. a. Name and Address of Lobbying Registrant <i>(if individual, last name, first name, MI):</i> N/A	b. Individuals Performing Services <i>(including address if different from No. 10a) (last name, first name, MI):</i> N/A	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: <u></u> Print Name: <u>PAZ GOMEZ</u> Title: <u>DEPUTY CHIEF OPERATING OFFICER</u> Telephone No.: <u>(619) 236 6959</u> Date: <u>12/1/17</u>	
Federal Use Only	Authorized for Local Reproduction Standard Form - LLL (Rev. 7-97)	

4. SIGNATURE

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

Name of Applicant: CITY OF SAN DIEGO

Printed Name and Title of Authorized Representative: PAZ GOMEZ, DEPUTY CHIEF OPERATING OFFICER


SIGNATURE

12/1/17
DATE

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503

**EXHIBIT D
ATTACHMENT 4**

NATIONAL POLICY ASSURANCES

NATIONAL POLICY ASSURANCES TO BE INCORPORATED AS AWARD TERMS (August 2008)

To the extent that a term does not apply to a particular type of activity or award, it is self-deleting.

Nondiscrimination Policies

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

- a. On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.), as implemented by DOE regulations at 10 CFR part 1040.
- b. On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.), as implemented by DOE regulations at 10 CFR parts 1041 and 1042.
- c. On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR part 90 and DOE at 10 CFR part 1040.
- d. On the basis of disability, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DOE regulations at 10 CFR part 1041.
- e. On the basis of race, color, national origin, religion, disability, familial status, and sex under Title VIII of the Civil Rights Act (42 U.S.C. 3601 et seq.) as implemented by the Department of Housing and Urban Development at 24 CFR part 100.
- f. On the basis of disability in the Architectural Barriers Act of 1968 (42 U.S.C. 4151 et seq.) for the design, construction, and alteration of buildings and facilities financed with Federal funds.

Environmental Policies

By signing this agreement or accepting funds under this agreement, the recipient assures that it will:

- a. Comply with applicable provisions of the Clean Air Act (42 U.S.C. 7401, et. seq.) and Clean Water Act (33 U.S.C. 1251, et. seq.), as implemented by Executive Order 11738 [3 CFR, 1971-1975 Comp., p. 799] and Environmental Protection Agency (EPA) rules at Subpart J of 40 CFR part 32.
- b. Identify to the awarding agency any impact this award may have on:
 1. The quality of the human environment, including wetlands, and provide help the agency may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321, et. seq.) and assist the agency to prepare Environmental Impact Statements or other required environmental documentation. In such cases, the recipient agrees to take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) or limit the choice of reasonable alternatives until the agency provides written notification of compliance with NEPA, as implemented by DOE at 10 CFR part 1021.

NATIONAL POLICY ASSURANCES TO BE INCORPORATED AS AWARD TERMS (August 2008)

To the extent that a term does not apply to a particular type of activity or award, it is self-deleting.

2. Flood-prone areas, and provide any help the agency may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. 4001, et. seq.), which require flood insurance, when available, for Federally assisted construction or acquisition in flood-prone areas, as implemented by DOE at 10 CFR part 1022.
 3. Use of land and water resources of coastal zones, and provide any help the agency may need to comply with the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et. Seq.).
 4. Coastal barriers along the Atlantic and Gulf coasts and Great Lakes' shores, and provide any help the agency may need to comply with the Coastal Barriers Resource Act (16 U.S.C. 3501, et. seq.), concerning preservation of barrier resources.
 5. Any existing or proposed component of the National Wild and Scenic Rivers system, and provide help the agency may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271, et seq.).
 6. Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide help the agency may need to comply with the Safe Drinking Water Act (42 U.S.C. 300h-3).
- c. Comply with applicable provisions of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), as implemented by the Department of Housing and Urban Development at 24 CFR part 35. The requirements concern lead-based paint in housing owned by the Federal Government or receiving Federal assistance).
- d. Comply with section 6002 of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6962), and implementing regulations of the Environmental Protection Agency, 40 CFR Part 247, which require the purchase of recycled products by States or political subdivision of States.

Live Organisms

By signing this agreement or accepting funds under this agreement, the recipient assures that it will comply with applicable provisions of the following national policies concerning live organisms:

- a. For human research subjects, the recipient must protect the rights and welfare of individuals that participate as human subjects in research under this award in accordance with the Common Federal Policy for the Protection of Human Subjects (45 CFR part 46), as implemented by DOE at 10 CFR part 745.
- b. For animals and plants:
 1. The recipient must comply with applicable provisions of Department of Agriculture rules at 9 CFR parts 1-4 that implement the Laboratory Animal Welfare Act of 1966 (7 U.S.C. 2131-2156) and provide for humane transportation, handling, care, and treatment of animals used in research, experimentation, or testing under this award.
 2. The recipient must follow the guidelines in the National Academy of Sciences (NAS) Publication

NATIONAL POLICY ASSURANCES TO BE INCORPORATED AS AWARD TERMS (August 2008)

To the extent that a term does not apply to a particular type of activity or award, it is self-deleting.

"Guide for the Care and Use of Laboratory Animals" (1996, which may be found currently at <http://www.nap.edu/readingroom/books/labrats/>) and comply with the Public Health Service Policy and Government principles Regarding the Care and use of animals (included as Appendix D to the NAS Guide).

3. The recipient must immediately identify to the awarding agency any potential impact that the recipient finds this award may have on endangered species, as defined by the Endangered Species Act of 1973, as amended ("the Act," 16 U.S.C. 1531-1543), and implementing regulations of the Departments of the Interior (50 CFR parts 10-24) and Commerce (50 CFR parts 217-227). The recipient also must provide any help the awarding agency may need to comply with 16 U.S.C. 1536(a)(2). This is not in lieu of responsibilities the recipient has to comply with provisions of the Act that apply directly to it as a U.S. entity, independent of receiving this award.

Debarment and Suspension

The recipient agrees to comply with the requirements regarding debarment and suspension in Subpart C of 2 CFR parts 180 and 901.

Drug-Free Workplace

The recipient agrees to comply with the requirements in Subpart B of 10 CFR part 607, which implements sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701, et seq.).

Lobbying

- a. The recipient assures that it will comply with the restrictions on lobbying in 31 U.S.C. 1352, as implemented by DOE at 10 CFR part 601, and submit all disclosures required by that statute and regulation.
- b. The recipient, if it is a nonprofit organization described in section 501(c)(4) of title 26, United States Code (the Internal Revenue Code of 1968), may not engage in lobbying activities as defined in the Lobbying Disclosure Act of 1995 (2 U.S.C., Chapter 26). If the awarding agency determines that the recipient has engaged in lobbying activities, it will cease all payments to the recipient under this and other awards and terminate the awards unilaterally for material failure to comply with the award terms and conditions. By submitting an application and accepting funds under this agreement, the recipient assures that it is not an organization described in section 501(c)(4) that has engaged in any lobbying activities described in the Lobbying Disclosure Act of 1995 (2 U.S.C. 1611).
- c. The recipient must comply with the prohibition in 18 U.S.C. 1913 on the use of Federal funds, absent express Congressional authorization, to pay directly or indirectly for any service, advertisement or other written matter, telephone communication, or other device intended to influence at any time a Member of Congress or official.

Officials not to benefit

NATIONAL POLICY ASSURANCES TO BE INCORPORATED AS AWARD TERMS (August 2008)

To the extent that a term does not apply to a particular type of activity or award, it is self-deleting.

The recipient agrees to comply with the requirement that no member of Congress shall be admitted to any share or part of this agreement, or to any benefit arising from it, in accordance with 41 U.S.C. 22.

Hatch Act

The recipient agrees to comply with the Hatch Act (5 U.S.C. 1501-1508 and 7324-7328), as implemented by the Office of Personnel Management at 5 CFR part 151, which limits political activity of employees or officers of State or local governments whose employment is connected to an activity financed in whole or part with Federal funds.

Native American Graves Protection and Repatriation Act of 1990

The recipient, if it is an organization which controls or possesses Native American remains and associated funerary objects, must comply with the requirements of 43 CFR part 10, the Department of the Interior implementation of the Native American Graves Protection and Repatriation Act of 1990 (25 U.S.C., chapter 32).

Fly America Act

The recipient agrees that it will comply with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118), commonly referred to as the "Fly America Act," and implementing regulations at 41 CFR 301-10.131 through 301-10.143. The law and regulations require air transport of people or property to, from, between or within a country other than the United States, the cost of which is supported under this award, to be performed by or under a cost-sharing arrangement with a U.S. flag carrier, if service is available.

Use of United States-flag vessels

- a. Pursuant to Pub. L. 664 (43 U.S.C. 1241(b)), at least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds under this award, and which may be transported by ocean vessel, must be transported on privately owned United States-flag commercial vessels, if available.
- b. Within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph 9.a of this section shall be furnished to both the awarding agency's administrator (through the recipient in the case of its contractor's bill-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

Research Misconduct

The recipient assures that it will comply with the government-wide policy on research misconduct issued by the Office of Science and Technology Policy (available in the Federal Register at 65 FR 76260, December 6, 2000, or on the Internet at www.ostp.gov), as implemented by DOE at 10 CFR part 733 and 10 CFR 600.31.

Requirements for an Institution of Higher Education Concerning Military recruiters and Reserve Officers Training Corps (ROTC)

- a. As a condition for receiving funds under an award by the National Nuclear Security Administration of the Department of Energy, the recipient agrees that it is not an institution of higher education that has a policy or practice placing any of the restrictions specified in 10 U.S.C. 983 as implemented by 32 CFR part 216, on:
 1. Maintenance, establishment, or operation of Senior ROTC units, or student participation in those units; or
 2. Military recruiters' access to campuses, students on campuses, or information about students.
- b. If the recipient is determined, using the procedures in 32 CFR part 216, to be such an institution of higher education during the period of performance of this award, the awarding agency:
 1. Will cease all payments to the recipient of funds under this award and all other awards subject to the requirements in 32 CFR part 216; and
 2. May suspend or terminate those awards unilaterally for material failure to comply with the award terms and conditions.

National Historic Preservation

- a. The recipient agrees to identify to the awarding agency any property listed or eligible for listing on the National Register of Historic Places that will be affected by this award, and to provide any help the awarding agency may need, with respect to this award, to comply with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470f), as implemented by the Advisory Council on Historic Preservation regulations at 36 CFR part 800 and Executive Order 11593, "Identification and Protection of Historic Properties," [3 CFR, 1971-1975 Comp., p. 559].
- b. The recipient agrees to identify to the awarding agency the potential under this award for irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data, and provide any help we may need, with respect to this award, to comply with the Archaeological and Historic Preservation Act of 1974 (16 U.S.C.469a-1, et seq.).

Relocation and Real Property Acquisition

The recipient assures that it will comply with 49 CFR part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, et seq.) and provides for fair and equitable treatment of persons displaced by Federally assisted programs or persons whose property is acquired as a result of such programs.

Confidentiality of patient records

The recipient must keep confidential any records that it maintains of the identity, diagnosis, prognosis, or treatment of any patient in connection with any program or activity relating to substance abuse education, prevention, training, treatment, or rehabilitation that is assisted directly or indirectly under this award, in accordance with 42 U.S.C. 290dd-2.

Constitution Day

The recipient must comply with Public Law 108-447, Div. J, Title I, Sec. 111 (36 U.S.C. 106 note), which requires each educational institution receiving Federal funds in a Federal fiscal year to hold an educational program on the United States Constitution on September 17th during that year for the students served by the educational institution.

Trafficking in Persons

a. Provisions applicable to a recipient that is a private entity:

1. The recipient, its employees, subrecipients under this award, and subrecipients' employees may not—
 - i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 - ii. Procure a commercial sex act during the period of time that the award is in effect; or
 - iii. Use forced labor in the performance of the award or subawards under the award.
2. The Federal awarding agency may unilaterally terminate this award, without penalty, if the recipient or a subrecipient that is a private entity –
 - i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or
 - ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—
 - A. Associated with performance under this award; or
 - B. Imputed to the recipient or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by the awarding agency at 2 CFR part 901.

b. Provision applicable to a recipient other than a private entity:

The Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—

1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—
 - i. Associated with performance under this award; or
 - ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies

on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by the awarding agency at 2 CFR part 901.

c. Provisions applicable to any recipient:

1. The recipient must inform the awarding agency immediately of any information it receives from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
2. The awarding agency’s right to terminate unilaterally that is described in paragraph a.2 or b. of this section:
 - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 - ii. Is in addition to all other remedies for noncompliance that are available to the awarding agency under this award.
3. The recipient must include the requirements of paragraph a.1 of this award term in any subaward it makes to a private entity.

d. Definitions. For purposes of this award term:

1. “Employee” means either:
 - i. An individual employed by the recipient or a subrecipient who is engaged in the performance of the project or program under this award; or
 - ii. Another person engaged in the performance of the project or program under this award and not compensated by the recipient including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
2. “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
3. “Private entity”:
 - i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
 - ii. Includes:
 - A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
 - B. A for-profit organization.
4. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

**EXHIBIT D
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 D
ATTACHMENT 6**

PROJECT TYPE METRICS

Metrics Activity: The key metrics to be reported will vary by project type. The minimum information to be reported, by project activity type, is listed below. The project type metrics to be reported for this award are checked below.

Building Codes and Standards

- Name of new code adopted
- Name of old code replaced
- Number and percentage of new and existing buildings covered by new code
- Other: _____

Building Retrofits

- Number of buildings retrofitted, by sector
- Square footage of buildings retrofitted, by sector
- Other: _____

Clean Energy Policy

- Number of alternative energy plans developed or improved
- Number of renewable portfolio standards established or improved
- Number of interconnection standards established or improved
- Number of energy efficiency portfolio standards established or improved
- Number of other policies developed or improved
- Other: _____

Building Energy Audits

- Number of audits performed, by sector
- Floor space audited, by sector
- Auditor's projection of energy savings, by sector
- Other: _____

Energy Efficiency Rating and Labeling

- Types of energy-consuming devices for which energy-efficiency rating and labeling systems were endorsed by the Contractor or subawardee
- Other: _____

Financial Incentives for Energy Efficiency and Other Covered Investments

- Monetary value of financial incentive provided, by sector
- Total value of investments incentivized, by sector
- Other: _____

- Government, School, Institutional Procurement
- Number of units purchased, by type (e.g., vehicles, office equipment, HVAC equipment, streetlights, exit signs)
 - Other: _____

- Industrial Process Efficiency (kwh equivalents)
- Reduction in natural gas consumption (MMcf)
 - Reduction in fuel oil consumption (gallons)
 - Reduction in electricity consumption (MWh)
 - Other: _____

- Loans and Grants
- Number and monetary value of loans given
 - Number and monetary value of grants given
 - Other: _____

- Renewable Energy Market Development (as applicable)
- Number and capacity of solar energy systems installed (kW)
 - Number and capacity of wind energy systems installed (kW)
 - Number and capacity of solar thermal systems installed (square feet)
 - Number and capacity of ground source geothermal systems installed (tons)
 - Number and capacity of biomass (non-transport) systems installed (kW)
 - Number and capacity of biofuel systems installed (gallons per year)
 - Number and capacity of hydropower systems installed (kW)
 - Number and capacity of other renewable energy systems installed (BTU/h or kW)
 - Other: _____

- Technical Assistance
- Number of information transactions contacts (for example, webinar, site visit, media, fact sheet) in which energy efficiency or renewable energy measures were recommended, by sector
 - Other: _____

- Transportation
- Number of alternative fuel vehicles purchased
 - Number of conventional vehicles converted to alternative fuel use
 - Number of new alternative refueling stations emplaced
 - Number of new carpools and vanpools formed
 - Number of energy-efficient traffic signals installed
 - Number of street lane-miles for which synchronized traffic signals were installed
 - Other: _____

Workshops, Training, and Education

- Number of workshops, training, and education sessions held, by sector
- Number of people attending workshops, training, and education sessions, by sector
- Other: _____

Other Activities Not Previously Defined

- Pertinent metric information for any activity not defined above should be captured and included as needed
- Other: _____
- Other: _____
- Other: _____

**EXHIBIT D
ATTACHMENT 7**

EXHIBIT D 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 D, Paragraph 1)

1. Title 10 CFR Part 600
2. Additional provisions that apply to the vendor

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

3. ARRA-Funded Project
4. Segregation of Costs
5. Prohibition on Use of Funds
6. Access to Records
7. Protecting State and Local Government and Contractor Whistleblowers
8. False Claims Act
9. 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 D*)

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

12. Wage Rate Requirements Under Section 1606 of ARRA
13. Davis-Bacon Act and Contract Work Hours and Safety Standards Act
14. ARRA Transactions Listed in Schedule of Expenditures of Federal Awards

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

15. Site Visits
16. 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 Manger for guidance.

D. Exhibit D Attachments

27. Attachment 2 – Certifications Regarding Lobbying and Debarment, Suspension, and Other Responsibility Matters
28. Attachment 3 – Standard Form LLL, Disclosure of Lobbying Activities

29. Attachment 4 – National Policy Assurances (*Applicable provisions*)
30. Attachment 5 – Federal Intellectual Property Provisions

**Exhibit F
Contact List**

California Energy Commission	Recipient
<p>Commission Agreement Manager:</p> <p>Daniel Johnson California Energy Commission 1516 Ninth Street, MS-26 Sacramento, CA 95814 Phone: (916) 651-3746 Fax: (916) 654-4423 e-mail: Daniel.johnson@energy.ca.gov</p>	<p>Project Manager:</p> <p>Lorie Cosio-Azar City of San Diego 9601 Ridgehaven Court, Ste. 120, MS 1101B San Diego, CA 92123 Phone: (858) 627-3352 Fax: (858) 492-5068 e-mail: lcosioazar@sandiego.gov</p> <p>Aaron Lu City of San Diego 9601 Ridgehaven Court, Ste. 120, MS 1101B San Diego, CA 92123 Phone: (858) 573-1291 Fax: (858) 492-5068 e-mail: ylu@sandiego.gov</p>
<p>Commission Agreement Officer:</p> <p>Crystal Presley-Willis California Energy Commission 1516 Ninth Street, MS-18 Sacramento, CA 95814 Phone: (916) 653-6110 Fax: (916) 654-4423 e-mail: crystal.presley-willis@energy.ca.gov</p>	<p>Administrator:</p> <p>Jack Clark City of San Diego 9601 Ridgehaven Court, Ste. 120, MS 1101B San Diego, CA 92123 Phone: (858) 492-6001 Fax: (858) 492-5068 e-mail: JHClark@sandiego.gov</p>
<p>Accounting Officer:</p> <p>California Energy Commission 1516 Ninth Street, MS-2 Sacramento, CA 95814 Phone: (916) 654-3902 Fax: N/A e-mail: mary.hung@energy.ca.gov</p>	<p>Accounting Officer:</p> <p>Nancy Adachi City of San Diego 9601 Ridgehaven Court, Ste. 120, MS 1101B San Diego, CA 92123 Phone: (858) 492-5063 Fax: (858) 492-5068 e-mail: NAdachi@sandiego.gov</p>

**Exhibit F
Contact List**

Legal Notices:

Tatyana Yakshina
Grants Manager
1516 Ninth Street, MS-18
Sacramento, CA 95814
Phone: (916) 654-4204
Fax: (916) 654-4423
e-mail: tatyana.yakshina@energy.ca.gov

Recipient Legal Notices:

Fritz Ortlieb
City of San Diego
1200 3rd Ave, Office of the City Attorney,
Office MS 59
San Diego, CA 92101
Phone: (619) 236-6220
Fax: (619) 533-5856
e-mail: FOrtlieb@sandiego.gov

EXHIBIT O
SCOPE OF WORK

SCOPE OF WORK – Cypress Envirosystems

TECHNICAL TASK LIST

Task #	Task Name
1	Administration
4	Wireless Pneumatic-to-DDC System in the CAB Complex

GLOSSARY

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

Term/ Acronym	Definition
CAM	Commission Agreement Manager
Challenge	Local Government Challenge
CPR	Critical Project Review
Energy Commission	California Energy Commission
Subcontractor	Cypress Envirosystems
City	City of San Diego
DDC	Direct Digital Controls
HVAC	Heating, Ventilation, and Air Conditioning
SOO	Sequence of Operations

TASK 1 ADMINISTRATION

Task 1.7 Identify and Obtain Required Permits

The goal of this task is to identify and obtain all permits required for work completed under this Agreement in advance of the date they are needed to keep the Agreement schedule on track. Permits must be identified in writing and obtained before the City can make any expenditure for which a permit is required.

The contractor shall:

- Identify and obtain required permits in advance of required permit date.

TASK 4 WIRELESS PNEUMATIC-TO-DDC CONTROLS SYSTEM IN CITY ADMINISTRATIVE BUILDING (CAB) COMPLEX

The goal of this task is to install and integrate wireless Direct Digital Controls (DDC) thermostats in the City’s CAB Complex to replace the existing pneumatic thermostats. This replacement will permit the use of advanced HVAC control strategies and result in reduced energy consumption throughout the CAB Complex.

The Recipient shall:

- Prepare System Product Data and Shop Drawing Submittals. This set of documents shall include, but is not limited to, the following:
 - a list of all items purchased and installed;
 - hardware and software product data; and
 - shop drawings.
- Remove all existing pneumatic thermostats within the City's CAB Complex and replace with Cypress EnviroSystems DDC thermostats.
- Integrate the newly installed Cypress EnviroSystems DDC thermostats into the City's CAB Complex's DDC controls system.
- Implement a revised Sequence of Operations (SOO) including modern control techniques to optimize zone level control within the CAB Complex. The SOO control strategies shall include, but are not limited to, the following:
 - programmable Schedule setbacks at zone level for unoccupied periods;
 - dead-band set-point control;
 - enforcement of set-point policy;
 - duct static pressure optimization; and
 - supply temperature optimization.
- Provide performance test checklists for each replacement thermostat.

Product:

- Product Data and Shop Drawing Submittals
- Completed Performance Test Checklists

The contractor must adhere to the asbestos requirements defined in the Exhibit P – ACM Building List, Exhibit Q – County Department of Health Assessment Tool & Exhibit R - Asbestos, Lead and other Hazardous Materials.

Scope of work is subject to change based on any amendments with the CEC, change orders will be issued to reflect that.



January 21st, 2021

To: City of San Diego
Attn: Arwa Sayed
Subject: SCoup Project

Arwa,

Thank you for the opportunity to provide a proposal for the above-referenced project. Our base pricing covers the furnishing and installation of all normally anticipated materials and equipment as referenced in the project narrative documents provided. This proposal is subject to the clarifications and exclusions listed below.

A. Pricing

Total Base Bid Pricing: \$357,447

B. Scope Information:

General Information:

- Replace existing pneumatic thermostats at the San Diego Civic Center with Wireless Pneumatic Thermostats.
- Install wireless communication network to enable remote monitoring and control of WPT's.
- Enable BACnet/IP interface for communication with the Building Automation System (BAS).

C. Scope of Work Breakdown

Task 1: Reserved for Administration Cost

Task 4: The goal of this task is to install and integrate Direct Digital Controls (DDC) thermostats in the City's CAB Complex to replace all existing pneumatic thermostats.

The Subcontractor shall:

- Prepare System Product Data and Shop Drawing Submittals. This set of documents shall include, but is not limited to, the following:
 - a list of all items purchased and installed;
 - hardware and software product data; and
 - shop drawings.



- Remove all existing pneumatic thermostats within the City's CAB Complex and replace with Cypress Envirosystems DDC thermostats.
- Provide performance test checklists for each replacement thermostat.

D. Equipment Breakdown

- (6) WPT Green Box Controller
- (6) WPT Wireless Hub
- (383) Wireless Pneumatic Thermostats

E. Clarifications

- All work to be performed between 8am and midnight. Work may be performed during weekdays and weekend days.
- Underlying pneumatic air system at CAB must be serviceable and substantially free of oil, water or other contaminants.
- Cypress team must have unimpeded physical access to locations where thermostats are to be replaced, and to where wireless hubs and controllers will be installed during the project implementation period (targeted for February 25th through March 31st, 2021).

F. Exclusions

- Verification of counts and locations of thermostats, and what they control (we assume the information provided by the City of San Diego is correct).
- Repair/correction of any underlying pneumatic issues and components (leaks, springs, dampers, valves etc.)
- BACnet/IP integration with the BAS, on the BAS side
- Control sequences on the BAS
- Graphics on the BAS
- Building or other permits
- Liquidated damages for any delays not attributable to Cypress Envirosystems
- Performance Bond
- Applicable Sales Tax

Please do not hesitate to call if you have any questions or if you require further information.

Best regards,

A handwritten signature in black ink, appearing to read "Harry Sim".

Harry Sim
CEO, Cypress Envirosystems

CYPRESS ENVIROSYSTEMS
5883 Rue Ferrari, Suite 100, San Jose, CA 95138
Phone: 800-544-5411 Web: www.CypressEnvirosystems.com

EXHIBIT P

ACM BUILDING LIST

202 C St. San Diego, CA 92101

List of Asbestos-Containing Materials

Type of Material	Material Location
Fire proofing	Floors 1 -5, 8-13 sprayed on all structural steel and decking
Fire proofing	Basement, 14, & 15 sprayed on all structural steel with some over-spray
Ceiling tiles. 2 foot x 5 foot, white, pattern is small holes in circular area	Ceilings on multiple floors
12"x 12" ceiling tiles: white, pattern is small holes in circular area	On all floors - primarily found in elevator lobby area
Pipe and fitting insulation	Through mechanical spaces, walls, and ceilings on all floors
12" x 12" and 9" x 9" floor tile and mastics	On all floors
Linoleum flooring	Areas on 10 th floor, 11 th floor, 13 th floor
Cement pipe	13 th floor air handling room
Transite panels	On Roof Cooling Tower
Fire Exit Door Cores	Located on floors throughout
Carpet Glues	Located on floors throughout
Baseboard Mastic	Located on floors throughout

City Operations Building

1222 First Avenue. San Diego, CA 92101

List of Asbestos-Containing Materials

Type of Material	Material Location
Spray Applied Fireproofing and Overspray	Floor 1 – spray applied and overspray on beams with complete coverage on metal decking (with tabs) in the Fire station, the loading dock and in the basement. Overspray is also present on the thermal system insulation and utility systems. (Floors 2-5 have been abated of Fireproofing)
Thermal System Insulation (TSI)	In portions of the basement and mechanical rooms on floors 6 and 7, above suspended ceiling tiles in portions of the basement and floors 3-5. Additional suspect TSI is located on the 1 st and second floors.
Roofing materials	Roof

Civic Theater/Central Plant
 1100 Third Avenue. San Diego, CA 92101
 List of Asbestos-Containing Materials

Type of Material	Material Location
Fire proofing	Spray-applied fireproofing on beams and columns with overspray on decking, in air plenums under auditorium seating, in pipe chases, behind access panels, and above suspended ceilings. Overspray is also present on thermal system insulation and utility systems.
Thermal system insulation (TSI)	Throughout Civic Theater and Central Plant
Spray Applied Ceiling Texture	In the lobby and on the 1 st , 2 nd , 3 rd and 4 th floors
Floor tile and mastic	Central Plant (excluding Central Plant Office)
Wall mounted 2' x 4' ceiling tiles	Orchestra Pit

Golden Hall/ Concourse

1101 First Avenue. San Diego, CA 92101

List of Asbestos-Containing Materials

Type of Material	Material Location
Fire proofing	On beams with overspray on the irregular metal deck above the attic; complete deck coverage at either end of the catwalk. Overspray is also present on thermal system insulation and utility systems.
2'x 2' Ceiling Tiles	In kitchen of basement, southwest section
1'x 1' Ceiling Tiles	Ceiling tile in basement shower rooms, dressing rooms, restrooms, hallways, general and office areas on the 1 st and 2 nd floors and balcony level; in the lobby on 1 st floor, and in the projection booth area of the balcony.
Thermal System Insulation (TSI)	Along the ceilings in the basement, above ceilings in the basement and Plaza Hall, and in mechanical rooms in the basement, Plaza Hall mezzanine, above the low roof, and balcony. On the tank in the southeast mechanical room on the low roof. Additional suspect thermal system insulation was located on the 1 st and 2 nd floors, Plaza Hall, and attic/catwalk
Spray-applied ceiling textured material and (other surfacing material)	On exterior east and west walkways of the 1 st and 2 nd floors, and above the ceiling tiles in classroom outside the 2 nd floor west walkway. Cooper Room on the 2 nd floor
Carpet glue and residue mastics	Lobby
Fire door insulation	2 nd floor door that leads to mechanical equipment and roof access
Sheet Vinyl Mastic	Room 236 restroom
9"x 9" floor tile and associated mastic	Office adjacent to rooms 231 and 236 and 1 st floor hallway.
Cove Base Mastic	Cove base mastic in office adjacent to rooms 231 and 236, freight elevator lobby.

EXHIBIT Q

COUNTY DEPARTMENT OF HEALTH ASSESTMENT TOOL

INCIDENT/RELEASE ASSESSMENT FORM ¹

If you have an emergency, Call 911

Handlers of hazardous materials are required to report releases. The following is a tool to be used for assessing if a release is reportable. Additionally, a non-reportable release incident form is provided to document why a release is not reported (see back).

Questions for Incident Assessment:

	YES	NO
1. Was anyone killed or injured, or did they require medical care or admitted to a hospital for observation?	<input type="checkbox"/>	<input type="checkbox"/>
2. Did anyone, other than employees in the immediate area of the release, evacuate?	<input type="checkbox"/>	<input type="checkbox"/>
3. Did the release cause off-site damage to public or private property?	<input type="checkbox"/>	<input type="checkbox"/>
4. Is the release greater than or equal to a reportable quantity (RQ)?	<input type="checkbox"/>	<input type="checkbox"/>
5. Was there an uncontrolled or unpermitted release to the air?	<input type="checkbox"/>	<input type="checkbox"/>
6. Did an uncontrolled or unpermitted release escape secondary containment, or extend into any sewers, storm water conveyance systems, utility vaults and conduits, wetlands, waterways, public roads, or off site?	<input type="checkbox"/>	<input type="checkbox"/>
7. Will control, containment, decontamination, and/or clean up require the assistance of federal, state, county, or municipal response elements?	<input type="checkbox"/>	<input type="checkbox"/>
8. Was the release or threatened release involving an unknown material or contains an unknown hazardous constituent?	<input type="checkbox"/>	<input type="checkbox"/>
9. Is the incident a threatened release (a condition creating a substantial probability of harm that requires immediate action to prevent, reduce, or mitigate damages to persons, property, or the environment)?	<input type="checkbox"/>	<input type="checkbox"/>
10. Is there an increased potential for secondary effects including fire, explosion, line rupture, equipment failure, or other outcomes that may endanger or cause exposure to employees, the general public, or the environment?	<input type="checkbox"/>	<input type="checkbox"/>

If the answer is YES to *any* of the above questions – report the release to the California Office of Emergency Services (CalOES) at 800-852-7550 and the local CUPA: (858) 505-6657. Note: Other state and federal agencies may require notification depending on the circumstances. See CalEMA’s “*California Hazardous Material Spill/Release Notification Guide*”.

Call 911 in an emergency

If all answers are NO, complete a Non-Reportable Release Incident Form (page 2 of 2) and keep it readily available. Documenting why a “no” response was made to each question will serve useful in the event questions are asked in the future, and to justify not reporting to an outside regulatory agency.

If in doubt, report the release.

¹ This document is a guide for accessing when hazardous materials release reporting is required by Chapter 6.95 of the California Health and Safety Code. It does not replace good judgment, Chapter 6.95, or other state or federal release reporting requirements.

NON-REPORTABLE RELEASE INCIDENT FORM

1. RELEASE AND RESPONSE DESCRIPTION

Incident # _____

Date/Time Discovered	Date/Time Discharge	Discharge Stopped <input type="checkbox"/> Yes <input type="checkbox"/> No
Incident Date / Time:		
Incident Business / Site Name:		
Incident Address:		
Other Locators (Bldg, Room, Oil Field, Lease, Well #, GIS)		
Please describe the incident and indicate specific causes and area affected. Photos Attached?: <input type="checkbox"/> Yes <input type="checkbox"/> No		
Indicate actions to be taken to prevent similar releases from occurring in the future.		

2. ADMINISTRATIVE INFORMATION

Supervisor in charge at time of incident:	Phone:
Contact Person:	Phone:

3. CHEMICAL INFORMATION

Chemical	Quantity <input type="checkbox"/> GAL <input type="checkbox"/> LBS <input type="checkbox"/> FT ³
Chemical	Quantity <input type="checkbox"/> GAL <input type="checkbox"/> LBS <input type="checkbox"/> FT ³
Chemical	Quantity <input type="checkbox"/> GAL <input type="checkbox"/> LBS <input type="checkbox"/> FT ³
Clean-Up Procedures & Timeline:	
Completed By:	Phone:
Print Name:	Title:

EXHIBIT R

ASBESTOS, LEAD AND OTHER HAZADOUS MATERIALS

(NOTE-IF ANY DISTURBANCE TO BUILDING MATERIALS IS TO OCCUR DO NOT USE THIS EXHIBIT. CONTACT THE ASBESTOS, LEAD AND MOLD PROGRAM TO PERFORM AN INSPECTION, CREATE A SURVEY REPORT AND PROJECT SPECIFICATION, AS REQUIRED)

**ADD:
ASBESTOS, LEAD AND OTHER HAZARDOUS MATERIALS.**

GENERAL

- A. The Contractor will follow all applicable, federal, state and local regulations that pertain to this Project and the Work being performed.
- B. The Contractor must not disturb any Hazardous Materials that include but are not limited to, asbestos containing materials, suspect Asbestos Containing Materials (“ACM(s)”) or painted surfaces that may contain lead-based paint during this Project.
- C. Contractor shall not work outside the agreed upon Work Area and Scope of Work that has been submitted, reviewed, and approved by the City.
- D. Should the Contractor encounter suspect Hazardous Materials, need to perform work outside of the pre-established Work Area or should disturbance to suspect building materials need to occur. The following steps must be followed:
 - 1. If suspect asbestos containing materials need to be disturbed and have not been tested Contact the City Resident Engineer (RE).
 - 2. If suspect asbestos containing debris or loose and flaky lead paint are identified, stop work, vacate that area and immediately notify the City RE.
 - 3. As soon as possible and as needed, the City will arrange for sampling of the suspect materials and determine if abatement is required. When an inspection is performed for building materials that will be disturbed, an inspection survey report will be provided to the City RE. The inspection survey report will be required to be maintained onsite for the duration of the Project.
 - 4. If abatement is required, and is not due to negligence of the Contractor, Contractor’s employees or sub-contractors, the City will coordinate such abatement and waste disposal at no cost to the Contractor.
 - 5. If abatement is required, the Contractor shall remain out of that work area and not return until the abatement has been completed, the area cleared, and Contractor has been notified in writing that Work may resume by the RE. If abatement is not required, the City will inform the Contractor that work may resume in that area.
- E. The Contractor and their staff shall continue looking for suspected materials throughout this Project.
- F. For the purposes of this PROJECT, if the building where this project is to occur has been identified as containing asbestos fireproofing, access above the ceiling, ceiling tile plane, and

inside wall cavities is prohibited. The asbestos containing fireproofing must not be contacted or disturbed.

- G. If a paint coating is present and no laboratory results are provided, it shall be assumed to contain lead above acceptable regulatory levels (currently 600mg/kg), unless the City performs sampling to determine otherwise. Disturbing this paint/coating would require a California Department of Public Health certified Lead Abatement Worker and/or Supervisor to perform the work following all applicable regulations.

CONTRACTOR'S RESPONSIBILITIES

- H. Contractor acknowledges by signing this Contract that it has been informed of known Asbestos Containing Materials present in the building. Contractor further acknowledges that it will timely inform all employees and sub-contractors working on this Project of known ACM in the building prior to commencing Work. (See APPENDIX A List of Known Asbestos Containing Materials).
- I. Safety Requirements. All Work performed under this Contract will be performed in such a manner as to provide maximum safety to the public and employees and shall comply with all safety provisions and regulations. The Contractor is responsible for abiding by all federal, state and local requirements. Contractors who have ten (10) or more employees shall have an injury/illness program as required by CAL/OSHA. The City RE or their designee reserves the right to issue restraining or cease and desist orders to the Contractor when unsafe or harmful acts are observed or reported.
- J. Personal Protective Equipment (PPE) shall be supplied by the Contractor for their staff and properly used, as required. Such use shall be in compliance with all federal, state and local regulations.
- K. Damages. Contractor's personnel will immediately report any damages, defects, leaks, power outages, or any other problems or irregularities including any injuries to the City RE or designee.
- L. The Contractor shall be responsible for all harm or injury to persons or property that are the result of the fault or negligence of the Contractor, the Contractor's employees, or the Contractor's Sub-Contractors.
- M. Parking. While on City premises, the Contractor is responsible for all parking fees, tickets, and permits and shall obey all parking regulations.
- N. Other. City Work Rules- Employees and agents of the Contractor shall, while on the premises of the City, comply with all City rules and regulations. The Contractor shall acquaint itself with conditions at the Work Site so as not to interfere with City operations. The Contractor shall not stop, delay, or interfere with City work schedules without the prior approval of the City.

ENCOUNTERS OF HAZARDOUS MATERIALS

- O. Any substance is considered a “Hazardous Substance” if it is toxic, corrosive, flammable, combustible, radioactive, an irritant, a strong sensitizer, or if it may cause substantial personal injury or substantial illness as a proximate result of any customary or reasonably foreseeable handling or use.
- P. A Hazardous Material refers to any substance or material that the Secretary of Transportation has determined “is capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and has designated as hazardous under section 5103 of Federal hazardous materials transportation law” (49 U.S.C. 5103)
- Q. If the Contractor encounters, causes the release of, or has knowledge of a release or an imminent release of any Hazardous Material, including ACM, work in the area shall immediately cease and workers shall vacate the area. The Contractor shall immediately notify the City RE. The City will investigate and will notify the County of San Diego, Department of Environmental Health (DEH) at (619) 338-2222 (during business hours) or by calling 911 (outside business hours), and/or the San Diego Air Pollution Control District, as required. If there is an immediate fire, explosion, health or safety threat, the Contractor shall notify the Fire Department by calling 911.
- R. “Hazardous Waste” can be defined as waste with properties that make it potentially dangerous or harmful to human health or the environment and appears on one of the four Resource Conservation and Recovery Act (RCRA) hazardous wastes lists (the F-list, K-list, P-list, or U-list) or that exhibits one of the four characteristics of a hazardous waste – ignitability, corrosivity, reactivity, or toxicity. Hazardous waste also includes non-RCRA Hazardous waste per the California Health and Safety Act. “Regulated waste” is waste regulated by the State of California but not considered hazardous. A waste determination shall be performed by the City, as required, on all potential Hazardous Waste or regulated waste that may be generated at this Work Site, within 10 days of generation, but not later than the end of the Project, to determine if it meets Hazardous Waste criteria in accordance with 22 CCR Division 4.5 or any other pertinent law or regulation which could restrict the disposal of the waste to a municipal landfill, sewer discharge, or storm drain discharge.
- S. If the waste determination was required due to a Contractor’s negligence, that Contractor will be responsible for all costs associated with the waste determination and disposal of the regulated or Hazardous Waste.
- T. If Hazardous Waste or regulated waste is generated during the normal course of this Project, the City will coordinate the proper disposal at no cost to the Contractor. If Hazardous Waste or regulated waste is generated due to a Contractor’s negligence proper waste disposal in accordance with applicable local, state and federal regulations will be coordinated by the City and the Contractor will be responsible for the associated costs.

REGULATORY REPORTING FOR CHEMICAL RELEASE OR THREATENED RELEASE

- U. Chemical releases or threatened releases involving a gas, liquid or solid Hazardous Materials or Hazardous Waste shall be immediately assessed utilizing the County Department of Environmental Health's Assessment Form as a guide to determine if the incident requires regulatory reporting to the California Emergency Management Agency, County Department of Environmental Health, Hazardous Materials Division, the National Response Center and any other pertinent regulatory agency. See APPENDIX B for a copy of County Department of Environmental Health's Assessment form and blank Chemical Release Report form.
- V. Untimely reporting of a chemical release or threatened release shall subject the Contractor to fines and penalties by the County of San Diego and any other pertinent regulatory agency.
- W. Chemical releases or threatened releases involving a gas, liquid, or solid Hazardous Materials or Hazardous Waste shall be immediately reported to the City.
- X. Chemical releases caused by the Contractor and any contaminated media (rags, absorbents, soil, etc.) shall be immediately contained, cleaned up, and handled as Hazardous Waste by a certified Abatement Contractor trained for the type of hazard present, at the Contractor's expense. The media shall be handled as Hazardous Waste unless a complete Hazardous Waste determination, as coordinated by the City, identifies the waste to be non-hazardous.
- Y. A Chemical Release Report Form or similar document shall be completed and emailed to the City RE or City designee promptly, this must occur immediately but in no event longer than 4 hours from the time of the chemical release. This includes all release incidents of Hazardous Materials or Hazardous Wastes for any size release that required regulatory reporting as determined by the County Department of Environmental Health's Assessment form (APPENDIX B) which also contains a blank Chemical Release Report Form.