

CALIFORNIA POLLUTION CONTROL FINANCING AUTHORITY
California Capital Access Program
Meeting Date: March 16, 2021

***Request for the Approval of an Extension of the Interagency Agreement
with the California Energy Commission (CEC) for the Electric Vehicle
Charging Station Financing Program under the California Capital Access
Program (CalCAP) Independent Contributor Program***

Prepared by: *Nicholas Montalvo*

Summary. The California Pollution Control Financing Authority (the “Authority”) has a five-year Interagency Agreement (“IA”) with the California Energy Commission (“CEC”) to fund a loan loss reserve program that encourages lenders to lend to small-business owners seeking to install electric vehicle charging stations on their properties. This item seeks to extend the IA between the Authority and the CEC by one year, with the term running from March 31, 2021, to March 31, 2022.

Background. CPCFA entered into an IA with the CEC effective April 1, 2015, to implement the Electric Vehicle Charging Station Financing Program (“EVCS Financing Program”). The EVCS Financing Program is modeled after the California Capital Access Program (“CalCAP”) as a loan loss reserve program that includes a rebate component. The EVCS Financing Program was funded with \$2,000,000 from the CEC’s Alternative and Renewable Fuel and Vehicle Technology Program (Article 2 (commencing with Section 44272) of Chapter 8.9 of Part 5 of Division 26 of the Health and Safety Code). The EVCS Financing Program is administered by the Authority, with the CEC as an independent contributor, and provides a credit enhancement along with additional incentives for small-business owners and lenders to fund the acquisition and installation of electric vehicle charging station equipment. The goal of the EVCS Financing Program is to expand the use of electric vehicles statewide by encouraging small businesses to install charging stations.

The Authority has contributed \$302,245 towards three loans in the program. There is currently approximately \$1,600,000 available in the EVCS Financing Program account to contribute to new loans.

Current Request. The Authority and the CEC are seeking a one-year, no-cost time extension for Agreement 600-14-007. The electric vehicle market has evolved substantially during the five years since the creation of the EVCS Financing Program, with vehicle manufacturers releasing more electric vehicle models alongside a substantial increase in purchases by consumers. Additionally, the Legislature has declared it is the policy of the state to promote and encourage the use of electric vehicle charging stations and to limit obstacles to their use. The one-year extension would allow the Authority and the CEC to review the current EVCS Financing Program for updates and enhancements and to use the remaining EVCS Financing Program funds to finance electric vehicle charging stations for borrowers that meet the current EVCS Financing Program requirements. The proposed Amendment to Agreement 600-14-007 is attached as Exhibit A.

Agenda Item 4.C.
Resolution No. 21-02-001

Staff Recommendation. Staff recommends the approval of Resolution No. 21-02-001 to authorize the Interim Executive Director or Deputy Executive Director to execute Amendment 1 to Interagency Agreement 600-14-007 with the CEC extending the term of the IA for the EVCS Financing Program from March 31, 2021, to March 31, 2022.

**RESOLUTION OF THE CALIFORNIA POLLUTION CONTROL FINANCING
AUTHORITY AUTHORIZING THE INTERIM EXECUTIVE DIRECTOR OR DEPUTY
EXECUTIVE DIRECTOR TO SIGN THE AMENDMENT TO THE INTERAGENCY
AGREEMENT WITH THE CALIFORNIA ENERGY COMMISSION**

March 16, 2021

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

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

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

WHEREAS, on April 1, 2015, the Authority entered into Interagency Agreement 600-14-007 with the California Energy Commission to utilize \$2,000,000 in funding for a loan loss reserve program called the Electric Vehicle Charging Station (“EVCS”) Financing Program as part of the Alternative and Renewable Fuel and Vehicle Technology Program (Article 2 (commencing with Section 44272) of Chapter 8.9 of Part 5 of Division 26 of the Health and Safety Code); and

WHEREAS, the Authority desires to extend the operative date of the Agreement from March 31, 2021, to March 31, 2022.

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

Section 1. The Interim Executive Director or Deputy Executive Director of the Authority is hereby authorized to prepare, enter into, and execute Amendment 1 to Interagency Agreement 600-14-007 with the California Energy Commission, the total amount of which is not to exceed \$2,000,000, for the Authority to continue to administer the Electric Vehicle Charging Station Financing Program, a loan loss reserve program with a rebate component through the California Capital Access Program.

STANDARD AGREEMENT - AMENDMENT

STD 213A (Rev. 4/2020)

 CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED _____ PAGES

AGREEMENT NUMBER

600-14-007

AMENDMENT NUMBER

1

Purchasing Authority Number

1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME

State Energy Resources Conservation and Development Commission (Energy Commission)

CONTRACTOR NAME

California Pollution Control Financing Authority

2. The term of this Agreement is:

START DATE

April 1, 2015

THROUGH END DATE

March 31, 2022

3. The maximum amount of this Agreement after this Amendment is:

\$2,000,000 Total Agreement Amount (\$0 amendment)

4. The parties mutually agree to this amendment as follows. All actions noted below are by this reference made a part of the Agreement and incorporated herein:

The purpose of this amendment is to extend the contract end date by 12 months. Agreement 600-14-007 approved by DGS on June 1, 2015, is amended as follows:

- Extend the contract end date from March 31, 2021 to March 31, 2022.

All other terms and conditions shall remain the same.

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.

CONTRACTOR

CONTRACTOR NAME (if other than an individual, state whether a corporation, partnership, etc.)

California Pollution Control Financing Authority

CONTRACTOR BUSINESS ADDRESS

801 Capitol Mall, 2nd Floor

CITY

Sacramento

STATE

CA

ZIP

95814

PRINTED NAME OF PERSON SIGNING

TITLE

CONTRACTOR AUTHORIZED SIGNATURE

DATE SIGNED

STATE OF CALIFORNIA

CONTRACTING AGENCY NAME

State Energy Resources Conservation and Development Commission (Energy Commission)

CONTRACTING AGENCY ADDRESS

1516 Ninth Street

CITY

Sacramento

STATE

CA

ZIP

95814

PRINTED NAME OF PERSON SIGNING

Adrienne Winuk

TITLE

Contracts, Grants and Loans Office Manager

CONTRACTING AGENCY AUTHORIZED SIGNATURE

DATE SIGNED

CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL

EXEMPTION (If Applicable)

STANDARD AGREEMENT

STD. 213 (NEW 06/03)

(RCS-14 - STC)

AGREEMENT NUMBER 600-14-007
REGISTRATION NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below

STATE AGENCY'S NAME

State Energy Resources Conservation and Development Commission (Energy Commission)

CONTRACTOR'S NAME

California Pollution Control Financing Authority

2. The term of this Agreement is: April 1, 2015 to March 31, 2021. The effective date of this Agreement is either the start date or the approval date by the Dept. of General Services, whichever is later. No work shall commence until the effective date.

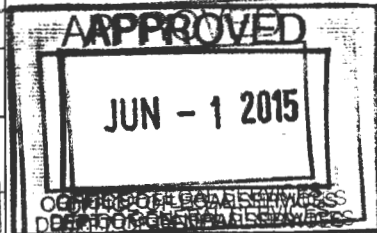

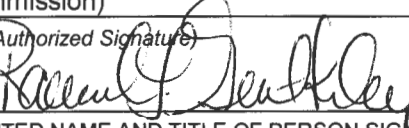
3. The maximum amount of this Agreement is: \$ 2,000,000

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement:

Exhibit A – Scope of Work	10	Pages
Exhibit A – Attachments	13	Pages
Exhibit B – Budget Detail and Payment Provision	3	Pages
Exhibit C* – General Terms and Conditions		GIA 610
Exhibit D – Special Terms and Conditions	10	Pages
Exhibit E – Additional Provisions	2	Pages
Exhibit F – Contacts	1	Page

Items shown with an Asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto. These documents can be viewed at <http://www.ols.dgs.ca.gov/Standard%20Language/default.htm>.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR		<i>California Department of General Services Use Only</i>
CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.) California Pollution Control Financing Authority		
BY (Authorized Signature) 	DATE SIGNED (Do not type) 4/27/2015	
PRINTED NAME AND TITLE OF PERSON SIGNING Renee Webster-Hawkins Executive Director		
ADDRESS 915 Capitol Mall, Suite 457, Sacramento, CA 95814		
STATE OF CALIFORNIA		
AGENCY NAME State Energy Resources Conservation and Development Commission (Energy Commission)		<input type="checkbox"/> Exempt per:
BY (Authorized Signature) 	DATE SIGNED (Do not type) 5/13/15	
PRINTED NAME AND TITLE OF PERSON SIGNING Rachel L. Grant Kiley, Contracts Grants and Loans Office Manager		
ADDRESS 1516 Ninth Street, Sacramento, CA 95814		

**EXHIBIT A
SCOPE OF WORK**

PURPOSE AND AUTHORIZATION

The purpose of this Interagency Agreement (Agreement) is for the California Pollution Control Financing Authority (Authority or CPCFA) to accept a financial contribution from the California Energy Commission (Energy Commission) as an Independent Contributor to CPCFA's California Capital Access Program (CalCAP), as authorized by California Health and Safety Code section 44559.2 and California Code of Regulations, title 4, division 11, article 7 (CalCAP regulations). CPCFA and the Energy Commission are referred to herein collectively as the "Parties".

SUMMARY

The Parties wish to establish and support an Electric Vehicle Charging Station Financing Program (EVCS Financing Program or Program) in order to help expand California's electric vehicle charging infrastructure in support of California's climate change policy goals consistent with the respective goals of CPCFA and the Energy Commission as more particularly described below. CPCFA shall establish the Program under its existing CalCAP program framework, with the cooperation and assistance of the Energy Commission as set forth herein. The Program shall offer a loan loss reserve contributions as a credit enhancement to Participating Financial Institutions that enroll qualified loans, and may also provide a rebate to each borrower meeting requirements specified in the Program Regulations at the time the loan is paid off or forty-eight (48) months after the loan is made, whichever is sooner. The Energy Commission will transfer funds to the Authority from the Alternative and Renewable Fuel and Vehicle Technology Program (ARFVTP) to support the Authority's efforts in developing, managing, implementing, overseeing and administering the Program.

BACKGROUND

The Authority is committed to promoting access to capital through the delivery of diverse financing options to California business and environmental industries by being the:

- Driving force of public and private partnerships.
- Leader in offering customized risk mitigation tools.
- Facilitator of providing financial assistance to projects that protect and restore the environment.

CPCFA has been providing low-cost innovative financing to California businesses since 1972. As a "conduit issuer" of tax-exempt private activity bonds, CPCFA is able to facilitate low cost financing to qualified water, wastewater, solid waste, and recycling projects to achieve the State's aggressive landfill diversion and environmental goals. Since 1994, CPCFA has developed and administered the California Capital Access Program. CalCAP consists of state and federally funded small business credit enhancement programs. These credit enhancement programs serve as a form of loan portfolio insurance that provides up to 100 percent coverage on certain loan defaults, to incentivize banks and other financial institutions to make loans to businesses. CPCFA has over 20 years of experience administering loan loss reserve and other alternative financing programs and has over 95 approved Financial Institutions who participate in its current programs. CPCFA has express authority to offer loan loss reserve programs benefitting eligible small businesses such as this EVCS Financing Program under Health and Safety Code sections 44559 *et seq.*

Health and Safety Code section 44559.2 allows third-party entities to participate in CalCAP, by contributing the loan loss reserve contributions to CPCFA for the benefit of the borrower and the Financial Institution. Requirements for participation as an Independent Contributor in CalCAP are set forth in the California Code of Regulations, title 4, division 11, article 7 section 8078. Pursuant to the CalCAP regulations (Participation in the Program by Certain Public or Private Entities) CPCFA may permit any government agency or other entity to become an Independent Contributor in CalCAP. This regulation authorizes CPCFA to accept a financial contribution from the Energy Commission to aid Financial Institutions with financing electric vehicle supply equipment and installation.

Over the last decade, California established a series of aggressive goals for reducing its greenhouse gas emissions. To meet these goals, Assembly Bill 118 (Núñez, Chapter 750, Statutes of 2007) created the ARFVTP administered by the Energy Commission. That statute, subsequently amended by AB 109 (Núñez, Chapter 313, Statutes of 2008) and AB 8 (Perea, Chapter 401, Statutes of 2013), authorizes the Energy Commission to develop and deploy alternative and renewable fuels and advanced transportation technologies to help attain the state's policies.

The ARFVTP has an annual budget of approximately \$100 million and provides financial support for projects that:

1. Reduce California's use and dependence on petroleum transportation fuels and increase the use of alternative and renewable fuels and advanced vehicle technologies.
2. Produce sustainable alternative and renewable low-carbon fuels in California.
3. Expand alternative fueling infrastructure and fueling stations.
4. Improve the efficiency, performance and market viability of alternative light-, medium-, and heavy-duty vehicle technologies.
5. Retrofit medium- and heavy-duty on-road and non-road vehicle fleets to alternative technologies or fuel use.
6. Expand the alternative fueling infrastructure available to existing fleets, public transit, and transportation corridors.
7. Establish workforce training programs and conduct public outreach on the benefits

The ARFVTP supports projects that: decrease the overall impact of California's carbon footprint; increase sustainability; and expand alternative fuel infrastructure, fueling stations and equipment. Ensuring adequate electric vehicle charging infrastructure in California is critical to meeting the State's policy goals. The Energy Commission has allocated funds from the ARFVTP to enable CPCFA to support further development of California's electric vehicle charging infrastructure through this Agreement.

General Terms and Conditions

1. **Attachment 1** to this Exhibit A contains the complete set of draft EVCS Financing Program Regulations (Regulations) developed by CPCFA with the participation of the Energy Commission and involved stakeholders. The Regulations include, but not limited to, definitions for the defined terms used throughout this Agreement and specific to this Program. The Regulations shall be considered to include the program standards required to be submitted by an Independent Contributor pursuant to Section 8078 of the CalCAP regulations. CPCFA shall formally adopt and establish the Regulations as a deliverable under Task 2.

2. CPCFA shall utilize the ARFVTP funds provided under this Agreement solely for Electric Vehicle Charging Station projects that expand California's electric vehicle charging infrastructure, consistent with California's climate change policy goals, CPCFA policy goals and Energy Commission policy goals set forth herein.
3. The Energy Commission agrees to indemnify the Authority against any loss, liability or claim arising from the use of the Energy Commission's ARFVTP funds in the Program; the Authority agrees to indemnify the Energy Commission against any loss, liability or claim arising from the Authority's performance of this Agreement.
4. The Parties agree that payments contemplated pursuant to this Agreement are intended to cover all of CPCFA's reasonably anticipated expenses consistent with section 8078(a)(6) and that no additional payments will be made except upon written agreement of the parties.
5. The Energy Commission reserves the right to audit CPCFA's implementation of the EVCS Financing Program.
6. Pursuant to section 8071(a)(9) of the CalCAP regulations CPCFA is authorized to conduct or direct periodic audits of the EVCS Financing Program's Participating Financial Institutions as follows. CPCFA-directed audits may be completed by CPCFA staff, independent certified public accountants, or other State of California agencies or departments. The Energy Commission shall have the right to approve or disapprove the plan and cost of CPCFA-directed audits. Audit costs incurred by CPCFA in excess of funding provided to CPCFA to cover Trustee costs and CPCFA's Administrative Costs shall be paid by CPCFA. The Energy Commission shall have no duty to pay any audit costs the Energy Commission has not formally approved and budgeted.
7. The Parties acknowledge that certain personal information of individual borrowers is protected under the California Information Practices Act (CIPA), Government Code sections 1798 et seq., and that the maintenance and dissemination of such information is subject to strict limits. CPCFA shall require lenders to provide each borrower a copy of the Privacy Notice for the Electric Vehicle Charging Station Program (Exhibit A, Attachment III) which identifies CPCFA as the responsible agency under CIPA. If and when the Energy Commission requests copies of the Borrower Form pursuant to Task 5.2 that includes personal information, the Parties shall first execute a nondisclosure agreement that specifies the purpose for which the information is to be used, any foreseeable disclosures of such information, and the notice, maintenance and safeguard procedures that the Energy Commission will implement to ensure compliance with Government Code section 1798.18 – 1798.22.
8. This Agreement will become effective following execution by the Parties and approval from the Department of General Services. The term shall be six (6) years from the effective date or at such earlier date as the Parties may mutually agree in writing.

TASKS

- A. The Energy Commission shall be solely responsible for Task 1.2.
- B. CPCFA shall be solely responsible for Tasks 1.1, 2, 3, 4.1, 5, 6 and 7.
- C. The Energy Commission and CPCFA shall be jointly responsible for Task 4.2.
- D. The Parties shall cooperate with each other as necessary and appropriate to ensure the satisfactory performance of each Task.

Task 1 (Energy Commission and CPCFA): EVCS Financing Program Funding

The goal of this task is to establish a funding source for the EVCS Financing Program.

Task 1.1: (CPCFA): Initial Program Invoicing

CPCFA shall prepare and submit an invoice to the Energy Commission in the amount of \$2,000,000 (two million dollars) for purposes of effectuating the Program.

Deliverables: Invoice requesting \$2,000,000

Task 1.2: (Energy Commission): Disbursement of Program Funds

Upon receipt of the invoice described in Task 1.1 from CPCFA, the Energy Commission shall disburse the amount of \$2,000,000 (two million dollars) from available ARFVTP funds to CPCFA in trust in accordance with the terms of this Agreement, including Exhibit B. CPCFA shall report on receipt of all disbursements as specified in the status reports prepared under Task 5.2.)

Deliverables: Remit \$2,000,000 (two million dollars) to CPCFA.

Task 2 (CPCFA): Formal Adoption and Promulgation of Program Regulations

Not later than 15 days following the effective date of this Agreement, CPCFA shall commence rulemaking pursuant to its authority under Health and Safety Code Section 44520(b) in order to make effective the Program Regulations.

Deliverables: Program Regulations in a form mutually acceptable to the Parties and approved by the Office of Administrative Law.

Task 3 (CPCFA) Financial Management of the EVCS Financing Program

This task describes the flow and management of EVCS Financing Program Funds.

Task 3.1 (CPCFA): Establishment of the Energy Commission Program Account and Energy Commission Cost Account

At all times throughout this Agreement, CPCFA shall maintain a valid services agreement with a Trustee to hold and manage EVCS Financing Program Funds consistent with this Agreement.

Upon receipt of the first disbursement from the Energy Commission, CPCFA shall establish two Energy Commission-designated accounts with its Trustee: 1) an interest-bearing Energy Commission Program Account to provide funds for the Loan Loss Reserve contributions to the Energy Commission Loan Loss Reserve Accounts for each Participating Financial Institution; and 2) an interest-bearing Energy Commission Cost Account.

CPCFA shall make deposits into the Energy Commission Program Account promptly upon receipt of disbursements from the Energy Commission as described in Task 1 of this Agreement.

Additionally, CPCFA shall make deposits into the Energy Commission Program Account utilizing funds recovered from Participating Financial Institutions upon their termination or withdrawal from the Program as described in the Program Regulations.

CPCFA shall make deposits into the Energy Commission Cost Account as follows: Deposits into the Energy Commission Cost Account shall come from CPCFA's authorized collection of interest earned on each Participating Financial Institution's Energy Commission Loan Loss Reserve Account, and interest earned on funds held in the Energy Commission Program Account prior to disbursement to a Participating Financial Institution's Energy Commission Loan Loss Reserve Account. Interest generated from funds held in the Energy Commission Cost Account shall remain in the Energy Commission Cost Account. Funds held in the Energy Commission Cost Account shall be used to cover CPCFA's Administrative Costs, including but not limited to the Trustee's costs.

Upon receipt and deposit of the \$2,000,000 (two million dollars), CPCFA shall immediately transfer five (5) percent, or \$100,000, from the Energy Commission Program Account to the Energy Commission Cost Account to be available to pay borrower rebates in the event a Participating Financial Institution's Energy Commission loan loss reserve funds are insufficient to fund borrower rebates as described in the Program Regulations. If CPCFA, in consultation with the Energy Commission, determines that these funds are not required to satisfy borrower rebates, the funds shall be made available to cover CPCFA's costs to administer the EVCS Financing Program (including but not limited to the Trustee's costs), not to exceed \$100,000 plus interest earnings deposited into the Energy Commission Cost Account. Administrative costs outside of those specified in this Scope of Work may be provided for in a modification to this Agreement, per Task 5.2.

Deliverable: CPCFA shall establish the above-referenced Accounts and report to the Energy Commission on all deposits and transfers as specified in the status reports prepared under Task 5.2.

Task 3.2: (CPCFA) Establishment of and Contributions to the Participating Financial Institutions' Loan Loss Reserve Accounts

CPCFA shall establish Energy Commission Loan Loss Reserve Accounts pursuant to the Program Regulations. After a Participating Financial Institution has enrolled an eligible loan in the EVCS Financing Program, CPCFA shall approve and direct the transfer of funds from the Energy Commission Program Account to a Participating Financial Institution's Energy Commission Loan Loss Reserve Account in the amount of the approved premium contribution. CPCFA shall approve a minimum Loan Loss Reserve contribution in the amount of 20 percent of the enrolled loan amount for all Qualified Loans enrolled in the Program. Alternatively, CPCFA may approve a Loan Loss Reserve contribution up to the amount of 30 percent of the enrolled loan amount for each Qualified Loan that supports installation of Electric Vehicle Charging Stations in Disadvantaged Communities or in a Multi-Unit Dwelling as defined in the Program Regulations.

The Energy Commission Loan Loss Reserve Accounts for the EVCS Financing Program may be held by either the Participating Financial Institution or the Trustee, pursuant to the Program Regulations. If a Participating Financial Institution participates in another of CPCFA's loan loss reserve programs, CPCFA shall require a separate Energy Commission Loan Loss Reserve Account to maintain Loan Loss Reserve contributions for the EVCS Financing Program.

During Energy Commission's participation in the EVCS Financing Program, the Energy Commission's liability under the Program to any person or entity shall not exceed Loan Loss Reserve contributions paid by CPCFA on behalf of Energy Commission into any single Participating Financial Institution's Energy Commission Loan Loss Reserve Account. CPCFA shall ensure that all Energy Commission funds are held in trust to be used only for the authorized purposes set forth in this Agreement and applicable law.

Deliverable: CPCFA shall report to the Energy Commission on all deposits and transfers as specified in the status reports prepared under Task 5.2. Upon the Energy Commission's request, CPCFA shall also provide documentation of current balances in each Participating Financial Institution's Loan Loss Reserve Account.

Task 3.3 (CPCFA) Payment of Eligible Borrower Rebates

Subject to the conditions described in the Program Regulations, CPCFA shall review, approve and direct the payment of the Borrower Rebate from the Participating Financial Institution's Energy Commission Loan Loss Reserve Account.

Deliverable: CPCFA shall report to the Energy Commission on Borrower Rebates paid as specified in the status reports prepared under Task 5.2.

Task 3.4 Payment of Eligible Claims for Reimbursement

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

Deliverable: CPCFA shall report to the Energy Commission on Claims for Reimbursement paid as specified in the status reports prepared under Task 5.2.

Task 4 (CPCFA): Implement Program Regulations and Operating Documents for the EVCS Financing Program

This task requires CPCFA to implement the EVCS Financing Program Regulations. The EVCS Financing Program shall be operated in compliance with Program Regulations and this Agreement.

Task 4.1 Implementation of Program Regulations

Upon completion of Task 2, CPCFA will have finalized the EVCS Financing Program Regulations, and developed and implemented business processes and forms for the EVCS Financing Program. CPCFA's draft Program Regulations are attached hereto as Exhibit A, Attachment I. The Parties shall adhere to the terms and conditions contained in the Program Regulations, as formally modified from time to time, to the full extent authorized by law. The Parties may mutually agree to make modifications to the Program Regulations. CPCFA shall commence rulemaking pursuant to Health and Safety Code Section 44520(b) in a timely fashion to make any agreed upon changes to the Program Regulations.

Deliverable: CPCFA shall implement the Program Regulations and report to the Energy Commission any failure to adhere to Program Regulations. CPCFA shall provide recommendations to the Energy Commission regarding potential changes to the Program Regulations and undertake rulemaking act in a timely fashion to incorporate agreed upon changes into the Program Regulations.

Task 4.2 Modifications to the Interagency Agreement

Within six months of implementation of the EVCS Financing Program, the Parties shall evaluate the Program Regulations for effectiveness, and may make modifications thereto.

The Executive Director of the Energy Commission and the Executive Director of CPCFA are jointly authorized under this Agreement to do any and all things and to execute and deliver any and all documents which they deem necessary or advisable in order to effectuate the purposes of this Agreement. The Executive Directors, through mutual written agreement, may make modifications to this Agreement including but not limited to the Program Regulations, to best achieve the goals and objectives of the EVCS Financing Program. However, the maximum amount of the Agreement, term of the Agreement, and maximum Loan Loss Reserve contribution for each Qualified Loan may only be amended with the express written approval of the Energy Commission and the Authority.

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

Deliverable: Such written modifications to this Agreement and/or the EVCS Financing Program Regulations as the Parties may mutually agree upon.

Task 5 (CPCFA): Administer the EVCS Financing Program

This task is to ensure CPCFA administers the Program in compliance with Program Regulations and this Agreement, and provides relevant status reports to the Energy Commission.

Task 5.1 CPCFA's Administration of the EVCS Financing Program

CPCFA shall administer the EVCS Financing Program pursuant to the Program Regulations and this Agreement. The Program Regulations define a qualified Financial Institution, borrower, project, and all other terms and conditions of the EVCS Financing Program.

Specifically, CPCFA shall review and approve applications from qualified Financial Institutions pursuant to the Program Regulations. In addition, CPCFA shall require each Participating Financial Institution and Borrower to complete and submit an EVCS Financing Program Loan Enrollment Application, including all required Participating Financial Institution and Borrower certifications (Exhibit A, Attachment II). The purpose of the EVCS Loan Enrollment Application is for each Participating Financial Institution and Borrower to substantiate and certify that the loan, the business and the project meets specified requirements of EVCS Financing Program.

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

Deliverable: CPCFA shall report to the Energy Commission on program progress as specified in the status reports prepared under Task 5.2.

Task 5.2 Status Reports

Monthly Reports

CPCFA shall provide monthly reports on loans enrolled in the EVCS Financing Program to the Energy Commission. The information shown below shall be reported and submitted to the Energy Commission electronically:

- a. Number of loans enrolled in the EVCS Financing Program;
- b. Dollar amount disbursed into each Participating Financial Institution's Energy Commission Loan Loss Reserve Account including adjustments;
- c. Total dollar amount of fund disbursements to or from the Energy Commission Program Account and the date of such fund disbursements;
- d. Dollar amounts, including applicable interest in or out of the Energy Commission Program Account;
- e. Interest deposits into the Energy Commission Cost Account;
- f. Information for each EVCS Financing Program claim including but not limited to, enrolled loan amount, dollar amount paid from each Participating Financial Institution's Energy Commission Loan Loss Reserve Account, and the dollar amount of funds from recovered assets put back into each Participating Financial Institution's Energy Commission Loan Loss Reserve Account;
- g. Information for each Borrower Rebate paid including but limited to, loan number, date enrolled, date Borrower Rebate paid, loan amount, and dollar amount paid from the Participating Financial Institution's Energy Commission Loan Loss Reserve Account;
- h. Project information from the EVCS Loan Enrollment Application, Section III; and

- i. A document signed by CPCFA's Executive Director stating that to the best of his/her knowledge the information contained in the reports is complete and accurate.

Quarterly Reports

CPCFA shall provide quarterly reports on loans enrolled in the EVCS Financing Program to Energy Commission. The report will include the following information: Borrower's city and county, EVCS loan number, enrolled loan amount, date enrolled, maturity date of the loan, Borrower Rebate eligibility date, percentage and dollar amount of the Loan Loss Reserve contribution, claims and rebates paid, type of business, number of employees, minority/woman/veteran-owned business information, number of units purchased, and the number of charging ports.

CPCFA shall submit to the Energy Commission a report detailing CPCFA's Administrative Costs incurred by CPCFA in support of the EVCS Financing Program.

Other Status Reports

In addition to the monthly and quarterly reports described above, CPCFA shall prepare, with the assistance and cooperation of the Energy Commission as needed, such other summary or annual reports that may be required as a result of EVCS Financing Program implementation. CPCFA shall make available to the Energy Commission, upon request, all copies of the EVCS Loan Enrollment Application, subject to the allowable use and disclosure provision in the General Terms and Conditions of this Agreement.

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

Task 6 (CPCFA): EVCS Financing Program Compliance

CPCFA shall ensure compliance with this Agreement and Program Regulations by all EVCS Financing Program participants, including the Participating Financial Institutions, Borrowers, the Energy Commission, and CPCFA. In addition, CPCFA shall require Participating Financial Institutions to provide each Borrower a copy of the Privacy Notice for the EVCS Financing Program (Exhibit A, Attachment III) which among other things identifies CPCFA as the responsible agency under CIPA.

Task 7 (CPCFA): Reconciliation at Program Closeout

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

shall ensure that said funds are promptly returned to or disbursed as directed by the Energy Commission.

8078.3. Definitions.

In addition to the definitions in Section 8070, the following definitions shall apply only to the Electric Vehicle Charging Station Financing Program.

- (a) "Borrower Rebate" means a payment made to a Borrower from the Participating Financial Institution's Loan Loss Reserve Account upon a valid claim made pursuant to Section 8078.7.
- (b) "CEC" and "Energy Commission" means the California Energy Commission.
- (c) "Disadvantaged Communities" means the top twenty five (25) percent of communities that are disproportionately affected by environmental pollution and socioeconomic characteristics as described by CalEnviroScreen 2.0 Tool¹.
- (d) "Electric Vehicle Charging Station" or "EVCS" means an element in an infrastructure that supplies electric energy for the recharging of plug-in electric vehicles.
- (e) "EVCS supply equipment" means equipment which meets the minimum technical requirements set by the Energy Commission as follows:
 - (1) Direct current fast chargers shall utilize:
 - (A) Either the CHAdeMO standard, or SAE combination standard, or a combination of both; and
 - (B) An open standard protocol for purposes of network interoperability.
 - (2) Level 2 charging equipment shall utilize:
 - (A) The SAE J1772 standard; and
 - (B) An open standard protocol for purposes of network interoperability.
 - (3) Open standard protocol is waived for medium- and heavy-duty EVCS supply equipment.
- (f) "Eligible Project Costs" means the amount to pay for acquisitions and services necessary and allocable to the installation and operation of one or more EVCSs in the State of California as allowed by the Energy Commission, specifically:
 - (1) The design and development of EVCS in locations accessible to either the Borrower's employees, the Borrower's tenants if in an Multi-Unit Dwelling (MUD), or the public generally;
 - (2) The acquisition of EVCS supply equipment, electric panel or grid improvements, materials and supplies (including conduit and construction materials), signage, and hardware and software necessary and allocable for fully operational charging station(s);
 - (3) Labor necessary and allocable to install fully operational charging station(s); and
 - (4) The costs for operating, servicing and maintaining the EVCS during the term of the loan, if the Borrower's primary business is not EVCS installation, operation or manufacturing.

¹ <http://www.oehha.ca.gov/ej/ces2.html>

- (g) “Multi-Unit Dwelling” or “MUD” means a classification of housing where multiple housing units are contained within one building or multiple buildings within a complex or community. Common types of MUDs include duplexes, townhomes, and apartments, mobile homes and manufactured-home parks.
- (h) “Program” means the Electric Vehicle Charging Station Financing Program established pursuant to the Interagency Agreement between the Authority and the Energy Commission. Where the term “Program” is used in Sections 8078.3 to 8078.7, inclusive, the definition provided in this subdivision shall be used instead of the definition provided in Section 8070(p).
- (i) “Qualified Business” means any entity eligible under section Health and Safety Code section 44559.1(i) and (m) that together with its affiliates has 1,000 or fewer employees, and that is not dominant in its field of operation. Where the term “Qualified Business” is used in Sections 8078.3 to 8078.7, inclusive, the definition provided in this subdivision shall be used instead of the definition provided in Section 8070(r).
- (j) “Qualified Loan” means a loan or a portion of a loan made by a Participating Financial Institution to a Qualified Business where the loan proceeds are for Eligible Project Costs for the installation and operation of one or more EVCS. “Qualified Loan” does not include any of the following:
 - (1) A loan for the construction or purchase of residential housing;
 - (2) A loan to finance Passive Real Estate Ownership;
 - (3) A loan for the refinancing of debt already held by the Participating Financial Institution other than a prior Qualified Loan enrolled under the Program, except to the extent of any increase in the outstanding balance;
 - (4) Any loan, the proceeds of which will be used to install EVCS at any of the facilities described in Section 8070(s)(4)(A);
 - (5) Any loan or portion thereof to the extent the same loan or portion thereof has been, is being, or will be enrolled in any other government program substantially similar to the Program; and
 - (6) Any loan where the total amount or value of loans enrolled in the Program by the Borrower exceeds \$500,000.

Where the term “Qualified Loan” is used in Sections 8078.3 to 8078.7, inclusive, the definition provided in this subdivision shall be used instead of the definition provided in Section 8070(s).

- (k) “Trustee” means a bank or trust company, or the State Treasurer, chosen by CPCFA from time to time to hold or administer some or all of the Program Accounts.

Note: Authority cited: Sections 44520, 44559.5(f), and 44559.11(b), Division 27, Health and Safety Code. Reference: Sections 44559.1, 44559.3, 44559.5, and 44559.11, Division 27, Health and Safety Code.

8078.4 Application by Financial Institution.

Financial Institutions shall follow the procedures set forth in Section 8071 in making application to become Participating Financial Institutions in the Electric Vehicle Charging Station Financing Program.

Note: Authority cited: Sections 44520, 44559.5(f), and 44559.11(b), Division 27, Health and Safety Code. Reference: Section 44559.2, Division 27, Health and Safety Code.

8078.5 Loan Enrollment.

(a) A Participating Financial Institution may enroll all or any portion of a Qualified Loan by submitting an EVCS Loan Enrollment Application which shall include the following information:

- (1) The official business name of the Borrower, including a D/B/A if any, and the business address.
- (2) The name and title of the individual(s) responsible for signing for the Qualified Loan on behalf of the Borrower.
- (3) Brief description of the Borrower's business and regular activities, either the SIC Code(s) or the NAICS Code(s) applicable to such business, and the amount of its annual revenues over the last three years.
- (4) Brief summary of the intended use of the proceeds of the Qualified Loan consistent with uses permitted as Eligible Project Costs.
- (5) Location(s) of the project(s) to be installed.
- (6) Amount of the Qualified Loan being enrolled (and indication if less than the full amount of the Qualified Loan is being enrolled) and the Participating Financial Institution loan number.
- (7) Type of the Qualified Loan (e.g., secured, unsecured, term loan).
- (8) Date of the Qualified Loan.
- (9) Interest rate applicable to the Qualified Loan.
- (10) Term or maturity date of the Qualified Loan.
- (11) Whether the loan is for the installation of EVCS in a Disadvantaged Community.
- (12) Whether the loan is for the installation of EVCS at a Multi-Unit Dwelling.
- (13) Number of persons currently employed by the Borrower, and number of jobs expected to be created and retained by the Qualified Loan.
- (14) The Participating Financial Institution's certification that the loan is a Qualified Loan, and that the business receiving the Qualified Loan is a Qualified Business.
- (15) The Participating Financial Institution's certification that, upon request of the Executive Director, the Participating Financial Institution will provide information from the financial records of the Borrower, and that the Participating Financial Institution has obtained the consent of the Borrower to such disclosure.
- (16) The certification that the Participating Financial Institution has obtained a written representation from the Borrower that the Borrower has no legal, beneficial or equitable interest in the Contribution.
- (17) The Participating Financial Institution's certification that the total amount of loans enrolled by the Borrower in the Program does not exceed \$500,000.
- (18) The Participating Financial Institution's certification that the Borrower has secured or made application for all applicable licenses or permits needed to install and operate the EVCS.
- (19) Acknowledgment that the lending activities of the Participating Financial Institution are subject to any applicable safety and soundness standards as set forth in applicable lending regulations.
- (20) The Participating Financial Institution shall be authorized to base the information requested by subsections (14) and (19) above upon representations made to it by the Borrower; provided that no such Borrower representation may be relied upon if it is known to be false by the lending officer(s) at the Participating Financial Institution who are directly involved in the negotiation of the Qualified Loan.

(21) Certification from the Participating Financial Institution that it has not, and will not, enroll the same loan or portion thereof in any other government program substantially similar to the Program.

(22) The submittal of a completed Borrower's Eligibility Criteria and Self-Certification form in which the Borrower certifies to the following:

(A) That it satisfies the definitions in Sections 8078.3(e), 8078.3(f), 8078.3(i), and 8078.3(j) of the EVCS Financing Program Regulations;

(B) The EVCS installation is compliant with Section 8078.3(c) or 8078.3(g) of the EVCS Program Regulations, if applicable;

(C) The EVCS installation is located within the boundaries of the State of California;

(D) The Borrower has legal control of the EVCS installation site for a term that is equal to or greater than the length of the enrolled loan, and assumes financial liability of the loan;

(E) The Borrower agrees to allow the participating financial institution to provide information from financial records of the Borrower upon request of the Executive Director of CPCFA;

(F) The Borrower has no legal, beneficial, or equitable interest in the matching contribution;

(G) If the EVCS installation financed through this Program is a part of a larger construction project carried out by the Borrower, the enrolled amount of the loan in this Program is the portion of costs of the total project as reasonably allocated to the installation and operation of the EVCS, as documented by the master contractor and/or installer of the EVCS;

(H) The Borrower has secured or made application for all applicable licenses or permits needed to install and operate the EVCS to be procured with the Qualified Loan;

(I) The Borrower agrees to allow California Energy Commission staff or its designee to inspect the EVCS and EVCS installation site;

(J) The Borrower acknowledges awareness of potential regulations from the California Department of Food and Agriculture, Division of Measurement Standards, governing the retail sale of electricity from EVCS. Once effective, installed EVCS may be required to adhere to adopted regulation requirements; and

(K) The Borrower is aware of the Borrower Rebate if it complies with Section 8078.7 of the EVCS Financing Regulations.

(23) Certification from the Participating Financial Institution that it has provided the Borrower CPCFA's Privacy Notice for the EVCS Financing Program, which provides the notice required under the California Information Practices Act (CIPA) (Civil Code section 1798.17). The Privacy Notice for the EVCS Financing Program informs the Borrower that personal information protected by the CIPA may be disclosed under the following circumstances:

(A) To consultants, auditors or contractors retained by the CPCFA where disclosure is required to fulfill CalCAP program requirements and subject to a nondisclosure agreement;

(B) To another governmental entity where required by state or federal law; or

(C) As otherwise required by law.

Information related to this loan not including personally identifying information may be disclosed to the California Energy Commission for statistical reporting.

(b) Upon enrollment of a Qualified Loan, CPCFA shall direct the Trustee to transfer a Contribution for deposit in the Participating Financial Institution's established Loan Loss Reserve Account, and the Trustee shall notify the Participating Financial Institution of the transfer.

(c) The Contribution for each Qualified Loan shall be calculated as follows:

(1) All Qualified Loans shall receive a Contribution in the amount of 20 percent of the enrolled loan amount.

(2) All Qualified Loans that support installation of Electric Vehicle Charging Stations in Disadvantaged Communities or in a Multi-Unit Dwelling shall receive an additional Contribution in the amount of 10 percent of the enrolled loan amount (total Contribution of 30 percent).

(d) Without regard to the terms of the loan, the term of enrollment in the Program shall not exceed forty-eight (48) months from the date of first disbursement of the Qualified Loan.

Note: Authority cited: Sections 44520, 44559.5(f), and 44559.11(b), Division 27, Health and Safety Code. Reference: Sections 44559.2, 44559.4, and 44559.11 Division 27, Health and Safety Code.

8078.6 Loan Loss Reserve Accounts

(a) Upon the Executive Director's acceptance of an application by a Participating Financial Institution, CPCFA shall establish a Loan Loss Reserve Trust Account for that Participating Financial Institution for the following purposes:

(1) To receive all Contributions deposited from the EVCS Financing Program;

(2) To pay claims in accordance with the Claim for Reimbursement Section 8074; and

(3) To pay Borrower Rebates in accordance with Section 8078.7.

(b) All moneys in a Loan Loss Reserve Account are property of the Authority held in trust to be used only for the valid and lawful purposes of the Program as provided in the Interagency Agreement with the Energy Commission and these regulations. Interest or income earned on moneys credited to the Loan Loss Reserve Account shall be deemed to be part of the Loan Loss Reserve Account. The Executive Director shall be authorized to withdraw from the Loan Loss Reserve Trust Account all interest and income that has been credited to the Loan Loss Reserve Account. The Executive Director shall be authorized to withdraw contributions improperly deposited in a Loan Loss Reserve Account. The Executive Director shall be authorized to direct that funds be withdrawn from Loan Loss Reserve Accounts to fund qualifying Borrower Rebates.

(c) Moneys in a Participating Financing Institution's Loan Loss Reserve Account shall not exceed the outstanding principal of its enrolled loans. From time to time, the Executive Director may withdraw from the Loan Loss Reserve Account all Loan Loss Reserve contributions that exceed the amount of outstanding principal.

(d) If any Loan Loss Reserve Account is held at a Participating Financial Institution, the Participating Financing Institution shall provide monthly statements to CPCFA no later than the 15th of each month reporting all Loan Loss Reserve Account activity, and beginning and ending balances. In addition, the Participating Financial Institution shall provide information to CPCFA regarding the status of enrolled loans, claims and recoveries upon request.

(e) The Participating Financial Institution shall provide reports on the quarterly basis to CPCFA no later than the 15 days after the end of the quarter, listing all enrolled loans which are in default whether or not the Participating Financial Institution has filed a claim with CPCFA. The quarters end on March 31, June 30, September 30, and December 31.

Note: Authority cited: Sections 44520, 44559.5(f), and 44559.11(b), Division 27, Health and Safety Code. Reference: Section 44559.3, Division 27, Health and Safety Code.

8078.7. Borrower Rebate

(a) A Borrower shall be eligible for a Borrower Rebate of fifty (50) percent of the Contribution if the following conditions are met:

- (1) The Borrower provides the Participating Financial Institution with a copy of an Electric Vehicle Charging Station Certificate of Commissioning relative to the EVCS financed;
- (2) The Borrower has no more than one 30-day late payment on the Qualified Loan;
- (3) The Qualified Loan has been paid off or forty-eight months have elapsed from the date of first disbursement of the Qualified Loan, whichever is sooner; and
- (4) The Borrower certifies that any outstanding balance of the loan repaid at the time of application for the Borrower Rebate was not refinanced into another credit structure with any Participating Financial Institution.

(b) A Participating Financial Institution shall make the request for a Borrower Rebate as specified in subdivision (c) of this section to CPCFA within 90 calendar days after the conditions in subdivision (a) of this section have been satisfied.

(c) To make a request for a Borrower Rebate, the Participating Financial Institution shall submit a Request for Borrower Rebate form to CPCFA which shall include the following information:

- (1) Name of the Participating Financial Institution.
- (2) Name, address and telephone number of contact person for the Participating Financial Institution.
- (3) Name, telephone number and address of the Qualified Business requesting the Borrower Rebate.
- (4) Amount, date of first disbursement of the Qualified Loan and loan number.
- (5) Amount of Contribution.
- (6) Amount of Borrower Rebate.
- (7) Date Borrower qualified for Borrower Rebate.
- (8) Participating Financial Institution certification of other evidence that the conditions in subdivision (a) of this section have been satisfied.

(d) CPCFA shall authorize the payment of a Borrower Rebate within 30 calendar days of receipt of a completed request for Borrower Rebate; provided, however, that the Executive Director shall be authorized to reject a request for Borrower Rebate if he or she determines that the certifications provided by the Participating Financial Institution and Borrower at the time of enrolling the Qualified Loan were false or unsubstantiated. CPCFA shall be authorized, upon providing written notice to the Participating Financial Institution, to defer payment of a Borrower

Rebate up to an additional 30 calendar days if CPCFA requires more information in order to validate the payment of the Borrower Rebate.

(e) Upon approval of a claim for Borrower Rebate, CPCFA shall instruct the Trustee to withdraw the appropriate amount from the Loan Loss Reserve Account and disburse the Borrower Rebate to the Borrower.

(f) CPCFA may, in its sole determination, authorize a Borrower Rebate upon independent verification that the Borrower has satisfied the requirements of subdivision (a) of this section in the event the Participating Financial Institution is unable or unwilling to supply the documentation needed for Borrower Rebate authorization.

Note: Authority cited: Sections 44520, 44559.5(f), and 44559.11(b), Division 27, Health and Safety Code. Reference: Sections 44559.3, and 44559.11, Division 27, Health and Safety Code.

CalCAP Use Only	CalCAP Loan # _____
	Date Received _____

EVCS FINANCING PROGRAM LOAN ENROLLMENT APPLICATION

Lender Information

Participating Lender _____ Lender ID# _____
 Lender Contact Name _____ Phone _____
 Lender Contact Email _____

Borrower Information

Business Name _____ DBA _____
 Name of Responsible Person _____ Title _____
 Address _____ City _____ County _____ Zip _____
 Type of Business/Activities _____
 Average Annual Revenue Last 3 Years \$ _____
 Number of Employees _____ Jobs created _____ Jobs retained _____
 Will loan monies be used at above address? Yes No If No, location where loan monies will be used:
 Address _____ City _____ County _____ Zip _____
 NAICS Code _____ <http://www.census.gov/eos/www/naics/> Census Tract # _____ <http://www.ffiec.gov/Geocode/default.aspx>
 Description of Eligible Project Costs (Purpose of Loan) _____
 Is EVCS installation in a Multi-Unit Dwelling? Yes No
 Is EVCS installation in a Disadvantaged Community? Yes No
 Is business minority owned? Yes No Decline to Answer
 Is business woman owned? Yes No Decline to Answer
 Is business veteran owned? Yes No Decline to Answer

Loan Information

Lender Loan Number _____
 Total Loan Amount \$ _____ Loan Amount Enrolled in CalCAP \$ _____
 Date of First Disbursement (Date of Loan) _____ Maturity Date _____
 Interest Rate _____% APR Fixed Variable Is the loan secured? Yes No

ELECTRIC VEHICLE CHARGING STATION FINANCING PROGRAM
BORROWER ELIGIBILITY CRITERIA AND SELF-CERTIFICATION

The undersigned Borrower hereby applies to the California Pollution Control Financing Authority (CPCFA) for participation in the Electric Vehicle Charging Station Financing Program (EVCS Financing Program).

SECTION I
EVCS FINANCING PROGRAM ELIGIBILITY

By initialing on each line, Borrower certifies to eligibility under the EVCS Financing Program.

(a)_____ Borrower will use the program only to purchase and install electric vehicle charging stations (EVCS) in compliance with the California Energy Commission's Alternative and Renewable Fuel and Vehicle Technology Program (ARFVTP) (California Health and Safety Code Section 44272) and the EVCS Financing Program Regulations. Eligible acquisitions with loan proceeds include:

- Design and development of EVCS in locations accessible to either the Borrower's employees, the Borrower's tenants if in an Multi-Unit Dwelling (MUD), or the public generally;
- Acquisition of EVCS, supply equipment, electric panel or grid improvements, materials and supplies (including conduit and construction materials), signage, and hardware and software necessary for fully operational charging stations;
- Labor to install fully operational charging station(s).

(b)_____ Borrower certifies that the acquisition and installation of EVCS subject to the statute referenced in the above statement meets all other EVCS Financing Program requirements.

(c)_____ Borrower understands they may be eligible for a Borrower Rebate at an amount of 50 percent of the Program premium contribution, contingent upon: repayment of the enrolled loan amount or 48 months from the date of first disbursement of the enrolled loan, whichever occurs first; loan payments were made in a timely manner with no more than one 30 day late payment over the term of the loan; submission of a EVCS Certificate of Commissioning; and a certification that any outstanding balance of the loan repaid at the time of application for the Borrower Rebate was not refinanced into another credit structure with any Participating Financial Institution.

Initial (d) and (e) only if applicable:

(d)_____ Borrower certifies that the location of the installed EVCS is in a multi-unit dwelling property as defined in the EVCS Financing Program Regulations.

(e)_____ Borrower certifies that the location of the installed EVCS is in a disadvantaged community as defined in the EVCS Financing Program Regulations.

**SECTION II
EVCS FINANCING PROGRAM BUSINESS ELIGIBILITY**

By initialing on each line, the Borrower certifies to eligibility under EVCS Financing Program.

(a)_____ Borrower is a qualified business defined as follows:

- “Qualified Business” means any entity eligible under section 8070(r) that together with its affiliates has 1,000 or fewer employees.

(b)_____ Borrower certifies the EVCS installation is located within the boundaries of the State of California.

(c)_____ Borrower certifies that it has legal control of the EVCS installation site for a term that is equal to or greater than the length of the enrolled loan, and will assume financial liability of the loan.

(d)_____ Borrower agrees to allow the participating financial institution to provide information from financial records of the Borrower upon request of the Executive Director of CPCFA.

(e)_____ Borrower has no legal, beneficial, or equitable interest in the fees or the matching contribution.

(f)_____ Borrower does not have a total principal amount in excess of \$500,000 enrolled in the EVSC Financing Program at any participating financial institution.

(g)_____ Borrower has received the EVCS Financing Program Privacy Notice dated April 1, 2015.

**SECTION III
EVCS FINANCING PROGRAM PROJECT ELIGIBILITY**

By initialing on each line, the Borrower certifies that each statement below is true and correct. Please also provide the applicable information in the table below, including the EVCS manufacturer and model purchased with EVCS Financing Program loan proceeds.

(a)_____ If the EVCS installation financed through this Program is a part of a larger construction project carried out by the Borrower, the enrolled amount of the loan in this Program is the portion of costs of the total project as reasonably allocated to the installation and operation of the EVCS, as documented by the master contractor and/or installer of the EVCS.

(b)_____ Borrower certifies that the facility at which the EVCS will be installed is not any of those prohibited by the CalCAP regulations, including: massage parlor, hot tub facility, racetrack, facility primarily used for gambling or to facilitate gambling, liquor store, bars, a store or other facility whose principal business is the sale of firearms, a store or other facility whose principal business is the manufacture or sale of tobacco or tobacco products, escort service, nudist camp, adult entertainment (including strip clubs, adult book stores, and businesses whose principal business is the sale of pornography), gun club, shooting range or gallery.

(c)_____ Borrower has secured or made application for all applicable licenses or permits needed to install and operate the EVCS to be procured with the Qualified Loan.

(d)_____ Borrower agrees to allow California Energy Commission staff or its designee to inspect the EVCS and EVCS installation site.

(e)_____ Borrower certifies that minimum technical requirements for direct current (DC) fast chargers include: 1) either the CHAdeMO standard, or the SAE combination standard (CCS), or a combination of both; and 2) EVCS' use an open standard protocol for purposes of network interoperability. Level 2 charging equipment must meet the SAE J1772 standard and use an open standard protocol. The open standard protocol is waived by CPCFA for medium-and heavy-duty EVCS.

(f)_____ Borrower acknowledges awareness of potential regulations from the California Department of Food and Agriculture, Division of Measurement Standards, governing the retail sale of electricity from EVCS. Once effective, installed EVCS may be required to adhere to adopted regulation requirements. Please see www.cdfa.ca.gov for more information.

Additional Information for Completion by the Borrower	
Manufacturer:	
Model(s):	
Total Units to be Purchased:	
Number of Networked Communication Units:	
Total number of charging ports:	
Total EVCS Cost:	
Estimated installation cost:	

(Business Name)

(Print Borrower's Name)

(Borrower's Signature)

(Date)

(Business Address)

(Phone Number)

(CPCFA Review: Signature and Title)

(Date)

PRIVACY NOTICE
EVCS Financing Program

The California Information Practices Act of 1977 (the Act) (Civil Code §1798.17) requires that this notice be provided when a governmental agency collects the personal information of individuals. Name, address, telephone number, gender, race, business and financial information related to this loan is requested by the California Capital Access Program (CalCAP) of the California Pollution Control Financing Authority for the purposes of assessing compliance with the Electric Vehicle Charging Station (EVCS) Financing Program requirements. It is mandatory for the lender to provide this information to CPCFA when enrolling a borrower's loan in the EVCS Financing Program. Failure to provide the information may result in rejection of the application.

Personal information protected by the Act may be disclosed under the following circumstances: (1) to consultants, auditors or contractors retained by the California Pollution Control Financing Authority where disclosure is required to fulfill CalCAP program requirements and subject to a nondisclosure agreement; (2) to another governmental entity where required by state or federal law; or (3) as otherwise required by law. Information related to this loan not including personally identifying information may be disclosed to the California Energy Commission for statistical reporting.

The agency official responsible for the maintenance of the personal information is the EVCS Program Manager, at 915 Capitol Mall, Suite 457, Sacramento, CA 95814, Tel: (916) 654-5610. California Code of Regulations §8072 authorizes the solicitation and maintenance of the personal information requested. Borrowers have the right to access their information upon request by contacting the EVCS Program Manager.

EXHIBIT B
Budget Detail and Payment Provision

1. **INVOICING PROCEDURES**

- A. Upon receipt and approval of an invoice for funds disbursement, the Energy Commission agrees to disburse funds to CPCFA, a Public Prime Contractor, via a no warrant claim schedule according to the budget as described in this Exhibit B.
- B. Upon the Energy Commission's receipt and written approval of an invoice for reimbursement of administrative costs, accompanied by documentation substantiating staff labor costs, Trustee costs, and other expenditures necessary to implement the EVCS Financing Program in compliance with this Agreement, CPCFA may direct the Trustee to transfer the approved amount of funds from the Energy Commission Cost Account to CPCFA.
- C. The invoice shall be submitted in duplicate. The request for payment shall consist of, but is not limited to, the following:
 - 1) Agreement number, date prepared, and billing period.
 - 2) The invoice shall identify charges as stated in the budget detail below.
- D. The Energy Commission will accept a computer generated or electronically transmitted invoice provided CPCFA sends a hard copy the same day to the Energy Commission, the address is noted below and in the Agreement Contact List.

California Energy Commission
Accounting Office, MS-2
1516 9th Street
Sacramento, California 95814

2. **BUDGET CONTINGENCY CLAUSE**

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

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

3. **TRAVEL AND PER DIEM RATES**

Travel costs shall be provided for in a modification to this Agreement, per Task 4.2.

4. **RETENTION**

No retention shall be withheld.

5. **PAYMENT TERMS**

- Advance Payment to Public Prime Contractor. Initial payment is not to exceed \$2,000,000 upon receipt of invoice.
- Reimbursement for Administrative Costs. Upon the Energy Commission's receipt and approval of an invoice for reimbursement of administrative costs, CPCFA may direct the Trustee to transfer the approved amount of funds from the Energy Commission Cost Account to CPCFA.

In order to reconcile expenditures by the end of the Agreement term, CPCFA shall provide the Energy Commission a report on unused funds, including interest, in the Energy Commission Program Account and CEC Cost Account maintained by the Trustee three (3) months prior to the end of the Agreement. CPCFA and the Energy Commission agree that funds (including interest) that have not been disbursed to a Lender's Energy Commission Loan Loss Reserve Account, or have not been used to cover costs related to fulfilling the Borrower Rebates due to insufficient funds in the Lenders' Energy Commission Loan Loss Reserve Accounts, or maintaining the Trustee accounts, or reimbursing CPCFA costs for administration of the EVCS Financing Program, will remain in the respective account at the Trustee until the Energy Commission requests disbursement to another designated account for the purpose of carrying out its policy goals, or requests the return of the funds.

6. **CONDITIONS FOR PAYMENT**

- A. A request for payment is subject to the Contract Manager's approval.
- B. Nothing herein contained shall preclude advance payments pursuant to Article 1, Chapter 3, Part 1, Division 3, Title 2 of the Government Code of the State of California.
- C. Costs for this Agreement shall be computed in accordance with State Administrative Manual Sections 8752 and 8752.1.
- D. Final invoice must be received by the Energy Commission no later than 30 calendar days after the Agreement termination date.
- E. The State will pay for State or local sales or use taxes on the services rendered or equipment, parts or software supplied to the Energy Commission pursuant to this Agreement.
- F. No payment will be made for costs identified in CPCFA invoices that has or will be reimbursed by any other source, including but not limited to a Government Entity contract or subcontract or other procurement Agreement.

7. **BUDGET DETAIL FOR INITIAL \$2,000,000 PAYMENT**

<u>Description</u>	<u>Explanation</u>	<u>Funding</u>
EVCS Program	Funds will be used to make contributions to lender's Energy Commission Loan Loss Reserve Accounts.	\$1,900,000
Administrative Costs*	Funds will be used by CPCFA for Borrower Rebate, or administrative and trustee costs	\$ 100,000
Total Energy Commission Funds		<u>\$ 2,000,000</u>

*Upon receipt and deposit of the \$2 million, CPCFA shall immediately transfer five (5) percent, or \$100,000, from the Energy Commission Program Account to the Energy Commission Cost Account to be available to pay borrower rebates in the event a lender's Energy Commission loan loss reserve funds are insufficient to fund borrower rebates as described in the Program Standards. If CPCFA, in consultation with the Energy Commission, determines that these funds are not required to satisfy Borrower rebates, the funds shall be made available to cover CPCFA's costs to administer the EVCS Financing Program (including but not limited to the Trustee's costs), not to exceed \$100,000 plus interest earnings deposited into the Energy Commission Cost Account. Administrative costs outside of those specified in this Scope of Work may be provided for in a modification to this Agreement, per Task 4.2.

Public/ Governmental Entity
EXHIBIT D
Special Terms and Conditions

1. AGREEMENT MANAGEMENT

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

2. SUBCONTRACTORS

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

AND

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

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

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

3. **CHANGES TO THE AGREEMENT**

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

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

4. **STANDARD OF PERFORMANCE**

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

- A. Contractor/subcontractor will reperform, at its own expense, any task, which was not performed to the reasonable satisfaction of the CAM. Any work reperformed pursuant to this paragraph shall be completed within the time limitations originally set forth for the specific task involved. Contractor/subcontractor shall work any overtime required to meet the deadline for the task at no additional cost to the Energy Commission.
- B. The CAM shall provide a new schedule for the reperformance of any task pursuant to this paragraph in the event that reperformance of a task within the original time limitations is not feasible.

- C. If the CAM directs the Contractor not to reperform a task, the CAM and Contractor shall negotiate a reasonable settlement for satisfactory services rendered. No previous payment shall be considered a waiver of the Energy Commission's right to reimbursement.

5. **REPORTS, DELIVERABLES AND INFORMATION DISCLOSURE**

- A. **Progress and Final Reports:** Contractor shall prepare progress reports summarizing all activities conducted by Contractor to date on a schedule as provided in Exhibit A or a work authorization, if applicable. At the conclusion of this Agreement, Contractor shall prepare a comprehensive Final Report, on a schedule as provided in Exhibit A.
- B. **Title:** Contractor's name shall only appear on the cover and title page of reports as follows:
 - California Energy Commission
 - Project Title
 - Contractor Number
 - By (Contractor)
- C. **Ownership:** Each report shall become the property of the Energy Commission.
- D. **Non-disclosure:** Contractor will not disclose data or disseminate the contents of the final or any progress report without written permission of the CAM, except as provided in F, below. Permission to disclose information on one occasion or at public hearings held by the Energy Commission relating to the same shall not authorize Contractor to further disclose and disseminate the information on any other occasion. Contractor will not comment publicly to the press or any other media regarding its report, or Commission's actions on the same, except to Commission staff, Contractor's own personnel involved in the performance of this Agreement, or at a public hearing, or in response to questions from a legislative committee. Notwithstanding the foregoing, in the event any public statement is made by the Energy Commission or any other party, based on information received from the Energy Commission as to the role of Contractor or the content of any preliminary or final report, Contractor may, if it believes the statement to be incorrect, state publicly what it believes is correct.
- E. **Confidentiality:** No record which has been designated as confidential, or is the subject of a pending application of confidentiality, shall be disclosed by the Contractor, Contractor's employees or any tier of subcontractors, except as provided in 20 California Code of Regulations, Sections 2506 and 2507, unless disclosure is ordered by a court of competent jurisdiction (20 California Code of Regulations, Sections 2501, et seq.). At the election of the CAM, Contractor, Contractor's employees and any subcontractor shall execute a "Confidentiality Agreement," supplied by the CAM or Contract Officer. Each subcontract shall contain provisions similar to the foregoing related to the confidentiality and nondisclosure of data.
- F. **Disclosure:** Ninety days after any document submitted by the contractor is deemed by the CAM to be a part of the public records of the State, Contractor may, if it wishes to do so at its own expense, publish or utilize a report or written document but shall include the following legend:

LEGAL NOTICE

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

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(THE COPYRIGHT HOLDER'S NAME)
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6. CONTRACT DATA, OWNERSHIP RIGHTS

- A. "Data" as used in this Agreement means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research or experimental, developmental or engineering work, or be usable or be used to define a design or process, or to support a premise or conclusion asserted in any deliverable document required by this Agreement. The data may be graphic or pictorial delineations in media, such as drawings or photographs, data or information, etc. It may be in machine form, such as punched cards, magnetic tape or computer printouts, or may be retained in computer memory.
- B. "Deliverable data" is that data which, under the terms of this Agreement, is required to be delivered to the Energy Commission and shall belong to the Energy Commission.
- C. "Proprietary data" is such data as the Contractor has identified in a satisfactory manner as being under Contractor's control prior to commencement of performance of this Agreement, and which Contractor has reasonably demonstrated as being of a proprietary nature either by reason of copyright, patent or trade secret doctrines in full force and effect at the time when performance of this Agreement is commenced. The title to "proprietary data" shall remain with the Contractor throughout the term of this Agreement and thereafter. The extent of the Energy Commission access to and the testimony available regarding, the proprietary data shall be limited to that reasonably necessary to demonstrate, in a scientific manner to the satisfaction of scientific persons, the validity of any premise, postulate or conclusion referred to or expressed in any deliverable for this Agreement.

- D. "Generated data" is that data, which a Contractor has collected, collated, recorded, deduced, read out or postulated for utilization in the performance of this Agreement. Any electronic data processing program, model or software system developed or substantially modified by the Contractor in the performance of this Agreement at the Energy Commission's expense, together with complete documentation thereof, shall be treated in the same manner as "generated data." "Generated data" shall be the property of the Energy Commission, unless and only to the extent that it is specifically provided otherwise in this Agreement.
- E. As to "generated data" which is reserved to Contractor by the express terms hereof, and as to any pre-existing or "proprietary data" which has been utilized to support any premise, postulate or conclusion referred to or expressed in any deliverable hereunder, Contractor shall preserve the same in a form which may be introduced as evidence in a court of law at Contractor's own expense for a period of not less than three years after receipt by the Energy Commission of the Final Report herein.
- F. Before the expiration of the three years, and before changing the form of or destroying any data, Contractor shall notify the Energy Commission of any contemplated action and the Energy Commission may, within thirty (30) days after notification, determine whether it desires the data to be preserved. If the Energy Commission so elects, the expense of further preserving data shall be paid for by the Energy Commission. Contractor agrees that the Energy Commission may at its own expense, have reasonable access to data throughout the time during which data is preserved. Contractor agrees to use its best efforts to furnish competent witnesses or to identify competent witnesses to testify in any court of law regarding data.

7. **PUBLIC HEARINGS**

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

8. **DISPUTES**

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

A. First Level Dispute Resolution

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

B. Second Level Dispute Resolution

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

9. **TERMINATION**

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

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

A. With Cause

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

- 1) Failure to perform or breach of any of the terms or covenants at the time and in the manner provided in this Agreement; or
- 2) Contractor is not able to pay its debts as they become due and/or Contractor is in default of an obligation that impacts his ability to perform under this Agreement; or

- 3) It is determined after notice and hearing by the Energy Commission or the Executive Director that gratuities were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the Energy Commission, with a view toward securing an Agreement or securing favorable treatment with respect to awarding or amending or making a determination with respect to performance of the Agreement; or
- 4) Significant change in Commission policy such that the work or product being funded would not be supported by the Energy Commission; or
- 5) Reorganization to a business entity unsatisfactory to the Energy Commission; or
- 6) The retention or hiring of subcontractors, or the replacement or addition of personnel that fail to perform to the standards and requirements of this Agreement.

B. Without Cause

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

10. **WAIVER**

No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or by law. The failure of the Energy Commission to enforce at any time any of the provisions of this Agreement, or to require at any time performance by Contractor of any of the provisions, shall in no way be construed to be a waiver of those provisions, nor in any way affect the validity of this Agreement or any part of it or the right of the Energy Commission to thereafter enforce each and every such provision.

11. **CAPTIONS**

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

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

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

13. **NOTICE**

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

Delivery by fax or e-mail is not considered legal notice for the purpose of this clause. This paragraph is not intended to apply to normal, daily communication between the parties related to progress of the work. This clause applies to situations where notice is required to be given by this Agreement or the parties are asserting their legal rights and remedies.

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

14. **STOP WORK**

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

- A. Compliance. Upon receipt of such stop work order, Contractor shall immediately take all necessary steps to comply therewith and to minimize the incurrence of costs allocable to work stopped.
- B. Equitable Adjustment. An equitable adjustment shall be made by Commission based upon a written request by Contractor for an equitable adjustment. Such adjustment request must be made by Contractor within thirty (30) days from the date of receipt of the stop work notice.
- C. Revoking a Stop Work Order. Contractor shall resume the stopped work only upon receipt of written instructions from the Energy Commission Contract Officer canceling the stop work order.

15. **BUSINESS ACTIVITY REPORTING**

- A. Contractor shall promptly notify the CAM of the occurrence of any of the following:
 - 1) A change of address.
 - 2) A change in the business name or ownership.
 - 3) The existence of any litigation or other legal proceeding affecting this Agreement.
 - 4) The occurrence of any casualty or other loss to Project personnel, equipment or third parties.
 - 5) Contractor's receipt of notice of any claim or potential claim against Contractor for patent, copyright, trademark, service mark and/or trade secret infringement that could affect the Energy Commission's rights.

B. Contractor shall not change or reorganize the type of business entity under which it does business except upon prior written notification to the Energy Commission. A change of business entity or name change requires an amendment assigning or novating the Agreement to the changed entity. In the event the Energy Commission is not satisfied that the new entity can perform as the original Contractor, the Energy Commission may terminate this Agreement as provided in the Termination clause.

16. **ACCESS TO SITES AND RECORDS**

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

17. **ASSURANCES**

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

18. **INTERPRETATION OF TERMS**

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

19. **HARASSMENT TRAINING**

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

Public/ Governmental Entity
EXHIBIT E
Additional Provisions

1. **CONFIDENTIALITY**

A. Information Considered Confidential

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

B. Confidential Deliverables: Labeling and Submitting Confidential Information

Prior to the commencement of this Agreement, if applicable, the parties have identified in the Attachment to this Exhibit, specific Confidential Information to be provided as a deliverable. All such confidential deliverables shall be marked, by the Contractor, as "Confidential" on each page of the document containing the Confidential Information and presented in a sealed package to the Commission Contracts Officer. (Non-confidential deliverables are submitted to the Accounting Office.) All Confidential Information will be contained in the "confidential" volume: no Confidential Information will be in the "public" volume.

C. Submittal of Unanticipated Confidential Information as a Deliverable

The Contractor and the Energy Commission agree that during this Agreement, it is possible that the Contractor may develop additional data or information not originally anticipated as a confidential deliverable. In this case, Contractor shall follow the procedures for a request for designation of Confidential Information specified in 20 CCR 2505. The Energy Commission's Executive Director makes the determination of confidentiality. Such subsequent determinations may be added to the list of confidential deliverables in the Attachment to this Exhibit.

D. Disclosure of Confidential Information

Disclosure of Confidential Information by the Energy Commission may only be made pursuant to 20 CCR 2506 and 2507. All confidential data, records or deliverables that are legally disclosed by the Contractor or any other entity become public records and are no longer subject to the above confidentiality designation.

2. **RIGHTS OF PARTIES IN COPYRIGHTS, PHYSICAL WORKS OF ART AND FINE ART**

The Contractor; by signing this Agreement, expressly grants to the Energy Commission for all copyrightable material, work of art and original work of authorship first produced, composed or authored in the performance of this Agreement a royalty-free, paid-up, non-exclusive, irrevocable, nontransferable, worldwide license to produce, translate, publish, use, dispose of, reproduce, prepare derivative works based on, distribute copies of, publicly perform, or publicly display a work of art or fine art, and to authorize others to produce, translate, publish, use, dispose of, reproduce, prepare derivative works based on, distribute copies of, publicly perform, or publicly display a work of art or fine art.

Contractor, by signing this Agreement, expressly conveys to the Energy Commission all ownership of the physical works of art and fine art produced under this Agreement. Contractor agrees it does not reserve any rights to the physical works of art and fine art produced under this Agreement.

Contractor shall obtain these same rights for the Energy Commission from all subcontractors and others who produce copyrightable material, works of art, or works of fine art under this Agreement. Contractor shall incorporate these paragraphs, modified appropriately, into its agreements with subcontractors. No subcontract shall be entered into without these rights being assured to the Energy Commission from the subcontractor.

EXHIBIT F Agreement Contacts

<p>Commission Agreement Manager:</p> <p>Larry Rillera, MS-27 California Energy Commission 1516 Ninth Street Sacramento, CA 95814 Phone (916) 651-6178 Fax # (916) 654-4368 e-mail: larry.rillera@energy.ca.gov</p>	<p>Contractor Project Manager:</p> <p>Jason Bradley California Pollution Control Financing Authority 915 Capitol Mall, Suite 457 Sacramento, CA 95814 Phone: (916) 654-5610 Fax: (916) 657-4821 e-mail: Jason.bradley@treasurer.ca.gov</p>
<p>Commission Agreement Officer:</p> <p>Albert De León, MS-18 California Energy Commission 1516 Ninth Street Sacramento, CA 95814 Phone: (916) 654-4299 Fax: (916) 654-4423 e-mail: albert.deleon@energy.ca.gov</p> <p>Deliver confidential deliverables to this location only.</p>	<p>Contractor Contract Administrator/Officer:</p> <p>Renee Webster-Hawkins California Pollution Control Financing Authority 915 Capitol Mall, Suite 457 Sacramento, CA 95814 Phone: (916) 654-5610 Fax: (916) 657-4821 e-mail: Rwebster@treasurer.ca.gov</p>
<p>Invoices, Progress Reports and Non-Confidential Deliverables to:</p> <p>Accounting Office, MS-2 California Energy Commission 1516 Ninth Street Sacramento, CA 95814 Phone: (916) Fax: (916) e-mail: @energy.ca.gov</p>	
<p>Commission Legal Notices:</p> <p>Rachel L. Grant Kiley, Manager Contracts, Grants, and Loans Office California Energy Commission 1516 Ninth Street, MS-18 Sacramento, CA 95814 Phone: (916) 654-4379 Fax: (916) 654-4423 e-mail: rachel.grant-kiley@energy.ca.gov</p>	<p>(contractor legal person)</p>