

**CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
Meeting Date: February 18, 2025**

**Request to Approve an Amendment to the Interagency Agreement with the
California Energy Commission regarding the Capital Access Zero-Emission
Heavy-Duty Infrastructure Loan Pilot Project (ZEHDI Project)**

Prepared by: *Robert Salls-Morneau*

Summary. The California Pollution Control Financing Authority (CPCFA) requests approval to amend the Interagency Agreement with the California Energy Commission (CEC) to administer CEC's Zero-Emission Heavy-Duty Infrastructure Loan Pilot Project (ZEHDI Project). The amendments include clarified references to the included exhibits, and additional language to the terms and conditions regarding prevailing wage requirements.

Background. On March 19, 2024, the CEC entered into an agreement with CPCFA to participate in CalCAP as an Independent Contributor, committing \$5.0 million to CalCAP to support the ZEHDI Project loan loss reserve program. The ZEHDI project is designed to assist in the expansion of California's electric vehicle charging infrastructure. The Project offers loan loss reserve contributions as a credit enhancement to participating financial institutions that enroll qualified loans.

Current Request. CPCFA and CEC are seeking to amend the Interagency Agreement to administer the ZEHDI Project. The amended agreement has been updated to reference a newly added Exhibit D. Exhibit D includes language stating the requirements CEC and CPCFA must follow regarding Prevailing Wage laws. Prevailing Wage laws require that any public works project pay employees prevailing wages per California Labor Codes. The proposed amended Interagency Agreement No. 600-23-008 is attached as Exhibit A.

Staff Recommendation. Staff recommends the approval of Resolution No. 25-02-001 to authorize the Executive Director or Deputy Executive Director to amend Interagency Agreement 600-23-008.

**CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
AUTHORIZING THE EXECUTIVE DIRECTOR OR DEPUTY EXECUTIVE
DIRECTOR TO EXECUTE INTERAGENCY AGREEMENT 600-23-008 WITH
THE CALIFORNIA ENERGY COMMISSION**

March 19, 2024

WHEREAS, the California Pollution Control Financing Authority (“Authority”) was created under the provisions of the California Pollution Control Financing Authority Act (Division 27 (commencing with Section 44500) of the Health and Safety Code); and

WHEREAS, Section 44522(c) of the Health and Safety Code provides that the Authority is authorized to “do all things generally necessary or convenient to carry out its powers and the purposes”; and

WHEREAS, Section 44519 of the Health and Safety Code provides that the Authority may employ an Executive Director and any other persons as are necessary to enable it to properly perform the duties imposed upon the Authority by the California Pollution Control Financing Authority Act, and the Authority may delegate to the Executive Director the power to enter into contracts on its behalf; and

WHEREAS, the California Capital Access Loan Program (CalCAP) is administered by the Authority, as established in Article 8 (commencing with Section 44559) of Chapter 1 of Division 27 of the Health and Safety Code, with the Legislature finding and declaring, “Better access to capital will allow small businesses to more easily comply with environmental mandates, and to remediate contamination of properties with a reasonable potential of economically beneficial reuse, and to succeed economically, generating additional revenue to state and local governments that can be used for environmental improvements, all to the benefit of all the residents of the state”; and

WHEREAS, on March 19, 2024, Authority entered into Interagency Agreement 600-23-008 with the California Energy Commission (CEC) to utilize \$5 million in funding for a loan loss reserve program called the Zero-Emission Heavy-Duty Infrastructure Loan Pilot Project (ZEHDI Project); and

WHEREAS, pursuant to Interagency Agreement 600-23-008, the Authority provides CEC all the services it normally provides to Independent Contributors in the role as administrator of CalCAP, and other services specified in Interagency Agreement 600-23-008 in support of the Zero-Emission Heavy-Duty Infrastructure Loan Pilot Project (ZEHDI Project).

WHEREAS, the Authority desires to amend the terms of the agreement,

NOW, THEREFORE, BE IT RESOLVED, by the California Pollution Control Financing Authority the following:

Section 1. The Executive Director and Deputy Executive Director of the Authority are hereby authorized to prepare, enter into, and execute an Amendment to Interagency Agreement 600-23-008 with the California Energy Commission for the Authority to administer the Zero-Emission Heavy-Duty Infrastructure Loan Pilot Project (ZEHDI Project), a loan loss reserve program through the California Capital Access Loan Program.

Section 2. The Executive Director and the Deputy Executive Director are hereby authorized and directed, for and on behalf of the Authority, to do any and all things to execute and deliver any and all documents, which the Executive Director and the Deputy Executive Director deem necessary or advisable in order to effectuate the purposes of this Resolution and the transactions contemplated hereby.

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PURPOSE

The California Pollution Control Financing Authority (CPCFA or Authority) and the California Energy Commission (CEC) (the Party or Parties), will enter into an agreement under the California Capital Access Program (CalCAP). The CEC will enroll in CalCAP as an Independent Contributor and the CPCFA will provide to the CEC all the services the CPCFA provides to Independent Contributors in CPCFA's role as administrator and operator of CalCAP's loan loss reserve credit support programs.

This Interagency Agreement (Agreement) will support the Zero-Emission Heavy-Duty Infrastructure Loan Pilot Project (ZEHDl Project or Project) help expand California's electric vehicle charging and hydrogen fueling infrastructure installation consistent with California's climate change policy goals that are consistent with the respective goals of the CPCFA and the CEC.

The CEC has established the Project, and the purpose of this Agreement is for CPCFA to implement and administer the Project under its existing CalCAP program framework. The Project shall offer loan loss reserve contributions as a credit enhancement to participating financial institutions that enroll qualified loans. Following the Budget (Attachment B to this Interagency Agreement), the CEC will transfer funds to the CPCFA from the Clean Transportation Program to support the CPCFA's efforts in developing, managing, implementing, overseeing, and administering the Project.

In consideration of the above, the CEC agrees to participate in CalCAP as an Independent Contributor, to commit up to \$5.0 million to CalCAP; and CPCFA will administer the Project to fund installation of electric vehicle and hydrogen fueling infrastructure.

A. ACRONYMS AND DEFINITIONS

List of Acronyms

Term/ Acronym	Definition
CalCAP	California Capital Access Program
CAM	Commission Agreement Manager
CAO	Commission Agreement Officer
CARB	California Air Resources Board
CEC	California Energy Commission
CPCFA	California Pollution Control Financing Authority
CPR	Critical Project Review

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Term/ Acronym	Definition
CTP	Clean Transportation Program
EVSE	Electric Vehicle Supply Equipment, also known as “chargers”
FTD	Fuels and Transportation Division
MDHD	Medium-Duty and Heavy-Duty
MWDVBE	Minority, Woman or Disabled Veteran Business Enterprise
ZEHDI	Zero-Emission Heavy-Duty Infrastructure

List of Definitions

Administrator	CPCFA as administrator of the CalCAP
Claims	Requests by Participating Financial Institutions for coverage for loan defaults under the LLR accounts
Charger	One component of the larger charging station which drivers will interact with. The charger is where the charging connectors are located and may include a display screen and the payment interface
Charging Port	The system within a charger that charges one electric vehicle. A charging port may have multiple connectors, but it can only provide power to charge only one electric vehicle through one connector at a time.
Independent Contributor	Please refer to Cal. Code Regs., tit. 4, sect. 8070(h).
Loan Loss Reserve Account	An account created specific to each individual Participating Financial Institution and funded by the CEC, for the sole purpose of paying qualifying claims on defaulted loans enrolled in the Project and any claims outstanding from the Project
Medium-Duty and Heavy-Duty	A vehicle with a gross vehicle weight rating of more than 8,600 pounds and include vans, buses, and trucks
Participating Financial Institution	A Financial Institution, as defined by Cal. Code Regs., tit. 4, section 8070(g), that has been approved by the Authority to enroll Qualified Loans in the Program and has agreed to all terms and conditions set forth in the Law and this Article and as may be required by any applicable federal law providing matching funding.

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Parties	CEC and CPCFA
Premium	The fees used to fund the loan loss reserve accounts
Previous Loan Loss Reserve Accounts	The loan loss reserve accounts established for the Participating Financial Institution under previous CEC/CPCFA loan loss reserve programs
Program Trustee	A bank or trust company chosen by the Authority from time to time to hold or administer some or all of the Loan Loss Reserve Accounts

*Please refer to Cal. Code Regs., tit. 4, section 8070 for additional definitions.

B. BACKGROUND

CPCFA's role as administrator and operator of CalCAP's loan loss reserve credit support programs is authorized by the California Health and Safety Code (HSC) section 44559 *et seq.* and CalCAP regulations as authorized in 4 CCR § 8070-8079 and HSC section 43018.9(f).

The Warren-Alquist Act established the CEC in 1974. As the state's primary energy policy and planning agency, the CEC is committed to reducing energy costs, curtailing greenhouse gas emissions, and ensuring a safe, resilient, and reliable supply of energy, creating the energy system of California's future through activities such as planning and policy development, renewable energy growth, energy efficiency, energy innovation, and cleaner transportation.

Assembly Bill (AB) 118 (Núñez, Chapter 750, Statutes of 2007) created the Clean Transportation Program. The statute authorizes the CEC to develop and deploy alternative and renewable fuels and advanced transportation technologies to help attain the state's climate change policies. AB 126 (Reyes, Chapter 319, Statutes of 2023) re-authorized the Clean Transportation Program through July 1, 2035, and specified that the CEC allocate no less than 15 percent of the moneys appropriated by the Legislature each year to hydrogen fueling stations to support hydrogen vehicles until there is a sufficient network of stations, which includes all types available, until July 1, 2030.

The Clean Transportation Program has an annual budget of about \$100 million and has provided financial support for projects that:

- Reduce California's use and dependence on petroleum transportation fuels and increase the use of alternative and renewable fuels and advanced vehicle technologies.
- Produce sustainable alternative and renewable low-carbon fuels in California.
- Expand alternative fueling infrastructure and fueling stations.
- Improve the efficiency, performance, and market viability of alternative light-, medium-, and heavy-duty vehicle technologies.

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- Retrofit medium-duty and heavy-duty (MDHD) on-road and non-road vehicle fleets to alternative technologies or fuel use.
- Expand the alternative fueling infrastructure available to existing fleets, public transit, and transportation corridors.
- Establish workforce training programs and conduct public outreach on the benefits of alternative transportation fuels and vehicle technologies.

The Governor's Executive Order N-79-20 requires 100 percent of sales of new passenger vehicles and trucks, all drayage trucks, off-road vehicles and equipment to be zero-emission by 2035, where feasible, and all other vehicles in the MDHD fleet to be zero-emission by 2045, where feasible.

In partnership with CARB's Zero-Emission Heavy-Duty Vehicle (ZEHDV) Air Quality Loan Program, the CEC has established the ZEHDV Project, which will assist the state in meeting the goals of N-79-20.

C. PROBLEM STATEMENT

CPCFA is committed to stimulating local economies in California by delivering innovative financing support for projects that protect and restore the environment and making capital more accessible to small businesses. CPCFA administers CalCAP, authorized by HSC § 44559 *et seq.*, which encourages banks and other financial institutions to make loans to small businesses. CalCAP administers a loan loss reserve financing program, a form of "loan portfolio insurance" that provides up to 100 percent coverage to participating financial institutions on certain enrolled loan defaults. The success of the Project will be due in part to the CalCAP Participating Financial Institutions that agree to participate in the program statewide.

CEC funding of the loan loss reserve will provide financial security that will encourage Participating Financial Institutions to provide loans for the construction of zero-emission MDHD fueling infrastructure.

D. ADMINISTRATIVE TASKS

Cal. Code Regs., tit. 4, sect. 8070(h) defines Independent Contributors. Requirements for participation as an Independent Contributor in CalCAP are found in 4 CCR § 8078 (Participation in the Program by Certain Public or Private Entities) which enables CPCFA to permit any individual, company, corporation, institution, utility, government agency or other entity to become an Independent Contributor in CalCAP, making possible the collaboration with the CEC to aid Participating Financial Institutions with financing the purchase and installation of new, fueling infrastructure for zero-emission MDHD vehicles.

The Parties agree that by executing this Agreement and performing the duties described

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herein, the CEC will have satisfied the requirements of an Independent Contributor as specified in California Code of Regulations, Title 4, section 8078.

CEC tasks:

For implementation of the Project, the CEC, as an Independent Contributor to CalCAP, shall contribute to the loan loss reserve account premiums each time a loan is enrolled in the Project, up to \$5,000,000, which is inclusive of any administrative, marketing, outreach, and other costs specified in this Agreement.

CPCFA tasks:

CPCFA will implement the Project, with the following characteristics:

1. **Maximum eligible fleet size:** twenty (20) vehicles;
2. **Maximum eligible fleet size exemption:** Non-profit organizations and public agencies, may have more than 20 vehicles; however, they must satisfy all other requirements of the CalCAP and Projects;
3. **Maximum number of charging ports or hydrogen nozzles to be installed:** twenty (20) charging ports, twenty (20) hydrogen nozzles, or twenty (20) total of both;
4. **Eligible equipment costs:** Eligible acquisitions with loan proceeds include the following. Acquisitions not listed may be eligible on a case-by-case basis with prior CEC approval:
 - a. New electric charging and/or hydrogen fueling equipment capable of supporting zero-emission MDHD vehicles and/or equipment, including taxes and shipping;
 - b. Acquisition of supply equipment, electric panel or grid improvements (if not paid for by the relevant electric utility), materials and supplies (including conduit and construction materials), required signage, and hardware and software necessary for fully operational charging stations;
 - c. Labor to install fully operational charging stations or hydrogen stations; and
 - d. Equipment Warranty, with the purchase of eligible equipment, not to include extended warranties (those exceeding three (3) years).
5. **Maximum interest rate a Participating Financial Institution may charge:** twenty (20) percent annual percentage yield (APY);
6. **Refinances:** Refinancing of existing loans to be enrolled in the program may be considered if for zero-emission vehicle infrastructure installation;
7. **Warranty & Maintenance Plans:** Allow the financing of equipment warranty and maintenance plans, when funded with the purchase of eligible infrastructure, not to include extended warranties beyond three years);

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8. **Eligibility of Enrollment:** Limit eligibility of enrollment in the Project to the financing of zero-emission vehicle charging and/or hydrogen fueling infrastructure at California site locations to support the deployment of zero-emission MDHD vehicles registered in California, substantiated by the California Department of Motor Vehicles (CA DMV) registration (proof of purchase of a MDHD zero-emission vehicle or proof of CA DMV registration for MDHD zero-emission vehicle shall be provided).
9. **Borrower Certifications:** CPCFA will require the borrower to complete the *Zero-Emission Heavy-Duty Infrastructure Loan Pilot Project (ZEHDI Project) Program Borrower Eligibility Criteria and Self-Certification Form* (Exhibit A, Attachment 1 - Borrower Certification). The purpose of the Borrower Certification is for each borrower to certify that the business meets specified requirements of both CalCAP.
 - a. The Borrower Certification contains the Participating Financial Institution's certification that it has adhered to all of its responsibilities and collected all loan enrollment documentation required by the CalCAP regulations.
 - b. CPCFA shall require the Participating Financial Institution to submit the completed Borrower Certification, on behalf of the borrower, to CPCFA for review.
 - c. CPCFA shall be responsible for review of the Borrower Certification and shall respond to a Participating Financial Institution's request for loan enrollment within fifteen (15) working days from receipt of the Participating Financial Institution's request.
 - d. CPCFA shall bear no responsibilities for verification of information submitted by the Borrower on the Borrower Certification.
10. **Loan Enrollment:** CPCFA will enroll qualified loans in the Project under CalCAP regulations (4 CCR § 8078) unless questions regarding eligibility arise during the review process. If questions arise or if a loan is determined to be ineligible, CPCFA will contact the Participating Financial Institution as per CalCAP regulations.
 - a. CEC understands that CPCFA has no role in underwriting loans. Loan approval is made solely by the Participating Financial Institution. CPCFA's role is limited to approving the enrollment of loans into the Project under CalCAP.
11. **Claims:** In the event a qualified loan defaults, the Participating Financial Institution can contact CPCFA as per program regulations CalCAP regulations (4 CCR § 8074). The Participating Financial Institution can be reimbursed (for up to 100 percent of the principal loss) from the Participating Financial Institution's loan loss reserve account. If questions arise, or if a claim is determined to be ineligible, CPCFA will contact the Participating Financial Institution as per CalCAP regulations. Claim approval is solely made by CPCFA.
12. **Participating Financial Institution Audits:** Per 4 CCR § 8071, CPCFA conducts Participating Financial Institution audits that may be in person and/or electronically and include, but are not limited to:

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- a. an official request of loan, project, and borrower related documents from the Participating Financial Institution;
- b. CalCAP staff visiting the Participating Financial Institution onsite to review the documents they are required to retain;
- c. reviewing the documents against a checklist; and
- d. drafting and routing a summary for CPCFA Executive Director review.

Additional audit provisions are contained in the GIA-610 and Exhibit GD.

13. **Project Modifications:** To ensure a sustainable Project, CPCFA may consider, in consultation with Participating Financial Institutions, financial advisors, and other stakeholders, other program modifications, including whether or not to charge the Participating Financial Institution and borrower a fee for each loan enrolled in the CalCAP for Small Business Program. These changes would be adopted either by subsequent amendment to this Agreement or by rulemaking promulgated by the Authority under its CalCAP regulations.

E. AGREEMENT TERM

The term of this Agreement shall commence when both Parties execute this Agreement through June 30, 2027.

F. MUTUAL INDEMNITY

CPCFA and CEC agree to compensate the other Party for losses arising out of this Agreement to the extent those losses are caused by the indemnifying party's breach of contract. The Parties agree that this indemnification clause satisfies the requirements of California Code of Regulations, Title 4, Section 8078(a)(3).

G. WAIVER OF REIMBURSEMENT SPECIFIED IN CALIFORNIA CODE OF REGULATIONS, TITLE 4, SECTION 8078(a)(6)

Apart from the amount specified in this Agreement's Exhibit B, Budget, for administrative costs, CPCFA hereby waives CEC's reimbursement of CPCFA for any reasonable costs related to the Independent Contributor's participation in the program.

Further, CPCFA agrees that if funding under this Agreement is not adequate to complete the tasks specified in this SOW, it will complete the work specified herein at its own expense.

H. PROGRAM FUNDING

CEC will provide funds in an amount of up to \$5.0 million to CPCFA.

I. SELECTION OF PROGRAM TRUSTEE

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CPCFA shall, in accordance with state contracting rules, select and appoint a Program Trustee, which CPCFA will use to receive and disburse loan loss reserve funds, consistent with the Project requirements.

J. PROGRAM TRUSTEE ACCOUNTS

CPCFA will establish two CEC-designated accounts with its Program Trustee through this agreement. The CEC may request the return of uncommitted CEC funds from the CEC's program and/or cost accounts at any time for CPCFA's failure to meet the terms and conditions of this Agreement.

1. **CEC Project Account:** an interest-bearing CEC Project Account to provide funds for the premium contributions to the Participating Financial Institutions' CEC loan loss reserve accounts.
 - a. Interest earned on the Project Account will be swept into the CEC Cost Account prior to transfer to a Participating Financial Institution's CEC loan loss reserve account.
2. **CEC Cost Account:** an interest-bearing CEC Cost Account used to reimburse for services provided by the Program Trustee related to maintaining the CEC Project and Cost Accounts and CPCFA for costs and expenses incurred as the Project Administrator. Interest generated from funds held in the CEC Cost Account shall remain in the CEC Cost Account.
 - a. **Deposits** into the CEC Cost Account shall come from:
 - i. Depositing ten (10) percent of each transmittal of funds from the CEC; and
 - ii. CPCFA's authorized collection of interest earned on each Participating Financial Institution's CEC loan loss reserve account and interest earned on funds held in the CEC Project Account prior to transfer to a Participating Financial Institution's CEC loan loss reserve account.
 - b. **Withdrawal of funds:** The CEC shall authorize CPCFA to withdraw funds from the CEC Cost Account, upon receipt of quarterly Invoice Payment Requests, in an amount not to exceed ten (10) percent of the total funds provided to CPCFA under this Agreement, to cover Program Trustee costs and CPCFA's Administrative costs.
 - c. **Marketing, Outreach, and Travel Costs** will be included with and submitted on the quarterly Invoice Payment Request and may be in excess of ten (10) percent Program Trustee and Administrative costs but shall not exceed \$5,000.00 (Five thousand dollars) per quarter without prior written consent from the CEC. Unused funds shall remain under the authority of the CEC.

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Please refer to Exhibit B-Budget Details and Payment Provisions for more details.

- i. Marketing and outreach includes any work to engage current and/or additional Participating Financial Institutions such as conferences, roundtables, lender training, industry events, etc.
 - ii. Travel includes any travel required to fulfill the scope of services included herein and in service to the marketing and outreach efforts.
3. **Program Trustee Accounts Reporting:** In order to reconcile expenditures by the end of the Agreement term, CPCFA shall provide the CEC a report on unused funds, including interest, in the Program Trustee maintained CEC Project Account and the CEC Cost Account three (3) months prior to the end of the Agreement.
4. **Remaining Funds:** CPCFA and the CEC agree that funds (including interest) that have not been transferred to a Participating Financial Institution's CEC loan loss reserve account, or have not been used to cover costs related to maintaining the Program Trustee accounts, CPCFA costs for administration of the Project, or travel and marketing costs will remain in the respective account at the Program Trustee until the last loan has been administered and CEC requests transfer to another designated account for the ZEHDl project or successor programs, or requests the return of the funds.

K. LOAN LOSS RESERVE ACCOUNTS

CPCFA shall require Participating Financial Institutions to maintain the CEC loan loss reserve accounts for the purpose of the Project separate from CPCFA's other CalCAP loan loss reserve accounts except as otherwise permitted above in item C (Previous Loan Loss Reserve Accounts).

1. The CEC loan loss reserve accounts for the Project may be held at either the Participating Financial Institution or at the Program Trustee, based on standard CalCAP practices authorized by CPCFA.
2. **Previous Loan Loss Reserve Accounts:** Participating Participating Financial Institutions may also utilize the same loan loss reserve accounts established and maintained, either by the Participating Financial Institution or the Program Trustee, under previous Interagency Agreements 08-607, 13-606, or 18MSC004 (and any subsequent amendments), for the purpose of the HDV Air Quality Loan Program and/or the Project.
3. **Liability:** During the CEC's participation in CalCAP under this Agreement, the CEC's liability under the program to any person or entity shall not exceed premium contributions paid by CPCFA on behalf of the CEC into any single Participating

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Financial Institution's loan loss reserve account, and in no case shall CEC's liability exceed \$5,000,000.

4. **Participating Financial Institution Loan Loss Reserve Accounts:** After a Participating Financial Institution has enrolled an eligible loan in the program, CPCFA shall approve the transfer of funds from the CEC Project Account to a Participating Financial Institution's CEC loan loss reserve account to cover the eligible premiums.
 - a. Interest collected from each Participating Financial Institution's CEC loan loss reserve account through CPCFA's authorized collection procedures shall be deposited, at a minimum, annually in the CEC Cost Account maintained by the Program Trustee.
5. **The Last Loan Administered:** Premium contributions funded by the CEC in Participating Financial Institutions' loan loss reserve accounts made under this Agreement shall be returned to the CEC, or, at the CEC's discretion and/or direction, held in one of the two CEC-designated accounts at the Program Trustee, once all loans guaranteed by the loan loss reserve account have been administered.

L. REPORTING

1. **Borrower Certification:** CPCFA shall make available to the CEC, upon request, all copies of the Borrower Certifications, subject to the allowable use and disclosure provision in Section L below. CPCFA will collect all other loan enrollment data on the Borrower Certification, not included in the monthly reporting below.
2. **Monthly Reporting:** CPCFA shall provide monthly reports on loans enrolled in the Project to the CEC. The reports will be provided in the form of a spreadsheet, submitted to the CEC electronically, including a document signed by CPCFA's Executive Director stating that to the best of his/her knowledge the information contained in the report is complete and accurate and include the following information:
 - a. **Per Loan:**
 - i. Borrower's site address where zero-emission infrastructure will be installed;
 - ii. Borrower's city;
 - iii. Borrower's zip code;
 - iv. Borrower's county;
 - v. CalCAP loan number;
 - vi. Date enrolled;

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- vii. Type of loan;
- viii. Interest rate;
- ix. Maturity date of loan;
- x. Percentage and dollar amount of the premium contribution;
- xi. Type of business;
- xii. Borrower's three-year average annual revenue;
- xiii. Number of employees; and
- xiv. Minority, Woman or Disabled Veteran Business Enterprise (MWDVBE) information.

b. Project Totals:

- i. Number of loans and Terminal Rental Adjustment Clause Leases (TRAC Leases) enrolled in CalCAP (monthly activity and cumulative activity);
- ii. Dollar amount transferred into each Participating Financial Institution's CEC loan loss reserve account including adjustments;
- iii. Total dollar amount of fund transfers to or from the CEC Project Account and the date of such fund transfers;
- iv. Dollar amounts, including applicable interest in or out of the CEC Project Account;
- v. Interest deposits into the CalCAP/CEC Cost Account;
- vi. Information for each claim including enrolled loan amount, dollar amount paid from Participating Financial Institution's CEC loan loss reserve account;
- vii. Project information from the Borrower Form, Section IV;

3. **Quarterly Reporting:** The quarterly report will be provided in the form of a spreadsheet, submitted to the CEC electronically, include a document signed by CPCFA's Executive Director stating that to the best of his/her knowledge the information contained in the reports is complete and accurate and include administrative costs related to management of CEC-designated accounts and by CPCFA for administration of the Project.

Per Loan:

- i. Number, type, date, and location of chargers or hydrogen fueling stations installed.
- ii. Nameplate capacity of the installed equipment, in kiloWatt (kW) for chargers and kilogram per day (kg/day) for hydrogen.
- iii. Number and type of charging ports per charger.
- iv. Location type, such as street, parking lot, hotel, restaurant, or multi-unit housing.
- v. Total cost per charger or fueling station, the subsidy from the CEC per charger or fueling station, federal subsidy per charger or fueling station, utility subsidy per charger or fueling station, and privately funded share

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per charger or fueling station.

4. **Annual Reporting:** In addition to the monthly reports described above, the CEC shall coordinate with CPCFA to prepare any summary or annual reports that may be required as a result of program implementation.

M. INFORMATION PRACTICES ACT OF 1977

CPCFA and all subcontractors, incentive and grant recipients, and project partners shall comply with the Information Practices Act

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

1. Sources of information. Recipient, and All Entities shall maintain a record of the source of an individual’s Personal Information in accordance with § 1798.16. Per IPA § 1798.16, this requirement does not apply if the data subject is the source of the Personal Information.
2. Use of information. Pursuant to IPA § 1798.14, the Recipient, and All Entities shall only use Personal Information for the purposes of this Agreement. Recipient, and All Entities shall not disclose any Personal Information to any person or entity other than the Energy Commission and Energy Commission employees.
3. Security. Pursuant to IPA § 1798.21, Recipient, and All Entities shall employ appropriate and reasonable safeguards to ensure the security and confidentiality of Personal Information and to protect against anticipated threats or hazards to their security or integrity which could result in any injury.
4. Notice. On or with any form used to collect Personal Information from individuals, the Recipient, and All Entities shall provide the notice required in § 1798.17. At the time of executing this agreement, § 1798.17 requires the following:
 - (a) The name of the agency and the division within the agency that is requesting the information.
 - (b) The title, business address, and telephone number of the agency official who is responsible for the system of records and who shall, upon request, inform an individual regarding the location of his or her records and the categories of any persons who use the information in those records.
 - (c) The authority, whether granted by statute, regulation, or executive order which authorizes the maintenance of the information.
 - (d) With respect to each item of information, whether submission of such information is mandatory or voluntary.
 - (e) The consequences, if any, of not providing all or any part of the requested information.
 - (f) The principal purpose or purposes within the agency for which the information is to be

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used.

- (g) Any known or foreseeable disclosures which may be made of the information pursuant to subdivision (e) or (f) of Section 1798.24.
- (h) The individual's right of access to records containing personal information which are maintained by the agency.

N. MARKETING AND OUTREACH

As described in H.2.c. (Marketing, Outreach, and Travel Costs), CPCFA shall market the Project throughout California to secure Participating Financial Institutions to serve the trucking sector and to educate MDHD vehicle owners, vehicle dealers, and equipment vendors on the program.

O. CONTRACT REPRESENTATIVES

The Project Managers during the term of this Agreement will be:

Requesting Agency: CEC	Providing Agency: State Treasurer's Office
Division: Fuels and Transportation Division	Section/Unit: CPCFA
Name: Marc Perry	Name: Doreen Smith
Address: 715 P Street MS-27 Sacramento, CA 95814	Address: P.O. BOX 942809 Sacramento, CA 95814
Phone: (916) 931-9424	Phone: (916) 654-5610
Email: Marc.Perry@energy.ca.gov	Email: Doreen.Smith@treasurer.ca.gov

Direct all Administrative inquiries to:

Requesting Agency: CEC	Providing Agency: State Treasurer's Office
Division: Fuels and Transportation Division	Section/Unit: CPCFA
Attention: Marc Perry	Attention: Melissa Foster
Address: 715 P Street MS-27 Sacramento, CA 95814	Address: P.O. BOX 942809 Sacramento, CA 95814
Phone: (916) 931-9424	Phone: (916) 654-5610
Email: Marc.Perry@energy.ca.gov	Email: calcap@treasurer.ca.gov

Direct all inquiries to the Administrative Representatives.

The parties may change their Contract Representative(s) upon providing ten (10) days written notice to the other party's Contract Representative(s). The notifying party shall provide complete contact information for the replacement Contract Representative(s) to include the information provided above.

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TASKS

- A. The CEC shall be solely responsible for Task 1.2.
- B. The CPCFA shall be solely responsible for Tasks 1.1, 2, 3, 5, 6, and 7.
- C. The CEC and CPCFA shall be jointly responsible for Task 4.
- D. The parties shall cooperate with each other as necessary and appropriate to ensure the satisfactory performance of each Task.

TASK 1 (CEC AND CPCFA): PROJECT FUNDING

The goal of this task is to establish a funding source for the Project.

Task 1.1 (CPCFA): Initial Project Invoicing

The CPCFA shall prepare and submit an invoice to the CEC in the amount of \$5.0 million for purposes of beginning the Project.

Product Due:

- Invoice requesting \$5.0 million

Task 1.2 (CEC): Disbursement of Project Funds

Upon receipt of the invoice described in Task 1.1 from the CPCFA, the CEC shall disburse the amount of \$5.0 million from available Clean Transportation Program funds to the CPCFA in accordance with the terms of this Agreement. The CPCFA shall report on receipt of all disbursements as specified in the status reports prepared under Task 4.2.

Product Due:

- Remit \$5.0 million dollars to the CPCFA

TASK 2 (CPCFA) FINANCIAL MANAGEMENT OF THE PROJECT

This task describes the flow and management of Project funds.

Task 2.1: Establishment of the CEC Project Account and CEC Cost Account

At all times throughout this agreement, the CPCFA shall maintain a valid services agreement with a Program Trustee to hold and manage Project funds consistent with this agreement.

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Upon receipt of the first disbursement from the CEC, the CPCFA shall establish two CEC-designated accounts with its Program Trustee: 1) an interest-bearing CEC Project Account to provide funds for the loan loss reserve contributions to the CEC Loan Loss Reserve Accounts for each participating financial institution; and 2) an interest-bearing CEC Cost Account.

The CPCFA shall make deposits into the CEC Project account promptly upon receipt of disbursement from the CEC as described in Task 1 of this Agreement.

Additionally, the CPCFA shall make deposits into the CEC Project account utilizing funds recovered from participating financial institutions upon their termination or withdrawal from the Project as described in the Project regulations.

The CPCFA shall make deposits into the CEC Cost Account as follows: Deposits into the CEC Cost Account shall come from the CPCFA's authorized collection of interest earned on each Participating Financial Institution's CEC Loan Loss Reserve Account, and interest earned on funds held in the CEC Project Account prior to disbursement to a Participating Financial Institution's CEC Loan Loss Reserve Account. Interest generated from funds held in the CEC Cost Account shall remain in the CEC Cost Account. Funds held in the CEC Cost Account shall be used to cover the CPCFA's Administrative Costs, including but not limited to the Program Trustee's costs, not to exceed \$500,000 plus interest earnings deposited into the CEC Cost Account. Administrative costs outside of those specified in this scope of work may be provided for in a modification to this Agreement, per Task 4.2.

Products Due:

- The CPCFA shall establish the above-referenced Accounts and report to the CEC on all deposits and transfers as specified in the status reports prepared under Task 4.2.

Task 2.2: Establishment of and Contributions to the Participating Financial Institutions' Loan Loss Reserve Accounts

The CPCFA shall establish CEC Loan Loss Reserve Accounts pursuant to the Project regulations. After a Participating Financial Institution has enrolled an eligible loan in the Project, the CPCFA shall approve and direct the transfer of funds from the CEC Project Account to a Participating Financial Institution's CEC Loan Loss Reserve Account in the amount of the approved premium contribution. The CPCFA shall approve a minimum Loan Loss Reserve contribution in the amount of 25 percent of the enrolled loan amount for all Qualified Loans enrolled in the Project.

The CEC Loan Loss Reserve Accounts for the Project may be held by either the Participating Financial Institution or the Program Trustee, pursuant to the Project regulations. If a Participating Financial Institution participates in another of the CPCFA's

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loan loss reserve programs, CPCFA shall establish a separate CEC Loan Loss Reserve Account to maintain Loan Loss Reserve contributions for the Project.

Products Due:

- The CPCFA shall report to the CEC on all deposits and transfers as specified in the status reports prepared under Task 4.2. Upon the CEC's request, the CPCFA shall also provide documentation of current balances in each Participating Financial Institution's Loan Loss Reserve Account.

Task 2.3 Payment of Eligible Claims for Reimbursement

Subject to the conditions described in the Project regulations, the CPCFA shall review, approve, and direct the payment of a qualified Claim for Reimbursement to a Participating Financial Institution from the Financial Institution's CEC Loan Loss Reserve Account.

Products Due:

- The CPCFA shall report to the CEC on Claims for Reimbursement paid as specified in the status reports prepared under Task 4.2.

TASK 3 (CPCFA): CREATE AND IMPLEMENT PROJECT REGULATIONS AND OPERATING DOCUMENTS FOR THE PROJECT

This task requires the CPCFA to implement the Project regulations. The Project shall be operated in compliance with Project regulations and this Agreement.

Task 3.1 Creation of Project Regulations and Forms

The CPCFA will create final Project regulations, as necessary to update current regulations, and develop business forms (including a standard application) for the Project. The CPCFA shall commence rulemaking pursuant to HSC Section 44520(b) in a timely fashion to create the Project regulations. Once created, CPCFA shall continue rulemaking to make the regulations permanent.

CPCFA shall submit draft text of the regulations and associated materials to the CEC for review and approval before any public posting, and also before any submittal to OAL. CPCFA shall ensure that CEC has at least two weeks to review the draft material, followed by a week to respond to any CEC comments or edits, before any deadline to post or submit.

CPCFA shall submit draft business forms to CEC for review and approval prior to finalizing and making those forms publicly available.

Products Due:

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- The CPCFA shall submit draft text of the regulations to the CEC CAM for review and approval.
- The CPCFA shall submit draft business forms to the CEC CAM for review and approval.

Task 3.2 Implementation of Project Regulations

The CPCFA shall implement the Project according to the regulations.

Products Due:

- The CPCFA shall implement and adhere to the Project regulations. The CPCFA shall provide updates to the CEC regarding potential changes to the Project regulations and, with CEC review and approval, undertake rulemaking in a timely fashion to change the Project regulations if CEC determines that changes are necessary.

TASK 4 (CEC and CPCFA) MODIFICATIONS TO THE INTERAGENCY AGREEMENT

Within six months of implementation of the Project, the Parties shall evaluate the Project regulations for effectiveness, and may make modifications thereto.

No modification of the terms of this Agreement shall be valid unless made in writing and signed by the CEC and the CPCFA. No oral understanding or agreement not expressly incorporated in this Agreement shall be binding upon the Parties.

Products Due:

- Written modifications to this Agreement and/or the Project regulations, if any.

TASK 5 (CPCFA): ADMINISTER THE PROJECT

This task is to ensure the CPCFA administers the Project in compliance with Project regulations and this Agreement, and provides relevant status reports to the CEC.

Task 5.1 Administration of the Project

The CPCFA shall administer the Project pursuant to the Project regulations and this Agreement. The Project regulations will define a qualified Financial Institution, borrower, project, and all other terms and conditions of the Project. CPCFA shall require Program Trustee, Participating Financial Institutions, and borrowers to comply with all the provisions applicable to subcontractors, as identified in Exhibit D to this Agreement, Public/Governmental Entity Special Terms and Conditions, including but not limited to prevailing wage, nondiscrimination, and audit requirements. In the event of conflict between Exhibit D and the GIA-610, the GIA-610 prevail.

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Specifically, the CPCFA shall review and approve applications from qualified Financial Institutions pursuant to the Project regulations and all applicable laws, ordinances, regulations, and standards. In addition, the CPCFA shall require each Participating Financial Institution and Borrower to complete and submit a Project Loan Enrollment Application, including all required Participating Financial Institution and Borrower certifications (Exhibit A, Attachment I). The purpose of the Project Application is for each Participating Financial Institution and Borrower to substantiate and certify that the loan, the business and the project meets specified requirements of Project.

The CEC acknowledges that the CPCFA has no role in underwriting loans enrolled in the Project. Loan approval is made solely by the Participating Financial Institution, according to the Participating Financial Institution's existing credit policies and underwriting criteria. The CPCFA's role in approving loan enrollments into the Project is limited to reviewing the eligibility of the Participating Financial Institution, the eligibility of the Borrower, and ensuring the proceeds of the loan are consistent with the Project regulations and applicable law.

Products Due:

- The CPCFA shall report to the CEC on program progress as specified in the status reports prepared under Task 5.2.

Task 5.2 Status Reports

Monthly Reports

The CPCFA shall provide monthly reports on loans enrolled in the Project to the CEC. The information shown below shall be reported and submitted to the CEC electronically:

- a. Number of loans enrolled in the Project;
- b. Dollar amount disbursed into each Participating Financial Institution's CEC Loan Loss Reserve Account including adjustments;
- c. Total dollar amount of fund disbursements to or from the CEC Project Account and the date of such fund disbursements;
- d. Dollar amounts, including applicable interest in or out of the CEC Project Account;
- e. Interest deposits into the CEC Cost Account;
- f. Information for each Project claim including but not limited to, enrolled claim amount, dollar amount paid from each Participating Financial Institution's CEC Loan Loss Reserve Account, and the dollar amount of funds from recovered assets put back into each Participating Financial Institution's CEC Loan Loss Reserve Account;

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- h. Project information from the ZEHD Project application, Exhibit A, Attachment 1, Section IV; and
- i. A document signed by the CPCFA's Executive Director stating that to the best of his/her knowledge the information contained in the reports is complete and accurate.

Products Due:

- Monthly progress reports due by the 10th day of each month.

Quarterly Reports

The CPCFA shall provide quarterly reports on loans enrolled in the Project to CEC. The report will include the following information: Borrower's city and county, loan number, enrolled loan amount, date enrolled, maturity date of the loan, percentage and dollar amount of the Loan Loss Reserve contribution, claims and rebates paid, type of business, number of employees, minority/woman/veteran-owned business information, number of charging dispensers and/or hydrogen dispensing equipment purchased, and the number of charging ports and/or hydrogen nozzles.

The CPCFA shall submit to the CEC a report detailing the CPCFA's Administrative Costs incurred by the CPCFA in support of the Project.

Products Due:

- Quarterly progress reports due by the 10th day of each January, April, July and October.

Other Status Reports

In addition to the monthly and quarterly reports described above, the CPCFA shall prepare, such other summary or annual reports that may be required as a result of Project implementation. The CPCFA shall make available to the CEC, upon request, all copies of the Project applications, subject to the allowable use and disclosure provision in the General Terms and Conditions of this Agreement.

After funding the last project, the Parties shall assess the reporting requirements related to the claims made by Participating Financial Institutions for reimbursement to Participating Financial Institutions and Borrower Rebates, and may mutually agree to make modifications to the frequency that this information will be reported to the CEC, consistent with Task 4.2.

Products Due:

- Summary and/or annual reports

TASK 6 (CPCFA): PROJECT COMPLIANCE

EXHIBIT A SCOPE OF WORK

The CPCFA shall ensure compliance with this Agreement and Project regulations by all Project participants, including the Participating Financial Institutions and Borrowers. In addition, the CPCFA shall require Participating Financial Institutions to provide each Borrower a copy of the Privacy Notice for the Project (Exhibit A, Attachment II) which among other things identifies the CPCFA as the responsible agency under the California Information Practices Act (CIPA).

Products Due:

- Privacy Notice for the Project provided by the Participating Financial Institution to each Borrower

TASK 7 (CPCFA): RECONCILIATION AT PROJECT CLOSEOUT

In order to reconcile expenditures by the end of the Agreement term, the CPCFA shall provide the CEC a report on unused funds, including interest, in the CEC Project Account and the CEC Cost Account, three (3) months prior to the end of the Agreement. The Parties agree that funds (including interest) that have not been disbursed to a Participating Financial Institution's CEC Loan Loss Reserve Account, or have not been used to cover costs related to maintaining the Program Trustee accounts or the CPCFA costs for administration of the Project, , shall remain in the respective account at the Program Trustee until the CEC requests disbursement to another designated account for the purpose of carrying out its policy goals, or requests the return of the funds, in which case the CPCFA shall ensure that said funds are promptly returned to or disbursed as directed by the CEC.

Products Due:

- Report of Unused Funds in CEC Project Account and CEC Cost Account

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AGREEMENT MANAGEMENT

1. The Contractor Project Manager may not be replaced without the Energy Commission Contract Agreement Manager's (CAM) prior written approval. Such approval shall not be unreasonably withheld. The Contractor Project Manager is responsible for the day-to-day project status, decisions and communications with the CAM.
2. The Energy Commission may change the CAM by notice given Contractor at any time signed by the Energy Commission Contracts Agreement Officer (CAO). The CAM is responsible for the day-to-day Agreement status, decisions and communications with the Contractor Project Manager. The CAM will review and approve all project deliverables, reports and invoices.
3. Energy Commission staff will be permitted to work side by side with Contractor's staff to the extent and under conditions that may be directed by the CAM. In this connection, Energy Commission staff will be given access to all data, working papers, etc., which Contractor may seek to utilize.
4. Contractor will not be permitted to utilize Energy Commission personnel for the performance of services, which are the responsibility of Contractor unless the CAM previously agrees to such utilization in writing and an appropriate adjustment in price is made. No charge will be made to Contractor for the services of Energy Commission employees while performing, coordinating or monitoring functions.
5. If the Schedule of Deliverables and Due Dates needs to be revised after the execution of the Agreement, the revised dates cannot extend beyond the term end date of the Agreement. Contractor shall work with the CAM to agree on the new deliverable due dates. The CAM shall issue the revised Schedule of Deliverables and Due Dates to the Contractor and the CAO. Although the dates can be revised, the deliverables cannot be changed through this process.

2. **SUBCONTRACTORS**

No Subcontractor(s) are named for this Agreement. If subcontractor(s) are added later to perform any portion of this Agreement, the following clauses apply and Contractor shall manage the performance of the subcontractor(s).

AND

- A. Nothing contained in this Agreement or otherwise, shall create any contractual relation between the State and any subcontractors, and no subcontract shall relieve the Contractor of his responsibilities and obligations hereunder. The Contractor agrees to be as fully responsible to the State for the acts and omissions of its subcontractors and/or persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Contractor. The Contractor's

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obligation to pay its subcontractors is an independent obligation from the State's obligation to make payments to the Contractor. As a result, the State shall have no obligation to pay or to enforce the payment of any monies to any subcontractor.

- B. Contractor shall be responsible for establishing and maintaining contractual agreements with and the reimbursement of each of the subcontractors for work performed in accordance with the terms of this Agreement. Contractor shall be responsible for scheduling and assigning subcontractors to specific tasks in the manner described in this Agreement; coordinating subcontractor accessibility to Energy Commission staff, and submitting completed products to the CAM. Upon request by the CAM, Contractor shall provide copies of all contractual agreements with subcontractors.
- C. All subcontracts shall contain the following: 1) the audit rights and non-discrimination provision stated in the General Terms and Conditions (Exhibit C); 2) further assignments shall not be made to any third or subsequent tier subcontractor without additional written consent of the CAM; and 3) the confidentiality provisions in the Reports paragraph of this Agreement.
- D. Contractors who are subcontracting with University of California may use the terms and conditions negotiated by the Energy Commission with University of California for their subcontracts. Contractors who are subcontracting with the Department of Energy's (DOE) Lawrence Livermore National Laboratory, Lawrence Berkeley National Laboratory, and the Sandia National Laboratories may use the terms and conditions negotiated with the Department of General Services. Contractors who are subcontracting with all other DOE laboratories may use the terms and conditions negotiated by the Energy Commission with DOE for their subcontracts.
- E. **Process for New Subcontractors**
The Energy Commission reserves the right to replace a subcontractor, request additional subcontractors, and approve additional subcontractors requested by Contractor. A replaced subcontractor and an added subcontractor are both defined as a "new" subcontractor. Such changes shall be subject to the following conditions:
- 1) The new subcontractor shall be selected using either: (a) A competitive bid process with written evaluation criteria by obtaining three or more bids and advertising the work to a suitable pool of subcontractors including without limitation: California Contracts Register; Contractor's mailing lists; mass media; professional papers or journals; posting on websites; and telephone or email solicitations; or (b) Non-competitive bid (sole source) process with a specific subcontractor.
 - 2) When a new subcontractor is proposed the CAM shall complete and submit to the CAO a "Subcontractor Addition" form. The proposed subcontract can be executed only after the CAO approves the Subcontractor Addition form. This form identifies the new subcontractor and bidding method used (competitive or non-competitive), the tasks the new subcontractor will be performing and the following shall be attached: resumes and completed Energy Commission budget forms.

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- 3) Labor Rates & Classifications: Personnel of new subcontractors must fit within a classification and be equal to or less than a rate already listed in the Agreement budget and the rate cannot exceed the subcontractor's actual rate. Adding classifications and/or higher rates for the new subcontractor other than ones currently listed in the Agreement requires a formal amendment.
- 4) Non-Labor Rates: The non-labor rates (such as fringe, indirect overhead, general and administrative, profit) charged by the new subcontractor shall be equal to or less than the existing non-labor rates already listed in the Agreement budget and cannot exceed subcontractor's actual non-labor rates. Adding higher non-labor rates for the new subcontractor than ones currently listed in the Agreement requires a formal amendment.
- 5) Other Direct Operating Expenses: The new subcontractor may charge other direct operating expenses (such as material or equipment) as already identified in the Agreement budget. No new types of operating expenses are allowed to be charged by the new subcontractor. Adding new types of operating expenses for the new subcontractor requires a formal amendment.

3. **CHANGES TO THE AGREEMENT**

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

- Change of Contractor's legal name
- Change of Contractor
- Changes in order to disencumber funds
- Changes to Exhibit A that reasonably modify the purpose of the Agreement
- Changes to Exhibit A that extend the due dates beyond the term of the Agreement
- Changes to Exhibit B that increase the amount of the Agreement
- Changes to Exhibit B that increase rates or fees
- Reallocations to Exhibit B that substantially changes Exhibit A

4. **STANDARD OF PERFORMANCE**

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

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

5. REPORTS, DELIVERABLES AND INFORMATION DISCLOSURE

- (a) **Progress and Final Reports:** Contractor shall prepare progress reports summarizing all activities conducted by Contractor to date on a schedule as provided in Exhibit A or a work authorization, if applicable. At the conclusion of this Agreement, Contractor shall prepare a comprehensive Final Report, on a schedule as provided in Exhibit A.
- (b) **Title:** Contractor's name shall only appear on the cover and title page of reports as follows:
California Energy Commission
Project Title
Contractor Number
By (Contractor)
- C. **Ownership:** Each report shall become the property of the Energy Commission.
- D. **Non-disclosure:** Contractor will not disclose data or disseminate the contents of the final or any progress report without written permission of the CAM, except as provided in F, below. Permission to disclose information on one occasion or at public hearings held by the Energy Commission relating to the same shall not authorize Contractor to further disclose and disseminate the information on any other occasion. Contractor will not comment publicly to the press or any other media regarding its report, or Commission's actions on the same, except to Commission staff, Contractor's own personnel involved in the performance of this Agreement, or at a public hearing, or in response to questions from a legislative committee. Notwithstanding the foregoing, in the event any public statement is made by the Energy Commission or any other party, based on information received from the Energy Commission as to the role of Contractor or the content of any preliminary or final report, Contractor may, if it believes the statement to be incorrect, state publicly what it believes is correct.

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- E. **Confidentiality:** No record which has been designated as confidential, or is the subject of a pending application of confidentiality, shall be disclosed by the Contractor, Contractor's employees or any tier of subcontractors, except as provided in 20 California Code of Regulations, Sections 2506 and 2507, unless disclosure is ordered by a court of competent jurisdiction (20 California Code of Regulations, Sections 2501, et seq.). At the election of the CAM, Contractor, Contractor's employees and any subcontractor shall execute a "Confidentiality Agreement," supplied by the CAM or Contract Officer. Each subcontract shall contain provisions similar to the foregoing related to the confidentiality and nondisclosure of data.
- F. **Disclosure:** Ninety days after any document submitted by the contractor is deemed by the CAM to be a part of the public records of the State, Contractor may, if it wishes to do so at its own expense, publish or utilize a report or written document but shall include the following legend:

LEGAL NOTICE

This report was prepared as a result of work sponsored by the California Energy Commission (Energy Commission). It does not necessarily represent the views of the Energy Commission, its employees, or the State of California. The Energy Commission, the State of California, its employees, contractors, and subcontractors make no warranty, express or implied, and assume no legal liability for the information in this report; 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 Energy Commission nor has the Energy Commission passed upon the accuracy or adequacy of the information in this report.

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6. **CONTRACT DATA, OWNERSHIP RIGHTS**

- A. "Data" as used in this Agreement means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research or experimental, developmental or engineering work, or be usable or be used to define a design or process, or to support a premise or conclusion asserted in any deliverable document required by this Agreement. The data may be graphic or pictorial delineations in media, such as drawings or photographs, data or information, etc. It may be in machine form, such as punched cards, magnetic tape or computer printouts, or may be retained in

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computer memory.

- B. "Deliverable data" is that data which, under the terms of this Agreement, is required to be delivered to the Energy Commission and shall belong to the Energy Commission.
- C. "Proprietary data" is such data as the Contractor has identified in a satisfactory manner as being under Contractor's control prior to commencement of performance of this Agreement, and which Contractor has reasonably demonstrated as being of a proprietary nature either by reason of copyright, patent or trade secret doctrines in full force and effect at the time when performance of this Agreement is commenced. The title to "proprietary data" shall remain with the Contractor throughout the term of this Agreement and thereafter. The extent of the Energy Commission access to and the testimony available regarding, the proprietary data shall be limited to that reasonably necessary to demonstrate, in a scientific manner to the satisfaction of scientific persons, the validity of any premise, postulate or conclusion referred to or expressed in any deliverable for this Agreement.
- D. "Generated data" is that data, which a Contractor has collected, collated, recorded, deduced, read out or postulated for utilization in the performance of this Agreement. Any electronic data processing program, model or software system developed or substantially modified by the Contractor in the performance of this Agreement at the Energy Commission's expense, together with complete documentation thereof, shall be treated in the same manner as "generated data." "Generated data" shall be the property of the Energy Commission, unless and only to the extent that it is specifically provided otherwise in this Agreement.
- E. As to "generated data" which is reserved to Contractor by the express terms hereof, and as to any pre-existing or "proprietary data" which has been utilized to support any premise, postulate or conclusion referred to or expressed in any deliverable hereunder, Contractor shall preserve the same in a form which may be introduced as evidence in a court of law at Contractor's own expense for a period of not less than three years after receipt by the Energy Commission of the Final Report herein.
- 6. Before the expiration of the three years, and before changing the form of or destroying any data, Contractor shall notify the Energy Commission of any contemplated action and the Energy Commission may, within thirty (30) days after notification, determine whether it desires the data to be preserved. If the Energy Commission so elects, the expense of further preserving data shall be paid for by the Energy Commission. Contractor agrees that the Energy Commission may at its own expense, have reasonable access to data throughout the time during which data is preserved. Contractor agrees to use its best efforts to furnish competent witnesses or to identify competent

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witnesses to testify in any court of law regarding data.

7. **PUBLIC HEARINGS**

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

8. **DISPUTES**

In the event of an Agreement dispute or grievance between Contractor and the Energy Commission, both parties may follow the procedure detailed below. Contractor shall continue with the responsibilities under this Agreement during any dispute.

A. First Level Dispute Resolution

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

B. Second Level Dispute Resolution

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

9. **TERMINATION**

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

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

A. With Cause

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

- 1) Failure to perform or breach of any of the terms or covenants at the time and in the manner provided in this Agreement; or
- 2) Contractor is not able to pay its debts as they become due and/or Contractor is in default of an obligation that impacts his ability to perform under this Agreement; or
- 3) It is determined after notice and hearing by the Energy Commission or the Executive Director that gratuities were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the Energy Commission, with a view toward securing an Agreement or securing favorable treatment with respect to awarding or amending or making a determination with respect to performance of the Agreement; or
- 4) Significant change in Commission policy such that the work or product being funded would not be supported by the Energy Commission; or
- 5) Reorganization to a business entity unsatisfactory to the Energy Commission; or

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- 6) The retention or hiring of subcontractors, or the replacement or addition of personnel that fail to perform to the standards and requirements of this Agreement.

B. Without Cause

The Energy Commission may, at its option, terminate this Agreement without cause in whole or in part, upon giving thirty (30) days advance notice in writing to the Contractor. In such event, the Contractor agrees to use all reasonable efforts to mitigate the Contractor's expenses and obligations hereunder. Also, in such event, the Energy Commission shall pay the Contractor for all satisfactory services rendered and expenses incurred within 30 days after notice of termination which could not by reasonable efforts of the Contractor have been avoided, but not in excess of the maximum payable under this Agreement.

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

11. **CAPTIONS**

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

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

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

13. **NOTICE**

Legal notice must be given using any of the following delivery methods: U.S. Mail, overnight mail, or personal delivery, providing evidence of receipt to the person identified in Exhibit F of this Agreement for legal notices.

Delivery by fax or e-mail is not considered legal notice for the purpose of this clause. This paragraph is not intended to apply to normal, daily communication between the parties related to progress of the work. This clause applies to situations where notice

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is required to be given by this Agreement or the parties are asserting their legal rights and remedies.

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

14. STOP WORK

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

- A. Compliance. Upon receipt of such stop work order, Contractor 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 Commission based upon a written request by Contractor for an equitable adjustment. Such adjustment request must be made by Contractor within thirty (30) days from the date of receipt of the stop work notice.
- C. Revoking a Stop Work Order. Contractor shall resume the stopped work only upon receipt of written instructions from the Energy Commission Contract Officer canceling the stop work order.

15. BUSINESS ACTIVITY REPORTING

- A. Contractor shall promptly notify the CAM of the occurrence of any of the following:
 - 1) A change of address.
 - 2) A change in the business name or ownership.
 - 3) The existence of any litigation or other legal proceeding affecting this Agreement.
 - 4) The occurrence of any casualty or other loss to Project personnel, equipment or third parties.
 - 5) Contractor's receipt of notice of any claim or potential claim against Contractor for patent, copyright, trademark, service mark and/or trade secret infringement that could affect the Energy Commission's rights.
- B. Contractor shall not change or reorganize the type of business entity under which it does business except upon prior written notification to the Energy Commission. A change of business entity or name change requires an amendment assigning or novating the Agreement to the changed entity. In the event the Energy Commission is not satisfied that the new entity can perform as

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the original Contractor, the Energy Commission may terminate this Agreement as provided in the Termination clause.

16. PUBLIC WORKS -- PAYMENT OF PREVAILING WAGES

Generally Required by Law

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

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

Projects deemed to be public works require among other things the payment of prevailing wages.

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

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

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

If the Contactor is unsure whether the project receiving this award is a “public work” as defined in the California Labor Code, it may wish to seek a timely determination from the DIR or an appropriate court.

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

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

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Indemnification. By accepting this Agreement, and as a material term of this Agreement, Contractor agrees to indemnify the CEC and hold the CEC harmless for any and all financial consequences arising out of or resulting from the failure of Contractor and/or any of Contractor's subcontractors to pay prevailing wages or to otherwise comply with the requirements of prevailing wage law.

Budget. Contractor's budget and subcontractors' budgets on public works projects must indicate which job classifications are subject to prevailing wage, if applicable. For detailed information about prevailing wage and the process to determine if the proposed project is a public work, Contractor may wish to contact the DIR or a qualified labor attorney of their choice for guidance.

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

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

Certification. Contractor shall certify to the CEC on each Payment Request Form, either that (1) prevailing wages were paid to eligible workers who provided labor for work covered by the payment request and that the Contractor and all contractors and subcontractors otherwise complied with all California prevailing wage laws, or (2) that the project is not a public work requiring the payment of prevailing wages.

17. **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.

18. **ASSURANCES**

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

19. **INTERPRETATION OF TERMS**

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

20. **HARASSMENT TRAINING**

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

21. **EXECUTIVE ORDER N-6-22 – RUSSIA SANCTIONS**

On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. “Economic Sanctions” refers to sanctions imposed by the U.S. government in response to Russia’s actions in Ukraine, as well as any sanctions imposed under state law. The EO directs state agencies to terminate contracts with, and to refrain from entering any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should the State determine Contractor is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this agreement. The State shall provide Contractor advance written notice of such termination, allowing Contractor at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the State.