County of San Luis Obispo
GENERAL SERVICES AGENCY
Janette D. Pell, Director

Cody VanDorn, Department Administrator

REQUEST FOR PROPOSAL PS- # 1216
ADDENDUM NO. 1
RENEWABLE ENERGY STREAMLINING PROGRAM

May 7, 2013

1. Please note the following addition to Request for Proposal PS-#1216. All changes shall be incorporated in and become part of the respective proposal.

   Please see attached terms and conditions of the grant agreement referenced on Page 8, section 1.9 GRANT AGREEMENT AND CONSULTANT CONTRACT of the original Request for Proposal. (Attachment was not included with the original document.)

2. Any proposer who has already forwarded the RFP and desires to make corrections or changes may request the RFP be returned. If corrections are made, a new or revised RFP must be received at the Office of the General Services Agency, 1087 Santa Rosa Street, San Luis Obispo, California, 93408, by May 29, 2013 at 3:00 p.m.

3. All other specifications, provisions, and conditions remain unchanged.

DEBBIE BELT - BUYER

ACKNOWLEDGMENT

_____
Dated

The foregoing addendum is hereby acknowledged and was considered in final submission of Request for Proposal PS-#1216, to be opened on May 29, 2013.

_____
Proposer

_____
Authorized Signature

PLEASE SIGN ACKNOWLEDGEMENT AND RETURN WITH PROPOSAL

ATTACHMENT 13

TERMS AND CONDITIONS

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EXHIBIT C

TERMS AND CONDITIONS

1.Grant Agreement

This project is being funded with a grant from the California Energy Commission (Energy Commission). Funding for this project was authorized by Assembly Bill x1 13 (Perez, Chapter 10, Statutes of 2011), and consists of funds from the Renewable Resource Trust Fund.

Program refers to the entire effort undertaken and planned by the Recipient including the work co-funded by the Commission. The program may coincide with or extend beyond the Agreement period. ***Project*** refers to the work elements of the program. Typically, there are distinct projects within the program being paid for by the Commission under this Agreement.

This Agreement is comprised of the grant funding award, the Terms and Conditions, and all attachments. These Terms and Conditions are standard requirements for Renewable Energy and Conservation Planning Grants (RECPG) grant awards. The Commission may impose special conditions in this grant Agreement which address the unique circumstances of this project. Special conditions that conflict with these standard provisions take precedence. Any special conditions are attached to this Agreement.

The Recipient shall sign two originals of the CEC-146 of this Agreement and return two signed CEC-146's to the Commission's Grants and Loans Office within 30 days. Failure to meet this requirement may result in the forfeiture of this award. When all required signatures are obtained, an executed copy will be returned to the Recipient.

All work and/or the expenditure of funds (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. The start term of this Agreement is either the specified start term or the date the Energy Commission signs the Agreement, whichever is later. The Energy Commission will only sign the Agreement after the Recipient signs it and it has been approved at an Energy Commission Business Meeting.

2.Attachments and References

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

- Work Statement
- Budget
- Content and Format of Progress Reports
- Special Conditions (if applicable)

3.Funding Limitations

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

4.Due Diligence

The Recipient is required to take timely actions which, taken collectively, move this project to completion. The Commission 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 the funding award is insufficient to complete all project work tasks by the Agreement term end date, the Commission can terminate this Agreement.

5.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's Accounting Office at the address below. The Accounting Office will forward products 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 Accounting Office. If the Commission Project Manager determines a product is substandard, given the description and intended use of the product as described in the Work Statement and the grant application, the Commission Project Manager may refuse to authorize payment for the product and any subsequent products that rely upon or are based upon that product under this Agreement.

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

a. **Electronic File Format**

The Recipient shall deliver documents to the Commission Project Manager in the following formats:

- Data sets shall be in Microsoft (MS) Access or MS Excel file format.
- PC-based text documents shall be in MS Word file format.
- Documents intended for public distribution shall be in Portable Document Format (PDF) file format, with the native file format provided as well.
- Project management documents shall be in MS Project file format.

Submit any requests for exemption to the electronic file in writing at least ninety (90) days before the product is due. The Commission Project Manager must approve or deny the request in writing.

6.Reports

a. Submission of Reports

All reports will be submitted to the Accounting Office at the address listed in Section 5 above.

b. Progress Reports

The Recipient shall prepare progress reports on the schedule provided in the work statement. The Recipient shall prepare progress reports which summarize all grant activities conducted by the Recipient for the reporting period, including an assessment of the ability to complete the project within the current budget and any anticipated cost overruns. See Attachment 11 "Content and Format of Progress Reports" for more information.

c. Final Reports

The Recipient shall prepare a final report outline, draft final report and final report on the schedule provided in the work statement. The final report shall describe the original purpose, approach, results and conclusions of the work done under this Agreement. Upon receipt of the final report, the Commission Project Manager shall ensure that all work has been satisfactorily completed. The Payment Request for the final payment (including any retention) may only be submitted after the final report is completed and the Commission Project Manager has verified satisfactory completion of the work.

d. 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.

e. Failure to Comply with Reporting Requirements

Failure to comply with the reporting requirements contained in this award will be considered a material noncompliance with the terms of the award. Noncompliance may result in withholding of future payments, suspension or termination of the current award, and withholding of future awards.

7.Legal Statement on Reports and Products

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

LEGAL NOTICE

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

8.Amendments

a. Budget Reallocations

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

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

For example, if under an agreement the Energy 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 Energy Commission funds can be reallocated without a formal amendment. If under an agreement the Energy Commission agrees to pay a recipient $800,000, ten percent would be $80,000, but the cap is $75,000, so the most that could be reallocated without a formal amendment is $75,000.

b) The budget reallocation cannot substantially change the Work Statement. Examples of budget reallocations that do not substantially change the Work Statement, but are not limited to, the following:

- Increasing or decreasing the overall travel budget. This does not mean an increase to the allowed per diem rates under this Agreement.
- Increasing or decreasing the equipment budget.
- Increasing or decreasing the number of personnel assigned to complete tasks. This does not include increasing the hourly rates of the personnel and classifications listed in the budget. Increasing hourly rates requires a formal amendment. The addition of personnel also requires a formal amendment unless there is already an identified classification of rates in the budget that the new personnel will be filling.

c) The budget reallocation only involves moving funds between tasks or categories. The total Agreement Amount must remain unchanged. Increasing the total amount of the Agreement requires a formal amendment.

d) The budget reallocation does not increase the percentage rate of Indirect Overhead, Direct Overhead, Fringe Benefits, General and Administrative Costs, or any other rates listed in the budget. For example, if an agreement budget lists the Indirect Overhead percentage rate as 25% of Direct Labor, the 25% cannot be changed without a formal amendment.

2) To effectuate a budget reallocation under this section, the Recipient must make a request in writing to both the Project Manager and the Grants Officer. Both the Project Manager and Grants Officer will then approve or disapprove the request in writing; the approval or disapproval is not effective or binding unless signed by both the Project Manager and the Grants Officer. Oral communications cannot be used or relied upon. If the request is approved, the Project Manager shall revise the Budget Attachments to reflect the changes and send them to the Grants Officer and Recipient.

3) Any desired budget reallocations that do not meet the four 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 Energy Commission at a Commission Business Meeting, a written amendment signed by both parties.

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

b. Non-Significant Changes

Changes that are not significant to the Agreement do not need to be

approved at an Energy Commission Business Meeting through a formal amendment. These changes shall be documented in a Letter of Agreement, signed by both parties.

c. Significant Changes

Significant changes to this Agreement require a formal amendment which must be approved at an Energy Commission Business Meeting. Significant Changes are defined as any modifications to the Agreement that do not meet the requirements in paragraph 8.b. above. Examples of significant changes include, but are not limited to:

- Change of Recipient.
- Changes to the Work Statement that significantly modify the scope of the 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 Energy Commission funding within the Agreement.

When seeking to change this Agreement, Recipient understands and acknowledges that it can take the Energy Commission six (6) months or more to process an amendment.

9.Contracting and Procurement Procedures

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

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

All subcontracts must incorporate all of the following:

- A clear and accurate description of the material, products, or services to be procured as well as a detailed budget and timeline.
- Provisions that allow for administrative, contractual, or legal remedies in instances where subcontractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.
- Provisions for termination by the Recipient, including termination procedures and the basis for settlement.
- Further assignments shall not be made to any third or subsequent tier subcontractor without additional advance written consent of the Commission.

All subcontracts must incorporate language conforming to the following provisions specified in this Agreement, and these provisions shall expressly flow down to all subcontractors:

- Standard of Performance
- Nondiscrimination Statement of Compliance
- Indemnification
- Travel and Per Diem
- Equipment
- Recordkeeping, Cost Accounting, and Auditing
- Access to Sites and Records
- Legal Notice
- Survival of the following sections:
    - Recordkeeping, Cost Accounting and Auditing
    - Equipment
    - Access to Sites and Records

Nothing contained in this Agreement or otherwise, shall create any contractual relation between the Commission and any subcontractors, and no subcontract shall relieve the Recipient of its responsibilities and obligations hereunder. The Recipient agrees to be as fully responsible to the Commission for the acts and omissions of its subcontractors or persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Recipient. The Recipient's obligation to pay its subcontractors is an independent obligation from the Commission's obligation to make payments to the Recipient. As a result, the Commission shall have no obligation to pay or to enforce the payment of any monies to any subcontractor.

Recipient shall be responsible for establishing and maintaining contractual agreements with and reimbursement of each subcontractor for work performed in accordance with the terms of this Agreement.

All subcontracts entered into pursuant to this Agreement shall be subject to examination and audit by the Energy Commission and/or Bureau of State Audits for a period of three years after final payment under this Agreement.

Recipient shall provide a copy of its subcontracts upon request by the Energy Commission.

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

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

10.Key Personnel, Key Subcontractors, and Prevailing Wage

a. Key Personnel

Key personnel are employees of the Recipient who are critical to the

outcome of the project. For example, they may have expertise in the particular field or have experience that is not available from another source. Replacing these individuals may affect the outcome of the project. Key personnel, listed in the Budget exhibit, may not be substituted without the Commission Project Manager's approval. Such approval shall not be unreasonably withheld. Recipient may substitute all other personnel, with reasonable advance notification made to the Commission Project Manager.

b. Key Subcontractors

Key subcontractors are subcontractors or vendors to the Recipient who are critical to the outcome of the project. As with key personnel, key subcontractors may have expertise in the particular field or have experience that is not available from another source. Replacing these subcontractors may affect the outcome of the project. An employee of the Recipient's subcontractor or vendor may also qualify as "key." Key subcontractors, listed in the Budget exhibit, may not be substituted without the Commission Project Manager's approval. Such approval shall not be unreasonably withheld. Recipient may substitute all other subcontractors, with reasonable advance notification made to the Commission Project Manager. Replacement of key subcontractors is subject to the "Contracting and Procurement Procedures" section contained within these terms and conditions.

c. Prevailing Wage

For purposes of this paragraph, "public works" means construction, alteration, demolition, installation, repair or maintenance work over $1,000; and "Contractor" means all contractors that provide public works activities for the Project.

1) Recipient/General Requirements

a) Recipient shall comply with state prevailing wage law, Chapter 1 of Part 7 of Division 2 of the Labor Code, commencing with Section 1720; and Title 8, California Code of Regulations, Chapter 8, Subchapter 3, commencing with Section 16000, for any public works activities performed on the Project funded by this Agreement. For purpose of compliance with prevailing wage law, the Recipient shall comply with provisions applicable to an awarding body. Compliance with state prevailing wage law includes without limitation: payment of prevailing wage as applicable; overtime and working hour requirements; apprenticeship obligations; payroll recordkeeping requirements; and other obligations as required by law.

b) Recipient shall certify to the Energy Commission on each Payment Request Form, that prevailing wages were paid to eligible workers who provided labor for work covered by the payment request and that the Recipient and all contractors complied with prevailing wage laws. Prior to the release of any retained funds under this Agreement, the Recipient shall submit to the Energy Commission a certificate signed by the Recipient and all contractors performing public works activities stating that prevailing wages were paid as required by law.

2) Flowdown Requirements

Recipient shall ensure that all agreements with contractors for public works activities for the Project contain the following provisions:

a) Contractor shall comply with state prevailing wage law, Chapter 1 of Part 7 of Division 2 of the Labor Code, commencing with Section 1720; and Title 8, California Code of Regulations, Chapter 8, Subchapter 3, commencing with Section 16000, for all construction, alteration, demolition, installation, repair or maintenance work over $1,000 performed under the contract. Contractor's obligations under prevailing wage laws include without limitation: pay not less than the applicable prevailing wage for public works activities performed on the Project; comply with overtime and working hour requirements; comply with apprenticeship obligations; comply with payroll recordkeeping requirements; and comply with other obligations as required by law.

b) Contractor shall ensure that the above requirements are included in all subcontracts for public works activities for the Project.

11.Permits and Clearances

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

12.Equipment

Title to equipment acquired by the Recipient with grant funds shall vest in the Recipient. The Recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by grant funds and the Recipient shall not encumber the property without Commission Project Manager approval.

13.Termination

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

a. With Cause

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

b. Without Cause

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

14.Stop Work

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

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

15.Travel and Per Diem

a. The Recipient shall be reimbursed for travel and per diem expenses using the same rates provided to non-represented State employees. The Recipient must pay for travel in excess of these rates. The Recipient may obtain current rates from the Energy Commissions Web Site at: http://www.energy.ca.gov/contracts/TRAVEL_PER_DIEM.PDF.

b. For purposes of payment, Recipient's headquarters shall be considered the location of the Recipient's office where the employees' assigned responsibilities for this award are permanently assigned. Travel expenditures not listed in this section cannot be reimbursed.

c. Travel identified in the Budget section of this Agreement is approved and does not require further authorization.

d. Travel that is not included in the Budget section of this Agreement shall require written authorization from the CAM and Grants and Loans Officer prior to travel departure. The Energy Commission will reimburse travel expenses from the Recipient's office location.

e. The Recipient must retain documentation of travel expenses in its financial records. The documentation must be listed by trip and include dates and times of departure and return, departure and destination cities. Travel receipts, including for travel meals and incidentals, shall be submitted with invoices requesting reimbursement from the Energy Commission.

16.Standard of Performance

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

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

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

- Recipient/subcontractor will re-perform, at its own expense, any task which was not performed to the reasonable satisfaction of the CAM. Any work re-performed pursuant to this paragraph shall be completed within the time limitations originally set forth for the specific task involved. Recipient/subcontractor shall work any overtime required to meet the deadline for the task at no additional cost to the Commission;

- The Commission shall provide a new schedule for the re-performance of any task pursuant to this paragraph in the event that re-performance of a task within the original time limitations is not feasible; and

- The Commission shall have the option to direct Recipient/subcontractor not to re-perform any task which was not performed to the reasonable satisfaction of the CAM pursuant to application of (1) and (2) above. In the event the Commission directs Recipient/subcontractor not to re-perform a task, the Commission and Recipient shall negotiate a reasonable settlement for satisfactory work performed. No previous payment shall be considered a waiver of the Commission's right to reimbursement.

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

17.Payment of Funds

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

a. Payment Requests

Unless indicated otherwise in Special Conditions, the Recipient may request payment from the Energy Commission at any time during the term of this Agreement, but no more frequently than monthly, although it is preferred that payment requests be submitted with the progress reports.

Payments will be made on a reimbursement basis for Recipient's 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.

The Energy Commission, at its sole discretion, may honor advance payment requests subject to special conditions specified by the Commission's Grants and Loans Office.

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

b. Payment Request Format

A request for payment shall consist of, but is not limited to the following.

Documentation

All payment requests must be submitted using a completed Payment Request form that can be found at the end of this document. This form must be accompanied by an itemized list of all charges and copies of all receipts or invoices necessary to document these charges for both Commission and

match share, including backup documentation for actual expenditures, such as time cards, vendor invoices, and proof of payment. Any payment request that is submitted without the itemization will not be authorized. If the itemization or documentation is incomplete, inadequate, or inaccurate, the CAM will inform the Recipient and hold the invoice until all required information is received or corrected. Any penalties imposed on the Recipient by a subcontractor because of delays in payment will be paid by the Recipient.

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

1) An invoice that includes a **list** of actual expenses incurred during the billing period, up to any Budget rate caps. The Recipient can only bill the lower of actual rates or Budget rate caps. Backup documentation is required at time of invoice submittal. Unless specified otherwise in Special Conditions, the invoice list must include expenditures in accordance with the Budget, as follows:

   a) Date prepared, grant number, Recipient's Federal ID number, and billing period;

   b) Recipient's actual labor expenditures, including hourly labor rates by individual name and classification, hours worked, and benefits (fully loaded rates may only be used if fully loaded rates are included in the grant Budget);

   c) Operating expenses, including travel, equipment, supplies, and other;

   d) Receipts for travel, including departure and return times;

   e) Receipts for materials, miscellaneous, and equipment;

   f) Subcontractor invoices;

   g) Overhead/indirect;

   h) Match fund expenditures; and

   i) By Budget line item (cost component) category, list budgeted amount, billed to date, current billing, and balance of funds.

2) A progress report that documents evidence of progress, which includes written progress reports and products prepared by the Recipient as detailed in the Work Statement.

The Commission will accept computer-generated or electronically transmitted

invoices without backup documentation provided that the Recipient sends a hardcopy the same day.

Recipient shall submit all invoices to the following address:

California Energy Commission
Accounting Office
RECPG Grant Program
1516 Ninth Street, MS-2
Sacramento, CA 95814

c. Certification

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

> ***The documents included in this request for payment are true and correct to the best of my knowledge and I, as an agent of [Company Name] have authority to submit this request. I certify that reimbursement for these costs has not and will not be received from any other sources, including but not limited to a Government entity contract, subcontract, or other procurement method. For projects considered to be a public work: Prevailing wages were paid to eligible workers who provided labor for the work covered by this invoice; Recipient and all subcontractors have complied with prevailing wage laws.***

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

Each invoice is subject to Commission Project Manager approval. The Commission Project Manager will not process any payment request during the Agreement term if the following conditions have not 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.

Payments shall be made to the Recipient only for undisputed invoices. An undisputed invoice is an invoice executed by the Recipient for project expenditures, that meets all payment conditions of the Agreement, and for which additional evidence is not required to make payment. The invoice may be disputed if all products due for the billing period have not been received and approved, if the invoice is inaccurate, or if it does not comply with the terms of this Agreement. If the invoice is disputed the Recipient will be notified via a Dispute Notification Form within 15 working days of receipt of the invoice.

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. 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.

1) Conditions for payment:

a) No payment shall be made in advance of services rendered unless prior written approval has been obtained by the Grants and Loans Office.

b) Payment shall only be made in accordance with the Budget attachment.

c) Each request for payment is subject to the Commission Project Manager's approval.

d) Final invoice must be received by the Energy Commission no later than 30 calendar days after the Agreement termination date.

e) No payment will be made for costs identified in recipient invoices that has or will be reimbursed by another source, including but not limited to a Government Entity contract.

18.Recordkeeping, Cost Accounting, and Auditing

a. Cost Accounting

Recipient agrees to keep separate, complete, and correct accounting of the costs involved in completing the grant and match funded (if any) portion of this project. The Commission or its agent shall have the right to examine Recipient's books of accounts at all reasonable times to the extent and as is necessary to verify the accuracy of Recipient's reports.

b. Accounting Procedures

The Recipient's costs shall be determined on the basis of the Recipient's accounting system procedures and practices employed as of the effective date of this Agreement, provided that the Recipient shall use generally accepted accounting principles and cost reimbursement practices. The Recipient's cost accounting practices used in accumulating and reporting costs during the performance of this Agreement shall be consistent with the practices used in estimating costs for any proposal to which this Agreement relates; provided that such practices are consistent with the other terms of this Agreement and provided, further, that such costs may be accumulated and reported in greater detail during performance of this Agreement. The Recipient's accounting system shall distinguish between direct costs and indirect costs. All costs incurred for the same purpose, in like circumstances, are either direct costs only or indirect costs only with respect to costs incurred under this Agreement.

c. Allowability of Costs

1) Allowable Costs

The costs for which the Recipient shall be reimbursed under this Agreement include all costs, direct and indirect, incurred in the performance of work that are identified in the grant Budget. Costs must be incurred within the term of the Agreement. Factors to be considered in determining whether an individual item of cost is allowable include (i) reasonableness of the item, (ii) appropriate use of the allowability of the item to the work, and (iii) the terms and

conditions of this Agreement.

2) Unallowable Costs

The following is a description of some specific items of cost that are unallowable; provided, however, that the fact that a particular item of cost is not included shall not mean that it is allowable. Details concerning the allowability of costs are available from the Energy Commission's Accounting Office.

a) Fees, Contingency Costs, Imputed Costs (e.g., Cost of Money), Fines and Penalties, Losses, and increased rates and fees for this Agreement.

b) The Commission will pay for state or local sales or use taxes on expenditures. The State of California is exempt from Federal excise taxes.

d. Audit Rights

Recipient shall maintain books, records, documents, and other evidence, based on the procedures set forth above, sufficient to reflect properly all costs claimed to have been incurred in performing this Agreement. The Energy Commission, an agency of the state or, at the Energy Commission's option, a public accounting firm designated by the Energy Commission, may audit such accounting records at all reasonable times with prior notice by the Energy Commission. The Energy Commission shall bear the expense of such audits. It is the intent of the parties that such audits shall ordinarily be performed not more frequently than once every twelve (12) months during the performance of the work and once at any time within three (3) years following payment by the Energy Commission of the Recipient's final invoice. However, performance of any such interim audits by the Energy Commission does not preclude further audit.

Recipient agrees that the Energy Commission, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting source documentation pertaining to the performance of this Agreement. Recipient agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of record retention is stipulated. Recipient agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Recipient agrees to include a similar right of the state to audit records and interview staff in any subcontract related to performance of this Agreement.

e. Refund to the Energy Commission

If the Energy Commission determines, that any invoiced and paid amounts exceed the actual allowable incurred costs, Recipient shall repay such amounts to the Energy Commission within thirty (30) days of request or as otherwise agreed by the Energy Commission and Recipient. If the Energy Commission does not receive such repayments, the Energy Commission shall be entitled to withhold further payments to the Recipient or seek repayment from the Recipient.

f. Audit Cost

The Recipient's cost of the audit shall be borne by the Recipient. The Energy Commission's cost of the audit shall be borne by the Commission except when the results of the audit reveal an error detrimental to the Energy Commission exceeding more than ten percent (10%) or $5,000 (whichever is greater) of the amount audited. Recipient shall pay the refund as specified in "e. Refund to the Energy Commission," and Recipient agrees to reimburse the Energy Commission for reasonable costs and expenses incurred by the Energy Commission in conducting such audit.

g. Match or Cost Share (match)

If the Budget includes a match share requirement, the Recipient's commitment of resources, as described in this Agreement, is a required expenditure for receipt of Energy Commission funds. Grant funds will be released only if the required match percentages are expended. The Recipient must maintain accounting records detailing the expenditure of the match (actual cash and in-kind services) and report on match share expenditures on the Recipient's request for payment.

19.Indemnification

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

20.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.

21.General Provisions

a. Governing Law

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

b. Independent Capacity

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

c. Assignment

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

d. Timeliness

Time is of the essence in this Agreement.

e. Unenforceable Provision

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

f. Waiver

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

g. Assurances

The 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. Project Changes

1) Recipient shall promptly notify the Energy Commission of the occurrence of any of the following:

a) A change of address.

b) 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.

i. Access to Sites and Records

The Energy Commission staff or its representatives shall have reasonable access to all project sites and to all records related to this Agreement.

j. 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"
- "Project Changes"
- "Termination"
- "Recordkeeping, Cost Accounting, and Auditing"
- "Indemnification"
- "Access to Sites and Records"

22.Certifications and Compliance

a. Federal, State & Local Laws

Recipient shall comply with all applicable federal, state and local laws, rules and regulations.

b. Nondiscrimination Statement of Compliance

During the performance of this Agreement, Recipient and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (40), 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 from 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 7285et 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 section to labor organizations with which they have a collective bargaining or other Agreement.

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

c. Drug Free Workplace Certification

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

1) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations as required by Government Code Section 8355(a).

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. Child Support Compliance Act (Applicable to California Employers)

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

1) It recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

2) To the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

e. Air or Water Pollution Violation

Under the state laws, the Recipient shall not be:

1) In violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district;

2) Subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or

3) Finally determined to be in violation of provisions of federal law relating to air or water pollution.

f. Americans With Disabilities Act

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

23. Site Visits

The California Energy Commission and/or its designees have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. Recipient must provide and must require subawardees to provide reasonable facilities and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

24. Budget Contingency Clause

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

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

25.Intellectual Property

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

26.Definitions

- ***Agreement Period*** is the length of this Agreement between the Energy Commission and the Recipient. The Recipient's Project may coincide with or extend outside the Agreement Period.

- ***Equipment*** is defined as having a useful life of at least one year, having an acquisition unit cost of at least $5,000, and purchased with Energy Commission funds. ***Equipment*** means any products, objects, machinery, apparatus, implements or tools purchased, used or constructed within the Project, including those products, objects, machinery, apparatus, implements or tools from which over thirty percent (30%) of the equipment is composed of Materials purchased for the Project. For purposes of determining depreciated value of equipment used in the Agreement, the Project shall terminate at the end of the normal useful life of the equipment purchased, funded and/or developed with Energy Commission funds. The

Energy Commission may determine the normal useful life of such equipment.

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

- ***Materials*** means the substances used in constructing a finished object, commodity, device, article or product.

- ***Project*** refers to the entire effort undertaken and planned by the Recipient and consisting of the work co-funded by the Energy Commission. The project may coincide with or extend beyond the Agreement Term.

- ***Terms Relating to Data***

  - ***Technical Data*** or ***Data*** as used throughout this Agreement means recorded information regardless of form or characteristic, of a scientific or technical nature and used in the performance of this Agreement. It may, for example, document research; document experimental, developmental, demonstration, or engineering work; or be usable or used to define a design or process; or to procure, produce, support, maintain, or operate material.
  - The data may be graphic or pictorial delineations in media such as drawings or photographs, test specifications or related performance or design type documents or computer software (including computer programs, computer software data bases, and computer software documentation). Examples of Technical Data include manufacturing techniques and methods, machinery, devices such as tools, products, or components, research and engineering data, engineering drawings and associated lists, specifications, engineering calculations, standards, process sheets, manuals, technical reports, catalog item identification, and related information. Technical Data as used herein does not include financial reports, cost analyses and other information incidental to administration of this Agreement.

  - ***Generated Data*** is that data that the Recipient collects, collates, records, deduces, reads out or postulates for use in the performance of this Agreement. In addition, any electronic data processing program, model or software system developed or substantially modified by the Recipient in the performance of this Agreement at Energy Commission expense, together with complete documentation thereof, shall be treated as Generated Data.

  - ***Product Data*** is that data which, under the terms of this Agreement, is required to be delivered to the Energy Commission.

STATE OF CALIFORNIA

FINANCIAL STATUS REPORT OR PAYMENT REQUEST Attachment 1

CEC-211 a (Revised 9/10) CALIFORNIA ENERGY COMMISSION

Payment Request Number: _____

Recipient: (Name and Address)		Type of Request ☐ Reimbursement ☐ Status Report Only ☐ Release Retention	Amount of this Request: $ _____ Funding History Funds Requested to Date: $ _____ Funds Received to Date: $ _____ Expenses to Date: $ _____ Funds on Hand: $ _____ Interest Earned to Date: $ _____
		Period Covered by this Request: to	
Grant Number:	Recipient ID No:	Approved Project Term: to	

ENERGY COMMISSION SHARE Line Item	Budgets	Expenses this Period	Expense to Date	Obligations Not Yet Paid	Remaining Balance
Personnel	0.00	0.00	0.00	0.00	0.00
Fringe Benefits	0.00	0.00	0.00	0.00	0.00
Travel	0.00	0.00	0.00	0.00	0.00
Equipment	0.00	0.00	0.00	0.00	0.00
Supplies	0.00	0.00	0.00	0.00	0.00
Contractual	0.00	0.00	0.00	0.00	0.00
Construction	0.00	0.00	0.00	0.00	0.00
Other	0.00	0.00	0.00	0.00	0.00
Indirect	0.00	0.00	0.00	0.00	0.00
TOTALS					0.00

MATCH SHARE Line Item	Budgets	Expenses this Period	Expense to Date	Obligations Not Yet Paid	Remaining Balance
Personnel	0.00	0.00	0.00	0.00	0.00
Fringe Benefits	0.00	0.00	0.00	0.00	0.00
Travel	0.00	0.00	0.00	0.00	0.00
Equipment	0.00	0.00	0.00	0.00	0.00
Supplies	0.00	0.00	0.00	0.00	0.00
Contractual	0.00	0.00	0.00	0.00	0.00
Construction	0.00	0.00	0.00	0.00	0.00
Other	0.00	0.00	0.00	0.00	0.00
Indirect	0.00	0.00	0.00	0.00	0.00
TOTALS					0.00
GRAND TOTALS					0.00

RECIPIENT CERTIFICATION

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. For projects considered to be a public work: Prevailing wages were paid to eligible works who provided labor for the work covered by this invoice; Recipient and all subcontractors have complied with prevailing wage laws.

Signature of Authorized Certifying Officer | Date | Type or Printed Name and Title | Phone

ENERGY COMMISSION APPROVALS

Commission Project Manager | Date | Commission Program Manager | Date | Grants Office | Date

ENERGY COMMISSION USE ONLY (-NS-)

Amount Authorized: $ _____ Retention: ☐ Yes ☐ No Fiscal Year: _____

Appropriation Code: _____ Retention: _____ 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.

Funds on Hand: This should be filled in only if you have received any advance funds from the Commission. If you have, show the balance of funds received. ("Funds Received to Date" minus "Expenses to Date" equals "Funds on Hand.")

Interest Earned to Date: Show all interest earned on previously advanced funds.

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