

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Chief Executive Office

BOARD AGENDA # *B-1

Urgent

Routine

AGENDA DATE October 5, 2010

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval to Accept the California Energy Commission Energy Efficiency Conservation Block Grant (EECBG) Funding Award and Execute the Program Pursuant to Guidelines

STAFF RECOMMENDATIONS:

1. Authorize the Chief Executive Officer, or his designee, to accept the California Energy Commission Energy Efficiency Block Grant Program funding award in the amount of \$671,249 and execute the Energy Efficiency Block Grant Program pursuant to guidelines.
2. Authorize the Project Manager to issue a Request for Proposals (RFP) for professional Design Services for the development of plans and specifications for the replacement of the heating, ventilation and air conditioning system (HVAC), and roof at the Juvenile Detention Facility on October 6, 2010.

(Continued on Page 2)

FISCAL IMPACT:

Stanislaus County has been awarded \$671,249 from the California Energy Commission Energy Efficiency Conservation Block Grant (EECBG) Program funded by the American Recovery and Reinvestment Act of 2009. With the Board's approval, \$575,000 is recommended to upgrade the heating, ventilation, and air conditioning system at the Juvenile Detention Facility at 2215 Blue Gum Avenue in Modesto, California, to be coordinated by Chief Executive Office Capital Projects staff. Additionally, staff is recommending

(Continued on Page 2)

BOARD ACTION AS FOLLOWS:

No. 2010-615

On motion of Supervisor O'Brien, Seconded by Supervisor Monteith

and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Monteith, DeMartini, and Chairman Grover

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) Approved as recommended

2) Denied

3) Approved as amended

4) Other:

MOTION:

ATTEST:


CHRISTINE FERRARO TALLMAN, Clerk

File No.

STAFF RECOMMENDATIONS: (Continued)

3. Authorize the Project Manager to open and evaluate proposals on October 27, 2010; immediately after 4:00 p.m.; and to modify the date if necessary and return to the Board to recommend an award.
4. Authorize the Project Manager to negotiate and sign contracts and work authorizations necessary to manage the design phase including construction management, professional services, and other project related costs as long as they are within the approved project budget.
5. Direct the Auditor-Controller to establish a new Energy Efficiency Block Grant Capital Project budget and increase appropriations and estimated revenue by \$671,249 as detailed in the attached Budget Journal form.
6. Authorize the Auditor-Controller to transfer \$300,000 of existing appropriations from the Chief Executive Plant Acquisition budget to the Energy Efficiency Block Grant Capital Project budget as detailed in the attached Budget Journal form.

FISCAL IMPACT: (Continued)

the remaining \$96,249 be used to fund a street light replacement project to change out approximately 276 County owned high pressure sodium lights with energy efficient induction lighting, with this effort coordinated by Public Works.

Staff is also recommending the Board authorize the Project Manager to issue a Request for Proposals (RFP) for professional Design Services for the development of Plans and Specifications for the replacement of the heating, ventilation and air conditioning system (HVAC), and roof at the Juvenile Detention Facility; authorize the Project Manager to open and evaluate proposals; and return to the Board to recommend an award. The final plans and specifications and the estimate of the probable project cost will be returned to the Board of Supervisors for acceptance prior to seeking bids for construction. All expenditures related to the HVAC and lighting replacement projects will be reimbursed in arrears as detailed in the grant guidelines. The cost of replacing the roof will be paid from existing appropriations through a transfer from Chief Executive Office Plant Acquisition budget to the new EECBG Capital Project budget.

The proposed roof replacement project was approved on June 8, 2010 as part of the Adopted Proposed Budget for Budget Year 2010-2011 in the Chief Executive Office Plant Acquisition budget, with funding approved up to \$300,000 for this deferred maintenance project. At this time, with Board approval, staff is recommending to transfer existing appropriations of \$300,000 from the Chief Executive Office Plant Acquisition budget to the Energy Efficiency Capital Project budget as detailed in the attached Budget Journal form. Although the roof replacement project is recommended to be performed concurrently with the HVAC replacement project, all costs associated

Approval to Accept the California Energy Commission Energy Efficiency Conservation Block Grant (EECBG) Funding Award and Execute the Program Pursuant to Guidelines
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with roof replacement project will be tracked separately from the proposed EECBG grant funded projects.

With the Board's approval of these actions, the new Energy Efficiency Capital Project budget will total \$971,249 for three projects at the Juvenile Justice Detention Facility. Of the total funding, \$671,249 will be funded by the California Energy Efficiency Block Grant award for the HVAC and lighting replacement projects, and \$300,000 funded through a transfer from the Chief Executive Office Plant Acquisition budget for the roof replacement project.

DISCUSSION:

Background

The American Recovery and Reinvestment Act (ARRA) of 2009 allocated \$3.2 billion nationwide to the Energy Efficiency and Conservation Block Grants (EECBG) Program. These funds are to be used to assist cities and counties in implementing projects and programs to reduce total energy use and fossil fuel emissions, as well as implementation of programs and other activities that result in long-term energy savings. Larger cities and counties have received direct allocations of EECBG grant funds while smaller cities and counties in California (i.e., cities with populations below 35,000 and counties with populations below 200,000) must apply to the California Energy Commission (CEC). Stanislaus County was eligible to receive \$671,249 based on a per capita basis for local governments to invest in cost-effective energy efficient products and/or projects for their communities.

Stanislaus County received notification of the grant in August 2009. A task force composed of members from the Chief Executive Office, Capital Projects, General Services Agency-Facility Maintenance and Public Works was assembled to identify potential projects. A total of nine (9) projects were evaluated and prioritized based on available non-grant funding, funding source, anticipated return on investment, and the ability to meet grant requirements and timelines. Based on the criteria, the list was narrowed to two (2), the Juvenile Detention Facility heating and cooling system replacement and Public Works street light lamp replacement were determined to be the most critical and cost effective projects for the County.

On December 22, 2009, the Board approved the following staff recommendations:

- Authorized the Chief Executive Officer to submit an application to the California Energy Commission for the Energy Efficiency Conservation Block Grant Program;
- Authorized the Chief Executive Officer to sign and submit the grant application and supporting documents to the California Energy Commission;
- Found that the recommended actions were exempt from the provisions of the California Environmental Quality Act (CEQA); and

Approval to Accept the California Energy Commission Energy Efficiency Conservation Block Grant (EECBG) Funding Award and Execute the Program Pursuant to Guidelines
Page 4

- Approved the Energy Efficiency Conservation Block Grant Resolution.

In January, 2010, the County submitted its application for review to the California Energy Commission. County staff participated on several teleconference workshops provided by the California Energy Commission for grantees on specific funding requirements under the ARRA Act of 2009. Contract negotiations between the County and the California Energy Commission were extensive. On August 26, 2010, the County received a grant agreement for execution with an amount not to exceed \$671,249.

At this time, staff is requesting the Board authorize the Chief Executive Officer, or his designee, to accept the California EECBG Program funding award and execute the EECBG Program pursuant to guidelines. With the Board's approval of these actions, the new Energy Efficiency Capital Project budget will total \$971,249 for three projects at the Juvenile Justice Detention Facility. Of the project total, \$671,249 will be funded by the California Energy Efficiency Block Grant award for the HVAC and lighting replacement projects, and \$300,000 funded through a transfer from the Chief Executive Office Plant Acquisition budget for the roof replacement project. The three projects are outlined below:

EECBG HVAC Replacement Project

The Stanislaus County Juvenile Detention Facility located at 2215 Blue Gum Avenue in Modesto currently has a number of different roof top heating, ventilation, and air conditioning (HVAC) units. The eight (8) units supporting the older housing units, kitchen, intake, and gym use a combination of chilled water supplied from a central chiller to cool the space and electric resistive heating elements located inside of each unit for heating. Electric resistive is a very inefficient way of heating a building. These units have out lived their useful life and are in need of replacement.

It is proposed to replace these eight (8) units with units with new high energy efficiency units. The replacement of this equipment will result in an estimated savings of 1,560 kilowatt hours (KWH) or 5,326 million british thermal units (MBTU) resulting in an estimated energy savings of \$45,000 per year. The entire cost of this replacement project will be funded by the ARRA grant funds with no impact to the general fund and the project will be coordinated by the Chief Executive Office Capital Projects staff.

EECBG Street Lighting Replacement Project

Stanislaus County Public Works is responsible for the operation, maintenance and energy costs of nearly 1700 streetlights, generally high-pressure sodium (HPS) ranging from 150 to 250 watts. The lights generally operate during evening hours, averaging 12 hours per day. Energy is supplied by three different energy companies: Pacific Gas and Electric; Modesto Irrigation District and Oakdale Irrigation District. The rate schedules vary by provider.

With Board approval, Public Works will change out approximately 276 of the existing County owned and maintained high pressure sodium lights with induction lighting. Induction lighting is a system based on the compact fluorescent lamp (CFL). The composition is the same as the CFL except that it does not use an electrode to transfer power to the lamp. Instead, there is an inductor inside the bulb connected to the ballast. The power is transmitted by means of electro-magnetic fields. Induction lighting is rated at 100,000 hours compared to 24,000 hours for HPS, reducing maintenance costs significantly. Power consumption is cut by about 50%, leading to much reduced energy costs. This is accomplished by the induction lights using a far lower wattage while the lumens remain comparable to HPS lighting, with less lumen depreciation over the life of the lamp. Induction lighting is also environmentally friendly at the time of disposal because of its use of solid mercury, rather than liquid mercury, and its long life span.

The existing HPS lights will be retrofitted to the new induction heads at a cost of approximately \$500/light, including materials and labor. The entire cost of this replacement project will be funded by \$96,249 of ARRA grant funds with Public Works providing the associated labor and equipment, estimated at approximately \$52,000. There is no impact to the general fund and the project will be coordinated by Public Works staff.

The recommended projects were previously determined to be exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 156 (b)(3) of the State CEQA Guidelines, since the Juvenile Detention Facility and Public Works street lights are existing public facilities and the recommended actions involve no expansion of the use of the facilities.

Roof Replacement Project

The purpose of this project is to replace the roof at the Stanislaus County Juvenile Justice Center, located at 2215 Blue Gum Avenue in Modesto, California.

The original Juvenile Detention Facility was constructed in 1976 and expansions were completed in 2000 and 2002. The roof at the Stanislaus County Juvenile Detention Facility is constructed of built up asphalt that has exceeded its life expectancy has failed. The proposed roof replacement project was approved on June 8, 2010 as part of the Adopted Proposed Budget for Budget Year 2010-2011 in the Chief Executive Office Plant Acquisition budget, with funding approved up to \$300,000 for this deferred maintenance project. At this time, with Board approval, staff is recommending to transfer existing appropriations of \$300,000 from the Chief Executive Office Plant Acquisition budget to the Energy Efficiency Capital Project budget as detailed in the attached Budget Journal form. Although the roof replacement project is recommended to be performed concurrently with the HVAC replacement project, all costs associated with roof replacement project will be tracked separately from the proposed EECBG grant funded projects.

POLICY ISSUE:

Board approval to accept this funding is required. Utilization of this funding will reduce energy consumption and supports the Board's Priorities of Effective Partnerships and Efficient Delivery of Public Services.

STAFFING IMPACT:

Grant recipients are required to report monthly on the use of ARRA funds. It is anticipated that the reporting requirements will have minimal staffing impact. Chief Executive Office Capital Projects, Auditor-Controller, General Services Agency and Public Works staff will be involved in the implementation of the grant funded projects.

CONTACT PERSON:

Patricia Hill Thomas, Chief Operations Officer. Telephone: (209) 525-6333

County of Stanislaus: Auditor-Controller

Legal Budget Journal

Database
Set of Books

FMSDBPRD.CO.STANISLAUS.CA.US.PROD
County of Stanislaus

Balance Type	Budget
Category	* List - Text Budget - Upload
Source	* List - Text AC GL TCF
Currency	* List - Text USD
Budget Name	List - Text LEGAL BUDGET
Batch Name	Text
Journal Name	Text CEO ML JV121225 9/30/2010
Journal Description	Text Juvenile Facility HVAC & Street Lighting Replacement Project
Journal Reference	Text CA Energy Commission Energy Efficiency Conservation Block Grant
Organization	List - Text Stanislaus Budget Org

Upl	Fund	Org	Acc't	GL Proj	Loc	Misc	Other	Debit		Credit		Period	Line Description
								incr appropriations	decr appropriations	decr est revenue	incr est revenue		
								(format - number + general)				Upper case	Text
												MM-YY	
												List - Text	
Pb	2076	0061136	62600	0004547	000000	000000	000000	550.00				OCT-10	HVAC-Off Supp
Pb	2076	0061136	62630	0004547	000000	000000	000000	11,000.00				OCT-10	HVAC-Out Print Svc
Pb	2076	0061136	62730	0004547	000000	000000	000000	275.00				OCT-10	HVAC-Postage
Pb	2076	0061136	63430	0004547	000000	000000	000000	4,936.80				OCT-10	HVAC-Design Consult
Pb	2076	0061136	64150	0004547	000000	000000	000000	9,873.60				OCT-10	HVAC-Code Req Test
Pb	2076	0061136	64210	0004547	000000	000000	000000	9,873.60				OCT-10	HVAC-Insp Services
Pb	2076	0061136	64220	0004547	000000	000000	000000	59,241.60				OCT-10	HVAC-Architect
Pb	2076	0061136	64600	0004547	000000	000000	000000	24,684.00				OCT-10	HVAC-Constr Mgmt Svc
Pb	2076	0061136	65000	0004547	000000	000000	000000	5,500.00				OCT-10	HVAC-Pub & Legal Notices
Pb	2076	0061136	73511	0004547	000000	000000	000000	100.00				OCT-10	HVAC-Auditors Office
Pb	2076	0061136	73512	0004547	000000	000000	000000	165.00				OCT-10	HVAC-Purchasing Dept
Pb	2076	0061136	80300	0004547	000000	000000	000000	282,888.00				OCT-10	HVAC-Struct & Impr
Pb	2076	0061136	80311	0004547	000000	000000	000000	165,912.00				OCT-10	HVAC-On Site Improve
Pb	2076	0061136	66280	0004549	000000	000000	000000	96,249.00				OCT-10	Lights-Operating Supp
Pb	2076	0061136	62400	0004545	000000	000000	000000	7,272.50				OCT-10	Roof-Misc Expense
Pb	2076	0061136	62600	0004545	000000	000000	000000	500.00				OCT-10	Roof-Off Supp
Pb	2076	0061136	62630	0004545	000000	000000	000000	10,000.00				OCT-10	Roof-Out Print Svc
Pb	2076	0061136	62730	0004545	000000	000000	000000	250.00				OCT-10	Roof-Postage
Pb	2076	0061136	63430	0004545	000000	000000	000000	2,200.00				OCT-10	Roof-Design Consult
Pb	2076	0061136	63640	0004545	000000	000000	000000	5,500.00				OCT-10	Roof-Legal Services
Pb	2076	0061136	64100	0004545	000000	000000	000000	2,500.00				OCT-10	Roof-Envir Consult Svcs
Pb	2076	0061136	64150	0004545	000000	000000	000000	4,400.00				OCT-10	Roof-Code Req Test
Pb	2076	0061136	64210	0004545	000000	000000	000000	4,400.00				OCT-10	Roof-Insp Services
Pb	2076	0061136	64220	0004545	000000	000000	000000	26,400.00				OCT-10	Roof-Architect
Pb	2076	0061136	64600	0004545	000000	000000	000000	11,000.00				OCT-10	Roof-Constr Mgmt Svc
Pb	2076	0061136	65000	0004545	000000	000000	000000	5,000.00				OCT-10	Roof-Pub & legal Notices
Pb	2076	0061136	73511	0004545	000000	000000	000000	150.00				OCT-10	Roof-Auditors Office
Pb	2076	0061136	73512	0004545	000000	000000	000000	250.00				OCT-10	Roof-Purchasing Dept
Pb	2076	0061136	74110	0004545	000000	000000	000000	125.00				OCT-10	Roof-Mail Rm Postage
Pb	2076	0061136	74190	0004545	000000	000000	000000	50.00				OCT-10	Roof-Pickup & Delivery
Pb	2076	0061136	80300	0004545	000000	000000	000000	200,000.00				OCT-10	Roof-Struct & Impr
Pb	2076	0061136	80570	0004545	000000	000000	000000	20,000.00				OCT-10	Roof-Change Order Cont
Pb	0100	0016031	85850	0004547	000000	000000	000000	299,997.50				OCT-10	HVAC-Oper Trnfr Out
Pb	2076	0061136	46600	0004547	000000	000000	000000		299,997.50			OCT-10	HVAC-Oper Trnfr In
Pb	2076	0061136	28800	0000000	000000	000000	000000		671,248.60			OCT-10	Fed-Other

Totals: 1271243.6 971246.1

Explanation:

Requesting Department	CEO	Data Entry	Auditors Office Only
<i>Malibu</i>	<i>Stanislaus</i>		
Signature	Signature	Keyed by	Prepared By
<i>10/1/10</i>	<i>10/1/10</i>		<i>10/1/10</i>
Date	Date	Date	Date
			Approved By

CALIFORNIA ENERGY COMMISSION

DIVISION OF FINANCIAL SERVICES
GRANTS & LOANS
1516 NINTH STREET, MS-1
SACRAMENTO, CA 95814-5512
(916) 654-4381
www.energy.ca.gov



August 25, 2010

2010 AUG 26 AM 10:31

Mark E. Loeser
Grantee Administrator
County of Stanislaus
1010 Tenth Street Place Suite 6800
Modesto, CA 95354

RE: GRANT AGREEMENT NUMBER: CBG-09-111
AMOUNT: \$671,249.00

Dear Mr. Mark E. Loeser:

Enclosed are copies of the above-referenced Agreement for your review and signature. Please complete the following items and return to: California Energy Commission, 1516 Ninth Street, MS-1, Sacramento, CA 95814.

- Two Standard Agreement (CEC-146) forms.
- Payee Data Record (STD 204).
- Recipient Information
- Exhibit C- Attachments C-1, C-2, C-3

PROCEDURE FOR EXECUTING AGREEMENT

- Enclosed are two Grant Agreement CEC 146 forms and one copy of the grant award agreement. Please review the agreement and any attachments carefully. Have each CEC 146 signed by the authorized person. **Retain the grant award agreement and return both signed copies of the CEC 146 to this office.**
- Either the Recipient Information form or Payee Data Record (STD 204) form is enclosed. This form must be completed, signed, and returned with the agreement. No payments can be made until this form is received.
- Complete and return Exhibit C- Attachments C-1 (Assurance of Compliance), C-2 (Certification Regarding Lobbying and Debarment, Suspension, and Other Responsibility Matters) and if applicable C-3 (Disclosure of Lobbying Activities).

August 25, 2010

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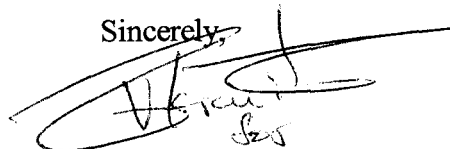
- Additionally, payment request forms are enclosed which should be retained in your files for future reimbursements.
- Please review the Grant Agreement prior to execution and note any changes made to the Terms and Conditions previously posted to the Energy Commission's website.
- Prior to reimbursement of project costs the Recipient must demonstrate compliance with the Single Audit Act and OMB Circular A-133. To check your status go to the State Controller's website at http://www.sco.ca.gov/aud_single_audits.html
- No work may commence on the project until all executed subcontracts and applicable prevailing wage determinations are reviewed by the Energy Commission and approved, as provided in Section 10 of the Terms and Conditions. Installation costs incurred prior to the submittal of such documentation are not reimbursable under this Agreement and will be disallowed (see attached enclosure).
- This grant award agreement is not binding on either party until fully and properly executed by the authorized state officials. A copy of this agreement will be sent to you when it has been executed by the state.
- The Energy Commission agrees to keep this offer open for a period of 30 days from the date of this letter. Failure to execute this agreement within this 30 day period may result in forfeiture of the award.

EFFECTIVE DATE

- The Effective Date of this Agreement is the date the Energy Commission signs the Agreement. The 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.
- These funds have a limited period in which they may be used. All Recipient expenditures must occur prior to the end of the Agreement term.

There are two offices at the Energy Commission with staff to assist you with your grant award. You may contact the Commission Project Manager listed in your Agreement, under contacts, for technical questions or me, Jennifer Masterson at (916) 654-4606 for administrative questions.

Sincerely,



Jennifer Masterson, Analyst
Grants and Loans Office

Enclosures (4)

cc: Adel Suleiman, Energy Commission
File



RECIPIENT County of Stanislaus	GRANT NUMBER CBG-09-111
ADDRESS 1010 10th Street Place, Ste 6800 Modesto, CA 95354	AGREEMENT TERM 06/30/10 to 06/14/12 <small>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.</small>

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): <u>7</u>
Exhibit A – Attachments	Page(s): <u>0</u>
Exhibit B – Budget	Page(s): <u>6</u>
Exhibit B – Attachments	Page(s): <u>3</u>
Exhibit C – General Terms and Conditions	Page(s): <u>64</u>
Exhibit C – Attachments	Page(s): <u>27</u>
Exhibit D – Special Terms and Conditions	Page(s): <u>0</u>
Exhibit D – Attachments	Page(s): <u>0</u>
Exhibit E - Contacts	Page(s): <u>1</u>
Exhibit F - Definitions	Page(s): <u>1</u>

CEC: \$ 671,249.00

PROGRAM B/A IT. 3360-001-0890 (2) Energy Resources Conservation			FUND TITLE FED	
AMOUNT ENCUMBERED \$ 671,249.00	ITEM 0890-3360-001-20	CHAPTER 1	STATUTE 2009	FISCAL YEAR 09/10
MATCH SHARE \$ 0	PURPOSE OF EXPENDITURE ARRA - Energy Efficiency and Conservation Block Grants			
TOTAL \$ 671,249.00	OPTIONAL USE 4400-702-30002			

I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose stated above.

SIGNATURE OF ACCOUNTING OFFICER 	DATE 6/30/10
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The undersigned parties have read the attachments to this agreement and will comply with the standards and requirements contained therein.

CALIFORNIA ENERGY COMMISSION		RECIPIENT	
SIGNATURE OF DEPUTY DIVISION CHIEF	DATE	AUTHORIZED SIGNATURE 	DATE 10/5/10
NAME Sherry Mediati	PHONE (916) 654-4204	NAME Richard W. Robinson	PHONE (209) 525-6333
TITLE Grants and Loans Manager		TITLE Chief Executive Officer	
CALIFORNIA ENERGY COMMISSION ADDRESS 1516 9th Street, Sacramento, CA 95814 MS 1			

GRANT NOT SUBJECT TO DGS APPROVAL PER ATTORNEY GENERAL OPINIONS

Recipient Information

Instructions: Complete all information on this form.

Legal Recipient Name	Stanislaus County
Tax ID	94-6000540
DUNS Number	073136772
Phone Number	(209) 525-6333
Fax Number	(209) 544-6226
Alias Name	1010 10 th Street, Suite 6800
Address 1	
Address 2	
City	Modesto
State	California
County	Stanislaus
ZIP	95354
Congressional District	Districts: 18 and 19

EXHIBIT C
ATTACHMENT C-1
ASSURANCE OF COMPLIANCE

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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.

County of Stanislaus

(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 data 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.

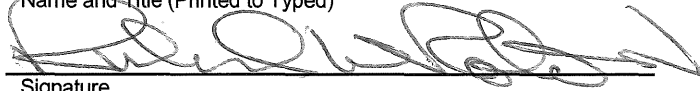
Applicant Certification

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

Richard W. Robinson, Chief Executive Officer

Name and Title (Printed or Typed)



Signature

() - (209) 525-6333

Telephone Number

10/25/2010

Date

County of Stanislaus

Applicant's Name

() -

Telephone Number

1010 Tenth Street Place Suite 6800

Address:

Date

Modesto, CA 95354

Agency Use Only

EXHIBIT C

ATTACHMENT C-2

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

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**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 Governmentwide 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.

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.

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: County of Stanislaus

Printed Name and Title of Authorized Representative: Richard W. Robinson, Chief Executive Officer


SIGNATURE

10/25/10
DATE


EXHIBIT C
ATTACHMENT C-3
DISCLOSURE OF LOBBYING ACTIVITIES

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**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)

<p>1. Type of Federal Action: <u> b </u> a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance</p>	<p>2. Status of Federal Action: a. bid/offer/application <u> b </u> b. initial award c. post-award</p>	<p>3. Report Type: <u> a </u> a. initial filing b. material change</p> <p>For material change only: Year _____ quarter _____ Date of last report _____</p>
<p>4. Name and Address of Reporting Entity: <u> </u> Prime <u> x </u> Subawardee Tier _____, if Known: Congressional District, if known:</p>		<p>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: California Energy Commission 1516 9th Street, Sacramento, CA 95814 Congressional District, if known:</p>
<p>6. Federal Department/Agency: Golden Field Office U.S. Department of Energy</p>	<p>7. Federal Program Name/Description: Energy Efficiency and Conservation Block Grant CFDA Number, if applicable: 81.128</p>	
<p>7. Federal Action Number, if known: DE-EE0000905</p>	<p>9. Award Amount, if known: \$</p>	
<p>10. a. Name and Address of Lobbying Registrant (if individual, last name, first name, MI): None to report</p>	<p>b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI): None to report</p>	
<p>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.</p>	<p>Signature: </p> <hr/> <p>Print Name: Richard W. Robinson</p> <hr/> <p>Title: Chief Executive Officer</p> <hr/> <p>(209) 525-6333 Telephone No.: _____ Date: <u>10/25/2010</u></p>	
<p>Federal Use Only</p>	<p>Authorized for Local Reproduction Standard Form - LLL (Rev. 7-97)</p>	

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 A
SCOPE OF WORK

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EXHIBIT A

SCOPE OF WORK

Task 1 — Attend Kick-Off Meeting

The goal of this task is to establish the lines of communication and procedures for implementing this Agreement. The Recipient shall attend a “kick-off” meeting with the Commission Project Manager and the Grants Officer. The Recipient shall bring their Project Manager and other relevant staff. The administrative and technical aspects of this Agreement will be discussed at the meeting. Prior to the kick-off meeting, the Commission Project Manager will provide an agenda to all potential meeting participants.

Topics to be discussed at this meeting will include, but are not limited to:

- Terms and Conditions of the Agreement
- Permit Documentation
- Scope of Work
- Project Schedule (including Products and Due Dates)
- Progress Reports
- Final Report
- Use of State Identity Branding Mark Logo
- Prohibition on KEMA Inc. or its subsidiary known as KEMA Services Inc. from performing services as a subcontractor or other lower-tier contractor to achieve the objectives of this Agreement
- Historic Preservation and Consultation Package Requirements

The Commission Project Manager shall designate the date and location of this meeting. This meeting may occur in person, via teleconference call, or other method at the discretion of the Commission Project Manager.

Products:

- List of Permits, if applicable (no draft)

Due Date: August 31, 2010

Task 2 — 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. Permits must be identified in writing and obtained before the

Recipient can incur any costs related to the use of the permits for which the Recipient will request reimbursement.

The Recipient shall prepare a letter documenting the permits required to conduct this Agreement and submit it to the Commission Project Manager at least 2 working days prior to the kick-off meeting:

1. If there are no permits required at the start of this Agreement, then state such in the letter.
2. 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:
 - Type(s) of permit(s)
 - Name, address and telephone number of the permitting jurisdictions or lead agencies
 - Schedule the Recipient will follow in applying for and obtaining these permits

The list of permits and the schedule for obtaining them will be discussed at the kick-off meeting and a timetable for submitting the updated list, schedule and the copies of the permits will be developed. 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.

If during the course of the Agreement additional permits become necessary, then provide the appropriate information on each permit and an updated schedule to the Commission Project Manager.

As permits are obtained, send a copy of each approved permit to the Commission Project Manager.

If during the course of the Agreement permits are not obtained on time or are denied, notify the Commission Project Manager within 5 working days.

Product: Letter documenting the Permits or stating that no Permits are required (no draft)

Due Date: August 31, 2010

Product: Updated list of permits as they change during the approved term of the Agreement (no draft)

Due Date: As necessary, within 10 days of change

Product: A copy of each approved Permit (no draft)

Due Date: As necessary, within 10 days of receipt of each permit

Task 2a — Submission of Waste Management Plan

The goal of this task is to submit a Waste Management Plan to the Commission Project Manager prior to the proposed project activities generating any waste. This Waste Management Plan will describe the Recipient'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, fluorescent ballasts and lamps, piping, roofing material, discarded equipment, debris, and asbestos.

The Recipient's Waste Management Plan must comply with all federal, state, and local laws and regulations governing waste disposal.

Products: Waste Management Plan (no draft)
Due Date: September 30, 2010

Task 2b — Submit Prevailing Wage Rates and Weekly Certified Payrolls

Within 30 days or less after execution of any subcontract for services under this Agreement the Recipient must submit to the Commission Project Manager a copy of applicable wage determinations for any and all labor and mechanic work to be performed under the subcontract.

The Recipient must also submit to the Energy Commission on a weekly basis a copy of all certified payrolls prepared for all subcontractors and lower tier contractors. The terms and conditions of this Agreement provide the required specifications.

These requirements apply to all subcontracts for services to achieve the objectives of this Agreement, including subcontracts paid for entirely with cost share funds.

Products: Copies of Applicable Wage Determinations (no draft)
Due Date: Within 30 days or less after execution of any subcontract for services under this Agreement

Products: Weekly Certified Payrolls of All Lower Tier Contractors (no draft)
Due Date: Weekly for each week in which any Contract work is performed during the term of the Agreement

Task 2c — Historic Preservation

Prior to the expenditure of EECBG Program funds to alter any structure or site, the Recipient is required to comply with the requirements of Section 106 of the National Historic Preservation Act (NHPA). In order to fulfill the requirements of Section 106, the Energy Commission and the Recipient must consult with the California State Historic Preservation Officer (SHPO), and, if applicable, the Tribal Historic Preservation Officer (THPO), to ensure that proposed projects will have no adverse effects on any historic resources. The Energy Commission has executed a Programmatic Agreement with the

SHPO to streamline the Section 106 consultation process. Under the Programmatic Agreement, the Energy Commission will evaluate projects to determine whether such projects are categorically excluded from the SHPO's direct review and consultation.

In order for the Energy Commission to determine whether a given project is categorically excluded from the SHPO's direct review and consultation, the applicant must prepare a Consultation Package for each project proposed under this grant, unless the project obtained SHPO clearance prior to grant approval. The Energy Commission will provide the required specifications for the Consultation Package.

Products: Consultation Package

Due Date: No later than 30 days after the **execution** of the grant or the identification of the project structure(s) or site(s) to be retrofitted under the grant, whichever is later.

Task 3 — Purchase Equipment for Streetlight Upgrades

The goal of this task is to purchase induction lighting for streetlight upgrades, as identified in Exhibit B of this agreement, the grant agreement budget.

The Recipient shall purchase the approved materials/equipment. A listing of the materials/equipment purchased shall be documented in the next monthly progress report submitted under this agreement.

Products: None

Due Date: March 31, 2011

Task 4 — Install Streetlight Upgrades in Stanislaus County

The goal of this task is to install streetlight upgrades, as purchased in Task 3 above, in the cities of Patterson, Turlock, Newman, Denair, Waterford, Hughson, Ceres, Modesto, Salida, Riverbank, and Oakdale located within Stanislaus County. This work will involve retrofitting 276 street light fixtures by replacing high pressure sodium lights with induction lighting.

The Recipient shall install the approved equipment. A listing of the equipment installed shall be documented in the next monthly progress report submitted under this agreement. As appropriate, photographs should be submitted to the Energy Commission Project Manager to verify that installation has been completed. For very large projects, a sampling of photos may be used to document installation. Recipients shall work with the assigned Energy Commission Project Manager to ensure sufficient verification is provided.

Products: Photographs of Installed Equipment

Due Date: May 31, 2011

Task 5 — Award Subcontract for Replacement of HVAC Units

The goal of this task is to approve a subcontract for the purchase and installation of eight (8) replacement HVAC units at the Stanislaus County Juvenile Justice Facility, located at 2215 Blue Gum Avenue, Modesto, California. This work will also include retrofitting equipment and materials necessary to convert to gas heating from electric heating. A listing of the specific materials/equipment purchased and project activities undertaken pursuant to this subcontract] shall be documented in the next monthly progress report submitted under this agreement.

NOTE: The requirement to submit copies of all executed subcontracts applies to all subcontracts for services to achieve the objectives of this Agreement, including subcontracts paid for entirely with cost share funds.

Products: Copy of Executed Subcontract (no draft)

Due Date: October 31, 2010

Task 6 — Install HVAC Units at Stanislaus County Juvenile Detention Facility

The goal of this task is to install the purchased equipment in Task 5 above.

The Recipient shall ensure that the subcontractor will install the approved equipment. A listing of the equipment installed shall be documented in the next monthly progress report submitted under this agreement. As appropriate, photographs should be submitted to the Energy Commission Project Manager to verify that installation has been completed. For very large projects, a sampling of photos may be used to document installation. Recipients shall work with the assigned Energy Commission Project Manager to ensure sufficient verification is provided.

Products: Photographs of Installed Equipment

Due Date: December 31, 2011

Task 7 — 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.

The Recipient shall prepare progress reports which summarize 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. The terms and conditions of this Agreement provide the required specifications.

Products: Monthly Progress Reports (no draft)

Due Date: By the 3rd day of each month until submission of the final report.

Task 8 — Final Report

The goal of this task is to prepare a comprehensive written Final Report that describes the original purpose, approach, results and conclusions of the work done under this Agreement. The Commission Project Manager will review and approve the Final Report.

A Draft Final Report shall be submitted to the Commission Project Manager no later than the Draft Final Report Due Date. The terms and conditions of this Agreement provide the required specifications.

The Commission Project Manager will review the Draft Final Report. The Recipient will incorporate applicable comments and submit the Final Report (the original and two copies) to the Commission Project Manager for review and approval. Upon receipt of the Final Report, the Commission Project Manager shall ensure that all work has been satisfactorily completed.

The Final Report must be completed on or before the Final Report Due Date.

The Final Report shall be a public document.

Product: Draft Final Report
Due Date: January 31, 2012

Product: Final Report
Due Date: April 2, 2012

EXHIBIT B

BUDGET

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EXHIBIT C

GENERAL TERMS AND CONDITIONS

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EXHIBIT C

GENERAL TERMS AND CONDITIONS

1. *Grant Agreement*

This project is being funded with a grant from the California Energy Commission (Commission). The Commission obtained the funds to make this grant through a federal grant agreement [Recovery Act: State of California Energy Efficiency and Conservation Block Grant (EECBG), number DE-EE0000905] with the U.S. Department of Energy (DOE). It is hereby understood and agreed that this Agreement shall be governed by the laws of the State of California (State) as to interpretation and performance.

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

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

2. *Attachments and References*

The following certifications and supporting documents are attached to this Agreement.

Exhibit A – Scope of Work

Exhibit B – Budget

- Attachment B-1 – Financial Status Request or Payment Request

Exhibit C - Terms and Conditions

- Attachment C-1 – Assurance of Compliance, Nondiscrimination in Federally Assisted Programs
- Attachment C-2 – Certifications Regarding Lobbying and Debarment, Suspension and Other Responsibility Matters
- Attachment C-3 – Disclosure of Lobbying Activities

- Attachment C-4 – National Policy Assurances
- Attachment C-5 – Federal Intellectual Property Provisions
- Attachment C-6 – Project Type Metrics
- Attachment C-7 – Vendor Flow-Down Provisions (Federal)
- Attachment C-8 – Direct Equipment Purchase Supporting Documentation (if applicable and as finalized by the Energy Commission and Recipient)

Exhibit D

- Special Terms and Conditions (if applicable)

Exhibit E

- Contacts

Exhibit F

- Definitions

3. Federal Provisions Incorporated by Reference

The Office of Management and Budget (OMB) Circulars and federal laws, regulations, and guidelines checked below are incorporated by reference as part of this Agreement. They are used to help guide the administration of this Agreement when questions arise during the course of performance of the award. OMB Circulars may be accessed on the OMB web site 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 Recipient must include in its subawards the provisions below that apply to the particular organization concerned.

- 42 United States Code (USC) Sections 17151 – 17158
- Title 10 Code of Federal Regulations (CFR) Part 600: Department of Energy (DOE) Financial Assistance Regulations
- Energy Efficiency and Conservation Block Grant Funding Opportunity Announcement DE-FOA-0000013, CDFA Number 81.128 (<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

4. Funding Limitations

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

The funding source(s) and applicable restriction(s) identified below apply to this grant:

- Funding for this Agreement is dependent upon a federal grant agreement, which is scheduled to terminate on September 13, 2012. Funding for this Agreement is subject to the approval of the applicable Federal Government agency, federal law, federal court judgments, and/or federal agency orders that may affect the provisions or terms of this Agreement.
- Energy Efficiency and Conservation Block Grant (EECBG) funding for this Agreement is approved as part of the EECBG grant. Grant funds may be used only for eligible activities as provided in 42 U.S.C. Section 17154(3)-(13) and as approved in the Block Grant Guidelines.

- **Supplanting**
Grant funds may not be used to supplant (i.e., take the place of) previously budgeted funds for this project, whether Recipient funds or funding from other grants. This includes budgeting for staff, contractors, or supplies. Funds may be used to supplement an existing budget.

5. *Due Diligence*

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

6. *Products*

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

7. *Reports*

a. Progress Reports

Progress reports are due monthly by the third of the following month until project completion. See Section 26(l) for progress report due dates and content.

b. Final Reports

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

- Table of Contents.
- Abstract.
- A brief summary of the objectives of the project and how these objectives were accomplished.

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

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

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

c. **Rights in Reports**

The Commission reserves the right to use and reproduce all reports and data produced and delivered pursuant to this Agreement, and reserves the right to authorize others to use or reproduce such materials. Each report becomes the property of the Commission.

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

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

8. Publications - Legal Statement on Reports and Products

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

- b. An acknowledgment of California 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 Department of Energy under Award Number DE-0000905."

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."

9. **Changes to the Agreement**

a. **Amendments**

1. This Agreement may be amended to make changes, including without limitation: additional funds, additional time, additional or modified tasks, and additional or modified terms.
2. The Contractor acknowledges that provisions included in this Agreement pursuant to Federal or State law, regulation, or policy are subject to change. The Contractor agrees to comply with any amendments that the Energy Commission makes to this Agreement to comply with Federal or State law, regulation, or policy.

3. Formal Amendments

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

- Change of Recipients legal name,

- Change of Recipient,
- Changes to Work Statement that reasonably modify the purpose of the Agreement, or
- Reallocations of more than 10% of the total budget amount between the line items of the Category Budget (Exhibit B) pursuant to subsection (b) below.

The following changes are not permitted for this Agreement:

- Changes to the Work Statement that extend the due dates beyond the term of the Agreement,
- Changes to the Budget that increase the amount of the Agreement, or
- Reallocations to the Budget that reduce the cost-effectiveness of the project below the minimum cost-effectiveness standard specified in the Block Grant Guidelines,

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

4. Informal Amendments

The Commission's Project Manager may approve changes to this Agreement that are not significant, including changes required to comply with Federal or State law, regulation, or policy. These changes shall be documented in a letter of agreement between the Recipient and the Commission Grants and Loans Officer.

b. Budget Reallocations

- (1) The Commission, through its Project Manager and Grants and Loans Officer, and the Recipient can agree upon and make certain budget reallocations without a formal amendment to this Agreement as long as ALL of the following conditions are met:
 - (a) The total of all budget reallocations cannot exceed ten percent (10%) with a cap amount of \$75,000 of the Agreement Amount. For purposes of this "Budget Reallocation Rule" "Agreement Amount" means the total amount of Commission funds being paid to the Recipient under this Agreement. It does not include any match funds provided by the Recipient.

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

- (b) The budget reallocation cannot substantially change the scope of work. Examples of budget reallocations that do not substantially change the scope of work include, but are not limited to, the following:
 - Increasing or decreasing the overall travel budget. This does not mean an increase to the allowed per diem rates under this Agreement.
 - Increasing or decreasing the equipment budget, including increasing or decreasing the quantity of equipment already proposed in the project as long as the project has been previously approved in the agreement. This does not include adding equipment for additional projects not previously approved in the budget. Adding additional projects is a change in scope and requires a formal amendment. For example, a project to retrofit fifty T-12 lights with fifty T-8 lights may be increased to a project that retrofits sixty T-12 lights with sixty T-8 lights if the project comes under budget. This does not require a formal amendment. But using the left over money for lighting control project that was not previously approved in the Agreement is a formal amendment and needs to be approved at a Commission business meeting.
 - Increasing or decreasing the number of personnel assigned to complete tasks; AND,
 - (c) The budget reallocation only involves moving funds between budget categories. The total Agreement Amount must remain unchanged. Increasing the total amount of the Agreement is not permitted; AND,
 - (d) The budget reallocation does not cause the project to fall below the minimum cost-effectiveness standard as described in the Block Grant Guidelines.
- (2) To effectuate a budget reallocation under this section, the Recipient must make a request in writing to both the Commission Project

Manager and the Grants and Loans Officer. Both the Commission Project Manager and the Grants and Loans Officer will then approve or disapprove the request in writing; the approval or disapproval is not effective or binding unless signed by both the Commission Project Manager and the Grants and Loans Officer. Oral communications cannot be used or relied upon. If the request is approved, the Commission Project Manager shall revise the Budget Attachments to reflect the changes and send them to the Grants and Loans Officer and the Recipient.

- (3) Any desired budget reallocations that do not meet both criteria in this section must be made through a formal amendment. For purposes of this provision, a "formal amendment" means that all of the following must occur: approval by the Commission at a Commission business meeting and a written amendment signed by both parties.

Attempted budget reallocations that do not meet the requirements of this section are not legally binding upon the parties.

c. Federal Approval

Amendments may also require prior written approval from DOE.

10. Contracting and Procurement Procedures

a. General Requirements for all Subcontracts

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

Procurement and subcontracting criteria are specified in the applicable OMB Circulars and/or additional federal provisions incorporated by reference in this Agreement. The Commission will defer to the Recipient's own regulations and procedures as long as they reflect applicable state and local laws and regulations and are not in conflict with the minimum standards specified in this Agreement and any OMB Circulars and/or federal regulations incorporated by reference in this Agreement, including 10 CFR Section 600.

More specifically, recipients that are state or local governments shall follow the procurement provisions of 10 CFR Section 600.236(b) through (i). Subawardees that are institutions of higher education, hospitals, and other nonprofit organizations shall follow 10 CFR Sections 600.140 through 600.149. Subawardees that are for-profit organizations shall follow 10 CFR Section 600.331.

The Recipient must ensure that any subcontractors under this Agreement are paid in compliance with federal and state prevailing wage laws in accordance with Sections 26(o) and 28 below. When advertising for a public contract opportunity, Recipients must attach the applicable wage determinations to the solicitation, assistance agreement, and resulting contract or grant.

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

All subcontracts must incorporate all of the following:

- A clear and accurate description of the material, products, or services to be procured as well as a detailed budget and timeline. The budget must include an itemized list of expenses, including, where applicable, detailed descriptions of all administrative costs, overhead, travel, materials and supplies, equipment, and contract labor.
- Provisions that ensure compliance with federal and state prevailing wage laws.
- Provisions that allow for administrative, contractual, or legal remedies in instances where subcontractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.
- Provisions for termination by the Recipient, including termination procedures and the basis for settlement.
- Language conforming to the "Nondiscrimination" provision in this Agreement.
- Any additional requirements specified in the federal provisions incorporated by reference on pages 2-3 of this Agreement.
- The provisions required by 10 Code of Federal Regulations (CFR) Section 600.236(i).
- The "Standard of Performance" provisions specified in this Agreement.
- The "Retention of Records" provisions specified in this Agreement.
- Audit provisions specified in this Agreement.
- Language conforming to the "Indemnification" provision in this Agreement.
- Language conforming to the "License" provision in this Agreement.

- National Policy Assurances, where applicable.
- Language conforming to the “Lobbying Activities” provision in this Agreement.
- Language conforming to the “Separation of Duties from Monitoring, Verification and Evaluation Contractor” provision in this Agreement.
- All provisions in Section 25 of this Agreement, “Additional Requirements for Federally-Funded Grants.” However, vendor subcontracts¹ need only contain the provisions of Section 25 listed in Exhibit C Attachment C-7, “Vendor Flow-Down Provisions (Federal).”
- All provisions in Section 26 of this Agreement, “Special Provisions Relating to Work Funded under the American Recovery and Reinvestment Act of 2009.” However, vendor subcontracts need only contain the provisions of Section 26 listed in Exhibit C Attachment C-7, “Vendor Flow-Down Provisions (Federal).”

b. Specific Requirement to Submit Subcontract Documentation

Within 30 days or less after execution of any subcontract for services or products under this Agreement the Recipient must submit to the Commission Project Manager a copy of the following support documentation:

- The complete, finally executed subcontract, and
- The applicable wage determinations for any and all labor and mechanic work, to be performed under the subcontract.

The Energy Commission must approve the applicable wage determinations prior to the commencement of any work under such a subcontract. The Energy Commission’s approval and execution of an EECBG Program Grant Award does not constitute the Energy Commission’s approval of any prevailing wage rates identified by the applicant on Exhibit B to this Agreement or on the Prevailing Wage Law Compliance and Certification Form (Attachment K in the EECBG Program Solicitation). The Energy Commission’s review of prevailing wage determinations will occur after an EECBG Program Grant Award has been approved and executed and the Recipient has submitted this documentation. Installation costs incurred prior to the Energy Commission’s approval of such documentation are not reimbursable under this Agreement and will be disallowed.

The Recipient must include these requirements in all subawards.

¹ Vendors are entities defined as such by Office of Management and Budget (OMB) Circular A-133 (see Subpart A, Section .105 and Subpart B, Section .210).

These requirements apply to all subcontracts for services to achieve the objectives of this Agreement, including subcontracts paid for entirely with cost share funds.

c. Requirement to Maintain Subcontract Documentation

In addition to submitting the specific documentation identified in subsection (b) above, the Recipient must maintain the following documentation and provide them promptly upon request by the Commission Project Manager:

- all solicitations for services or products required to carry out the terms of this Agreement,
- copies of the proposals or bids received
- if applicable, justification and cost analysis for noncompetitive proposals in accordance with 10 CFR 600.236(d)(4) specifying why competitive procurement was infeasible and which of the following circumstances applies:
 - The item is available only from a single source;
 - The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
 - USDOE authorizes noncompetitive proposals; or
 - After solicitation of a number of sources, competition is determined inadequate.
- copies of subcontracts executed.

The Recipient must include the requirement to maintain subcontract documentation in all subawards.

d. Additions, Removal or Substitutions of Subcontractors

The Energy Commission reserves the right to replace a subcontractor, request additional subcontractors, and approve replacement or additional subcontractors requested by the Recipient.

Failure to comply with the requirements of this Section 10 may result in the termination of this Agreement.

11. Bonding and Insurance

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

12. Permits and Clearances

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

13. Equipment

Title to equipment acquired by the Recipient with grant funds shall vest in the Recipient. The Recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by grant funds, and the Recipient shall not encumber the property without Commission Project Manager approval. When no longer needed for the original project or program, the Recipient shall contact the Commission Project Manager for disposition instructions.

All equipment purchased with Federal funds shall be subject to the provisions of Title 10 Code of Federal Regulations (CFR) Part 600: DOE Financial Assistance regulations (<http://ecfr.gpoaccess.gov>), which are incorporated by reference in Section 3 of this Agreement.

14. Termination

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

a. With Cause

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

b. Without Cause

The Commission Policy Committee 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 by certified mail, return receipt requested. In such event, the Recipient agrees to use all reasonable efforts to mitigate the Recipient's expenses and obligations hereunder. Also in such event, the Commission shall pay the Recipient for all satisfactory work performed and expenses incurred within 30 days after such notice of termination which could not by reasonable efforts of the Recipient have been avoided, but not in excess of the maximum payable under this Agreement.

15. Travel and Per Diem

- a. The Recipient shall be reimbursed for travel and per diem expenses using the same rates provided to non-represented State employees. The Recipient must pay for travel in excess of these rates. The Recipient may obtain current rates from the Energy Commissions Web Site at: http://www.energy.ca.gov/contracts/TRAVEL_PER_DIEM.PDF.
- b. Travel identified in the Budget section of this Agreement is approved and does not require further authorization.
- c. Travel that is not included in the Budget section of this Agreement shall require written authorization from the Project Manager and Grants and Loans Officer prior to travel departure. The Energy Commission will reimburse travel expenses from the Recipient's office location.
- d. 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.

16. License

- a. The Commission shall be granted a no-cost, nonexclusive, nontransferable, irrevocable worldwide license to use or have practiced for or on behalf of the State inventions developed hereunder and patents or patent applications derived from such inventions. Recipient must obtain agreements to effectuate this clause with all persons or entities obtaining ownership interest in the patented subject inventions.
- b. The Commission makes no claim to intellectual property that existed prior to this Agreement and was developed without Commission funding. If applicable, the Recipient gives notice that the items listed in the Intellectual Property attachment or exhibit have been developed without Commission funding and prior to the start of this Agreement. This list represents a brief description of the prior developed intellectual property. A detailed description of the intellectual property, as it exists on the effective date of this Agreement, may be necessary if Commission funds are used to further develop the listed intellectual property. This information will assist the parties to make an informed decision regarding intellectual property rights.
- c. The Commission shall be granted the no-cost use of the technical data first produced or specifically used in the performance of this Agreement.

- d. The Commission shall be granted a royalty-free nonexclusive, irrevocable, nontransferable worldwide license to produce, translate, publish, use and dispose of, and to authorize others to produce, translate, publish, use and dispose of all copyrightable material first produced or composed in the performance of this Agreement.

17. Standard of Performance

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

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

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

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

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

18. Payment of Funds

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

a. Payment Requests

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

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

Funds in this Agreement have a limited period in which they must be expended. All Recipient expenditures (Commission-reimbursed and match share) must occur within the approved term of this Agreement

b. Documentation

All payment requests must be submitted using a completed Payment Request form (Exhibit B, Attachment B-1). This form must be accompanied by an itemized list of all charges and copies of all receipts or invoices necessary to document these charges for both Commission and match share, including backup documentation for actual expenditures, such as time cards, vendor invoices, and proof of payment. Each payment request shall be adjusted to account for any cost share funding including rebate proceeds pursuant to Section 25(n) below. Any payment request that is submitted without the itemization will not be authorized. If the itemization or documentation is incomplete, inadequate, or inaccurate, the Commission Project Manager will inform the Recipient and hold the invoice until all required information is received or corrected. Any penalties imposed on the Recipient by a subcontractor because of delays in payment will be paid by the Recipient.

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

c. Certification

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

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

d. Government Entity

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

e. Release of Funds

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

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

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

Facilities and Administration (F&A)

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

- The Recipient may bill at the federal provisional rate but must adjust annually to reflect their actual final rates for the year in accordance with the Labor, Fringe, and Indirect Invoicing Instructions which can be accessed at www.energy.ca.gov/contracts/pier/PIERInvoicingInstructions.doc.
- The cost pools used to develop the federal rates must be allocable to the Commission Agreement, and the rates must be representative of the portion of costs benefiting the Commission Agreement. For example, if the federal rate is for manufacturing overhead at the Recipient's manufacturing facility and the Commission Agreement is for research and development at their research facility, the federal indirect overhead rate would not be applicable to the Commission Agreement.
- The federal rate must be adjusted to exclude any costs that are specifically prohibited in the Commission Agreement.
- The Recipient may only bill up to the Agreement Budget rate caps unless and until an amendment to the Agreement Budget is approved.

g. Retention

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

h. State Controller's Office

Payments are made by the State Controller's Office.

19. Fiscal Accounting Requirements

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

a. Accounting and Financial Methods

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

b. Retention of Records

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

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

c. Audits

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

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

d. Cost or Match Share

If the grant Budget includes cost or match share under this Agreement, the Recipient agrees to be liable for the percentage of cost or match share identified in this Agreement only to the extent necessary to meet the minimum cost effectiveness standard described in the Block Grant Guidelines.

Failure to provide the minimum required cost or match share to meet the minimum cost-effectiveness standard 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."

20. Indemnification

The Recipient agrees to indemnify, defend, and save harmless the State, its officers, agents, and employees from any and all claims and losses accruing or resulting to Recipient and to any and all contractors, subcontractors, material men, laborers, and any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the Recipient in the performance of this Agreement.

21. Disputes

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

a. Commission Dispute Resolution

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

Recipient, indicating a decision supported by reasons. Should the Recipient disagree with the Grants and Loans Officer decision, the Recipient may appeal to the second level.

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

b. Mutual Agreement for Arbitration

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

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

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

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

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

22. *Workers' Compensation Insurance*

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

23. *General Provisions*

- a. Governing Law

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

b. Independent Capacity

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

c. Assignment

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

d. Timeliness

Time is of the essence in this Agreement.

e. Unenforceable Provision

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

f. Waiver

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

g. Assurances

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

h. Change in Business

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

(a) A change of address.

(b) A change in the business name or ownership.

(c) The existence of any litigation or other legal proceeding affecting the project.

- (d) The occurrence of any casualty or other loss to project personnel, equipment or third parties of a type commonly covered by insurance.
 - (e) Receipt of notice of any claim or potential claim against Recipient for patent, copyright, trademark, service mark and/or trade secret infringement that could affect the Commission's rights.
- (2) Recipient shall not change or reorganize the type of business entity under which it does business except upon prior written notification to the Commission. A change of business entity or name change requires an amendment assigning or novating the Agreement to the changed entity. In the event the Commission is not satisfied that the new entity can perform as the original Recipient, the Commission may terminate this Agreement as provided in the termination paragraph.

i. **Survival of Terms**

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

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

24. Certifications and Compliance

a. **Federal, State and Municipal Requirements**

Recipient must obtain any required permits, ensure the safety and structural integrity of any repair, replacement, construction and/or alteration, and shall comply with all applicable federal, State, and municipal laws, rules, codes, and regulations for work performed under this Agreement.

b. **State 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. State 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).
- (2) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) 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(c), that every employee who works on the proposed project:
- Will receive a copy of the company's drug-free policy statement;
 - Will agree to abide by the terms of the company's statement as a condition of employment on the project.

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

d. 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.

25. Additional Requirements for Federally- Funded Grants

For purposes of this Section 25, the term "subawardee" refers to any entity other than a vendor that receives funding from the Recipient to carry out or support any portion of this Agreement. The term "vendor" refers to those entities defined as such by OMB Circular A-133 (see Subpart A, Section .105 and Subpart B, Section .210). The Recipient must include all of the provisions below in its agreements with subawardees. It must include in its agreements with vendors only the terms in Attachment C-7 of this Exhibit, "Vendor Flow-Down Provisions".

a. Site Visits

The California 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. Recipient must provide and must require subawardees to provide reasonable facilities and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

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

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

c. Nondiscrimination Clause

This award is subject to the provisions of 10 CFR Part 1040.1 *et seq.* The Recipient will complete and certify by signature on the DOE Form 1600.5, U.S. DOE “Assurance of Compliance, Nondiscrimination in Federally Assisted Programs” (Exhibit C, Attachment C-1) its commitment to comply with this law and return to the Commission Grants and Loans Officer.

d. 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, 2 CFR Part 901, and 10 CFR Part 607. The Recipient will complete and certify by signature on the attached Form “Certifications Regarding Lobbying and Debarment, Suspension and Other Responsibility Matters” (Exhibit C, Attachment C-2) its commitment to comply with these requirements and return to the Commission Grants and Loans Officer.

e. Lobbying Restrictions

By accepting funds under this award, the Recipient 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 Recipient shall disclose lobbying activities by completing and signing the "Disclosure of Lobbying Activities" (Exhibit C, Attachment C-3) and returning it to the Commission Grants and Loans Officer.

f. National Policy Assurances

The Recipient agrees to adhere to and include in all subawards the requirements set forth in the attached "National Policy Assurances" (Exhibit C, Attachment C-4 of this Agreement). Terms are self-deleting to the extent they do not apply to a particular type of activity or award.

g. Federal Intellectual Property Provisions and Contact Information

(1) In addition to the "License" provisions in Section 16 of this Agreement, the Recipient must conform to "Federal Intellectual Property Provisions" (Exhibit C Attachment C-5) included in this Agreement. A list of all intellectual property provisions may be found at http://www.gc.doe.gov/financial_assistance_awards.htm.

(2) Questions regarding intellectual property matters should be referred to the 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. Decontamination and/or Decommissioning (D &D) Costs

Notwithstanding any other provisions of this Agreement, the Government shall not be responsible for or have any obligation to the Recipient or its subawardees for (i) Decontamination and/or Decommissioning (D&D) of any of the Recipient's or its subawardees' facilities, or (ii) any costs which may be incurred by the Recipient or its subawardees in connection with the D&D of any of its facilities due to the performance of the work under this Agreement, whether said work was performed prior to or subsequent to the effective date of this Agreement.

i. National Environmental Policy Act (NEPA) Compliance

The Recipient is restricted from taking any action using federal funds for projects under this award that would have an adverse effect on the environment or limit the choice of reasonable alternatives prior to DOE providing a final NEPA determination regarding these projects.

If the Recipient moves forward with activities that are not authorized for federal funding by the DOE Contracting Officer in advance of the final NEPA determination, the Recipient is doing so at risk of not receiving federal funding, and such costs may not be recognized as allowable cost share.

j. Historic Preservation

Prior to the expenditure of EECBG Program funds to alter any structure or site, the Recipient is required to comply with the requirements of Section 106 of the National Historic Preservation Act (NHPA) outlined in 36 CFR Part 800, consistent with DOE's 2009 letter of delegation of authority regarding the NHPA. Section 106 of the NHPA applies to historic properties that are listed in or eligible for listing in the National Register of Historic Places. Recipients shall avoid undertaking any project activities that result in an adverse effect to historic properties pending compliance with Section 106. Section 110(k) of the NHPA applies to DOE funded activities.

In order to fulfill the requirements of Section 106, the Energy Commission and applicants must consult with the California State Historic Preservation Officer (SHPO), and, if applicable, the Tribal Historic Preservation Officer (THPO), to ensure proposed projects will have no adverse effects on any historic resources.

The Energy Commission executed a Programmatic Agreement (Programmatic Agreement) with the SHPO, as amended, 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 such projects 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 applicant must prepare a Consultation Package, as provided in the Programmatic Agreement, for each building or structure upon which the project will be undertaken.

k. Availability of Federal Funds

It is mutually agreed that partial or whole funding for this Agreement is dependent upon a federal agreement (DE-EE0000905) that has a scheduled budget period end date of September 13, 2012, and 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, this Agreement shall be amended to reflect any reduction in funds; and (4) The Commission has the option to invalidate the Agreement under the 30-day cancellation clause or to amend the Agreement to reflect any reduction in funds.

l. Resolution of Conflicting Terms

Any apparent inconsistency between federal and state statutes and regulations and the terms and conditions contained in this award must be referred to the Commission Project Manager or the Commission Grants and Loans Officer for guidance.

m. 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.

n. Disclosure and Use of Rebate Proceeds and other Cost Share Funding

Recipients shall disclose all sources of cost share funding that will support the projects and activities under this Agreement, including the receipt of

any utility or manufacturer rebates for which the Recipient qualifies through the purchase or installation of energy efficiency measures under this Agreement. Such "cost share funding" sources include, but are not limited to: repayments to and interest earned on a revolving loan fund, program income, rebates, refunds, contract settlements, audit recoveries, credits, discounts, and interest earned on any of those funds. If such funding is anticipated at the time of the Agreement, it shall be reported as "Cost Share" funding on the initial Category Budget (Attachment B) (Budget). If any such funding becomes available before the end of the term of this Agreement, it shall be reported in the final payment request.

Recipients shall adjust payment requests for cost reimbursement by any cash available from cost share funding sources. Recipients that earn program income as defined at 10 CFR Part 600.124 may add the program income to the funds provided under this Agreement and used to further eligible project objectives.

o. Specific Requirement to Submit Waste Management Plan

Prior to the proposed project activities generating any waste, the Recipient is required to submit a copy of the Recipient's Waste Management Plan to the Commission Project Manager. This Waste Management Plan will describe the Recipient'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, fluorescent ballasts and lamps, piping, roofing material, discarded equipment, debris, and asbestos.

The Recipient's Waste Management Plan must comply with all federal, state, and local laws and regulations governing waste disposal.

p. Single Audit Act

In order to be eligible for EECBG Program funding, all cities, counties, and lead collaborative applicants must be in compliance with the requirements of the Single Audit Act of 1984, P.L. 98-502, and the Single Audit Act Amendments of 1996, P.L. 104-156, and Office of Management and Budget (OMB) Circular A-133, Audits of State, Local Governmental, and Non-Profit Organizations. More specifically, OMB Circular A-133, Subpart B, Section .200 requires that non-Federal entities which expend \$500,000 or more in a year in Federal awards shall have a single or program specific audit conducted for that year. Thus, prior to the Energy Commission reimbursing the Recipient for any project costs, the Recipient must demonstrate compliance with the Single Audit Act and OMB Circular A-133. If after four months following the execution of this Agreement the Recipient is not in compliance with these requirements, the Energy Commission reserves the

right to terminate the grant award and reallocate EECBG Program funding, as provided in the Block Grant Guidelines.

Further, in executing this Agreement the Recipient understands and acknowledges that compliance with the Single Audit Act and OMB Circular A-133 is mandatory and that failure to comply at any time during the period of this Agreement could adversely affect the Energy Commission's ability to reimburse project costs, and may require the termination and reallocation of the grant award.

q. Cash Management Improvement Act

In accordance with 31 United States Code (U.S.C.) Sections 3335, 6501, and 6503 (the Cash Management Improvement Act, or CMIA) and implementing regulations at 31 CFR Part 205, the Recipient shall minimize the time elapsing between the drawdown of funds from the Energy Commission and the disbursement of funds. The Recipient shall request reimbursement to occur as close as possible to the disbursement.

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.

r. Project Extensions

Project extensions are not permitted for EECBG grants. Projects must be completed and operational by the ending term date of this Agreement. If a project cannot be completed within the term of this Agreement, the Agreement will be terminated and remaining grant funds unencumbered.

26. Special Provisions Relating to Work Funded Under the American Recovery and Reinvestment Act of 2009

For purposes of this Section 26, the term "vendor" refers to those entities defined as such by OMB Circular A-133 (see Subpart A, Section .105 and Subpart B, Section .210). The term "subawardee" refers to any entity other than a vendor that receives funding from the Recipient to carry out or support any portion of this Agreement. The Recipient must include all of the provisions below in its agreements with subawardees. It must include in its agreements with vendors only the terms in Attachment C-7 of this Exhibit, "Vendor Flow-Down Provisions".

a. ARRA-Funded Project

Funding for this award is from the American Recovery and Reinvestment Act (ARRA) of 2009, Pub. L. 111-5. Funding for this award is authorized by the Energy Efficiency and Conservation Block Grant Program, Federal Grant Number DE-EE0000013, CFDA Number 81.128. The federal grant term expires on September 13, 2012. All recipients and subawardees/vendors are subject to audit by appropriate federal or State entities. The State has the right to cancel, terminate, or suspend this Agreement if the Recipient or its subawardee fails to comply with the reporting and operational requirements contained herein.

b. Enforceability

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

c. Registration Requirements

Prior to beginning work, the Recipient must obtain a Dun and Bradstreet Data Universal Numbering System (DUNS) number and register with the Central Contract Registration (CCR). Websites are as follows:

DUNS website: http://www.dnb.com/US/duns_update

CCR website: <http://www.ccr.gov>

The Recipient must maintain current registrations in the CCR at all times during which it has an active award funded with ARRA funds. A DUNS Number is one of the requirements for registration in the CCR.

d. Segregation of Costs and Records

The Recipient and its subawardee/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. Pursuant to 10 CFR Section 600.242 (incorporated by reference herein), records must be maintained for three (3) years after the Commission grant term or federal grant term, whichever is later, unless the Commission or Federal Government requests a longer retention period.

The Recipient and its subawardees/vendors must keep separate records for ARRA funds to ensure those records comply with the requirements of ARRA. If this grant is split-funded with non-ARRA funds, the Recipient must track and report the ARRA funds separately to meet the reporting requirements of ARRA and related guidance.

e. Prohibition on Use of ARRA Funds

The Recipient agrees that, in accordance with ARRA, Section 1604, that none of the funds provided under this Agreement derived from ARRA may be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

f. Access to Records

In accordance with ARRA Sections 902, 1514, and 1515, 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 of the Recipient or any of its subawardees/vendors 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/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/vendors from whom it acquires goods or services in its execution of the ARRA-funded work.

g. 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.

h. Protecting State and Local Government and Contractor Whistleblowers

The Recipient agrees that both it and its subawardee/vendors shall comply with Section 1553 of ARRA, which prohibits all non-federal contractors, 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 Recipient agrees that it and its subawardees shall post notice of the rights and remedies available to employees under Section 1553 of Title XV of Division A of the ARRA.

The requirements of Section 1553 of the 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 mismanagement 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 30 days after receiving an inspector general report of an alleged reprisal, the head of the agency shall determine whether there is sufficient basis to conclude that the non-federal employer has subjected the employee to a prohibited reprisal. The agency shall either issue an order denying relief in whole or in part or shall take one or more of the following actions:

- Order the employer to take affirmative action to abate the reprisal.
- Order the employer to reinstate the person to the position that the person held before the reprisal, together with compensation including back pay, compensatory damages, employment benefits,

and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.

- Order the employer to pay the employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the employee for or in connection with, bringing the complaint regarding the reprisal, as determined by the head of a court of competent jurisdiction.

Non-enforceability of Certain Provisions Waiving Rights and Remedies or Requiring Arbitration: Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

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

i. Information in Support of ARRA Reporting

The Recipient will be required to submit backup documentation for expenditures of funds under ARRA including such items as timecards and invoices. See Section 18, "Payment of Funds", for more details on invoicing. In addition to the invoicing requirements, the Recipient shall provide copies of backup documentation at the request of the U.S. Department of Energy's (DOE's) Contracting Officer or designee, or the Energy Commission's Contract Manager or designee.

j. False Claims Act

The Recipient agrees that it shall promptly notify the State and shall refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, subawardee/vendor or other person has committed 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.

k. Availability of Funds

Funds appropriated under ARRA and obligated to this award are available for reimbursement of costs until the end of your grant term or September 13, 2012, whichever comes first.

l. Reporting and Registration Requirements under Section 1512 of ARRA

- (1) This award requires the Recipient 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 in accordance with Section 7, "Reports", of this Agreement in addition to this section.
- (3) Progress reports are due monthly by the third of the following month. For example, the January progress report is due by February 3.
- (4) The Recipient must maintain current registration in the CCR (<http://www.ccr.gov>) at all times during which it has an active federal award funded with ARRA funds. A DUNS Number (<http://www.dnb.com>) is one of the requirements for registration in the CCR.
- (5) The Recipient shall report the information described in Section 1512(c) of ARRA and other information reasonably requested by the State or required by the Federal Government or by the State to meet their obligation to provide accurate, complete, and timely information to the public; to meet the federal program reporting requirements; and/or to comply with State or federal law or regulation. Standard data elements and federal instructions for use in complying with reporting requirements under Section 1512 of ARRA are provided online at www.FederalReporting.gov.
- (6) The Recipient shall submit reports to the Commission's Project Manager in a format determined by the Commission. The Recipient must NOT register at [FederalReporting.gov](http://www.FederalReporting.gov).
- (7) The Recipient 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 Recipient'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).
- Furthermore, subrecipients will be required to calculate direct jobs created and retained by each subcontractor, including all subrecipients and many vendors. The requirement to calculate vendor jobs does not apply to subcontracts with material suppliers or central service providers (so-called "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, subrecipients should be able to substantiate vendor/subcontractor 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 Recipient's preceding fiscal year, the Recipient 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) Federal and State Program Status Report

- 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 saved (kWh, therms, gallons, Btu, etc.).
 - Renewable energy installed capacity and generated.

- GHG emissions reduced (tons) (CO2 equivalents) (methane, carbon, sulfur dioxide, nitrogen oxide, carbon monoxide).
- Energy cost savings.
- Funds leveraged.
- Project type metrics. The key metrics to be reported will vary by project type. See Exhibit C, Attachment C-6, Project Type Metrics.

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

The Recipient agrees that in accordance with ARRA, Section 1605, neither it nor its subawardees/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 Recipient 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—

- Processed into a specific form and shape; or
- 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 ARRA by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraphs 2b and 2c 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 2b of this section and condition if the Federal Government determines that—
- 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;
 - 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
 - The application of the restriction of Section 1605 of the ARRA would be inconsistent with the public interest.
- (3) Request for determination of inapplicability of Section 1605 of the ARRA.
- (a) (i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph 2c of this section shall include adequate information for Federal Government evaluation of the request, including—

- A description of the foreign and domestic iron, steel, and/or manufactured goods;
 - Unit of measure;
 - Quantity;
 - Cost;
 - Time of delivery or availability;
 - Location of the project;
 - Name and address of the proposed supplier; and
 - A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph 2c 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 4 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 ARRA 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 ARRA 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 ARRA applies, use of foreign iron, steel, and/or manufactured goods is noncompliant with Section 1605 of ARRA.
- (4) Data. To permit evaluation of requests under paragraph 2 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

<u>Description</u>	<u>Unit of Measure</u>	<u>Quantity</u>	<u>Cost (\$s)</u>
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.]

n. Wage Rate Requirements under Section 1606 of ARRA

In accordance with ARRA, Section 1606, the Recipient assures that it and its subawardees/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 subcontractors 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 of 1950 (64 Stat. 1267; 5 U.S.C. App.) and Section 3145 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.

The Recipient will complete and certify by signature on Attachment "K" of the application its commitment to comply with 29 CFR 5.5 and will return it to the Commission Grants and Loans Officer.

o. 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.
- (c) 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.

- (d) 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.
- (e) 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.
- (f) 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.
- (g) 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 regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. The most current wage determinations of the Secretary of Labor applicable to this Agreement are posted at www.wdol.gov, and are incorporated by reference into this Agreement. The Secretary of Labor periodically updates wage rates. The Recipient, Subrecipient, the Recipient's and Subrecipient's contractors and subcontractors are responsible for ensuring that the most recent wage rates are incorporated into any contract or subcontract under this Agreement. The weatherization worker wage determination published for the Weatherization Assistance Program may not be used in any contracts or subcontracts under this Agreement.

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 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/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.

(d) 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.
- (e) 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.
- (f) 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 Sections 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.
- (g) 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.

- (h) 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.
- (i) 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.
- (j) 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.

(k) Requirement to submit copies of certified payrolls

Contractor is responsible to submit to the Energy Commission on a weekly basis from the beginning of work on the project a copy of all certified payrolls prepared in accordance with Section 26(o)(2)(c)(ii) above for all lower tier contractors.

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

Contractor is responsible to notify the Energy Commission of any non-compliance with Davis-Bacon Act prevailing wage requirements by any lower tier contractors.

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 29 CFR Section 5.5(b)(1) 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 Sections 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 29 CFR Sections 5.5(b)(1) through (4).

- (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.

- p. 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 Section 215.21 "Uniform Administrative Requirements for Grants and Agreements" and OMB Circular A-102 Common Rules provisions, the Recipient agrees to maintain records that identify adequately the source and application of ARRA funds. OMB Circular A-102 is available at <http://www.whitehouse.gov/omb/circulars/a102/a102.html>.

 - (2) If the Recipient 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 Recipient agrees to separately identify the expenditures for federal awards under the 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 the 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 Recipient agrees to separately identify to each subawardee, 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 Recipient awards ARRA funds for an existing program, the information furnished to subawardees shall distinguish the subawards of incremental ARRA funds from regular subawards under the existing program.
- (4) The Recipient agrees to require its subawardees to include on their SEFA information to specifically identify ARRA funding similar to the requirements for the recipient SEFA described above. This information is needed to allow the recipient to properly monitor subawardee expenditure of ARRA funds as well as oversight by the federal awarding agencies, Offices of Inspector General, and the Government Accountability Office.

q. Recognition of ARRA funding

Recipient shall publicly recognize ARRA as a source of funding for the project(s) funded by this Agreement. The Commission Project Manager shall provide Recipient instructions on how to publicly identify ARRA funding.

27. Data in Support of Energy Savings and Emission Reductions

The Commission may request utility bill data from the Recipient to track program energy savings and greenhouse gas emission reduction impacts. Upon request, the Recipient must be prepared to provide utility billing data for at least the 12 months preceding and the 12 months following the project's implementation of a building retrofit project. To ease the burden of this data provision on the Recipient, the Commission will work with the Recipient's utility company to facilitate the electronic exchange of the required billing data. The Recipient authorizes the Commission to exchange this data with the Recipient's energy utility company and agrees to complete an authorization form if requested by the Commission.

Upon written request from the Commission, the Recipient and its subawardees shall allow the Commission or its agent access to facilities and records and allow the Commission or its agent to collect data needed to measure and verify electricity and fuel reductions (this may include but is not limited to utility bills, metering data, facility equipment surveys, information on operational practices, and site occupancy levels). Further, if requested, the Recipient and subawardees must provide the Commission or its agent associated data from a period prior to the start of the project as necessary to establish baseline energy and/or fuel use. The Recipient shall include this provision in its subaward agreements.

28. *Compliance with California Prevailing Wage Laws for Public Works Projects*

The Recipient agrees to pay not less than the specified general prevailing wage rates to all workers employed in the execution of the contract subject to the requirements of California Labor Code Section 1770 et seq. The Recipient is responsible for ascertaining and complying with all current general prevailing wage requirements and rates for crafts and any rate changes that occur during the life of the contract. 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 administrative requirements provided in the California Labor Code.

29. *Requirement to Submit Subcontractor Documentation of Prevailing Wage Determinations Prior to Commencing Work*

The Recipient understands and acknowledges that no work may commence on the project unless and until all applicable prevailing wage determinations are approved by the Energy Commission, as provided in Section 10 of this Agreement. Installation costs incurred prior to the submittal of such documentation are not reimbursable under this Agreement and will be disallowed.

The Recipient is exempt from the requirement to submit prevailing wage determinations only if its authorized legal representative certified on the Prevailing Wage Law Compliance and Certification Form (Attachment K in the EECBG Program Solicitation) that none of the activities to be carried out under this Agreement are subject to the payment of federal or state prevailing wage rates.

30. *Requirement to Submit Waste Management Plan*

The Recipient understands and acknowledges that no work generating waste may commence on the project unless and until a Waste Management Plan that describes the Recipient's plan to dispose of any sanitary or hazardous waste generated by the proposed project activities, as provided in Section 25(o) of this Agreement, is submitted to the Energy Commission. Costs incurred for project activities generating waste prior to the submission of the Recipient's Waste Management Plan are not reimbursable under this Agreement and will be disallowed.

31. *Requirement to Submit Authorizing Resolution*

If at the time of the Recipient's first request for reimbursement of project costs the Recipient has not submitted an authorizing resolution that satisfies the

minimum criteria established in the EECBG Program Solicitation, the Energy Commission reserves the right to deny reimbursement.

32. Separation of Duties from Monitoring, Verification and Evaluation Contractor

The Energy Commission has retained KEMA Inc. to serve as the monitoring, verification and evaluation (MV&E) contractor for all of the Energy Commission's ARRA-funded projects, including projects funded through contracts, grants or loans by the EECBG Program, the State Energy Program, the State Energy Efficient Appliance Rebate Program, and the Energy Assurance Planning Program. In order to achieve the Energy Commission's policy requiring a separation of duties between the MV&E contractor and any projects that it evaluates, Recipient is prohibited from including KEMA Inc. or a related company known as KEMA Services Inc. as a participant in this Project, where KEMA Inc. or KEMA Services Inc. is paid either from these funds as a subcontractor or other lower-tier contractor or from other funds which Recipient has included as cost share to achieve the objectives of this Agreement.

33. Compliance with the Single Audit Act and OMB Circular A-133

The Recipient understands and acknowledges that prior to the Energy Commission reimbursing the Recipient for any project costs the Recipient must demonstrate compliance with the Single Audit Act and OMB Circular A-133. If after four months following the execution of this Agreement the Recipient is not in compliance with these requirements, the Energy Commission reserves the right to terminate the grant award and reallocate EECBG Program funding, as provided in the Block Grant Guidelines.

Further, the Recipient understands and acknowledges that compliance with the Single Audit Act and OMB Circular A-133 is mandatory and that failure to comply at any time during the period of this Agreement could adversely affect the Energy Commission's ability to reimburse project costs, and may require the termination and reallocation of the grant award.

34. State ARRA Guidelines for Energy Efficiency and Conservation Block Grant Program

The Commission's *Block Grant Guidelines*, dated October 7, 2009, (publication number CEC-150-2009-002-CMF-REV1) are hereby incorporated by reference into this Agreement. The Recipient warrants that it has read and understands the Guidelines and acknowledges that requirements specified therein apply to the Recipient and the funding provided under this Agreement. The Recipient acknowledges that the Guidelines are subject to change pursuant to Public Resources Code Section 25462 and that any changes made to the Guidelines shall apply to the Recipient and the funding provided under this Agreement.

Budget Category Budget

Budget Category Item	EECBG Share (\$)	Cost Share (\$)	Total Cost (\$)
Personnel:			
Unloaded Direct Labor		\$ 16,878	\$ 16,878
Fringe Benefits		\$ 11,326	\$ 11,326
Total Personal Services	\$ -	\$ 28,204	\$ 28,204
Operating Expenses:			
Travel			\$ -
Equipment	\$ -		\$ -
Materials/Supplies	\$ 96,249		\$ 96,249
Non-Labor Contract Expenses	\$ 282,888		\$ 282,888
Contract Labor	\$ 274,522	\$ -	\$ 274,522
Miscellaneous	\$ 17,590	\$ 19,700	\$ 37,290
Total Operating Expenses	\$ 671,249	\$ 19,700	\$ 690,949
Overhead:			
Overhead		\$ 4,231	\$ 4,231
Total Overhead	\$ -	\$ 4,231	\$ 4,231
Total	\$ 671,249	\$ 52,135	\$ 723,384

BUDGET DETAILS

Equipment

Item	Quantity	Unit Cost	EECBG Share	Cost Share	Total Cost
Total Equipment			\$ -	\$ -	\$ -

Materials, Supplies

Item	Quantity	Unit Cost	EECBG Share	Cost Share	Total Cost
Cobra Street Light Series 100W, 5000 K	249	\$ 350.40	\$ 86,500	\$ 3	\$ 86,503
Cobra Street Light Series 150W, 5000 K	8	\$ 352.00	\$ 2,816	\$ -	\$ 2,816
Cobra Street Light Series 200W, 5000 K	19	\$ 364.90	\$ 6,933	\$ -	\$ 6,933
Total Materials and Supplies			\$ 96,249	\$ 3	\$ 96,252

Non-Labor Contract Expenses

Subcontractor Name	Purpose	EECBG Share	Cost Share	Total Cost
TBD	Contractor purchased equipment for HVAC /gas conversion project	\$ 282,888	\$ -	\$ 282,888
		\$ -	\$ -	\$ -
		\$ -	\$ -	\$ -
		\$ -	\$ -	\$ -
Total Non-Labor Contract Expenses		\$ 282,888	\$ -	\$ 282,888

BUDGET DETAILS

Miscellaneous

Item	Purpose	EECBG Share	Cost Share	Total Cost
Rental of aerial and pick up trucks (County owned)	Streetlight installation		\$19,700	19,700
Office Supplies, Outside Printing services, Postage, Publicatons and legal notices.	Bid process expenses	\$ 17,590	\$ -	\$ 17,590
			\$ -	\$ -
			\$ -	\$ -
Total Miscellaneous		\$ 17,590	\$ 19,700	\$ 37,290

Overhead

Name of Overhead	Overhead Base*	Maximum % Rate to be Billed**	Base Cost	EECBG Share	Match Share	Total Cost
Indirect Costs	Total Personnel Expense	15%	\$ 28,204.00	\$ -	\$ 4,231	\$ 4,231
		0%	\$ -	\$ -	\$ -	\$ -
		0%	\$ -	\$ -	\$ -	\$ -
		0%	\$ -	\$ -	\$ -	\$ -
Total Overhead				\$ -	\$ 4,231	\$ 4,231

* Base: Define cost categories used to charge Overhead rate, e.g., Total Labor, Total Direct Cost, Materials, Subcontracts, etc.

** Maximum Indirect Overhead rates are caps: Energy Commission will not reimburse at higher rates over the term of the project.

**ATTACHMENT E-3
CONTRACT LABOR**

Contract Labor

Subcontractor	Title / Job Classification	Number of Individuals Employed in Classification	Estimated Prevailing Wage Rate* as Determined	Estimated Maximum Rate to be Billed (\$ / Hr)	No. of Hours	EECBG Share	Cost Share	Total Cost
TBD		TBD	TBD	\$ -			\$ -	\$ -
				\$ -			\$ -	\$ -
				\$ -			\$ -	\$ -
				\$ -			\$ -	\$ -
				\$ -			\$ -	\$ -
				\$ -		\$ -	\$ -	\$ -
				\$ -		\$ -	\$ -	\$ -
				\$ -		\$ -	\$ -	\$ -
				\$ -		\$ -	\$ -	\$ -
				\$ -		\$ -	\$ -	\$ -
Total Contract Labor						\$ 274,522	\$ -	\$ 274,522

* Prevailing wage rates are comprised of unloaded hourly rates and qualifying fringe benefits. For more information on prevailing wage rates under Federal and California law see EECBG Application Exhibits 7 and 8 and Attachment K.

ATTACHMENT E-3
CONTRACT LABOR

108610
448800
17957.5
575367.5

EXHIBIT B
ATTACHMENT B-1
PAYMENT REQUEST FORM

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FINANCIAL STATUS REPORT OR PAYMENT REQUEST

Grant
CEC 211-(a) (Rev. 1/01)

Payment Request No.: _____

Instructions are on the reverse

Recipient (Name and Address)	Type of Request <input type="checkbox"/> Reimbursement <input type="checkbox"/> Status Report Only <input type="checkbox"/> Release Retention	Amount of this Request \$ _____
Grant No.	Recipient ID No.	Approved Project Term to
		Funding History Funds Requested to Date: \$ _____ Funds Received to Date: \$ _____ Expenses to Date: \$ _____ Funds on Hand: \$ _____ Interest Earned to Date: \$ _____

ENERGY COMMISSION SHARE Line Item	Budget	Expenses this Period	Expenses to Date	Obligations Not Yet Paid	Remaining Balance
Personnel					
Fringe Benefits					
Travel					
Equipment					
Supplies					
Contractual					
Construction					
Other					
Indirect					
TOTAL					
MATCH SHARE Line Item	Budget	Expenses this Period	Expenses to Date	Obligations Not Yet Paid	Remaining Balance
Personnel					
Fringe Benefits					
Travel					
Equipment					
Supplies					
Contractual					
Construction					
Other					
Indirect					
TOTAL					
GRAND TOTAL					

RECIPIENT CERTIFICATION		ENERGY COMMISSION USE ONLY (-NS-)	
I certify to the best of my knowledge and belief that this report is correct and complete and all outlays and obligations are for the purposes set forth in the funding Agreement and that the reimbursement of these costs has not and will not be received under other sources including, but not limited to, a Government Entity contract, subcontract, or other procurement method.		Amount Authorized	
		Signature of Authorized Certifying Officer	Date
Type or Print Name and Title	Phone	Fiscal Year	
ENERGY COMMISSION APPROVALS		Appropriation Code	
Commission Project Manager	Date		
Commission Program Manager	Date	Retention	
Grants Office	Date	Amount Scheduled	

INSTRUCTIONS

Payment Request No.: Begin with the number 1 on your first payment request and consecutively number each subsequent payment request. The last payment request should include the notation, "Final."

Recipient (Name and Complete Address): Same as "Recipient" on the Grant Agreement. Address should include the city, state, and zip code.

Type of Request: Indicate if this is a "Reimbursement" or "Status Report Only." Be sure to provide backup documentation. If no funds are being requested, check "Status Report Only."

Amount of this Request: This line shows the amount currently being requested. Indicate the amount being requested.

Period Covered by this Report: The time period covered by this request. The first day of the period should be the day after the last day covered by your previous report. Example: 1/14/94 to 3/31/94.

Grant No.: Same as "Grant Number" on the Grant Agreement. This is the eight digit code assigned by the Energy Commission (example 961-93-000).

Recipient ID No.: This space is for an account number or other identifier that may be assigned by the Recipient (optional).

Approved Project Term: This is the entire project period beginning with the date the project starts through the end date. This date should match the "Term" on the Grant Agreement unless you have received a term extension.

Total Funds Requested to Date: Show the total of all funds requested from the Energy Commission prior to this request.

Funds Received to Date: Show the total amount of funds received from the Energy Commission prior to this request. "Funds Requested to Date" minus any retention withheld equals "Funds Received to date".

Total Expenses to Date: Show the total expenses from the beginning of the project through and including the period covered by this report. This amount should be the same as the "Grand Total" expenses to date.

Line Items: The following budget categories apply to all expenditures invoiced.

- **Budget:** Show by line item the budget as shown in the Grant Agreement.
- **Expenses this Period:** Show by line item the actual payments made by the Recipient during the period covered by this report.
- **Expenses to Date:** Show by line item the cumulative total of all expenses from the beginning of the project through and including the period covered by this report.
- **Obligations Not Yet Paid:** Show by line item all funds obligated on purchase orders, contracts, etc. for which you have received an invoice but have not yet paid.
- **Remaining Balance:** Show by line item the funds available for expenses or obligations. "Budget" minus "Expenses to Date" minus "Obligations Not Yet Paid" equals "Remaining Balance."

Certification: Name, title and signature of authorized certifying official (usually the grant Recipient's project manager).

Submit original and one copy to:

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

EXHIBIT C
ATTACHMENT C-1
ASSURANCE OF COMPLIANCE

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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.

County of Stanislaus

(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 data 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.

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

Name and Title (Printed to Typed) () -
Telephone Number

Signature Date

County of Stanislaus Applicant's Name () -
Telephone Number

Address: 1010 Tenth Street Place Suite 6800 Date

Modesto, CA 95354

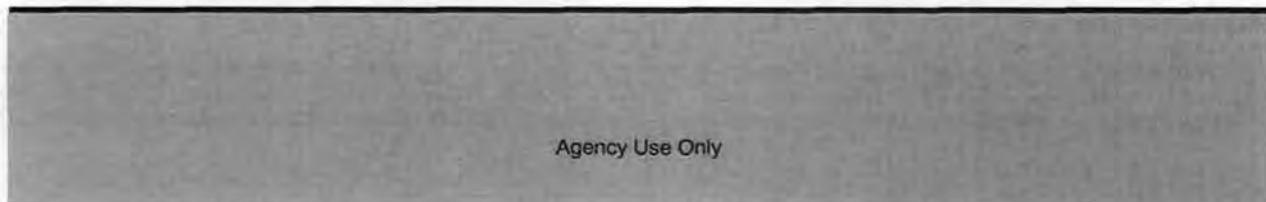


EXHIBIT C

ATTACHMENT C-2

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

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**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 Governmentwide 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.

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.

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: County of Stanislaus

Printed Name and Title of Authorized Representative: _____

SIGNATURE

DATE

EXHIBIT C
ATTACHMENT C-3
DISCLOSURE OF LOBBYING ACTIVITIES

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**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)

<p>1. Type of Federal Action: _____ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance</p>	<p>2. Status of Federal Action: a. bid/offer/application _____ b. initial award c. post-award</p>	<p>3. Report Type: _____ a. initial filing b. material change</p> <p>For material change only: Year _____ quarter _____ Date of last report _____</p>
<p>4. Name and Address of Reporting Entity: _____ Prime _____ Subawardee _____ Tier _____, if Known:</p> <p>Congressional District, if known:</p>	<p>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</p> <p>Congressional District, if known:</p>	
<p>6. Federal Department/Agency:</p>	<p>7. Federal Program Name/Description:</p> <p>CFDA Number, if applicable: _____</p>	
<p>7. Federal Action Number, if known:</p>	<p>9. Award Amount, if known:</p> <p>\$ _____</p>	
<p>10. a. Name and Address of Lobbying Registrant (if individual, last name, first name, MI):</p>	<p>b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI):</p>	
<p>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.</p>	<p>Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p> <p>Telephone No.: _____ Date: _____</p>	
<p>Federal Use Only</p>	<p>Authorized for Local Reproduction Standard Form - LLL (Rev. 7-97)</p>	

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 C

ATTACHMENT C-4

NATIONAL POLICY ASSURANCES

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NATIONAL POLICY ASSURANCES

(August 2008)

By signing this agreement or accepting funds under this agreement, the Recipient assures that it will comply with applicable provisions of the following National Policy Assurances. To the extent that a term does not apply to a particular type of activity or award, it is self-deleting.

I. Nondiscrimination Policies

You must comply with applicable provisions of the following national policies prohibiting discrimination:

1 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;

2 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;

3 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 regulations at 10 CFR part 1040;

4 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;

5 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; and

6 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.

II. Environmental Policies

You must:

1 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 rules at 40 CFR part 32, Subpart J.

2 Immediately identify to us, as the awarding agency, any potential impact that you find this award may have on:

a. The quality of the human environment, including wetlands, and provide any help we may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321 et. seq.) and assist us to prepare Environmental Impact Statements or other environmental documentation. In such cases, you may 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 we provide written notification of Federal compliance with NEPA, as implemented by DOE at 10 CFR part 1021.

b. Flood-prone areas, and provide any help we 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.

c. Use of land and water resources of coastal zones, and provide any help we may need to comply with the Coastal Zone Management Act of 1972(16 U.S.C. 1451, et. seq.).

d. Coastal barriers along the Atlantic and Gulf coasts and Great Lakes' shores, and provide help we may need to comply with the Coastal Barriers Resource Act (16 U.S.C. 3501 et. seq.), concerning preservation of barrier resources.

e. Any existing or proposed component of the National Wild and Scenic Rivers system, and provide any help we may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.).

f. Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide any help we may need to comply with the Safe Drinking Water Act(42 U.S.C. 300h-3).

3 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.

4 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.

III. Live Organisms

1 Human research subjects. You 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.

2 Animals and plants.

a. You 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.

b. You must follow the guidelines in the National Academy of Sciences(NAS) Publication "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).

c. You must immediately identify to us, as the awarding agency, any potential impact that you find 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). You also must provide any help we may need to comply with 16 U.S.C. 1536(a)(2). This is not in lieu of responsibilities you have to comply with provisions of the Act that apply directly to you as a U.S. entity, independent of receiving this award.

IV. Other National Policies

1 Debarment and suspension. You must comply with requirements regarding debarment and suspension in Subpart C of 2 CFR parts 180 and 901.

2 Drug-free workplace. You must comply with drug-free workplace 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.).

3 Lobbying.

a. You must 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. If you are a nonprofit organization described in section 501(c)(4)of title 26, United States Code (the Internal Revenue Code of 1968),you may not engage in lobbying activities as defined in the Lobbying Disclosure Act of 1995 (2 U.S.C., Chapter 26). If we determine that you have engaged in lobbying activities, we will cease all payments to you 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, you assure that you are 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. You 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 of any government concerning any legislation, law, policy, appropriation, or ratification.

4 Officials not to benefit. You must 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 41U.S.C. 22.

5 Hatch Act. If applicable, you must comply with the provisions of the Hatch Act (5 U.S.C. 1501-1508 and 7324-7326), 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.

6 Native American graves protection and repatriation. If you control or possess Native American remains and associated funerary objects, you 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).

7 Fly America Act. You must 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.

8 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 our award administrator (through you in the case of your contractor's bill-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

9 Research misconduct. You must 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.

10 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, you agree that you are 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:

- i. Maintenance, establishment, or operation of Senior ROTC units, or student participation in those units; or
- ii. Military recruiters' access to campuses, students on campuses, or information about students.

b. If you are 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, we:

- i. Will cease all payments to you of funds under this award and all other awards subject to the requirements in 32 CFR part 216; and
- ii. May suspend or terminate those awards unilaterally for material failure to comply with the award terms and conditions.

11. Historic preservation. You must identify to us any:

a. Any property listed or eligible for listing on the National Register of Historic Places that will be affected by this award, and provide any help we 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. 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.).

12 Relocation and real property acquisition. You must comply with applicable provisions of 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.

13 Confidentiality of patient records. You must keep confidential any records that you maintain 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.

14 Constitution Day. You 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.

15 Trafficking in Persons

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

1. You as the recipient, your 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. We, as the awarding agency, may unilaterally terminate this award, without penalty, if you 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 you 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 our agency at 2 CFR part 901.

b. Provision applicable to a recipient other than a private entity. We, as the 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 our agency at 2 CFR part 901.

c. Provisions applicable to any recipient.

1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
2. Our 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 us under this award.
3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

d. Definitions. For purposes of this award term:

1. "Employee" means either:
 - i. An individual employed by you 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 you 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).

V. National Policy Requirements for Subawards.

Recipient responsibility. You must include in any subaward you make under this award the requirements of the national policy requirements in Sections I through IV of this document that apply, based on the type of subawardee organization and situation

EXHIBIT C
ATTACHMENT C-5
FEDERAL INTELLECTUAL PROPERTY PROVISIONS

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FEDERAL INTELLECTUAL PROPERTY PROVISIONS

Intellectual Property Provisions (NRD-1003) Nonresearch and Development

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 C
ATTACHMENT C-6
PROJECT TYPE METRICS

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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 State government, schools, or institutional procurement
- 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: _____

Industrial Retrofit Support

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

Loans and Grants

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

Renewable Energy Market Development

- Number and size of solar energy systems installed
- Number and size of wind energy systems installed
- Number and size of other renewable energy systems installed
- Other: _____

Tax Credits

- Monetary value of tax credits given, by sector
- Other: _____

Financial Incentives for Energy Efficiency and Other Covered Investments

- Number and monetary value of financial incentive provided, by sector
- Total value of investments incentivized, by sector
- Other: _____

Technical Assistance

- Number of information transactions contacts (for example, webinar, site visit, media, fact sheet) in which energy efficiency or renewable energy measure 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
- Type of workshops, training, and education sessions held
- 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 C
ATTACHMENT C-7
VENDOR FLOW-DOWN PROVISIONS (FEDERAL)

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VENDOR FLOW-DOWN PROVISIONS (FEDERAL)

The provisions below must be included in all contracts with vendors that receive ARRA funding. The terms "vendor" and "subrecipient" as used below refer 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 Provisions Incorporated by Reference (Section 3)

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

B. Certifications and Compliance (Section 24)

3. Federal, State and Municipal Requirements

C. Additional Requirements for Federally-Funded Grants (Section 25)

4. Site Visits
5. Notice Regarding the Purchase of American-Made Equipment and Products—Sense of Congress
6. Nondiscrimination Clause
7. Certifications Regarding Lobbying and Debarment, Suspension and Other Responsibility Matters
8. Lobbying Restrictions
9. National Policy Assurances
10. Federal Intellectual Property Provisions and Contact Information
11. Decontamination and/or Decommissioning (D&D) Costs
12. 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 B*)

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

13. Specific Requirement to Submit Waste Management Plan
14. Cash Management Improvement Act

D. Special Provisions Relating to Work Funded Under the American Recovery and Reinvestment Act of 2009 (Section 26)

15. ARRA-Funded Project

16. Segregation of Costs and Records

17. Prohibition on Use of ARRA Funds

18. Access to Records

19. Protecting State and Local Government and Contractor Whistleblowers

20. Information in Support of ARRA Reporting

21. False Claims Act

22. 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 B)

As this award requires [name of vendor] to complete projects or activities which are funded under ARRA, [name of vendor] must provide the following "Vendor Data Elements" to [name of subrecipient, or name of other entity that entered into contract with vendor]. This information must be provided to [name of subrecipient], 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

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

24. Wage Rate Requirements Under Section 1606 of ARRA

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

26. ARRA Transactions Listed in Schedule of Expenditures of Federal Awards

27. Recognition of ARRA funding

E Exhibit B Attachments

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

29. Attachment 3 – Standard Form LLL, Disclosure of Lobbying Activities

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

31. Attachment 5 – Federal Intellectual Property Provisions

EXHIBIT E

Contacts List

<p>Commission Grant Manager:</p> <p>Adel Suleiman California Energy Commission 1516 Ninth Street, MS - 23 Sacramento, CA 95814 Phone: (916) 653-1004 Fax: (916) 654-4368 e-mail: Asuleima@energy.state.ca.us</p>	<p>Grantee Project Manager:</p> <p>Patricia Hill Thomas County of Stanislaus 1010 Tenth Street Place Suite 6800 Modesto, CA 95354 Phone: (209) 525-6333 Fax: (209) 544-6226 e-mail: THOMASP@stancounty.com</p>
<p>Commission Grant's Officer:</p> <p>Jennifer Masterson California Energy Commission 1516 Ninth Street, MS - 1 Sacramento, CA 95814 Phone: (916) 654-4606 Fax: (916) 654-4404 e-mail: jmasters@energy.state.ca.us</p>	<p>Grantee Administrator:</p> <p>Mark E. Loeser County of Stanislaus 1010 Tenth Street Place Suite 6800 Modesto, CA 95354 Phone: (209) 525-4304 Fax: (209) 544-6226 e-mail: LOESERM@stancounty.com</p>
<p>Commission Accounting Officer:</p> <p>Kathy Jones California Energy Commission 1516 Ninth Street, MS - 2 Sacramento, CA 95814 Phone: (916) 654-4377 Fax: (916) 653-1435 e-mail: kjones@energy.state.ca.us</p>	<p>Grantee's Accounting Officer:</p> <p>Larry Haugh County of Stanislaus 1010 Tenth Street Place Modesto, CA 95354 Phone: (209) 525-6593 Fax: (209) 525-6487 e-mail: HAUGHL@stancounty.com</p>
<p>Commission Legal Notice:</p> <p>Sherry Mediati Grants and Loans Manager 1516 9th Street, MS-1 Sacramento, CA 95814-5512 Phone: (916) 654-4204 Fax: (916) 654-4076 e-mail: smediati@energy.state.ca.us</p>	

EXHIBIT F Definitions

1. **Agreement** refers to the grant funding award, the Terms and Conditions, and all attachments.
2. **Agreement Budget** refers to the Energy Commission reimbursable and Grantee's expenditures for that portion of the Project covered by the Agreement.
3. **Commission** refers to the California Energy Commission.
4. **Committee** refers to the Policy Committee of the California Energy Commission.
5. **Date** means calendar date.
6. **CEQA** is the California Environmental Quality Act enacted by the Legislature in 1970 and is found at Public Resources Code §§ 21000 *et seq.*
7. **Equipment** is defined as tangible, nonexpendable personal property that has been purchased with funds from this Agreement and that has a useful life of at least one year and an acquisition unit cost of at least \$5,000. **Equipment** means any products, objects, machinery, apparatus, implements or tools purchased, used or constructed within the Project and purchased with funds from this Agreement. For purposes of determining depreciated value of equipment used in the Agreement, the Project shall terminate at the end of the normal useful life of the equipment purchased with funds from this Agreement. The Energy Commission may determine the normal useful life of such equipment.
8. **NEPA** is the National Environmental Policy Act enacted by Congress in 1970 and is found at 42 U.S.C. §§ 4321 *et seq.*
9. **Recipient** refers to the entity defined as a "subrecipient" under federal law (see Office of Management and Budget (OMB) Circular A-133, Subpart A, Section .105 and Subpart B, Section .210).
10. **Subawardee** refers to any entity other than a vendor that receives funding from the Recipient to carry out or support any portion of this Agreement.
11. **Subrecipient** is defined by OMB Circular A-133, Subpart A, Section .105 as "a non-Federal entity that expends Federal awards received from a pass-through entity to carry out a Federal program, but does not include an individual that is a beneficiary of such a program." Additional guidance on distinguishing between a subrecipient and a vendor under federal law is provided in OMB Circular, Subpart B, Section .210.
12. **Vendor** is defined by OMB Circular A-133, Subpart A, Section .105 as "a dealer, distributor, merchant, or other seller providing goods or services that are required for the conduct of a Federal program. These goods or services may be for an organization's own use or for the use of beneficiaries of the Federal program." Additional guidance on distinguishing between a subrecipient and a vendor under federal law is provided in OMB Circular, Subpart B, Section .210.

California Energy Commission
Prevailing Wage Documents for ARRA-Funded
Grants, Loans and Contracts

June 2, 2010

Grantees, borrowers, or contractors receiving American Recovery and Reinvestment Act of 2009 (ARRA) funds from the Energy Commission that are using contractors or subcontractors to perform labor or mechanic work on ARRA-funded projects must submit specific prevailing wage documentation to the Energy Commission. These documentation requirements apply to all subcontracts for services to achieve the objectives of ARRA-funded projects, including subcontracts paid for entirely with cost share funds. These documentation requirements are included in your grant, loan or contract agreement and are summarized below.

1. Initial Review

Submit copies of:

- All ***subcontracts*** for services to achieve the objectives of the agreement.
- The ***applicable wage determinations*** for any and all labor and mechanic work, to be performed under the subcontract(s).

Submit these documents as soon as they are available. If you already have signed subcontract(s) and have determined the appropriate prevailing wage determinations, submit these documents as soon as possible.

2. Ongoing Review

Submit copies of:

- ***Weekly certified payrolls.***
Under the Davis-Bacon Act all contractors and subcontractors performing work on federally financed or assisted construction contracts must submit weekly a copy of all payrolls to the Energy Commission accompanied by a signed "Statement of Compliance" certifying that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper federal or California prevailing wage rate, whichever is higher, for the work performed. See 29 C.F.R. § 5.5(a)(3)(ii).

The weekly certified payroll submission must minimally contain the following information: the name and individual identifying number (e.g., the last four digits of the employee's social security number) of each covered 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), daily and weekly number of hours worked, deductions made and actual wages paid. See 29 C.F.R. § 5.5(a)(3)(i). As noted, each weekly certified payroll submission must be accompanied by a signed Statement of Compliance. The required specifications for the Statement of Compliance are provided in 29 Code of Federal Regulations Section 5.5(a)(3)(ii)(B)(1)-(3).

To satisfy the requirement to submit weekly certified payrolls accompanied by a signed Statement of Compliance, grantees, borrowers, and contractors may use the weekly certified payroll form prepared by the United States Department of Labor (DOL), Form WH-347, which is available at <http://www.dol.gov/whd/forms/wh347instr.htm>. Use of Form WH-347 is optional.

3. Submission of Prevailing Wage Documentation

Please submit these documents to your assigned Project Manager :

If you have any questions, please contact your assigned Project Manager

4. Additional Information

- Davis-Bacon Act
 - DOL Recovery Act website at <http://www.dol.gov/whd/recovery/index.htm>.
 - DOL Prevailing Wage Resource Book, July 2009, available at <http://www.dol.gov/whd/recovery/pwr/toc.htm>.
 - Davis-Bacon Labor Clauses, available from DOL's website at http://www.dol.gov/dol/allcfr/Title_29/Part_5/29CFR5.5.htm.
 - The Wage and Hour Division of the Department of Labor maintains seven regional district offices in California. Contact information for these district offices may be found at <http://www.dol.gov/whd/america2.htm>.
- State Prevailing Wage Law
 - DIR Public Works Manual, May 2009, available at <http://www.dir.ca.gov/dlse/PWManualCombined.pdf>.
 - DIR Prevailing Wage website at <http://www.dir.ca.gov/dlsr/DPreWageDetermination.htm>.
 - DIR Building Compliance and Community Alliance Public Works Toolkit at http://www.dir.ca.gov/DAS/DAS_BuildingCompliance/BuildingCompliance.htm.
 - Prevailing Wage Hotline at (415) 703-4774.
For questions involving coverage call (415) 703-4340 or (916) 928-3184.

Stanislaus Capital Projects
1010 10th Street, Suite 2300, Modesto, CA 95354
Phone: (209) 525-4380 FAX: (209) 525-4384

BOARD OF SUPERVISORS

TRANSMITTAL

2011 MAR -4 A 10: 21

**TO: Don Phemister
Phemister Construction Management**

SUBJECT: STANISLAUS COUNTY CAPITAL PROJECTS

DATE: 3/3/2011

We are sending you X attached under separate cover the following material:

<input type="checkbox"/> Shop Drawings	<input type="checkbox"/> Change Order	<input type="checkbox"/> Specifications
<input type="checkbox"/> Copy of Letter	<input type="checkbox"/> Plans	<input type="checkbox"/> Computer Printout
<input type="checkbox"/> Prints	<input type="checkbox"/> Samples	<input type="checkbox"/> Updates

COPIES	DATE	DESCRIPTION
1		Fully-executed Work Authorization No. 24 for the Juvenile Hall Roof Replacement.

REMARKS:

For your records.

Note: WA No. 24 Approved by the Board on October 5, 2010 in Item B-1.

COPIES: Patricia Hill Thomas (Copy)
Mark Loeser (Copy)
Liz King (Original)
Norma Baker (Original + Copy)
File X 2.1.1 (1872)
File X 5.6.2.1
File X 15.77.6

SIGNED: 
Teresa Vander Veen

PHEMISTER CONSTRUCTION MANAGEMENT, INC.
WORK AUTHORIZATION NO. 24
FOR SPECIAL SERVICES
JUVENILE HALL ROOF REPLACEMENT, MODESTO

1. This Work Authorization No. 24 is entered into effect on February 4, 2011, in accordance with the terms and conditions of the agreement between Phemister Construction Management, Inc., ("PCM"), and Stanislaus County dated December 20, 2003 ("Agreement").
2. This Work Authorization is for those construction management services, for value engineering services on the schematic phase of the above mentioned project. PCM's work shall include:

Design Phase

A. Project Management

- 1) Design Kick-Off Meeting: At the start of the Design Phase, the CM shall conduct a Project Conference attended by the Design Professional, the Owner and others. During the meeting, the CM shall review the Scope of the Project, the Project Management Plan, the Master Schedule, the proposed Design Phase Milestone Schedule, the Project and Construction Budget and the MIS.
- 2) Design Phase Information: The CM shall monitor the Design Professional's compliance with the Design Schedule, Project Management Plan, and Design Phase Procedures; and the CM shall coordinate and expedite the flow of information between the Owner, Design Professional and others.
- 3) Project Meetings: The CM shall conduct periodic Project meetings attended by the Owner, Design Professional and others. Such meetings shall serve as a forum for the exchange of information concerning the Project and review of design progress. The CM shall prepare and distribute minutes of these meetings to the Owner, Design Professional and others, as agreed to by the Owner.
- 4) Review of Design Documents & Design Recommendations: The CM shall review the design documents for clarity, consistency, constructibility and coordination. The results of the review shall be provided in writing and as notations on the documents to the Owner. The CM shall also make recommendations to the Owner with respect to constructibility, construction cost sequence of construction, construction duration and separation of the contracts for various projects into categories of the work. However, the CM is not responsible for providing, nor does the CM control, the Project design or the contents of the design documents. By performing the reviews described herein, the CM is not acting in a manner so as to assume responsibility or liability, in whole or in part, for all or any part of the Project design and design documents. The CM's actions in reviewing the Project design and design documents and in making recommendations as provided herein are advisory only to the Owner. The Architect is not a third party beneficiary of the CM's work described in this paragraph and the Architect remains solely responsible for the contents of design drawings and design documents.
- 5) Owner's Design Reviews: The CM shall expedite the Owner's design reviews by compiling and conveying the Owner's comments to the Design Professional.
- 6) Approvals by Regulatory Agencies: The CM shall coordinate transmittal of documents to regulatory agencies for review and shall advise the Owner of potential problems in completion of such reviews.

- 7) General Conditions: The CM shall assist the Owner in the preparation of the General Conditions and other front end documents for the Construction Contracts.
- 8) Project Funding: The CM shall assist the Owner in preparing documents concerning the Project and Construction Budget for use in obtaining or reporting on project funding. The documents shall be prepared in a form approved by the Owner.
- 9) Grant Applications: The CM shall assist the Owner in preparing grant applications for project funding. The documents shall be in a form required by the agency providing the grant.

B. Time Management

- 1) Revisions to Master Schedule: While performing the services provided in the Design Phase, the CM shall recommend revisions to the Master Schedule.
- 2) Monitoring the Design Phase Milestone Schedule: While performing the services provided in the Design Phase, the CM shall monitor compliance with the Design Phase Milestone Schedule. The CM shall make recommendations to the Owner if progress is not in compliance with the schedule.

C. Cost Management Task

- 1) Project and Construction Budget Revision: The CM shall make recommendations to the Owner on the impact of design changes that may result in revisions to the Project and Construction Budget project schedule and established project strategy.
- 2) Cost Control and Estimating: The CM shall prepare an estimate of the construction cost for each submittal of design drawings and specifications from the Design Professional. The estimate for each submittal shall be accompanied by a report to the Owner and Design Professional identifying variances from the Project and Construction Budget. The CM shall coordinate and assist in expediting the activities of the Owner and Design Professional when changes to the design are required to remain within the Project and Construction Budget.
- 3) Value Analysis Studies: The CM shall provide value analysis studies on major construction components as directed by the Owner. The results of these studies shall be in report form and shall be distributed to the Owner and Design Professional.

D. Management Information Systems (MIS)

- 1) Schedule Reports: In conjunction with the services provided during the Design Phase the CM shall prepare and distribute Schedule Update Reports that shall compare actual progress with scheduled progress for the Design Phase and the overall Project.
- 2) Project Cost Reports: The CM shall prepare and distribute Project Cost Reports that shall indicate estimated costs compared to the Project and Construction Budget.
- 3) Cash Flow Report: The CM shall prepare a cash flow report for submission to funding agencies in compliance with requirements. Also, the CM shall periodically prepare and distribute a Cash Flow Report for the Owner.
- 4) Design Phase Change Order Report: The CM shall prepare and distribute Design Phase Change Order Reports that shall list all Owner-approved change orders as of the date of the report and shall

state the effect of the change orders on the Project and Construction Budget and the Master Schedule.

- 5) Construction Phase Procedures: The CM shall prepare procedures for reporting, communications and administration during the Construction Phase for approval by Owner.

Bid and Award Phase

A. Project Management

- 1) Bidders Interest Campaign: The CM shall conduct a campaign to attempt to increase interest among qualified bidders.
- 2) Notices and Advertisements: The CM shall assist the Owner in preparing and placing notices and advertisements to solicit bids for the Project.
- 3) Delivery of Bid Documents: The CM shall coordinate the delivery of Bid Documents to the bidders. The Owner shall obtain the Owner-approved contract documents from the Design Professional and the CM shall arrange for printing, binding, wrapping and delivery to the bidders. The CM shall maintain a list of bidders receiving Bid Documents.
- 4) Pre-bid Conferences: In conjunction with the Owner and Design Professional, the CM shall conduct Pre-bid Conferences. These conferences shall be forums for the Owner, CM and Design Professional to explain the Project requirements to the bidders, including information concerning schedule requirements, time and cost control requirements, access requirements, the Owner's administrative requirements, technical and other information.
- 5) Information to Bidders: The CM shall develop and coordinate procedures to provide answers to bidder's questions.
- 6) Addenda: The CM shall receive from the Design Professional a copy of all Addenda. The CM shall review Addenda for clarity, consistency and coordination among the bidders. The CM shall distribute a copy of all Addenda to each bidder receiving documents. By performing the reviews and distributions described herein, the CM is not acting in a manner so as to assume responsibility or liability, in whole or in part, for all or any part of the Project design contents or the design documents.
- 7) Bid Opening and Recommendations: The CM shall assist the Owner in conducting the bid opening and coordinating the bid process and shall evaluate the bids (including alternates) for responsiveness and price. The CM shall make recommendations to the Owner concerning the acceptance or rejection of bids.
- 8) Post-bid Conference: The CM shall conduct a Post-bid Conference with the low bidder to review contract award procedures, schedules, project staffing and other pertinent issues.
- 9) Construction Contracts: The CM shall assist the Owner in the assembly, delivery and execution of the Contract Documents. The CM shall issue to the Contractors the Notice of Award and the Notice to Proceed provided by the Owner. The contract documents must be formatted in such a manner that

they allow bid reporting and subsequent construction tracking of the grant-funded project by CSI elements.

10) Pre-Construction Conference: In consultation with the Owner and Design Professional, the CM shall conduct a Pre-Construction Conference during which the CM shall review the Project organization, communication protocols, security, responsibilities and other general project procedures.

11) Permits, Insurance and Labor Affidavits: The CM shall assist the Owner in verifying that the Contractor has secured the building permits, bonds, insurance, labor affidavits and waivers as required by the Contract Documents. Such action by the CM shall not relieve the Contractor of its responsibilities to comply with the provisions of the Contract Documents.

B. Time Management: The CM shall monitor compliance with the Master Schedule and recommend revisions to the Owner as appropriate.

C. Cost Management

1) Estimates for Addenda: The CM shall prepare an estimate of costs for all Addenda and shall submit the estimate to the Owner for approval. Project and construction budgets shall be adjusted as directed by the Owner.

2) Analyzing Bids: Upon receipt of the bids, the CM shall evaluate the bids, including alternate prices and unit prices, and shall make a recommendation to the Owner in regard to the award of each construction contract.

D. Management Information System (MIS)

1) Schedule Maintenance Reports: The CM shall prepare and distribute Schedule Update Reports during the Bid and Award Phase. The Reports shall compare the actual bid and award dates to scheduled bid and award dates and shall summarize the anticipated impact of current schedule modifications on the Master Schedule.

2) Project Cost Reports: The CM shall prepare and distribute Project Cost Reports during the Bid and Award Phase. The Reports shall specify actual award prices and construction costs for the Project compared to the Project and Construction Budgets.

3) Cash Flow Reports: The CM shall prepare and distribute Cash Flow Reports during the Bid and Award Phase. That portion of the Project that is funded by Violent offender Grant funds must be identified and tracked separately. The Reports shall be based on actual award prices and construction costs for the Project and the Reports shall specify actual cash flow compared to projected cash flow.

Construction Phase

A. Project Management

1) On-Site Management and Construction Phase Communication Procedures: The CM shall provide and maintain a management team on the Project site to provide contract administration as an agent of the Owner and to establish and implement coordination and communication procedures among the CM, Owner, Design Professional and Contractors.

- 2) Construction Administration Procedures: The CM shall establish and implement procedures for expediting and processing requests for information, shop drawings, material and equipment sample submittals, contract schedule adjustments, change orders, substitutes and payment requests and the maintenance of Logs for tracking all relevant information related to the above. The CM shall maintain daily job reports. As the Owner's representative at the construction site, if provided for in the Construction Phase Procedures approved by the Owner, the CM shall be the party to whom requests for information, submittals, Contractor schedule adjustments, substitutes, change order requests and payment applications shall be submitted.
- 3) Project Site Meetings: Periodically the CM shall conduct coordination meetings at the Project site with each Contractor, the Owner and the Design Professional (if provided for in the Agreement between the Owner and the Design Professional). The CM shall record, transcribe and distribute minutes to all attendees, the Owner and Design Professional.
- 4) Quality Review: The CM shall establish and implement a program to monitor the quality of the construction. The purpose of the program shall be to assist in guarding the Owner against defects and deficiency in the work of the Contractor. The CM may reject work and transmit to the Owner and Contractor a notice of nonconforming work when it is the opinion of the CM, Owner, or Design Professional that the Work does not conform to the requirements of the Contract Documents. The CM is not authorized as a part of this service to change, revoke, alter, enlarge, relax or release any requirements of the Contract Documents or to approve or accept any portion of the Work not performed in accordance with the Contract Documents. No action taken by the CM shall relieve any or all of the Contractors from their obligation to perform their work in strict conformity with the Contract Documents and in strict conformity with all other applicable laws, rules and regulations. Such limits of authority shall be made clear and enforced by the Owner in the Contractor's Contract Documents. Communication between the CM and Contractor with regard to Quality Review shall not in any way be construed as binding the CM or Owner as releasing the Contractor from the fulfillment of any of the terms of his Contract Documents. The CM is not responsible for, nor does the CM control, the means and methods of construction for the Project. It is understood that the CM's action in providing Quality Review as stated herein is a service to the Owner and by performing as provided herein, the CM is not acting in a manner so as to assume responsibility or liability, in whole or in part, for all or any part of the construction work for the Project.
- 5) Coordination of Other Independent Consultants: Technical inspection and testing provided by the Design Professional or others shall be coordinated by the CM. The CM shall be provided a copy of all inspection and testing reports on the day of the inspection or test or within a reasonable time period. The CM is not responsible for providing, nor does the CM control, the actual performance of technical inspection and testing. The CM is performing a coordination function and is not acting in a manner so as to assume responsibility or liability, in whole or in part, for any part of such inspection and testing.
- 6) Review of Requests for Changes to the Contract Time and Price: The CM shall review the contents of requests for changes to the contract time or price submitted by a Contractor, assemble information concerning the request and endeavor to determine the cause of the requests and make recommendations to the Owner with respect to acceptance of the requests. The CM will implement the Owner's decisions regarding all requests for changes. All changes to the Agreement between the Owner and Contractor shall be only by change orders executed by the Owner.

- 7) Record Drawings, Operation and Maintenance Materials: As required by the Contract Documents, the CM shall receive from the Contractor As-Built record drawings, operation and maintenance manuals, warranties and guarantees for materials and equipment installed on the Project, and review such documents for completeness and submit documents to the Owner.
- 8) Substantial Completion: In consultation with the Design Professional and Owner's inspectors (when applicable), the CM shall review the contractor's request for substantial completion and final completion and recommend to the Owner when the Project and the Contractor's Work has achieved substantial and final completion. The CM shall, prior to issuing a Certificate of Substantial Completion, compile a list of incomplete work which does not conform to the Contract Documents based on input from the Design Professional and Owner's inspectors (when applicable). This list shall be attached to the Certificate of Substantial Completion. The CM shall issue the Certificate of Substantial Completion and Certification of Final Completion to the Contractor.
- 9) Final Payment: In consultation with the Design Professional and Owner's inspector (when applicable), the CM shall provide to the Owner a written recommendation regarding final payment to the Contractor.

B. Time Management

- 1) Master Schedule: The CM shall adjust and update the Master Schedule and distribute copies to the Owner and Design Professional. Recommendations for such adjustments to the Master Schedule shall be made to the Owner, and upon Owner's approval shall be incorporated by the CM.
- 2) Contractor's Construction Schedule: The CM shall review each Contractor's Construction Schedule and shall verify that the schedule is prepared in accordance with the requirements of the Contract Documents and that it establishes completion dates that comply with the requirements of the Contract Documents. If changes in the Master Schedule maintained by the CM are appropriate, the CM shall make such modifications as approved by the Owner.
- 3) Construction Schedule Reports: The CM shall, on a monthly basis, review the progress of construction of each Contractor, shall evaluate the percentage complete of each construction activity as indicated in the Contractor's Construction Schedule and shall review such percentages with the Contractor. This evaluation shall serve as data for input to the periodic Construction Schedule Report that shall be prepared and distributed to the Owner. The Report shall indicate the actual progress compared to scheduled progress and shall serve as the basis for the progress payments to the Contractor. The CM shall advise and make recommendations to the Owner concerning the alternative courses of action that the Owner may take in its efforts to achieve contract compliance by the Contractor.
- 4) The CM Review of Time Extension Requests: Prior to the issuance of change orders, the CM shall advise the Owner as to the effect on the Master Schedule of time extensions requested by the Contractor.
- 5) Recovery Schedules: The CM shall review the recovery schedule submitted by the Contractor for compliance with the Contract Documents.

C. Cost Management

- 1) Allocation of Cost to the Contractor's Construction Schedule: The Contractor's Construction Schedule shall have the total contract price allocated among the Contractor's scheduled activities so that each of the Contractor's activities shall be allocated a price and the sum of the prices of the activities all equal the total contract price. The CM shall review the contract price allocations and verify that such allocations are made in accordance with the requirements of the Contract Documents. Progress payments to the Contractor shall be based on the Contractor's percentage of completion of the scheduled activities as set out in the Construction Schedule Reports and the Contractor's compliance in accordance with the Contract Documents.
- 2) Change Order Control: The CM shall establish and implement a change order control system. All proposed change orders shall first be described in detail by the CM, with the assistance of the Design Professional when necessary, in a request for a proposal to the Contractor, and shall be accompanied by technical drawings and specifications prepared by the Design Professional. In response to the request for a proposal, the Contractor shall submit to the CM for evaluation detailed information concerning the cost and time adjustments, if any, as may be necessary to perform the proposed change work order. The CM shall discuss the proposed change order with the Contractor and endeavor to determine the Contractor's basis of the cost and time impacts of performing the work. The CM shall make recommendations to the Owner of whether the CM believes the change in the work is in the best interest of the project, prior to the Owner's execution of change orders. The CM shall verify that change order work and adjustments of time, if any, required by approved change orders have been incorporated into the Contractor's Construction Schedule.
- 3) Cost Records: In instances when a lump sum or unit price is not determined prior to performing work described in a request for a proposal relating to a change order the CM shall request from the Contractor records of the cost of payroll, materials and equipment and the amount of payments to subcontractor's incurred by the Contractor in performing the work.
- 4) Progress Payments: In consultation with the Design Professional, the CM shall review the payment applications submitted by each Contractor and determine whether the amount requested reflects the progress of the Contractor's work. The CM shall make appropriate adjustments to each payment application and shall prepare and forward to the Owner a Progress Payment Report. The Report shall state the total contract price, payments to date, current payment requested, retainage and actual amounts owed for the current period. Included in this report shall be a Certificate of Payment that shall be signed by the CM and delivered to the Owner.

D. Management Information System (MIS)

- 1) Schedule Update Reports: The CM shall prepare and distribute Schedule Update Reports during the Construction Phase. The Reports shall compare the actual construction dates to scheduled construction dates of each separate contract, milestone dates (if any), and to the Master Schedule for the Project.
- 2) Project Cost Reports: The CM shall prepare and distribute Project Cost Reports during the Construction Phase. The Reports shall specify actual Project and construction costs compared to the Owner-approved Project and Construction Budget.

- 3) Project and Construction Budget Revision: The CM shall make recommendations to the Owner on the impact of construction changes that may result in revision to the Project and Construction Budget.
- 4) Cash Flow Reports: The CM shall periodically prepare and distribute Cash Flow Reports during the Construction Phase. The Reports shall specify actual cash flow as compared to projected cash flow.
- 5) Progress Payment Reports: The CM shall prepare and distribute the Progress Payment Reports to the Owner. The Reports shall state the total construction contract price, payment to date, current payment requested, retainage and actual amounts owed this period. A portion of this Report shall be a Certificate of Payment that shall be signed by the CM, and delivered to the Owner for use by the Owner in making payments to the Contractor.
- 6) Change Order Reports: The CM shall periodically prepare and distribute Change Order Reports during the Construction Phase. The Report shall list all Owner-approved change orders by number, a brief description of the change order Work, the cost established in the change order time impacts, if any, and percent of completion of the change order work.
- 7) Contractor's Safety Program Report: The CM shall verify that safety programs are submitted to the Owner by each Contractor, as required by their Contract Documents. The CM shall not be responsible for or have any liability in whole or in part for Contractor implementation of or compliance with Contractor safety programs and safety laws, regulations, etc., nor shall the CM be responsible for the adequacy, or completeness, of Contractor Safety Programs or the Contractor's compliance and performance thereof. The CM has no responsibility for review of safety programs.

Post-Construction Phase

A. Project Management

- 1) Record Documents: The CM shall coordinate and expedite submittals of information from the Contractors for as-built record drawings and specification preparation and shall coordinate and expedite the transmittal of Record Documents to the Owner.
- 2) Organize and Index Operation Maintenance Materials: Prior to the Final Completion of the Project, the CM shall compile manufacturers' operations and maintenance manuals, warranties and guarantees as received from the Contractors, and submit such documents to the Owner.
- 3) Occupancy Permits: The CM shall assist the Owner in obtaining an Occupancy Permit by accompanying governmental officials during inspections of the Project, preparing and submitting documentation to governmental agencies and coordinating final testing and other activities.
- 4) Occupancy Plan: The CM shall prepare an Occupancy Plan and provide coordination services that shall include a schedule for relocation for furniture, equipment and the Owner's personnel. This schedule shall be provided to the Owner.

B. Cost Management

- 1) Change Orders: The CM shall continue to provide services related to change orders during the Post-Construction Phase.

C. Management Information Systems (MIS)

- 1) Close-out Reports: At the conclusion of the Project, the CM shall prepare final Project Cost and close-out reports.
- 2) MIS Reports for Move-in and Occupancy: The CM shall prepare and distribute reports associated with the Occupancy Plan.

Additional Services Within the Scope of this Agreement.

- A. Services related to claims analysis after substantial completion of the Project;
- B. Performing general warranty inspections during the warranty period of the Project.
- C. Consultation regarding replacement of work damaged by fire or other cause during construction and furnishing services in connection with the replacement of such work.
- D. Services made necessary by the substantial, material and continuing default of the Contractor.
- E. Preparation for and serving as a witness in connection with any public or private hearing or arbitration, mediation or legal proceeding.
- F. Services related to move-in including preparing and soliciting responses to requests for proposals, preparing and coordinating the execution of contracts, administering the contract for moving activities in conjunction with move-in for the Project and providing on-site personnel to oversee the relocation of furniture and equipment by the movers while actual move-in is in progress. However, CM's post-construction services include coordination related to all aspects of the move-in process.

3. Period of Performance: February 4, 2011 to June 30, 2011

4. Method of Compensation and Rates:

<u>Name</u>	<u>Title</u>	
Gino Colacchia	Construction Manager	\$90.00 per Hour

5. Payment Terms: Per the Agreement.

6. Verification of Insurance: Per the Agreement.

7. Funding Source: 2076 / 0061136 / 64600 GL 4545 Location 87714

8. NOT TO EXCEED: \$8,500.00

Approved by the Board on October 5, 2010, Item B-1.

Dated: February 4, 2011

Stanislaus County

Phemister Construction Management, Inc.