

## AGREEMENT FOR SERVICES OF INDEPENDENT CONTRACTOR

**THIS AGREEMENT** ("Agreement") is made by and between the County of Santa Barbara, a political subdivision of the State of California ("COUNTY") and Veregy Pacific, a California limited liability company ("CONTRACTOR" and together with COUNTY, collectively, the "Parties" and each a "Party").

**WHEREAS**, CONTRACTOR represents that it is specially trained, skilled, experienced, and competent to perform the special services required by COUNTY and is willing to perform such services, and COUNTY desires to retain the services of CONTRACTOR pursuant to the terms, covenants, and conditions herein set forth.

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained herein, the Parties agree as follows:

### 1. DESIGNATED REPRESENTATIVE

Brandon Kaysen, whose phone number is (805) 621-1135, is the representative of COUNTY and will administer this Agreement for and on behalf of COUNTY. Clayton Boop, Vice President, West, whose phone number is 602.429.3069, is the authorized representative for CONTRACTOR. Changes to a Party's designated representative shall be made only after advance written notice to the other Party.

### 2. NOTICES

All notices, claims, waivers, consents and other communications required or permitted to be given under this Agreement (each "Notice") shall be in writing and addressed to the receiving Party at its address set forth below (or to such other address that such receiving Party may designate from time to time in accordance with this Section), by personal delivery, facsimile, by first class mail via the United States Postal Service ("USPS"), registered or certified mail, or nationally recognized overnight courier service (in each case, return receipt requested, postage prepaid):

To COUNTY:                    Brandon Kaysen  
                                      Energy Manager  
                                      General Services Department  
                                      County of Santa Barbara  
                                      Courthouse, East Wing, 2nd Floor  
                                      1105 Santa Barbara Street  
                                      Santa Barbara, CA 93101  
                                      Tel: (805) 621-1135  
                                      [bkaysen@countyofsb.org](mailto:bkaysen@countyofsb.org)

To CONTRACTOR:           Clayton M. Boop  
                                     Vice President, West  
                                     Veregy  
                                     3312 East Broadway Road  
                                     Phoenix, AZ 85040  
                                     Email: [cboop@veregy.com](mailto:cboop@veregy.com)

O: 602.429.3069

If sent by first class mail, Notices shall be deemed to be received five (5) days following their deposit in the USPS mail. This Notices section shall not be construed as meaning that either Party agrees to service of process except as required by applicable law.

**3. SCOPE OF SERVICES**

CONTRACTOR shall provide to COUNTY the services (the "Services") as set forth in the Statement of Work attached hereto as Exhibit A and incorporated herein by reference ("Statement of Work").

**4. TERM**

The term of this Agreement ("Term") shall commence on the Effective Date (defined below) and shall terminate upon completion of the Services under the Statement of Work, but no later than October 3, 2026, unless otherwise directed by COUNTY or unless earlier terminated in accordance with the provisions of this Agreement.

**5. COMPENSATION OF CONTRACTOR**

In full consideration for CONTRACTOR's services, CONTRACTOR shall be paid for performance of the Services under this Agreement in accordance with the terms of EXHIBIT B, attached hereto and incorporated herein by reference, subject to adjustments as provided in this Agreement. Billing shall be made by invoice, which shall include the contract number assigned by COUNTY, delivered to COUNTY at the address for Notices to COUNTY set forth in Section 2, above, following completion of the increments identified on EXHIBIT B. Unless otherwise specified on EXHIBIT B, payment shall be net thirty (30) days from delivery of invoice.

CONTRACTOR shall provide a \$50,000 credit towards the cost of the Services in consideration of the COUNTY assigning the 179D Tax Deduction to 'Veregy Pacific, LLC (f/k/a Empowered Solutions, LLC)' by executing the 179D Deduction Form attached hereto as Attachment A-1.

COUNTY acknowledges and represents that the project site where CONTRACTOR's Services are to be performed and all building and improvements located on the same are "government-owned buildings" as COUNTY is a political subdivision and COUNTY owns said property, building and other improvements where the Services are to be performed ("Property"). COUNTY hereby allocates to CONTRACTOR any and all Section 179D deductions for the Services. COUNTY further acknowledges that CONTRACTOR is the entity that has created and is primarily responsible for the technical specifications for installation of energy efficient work at COUNTY's Property, as described herein. COUNTY agrees to complete and execute the "Form for Allocation of Section 179D Deduction," which is attached hereto as Attachment A-1 and incorporated herein by reference. COUNTY also agrees to reasonably participate, at no cost to COUNTY, in any analysis, inspection and/or certification required by statute or otherwise necessary to ensure that CONTRACTOR receives the Section 179D deduction.

**6. INDEPENDENT CONTRACTOR**

It is mutually understood and agreed that CONTRACTOR (including any and all of its officers, agents, and employees) shall perform all of the Services under this Agreement as an independent contractor as to COUNTY, and not as an officer, agent, servant, employee, joint venture, partner, or associate of COUNTY. Furthermore, COUNTY shall have no right to control, supervise, or direct the manner or method by which CONTRACTOR shall perform its work and function. However, COUNTY shall retain the right to administer this Agreement so as to verify that CONTRACTOR is performing its obligations hereunder in accordance with the terms and conditions hereof. CONTRACTOR understands and acknowledges that it shall not be entitled to any of the benefits of a COUNTY employee, including, but not limited to, vacation, sick leave, administrative leave, health insurance, disability insurance, retirement, unemployment insurance, workers' compensation and protection of tenure. CONTRACTOR shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, CONTRACTOR shall be solely responsible and save COUNTY harmless from all matters relating to payment of CONTRACTOR's employees, including compliance with Social Security withholding and all other regulations governing such matters. It is acknowledged that during the Term of this Agreement, CONTRACTOR may be providing services to others unrelated to the COUNTY or to this Agreement. CONTRACTOR has no authority to commit, act for or on behalf of COUNTY, or to bind COUNTY to any obligation or liability.

## **7. STANDARD OF PERFORMANCE**

CONTRACTOR certifies that it has the skills, expertise, and all licenses and permits necessary to perform the Services. Accordingly, CONTRACTOR shall perform all such Services in the manner and according to the standards observed by a competent practitioner of the same profession in which CONTRACTOR is engaged. All products of whatsoever nature, which CONTRACTOR delivers to COUNTY pursuant to this Agreement, shall be prepared in a first class and workmanlike manner, and shall conform to the highest standards of quality observed by professionals practicing in CONTRACTOR's profession. CONTRACTOR shall correct any errors or omissions in the performance of the Services, at COUNTY'S request without additional compensation. CONTRACTOR has and shall, at CONTRACTOR's sole cost and expense, all times during the Term, maintain in effect all permits, licenses, permissions, authorizations, and consents required by applicable law or otherwise necessary to carry out CONTRACTOR's obligations under this Agreement. CONTRACTOR is in compliance with and shall at all times during the Term comply with all applicable laws, regulations, and ordinances.

## **8. DEBARMENT AND SUSPENSION**

CONTRACTOR certifies to COUNTY that none of it or its employees or principals are debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, state, or county government contracts. CONTRACTOR certifies that it shall not contract with a subcontractor that is so debarred or suspended.

## **9. TAXES**

CONTRACTOR shall pay all taxes, levies, duties, and assessments of every nature due in connection with any work under this Agreement, and shall make any and all payroll deductions required by law. CONTRACTOR is responsible for all CONTRACTOR personnel and for the payment of their compensation, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments, and disability benefits. In no event shall COUNTY pay or be responsible for any taxes imposed on, or with respect to, CONTRACTOR's income, revenues, gross receipts, personnel, real or personal property, or other assets. COUNTY shall not be responsible for paying any taxes on CONTRACTOR's behalf, and should COUNTY be required to do so by state, federal, or local taxing agencies, CONTRACTOR agrees to promptly reimburse COUNTY for the full value of such paid taxes plus interest and penalty, if any. These taxes shall include, but not be limited to, the following: FICA (Social Security), unemployment insurance contributions, income tax, disability insurance, and workers' compensation insurance.

## **10. CONFLICT OF INTEREST**

CONTRACTOR covenants that CONTRACTOR presently has no employment or interest and shall not acquire any employment or interest, direct or indirect, including any interest in any business, property, or source of income, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. CONTRACTOR further covenants that in the performance of this Agreement, no person having any such interest shall be employed by CONTRACTOR. CONTRACTOR must promptly disclose to COUNTY, in writing, any potential conflict of interest. COUNTY retains the right to waive a conflict of interest disclosed by CONTRACTOR if COUNTY determines it to be immaterial, and such waiver is only effective if provided by COUNTY to CONTRACTOR in writing.

## **11. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY**

Provided that CONTRACTOR has been paid for the Services, COUNTY shall be the owner of the following items incidental to this Agreement upon production, whether or not completed: all data collected, all documents of any type whatsoever, all photos, designs, sound or audiovisual recordings, software code, inventions, technologies, and other materials, and any material necessary for the practical use of such items, from the time of collection and/or production whether or not performance under this Agreement is completed or terminated prior to completion. CONTRACTOR shall not release any of such items to other parties except after prior written approval of COUNTY.

Unless otherwise specified in Exhibit A, CONTRACTOR hereby assigns to COUNTY all copyright, patent, and other intellectual property and proprietary rights to all data, documents, reports, photos, designs, sound or audiovisual recordings, software code, inventions, technologies, and other materials prepared or provided by CONTRACTOR pursuant to this Agreement (collectively referred to as "Copyrightable Works and Inventions"). COUNTY shall have the unrestricted authority to copy, adapt, perform, display, publish, disclose, distribute, create derivative works from, and otherwise use in whole or in part, any Copyrightable Works and Inventions. CONTRACTOR agrees to take such actions and execute and deliver such documents as may be needed to validate, protect and confirm the rights and assignments provided hereunder. CONTRACTOR warrants that any Copyrightable Works and Inventions and other items provided under this Agreement will not infringe upon any intellectual property or proprietary rights of any third party. CONTRACTOR at its own expense shall defend, indemnify, and hold harmless COUNTY against any claim that any Copyrightable Works or Inventions or other items provided by CONTRACTOR hereunder infringe upon intellectual or other proprietary rights of a third party, and CONTRACTOR shall pay any damages, costs, settlement amounts, and fees (including attorneys' fees) that may be incurred by COUNTY in connection with any such claims. This Ownership of Documents and Intellectual Property provision shall survive expiration or termination of this Agreement. In the event that COUNTY utilizes the Copyrightable Works and Inventions for a project other than this project or utilizes a contractor other than CONTRACTOR for the Services or in the event that COUNTY or any contractor, design professional, agent or employee of COUNTY modifies the Copyrightable Works and Inventions in any way, COUNTY shall waive and release CONTRACTOR from and against any and all claims, causes of action, costs, liabilities or damages, resulting from the COUNTY's use of said Copyrightable Works and Inventions.

#### **12. NO PUBLICITY OR ENDORSEMENT**

CONTRACTOR shall not use COUNTY's name or logo or any variation of such name or logo in any publicity, advertising or promotional materials. CONTRACTOR shall not use COUNTY's name or logo in any manner that would give the appearance that the COUNTY is endorsing CONTRACTOR. CONTRACTOR shall not in any way contract on behalf of or in the name of COUNTY. CONTRACTOR shall not release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the COUNTY or its projects, without obtaining the prior written approval of COUNTY in each instance.

#### **13. COUNTY PROPERTY AND INFORMATION**

All of COUNTY's property, documents, information, and data provided to or accessed by or on behalf of CONTRACTOR in connection with the Services, including, without limitation, all data collected, used, maintained, processed, stored, or generated by or on behalf of COUNTY in connection with this Agreement ("COUNTY Property") and any derivative works of the COUNTY Property shall remain COUNTY's property, and CONTRACTOR shall return or delete COUNTY Property whenever requested by COUNTY, and whenever required in accordance with Section 19 of this Agreement. CONTRACTOR may use COUNTY Property solely for the purpose of, and only to the extent necessary for, CONTRACTOR's provision of the Services hereunder. CONTRACTOR shall not disclose, disseminate, publish, or transfer to any third party, any COUNTY Property without COUNTY's prior written consent. CONTRACTOR shall be entitled to rely on the accuracy and completeness of any information provided by COUNTY for use by CONTRACTOR on the project.

#### **14. RECORDS, AUDIT, AND REVIEW**

CONTRACTOR shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of CONTRACTOR's profession, and shall maintain such records for at least four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting principles. COUNTY shall have the right to audit and review all such documents and records at any time during CONTRACTOR's regular business hours or upon reasonable notice. In addition, if this Agreement exceeds ten thousand dollars (\$10,000.00) and if required by law, CONTRACTOR shall be subject to the examination and audit of the California State Auditor, at the request of the COUNTY or as part of any audit of the COUNTY, for a period of three

(3) years after final payment under the Agreement (Cal. Govt. Code Section 8546.7). CONTRACTOR shall participate in any audits and reviews, whether by COUNTY or the State, at no charge to COUNTY.

If federal, state or COUNTY audit exceptions are made relating to this Agreement, CONTRACTOR shall reimburse all costs incurred by federal, state, and/or COUNTY governments associated with defending against the audit exceptions or performing any audits or follow-up audits, including but not limited to: audit fees, court costs, attorneys' fees based upon a reasonable hourly amount for attorneys in the community, travel costs, penalty assessments and all other costs of whatever nature. Immediately upon notification from COUNTY, CONTRACTOR shall reimburse the amount of the audit exceptions and any other related costs directly to COUNTY as specified by COUNTY in the notification.

**15. INDEMNIFICATION AND INSURANCE**

CONTRACTOR agrees to and shall comply with the indemnification and insurance provisions as set forth in EXHIBIT C, attached hereto and incorporated herein by reference.

**16. NONDISCRIMINATION**

COUNTY hereby notifies CONTRACTOR that COUNTY's Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this Agreement and is incorporated herein by this reference with the same force and effect as if the ordinance were specifically set out herein and CONTRACTOR agrees to comply with said ordinance.

**17. NONEXCLUSIVE AGREEMENT**

CONTRACTOR understands that this is not an exclusive Agreement, and that COUNTY shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by CONTRACTOR as the COUNTY desires.

**18. NON-ASSIGNMENT**

CONTRACTOR shall not assign, subcontract, delegate, or otherwise transfer, directly or indirectly, whether by operation of law or otherwise ("Transfer") this Agreement, or any of CONTRACTOR's rights or obligations under this Agreement, without the prior written consent of COUNTY. Any attempted or purported Transfer in violation of this Section 18 shall be null and void and without legal effect and shall constitute grounds for termination. No Transfer shall relieve CONTRACTOR of any of its obligations hereunder.

**19. TERMINATION**

A. By COUNTY. COUNTY may, by written notice to CONTRACTOR, terminate this Agreement in whole or in part at any time, whether for COUNTY's convenience, for nonappropriation of funds, or because of the failure of CONTRACTOR to fulfill its obligations hereunder.

1. **For Convenience.** COUNTY may terminate this Agreement in whole or in part upon thirty (30) days written notice. During the thirty (30) day period, CONTRACTOR shall, as directed by COUNTY, wind down and cease its services as quickly and efficiently as reasonably possible, without performing unnecessary services or activities and by minimizing negative effects on COUNTY from such winding down and cessation of services. Upon termination by COUNTY for convenience, COUNTY shall immediately pay CONTRACTOR all remaining amounts owed for Services completed through the date of termination, for materials and equipment purchased that cannot be returned, for restocking fees for materials and equipment that can be returned, and for demobilization costs.

2. **For Nonappropriation of Funds.** Notwithstanding any other provision of this Agreement, in the event that no funds or insufficient funds are appropriated or budgeted by federal, State or COUNTY governments, or sufficient funds are not otherwise available for payments hereunder in the fiscal year(s) covered by the Term of this Agreement, then COUNTY will notify CONTRACTOR of such occurrence, and COUNTY may terminate or suspend this Agreement in whole or in part, with or without a prior notice period. Subsequent to termination of this Agreement under this provision, COUNTY shall have no obligation to make payments with regard to the remainder of the Term.
  3. **For Cause.** Should CONTRACTOR default in the performance of this Agreement or materially breach any of the provisions hereof, COUNTY may, at COUNTY's sole option, terminate or suspend this Agreement in whole or in part upon written notice ("Termination Notice"). Upon receipt of such Termination Notice, CONTRACTOR shall immediately discontinue all Services (unless otherwise directed in such Termination Notice) and notify COUNTY in writing of the status of CONTRACTOR's performance of Services hereunder. The date of termination shall be the date the Termination Notice is received by CONTRACTOR, unless the Termination Notice directs otherwise. Prior to terminating for cause, COUNTY shall notify CONTRACTOR in writing of the alleged breach of this Agreement and, if, in COUNTY's determination, such breach is subject to cure, shall provide CONTRACTOR with thirty (30) days to cure said breach as specified in such written breach notice. Thereafter, if CONTRACTOR fails to cure said breach as specified in such written breach notice to the satisfaction of COUNTY within such 30-day period, COUNTY may proceed to terminate this Agreement upon delivery of a Termination Notice as specified above.
- B. By CONTRACTOR. Should COUNTY fail to pay CONTRACTOR all or any part of the payment set forth in EXHIBIT B, CONTRACTOR may, at CONTRACTOR's option, terminate this Agreement if such failure is not remedied by COUNTY within thirty (30) days of written Notice to COUNTY of such late payment.
  - C. Upon termination, CONTRACTOR shall deliver to COUNTY all data, estimates, graphs, summaries, reports, and all other property, records, documents or papers as may have been accumulated or produced by CONTRACTOR in performing this Agreement, whether completed or in process, except such items as COUNTY may, by written permission, permit CONTRACTOR to retain. Notwithstanding any other payment provision of this Agreement, COUNTY shall pay CONTRACTOR for satisfactory Services performed as of the date of termination to include a prorated amount of compensation due hereunder less payments, if any, previously made. In no event shall CONTRACTOR be paid an amount in excess of the Maximum Contract Amount, or for profit on unperformed portions of Services. CONTRACTOR shall furnish to COUNTY such financial information as in the judgment of COUNTY is necessary to determine the reasonable value of the Services rendered by CONTRACTOR. In the event of a dispute as to the reasonable value of the Services rendered by CONTRACTOR, the decision of COUNTY shall be final provided that if CONTRACTOR disagrees with COUNTY's determination, it can assert a claim. The foregoing is cumulative and shall not affect any right or remedy which COUNTY may have in law or equity.
  - D. In no event shall either party be liable for any incidental, indirect, speculative, remote, or consequential damages arising from, relating to, or connected with the Services, or any work, equipment, materials, or any goods or services provided hereunder. Each party waives claims against the other party for consequential damages arising out of or relating to this Agreement. This waiver includes damages incurred by each party for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons.

## 20. SECTION HEADINGS

The headings of the several sections herein, and any Table of Contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

**21. SEVERABILITY**

If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

**22. REMEDIES NOT EXCLUSIVE**

No remedy herein conferred upon or reserved to either party is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

**23. TIME IS OF THE ESSENCE**

Time is of the essence in this Agreement and each covenant and term is a condition herein.

**24. NO WAIVER OF DEFAULT**

No delay or omission of either party to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to either party shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of said party.

**25. ENTIRE AGREEMENT AND AMENDMENT**

This Agreement, including all Exhibits and attachments hereto, contains the entire understanding and agreement of the Parties with respect to the subject matter hereof, and there have been no promises, representations, agreements, warranties or undertakings by any of the Parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, duly executed by duly authorized representatives of each of the Parties and by no other means. Each Party waives its future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

**26. SUCCESSORS AND ASSIGNS**

This Agreement is binding on and inures to the benefit of the Parties and their respective successors and permitted assigns in accordance with Section 18, above.

**27. COMPLIANCE WITH LAW**

CONTRACTOR shall, at its sole cost and expense, comply with all applicable County, State and Federal ordinances and statutes now in force or which may hereafter be in force. The judgment of any court of competent jurisdiction, or the admission of CONTRACTOR in any action or proceeding against CONTRACTOR, whether COUNTY is a party thereto or not, that CONTRACTOR has violated any such ordinance or statute, shall be conclusive of that fact as between CONTRACTOR and COUNTY. The price is based upon laws, codes and regulations in existence as of the date this Agreement is executed. Any changes in or to applicable laws, codes and regulations affecting the cost of the Services shall be the responsibility of COUNTY and shall entitle CONTRACTOR to an equitable adjustment in the price and schedule.

**28. CALIFORNIA LAW AND JURISDICTION**

This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.

**29. EXECUTION OF COUNTERPARTS**

This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

**30. AUTHORITY**

All signatories and parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, CONTRACTOR hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which CONTRACTOR is obligated, which breach would have a material effect hereon.

**31. SURVIVAL**

All provisions of this Agreement which by their nature are intended to survive the termination or expiration of this Agreement shall survive such termination or expiration.

**32. SUBCONTRACTORS**

CONTRACTOR is authorized to subcontract with only the subcontractor(s) identified in Exhibit A ("Subcontractors"). Contractor shall be fully responsible for all services performed by Subcontractors. Contractor shall secure from each of Subcontractor a legally binding written agreement to comply with the provisions of this Agreement pertaining to CONTRACTOR's obligations as if such obligations pertained to such Subcontractor, including, but not limited to, audit obligations to the extent required by applicable law.

**33. HANDLING OF PROPRIETARY INFORMATION**

CONTRACTOR understands and agrees that certain materials which may be provided by County may be classified, and may also be labeled, as proprietary confidential information ("Confidential Information"). CONTRACTOR shall comply with the following special provisions with respect to Confidential Information:

- a. CONTRACTOR shall ensure that all reasonable steps are taken to prevent disclosure of the Confidential Information to any person except personnel of CONTRACTOR who have a need to know such Confidential Information for the purposes of fulfilling CONTRACTOR's obligations hereunder, and provided that such Confidential Information shall only be used to the extent necessary to fulfill CONTRACTOR's obligations hereunder.
- b. Upon termination of this Agreement, CONTRACTOR shall return all copies of the Confidential Information directly to the COUNTY representative designated above.

**34. NEWS RELEASES/INTERVIEWS**

CONTRACTOR agrees for itself, its agents, employees, and subcontractors, that it will not communicate with the media concerning the subject matter of this Agreement without prior written approval of the COUNTY representative



designated above. CONTRACTOR further agrees to refer all media requests to the COUNTY representative designated above.

### 35. CHANGES IN SCOPE

CONTRACTOR shall not be entitled to additional compensation beyond the amount set forth in Exhibit B for Base Services other than in accordance with Section 36, below. In the event that COUNTY requests a change in the Statement of Work which CONTRACTOR contends is material and would require an increase in compensation, and such increase is not in any way attributable to acts or omissions of or on behalf of CONTRACTOR, including, but not limited to, faulty or inaccurate calculations or estimations made by or on behalf of CONTRACTOR, CONTRACTOR may, within five (5) business days of COUNTY's request, advise COUNTY in writing of such contention. If written notice is not given to COUNTY within such 15-day period, such change shall be deemed immaterial, and CONTRACTOR shall perform, but shall not be entitled to additional compensation for, such change.

If COUNTY causes a change in the Services that CONTRACTOR contends is objectively material, and such change is not in any way attributable to acts or omissions of or on behalf of CONTRACTOR, including, but not limited to, faulty or inaccurate calculations or estimations made by or on behalf of CONTRACTOR, CONTRACTOR must, within fifteen (15) business days of the event that caused such change, notify COUNTY in writing that CONTRACTOR contends COUNTY has caused a material change in the Services, and substantiate the reason(s) for CONTRACTOR's contention. If the COUNTY's Director of General Services, or his Assistant Director designee ("Director") concurs that COUNTY has caused a material change in Services required by COUNTY hereunder, the Director may execute a Change Order in accordance with Section 36, below.

If there is a material increase in the work or materials required to complete the Services, and such increase is not in any way attributable to acts or omissions of or on behalf of CONTRACTOR, including, but not limited to, faulty or inaccurate calculations or estimations made by or on behalf of CONTRACTOR, the Director may request, and CONTRACTOR, pursuant to such request, shall provide, assistance in re-allocating the remaining available funds for Base Services compensation hereunder. Such assistance must, if requested by the Director, also include a determination of any other services and deliverables necessary to complete the Project.

If there is a material decrease in the work or materials required to complete the Services, CONTRACTOR shall immediately notify the Director of such decrease, and agrees to accept a reasonable corresponding reduction in compensation hereunder.

The compensation set forth in Exhibit B has been based on normal site conditions, without allowance for any additional work that might be caused by site conditions which cannot be determined by Veregy by a reasonable visual inspection. If conditions are encountered at the site that are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than five (5) days after first observance of the conditions, and, if appropriate, an equitable adjustment to CONTRACTOR's compensation and any schedule may be made by a negotiated Change Order.

**Except as expressly provided in the Statement of Services (Exhibit A),** CONTRACTOR and its subcontractors shall not be required to handle, remove, come into contact with, dispose of, or otherwise work with Hazardous Materials existing on the project site at the date of this Agreement or resulting, either directly or indirectly, from any acts or omissions of COUNTY, its employees, agents or assigns, or any of COUNTY's other contractors or subcontractors, and in no way arising out of any act or omission by or on behalf of any of CONTRACTOR or its subcontractors. "Hazardous Materials" as used herein includes all hazardous or toxic substances or materials as may be so designated by federal, State of California, or applicable local governmental entities. If, during the performance of the Services, the presence

of Hazardous Materials is discovered, CONTRACTOR shall notify COUNTY of such discovery and shall be permitted to immediately cease all work which requires contact with or exposure to such Hazardous Materials, until the COUNTY has made arrangements for the mitigation of the same. In the event of any such cessation of Services due to the presence of such Hazardous Materials, the parties hereto may negotiate an extension of the Term. In the event that the parties hereto agree that CONTRACTOR shall remove or remediate any Hazardous Materials discovered during the course of the Services, such agreement shall be reflected in a duly executed Change Order reflecting the terms of such additional services.

To the extent authorized by applicable law, COUNTY shall indemnify, defend, and hold CONTRACTOR and its respective officers, directors, employees, agents and subcontractors (collectively the "Indemnified Parties"), harmless from, against, and in respect of any and all rights, claims, demands, liabilities, obligations, orders, assessments, interest, penalties, fines, settlement payments, costs, expenses and damages, including, without limitation, reasonable legal fees and out-of-pocket expenses ("Damages") imposed upon or incurred by any Indemnified Party and that arise from claims asserted by third parties or by COUNTY concerning any Hazardous Materials; except to the extent that the Damages arise out of any act or omission by or on behalf of CONTRACTOR or its agents.

Unless prior to the execution of this Agreement, CONTRACTOR received written notification from COUNTY of the existence of Hazardous Materials on the site, and said notice included a description of the Hazardous Materials, and the quantity and location of the Hazardous Materials, COUNTY is hereby representing to CONTRACTOR that COUNTY is not aware of any Hazardous Materials present at the site.

If CONTRACTOR is delayed at any time in the progress of performing its obligations under this Agreement by any act of neglect of COUNTY or of any employee or agent of COUNTY or any contractor employed by COUNTY; or by changes ordered or requested by COUNTY in the Services performed pursuant to this Agreement in no way arising out of any act or omission by or on behalf of CONTRACTOR; or by labor disputes, fire, adverse weather conditions, or unavoidable casualties beyond CONTRACTOR's reasonable control and in no way arising out of any act or omission by or on behalf of CONTRACTOR (an "Excusable Delay"), then the time for performance of the obligations affected by such Excusable Delay may be extended by a period of time equal to any delay actually incurred as a direct result thereof, provided that CONTRACTOR provides immediate written notice to COUNTY of each such Excusable Delay, including the reasonably anticipated duration thereof, and provided further that COUNTY may terminate this Agreement in the event that such Excusable Delay continues for more than 30 days.

### **36. Supplementary Services & Deliverables**

To the extent that COUNTY has established a Supplemental Services Allowance ("SSA") for the performance of services not included within the Services, the amount of such SSA is set forth in Exhibit B. CONTRACTOR shall not commence work other than as set forth in the Statement of Work unless pursuant to a Change Order duly executed by the Director, and only to the extent such SSA and Change Order authority are expressly authorized and delegated by the COUNTY Board of Supervisors in approving this Agreement. The aggregate amount of compensation payable to Contractor for all Change Orders shall not exceed the SSA. Payment may only be made for Change Orders that include objective rates for the change or alteration using a price-determination method that is common in commercial transactions, such as hourly rates or cost plus a fixed fee.

### **37. ORDER OF PRECEDENCE**

In the event of conflict between the provisions contained in Sections 1 through 37 of this Agreement ("Numbered Sections") and the provisions contained in the Exhibits attached hereto, the provisions contained in the Numbered Sections shall control prevail over those in the Exhibits, other than Exhibit C, which Exhibit C shall control and prevail. If the Statement of Work, or a proposal provided by CONTRACTOR and incorporated into the Statement of Work or otherwise attached hereto, includes any standard printed terms from CONTRACTOR, or any hyperlinks to standard terms or other provisions from CONTRACTOR ("CONTRACTOR's Terms"), CONTRACTOR agrees that in the

event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between the COUNTY's terms set forth in the Numbered Sections and Exhibits B and C, on the one hand, and CONTRACTOR's Terms, on the other, the County's terms shall take precedence and control, followed by CONTRACTOR's Terms, if any.

**38. COMPLIANCE WITH FUNDING PROGRAM PROVISIONS**


CONTRACTOR acknowledges that State, Federal, and other forms of financial assistance will be used to fund this Agreement, including The Energy Efficiency Conservation Block Grant (EECBG) voucher program and Pacific Gas and Electric's On-Bill Financing (OBF) loan program. CONTRACTOR shall only use such funds as authorized herein and in the applicable program requirements, guidelines, and regulations, and the agreements by and between the County and such funding provider regarding the provision of such funds. CONTRACTOR will comply with all applicable local, state and federal law, regulations, executive orders, federal policies, procedures, and directives, including, but not limited to, Title 2 of the Code of Federal Regulations (CFR) Part 200, entitled, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards." In addition, CONTRACTOR shall comply with the Funding Terms and Conditions attached hereto as EXHIBITS D through F and incorporated herein by reference. CONTRACTOR shall comply with grant and loan agreements, assurances in applications, notices of award, and all other applicable federal, state, and local laws, regulations, ordinances, orders, rules, guidelines, directives, circulars, bulletins, notices, and policies governing the funds provided in connection with this Agreement. CONTRACTOR and hired subcontractors shall be responsible for providing services in a manner consistent with all federal and state requirements and standards required as a condition of receiving and expending such funds provided in connection with this Agreement.

Agreement for Services of Independent Contractor by and between the **County of Santa Barbara** and Veregy Pacific, LLC.

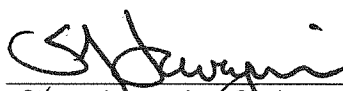
**IN WITNESS WHEREOF**, the Parties have executed this Agreement to be effective as of the first date duly executed by all of the parties hereto ("Effective Date").

**ATTEST:**

Mona Miyasato  
County Executive Officer  
Clerk of the Board

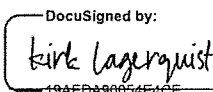
By:   
Deputy Clerk

**COUNTY OF SANTA BARBARA:**

By:   
Steven Lavagnino, Chair  
Board of Supervisors  
Date: 11-5-24

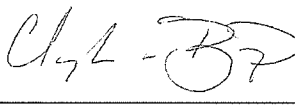
**RECOMMENDED FOR APPROVAL:**

Kirk Lagerquist, Director  
General Services Department

By:   
DocuSigned by:  
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Department Head

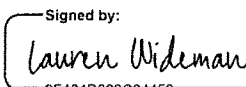
**CONTRACTOR:**

Clayton Boop  
Veregy Pacific, LLC

By:   
Name: Clayton Boop  
Title: VP - West Region

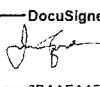
**APPROVED AS TO FORM:**

Rachel Van Mullem  
County Counsel

By:   
Signed by:  
8F484D822C84458...  
Deputy County Counsel

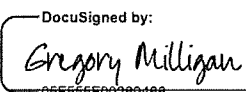
**APPROVED AS TO ACCOUNTING FORM:**

Betsy M. Schaffer, CPA  
Auditor-Controller

By:   
DocuSigned by:  
8BAAEA15901943F...  
Deputy

**APPROVED AS TO FORM:**

Greg Milligan, ARM  
Risk Manager

By:   
DocuSigned by:  
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Risk Management

## EXHIBIT A

### STATEMENT OF WORK

CONTRACTOR shall provide all materials, labor, engineering, project management, and construction services required to successfully implement an LED lighting retrofit at all of the following eleven (11) Foster Road Lighting Project locations in Santa Maria, California: 500, 548, 620, 624B, 624C, 708, 812, 812A, and 912 Foster Road, and 4251 and 4263 California Boulevard (collectively, the "Project"). Such Services shall include all of the following elements:

- **Support for OBF Application Reporting**

CONTRACTOR will provide assistance in reporting on the completed Project for the County's On-Bill Financing (OBF) obligations by providing relevant project information to the County.

- **Demolition of Existing Non-LED Fixtures**

As part of the Project, CONTRACTOR will execute the removal and safe disposal of existing non-LED fixtures, making way for the installation of more energy-efficient LED lighting systems.

- **Procurement and Installation of New LED Fixtures**

CONTRACTOR will handle the sourcing, procurement, and professional installation of LED fixtures at all Project locations. These fixtures will be carefully selected to maximize energy efficiency. Lighting will be tied into SensorView as applicable.

- **Recycling and Proper Disposal**

Environmental responsibility is paramount. CONTRACTOR will ensure the proper disposal and recycling of the existing light fixtures. In line with this, CONTRACTOR will provide Hazardous Materials (HAZMAT) manifests for all disposed materials, maintaining transparency and compliance with all applicable laws and regulations.

- **Complete Lighting Inventory and Specifications**

CONTRACTOR will conduct a meticulous lighting inventory, documenting all specifications and ordering information for the new lamps and fixtures. This detailed inventory ensures accurate planning and execution of the retrofit.

Upon the County's Notice to Proceed, CONTRACTOR will begin the implementation phase of the Project. This phase has several components, outlined below.

## Work Plan

The objective is to ensure the successful implementation of the energy efficiency Project, with a strong focus on minimizing disruptions to County operations and prioritizing safety. CONTRACTOR shall stage the system installation in a manner that aligns with the facility's needs, as directed by the COUNTY. CONTRACTOR represents and warrants that its highly skilled and experienced project management team is and shall be dedicated to the success of the Project. The successful project plan shall include the following key elements:

### 1. Communication with County Stakeholders

CONTRACTOR shall maintain transparent and consistent communication with all COUNTY stakeholders during the Term and throughout key Project events to ensure that everyone is well-informed and engaged in the process.

### 2. Project Safety and Risk Mitigation

CONTRACTOR shall maintain Project safety as a top priority. CONTRACTOR shall have a comprehensive safety plan in place to mitigate risks and ensure that the Project proceeds with the highest safety standards.

### 3. Coordination Among Contractor Trades

CONTRACTOR will facilitate seamless coordination among all contractor trades involved in the Project to guarantee efficient workflow and minimal disruptions.

### 4. Providing Project Documentation

CONTRACTOR will provide all necessary Project documentation to ensure that every aspect of the Project is well-documented and transparent.

### 5. Implementing Intended Energy Savings

The core goal of the Project is to achieve energy savings. CONTRACTOR shall implement all energy-saving measures as intended in the Project plan.

### 6. Delivering Quality Project Performance

CONTRACTOR shall deliver a high-quality Project performance that adheres to the COUNTY's Project schedule, stays within the COUNTY's Project budget and the Maximum Contract Amount (defined in Exhibit B, below), and meets and exceeds expectations.

### 7. Kick-Off Meeting

Prior to commencing any work, a "Project Kick-Off" meeting will be held with the COUNTY. Representatives from each involved trade, along with CONTRACTOR project management and COUNTY staff, will be present. At this meeting, a Work Schedule and Implementation Plan will be presented and discussed. The purpose is to address potential issues and familiarize all parties with the Project's details. The schedule and plan may be modified as necessary during the kick-off meeting, to the satisfaction of COUNTY.

### 8. Ongoing Communication and Safety

Periodic construction and Project management meetings will be held to ensure the smooth progression of the Project. CONTRACTOR shall compile Biweekly progress reports and distribute each such report to all COUNTY stakeholders identified by the COUNTY during the kick-off meeting. CONTRACTOR shall present a comprehensive work safety plan, aligned with COUNTY requirements and all applicable laws, regulations, and guidelines, for discussion at the kick-off meeting. All subcontractors will be required to sign and adhere to this safety plan, complying with all applicable federal, state, and local laws and regulations. CONTRACTOR shall conduct mandatory periodic safety meetings for all subcontractors. CONTRACTOR shall present a material and equipment storage and handling plan will ensure that the Project does not disrupt daily operations. CONTRACTOR shall also address COUNTY security and access concerns during the kick-off meeting.

## Site Project Management Activities

### **Project Administration**

This phase encompasses all essential administrative responsibilities vital for the successful execution of this turnkey project. CONTRACTOR shall keep the COUNTY's Facilities staff well-informed about the ongoing activities hereunder in a consistent manner and adhering to formats approved by the COUNTY.

To achieve this, CONTRACTOR has outlined the following key activities:

- **Progress Reporting**

CONTRACTOR shall deliver weekly written progress reports to COUNTY ("Weekly Reports"). Each of the Weekly Reports will provide a detailed account of the Project's advancement to date, milestones achieved, and all noteworthy developments. Each of the Weekly Reports will be structured in a format that meets the COUNTY's specific requirements and preferences.

- **Bi-Weekly Conference Calls**

In addition to written reports, CONTRACTOR will arrange bi-weekly conference calls with the COUNTY. Such calls shall serve as an opportunity to discuss Project status, address any questions or concerns, and provide a platform for open communication. These calls will be coordinated to ensure all relevant parties are available.

- **Project Meetings**

CONTRACTOR understands the significance of effective communication, and to facilitate this, CONTRACTOR shall attend the following meetings:

- **Project Kick-Off Meeting**

This initial meeting will mark the official start of the Project. CONTRACTOR will present an overview of the Project plan, roles and responsibilities, and address any initial queries or requirements.

- **Project Progress Meetings (As Needed)**

If circumstances dictate, or at the COUNTY's request, additional Project Progress Meetings will be organized. These meetings will allow for a detailed review of specific Project aspects, addressing any emerging challenges or opportunities.

- **Project Closeout Meeting**

At the Project's conclusion, a Project Closeout Meeting will be conducted. This meeting will encompass a comprehensive Project review, final documentation, and the opportunity for feedback and discussion regarding the Project's outcomes.

CONTRACTOR's scheduling and coordination of these meetings will be promptly executed upon its receipt of the Notice to Proceed from COUNTY.

### **Engineering and Design**

For this Project, CONTRACTOR will be following a design-build approach to ensure efficiency and accuracy in the implementation. CONTRACTOR's engineering and design process will encompass the following key elements:

- **Comprehensive Design-Build Approach**

CONTRACTOR will execute this Project using a design-build methodology, which streamlines the process and promotes seamless collaboration between design and construction phases. This approach minimizes potential issues and enhances Project efficiency.

- **Design Development for Permits and Approvals**

CONTRACTOR's dedicated engineering team will develop the Project design to a level of detail that is sufficient to secure the required permits and plan check approvals from the relevant authorities having jurisdiction, if required. CONTRACTOR will ensure that all design elements align with all applicable federal, State, and local laws and regulations, as well as all EECBG requirements outlined in EXHIBIT D and EXHIBIT E, as well as the OBF Requirements outlined in EXHIBIT F (all of the foregoing, collectively, "Applicable Laws").

- **Effective Project Kick-Off**

To initiate the Project effectively, CONTRACTOR will conduct a Project Kick-Off Meeting. During this meeting, CONTRACTOR will outline the design and engineering aspects, clarify roles and responsibilities, and establish a clear timeline for design development.

- **Collaboration and Consultation**

CONTRACTOR's design team will collaborate closely with the County and other stakeholders to ensure that the Project design aligns with the County's goals and expectations. Regular consultation will be encouraged to incorporate valuable input.

### **Procurement**

CONTRACTOR shall ensure that the procurement of energy-efficient equipment for this Project is executed seamlessly and in accordance with the highest standards and all Applicable Laws. CONTRACTOR will ensure that all equipment procured for projects align with all applicable federal, State, and local laws and regulations, as well as all EECBG requirements outlined in EXHIBIT D and EXHIBIT E, as well as the OBF Requirements outlined in EXHIBIT F (all of the foregoing, collectively, "Applicable Laws"). CONTRACTOR's procurement process shall meet the following objectives:

- **High-Quality Product Selection**



CONTRACTOR will meticulously select energy-efficient equipment that meets the highest quality standards. Our commitment to quality ensures the longevity and efficiency of the installed equipment.

- **Compliance with Standards**

All equipment and materials procured by CONTRACTOR will adhere to industry standards, all Applicable Laws, and all specific requirements outlined in the EECBG Terms and Conditions and Scope of Work as well as PG&E approved OBF Application.

- **Scope of Work Fulfillment**

CONTRACTOR will procure all the equipment and materials essential for completing the Project as described herein and consistent with the approved OBF Application. This includes sourcing, purchasing, and overseeing the delivery of the required items.

**Construction**

CONTRACTOR will orchestrate a seamless process encompassing mobilization, construction, and demobilization to effectively perform the Services hereunder. The construction phase shall include the following key features:

- **Detailed Construction Plan**

Before the construction commences on-site, CONTRACTOR will present to the COUNTY a comprehensive Construction Plan, which will serve as a roadmap for the entire construction phase, outlining Project milestones, timelines, and key activities.

- **Collaborative Plan Review**

A formal Construction Plan will be submitted to the County for thorough review and discussion. We encourage open collaboration to ensure that the plan aligns with the COUNTY's specific requirements and preferences. Any necessary revisions and revisions requested by COUNTY will be promptly addressed by CONTRACTOR.

- **Mobilization and Construction Execution**

CONTRACTOR will oversee the mobilization process to prepare for construction. This includes the setup of equipment, materials, and resources. The construction phase will be carried out by CONTRACTOR in strict adherence to the COUNTY-approved Construction Plan. CONTRACTOR shall ensure that all such work is executed efficiently and on schedule.

- **Quality Control and Inspections**

Throughout the construction process, CONTRACTOR will implement stringent quality control measures to guarantee the highest standards of workmanship. All necessary inspections and certifications will be conducted as required, and the relevant documentation will be transmitted to the COUNTY for record-keeping and compliance purposes.

- **Regular Progress Updates**

CONTRACTOR is committed to providing regular updates on the construction progress. CONTRACTOR understands that transparent communication is essential for ensuring that the Project stays on track.

### **Startup and Commissioning**

CONTRACTOR is committed to a thorough startup and commissioning process for each system, ensuring that they operate flawlessly in alignment with the design specifications. CONTRACTOR's approach to startup and commissioning shall include the following key elements:

- **System Verification**  
CONTRACTOR will meticulously verify the operation of each system to confirm that it functions correctly and efficiently, in strict accordance with the design parameters.
- **Functional Testing**  
CONTRACTOR's comprehensive commissioning process involves functional testing of all system components and controls. This step will identify any issues and ensure that the systems operate as intended.
- **System Optimization**  
If necessary, CONTRACTOR will make adjustments to optimize system performance, ensuring that energy efficiency and lighting quality are maximized.
- **Documentation**  
CONTRACTOR will provide documentation to the COUNTY, including any records and adjustments made during the commissioning process.
- **Training and Handover**  
CONTRACTOR will offer training to the COUNTY's staff, ensuring they are fully equipped to manage and maintain the newly implemented systems effectively.

### **Project Management**

CONTRACTOR shall take a comprehensive approach to Project management, encompassing all critical activities required for the successful execution of the design/build scope of work. CONTRACTOR will ensure that all labor utilized for project implementation align with all applicable federal, State, and local laws and regulations, as well as all EECBG requirements outlined in EXHIBIT D and EXHIBIT E, as well as the OBF Requirements outlined in EXHIBIT F (all of the foregoing, collectively, "Applicable Laws"). CONTRACTOR shall provide effective Project management including the following key components:

- **Dedicated Lead Project Manager**  
CONTRACTOR will appoint a highly skilled Lead Project Manager to oversee the Project's entirety. This manager will serve as the primary point of contact for the COUNTY counterpart, ensuring streamlined communication and efficient coordination.
- **Holistic Project Oversight**  
CONTRACTOR's project management team will provide end-to-end oversight, encompassing all phases of the Project from inception to completion to ensure that every detail is meticulously managed.

- **Clear Roles and Responsibilities**

CONTRACTOR will establish transparent roles and responsibilities for both CONTRACTOR's team and the COUNTY, facilitating a clear understanding of who is responsible for various Project aspects.

- **Timely Progress Monitoring**

CONTRACTOR will employ a robust system for tracking and monitoring Project progress, ensuring that milestones and timelines are adhered to. Regular reporting and updates will keep the COUNTY informed.

- **Issue Resolution and Risk Mitigation**

CONTRACTOR represents and warrants that its project management team is prepared to address any challenges or issues that may arise, and CONTRACTOR shall be proactive in identifying and mitigating risks to keep the Project on track.

- **Collaborative Decision-Making**

CONTRACTOR shall engage in collaborative decision-making, accepting input from the COUNTY and its stakeholders to ensure that the Project aligns with COUNTY goals and expectations.

- **Proactive Communication**

CONTRACTOR shall engage in open and proactive communication with the COUNTY throughout the Project's lifecycle, ensuring that the County is well-informed and engaged at every step.

- **Quality Assurance**

Quality is paramount. CONTRACTOR will implement rigorous quality control measures to guarantee that all work performed hereunder meets the highest professional standards.

## **EXCLUSIONS**

The following are excluded from the scope of supply/work of this Project:

1. Running new wire to extend or move fixtures
2. Repair or replacement of cracked or damaged fixture lenses or louvers
3. Replacement of defective emergency battery back-up ballasts
4. All electrical wiring other than that required for ballast replacement within the existing lighting fixtures
5. Upgrading present system to meet lighting code if existing system fails to meet code
6. Bond and permit fees
7. Re-wire work at control panels
8. Overtime work
9. Work not specifically outlined in this Agreement.

## **ASSUMPTIONS**

- All pre-existing electrical wiring in the Project locations within the COUNTY facilities is assumed to be in good condition and compliant with current UBC and NEC requirements.

- Access will be granted to CONTRACTOR for Project locations during normal COUNTY business hours during the construction phase of the Project.
- A job trailer and on-site storage of Project materials is granted by the County.
- Veregy will not be responsible for facilitating the reporting for the EECBG program or OBF loan requirements, but will be responsible for following the requirements of each program and providing information to the County for successful reporting.

## WARRANTY

CONTRACTOR warrants all parts and labor for all items installed as part of this Project. CONTRACTOR will pass through to COUNTY all manufacturer warranties, including, but not limited to, direct service warranties (each, an "OEM Warranty"), and, prior to the termination or expiration of the Term, CONTRACTOR shall provide to COUNTY a true and correct copy of all relevant OEM Warranty documentation, including, but not limited to, all documentation and information necessary for the COUNTY to directly enforce each OEM Warranty. CONTRACTOR warrants all labor provided hereunder for a period of three (3) months after the date of Project completion. No other warranty is implied or expressed for any other systems other than those described herein, in the Construction Plan, and/or in the OBF Application, which shall be construed to include all modifications made to facilitate installation of the Project. Electrical systems, hardware, mechanical equipment and wiring provided other than by or on behalf of CONTRACTOR are not covered by CONTRACTOR's warranty.

## SUBCONTRACTORS

- Jlc Energy Solutions Inc, 6388 Madera Ct, Corona, CA  
License # 1075722

**Suspension for Convenience.** The COUNTY may, with or without cause, order CONTRACTOR in writing to suspend, delay, or interrupt the services under this Agreement in whole or in part for up to 180 days. COUNTY shall incur no liability for suspension under this provision and suspension shall not constitute a breach of this Agreement.

## ATTACHMENT A-1

### FORM ALLOCATION OF SECTION 179D DEDUCTION

<b>ADDRESS OF GOVERNMENT-OWNED BUILDING:</b>  Project Name: _____ Project Street: _____ Project City, State & Zip Code: _____	
<b>AUTHORIZED REPRESENTATIVE OF THE OWNER OF THE GOVERNMENT-OWNED BUILDING:</b>  Owner Name: _____ Representative Name: _____ Representative Title: _____ Representative Street Address: _____ Representative City, State & Zip: _____ Representative Phone Number: _____	
<b>AUTHORIZED REPRESENTATIVE OF DESIGNER RECEIVING THE ALLOCATION OF THE SECTION 179D DEDUCTION:</b>  Designer Name: _____ Representative Name: _____ Representative Title: _____ Representative Street Address: _____ Representative City, State & Zip: _____ Representative Phone Number: _____	
<b>PROJECT COST:</b> _____	
<b>DATE PROJECT PLACED IN SERVICE:</b> _____	
<b>AMOUNT OF SECTION 179D DEDUCTION ALLOCATED TO THE DESIGNER:</b>  Building Envelope: _____ Lighting System: _____ HVAC System: _____ TOTAL: _____	

Under penalties of perjury, I declare that I have examined this allocation, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of this allocation are true, correct, and complete.

AUTHORIZED REPRESENTATIVE OF  
OWNER OF GOVERNMENT-OWNED BUILDING:

By: \_\_\_\_\_

Dated: \_\_\_\_\_

AUTHORIZED REPRESENTATIVE OF  
DESIGNER:

By: \_\_\_\_\_

Dated: \_\_\_\_\_

## **EXHIBIT B**

### **PAYMENT ARRANGEMENTS**

#### **Periodic Compensation (with attached Schedule of Fees)**

- A. For Services to be rendered under this Agreement, CONTRACTOR shall be paid a maximum total contract amount, including cost reimbursements and SSA, if any, not to exceed \$1,359,190 ("Maximum Contract Amount") as set forth in greater detail in the Contractor Compensation Summary table, below.
- B. Payment for Services shall be made upon CONTRACTOR's satisfactory performance, based upon the scope and methodology contained in **EXHIBIT A** as determined by COUNTY. Payment for Services shall be based upon the costs, expenses, overhead charges and hourly rates for personnel, as defined in **Attachment B1** (Schedule of Fees). Invoices submitted for payment that are based upon **Attachment B1** must contain sufficient detail to enable an audit of the charges and provide supporting documentation.
- C. Monthly, CONTRACTOR shall submit to the COUNTY an invoice for the Services performed over the period specified. Each such invoices must reference the assigned Board Contract Number for this Agreement. COUNTY shall evaluate the quality of the invoiced Service performed and, if found to be satisfactory and within the cost basis of **Attachment B1** and the scope of Exhibit A, shall initiate payment processing. COUNTY shall pay invoices or claims for satisfactory Services within 30 days of receipt of correct and complete invoices or claims from CONTRACTOR.
- D. COUNTY's failure to discover or object to any unsatisfactory work or billings prior to payment will not constitute a waiver of COUNTY's right to require CONTRACTOR to correct such work or billings or seek any other legal remedy.

## ATTACHMENT B-1

### Schedule of Fees

OBF Application #	Building	Proposed Fixture Qty	Taxable Costs		Non Taxable Costs		Total Project Costs
			Materials	Labor	Sales Tax (Mats. Only)		
12731	Ag Comm Annex - 708 W Foster Road	15	\$ 5,027.00	\$ 3,390.28	\$ 439.86		\$ 8,857.14
12728	Animal Shelter - 548 W Foster Road	275	\$ 36,212.00	\$ 132,963.34	\$ 3,168.55		\$ 172,343.89
12737	Corp Yard - 912 W Foster Road	219	\$ 29,418.00	\$ 131,470.82	\$ 2,574.08		\$ 163,462.90
12734	Juvenile Justice Center - 4263 California Blvd	750	\$ 107,410.00	\$ 300,069.14	\$ 9,398.38		\$ 416,877.52
12727	Mental Health - 500 W Foster Road	335	\$ 36,188.00	\$ 132,190.77	\$ 3,166.45		\$ 171,545.22
12733	Motorpool - 812A W Foster Road	77	\$ 16,005.00	\$ 84,215.17	\$ 1,400.44		\$ 101,620.61
12736	Planning & Dev - 624C W Foster Road	171	\$ 22,129.00	\$ 60,614.46	\$ 1,936.29		\$ 84,679.75
12735	Probation - 4251 California Blvd	44	\$ 6,403.00	\$ 53,684.58	\$ 560.26		\$ 60,647.84
12730	Public Works - 620 W Foster Road	241	\$ 21,764.00	\$ 28,328.40	\$ 1,904.35		\$ 51,996.75
14665	Sherri's Dept - 812 W Foster Road	253	\$ 38,128.00	\$ 53,727.38	\$ 3,336.20		\$ 95,191.58
12729	Veterans P&D - 624B W Foster Rd	64	\$ 17,279.00	\$ 13,175.90	\$ 1,511.91		\$ 31,966.81
	<b>Total</b>	<b>2444</b>	<b>\$ 335,963.00</b>	<b>\$ 993,830.24</b>	<b>\$ 29,396.76</b>		<b>\$ 1,359,190.00</b>
				Credit in Consideration of 179D included			<b>\$ (50,000.00)</b>

## **EXHIBIT C**

### **Indemnification and Insurance Requirements (For Design/Build Construction Contracts)**

#### **INDEMNIFICATION**

##### **A. Indemnification pertaining to the Construction Services:**

CONTRACTOR agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless COUNTY and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, judgments and/or liabilities arising out of the negligence of CONTRACTOR and its employees, subcontractors, or agents or CONTRACTOR's breach of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person or entity and for any costs or expenses (including but not limited to attorneys' fees) incurred by COUNTY.

##### **B. Indemnification pertaining to the Professional Services:**

CONTRACTOR agrees to indemnify, defend (with counsel reasonably approved by COUNTY) and hold harmless COUNTY and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, judgments and/or liabilities arising out of the negligence of CONTRACTOR and its employees, subcontractors, or agents in or CONTRACTOR's breach of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person or entity and for any costs or expenses (including but not limited to attorneys' fees) incurred by COUNTY on account of any claim except where such indemnification is prohibited by law.

##### **C. Indemnification pertaining to the Design Professional Services:**

CONTRACTOR agrees to fully indemnify and hold harmless COUNTY and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, suits damages, costs, expenses, judgments and/or liabilities that arise out of, or pertain to, or relate to the negligence, recklessness, or willful misconduct of the CONTRACTOR and its employees, subcontractors, or agents in the negligent performance of services under this Agreement. The indemnity includes the cost to defend COUNTY to the extent of the CONTRACTOR'S proportionate percentage of fault. Should one (or more) defendants be unable to pay its share of the defense costs due to bankruptcy or dissolution of the business, CONTRACTOR shall meet and confer with other parties regarding unpaid defense costs and CONTRACTOR shall pay COUNTY'S cost of defense to the fullest extent permitted by law.

#### **NOTIFICATION OF ACCIDENTS AND SURVIVAL OF INDEMNIFICATION PROVISIONS**

CONTRACTOR shall notify COUNTY immediately in the event of any accident or injury arising out of or in connection with this Agreement. The indemnification provisions in this Agreement shall survive any expiration or termination of this Agreement.

#### **INSURANCE**

CONTRACTOR shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection



with the performance of the work hereunder and the results of that work by the CONTRACTOR, its agents, representatives, employees or subcontractors.

A. Minimum Scope and Limit of Insurance

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$2,000,000 per occurrence and \$4,000,000 in the aggregate.
2. **Automobile Liability:** Automobile Liability: Insurance Services Office Form CA 0001 covering Code 1 (any auto), with limits no less than \$2,000,000 per accident for bodily injury and property damage.
3. **Workers' Compensation:** Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. **Professional Liability:** Insurance appropriate to the CONTRACTOR'S profession, with limit of no less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate.
5. **Contractors' Pollution Legal Liability and/or Asbestos Legal Liability:** (*if project involves environmental hazards*) with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.

If the CONTRACTOR maintains higher limits than the minimums shown above, the COUNTY requires and shall be entitled to coverage for the higher limits maintained by the CONTRACTOR. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the COUNTY.

B. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **Additional Insured** – COUNTY, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the CONTRACTOR including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the CONTRACTOR'S insurance at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).
2. **Primary Coverage** – For any claims related to this Agreement, the CONTRACTOR'S insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the COUNTY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, officials, employees, agents or volunteers shall be excess of the CONTRACTOR'S insurance and shall not contribute with it.
3. **Notice of Cancellation** – Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the COUNTY.
4. **Waiver of Subrogation Rights** – Each party hereby agrees to waive rights of subrogation which any insurer of the other party may acquire from said party by

virtue of the payment of any loss. Each party agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. **The Workers' Compensation policy shall be endorsed with a waiver of subrogation** in favor of the COUNTY for all work performed by the CONTRACTOR, its employees, agents and subcontractors. This provision applies regardless of whether or not the COUNTY has received a waiver of subrogation endorsement from the insurer.

5. **Deductibles and Self-Insured Retention** – Any deductibles or self-insured retentions must be declared to and approved by the COUNTY. At the option of the COUNTY, either: the CONTRACTOR shall cause the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the COUNTY, its officers, officials, employees, agents and volunteers; or the CONTRACTOR shall provide a financial guarantee satisfactory to the COUNTY guaranteeing payment of losses and related investigations, claim administration, and defense expenses.
6. **Acceptability of Insurers** – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best's Insurance Guide rating of "A- VII".
7. **Verification of Coverage** – CONTRACTOR shall furnish the COUNTY with proof of insurance, original certificates and amendatory endorsements as required by this Agreement. The proof of insurance, certificates and endorsements are to be received and approved by the COUNTY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the CONTRACTOR'S obligation to provide them. The CONTRACTOR shall furnish evidence of renewal of coverage throughout the term of the Agreement. The COUNTY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
8. **Failure to Procure Coverage** – In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, COUNTY has the right but not the obligation or duty to terminate the Agreement. Maintenance of required insurance coverage is a material element of the Agreement and failure to maintain or renew such coverage or to provide evidence of renewal may be treated by COUNTY as a material breach of contract.
9. **Subcontractors** – CONTRACTOR shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and CONTRACTOR shall ensure that COUNTY is an additional insured on insurance required from subcontractors. For CGL coverage subcontractors shall provide coverage with a format least as broad as CG 20 38 04 13.
10. **Claims Made Policies** – If any of the required policies provide coverage on a claims-made basis:
  - i. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
  - ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work.
  - iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the CONTRACTOR must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

**11. Special Risks or Circumstances** – COUNTY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. CONTRACTOR agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of COUNTY to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of COUNTY.

## **EXHIBIT D**

### **EECBG Special Terms and Conditions**

County of Santa Barbara ("Recipient"), which is identified in the Assistance Agreement, and the Office of State and Community Energy Programs ("SCEP"), and Energy Efficiency and Conservation Block Grant Program ("EECBG"), an office within the United States Department of Energy ("DOE"), enters into this Award, to achieve the project objectives and the technical milestones and deliverables stated in Attachment 1 to this Award.

#### **Subpart A. General Provisions**

##### **Term 1. Legal Authority and Effect**

A DOE financial assistance award is valid only if it is in writing and is signed, either in writing or electronically, by a DOE Contracting Officer.

The Recipient may accept or reject the Award. Acknowledgement of award documents by the Recipient's authorized representative through electronic systems used by DOE, specifically The EECBG Program Voucher Portal (<https://doerebates.my.site.com/eecbgvouchers/s/>), constitutes the Recipient's acceptance of the terms and conditions of this Award. Acknowledgement via the EECBG Program Voucher Portal by the Recipient's authorized representative constitutes the Recipient's electronic signature.

##### **Term 2. Flow Down Requirement**

The Recipient agrees to apply the terms and conditions of this Award, as applicable to all subcontractors as required by 2 CFR 200.101, and to require their strict compliance therewith. Further, the Recipient must apply the Award terms as required by 2 CFR 200.327 to all sub contractors and to require their strict compliance therewith.

##### **Term 3. Compliance with Federal, State, and Municipal Law**

The Recipient is required to comply with applicable Federal, state, and local laws and regulations for all work performed under this Award. The Recipient is required to obtain all necessary Federal, state, and local permits, authorizations, and approvals for all work performed under this Award.

##### **Term 4. Inconsistency with Federal Law**

Any apparent inconsistency between Federal statutes and regulations and the terms and conditions contained in this Award must be referred to the DOE Award Administrator for guidance.

##### **Term 5. Federal Stewardship**

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

##### **Term 6. NEPA Requirements**

DOE must comply with the National Environmental Policy Act (NEPA) prior to authorizing the use of

Federal funds. Based on all information provided by the Recipient, SCEP has made a NEPA determination by issuing a categorical exclusion (CX) for all activities listed in the Application approved by the Contracting Officer and the DOE NEPA Determination. The Recipient is thereby authorized to use Federal funds for the defined project activities, except where such activity is subject to a restriction set forth elsewhere in this Award. This authorization is specific to the project activities and locations as described in the Application approved by the Contracting Officer and the DOE NEPA Determination.

***If the Recipient later intends to add to or modify the activities or locations*** as described in the approved Application and the DOE NEPA Determination, those new activities/locations or modified activities/locations are subject to additional NEPA review and are not authorized for Federal funding until the Contracting Officer provides written authorization on those additions or modifications. Should the Recipient elect to undertake activities or change locations prior to written authorization from the Contracting Officer, the Recipient does so at risk of not receiving Federal funding for those activities, and such costs may not be recognized as allowable cost share.

**Condition(s):**

NEPA Logs if conducting potentially ground disturbing activities.

**Term 7. Notice Regarding the Purchase of American-Made Equipment and Products – Sense of Congress**

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

**Term 8. Reporting Requirements**

The reporting requirements for this Award are identified on the Federal Assistance Reporting Checklist, attached to this Award. Failure to comply with these reporting requirements is 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. A willful failure to perform, a history of failure to perform, or unsatisfactory performance of this and/or other financial assistance awards, may also result in a debarment action to preclude future awards by Federal agencies.

**Term 9. Lobbying**

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

**Term 10. Publications**

The Recipient is required to include the following acknowledgement in publications arising out of, or relating to, work performed under this Award, whether copyrighted or not:

- **Acknowledgment:** “This material is based upon work supported by the U.S. Department of Energy’s Office of State and Community Energy Programs (SCEP) under the Energy Efficiency and Conservation Block Grant (EECBG) Program Application # XXXXXXXXX”
- **Full Legal Disclaimer:** “This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their

employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof.”

*Abridged Legal Disclaimer:* “The views expressed herein do not necessarily represent the views of the U.S. Department of Energy or the United States Government.”

Recipients should make every effort to include the full Legal Disclaimer. However, in the event that recipients are constrained by formatting and/or page limitations set by the publisher, the abridged Legal Disclaimer is an acceptable alternative.

#### **Term 11. No-Cost Extension**

As provided in 2 CFR 200.308, the Recipient must provide the Contracting Officer with notice in advance if it intends to utilize a one-time, no-cost extension of this Award. The notification must include the supporting reasons and the revised period of performance. The Recipient must submit this notification in writing to the Contracting Officer and DOE Technology Manager/ Project Officer at least 30 days before the end of the current budget period. Any no-cost extension will not alter the project scope, milestones, deliverables, or budget of this Award.

#### **Term 12. Property Standards**

The complete text of the Property Standards can be found at 2 CFR 200.310 through 200.316. Also see 2 CFR 910.360 for additional requirements for real property and equipment for For-Profit recipients.

#### **Term 13. Insurance Coverage**

See 2 CFR 200.310 for insurance requirements for real property and equipment acquired or improved with Federal funds. Also see 2 CFR 910.360(d) for additional requirements for real property and equipment for For-Profit recipients.

#### **Term 14. Real Property**

Subject to the conditions set forth in 2 CFR 200.311, title to real property acquired or improved under a Federal award will conditionally vest upon acquisition in the non-Federal entity. The non-Federal entity cannot encumber this property and must follow the requirements of 2 CFR 200.311 before disposing of the property.

Except as otherwise provided by Federal statutes or by the Federal awarding agency, real property will be used for the originally authorized purpose as long as needed for that purpose. When real property is no longer needed for the originally authorized purpose, the non-Federal entity must obtain disposition instructions from DOE or pass-through entity. The instructions must provide for one of the following alternatives: (1) retain title after compensating DOE as described in 2 CFR 200.311(c)(1); (2) Sell the property and compensate DOE as specified in 2 CFR 200.311(c)(2); or (3) transfer title to DOE or to a third party designated/approved by DOE as specified in 2 CFR 200.311(c)(3). See 2 CFR 200.311 for additional requirements pertaining to real property acquired or improved under a Federal award.

#### **Term 15. Equipment**

Subject to the conditions provided in 2 CFR 200.313, title to equipment (property) acquired under a Federal award will conditionally vest upon acquisition with the non-Federal entity. The non-Federal entity cannot encumber this property and must follow the requirements of 2 CFR 200.313 before disposing of the property.

Equipment must be used by the non-Federal entity in the program or project for which it was acquired as long as it is needed, whether or not the project or program continues to be supported by the Federal award. When no longer needed for the originally authorized purpose, the equipment may be used by programs supported by DOE in the priority order specified in 2 CFR 200.313(c)(1)(i) and (ii). Management requirements, including inventory and control systems, for equipment are provided in 2 CFR 200.313(d).

When equipment acquired under a Federal award is no longer needed, the non-Federal entity must obtain disposition instructions from DOE or pass-through entity. Disposition will be made as follows: (1) items of equipment with a current fair market value of \$5,000 or less may be retained, sold, or otherwise disposed of with no further obligation to DOE; (2) Non-Federal entity may retain title or sell the equipment after compensating DOE as described in 2 CFR 200.313(e)(2); or (3) transfer title to DOE or to an eligible third party as specified in 2 CFR 200.313(e)(3). See 2 CFR 200.313 for additional requirements pertaining to equipment acquired under a Federal award. See also 2 CFR 200.439 Equipment and other capital expenditures.

#### **Term 16. Supplies**

See 2 CFR 200.314 for requirements pertaining to supplies acquired under a Federal award. See also 2 CFR 200.453 Materials and supplies costs, including costs of computing devices.

#### **Term 17. Property Trust Relationship**

Real property, equipment, and intangible property, that are acquired or improved with a Federal award must be held in trust by the non-Federal entity as trustee for the beneficiaries of the project or program under which the property was acquired or improved. See 2 CFR 200.316 for additional requirements pertaining to real property, equipment, and intangible property acquired or improved under a Federal award.

#### **Term 18. Record Retention**

Consistent with 2 CFR 200.334 through 200.338, the Recipient is required to retain records relating to this Award.

#### **Term 19. Audits**

##### **A. Government-Initiated Audits**

The Recipient must provide any information, documents, site access, or other assistance requested by SCEP, DOE or Federal auditing agencies (e.g., DOE Inspector General, Government Accountability Office) for the purpose of audits and investigations. Such assistance may include, but is not limited to, reasonable access to the Recipient's records relating to this Award. Consistent with 2 CFR part 200 as amended by 2 CFR part 910, DOE may audit the Recipient's financial records or administrative records relating to this Award at any time. Government-initiated audits are generally paid for by DOE. DOE may conduct a final audit at the end of the project period (or the termination of the Award, if applicable). Upon completion of the audit, the Recipient is required to refund to DOE any payments for costs that were determined to be unallowable. If the audit has not been performed or completed prior to the closeout of the award, DOE retains the right to recover an appropriate amount after fully considering the recommendations on

disallowed costs resulting from the final audit. DOE will provide reasonable advance notice of audits and will minimize interference with ongoing work, to the maximum extent practicable.

**B. Annual Independent Audits (Single Audit or Compliance Audit)**

The Recipient must comply with the annual independent audit requirements in 2 CFR 200.500 through .521 for institutions of higher education, nonprofit organizations, and state and local governments (Single audit), and 2 CFR 910.500 through .521 for for-profit entities (Compliance audit).

The annual independent audits are separate from Government-initiated audits discussed in part A. of this Term and must be paid for by the Recipient. To minimize expense, the Recipient may have a Compliance audit in conjunction with its annual audit of financial statements. The financial statement audit is **not** a substitute for the Compliance audit. If the audit (Single audit or Compliance audit, depending on Recipient entity type) has not been performed or completed prior to the closeout of the award, DOE may impose one or more of the actions outlined in 2 CFR 200.339, Remedies for Noncompliance.

**Term 20. Indemnity**

The Recipient shall indemnify DOE and its officers, agents, or employees for any and all liability, including litigation expenses and attorneys' fees, arising from suits, actions, or claims of any character for death, bodily injury, or loss of or damage to property or to the environment, resulting from the project, except to the extent that such liability results from the direct fault or negligence of DOE officers, agents or employees, or to the extent such liability may be covered by applicable allowable costs provisions.

**Term 21. Foreign National Participation**

If the Recipient (including any of its contractors) anticipates involving foreign nationals in the performance of the Award, the Recipient must, upon DOE's request, provide DOE with specific information about each foreign national to ensure compliance with the requirements for participation and access approval. The volume and type of information required may depend on various factors associated with the Award. The DOE Contracting Officer will notify the Recipient if this information is required.

DOE may elect to deny a foreign national's participation in the Award. Likewise, DOE may elect to deny a foreign national's access to a DOE sites, information, technologies, equipment, programs or personnel.

**Term 22. Post-Award Due Diligence Reviews**

During the life of the Award, DOE may conduct ongoing due diligence reviews, through Government resources, to identify potential risks of undue foreign influence. In the event, a risk is identified, DOE may require risk mitigation measures, including but not limited to, requiring an individual or entity not participate in the Award.

**Subpart B. Financial Provisions**

**Term 23. Maximum Obligation**

The maximum obligation of DOE for this Award is the total "Funds Obligated" stated in Block 13 of the Assistance Agreement to this Award.

**Term 24. Refund Obligation**

The Recipient must refund any excess payments received from SCEP, including any costs determined unallowable by the Contracting Officer. Upon the end of the project period (or the termination of the Award, if applicable), the Recipient must refund to SCEP the difference between (1) the total payments received from SCEP, and (2) the Federal share of the costs incurred. Refund obligations under this Term do not supersede the annual reconciliation or true up process if specified under the Indirect Cost Term.



**Term 25. Allowable Costs**

SCEP determines the allowability of costs through reference to 2 CFR part 200 as amended by 2 CFR part 910. All project costs must be allowable, allocable, and reasonable. The Recipient must document and maintain records of all project costs, including, but not limited to, the costs paid by Federal funds, costs claimed by its subcontractors, and project costs that the Recipient claims as cost sharing, including in-kind contributions. The Recipient is responsible for maintaining records adequate to demonstrate that costs claimed have been incurred, are reasonable, allowable and allocable, and comply with the cost principles. Upon request, the Recipient is required to provide such records to SCEP. Such records are subject to audit. Failure to provide SCEP adequate supporting documentation may result in a determination by the Contracting Officer that those costs are unallowable. The Recipient is required to obtain the prior written approval of the Contracting Officer for any foreign travel costs.

**Term 26. Decontamination and/or Decommissioning (D&D) Costs**

Notwithstanding any other provisions of this Award, the Government shall not be responsible for or have any obligation to the Recipient for (1) Decontamination and/or Decommissioning (D&D) of any of the Recipient's facilities, or (2) any costs which may be incurred by the Recipient in connection with the D&D of any of its facilities due to the performance of the work under this Award, whether said work was performed prior to or subsequent to the effective date of the Award.

**Term 27. Use of Program Income**

If the Recipient earns program income during the project period as a result of this Award, the Recipient must add the program income to the funds committed to the Award and used to further eligible project objectives.

**Term 28. Payment Procedures****A. Method of Payment**

Payment will be made by reimbursement by CFO through ACH. Equipment rebate voucher applications will be approved for payment by DOE once the equipment has been installed and all required documentation has been provided.

**B. Payments**

All payments are made by electronic funds transfer to the bank account identified attached to the Recipient's UEI and identified in the Recipient's SAM.gov account.

**C. Unauthorized Drawdown of Federal Funds**

For each budget period, the Recipient may not spend more than the Federal share authorized to that award, without specific written approval from the Contracting Officer. The Recipient must immediately refund SCEP any amounts spent in excess of the authorized amount.

**D. Supporting Documents for Agency Approval of Payments**

DOE may request additional information from the Recipient to support the payment requests prior to release of funds, as deemed necessary. The Recipient is required to comply with these requests. Supporting documents include invoices, copies of contracts, vendor quotes, proof of installation and other expenditure explanations that justify the payment requests.

**Term 29. Budget Changes****A. Budget Changes Generally**

The Contracting Officer has reviewed and approved the budget in Attachment 1 to this Award. Any increase in the total project cost, whether DOE share or Cost Share, which is stated as "Total" in Block 12 to the Assistance Agreement of this Award, must be approved in advance and in writing by the Contracting Officer. Any change that alters the project scope, milestones or deliverables requires prior written approval of the Contracting Officer. SCEP may deny reimbursement for any failure to comply with the requirements in this term.

#### **B. Transfers of Funds Among Direct Cost Categories**

The Recipient is required to obtain the prior written approval of the Contracting Officer for any transfer of funds among direct cost categories where the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total project cost stated in the budget on the recipient's application.

The Recipient is required to notify the DOE Technology Manager/Project Officer of any transfer of funds among direct cost categories where the cumulative amount of such transfers is equal to or below 10 percent of the total project cost, stated in the budget on the recipient's application.

#### **Subpart C. Miscellaneous Provisions**

##### **Term 30. Environmental, Safety and Health Performance of Work at DOE Facilities**

With respect to the performance of any portion of the work under this Award which is performed at a DOE -owned or controlled site, the Recipient agrees to comply with all State and Federal Environmental, Safety and Health (ES&H) regulations and with all other ES&H requirements of the operator of such site.

Prior to the performance on any work at a DOE-owned or controlled site, the Recipient shall contact the site facility manager for information on DOE and site-specific ES&H requirements. The Recipient is required apply this provision to its contractors.

##### **Term 31. System for Award Management and Universal Identifier Requirements**

#### **A. Requirement for Registration in the System for Award Management (SAM)**

Unless the Recipient is exempted from this requirement under 2 CFR 25.110, tThe Recipient must maintain the currency of its information in SAM until the Recipient submits the final financial report required under this Award or receive the final payment, whichever is later. This requires that the Recipient reviews and updates the information at least annually after the initial registration, and more frequently if required by changes in its information or another award term.

#### **B. Unique Entity Identifier (UEI)**

SAM automatically assigns a UEI to all active SAM.gov registered entities. Entities no longer have to go to a third-party website to obtain their identifier. This information is displayed on SAM.gov.

If the Recipient is authorized to make subawards under this Award, the Recipient:

- i. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from the Recipient unless the entity has provided its UEI number to the Recipient.
- ii. May not make a subaward to an entity unless the entity has provided its UEI number to the Recipient.

#### **C. Definitions**

For purposes of this award term:

- i. System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM Internet site (currently at ).
- ii. Unique Entity Identifier (UEI) is the 12-character, alpha-numeric identifier that will be assigned by SAM.gov upon registration.
- iii. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR Part 25, subpart C:

1. A Governmental organization, which is a State, local government, or Indian Tribe.
2. A foreign public entity.
3. A domestic or foreign nonprofit organization.
4. A domestic or foreign for-profit organization.
5. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

iv. Subaward:

1. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which the Recipient received this Award and that the Recipient awards to an eligible subrecipient.
2. The term does not include the Recipient's procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200.501 Audit requirements, (f) *Subrecipients and Contractors* and/or 2 CFR 910.501 Audit requirements, (f) *Subrecipients and Contractors*).
3. A subaward may be provided through any legal agreement, including an agreement that the Recipient considers a contract.

v. Subrecipient means an entity that:

1. Receives a subaward from the Recipient under this Award; and
2. Is accountable to the Recipient for the use of the Federal funds provided by the subaward.

### **Term 32. Nondisclosure and Confidentiality Agreements Assurances**

A. By entering into this agreement, the Recipient attests that it **does not and will not** require its employees or contractors to sign internal nondisclosure or confidentiality agreements or statements prohibiting or otherwise restricting its employees or contractors from lawfully reporting waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

B. The Recipient further attests that it **does not and will not** use any Federal funds to implement or enforce any nondisclosure and/or confidentiality policy, form, or agreement it uses unless it contains the following provisions:

- i. *"These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a*

*violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.”*

ii. The limitation above shall not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

iii. Notwithstanding provision listed in paragraph (a), a nondisclosure or confidentiality policy form or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or officer of the United States Government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement shall, at a minimum, require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government. Such nondisclosure or confidentiality forms shall also make it clear that they do not bar disclosures to Congress, or to an authorized official of an executive agency or the Department of Justice, that are essential to reporting a substantial violation of law.

### **Term 33. Contractor Change Notification**

Except for contractors specifically proposed as part of the Recipient's Application for award, the Recipient must notify the Contracting Officer and Project Manager in writing 30 days prior to the execution of new or modified contract agreements, including naming any To Be Determined contractors. This notification does not constitute a waiver of the prior approval requirements outlined in 2 CFR part 200 as amended by 2 CFR part 910, nor does it relieve the Recipient from its obligation to comply with applicable Federal statutes, regulations, and executive orders.

In order to satisfy this notification requirement, the Recipient documentation must, as a minimum, include the following:

- A description of the service to be provided or the equipment to be purchased.
- An assurance that the process undertaken by the Recipient to solicit the contractor complies with their written procurement procedures as outlined in 2 CFR 200.317 through 200.327.
- An assurance that no planned, actual or apparent conflict of interest exists between the Recipient and the selected contractor and that the Recipient's written standards of conduct were followed.<sup>3</sup>
- A completed Environmental Questionnaire, if applicable.
- An assurance that the contractor is not a debarred or suspended entity.
- An assurance that all required award provisions will be flowed down in the resulting contract agreement.
- The Recipient is responsible for making a final determination to award or modify contractor agreements under this agreement, but the Recipient may not proceed with the contractor agreement until the Contracting Officer determines, and provides the Recipient written notification, that the information provided is adequate.

Should the Recipient not receive a written notification of adequacy from the Contracting Officer within 30 days of the submission of the contractor documentation stipulated above, the Recipient may proceed to award or modify the proposed contractor agreement.

#### **Term 34. Recipient Integrity and Performance Matters**

##### **A. General Reporting Requirement**

If the total value of your currently active Financial Assistance awards, grants, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this term. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

##### **B. Proceedings About Which You Must Report**

Submit the information required about each proceeding that:

- Is in connection with the award or performance of a Financial Assistance, cooperative agreement, or procurement contract from the Federal Government;
- Reached its final disposition during the most recent five-year period; and
- Is one of the following: 1. A criminal proceeding that resulted in a conviction, as defined in paragraph E of this award term and condition;
- A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
- An administrative proceeding, as defined in paragraph E of this term, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
- Any other criminal, civil, or administrative proceeding if: a. It could have led to an outcome described in paragraph B.iii.1, 2, or 3 of this term;
- It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
- The requirement in this term to disclose information about the proceeding does not conflict with applicable laws and regulations.

##### **C. Reporting Procedures**

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph B of this term. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

##### **D. Reporting Frequency**

During any period of time when you are subject to the requirement in paragraph A of this term, you must report proceedings information through SAM for the most recent five-year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, Financial Assistance awards, (including cooperative agreement awards) with a cumulative total value greater than \$10,000,000, must disclose semiannually any information about the criminal, civil, and administrative proceedings.

## **E. Definitions**

For purposes of this term:

- Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or Financial Assistance awards. It does not include audits, site visits, corrective plans, or inspection of deliverables.
- Conviction means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of *nolo contendere*.
- Total value of currently active Financial Assistance awards, cooperative agreements and procurement contracts includes—
  - Only the Federal share of the funding under any Federal award with a recipient cost share or match; and
  - The value of all expected funding increments under a Federal award and options, even if not yet exercised.

### **Term 35. Export Control**

The United States government regulates the transfer of information, commodities, technology, and software considered to be strategically important to the U.S. to protect national security, foreign policy, and economic interests without imposing undue regulatory burdens on legitimate international trade. There is a network of Federal agencies and regulations that govern exports that are collectively referred to as “Export Controls.” The Recipient is responsible for ensuring compliance with all applicable United States Export Control laws and regulations relating to any work performed under a resulting award. The Recipient must immediately report to DOE any export control violations related to the project funded under this award, at the recipient or subrecipient level, and provide the corrective action(s) to prevent future violations.

### **Term 36. Interim Conflict of Interest Policy for Financial Assistance**

The DOE interim Conflict of Interest Policy for Financial Assistance (COI Policy) can be found at <https://www.energy.gov/management/departments-energy-interim-conflict-interest-policy-requirements-financial-assistance>. This policy is applicable to all non-Federal entities applying for, or that receive, DOE funding by means of a financial assistance award (e.g., a grant, cooperative agreement, or technology investment agreement) and, through the implementation of this policy by the entity, to each Investigator who is planning to participate in, or is participating in, the project funded wholly or in part under this Award. The term “Investigator” means the PI and any other person, regardless of title or position, who is responsible for the purpose, design, conduct, or reporting of a project funded by DOE or proposed for funding by DOE. The Recipient must flow down the requirements of the interim COI Policy to any

contracting non-Federal entities, with the exception of DOE National Laboratories. Further, the Recipient must identify all financial conflicts of interests (FCOI), i.e., managed and unmanaged/ unmanageable, in its initial and ongoing FCOI reports. Prior to award, the Recipient was required to: 1) ensure all Investigators on this Award completed their significant financial disclosures; 2) review the disclosures; 3) determine whether a FCOI exists; 4) develop and implement a management plan for FCOIs; and 5) provide DOE with an initial FCOI report that includes all FCOIs (i.e., managed and unmanaged/unmanageable). Within 180 days of the date of the Award, the Recipient must be in full compliance with the other requirements set forth in DOE's interim COI Policy.

### **Term 37. Organizational Conflict of Interest**

Organizational conflicts of interest are those where, because of relationships with a parent company, affiliate, or subsidiary organization, the Recipient is unable or appears to be unable to be impartial in conducting procurement action involving a related organization (2 CFR 200.318(c)(2)).

The Recipient must disclose in writing any potential or actual organizational conflict of interest to the DOE Contracting Officer. The Recipient must provide the disclosure prior to engaging in a procurement or transaction using project funds with a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe. For a list of the information that must be included the disclosure, see Section VI. of the DOE interim Conflict of Interest Policy for Financial Assistance at <https://www.energy.gov/management/departments-energy-interim-conflict-interest-policy-requirements-financial-assistance>.

If the effects of the potential or actual organizational conflict of interest cannot be avoided, neutralized, or mitigated, the Recipient must procure goods and services from other sources when using project funds. Otherwise, DOE may terminate the Award in accordance with 2 CFR 200.340 unless continued performance is determined to be in the best interest of the Federal government. The Recipient must flow down the requirements of the interim COI Policy to any contracting non-Federal entities, with the exception of DOE National Laboratories. The Recipient is responsible for ensuring contractor compliance with this term. If the Recipient has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the Recipient must maintain written standards of conduct covering organizational conflicts of interest.

### **Term 38. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment**

As set forth in 2 CFR 200.216, recipients and subrecipients are prohibited from obligating or expending project funds (Federal and non-Federal funds) to:

- A. Procure or obtain;
- B. Extend or renew a contract to procure or obtain; or
- C. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
  - a. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera
  - b. Telecommunications or video surveillance services provided by such entities or using such equipment.

- c. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country. See Public Law 115-232, section 889 for additional information.

#### **Term 39. Human Subjects Research**

Research involving human subjects, biospecimens, or identifiable private information conducted with Department of Energy (DOE) funding is subject to the requirements of DOE Order 443.1C, *Protection of Human Research Subjects*, 45 CFR Part 46, *Protection of Human Subjects (subpart A which is referred to as the "Common Rule")*, and 10 CFR Part 745, *Protection of Human Subjects*.

Federal regulation and the DOE Order require review by an Institutional Review Board (IRB) of all proposed human subjects research projects. The IRB is an interdisciplinary ethics board responsible for ensuring that the proposed research is sound and justifies the use of human subjects or their data; the potential risks to human subjects have been minimized; participation is voluntary; and clear and accurate information about the study, the benefits and risks of participating, and how individuals' data/specimens will be protected/used, is provided to potential participants for their use in determining whether or not to participate. The Recipient shall provide the Federal Wide Assurance number identified in item 1 below and the certification identified in item 2 below to DOE prior to initiation of any project that will involve interactions with humans in some way (e.g., through surveys); analysis of their identifiable data (e.g., demographic data and energy use over time); asking individuals to test devices, products, or materials developed through research; and/or testing of commercially available devices in buildings/homes in which humans will be present. *Note:* This list of examples is illustrative and not all inclusive.

No DOE funded research activity involving human subjects, biospecimens, or identifiable private information shall be conducted without: Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

1) A registration and a Federal Wide Assurance of compliance accepted by the Office of Human Research Protection (OHRP) in the Department of Health and Human Services; and

2) Certification that the research has been reviewed and approved by an Institutional Review Board (IRB) provided for in the assurance. IRB review may be accomplished by the awardee's institutional IRB; by the Central DOE IRB; or if collaborating with one of the DOE national laboratories, by the DOE national laboratory IRB. The Recipient is responsible for ensuring all subrecipients comply and for reporting information on the project annually to the DOE Human Subjects Research Database (HSRD) at <https://science.osti.gov/HumanSubjects/Human-Subjects-Database/home>. *Note:* If a DOE IRB is used, no end of year reporting will be needed. Additional information on the DOE Human Subjects Research Program can be found at: <https://science.osti.gov/ber/human-subjects>

#### **Term 40. Fraud, Waste and Abuse**

The mission of the DOE Office of Inspector General (OIG) is to strengthen the integrity, economy and efficiency of DOE's programs and operations including deterring and detecting fraud, waste, abuse and mismanagement. The OIG accomplishes this mission primarily through investigations, audits, and inspections of Department of Energy activities to include grants, cooperative agreements, loans, and contracts. The OIG maintains a Hotline for reporting allegations of fraud, waste, abuse, or mismanagement. To report such allegations, please visit <https://www.energy.gov/ig/ig-hotline>.



Additionally, the Recipient must be cognizant of the requirements of 2 CFR § 200.113 Mandatory disclosures, which states: The non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Non-Federal entities that have received a Federal award including the term and condition outlined in appendix XII of 2 CFR Part 200 are required to report certain civil, criminal, or administrative proceedings to SAM (currently FAPIIS). Failure to make required disclosures can result in any of the remedies described in § 200.339. (See also 2 CFR part 180, 31 U.S.C. 3321, and 41 U.S.C. 2313.)

#### **Subpart D. Bipartisan Infrastructure Law (BIL)-specific requirements**

##### **Term 41. Reporting, Tracking and Segregation of Incurred Costs**

BIL funds can be used in conjunction with other funding, as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the BIL and related Office of Management and Budget (OMB) Guidance. The Recipient must keep separate records for BIL funds and must ensure those records comply with the requirements of the BIL. Funding provided through the BIL that is supplemental to an existing grant or cooperative agreement is one-time funding.

##### **Term 42. Davis-Bacon Requirements**

This award is funded under Division D of the Bipartisan Infrastructure Law (BIL). All laborers and mechanics employed by the recipient, subrecipients, contractors or subcontractors in the performance of construction, alteration, or repair work in excess of \$2,000 on an award funded directly by or assisted in whole or in part by funds made available under this award shall be paid wages at rates not less than those prevailing on similar projects in the locality, as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code commonly referred to as the "Davis-Bacon Act" (DBA). Recipients shall provide written assurance acknowledging the DBA requirements for the award or project and confirming that all of the laborers and mechanics performing construction, alteration, or repair, through funding under the award are paid or will be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by Subchapter IV of Chapter 31 of Title 40, United States Code (Davis-Bacon Act).

The Recipient must comply with all of the Davis-Bacon Act requirements, including but not limited to:

- (1) ensuring that the wage determination(s) and appropriate Davis-Bacon clauses and requirements are flowed down to and incorporated into any applicable subcontracts.
- (2) being responsible for compliance by any subcontractor with the Davis-Bacon labor standards.
- (3) receiving and reviewing certified weekly payrolls submitted by all subcontractors and subrecipients for accuracy and to identify potential compliance issues.
- (4) maintaining original certified weekly payrolls for 3 years after the completion of the project and must make those payrolls available to the DOE or the Department of Labor upon request, as required by 29 CFR 5.6(a)(2).
- (5) conducting payroll and job-site reviews for construction work, including interviews with employees, with such frequency as may be necessary to assure compliance by its subcontractors and as requested or directed by the DOE.

(6) cooperating with any authorized representative of the Department of Labor in their inspection of records, interviews with employees, and other actions undertaken as part of a Department of Labor investigation.

(7) posting in a prominent and accessible place the wage determination(s) and Department of Labor Publication: WH-1321, Notice to Employees Working on Federal or Federally Assisted Construction Projects.

(8) notifying the Contracting Officer of all labor standards issues, including all complaints regarding incorrect payment of prevailing wages and/or fringe benefits, received from the recipient, , contractor, or subcontractor employees; significant labor standards violations, as defined in 29 CFR 5.7; disputes concerning labor standards pursuant to 29 CFR parts 4, 6, and 8 and as defined in FAR 52.222-14; disputed labor standards determinations; Department of Labor investigations; or legal or judicial proceedings related to the labor standards under this Contract, a subcontract, or subrecipient award.

(9) preparing and submitting to the Contracting Officer, the Office of Management and Budget Control Number 1910-5165, Davis Bacon Semi-Annual Labor Compliance Report, by April 21 and October 21 of each year. Form submittal will be administered through the iBenefits system (<https://doeibenefits2.energy.gov>) or its successor system. The Recipient must undergo Davis-Bacon Act compliance training and must maintain competency in Davis-Bacon Act compliance. The Contracting Officer will notify the Recipient of any DOE sponsored Davis-Bacon Act compliance trainings. The Department of Labor offers free Prevailing Wage Seminars several times a year that meet this requirement, at <https://www.dol.gov/agencies/whd/government-contracts/construction/seminars/events>.

The Department of Energy has contracted with, a third-party DBA electronic payroll compliance software application. The Recipient must ensure the timely electronic submission of weekly certified payrolls as part of its compliance with the Davis-Bacon Act unless a waiver is granted to a particular contractor or subcontractor because they are unable or limited in their ability to use or access the software.

#### **Davis Bacon Act Electronic Certified Payroll Submission Waiver**

A waiver must be granted before the award starts. The applicant does not have the right to appeal SCEP's decision concerning a waiver request.

For additional guidance on how to comply with the Davis-Bacon provisions and clauses, see

<https://www.dol.gov/agencies/whd/government-contracts/construction> and

<https://www.dol.gov/agencies/whd/government-contracts/protections-for-workers-in-construction>.

#### **Term 43. Buy American Requirement for Infrastructure Projects**

*\*NOTE: Buy American Requirements only apply to awards over \$250,000. Please disregard this section if your total EECBG Program award is less than \$250,000.*

#### **A. Definitions**

**Components** are defined as the articles, materials, or supplies incorporated directly into the end manufactured product(s).

**Construction Materials** are an article, material, or supply—other than an item primarily of iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives—that is used in an infrastructure project and is or consists primarily of non-ferrous metals, plastic and polymer-based products (including polyvinylchloride, composite building

materials, and polymers used in fiber optic cables), glass (including optic glass), lumber, drywall, coatings (paints and stains), optical fiber, clay brick; composite building materials; or engineered wood products.

**Domestic Content Procurement Preference Requirement-** means a requirement that no amounts made available through a program for federal financial assistance may be obligated for an infrastructure project unless—

- (A) all iron and steel used in the project are produced in the United States;
- (B) the manufactured products used in the project are produced in the United States; or
- (C) the construction materials used in the project are produced in the United States.

Also referred to as the **Buy America Requirement**.

**Infrastructure** includes, at a minimum, the structures, facilities, and equipment located in the United States, for: roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property; and generation, transportation, and distribution of energy -including electric vehicle (EV) charging.

The term “infrastructure” should be interpreted broadly, and the definition provided above should be considered as illustrative and not exhaustive.

**Manufactured Products** are items used for an infrastructure project made up of components that are not primarily of iron or steel; construction materials; cement and cementitious materials’ aggregates such as stone, sand, or gravel; or aggregate binding agents or additives.

**Primarily of iron or steel** means greater than 50% iron or steel, measured by cost.

**Project-** means the construction, alteration, maintenance, or repair of infrastructure in the United States.

**Public-** The Buy America Requirement does not apply to non-public infrastructure. For purposes of this guidance, infrastructure should be considered “public” if it is: (1) publicly owned or (2) privately owned but utilized primarily for a public purpose. Infrastructure should be considered to be “utilized primarily for a public purpose” if it is privately operated on behalf of the public or is a place of public accommodation.

## **B. Buy America Requirement**

None of the funds provided under this award (federal share or recipient cost-share) may be used for a project for infrastructure unless:

1. All iron and steel used in the project is produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
2. All manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
3. All construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America Requirement only applies to articles, materials, and supplies that are consumed in, incorporated into, or permanently affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought into the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America Requirement apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project. Recipients are responsible for administering their award in accordance with the terms and conditions, including the Buy America Requirement. The recipient must ensure that the Buy America Requirement flows down to all subawards and that the subawardees and subrecipients comply with the Buy America Requirement. The Buy America Requirement term and condition must be included all sub-awards, contracts, subcontracts, and purchase orders for work performed under the infrastructure project.

### **C. Certification of Compliance**

The Recipient must certify or provide equivalent documentation for proof of compliance that a good faith effort was made to solicit bids for domestic products used in the infrastructure project under this Award. The Recipient must also maintain certifications or equivalent documentation for proof of compliance that those articles, materials, and supplies that are consumed in, incorporated into, affixed to, or otherwise used in the infrastructure project, not covered by a waiver or exemption, are produced in the United States. The certification or proof of compliance must be provided by the suppliers or manufacturers of the iron, steel, manufactured products and construction materials and flow up from all subawardees, contractors and vendors to the Recipient. The Recipient must keep these certifications with the award/project files and be able to produce them upon request from DOE, auditors or Office of Inspector General.

### **D. Waivers**

When necessary, the Recipient may apply for, and DOE may grant, a waiver from the Buy America Requirement. Requests to waive the application of the Buy America Requirement must be in writing to the Contracting Officer. Waiver requests are subject to review by DOE and the Office of Management and Budget, as well as a public comment period of no less than 15 calendar days. Waivers must be based on one of the following justifications:

1. Public Interest- Applying the Buy America Requirement would be inconsistent with the public interest;
2. Non-Availability- The types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
3. Unreasonable Cost- The inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent. Requests to waive the Buy America Requirement must include the following:
  - Waiver type (Public Interest, Non-Availability, or Unreasonable Cost);
  - Recipient name and Unique Entity Identifier (UEI);
  - Award information (Federal Award Identification Number, Assistance Listing number);
  - A brief description of the project, its location, and the specific infrastructure involved;
  - Total estimated project cost, with estimated federal share and recipient cost share breakdowns;

- Total estimated infrastructure costs, with estimated federal share and recipient cost share breakdowns;
- List and description of iron or steel item(s), manufactured goods, and/or construction material(s) the recipient seeks to waive from the Buy America Preference, including name, cost, quantity(ies), country(ies) of origin, and relevant Product Service Codes (PSC) and North American Industry Classification System (NAICS) codes for each;
- A detailed justification as to how the non-domestic item(s) is/are essential to the project;
- A certification that the recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and non-proprietary communications with potential suppliers;
- A justification statement—based on one of the applicable justifications outlined above—as to why the listed items cannot be procured domestically, including the due diligence performed (e.g., market research, industry outreach, cost analysis, cost-benefit analysis) by the recipient to attempt to avoid the need for a waiver. This justification may cite, if applicable, the absence of any Buy America-compliant bids received for domestic products in response to a solicitation; and
- Anticipated impact to the project if no waiver is issued.
- The Recipient should consider using the following principles as minimum requirements contained in their waiver request:
  - Time-limited: Consider a waiver constrained principally by a length of time, rather than by the specific project/award to which it applies. Waivers of this type may be appropriate, for example, when an item that is “non-available” is widely used in the project. When requesting such a waiver, the Recipient should identify a reasonable, definite time frame (e.g., no more than one to two years) designed so that the waiver is reviewed to ensure the condition for the waiver (“non-availability”) has not changed (e.g., domestic supplies have become more available).
  - Targeted: Waiver requests should apply only to the item(s), product(s), or material(s) or category(ies) of item(s), product(s), or material(s) as necessary and justified. Waivers should not be overly broad as this will undermine domestic preference policies.
  - Conditional: The Recipient may request a waiver with specific conditions that support the policies of IIJA/BABA and Executive Order 14017.
- DOE may request, and the Recipient must provide, additional information for consideration of this waiver. DOE may reject or grant waivers in whole or in part depending on its review, analysis, and/or feedback from OMB or the public. DOE's final determination regarding approval or rejection of the waiver request may not be appealed. Waiver requests may take up to 90 calendar days to process.

**Term 44. Affirmative Action and Pay Transparency Requirements**

All federally assisted construction contracts exceeding \$10,000 annually will be subject to the requirements of Executive Order 11246:

- (1) Recipients and contractors are prohibited from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identity or national origin.
- (2) Recipients and contractors are required to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment. This includes flowing down the appropriate language to all subrecipients, contractors and subcontractors.

(3) Recipients and contractors are prohibited from taking adverse employment actions against applicants and employees for asking about, discussing, or sharing information about their pay or, under certain circumstances, the pay of their co-workers. The Department of Labor's (DOL) Office of Federal Contractor Compliance Programs (OFCCP) uses a neutral process to schedule contractors for compliance evaluations. OFCCP's Technical Assistance Guide<sup>4</sup> should be consulted to gain an understanding of the requirements and possible actions the recipients, subrecipients, contractors and subcontractors must take.

**Term 45. Potentially Duplicative Funding Notice**

If the Recipient have or receive any other award of federal funds for activities that potentially overlap with the activities funded under this Award, the Recipient must promptly notify DOE in writing of the potential overlap and state whether project funds (i.e., recipient cost share and federal funds) from any of those other federal awards have been, are being, or are to be used (in whole or in part) for one or more of the identical cost items under this Award. If there are identical cost items, the Recipient must promptly notify the DOE Contracting Officer in writing of the potential duplication and eliminate any inappropriate duplication of funding.

**Term 46. Transparency of Foreign Connections**

During the term of the Award, the Recipient must notify the DOE Contracting Officer within fifteen (15) business days of learning of the following circumstances in relation to the Recipient or contractors:

1. The existence of any joint venture or subsidiary that is based in, funded by, or has a foreign affiliation with any foreign country of risk;
2. Any current or pending contractual or financial obligation or other agreement specific to a business arrangement, or joint venture-like arrangement with an enterprise owned by a country of risk or foreign entity based in a country of risk;
3. Any current or pending change in ownership structure of the Recipient or contractors that increases foreign ownership related to a country of risk;
4. Any current or pending venture capital or institutional investment by an entity that has a general partner or individual holding a leadership role in such entity who has a foreign affiliation with any foreign country of risk;
5. Any current or pending technology licensing or intellectual property sales to a foreign country of risk; and
6. Any current or pending foreign business entity, offshore entity, or entity outside the United States related to the Recipient or subrecipient.

**Term 47. Foreign Collaboration Considerations**

a. Consideration of new collaborations with foreign organizations and governments. The Recipient must provide DOE with advanced written notification of any potential collaboration with foreign entities, organizations or governments in connection with its DOE-funded award scope. The Recipient must await further guidance from DOE prior to contacting the proposed foreign entity, organization or government regarding the potential collaboration or negotiating the terms of any potential agreement.

b. Existing collaborations with foreign entities, organizations and governments. The Recipient must provide DOE with a written list of all existing foreign collaborations in which has entered in connection with its DOE-funded award scope.

c. Description of collaborations that should be reported: In general, a collaboration will involve some provision of a thing of value to, or from, the Recipient. A thing of value includes but may not be limited to all resources made available to, or from, the recipient in support of and/or related to the Award, regardless of whether or not they have monetary value. Things of value also may include in-kind contributions (such as office/laboratory space, data, equipment, supplies, employees, students). In-kind contributions not intended for direct use on the Award but resulting in provision of a thing of value from or to the Award must also be reported. Collaborations do not include routine workshops, conferences, use of the Recipient's services and facilities by foreign investigators resulting from its standard published process for evaluating requests for access, or the routine use of foreign facilities by awardee staff in accordance with the Recipient's standard policies and procedures.

## EXHIBIT E

### EECBG SCOPE OF WORK REQUIREMENTS

#### **Blueprints and Additional Activities:**

All proposed project activities and equipment funded from the EEBG *Administrative and Legal Requirements Documents* (ALRD), and all proposed project activities and equipment funded under *Financial Incentive Programs*, must be listed below. Activities and equipment not listed below would require submission of an *Environmental Questionnaire 1* form (EQ1).

This Statement of Work is organized around EECBG Program Blueprints. Applicants that plan to use a Blueprint should identify their selected Blueprint number and ensure that their proposed activities align with this Statement of Work. Applicants that do not plan to use a Blueprint may find that their proposed activities are covered under one of the Blueprint headers or the “Additional Activities” section. Please review each item carefully to determine if proposed activities are included in this Statement of Work.

1. **Blueprint #2A:** Funding commercially available, energy efficient, grid-interactivity, electrification and renewable energy upgrades; provided that projects adhere to the requirements of the respective applicant's DOE executed *Historic Preservation Programmatic Agreement* (PA), are installed in or on existing buildings (or within the boundaries of a facility, defined as an already disturbed area due to regular ground maintenance), do not require tree removal or tree trimming, do not require structural reinforcement, and are limited to:
  - a. Installation of insulation.
  - b. Installation of energy efficient lighting and light poles (may be installed within a maintained utility easement if no trees are removed).
  - c. HVAC upgrades to existing systems.
  - d. Weather sealing and duct sealing.
  - e. Purchase and installation of energy/water-efficient residential and commercial appliances and equipment (including, but not limited to, grid-interactive building technologies, energy or water monitoring and control systems, thermostats, heat pumps, air conditioners, and related software).
  - f. Retrofit of energy efficient pumps and motors (for such uses as, but not limited to, wastewater treatment plants) where it would not alter the capacity, use, mission, or operation of an existing facility.
  - g. Retrofit and replacement of windows and doors.



- h. Installation of electric appliances (including replacement of appliances that utilize fossil fuels with electric appliances) such as heat pumps for water heating, air heating/cooling, electric dryers, and stoves.
  - i. Retrofit and installation of energy-efficient commercial kitchen equipment, such as efficient refrigerators, freezers, dishwashers.
  - j. Electrical system upgrades limited to electric panel upgrades, updated wiring and conduit, grounding, and arc-fault circuit interrupter (AFCI) and ground-fault circuit interrupter (GFCI) breakers.
2. **Blueprint #2B: Energy Savings Performance Contracts for Efficiency and Electrification in Buildings**, activities limited to:
- a. Funding commercially available energy efficiency or renewable energy upgrades; provided that projects adhere to the requirements of the respective applicant's DOE executed *Historic Preservation Programmatic Agreement* (PA), are installed in or on existing buildings (or within the boundaries of a facility, defined as an already disturbed area due to regular ground maintenance), do not require tree removal or tree trimming, do not require structural reinforcement, and are limited to:
    - i. Installation of insulation.
    - ii. Installation of energy efficient lighting and light poles (may be installed within a maintained utility easement if no trees are removed).
    - iii. HVAC upgrades (to existing systems).
    - iv. Weather sealing and duct sealing.
    - v. Purchase and installation of energy/water-efficient residential and commercial appliances and equipment (including, but not limited to, grid-interactive building technologies, energy or water monitoring and control systems, thermostats, heat pumps, air conditioners, and related software).
    - vi. Retrofit of energy efficient pumps and motors (for such uses as, but not limited to, wastewater treatment plants) where it would not alter the capacity, use, mission, or operation of an existing facility.
    - vii. Retrofit and replacement of windows and doors.
    - viii. Installation of electric appliances (including replacement of appliances that utilize fossil fuels with electric appliances) such as heat pumps for water heating, air heating/cooling, electric dryers, and stoves.
    - ix. Retrofit and installation of energy-efficient commercial kitchen equipment, such as efficient refrigerators, freezers, dishwashers.
    - x. Electrical system upgrades limited to electric panel upgrades, updated wiring and conduit, grounding, and arc-fault circuit interrupter (AFCI) and ground-fault circuit interrupter (GFCI) breakers.
  - b. Post-implementation measurement & verification limited to data analysis (e.g.: metering/usage/temperature), which may include monitoring devices installed on equipment, but not on buildings.
3. **Blueprint #2C: Building Efficiency & Electrification Campaign**, activities limited to:
- a. Building Energy Efficiency: Funding commercially available energy efficiency or renewable energy upgrades; provided that projects adhere to the requirements of the respective applicant's DOE executed *Historic Preservation Programmatic Agreement* (PA), are installed in or on existing buildings (or within the boundaries of a facility, defined as an already disturbed area due to regular ground maintenance), do not require tree removal or tree trimming, do not require structural reinforcement, and are limited to:
    - i. Installation of insulation.
    - ii. Installation of energy efficient lighting and light poles (may be installed within a maintained utility easement if no trees are removed).

- iii. HVAC upgrades to existing systems.
  - iv. Weather sealing and duct sealing.
  - v. Purchase and installation of energy/water-efficient residential and commercial appliances and equipment (including, but not limited to, grid-interactive building technologies, energy or water monitoring and control systems, thermostats, heat pumps, air conditioners, and related software).
  - vi. Retrofit of energy efficient pumps and motors (for such uses as, but not limited to, wastewater treatment plants) where it would not alter the capacity, use, mission, or operation of an existing facility.
  - vii. Retrofit and replacement of windows and doors.
  - viii. Installation of electric appliances (including replacement of appliances that utilize fossil fuels with electric appliances) such as heat pumps for water heating, air heating/cooling, electric dryers, and stoves.
  - ix. Retrofit and installation of energy-efficient commercial kitchen equipment, such as efficient refrigerators, freezers, dishwashers.
  - x. Electrical system upgrades limited to electric panel upgrades, updated wiring and conduit, grounding, and arc-fault circuit interrupter (AFCI) and ground-fault circuit interrupter (GFCI) breakers.
- 4. **Blueprint #3A: Solar and Battery Storage - Power Purchase Agreements and Direct Ownership,** activities limited to:
  - a. Installation of renewable energy technology, provided that projects adhere to the requirements of the respective applicant's DOE executed *Historic Preservation Programmatic Agreement (PA)*, are installed in or on existing buildings, (or within the boundaries of a facility, defined as an already disturbed area due to regular ground maintenance), do not require tree removal or tree trimming, do not require structural reinforcement, and are limited to Solar Electricity/Photovoltaic systems not to exceed 60 kW DC.
  - b. Installation of energy storage systems, including electrochemical and thermal storage systems, provided that projects adhere to the requirements of the respective applicant's DOE executed *Historic Preservation Programmatic Agreement (PA)*, are installed in or on existing buildings, (or within the boundaries of a facility, defined as an already disturbed area due to regular ground maintenance), do not require tree removal or tree trimming, do not require structural reinforcement, and are appropriately sized not to exceed 1,000 kWh.
- 5. **Blueprint #3B: Community Solar,** activities limited to:
  - a. Stakeholder engagement, education, and outreach.
  - b. Site assessments and selection.
  - c. Procurement of developer, legal & technical support.
  - d. Communications, program education, and promotion
  - e. Installation of solar electricity/photovoltaic (PV) systems , provided that projects adhere to the requirements of the respective applicant's DOE executed *Historic Preservation Programmatic Agreement (PA)*, are installed in or on existing buildings, (or within the boundaries of a facility, defined as an already disturbed area due to regular ground maintenance), do not require tree removal or tree trimming, do not require structural reinforcement, and are not to exceed 60 kW DC.
  - f. Installation of energy storage systems, including electrochemical and thermal storage systems, provided that projects adhere to the requirements of the respective applicant's DOE executed *Historic Preservation Programmatic Agreement (PA)*, are installed in or on existing buildings, (or within the boundaries of a facility, defined as an already disturbed area due to regular ground maintenance), do not require tree removal or tree trimming, do not require structural reinforcement, and are appropriately sized not to exceed 1,000 kWh.
- 6. **Blueprint #3C: Solarize Campaign,** activities limited to:

- a. Installation of solar electricity/photovoltaic (PV) systems , provided that projects adhere to the requirements of the respective applicant's DOE executed *Historic Preservation Programmatic Agreement* (PA), are installed in or on existing buildings, (or within the boundaries of a facility, defined as an already disturbed area due to regular ground maintenance), do not require tree removal or tree trimming, do not require structural reinforcement, and are not to exceed 60 kW DC.
  - b. Installation of energy storage systems, including electrochemical and thermal storage systems, provided that projects adhere to the requirements of the respective applicant's DOE executed *Historic Preservation Programmatic Agreement* (PA), are installed in or on existing buildings, (or within the boundaries of a facility, defined as an already disturbed area due to regular ground maintenance), do not require tree removal or tree trimming, do not require structural reinforcement, and are appropriately sized not to exceed 1,000 kWh.
7. **Blueprint #3D: Renewable Resource Planning**, activities limited to:
  - a. Installation of solar electricity/photovoltaic (PV) systems , provided that projects adhere to the requirements of the respective applicant's DOE executed *Historic Preservation Programmatic Agreement* (PA), are installed in or on existing buildings, (or within the boundaries of a facility, defined as an already disturbed area due to regular ground maintenance), do not require tree removal or tree trimming, do not require structural reinforcement, and are limited to systems not to exceed 60 kW DC.
  - b. Installation of energy storage systems, including electrochemical and thermal storage systems, provided that projects adhere to the requirements of the respective applicant's DOE executed *Historic Preservation Programmatic Agreement* (PA), are installed in or on existing buildings, (or within the boundaries of a facility, defined as an already disturbed area due to regular ground maintenance), do not require tree removal or tree trimming, do not require structural reinforcement, and are appropriately sized not to exceed 1,000 kWh.
8. **Blueprint #4A: Electric Vehicles for Fleets and Fleet Electrification**, activities limited to:
  - a. Purchase of alternative fuel vehicles, including electric vehicles and plug-in hybrid vehicles.
  - b. Installation of electric vehicle supply equipment (EVSE), including testing measurements to assess the safety and functionality of the EVSE (restricted to existing footprints and areas of previous ground disturbance within an existing parking facility, defined as any building, structure, land, right-of-way, facility, or area used for parking of motor vehicles). All activities must use reversible, non-permanent techniques for installation, and where appropriate, use the lowest profile EVSE reasonably available that provides the necessary charging capacity. EVSE shall be placed in minimally visibly intrusive area; use colors complementary to surrounding environment, where possible, and be limited to the current electrical capacity. This applies to Level 1, Level 2, and Level 3 (also known as Direct Current (DC) Fast Charging) EVSE for community and municipal fleets.
9. **Blueprint #4B: Electric Vehicle Charging Infrastructure**, activities limited to:
  - a. Installation of electric vehicle supply equipment (EVSE), including testing measurements to assess the safety and functionality of the EVSE (restricted to existing footprints and areas of previous ground disturbance within an existing parking facility, defined as any building, structure, land, right-of-way, facility, or area used for parking of motor vehicles). All activities must use reversible, non-permanent techniques for installation, and where appropriate, use the lowest profile EVSE reasonably available that provides the necessary charging capacity. EVSE shall be placed in minimally visibly intrusive area; use colors complementary to surrounding environment, where possible, and be limited to the current electrical capacity. This applies to Level 1, Level 2, and Level 3 (also known as Direct Current (DC) Fast Charging) EVSE for community and municipal fleets.
10. **Building Energy Efficiency: Funding commercially available energy efficiency or renewable energy upgrades**, provided that projects adhere to the requirements of the respective applicant's DOE executed *Historic Preservation Programmatic Agreement* (PA), are installed in or on existing buildings, (or within the

boundaries of a facility, defined as an already disturbed area due to regular ground maintenance), do not require tree removal or tree trimming, do not require structural reinforcement, are appropriately sized, and are limited to:

- a. Installation of insulation.
  - b. Installation of energy efficient lighting and light poles (may be installed within a maintained utility easement if no trees are removed).
  - c. HVAC upgrades to existing systems.
  - d. Weather sealing and duct sealing.
  - e. Purchase and installation of energy/water-efficient residential and commercial appliances and equipment (including, but not limited to, grid-interactive building technologies, energy or water monitoring and control systems, thermostats, heat pumps, air conditioners, and related software).
  - f. Retrofit of energy efficient pumps and motors (for such uses as, but not limited to, wastewater treatment plants) where it would not alter the capacity, use, mission, or operation of an existing facility.
  - g. Retrofit and replacement of windows and doors.
- 
- h. Installation of electric appliances (including replacement of appliances that utilize fossil fuels with electric appliances) such as heat pumps for water heating, air heating/cooling, electric dryers, and stoves.
  - i. Retrofit and installation of energy-efficient commercial kitchen equipment, such as efficient refrigerators, freezers, dishwashers.
  - j. Electrical system upgrades required to enable energy efficient/clean energy. Measures limited to electric panel upgrades, updated wiring and conduit, grounding, and arc-fault circuit interrupter (AFCI) and ground-fault circuit interrupter (GFCI) breakers.
11. Installation of renewable energy technology, provided that projects adhere to the requirements of the respective applicant's DOE executed *Historic Preservation Programmatic Agreement* (PA), are installed in or on existing buildings, (or within the boundaries of a facility, defined as an already disturbed area due to regular ground maintenance), do not require tree removal or tree trimming, do not require structural reinforcement, are appropriately sized, and are limited to:
- a. Solar Electricity/Photovoltaic—appropriately sized systems not to exceed 60kW (including community solar projects)
  - b. Wind Turbines 20 kW or smaller
  - c. Solar thermal systems (including solar thermal hot water) limited to 200,000 BTU per hour or smaller.
  - d. Ground source heat pumps limited to horizontal/vertical, ground, closed-loop systems with a capacity of 5.5 tons or smaller.
12. Biomass thermal systems, provided that projects adhere to the requirements of the respective applicant's DOE executed *Historic Preservation Programmatic Agreement* (PA), are installed in existing buildings, do not require structural reinforcement, are appropriately sized, and limited to 3 MMBTUs per hour or smaller, with appropriate regulatory permits obtained and Best Available Control Technologies (BACT) installed and operated.
13. Purchase of alternative fuel vehicles, hybrids, and electric vehicles.
14. Installation of fueling pumps and systems for fuels such as compressed natural gas, hydrogen, ethanol, and other commercially available biofuels, (but not storage tanks) provided that projects adhere to the requirements of the respective applicant's DOE executed *Historic Preservation Programmatic Agreement* (PA), are installed on a current fueling station site, do not require tree removal or tree trimming, are appropriately sized, and obtain the appropriate permits, and comply with regulatory requirements.

15. Installation of energy storage systems, including electrochemical and thermal storage systems, provided that projects adhere to the requirements of the respective applicant's DOE executed *Historic Preservation Programmatic Agreement* (PA), are installed in or on existing buildings, (or within the boundaries of a facility, defined as an already disturbed area due to regular ground maintenance), do not require tree removal or tree trimming, do not require structural reinforcement, are appropriately sized not to exceed 1,000 kWh, obtain the appropriate permits, and comply with regulatory requirements.

The Applicant is responsible for informing DOE of any extraordinary circumstances, cumulative impacts, or connected actions that may lead to significant impacts on the environment or any inconsistency with the "integral elements" from a particular project. See 10 C.F.R. Part 1021 Appendix B, and the DOE's online NEPA and historic preservation training at [www.energy.gov/node/4816816](http://www.energy.gov/node/4816816) to reviews these concepts.

Expedited NEPA review based on this NEPA Statement of Work and supporting documents does not preclude DOE from conducting stewardship activities, including audits, and site visits, or from exercising any other rights under the EECBG program.

## EXHIBITF

### Sample Pacific Gas and Electric On-Bill Financing Agreement



#### LOCAL AGENCY AND DISTRICT CUSTOMERS

### **ON-BILL FINANCING LOAN AGREEMENT**

The undersigned Local Agency or District<sup>1</sup> Customer (“**Customer**”) has contracted for the provision of energy efficiency/demand response equipment and services (the “**Work**”) which qualify for one or more of PG&E’s applicable rebate or incentive programs. Subject to the conditions (including the process for Adjustment and preconditions to funding) set forth below, Pacific Gas and Electric Company (“**PG&E**”) shall extend a loan (the “**Loan**”) to Customer in the amount of the loan balance (the “**Loan Balance**”) pursuant to the terms of this On-Bill Financing Loan Agreement (“**Loan Agreement**”) and PG&E’s rate schedules E-OBF and/or G-OBF, as applicable (the “**Schedule**”).

To request the Loan, Customer has submitted a completed On-Bill Financing Application and associated documentation as required by PG&E (the “**Application**”). Collectively the Application and this Loan Agreement (including any Adjustment hereunder) comprise the “**Agreement**”.

1. Customer shall arrange for its Contractor, as identified at the end of this Agreement (“**Contractor**”), to provide the Work as described in the Application.
2. The estimated Loan Balance is set forth below. The total cost of the Work as installed, rebate/incentive for qualifying energy efficiency measures, Loan Balance, monthly payment, and loan term specified in this Loan Agreement may be adjusted, if necessary, after the Work and the post-installation inspection described in the Application and/or herein are completed (the “**Adjustment**”). The Adjustment will be calculated using the actual total cost of the Work, as installed, and the estimated energy savings (as described in the Application) of such Work. In no event will the Loan Balance be increased without Customer’s written consent, even if Customer is eligible for such increased Loan Balance. Moreover, in no event will the Loan Balance exceed the maximum loan amount stipulated in the Application. Customer understands that in order to be eligible for the Loan, the initial Loan Balance for Work may not fall below the minimum loan amount, nor may the payback period exceed the maximum payback period. **Accordingly, if after the Adjustment, the Loan Balance falls below the minimum loan amount or if the simple payback period exceeds the program maximum payback period, each as described in the Application, PG&E shall have no obligation to extend the Loan, as the Work would not meet program requirements.** The Adjustment described in this paragraph will be communicated to the Customer in writing and will automatically become part of this Loan Agreement, except that any proposed increase in the Loan Balance will only become part of this Loan Agreement upon Customer’s written consent to such increase.
3. **PG&E shall have no liability in connection with, and makes no warranties, expressed or implied, regarding the Work.** The Parties acknowledge and agree that PG&E is only providing the Local Agency or District cited here with financing. The Customer has independently hired contractors (“Local Agency or District Contractors”) to perform the work on behalf of the Customer to qualify for financing. The Customer acknowledges and agrees that the Local Agency or District Contractors are not third party beneficiaries to this agreement between the Customer and PG&E. To the extent authorized by law and subject to appropriation of the Legislature, the Customer agrees that it will look only to Local Agency or District Contractors for any claims related to the installed equipment or its performance and that PG&E shall have no responsibility or liability, except for the payment of the loan proceeds, and the Customer shall indemnify PG&E for any claims made by the Local Agency or District Contractors against PG&E.

4. Customer represents and warrants that (a) Customer is receiving this Loan solely for Work obtained in connection with Customer's business, and not for personal, family or household purposes; (b) Customer, if not an individual or a government agency, is duly organized, validly existing and in good standing under the laws of its state of formation, and has full power and authority to enter into this Agreement and to carry out the provisions of this Agreement. Customer is duly qualified and in good standing to do business in all jurisdictions where such qualification is required; (c) this Loan Agreement has been duly authorized by all necessary proceedings, has been duly executed and delivered by Customer and is a valid and legally binding agreement of Customer duly enforceable in accordance with its terms; (d) no consent, approval, authorization, order, registration or qualification of or with any court or regulatory authority or other governmental body having jurisdiction over Customer is required for, and the absence of which would adversely affect, the legal and valid execution and delivery of this Loan Agreement, and the performance of the transactions contemplated by this Loan Agreement; (e) the execution and delivery of this Loan Agreement by Customer hereunder and the compliance by Customer with all provisions of this Loan Agreement: (i) will not conflict with or violate any Applicable Law; and (ii) will not conflict with or result in a breach of or default under any of the terms or provisions of any loan agreement or other contract or agreement under which Customer is an obligor or by which its property is bound; and (f) all factual information furnished by Customer to PG&E in the Application and pursuant to this Agreement is true and accurate.
5. The Application must include the Federal Tax Identification Number or Social Security Number of the party who will be the recipient of the checks for the rebate/incentive or any Loan proceeds. Checks may be issued directly to the Customer or its designated Contractor or both, for the benefit of the Customer, as specified below. Customer acknowledges that PG&E will not be responsible for any tax liability imposed on the Customer or its contractor in connection with the transactions contemplated under the Agreement, whether by virtue of the Loan contemplated under the Agreement, or otherwise, and Customer shall indemnify PG&E for any tax liability imposed upon PG&E as a result of the transactions contemplated under the Agreement.
6. Upon completion of the Work, Customer shall send a written confirmation of completion to PG&E's On-Bill Financing Program Administrator at the address listed in Section 15. Within 60 days after receiving the confirmation, PG&E (a) will conduct a post installation inspection and project verification, including review of invoices, receipts and other documents as required by PG&E to verify the correctness of any amounts claimed by Customer; and (b) will adjust, if necessary, the total cost, incentive, Loan Balance, monthly payment, and loan term as stated above. Customer shall give PG&E reasonable access to its premises and the Work. If the Work conforms to all requirements of the Agreement and all amounts claimed by Customer as Work costs are substantiated to PG&E's reasonable satisfaction, PG&E will issue a check ("**Check**") to Customer or Contractor (as designated by Customer in Section 15) for all amounts PG&E approves for payment in accordance with the Agreement. The date of such issuance is the "**Issuance Date**". If the Check is issued to Customer, Customer shall be responsible for paying any outstanding fees due to Contractor for the Work. If the Check is less than the amount due from Customer to Contractor, Customer shall be responsible for the excess due to the Contractor.
7. Customer shall repay the Loan Balance to PG&E as provided in this Loan Agreement irrespective of whether or when the Work is completed, or whether the Work is in any way defective or deficient, and whether or not the Work delivers energy efficiency savings to Customer.
8. The monthly payments will be included by PG&E on the Account's regular energy service bills, or by separate bill, in PG&E's discretion. Regardless whether the monthly payments are included in the regular utility bill or a separate loan installment bill, the following repayment terms will apply:
  - a. The Customer agrees to repay to PG&E the Loan Balance in the number of payments listed below and in equal installments (with the final installment adjusted to account for rounding), by the due date set forth in each PG&E utility bill or loan installment bill rendered in connection with

Customer's account (identified by the number set forth below) ("Account"), commencing with the bill which has a due date falling at least 30 days after the Issuance Date.

- b. If separate energy service bills and loan installment bills are provided, amounts due under this Loan Agreement as shown in the loan installment bill shall be deemed to be amounts due under each energy services bill to the Account, and a default under this Loan Agreement shall be treated as a default under the Account.
  - c. If the Customer is unable to make a full utility bill payment in a given month, payment arrangements may be made at PG&E's discretion.
  - d. Any partial bill payments received for a month will be applied in equal proportion to the energy charges and the loan obligation for that month, and the Customer may be considered in default of both the energy bill and the loan installment bill.
  - e. Further payment details are set forth below.
9. Any notice from PG&E to Customer regarding the Program or the transactions contemplated under the Loan Agreement may be provided within a PG&E utility bill or loan installment bill, and any such notices may also be provided to Customer at the address below or to the Customer's billing address of record in PG&E's customer billing system from time to time, and in each case shall be effective five (5) days after they have been mailed.
10. The Loan Balance shall not bear interest.
11. Customer may, without prepayment penalty, pay the entire outstanding loan balance in one lump sum payment provided the customer first notifies PG&E by telephoning the toll free phone number (1-800-468-4743), and by sending written notice to PG&E On-Bill Financing Program Administrator at the address listed below, in advance of making the lump sum payment. Accelerated payments that are received from Customer without PG&E's prior approval may, at PG&E's sole discretion, be applied proportionally to subsequent energy charges and Loan repayments and PG&E shall have no obligation to apply accelerated payments exclusively to reduction of the outstanding Loan.
12. The entire outstanding Loan Balance will become immediately due and payable, and shall be paid by Customer within 30 days if: (i) the Account is closed or terminated for any reason; (ii) Customer defaults under the Agreement; (iii) Customer sells the equipment forming part of the Work to any third party; or (iv) Customer becomes Insolvent. Customer becomes "Insolvent" if: (i) Customer is unable to pay its debts as they become due or otherwise becomes insolvent, makes a general assignment for the benefit of its creditors, or suffers or permits the appointment of a receiver for its business or assets or otherwise ceases to conduct business in the normal course; or (ii) any proceeding is commenced by or against Customer under any bankruptcy or insolvency law that is not dismissed or stayed within 45 days.
13. Customer understands that without limiting any other remedy available to PG&E against Contractor or Customer, **failure to repay the Loan Balance in accordance with the terms of the Agreement could result in shut-off of utility energy service, adverse credit reporting, and collection procedures, including, without limitation, legal action.**
14. If there is any conflict among the documents comprising the Agreement, the following order of priority shall apply: 1. this Loan Agreement; 2. the Application; 3. any documents attached to the Application.



15. LOCAL AGENCY OR DISTRICT REQUIREMENT

a. All Payment Obligations Subject to Appropriation

The Customer acknowledges that the cost incurred pursuant to this Loan Agreement will be part of the monthly bill for electric use. All payment obligations and the Work replacement obligations of the Customer under this Loan Agreement or any related agreement or application is subject to appropriation by the Legislative body belonging to Local Agency or District cited in this loan agreement.

b. No Lien or Encumbrance; Subordination:

- (1) Notwithstanding any other provision in this Loan Agreement – , PG&E acknowledges that nothing in this Loan Agreement shall constitute a mortgage, charge, assignment, transfer, pledge, lien or encumbrance upon either the Work or any part of the buildings, structures or related facilities in which the Work is constructed, installed or situated (collectively, the “Related Facilities”). Accordingly, PG&E agrees it will not record or file any instrument that would indicate or imply it has a security interest in the Related Facilities, including but not limited to a UCC-1.
- (2) In addition to the preceding paragraph (a), if this Loan Agreement were ever construed or deemed to create any such encumbrance, then: (i) this Loan Agreement shall be junior and subordinate and subject in all respects to the terms and conditions of any and all leases, and indentures related to lease revenue bonds issued by the Local Agency or District cited here or any other issuer of bonds on behalf of the Local Agency or District concerning the Related Facilities entered into in the past, the present or the future (the “Senior Security Documents”); and (ii) any term or condition of this Loan Agreement relating to any right, title or interest in the Related Facilities or other benefits derived there from shall be in all respects junior and subordinate to, and subject to the terms of, the Senior Security Documents.

16. Loan Particulars.

This table is to be completed by PG&E						
Total Cost	Incentive	Customer Buy- Down (if applicable)	Loan Balance <sup>1</sup>	Monthly Payment	Term <sup>2</sup> (months)	Number of Payments
\$ -	\$ -	\$ -	\$ -	\$ -	-	-

Check Made Payable to Customer ☐ or Contractor ☐  
[customer to select payment method. Note that only one check can be issued]

17. This agreement at all times shall be subject to such modifications as the California Public Utilities Commission may direct from time to time in the exercise of its jurisdiction.

Federal Tax ID or Social Security #, Customer	Federal Tax ID or Social Security #, Contractor

PG&E Account # / Service Agreement #

Account Name, Customer	Name, Contractor
Primary Customer Name: COUNTY OF SANTA BARBARA	

Customer Address (For OBF Check Delivery)	Contractor Address (For OBF Check Delivery)
COUNTY OF SANTA BARBARA, BRANDON KAYSEN	
1105 SANTA BARBARA ST	
SANTA BARBARA CA 93103	

Name and Title of Authorized Representative of Customer	Name and Title of Authorized Representative of Contractor

Signature of Authorized Representative of


ACCEPTED: Pacific Gas and Electric Company

By	Date
PG&E On-Bill Financing Authorized Representative	

<sup>1</sup> The Loan Balance shall not exceed two-hundred fifty thousand dollars (\$250,000), except where, in PG&E's sole opinion, the opportunity for uniquely large energy savings exist, in which case the Loan Balance may exceed two-hundred fifty thousand dollars (\$250,000) but shall not exceed four million dollars (\$4,000,000).

<sup>2</sup> The loan term in months will be established by PG&E at the time of the OBF Loan Agreement initiation. The maximum loan term shall be one hundred and twenty (120) months.