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Enactment Date	9-28-2022 CJH



**OAKLAND UNIFIED
SCHOOL DISTRICT**
Community Schools, Thriving Students

OAKLAND UNIFIED SCHOOL DISTRICT
Office of the Board of Education
September 28, 2022

Memo

To Board of Education

From Sondra Aguilera, Acting Superintendent
Tadashi Nakadegawa, Deputy Chief, Facilities Planning and Management

Board Meeting Date September 28, 2022

Subject Grant Agreement - California Schools Healthy Air, Plumbing, and Efficiency (CalSHAPE)
Program - Plumbing - Division of Facilities Planning and Management

ACTION REQUESTED:

Approval by the Board of Education of Grant Agreement Number 21R1PA0920 from the California Energy Commission California Schools Healthy Air, Plumbing, and Efficiency CalSHAPE Plumbing Program and the District, in the amount of \$1,070,093.25, to support forty-two (42) various school sites as described in Grant Agreement, incorporated herein by reference as though fully set forth via the Division of Facilities Planning and Management, for the period of July 1, 2022 through June 30, 2023.

BACKGROUND:

The grant agreement for the OUSD Division of Facilities Planning and Management for the 2022-2023 fiscal year was submitted for funding as indicated in the chart below. The Grant Face Sheet and grant application packets are attached.

File I.D. #	Backup Document Included	Type	Recipient	Grant's Purpose	Time Period	Funding Source	Grant Amount
22-1736	Yes	Grant	Division of Facilities Planning and Management	To support 42 various school sites Plumbing Program	July 1, 2022- June 30, 2023	California Energy Commission California Schools Healthy Air, Plumbing, and Efficiency (CalSHAPE) Program	\$1,070,093.25

DISCUSSION:

The District created a Grant Face sheet process to

- Review proposed grant projects at OUSD sites and assess their contribution
- Identify OUSD resources required for program success

OUSD received a Grant Face Sheet and a completed grant application for the program listed to be hosted in the Division of Facilities Planning and Management.

FISCAL IMPACT:

The total amount of grants will be provided to OUSD schools from the funders.

- Grants valued at \$1,070,093.25

RECOMMENDATION:

Approval by the Board of Education of a Grant Agreement from the California Energy Commission's California Schools Healthy Air, Plumbing, and Efficiency (CalSHAPE) Plumbing Program for \$1,070,093.25 for the District's, California Schools Healthy Air, Plumbing and Efficiency Plumbing Program, pursuant to the terms and conditions thereof, for the period of July 1, 2022 through June 30, 2023.

The total amount of the grant for the 2022-2023 fiscal years will be provided to OUSD by the California Energy Commission California Schools Healthy Air, Plumbing, and Efficiency CalSHAPE Program.

ATTACHMENTS:

Grant Face Sheet
Grant Agreement
Payee Data Record


OUSD Grants Management Face Sheet

Title of Grant: California Schools Healthy Air, Plumbing, and Efficiency (CALSHAPE) Program - Plumbing	Funding Cycle Dates: 07/01/2022-06/30/2023
Grant's Fiscal Agent: Ryan Kastigar Program Manager (916) 891 8917 Ryan.Kastigar@energy.ca.gov	Grant Amount for Full Funding Cycle: \$1,070,093.25
Funding Agency: California Energy Commission Adrienne Winuk Contracts, Grants, and Loans Officer Manager 1516 9th Street, MS 18 Sacramento, CA 95814	Grant Focus: Water Efficiency Improvements; Replacing Faulty or Aged Infrastructure such as toilets and urinals; reducing flow in faucets; replacing certain appliances.
List all School(s) or Department(s) to be Served: 42 school sites listed in Exhibit A	

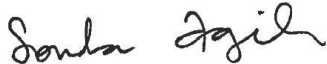
Information Needed	School or Department Response
How will this grant contribute to sustained student achievement or academic standards?	Improve quality of infrastructure to provide better overall learning environment
How will this grant be evaluated for impact upon student achievement? (Customized data design and technical support are provided at 1% of the grant award or at a negotiated fee for a community-based fiscal agent who is not including OUSD's indirect rate of 3.98% in the budget. The 1% or negotiated data fee will be charged according to an Agreement for Grant Administration Related Services payment schedule. This fee should be included in the grant's budget for evaluation.)	Improved infrastructure conditions for students and staff
Does the grant require any resources from the school(s) or district? If so, describe.	No matching funds required; minimal staff time required to coordinate with project implementation contractor(s).
Are services being supported by an OUSD funded grant or by a contractor paid through an OUSD contract or MOU? (If yes, include the district's indirect rate of 3.98% for all OUSD site services in the grant's budget for administrative support, evaluation data, or indirect services.)	Grant is being awarded to District by California Energy Commission under AB 841 CalSHAPE grant; funds are being used to offset majority of project costs ; grant funds being used to pay contractor to implement the approved Scope of Work
Will the proposed program take students out of the classroom for any portion of the school day?	No

(OUSD reserves the right to limit service access to students during the school day to ensure academic attendance continuity.)	
Who is the contact managing and assuring grant compliance? (Include contact's name, address, phone number, email address.)	Tadashi Nakadegawa Deputy Chief of Facilities Planning and Management 955 High Street Oakland, CA 94601 (510) 535-7038 tadashi.nakadegawa@ousd.org

Applicant Obtained Approval Signatures:

Entity	Name/s	Signature/s	Date
Principal/Administrator	Tadashi Nakadegawa		08/26/2022

Grant Office Obtained Approval Signatures:

Entity	Name/s	Signature/s	Date
Senior Business Officer	Lisa Grant-Dawson		
Acting Superintendent	Sondra Aguilera		9-29-2022



RECIPIENT Oakland Unified	AGREEMENT NUMBER 21R1PA0920
ADDRESS Brendan Daughton 955 High Street Oakland USD Oakland, CA 94601	AGREEMENT TERM Ends 24 months after Effective Date The effective date of this Agreement is either the start date or the approval signature date by the California Energy Commission representative below, whichever is later. The California Energy Commission shall be the last party to sign. No work is authorized, nor shall any work begin, until on or after the effective date.

PROJECT DESCRIPTION
 The parties agree to comply with the terms and conditions of the following Exhibits which are by this reference made a part of the agreement.
Exhibit A – Scope of Work
Exhibit B – Budget
Exhibit C – Agreement Contacts
Exhibit D – Terms and Conditions

EIMBURSABLE AMOUNT
\$1,070,093.25
Total of REIMBURSABLE AMOUNT
\$1,070,093.25

The undersigned parties have read the attachments to this agreement and will comply with the standards and requirements contained therein.

CALIFORNIA ENERGY COMMISSION		RECIPIENT	
AUTHORIZED SIGNATURE	DATE	AUTHORIZED SIGNATURE	DATE
			Digitally signed by Tadashi Nakadegawa Date: 2022.08.22 13:01:05 -07'00'
NAME		NAME	
Adrienne Winuk		Tadashi Nakadegawa	
TITLE		TITLE	
Contracts, Grants, and Loans Office Manager		Dep. Chief Facilities Planning & Mgmt.	
CALIFORNIA ENERGY COMMISSION ADDRESS			
1516 9th Street, MS 18, Sacramento, CA 95814			

Approved as to form by OUSD Attorney Carrie M. Rasmussen on 9/21/22

9-29-2022

Gary Yee
 President, Board of Education

EXHIBIT A
Scope of Work

Oakland Unified 01612590000000

Total Number of Sites 42

Site Name	CDS Code
Community Day	01612590106542
McClymonds High	01612590110189
Manzanita SEED Elementary	01612590110247
United for Success Academy	01612590112763
Elmhurst United Middle	01612590112789
Coliseum College Prep Academy	01612590112797
Futures Elementary	01612590115576
Global Family	01612590115584
East Oakland Pride Elementary	01612590115600
West Oakland Middle	01612590115626
Oakland International High	01612590115667
Castlemont High	01612590125161
Fremont High	01612590125716
Rudsdale Continuation	01612590130146
Dewey Academy	01612590132688
Oakland High	01612590135905
Allendale Elementary	01612596001630
Bella Vista Elementary	01612596001655
Brookfield Elementary	01612596001663
Burckhalter Elementary	01612596001689
Howard Elementary	01612596001713
Fruitvale Elementary	01612596001838
Garfield Elementary	01612596001846
Grass Valley Elementary	01612596001879
New Highland Academy	01612596001903
Horace Mann Elementary	01612596001929
Laurel Elementary	01612596001994
Markham Elementary	01612596002059
Bridges Academy	01612596002075
Parker Elementary	01612596002091
Prescott	01612596002125
Madison Park Academy TK-5	01612596002182
Esperanza Elementary	01612596002190
ACORN Woodland Elementary	01612596002273
Bret Harte Middle	01612596056998
Frick Middle	01612596057020
Roosevelt Middle	01612596057087
Westlake Middle	01612596057095
Madison Park Academy 6-12	01612596066450
Martin Luther King, Jr. Elementary	01612596072235
La Escuelita Elementary	01612596096523
International Community	01612596118616

Community Day	Unit Count
Appliance/Fixture	
Toilet	11
Urinal	2

McClymonds High	Unit Count
Appliance/Fixture	
Interior Faucet	4
Toilet	1

Manzanita SEED Elementary	Unit Count
Appliance/Fixture	
Toilet	9
Urinal	3

United for Success Academy	Unit Count
Appliance/Fixture	
Interior Faucet	2

Elmhurst United Middle	Unit Count
Appliance/Fixture	
Toilet	8
Urinal	2

Coliseum College Prep Academy	Unit Count
Appliance/Fixture	
Toilet	14
Urinal	8

Futures Elementary	Unit Count
Appliance/Fixture	
Interior Faucet	2
Toilet	17
Urinal	1

Global Family	Unit Count
Appliance/Fixture	
Commercial Dishwasher	1
Toilet	3

East Oakland Pride Elementary	Unit Count
Appliance/Fixture	
Toilet	7
Urinal	3

West Oakland Middle	Unit Count
Appliance/Fixture	
Toilet	3
Urinal	1

Oakland International High**Appliance/Fixture****Unit Count**

Toilet

13

Urinal

7

Castlemont High**Appliance/Fixture****Unit Count**

Toilet

10

Urinal

4

Fremont High**Appliance/Fixture****Unit Count**

Toilet

7

Urinal

2

Rudsdale Continuation**Appliance/Fixture****Unit Count**

Toilet

5

Urinal

1

Dewey Academy**Appliance/Fixture****Unit Count**

Toilet

2

Oakland High**Appliance/Fixture****Unit Count**

Automatic Ice Maker

1

Toilet

36

Urinal

25

Allendale Elementary**Appliance/Fixture****Unit Count**

Toilet

15

Urinal

1

Bella Vista Elementary**Appliance/Fixture****Unit Count**

Toilet

15

Brookfield Elementary**Appliance/Fixture****Unit Count**

Toilet

4

Burckhalter Elementary**Appliance/Fixture****Unit Count**

Toilet

3

Urinal

1

Howard Elementary

Appliance/Fixture	Unit Count
Toilet	5
Urinal	1
Fruitvale Elementary	
Appliance/Fixture	Unit Count
Interior Faucet	1
Toilet	6
Urinal	1
Garfield Elementary	
Appliance/Fixture	Unit Count
Toilet	18
Urinal	2
Grass Valley Elementary	
Appliance/Fixture	Unit Count
Interior Faucet	1
Toilet	10
New Highland Academy	
Appliance/Fixture	Unit Count
Toilet	11
Horace Mann Elementary	
Appliance/Fixture	Unit Count
Toilet	1
Laurel Elementary	
Appliance/Fixture	Unit Count
Toilet	14
Urinal	4
Markham Elementary	
Appliance/Fixture	Unit Count
Toilet	2
Urinal	8
Bridges Academy	
Appliance/Fixture	Unit Count
Toilet	11
Urinal	4
Parker Elementary	
Appliance/Fixture	Unit Count
Toilet	6
Urinal	1
Prescott	
Appliance/Fixture	Unit Count

Toilet	6
Urinal	3

Madison Park Academy TK-5

Appliance/Fixture	Unit Count
Toilet	4

Esperanza Elementary

Appliance/Fixture	Unit Count
Toilet	2

ACORN Woodland Elementary

Appliance/Fixture	Unit Count
Toilet	2

Bret Harte Middle

Appliance/Fixture	Unit Count
Interior Faucet	3
Toilet	22
Urinal	7

Frick Middle

Appliance/Fixture	Unit Count
Toilet	21
Urinal	11

Roosevelt Middle

Appliance/Fixture	Unit Count
Toilet	6

Westlake Middle

Appliance/Fixture	Unit Count
Toilet	33
Urinal	15

Madison Park Academy 6-12

Appliance/Fixture	Unit Count
Toilet	20
Urinal	7

Martin Luther King, Jr. Elementary

Appliance/Fixture	Unit Count
Toilet	8
Urinal	1

La Escuelita Elementary

Appliance/Fixture	Unit Count
Toilet	6

International Community

Appliance/Fixture
Toilet

Unit Count
1

EXHIBIT B Budget

Oakland Unified 01612590000000

**Total Requested Amount
\$1,070,093.25**

Site Name	Requested Amount
Community Day	\$25,827.47
McClymonds High	\$2,008.16
Manzanita SEED Elementary	\$23,405.74
United for Success Academy	\$129.64
Elmhurst United Middle	\$15,834.60
Coliseum College Prep Academy	\$44,901.91
Futures Elementary	\$32,888.67
Global Family	\$74,344.05
East Oakland Pride Elementary	\$20,067.93
West Oakland Middle	\$7,769.56
Oakland International High	\$40,934.66
Castlemont High	\$20,959.02
Fremont High	\$18,138.63
Rudsdale Continuation	\$11,303.47
Dewey Academy	\$3,594.82
Oakland High	\$140,472.19
Allendale Elementary	\$27,308.38
Bella Vista Elementary	\$26,305.50
Brookfield Elementary	\$7,031.67
Burckhalter Elementary	\$6,096.12
Howard Elementary	\$9,593.88
Fruitvale Elementary	\$14,514.38
Garfield Elementary	\$35,059.39
Grass Valley Elementary	\$17,670.87
New Highland Academy	\$20,010.38
Horace Mann Elementary	\$1,748.88
Laurel Elementary	\$31,849.61
Markham Elementary	\$10,455.80
Bridges Academy	\$29,672.04
Parker Elementary	\$11,342.76
Prescott	\$18,179.29
Madison Park Academy TK-5	\$7,483.86
Esperanza Elementary	\$3,497.76
ACORN Woodland Elementary	\$3,619.58
Bret Harte Middle	\$56,511.01
Frick Middle	\$64,370.15
Roosevelt Middle	\$10,590.34
Westlake Middle	\$92,361.07
Madison Park Academy 6-12	\$52,710.34
Martin Luther King, Jr. Elementary	\$16,854.66
La Escuelita Elementary	\$10,889.98

International Community

\$1,785.03

**Community Day
Appliance/Fixture**

Toilet

Urinal

Requested Amount

\$20,853.93

\$4,973.54

**McClymonds High
Appliance/Fixture**

Interior Faucet

Toilet

Requested Amount

\$259.28

\$1,748.88

**Manzanita SEED Elementary
Appliance/Fixture**

Toilet

Urinal

Requested Amount

\$15,945.43

\$7,460.31

**United for Success Academy
Appliance/Fixture**

Interior Faucet

Requested Amount

\$129.64

**Elmhurst United Middle
Appliance/Fixture**

Toilet

Urinal

Requested Amount

\$14,135.64

\$1,698.96

**Coliseum College Prep Academy
Appliance/Fixture**

Toilet

Urinal

Requested Amount

\$25,007.75

\$19,894.16

**Futures Elementary
Appliance/Fixture**

Interior Faucet

Toilet

Urinal

Requested Amount

\$129.64

\$30,272.26

\$2,486.77

**Global Family
Appliance/Fixture**

Commercial Dishwasher

Toilet

Requested Amount

\$68,980.16

\$5,363.89

**East Oakland Pride Elementary
Appliance/Fixture**

Toilet

Urinal

Requested Amount

\$12,607.62

\$7,460.31

**West Oakland Middle
Appliance/Fixture**

Requested Amount

Toilet	\$5,282.79
Urinal	\$2,486.77
Oakland International High	
Appliance/Fixture	Requested Amount
Toilet	\$23,527.27
Urinal	\$17,407.39
Castlemont High	
Appliance/Fixture	Requested Amount
Toilet	\$17,561.10
Urinal	\$3,397.92
Fremont High	
Appliance/Fixture	Requested Amount
Toilet	\$13,165.09
Urinal	\$4,973.54
Rudsdale Continuation	
Appliance/Fixture	Requested Amount
Toilet	\$8,816.70
Urinal	\$2,486.77
Dewey Academy	
Appliance/Fixture	Requested Amount
Toilet	\$3,594.82
Oakland High	
Appliance/Fixture	Requested Amount
Automatic Ice Maker	\$13,150.50
Toilet	\$65,152.44
Urinal	\$62,169.25
Allendale Elementary	
Appliance/Fixture	Requested Amount
Toilet	\$26,458.90
Urinal	\$849.48
Bella Vista Elementary	
Appliance/Fixture	Requested Amount
Toilet	\$26,305.50
Brookfield Elementary	
Appliance/Fixture	Requested Amount
Toilet	\$7,031.67
Burckhalter Elementary	
Appliance/Fixture	Requested Amount
Toilet	\$5,246.64
Urinal	\$849.48

Howard Elementary**Appliance/Fixture**

Toilet

Urinal

Requested Amount

\$8,744.40

\$849.48

Fruitvale Elementary**Appliance/Fixture**

Interior Faucet

Toilet

Urinal

Requested Amount

\$1,534.33

\$10,493.28

\$2,486.77

Garfield Elementary**Appliance/Fixture**

Toilet

Urinal

Requested Amount

\$31,723.14

\$3,336.25

Grass Valley Elementary**Appliance/Fixture**

Interior Faucet

Toilet

Requested Amount

\$64.82

\$17,606.05

New Highland Academy**Appliance/Fixture**

Toilet

Requested Amount

\$20,010.38

Horace Mann Elementary**Appliance/Fixture**

Toilet

Requested Amount

\$1,748.88

Laurel Elementary**Appliance/Fixture**

Toilet

Urinal

Requested Amount

\$25,177.11

\$6,672.50

Markham Elementary**Appliance/Fixture**

Toilet

Urinal

Requested Amount

\$3,659.96

\$6,795.84

Bridges Academy**Appliance/Fixture**

Toilet

Urinal

Requested Amount

\$19,724.96

\$9,947.08

Parker Elementary**Appliance/Fixture**

Toilet

Urinal

Requested Amount

\$10,493.28

\$849.48

Prescott	
Appliance/Fixture	Requested Amount
Toilet	\$10,718.98
Urinal	\$7,460.31
Madison Park Academy TK-5	
Appliance/Fixture	Requested Amount
Toilet	\$7,483.86
Esperanza Elementary	
Appliance/Fixture	Requested Amount
Toilet	\$3,497.76
ACORN Woodland Elementary	
Appliance/Fixture	Requested Amount
Toilet	\$3,619.58
Bret Harte Middle	
Appliance/Fixture	Requested Amount
Interior Faucet	\$194.46
Toilet	\$38,909.16
Urinal	\$17,407.39
Frick Middle	
Appliance/Fixture	Requested Amount
Toilet	\$37,015.68
Urinal	\$27,354.47
Roosevelt Middle	
Appliance/Fixture	Requested Amount
Toilet	\$10,590.34
Westlake Middle	
Appliance/Fixture	Requested Amount
Toilet	\$59,121.40
Urinal	\$33,239.67
Madison Park Academy 6-12	
Appliance/Fixture	Requested Amount
Toilet	\$35,302.95
Urinal	\$17,407.39
Martin Luther King, Jr. Elementary	
Appliance/Fixture	Requested Amount
Toilet	\$14,367.89
Urinal	\$2,486.77
La Escuelita Elementary	
Appliance/Fixture	Requested Amount
Toilet	\$10,889.98

**International Community
Appliance/Fixture**
Toilet

Requested Amount
\$1,785.03

Total Grant Award
Initial Payment
Final Payment

\$1,070,093.25
\$535,046.62
\$535,046.63

EXHIBIT C Contacts

CalSHAPE Program Staff

California Energy Commission
715 P Street
Sacramento, CA 95814
E-mail: CalSHAPE@energy.ca.gov

Confidential Deliverables/Products

Adrienne Winuk, Manager
California Energy Commission
Contracts, Grants and Loans Office
715 P Street, MS - 18
Sacramento, CA 95814
E-mail: Adrienne.Winuk@energy.ca.gov

Invoices, Progress Reports and Non-Confidential Deliverables to

Mary Hung
California Energy Commission
Accounting Office
714 P Street MS - 2
Sacramento, CA 95813
E-mail: Mary.Hung@energy.ca.gov

EXHIBIT C Contacts

LEA Contact (Primary)

Name

Address

City, State, Zip

E-mail

LEA Contact (Alternate)

Name

Address

City, State, Zip

E-mail

LEA Contact (Alternate)

Name

Address

City, State, Zip

E-mail

EXHIBIT D

CALIFORNIA SCHOOLS HEALTHY AIR, PLUMBING, AND EFFICIENCY (CALSHAPE) STANDARD GRANT TERMS AND CONDITIONS

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1. **Introduction**

This grant agreement (Agreement) between the California Energy Commission (Energy Commission or Commission) and the Recipient is funded by the School Energy Efficiency Stimulus Program, established by Assembly Bill 841 (Ting, Chapter 372, Statutes of 2020), which in part provides grants to replace noncompliant plumbing fixtures and appliances. This grant program is referred to as the California Schools Healthy Air, Plumbing, and Efficiency (CalSHAPE) Plumbing Program.

This Agreement includes: (1) the Agreement signature page (**form CEC-146**); (2) the scope of work (**Exhibit A**); (3) the budget (**Exhibit B**); (4) a contacts list (**Exhibit C**); (5) these terms and conditions, which are standard requirements for CalSHAPE plumbing program grant awards (**Exhibit D**); (6) any special terms and conditions that the Energy Commission may impose to address the unique circumstances of the funded project, which take precedence in the event of a conflict with any provision of these terms and conditions (**Exhibit E**); (7) all attachments; and (8) all documents incorporated by reference.

All work and expenditure of Commission-reimbursed funds must occur within the Agreement term specified on the CEC-146 form.

2. **Documents Incorporated by Reference**

The documents below are incorporated by reference into this Agreement. These terms and conditions will govern in the event of a conflict with the documents below, with the exception of the documents in subsections (f) and (g) below. Where this Agreement or California laws and regulations are silent or do not apply, the Energy Commission will use the federal cost principles and acquisition regulations listed below as guidance in determining whether reimbursement of claimed costs is allowable. Documents incorporated by reference include:

Funding Documents

- a. The notice of funding availability for the project supported by this Agreement
- b. The Recipient's application submitted in response to the notice of funding availability

Program Guidelines

- c. CalSHAPE Plumbing Program Commission Guidelines, available at <https://www.energy.ca.gov/programs-and-topics/programs/california-schools-healthy-air-plumbing-and-efficiency-program>

Federal Cost Principles (*applicable to state and local governments, Indian tribes, institutions of higher education, and nonprofit organizations*)

- d. 2 Code of Federal Regulations (CFR) Part 200, Subpart E (Sections 200.400 et seq.)

Federal Acquisition Regulations (*applicable to commercial organizations*)

- e. 48 CFR, Ch.1, Subchapter E, Part 31, Subpart 31.2: Contracts with Commercial Organizations (supplemented by 48 CFR, Ch. 9, Subchapter E, Part 931, Subpart 931.2 for Department of Energy grants)

Nondiscrimination

- f. 2 California Code of Regulations, Section 11099 et seq.: Contractor Nondiscrimination and Compliance

General Laws

- g. Any federal, state, or local laws or regulations applicable to the project that are not expressly listed in this Agreement

3. **Standard of Performance**

In performing work under the Agreement, the Recipient, its subcontractors, and their employees are responsible for exercising the degree of skill and care required by customarily accepted good professional practices and procedures for the type of work performed.

4. **Due Diligence**

- a. The Recipient must take timely actions that, taken collectively, move this project to completion.
- b. Energy Commission staff will periodically evaluate the project schedule for completion of Scope of Work tasks. This evaluation may include but not be limited to random checks of project progress at periodic intervals set by the Energy Commission. Recipients subject to a project check must complete a progress report using a template prepared by the Energy Commission to provide information on the project status and expected completion date.
- c. If Energy Commission staff determines that: (1) the Recipient is not diligently completing the tasks in the Scope of Work; or (2) the time remaining in this Agreement is insufficient to complete all project tasks by the Agreement end date, Energy Commission staff may recommend that this Agreement be terminated, and the Commission may terminate this Agreement without prejudice to any of its other remedies.

5. **Products**

- a. **“Products”** are any tangible item specified for delivery to the Energy Commission in the Scope of Work, such as reports and summaries. The Recipient will submit all products identified in the Scope of Work to Energy Commission staff, in the manner and form specified in the Scope of Work.

If Energy Commission staff determines that a product is substandard given its description and intended use as described in this Agreement, Energy Commission staff, without prejudice to any of the Commission’s other remedies, may refuse to authorize payment for the product and any subsequent products that rely on or are based upon the product under this Agreement.

- b. **Failure to Submit Products**

Failure to submit a product required in the Scope of Work may be considered material noncompliance with the Agreement terms. Without prejudice to any other remedies, noncompliance may result in actions such as the withholding of future payments or awards, or the suspension or termination of the Agreement.

- c. **Legal Statements on Products**

All documents that result from work funded by this Agreement and are released to the public must include the following statement to ensure no Commission endorsement of documents:

LEGAL NOTICE

This document was prepared as a result of work sponsored by the California Energy Commission. It does not necessarily represent the views of the Energy Commission, its employees, or the State of California. Neither the Commission, the State of California, nor the Commission's employees, contractors, or subcontractors makes any warranty, express or implied, or assumes any legal liability for the information in this document; nor does any party represent that the use of this information will not infringe upon privately owned rights. This document has not been approved or disapproved by the Commission, nor has the Commission passed upon the accuracy of the information in this document.

6. Amendments

a. Procedure for Requesting Extensions

The Recipient must submit a written request to the CalSHAPE Program for a one-time only extension to the Agreement, not to exceed six-months nor the final program reporting deadline date of June 1, 2026. The request must include:

- A brief summary of the proposed extension; and
- A brief summary of the reason(s) for the extension

b. Approval of Changes

No amendment or variation of this Agreement shall be valid unless made in writing and signed by both of the parties except for the Commission's unilateral termination rights in Section 16 of these terms. No oral understanding or agreement is binding on any of the parties.

7. Contracting and Procurement Procedures

This section provides general requirements for agreements entered into between the Recipient and subcontractors for the performance of this Agreement.

a. Contractor's Obligations to Subcontractors

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

2) Nothing contained in this Agreement or otherwise creates any contractual relation between the Commission and any subcontractors, and no subcontract may relieve the Recipient of its responsibilities under this Agreement. The Recipient agrees to be as fully responsible to the Commission for the acts and omissions of its subcontractors or persons directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the Recipient.

The Recipient's obligation to pay its subcontractors is an independent obligation from the Commission's obligation to make payments to the Recipient. As a result, the Commission has no obligation to pay or enforce the payment of any funds to any subcontractor.

3) The Recipient is responsible for establishing and maintaining contractual agreements with and reimbursing each subcontractor for work performed in accordance with the terms of this Agreement.

b. Flow-Down Provisions

Subcontracts funded in whole or in part by this Agreement must include language conforming to the provisions below, unless the subcontracts are entered into by the University of California (UC) or the U.S. Department of Energy (DOE) national laboratories. UC may use the terms and conditions negotiated by the Energy Commission with UC for its subcontracts. DOE national laboratories may use the terms and conditions negotiated with DOE (please contact the Commission Grants Officer for these terms).

- Standard of Performance (Section 3)
- Legal Statements on Products (included in Section 5, "Products")
- Prevailing Wage (Section 10)
- Recordkeeping, Cost Accounting, and Auditing (Section 11)
- Equipment (Section 14)
- Indemnification (Section 17)
- Intellectual Property (Section 20)
- Access to Sites and Records (included in Section 22, "General Provisions")
- Nondiscrimination (included in Section 23, "Certifications and Compliance")
- Survival of the following sections:
 - Equipment (Section 14)
 - Recordkeeping, Cost Accounting, and Auditing (Section 11)
 - Intellectual Property (Section 20)
 - Access to Sites and Records (included in Section 22, "General Provisions")

Subcontracts funded in whole or in part by this Agreement must also include the following:

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

c. Audits

All subcontracts entered into for the performance of this Agreement are subject to examination and audit by the Energy Commission, Bureau of State Audits, or the California Public Utilities Commission for a period of three (3) years after payment of the Recipient's final invoice under this Agreement.

d. Copies of Subcontracts

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

e. Conflicting Subcontract Terms

Prior to the execution of this Agreement, the Recipient will notify the CalSHAPE Program of any known or reasonably foreseeable conflicts between this Agreement and its agreements with any subcontractors (e.g., conflicting intellectual property or payment terms). If the Recipient discovers any such conflicts after the execution of this Agreement, it will notify the CalSHAPE Program of the conflict within fifteen (15) days of discovery. The Energy Commission may, without prejudice to its other remedies, terminate this Agreement if any conflict impairs or diminishes its value.

f. Penalties for Noncompliance

Without limiting the Commission's other remedies, failure to comply with the above requirements may result in the termination of this Agreement.

8. Payment of Funds

a. Timing of Payment

See Chapter 3, Section G, Timing of Payment, of the CalSHAPE Plumbing Commission Guidelines.

Final payment will only be made after the Energy Commission: (1) receives and approves the Recipient's final reporting; and (2) receives and accepts all other required documentation necessary for the Energy Commission to determine the total final amount due to the Recipient, based on actual and allowable Incurred Costs and Paid Costs under this Agreement, up to the total grant award amount.

Without limiting any other rights and remedies available to the Energy Commission, Recipient must return funds to the Energy Commission received under this Agreement if, for example, the Recipient was overpaid in the first payment, did not complete the project, or did not meet other program requirements.

b. Reimbursable Cost Requirements

In addition to any other requirements in this Agreement, the Energy Commission is only obligated to reimburse the Recipient for Incurred and Paid Costs that are (1) incurred during the Agreement Term; (2) invoiced within the required timeframes of this Agreement; (3) made in accordance with the Agreement's Budget; and (4) actual and allowable expenses under this Agreement.

ALL of the items in the Budget are capped amounts (i.e., maximums), and the Recipient can only bill its ACTUAL amount up to capped amounts listed in the Budget. For example, if the Budget includes an employee's hourly rate of \$50/hour but the employee is only paid \$40/hour, the Recipient can only bill for \$40/hour. Under the same example, if the employee earned \$70/hour but the Budget only lists \$50/hour, the Recipient can only bill for \$50. If the actual rates exceed the approved rates in the Budget, the difference may be charged to the agreement as a match share expenditure.

c. Payment Requests

Recipient agrees and acknowledges that time is of the essence in submitting the final payment request. The Commission has a limited period of time, set by law, in which it can reimburse funds under this Agreement. Without prejudice to the Commission's other rights, the Recipient risks not receiving any funds, and relieves the Commission of any duty and liability whatsoever to pay, for any payment requests received after the end of the Agreement.

d. Invoice Approval and Disputes:

Payment is subject to Energy Commission staff's approval. Payments will be made to the Recipient for undisputed invoices. An undisputed invoice is an invoice submitted by the Recipient for work performed, for which project expenditures and products meet all Agreement conditions, and for which additional evidence is not required to determine its validity.

The invoice will be disputed if all products due for the billing period have not been received and approved, if the invoice is inaccurate, or if it does not comply with the terms of this Agreement. If the invoice is disputed, the Recipient will be notified by the CEC.

e. Multiple Non-Energy Commission Funding Sources:

No payment will be made for costs identified in recipient invoices that have been or will be reimbursed by another source, including but not limited to an agreement with another government entity.

"Government Entity" means: (1) a state governmental agency; (2) a state college or university; (3) a local government entity or agency, including those created as a Joint Powers Authority; (4) an auxiliary organization of the California State University or a California community college; (5) the federal government; (6) a foundation organized to support the Board of Governors of the California Community Colleges; and (7) an auxiliary organization of the Student Aid Commission established under California Education Code Section 69522.

f. Reduced funding:

If the Energy Commission does not receive sufficient funds under the Budget Act or from the investor-owned utility administrators of the CalSHAPE program to fully fund the work identified in Exhibit A (Scope of Work), the following will occur:

- 1) If the Energy Commission has received a reduced amount of funds for the work, it may: (1) offer an Agreement amendment to the Recipient to reflect the reduced amount; or (2) cancel this Agreement (with no liability occurring to the State).
- 2) If the Energy Commission has received no funds for the work identified in Exhibit A: (1) this Agreement will be of no force and effect; (2) the State will have no obligation to pay any funds to the Recipient; and (3) the Recipient will have no obligation to perform any work under this Agreement.

g. Allowability of Costs

1) Allowable Costs

The costs for which the Recipient will be reimbursed under this Agreement include all costs, direct and indirect, incurred in the performance of the work identified in the Scope of Work. Costs must be incurred within the Agreement term. Factors to be considered in determining whether an individual item of cost is allowable include: (i) reasonableness of the item, including necessity of the item for the work; (ii) applicable federal cost principles or acquisition regulations incorporated by reference in Section 2 of this Agreement; and (iii) the terms and conditions of this Agreement.

2) Unallowable Costs

See Chapter 3, Section H, Ineligible Costs, of the CalSHAPE Plumbing Program Commission Guidelines.

- 3) Except as provided for in this Agreement or applicable California law or regulations, the Recipient will use the federal cost principles and/or acquisition regulations incorporated by reference in Section 2 of this Agreement when determining allowable and unallowable costs. In the event of a conflict, this Agreement takes precedence over the federal cost principles and/or acquisition regulations.

h. Final Invoice for Remaining Funds

See Chapter 4, Section C, Final Documentation and Invoice for Remaining Funds, of the CalSHAPE Plumbing Program Commission Guidelines. The Recipient must submit all invoices electronically by uploading them to the CalSHAPE Online System, which is found at <https://calshape.energy.ca.gov/>.

- i. If the Recipient has not otherwise provided to the Commission documentation showing the Recipient's payment of Incurred Costs, the Recipient shall provide such documentation as soon as possible and not later than three working days from a request from Commission personnel.

j. Certification

The following certification will be included on each payment request form and signed by the Recipient's authorized officer:

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

9. **Reserved**

10. **Prevailing Wage**

a. Requirement

Projects funded by the Energy Commission often involve construction, alteration, demolition, installation, repair, or maintenance work over \$1,000. Such projects might be considered "public works" under the California Labor Code (See California Labor Code Section 1720 et seq. and Title 8 California Code of Regulations, Section 16000 et seq.). Public works projects require the payment of prevailing wages. Prevailing wage rates can be significantly higher than non-prevailing wage rates.

b. Determination of Project's Status

Only the California Department of Industrial Relations (DIR) and courts of competent jurisdiction may issue legally binding determinations that a particular project is or is not a public work. If the Recipient is unsure whether the project funded by the Agreement is a “public work” as defined in the California Labor Code, it may wish to seek a timely determination from DIR or an appropriate court. As such processes can be time consuming, it may not be possible to obtain a timely determination before the date for performance of the Agreement.

By accepting this grant, the Recipient is fully responsible for complying with all California public works requirements, including but not limited to payment of prevailing wage. As a material term of this grant, the Recipient must either:

- 1) Timely obtain a legally binding determination from DIR or a court of competent jurisdiction before work begins on the project that the proposed project is not a public work; or
- 2) Assume that the project is a public work and ensure that:
 - Prevailing wages are paid unless and until DIR or a court of competent jurisdiction determines that the project is not a public work;
 - The project budget for labor reflects these prevailing wage requirements; and
 - The project complies with all other requirements of prevailing wage law, including but not limited to keeping accurate payroll records and complying with all working hour requirements and apprenticeship obligations.

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

c. Subcontractors and Flow-down Requirements

The Recipient will ensure that its subcontractors also comply with the public works/prevailing wage requirements above. The Recipient will ensure that all agreements with its subcontractors to perform work related to this Project contain the above terms regarding payment of prevailing wages on public works projects. The Recipient is responsible for any failure of its subcontractors to comply with California prevailing wage and public works laws.

d. Indemnification and Breach

Any failure of the Recipient or its subcontractors to comply with the above requirements will constitute breach of this Agreement which excuses the Commission’s performance of this Agreement at the Commission’s option, and will be at the Recipient’s sole risk. In such a case, the Commission will refuse payment to the Recipient of any amount under this award and the Commission will be released, at its option, from any further performance of this Agreement or any portion thereof. The Recipient will indemnify the Energy Commission and hold it harmless for any and all financial consequences arising out of or resulting from the failure of the Recipient and/or any of its subcontractors to pay prevailing wages or to otherwise comply with the requirements of prevailing wage law.

e. Budget

The Recipient’s budget on public works projects must indicate which job classifications are subject to prevailing wage. For detailed information about prevailing wage and the process to determine if the proposed project is a public work, the Recipient may wish to contact DIR or a qualified labor attorney for guidance.

f. Covered Trades

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

g. Questions

If the Recipient has any questions about this contractual requirement or the wage, record keeping, apprenticeship, or other significant requirements of California prevailing wage law, the Recipient should consult DIR and/or a qualified labor attorney before entering into this Agreement.

h. Certification

The Recipient will certify to the Energy Commission on each payment request form either that: (a) prevailing wages were paid to eligible workers who provided labor for work covered by the payment request and the Recipient and all contractors and subcontractors otherwise complied with all California prevailing wage laws; or (b) the project is not a public work requiring the payment of prevailing wages. In the latter case, the Recipient will provide competent proof of a DIR or court determination that the project is not a public work requiring the payment of prevailing wages.

Prior to the release of any retained funds under this Agreement, the Recipient will submit to the Energy Commission the above-described certificate signed by the Recipient and all contractors and subcontractors performing public works activities on the project. Absent this certificate, the Recipient will have no right to any funds under this Agreement, and Commission will be relieved of any obligation to pay any funds.

11. Recordkeeping, Cost Accounting, and Auditing

a. Cost Accounting

The Recipient will keep separate, complete, and correct accounting of the costs involved in completing the project and any match-funded portion of the project. The Commission or its agent will have the right to examine the Recipient's books of accounts at all reasonable times, to the extent necessary to verify the accuracy of the Recipient's reports.

b. Accounting Procedures

The Recipient's costs will be determined on the basis of its accounting system procedures and practices employed as of the effective date of this Agreement, provided that the Recipient uses generally accepted accounting principles and cost reimbursement practices. The Recipient's cost accounting practices used in accumulating and reporting costs during the performance of this Agreement will be consistent with the practices used in estimating costs for any proposal to which this Agreement relates; provided that such practices are consistent with the other terms of this Agreement and that such costs may be accumulated and reported in greater detail during performance of this Agreement.

The Recipient's accounting system will distinguish between direct and indirect costs. All costs incurred for the same purpose, in like circumstances, are either direct costs only or indirect costs only with respect to costs incurred under this Agreement.

c. Inspections, Assessment, and Studies

If selected, the Recipient must cooperate with and participate in the following:

- 1) An assessment of a funded project's greenhouse gas reductions and energy savings. This may include, but is not limited to, requests from Energy Commission staff or its delegate for data, project and equipment information, and reasonable access to the project site to assist with determining greenhouse gas reductions and energy savings attributable to the funded project. Costs associated with any activities associated with such an assessment will not be funded by a CalSHAPE Program grant.
- 2) A site inspection and verification of installation and operation of new fixtures and appliances. This may include, but is not limited to, providing Energy Commission staff or its delegates reasonable access to the funded project site to inspect and verify installation and operation. Recipient understands that any such inspection and verification by Energy Commission staff or its delegates is not a safety inspection.
- 3) A measurement and evaluation study that will be used to analyze current program performance and improve future program designs. This may include but is not limited to providing Energy Commission staff or its delegates data, project and equipment information, and reasonable access to the funded project site.

d. Audit Rights

The Recipient will maintain books, records, documents, and other evidence, based on the procedures set forth above, sufficient to reflect properly all costs claimed to have been incurred in the performance of this Agreement. The Energy Commission, another state agency, and/or a public accounting firm designated by the Energy Commission may audit the Recipient's accounting records at all reasonable times, with prior notice by the Energy Commission.

It is the intent of the parties that the audits will ordinarily be performed not more frequently than once every twelve (12) months during the performance of the work and once at any time within three (3) years after payment by the Energy Commission of the Recipient's final invoice. However, performance of any such interim audits by the Energy Commission does not preclude further audit. The Energy Commission may audit books, records, documents, and other evidence relevant to the Recipient's royalty payment obligations (see Section 21) for a period of ten (10) years after payment of the Recipient's final invoice.

The Recipient will allow the auditor(s) to access such records during normal business hours, and will allow interviews of any employees who might reasonably have information related to such records. The Recipient will include a similar right of the state to audit records and interview staff in any subcontract related to the performance of this Agreement.

e. Refund to the Energy Commission

If the Energy Commission determines that any invoiced and paid amounts exceed the actual allowable incurred costs, the Recipient will repay the amounts to the Energy Commission within thirty (30) days of request or as otherwise agreed by the Energy Commission and the Recipient. If the Energy Commission does not receive such repayments, it will be entitled to take any actions enforce any remedies available to it, such as withholding further payments to the Recipient and seeking repayment from the Recipient.

f. **Audit Cost**

The Recipient will bear its cost of participating in any audit (e.g., mailing or travel expenses). The Energy Commission will bear the cost of conducting the audit unless the audit reveals an error detrimental to the Energy Commission that exceeds more than ten percent (10%) or \$5,000 (whichever is greater) of the amount audited. The Recipient will pay the refund as specified in subsection (d), and will reimburse the Energy Commission for reasonable costs and expenses incurred by the Commission in conducting the audit.

g. **Match or Cost Share**

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

12. Workers' Compensation Insurance

- a. The Recipient warrants that it carries Worker's Compensation Insurance for all of its employees who will be engaged in the performance of this Agreement, and agrees to furnish to the CalSHAPE Program satisfactory evidence of this insurance upon the CalSHAPE Program's request.
- b. If the Recipient is self-insured for worker's compensation, it warrants that the self-insurance is permissible under the laws of the State of California and agrees to furnish to the CalSHAPE Program satisfactory evidence of the insurance upon the CalSHAPE Program's request.

13. Permits and Clearances

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

14. Equipment

Title to equipment acquired by the Recipient with grant funds will vest in the Recipient. The Recipient may use the equipment in the project or program for which it was acquired as long as needed, regardless of whether the project or program continues to be supported by grant funds. However, the Recipient may not sell, lease, or encumber the property (i.e., place a legal burden on the property such as a lien) during the Agreement term without Energy Commission Staff's prior written approval.

The Recipient may refer to the applicable federal regulations incorporated by reference in this Agreement for guidance regarding additional equipment requirements.

15. Stop Work

Energy Commission staff may, at any time by written notice to the Recipient, require the Recipient to stop all or any part of the work tasks in this Agreement. Stop work orders may be issued for reasons such as a project exceeding budget, noncompliance with the standard of performance, out of scope work, project delays, and misrepresentations.

- a. **Compliance.** Upon receipt of a stop work order, the Recipient must immediately take all necessary steps to comply with the order and to stop the incurrence of costs allocable to the Energy Commission.
- b. **Canceling a Stop Work Order.** The Recipient may resume the work only upon receipt of written instructions from Energy Commission staff.

16. Termination

a. Purpose

Because the Energy Commission is a state entity and provides funding on behalf of all California ratepayers, it must be able to terminate the Agreement upon the default of the Recipient and to proceed with the work required under the Agreement in any manner it deems proper. The Recipient agrees that upon any of the events triggering the termination of the Agreement by the Energy Commission, the Energy Commission has the right to terminate the Agreement, and it would constitute bad faith of the Recipient to interfere with the immediate termination of the Agreement by the Energy Commission.

b. With Cause

The Energy Commission may, for cause, terminate this Agreement upon giving five (5) calendar days advance written notice to the Recipient. In this event, the Recipient will use all reasonable efforts to mitigate its expenses and obligations. The Recipient will relinquish possession of equipment purchased for this Agreement with Energy Commission funds to the Commission, or the Recipient may purchase the equipment as provided by the terms of this Agreement, with approval of the Energy Commission.

The term "for cause" includes but is not limited to the following:

- Partial or complete loss of match funds;
- Reorganization to a business entity unsatisfactory to the Energy Commission;
- Retention or hiring of subcontractors, or replacement or addition of personnel, that fail to perform to the standards and requirements of this Agreement;
- The Recipient's inability to pay its debts as they become due and/or the Recipient's default of an obligation that impacts its ability to perform under this Agreement; or
- Significant change in state or Energy Commission policy such that the work or product being funded would not be supported by the Commission.

c. Without Cause

The Energy Commission may terminate this Agreement without cause upon giving thirty (30) days advance written notice to the Recipient. In this event, the Recipient will use all reasonable efforts to mitigate its expenses and obligations.

17. Indemnification

To the extent allowed under California law, the Recipient will indemnify, defend, and hold harmless the state (including the Energy Commission) and state officers, agents, and employees from any and all claims and losses in connection with the performance of this Agreement.

18. Reserved

19. Reserved

20. Intellectual Property

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

“Intellectual property” means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, and logos that are created, conceived, discovered, made, developed, altered, or reduced to practice with Agreement or match funds during or after the Agreement term; (b) any associated proprietary rights to these items, such as patent and copyright; and (c) any upgrades or revisions to these items.

“Works of authorship” does not include written products created for Agreement reporting and management purposes, such as reports, summaries, lists, letters, agendas, schedules, and invoices.

- b. The Energy Commission owns all products identified in the Scope of Work, with the exception of products that fall within the definition of “intellectual property.”

“Product” means any tangible item specified for delivery to the Energy Commission in the Scope of Work.

- c. Both the Energy Commission and the California Public Utilities Commission have a no-cost, non-exclusive, transferable, irrevocable, royalty-free, worldwide, perpetual license to use, publish, translate, modify, and reproduce intellectual property for governmental purposes, including but not limited to providing data and reports to the California Public Utilities Commission, State legislature, and Utilities and using data for the development of future programs.

- d. Intellectual Property Indemnity

The Recipient may not, in supplying work under this Agreement, knowingly infringe or misappropriate any intellectual property right of a third party, and will take reasonable actions to avoid infringement.

To the extent allowed under California law, the Recipient will defend and indemnify the Energy Commission and the California Public Utilities Commission from and against any claim, lawsuit, or other proceeding, loss, cost, liability, or expense (including court costs and reasonable fees of attorneys and other professionals) to the extent arising out of: (i) any third party claim that a product infringes any patent, copyright, trade secret, or other intellectual property right of any third party; or (ii) any third party claim arising out of the negligent or other tortious acts or omissions by the Recipient or its employees, subcontractors, or agents in connection with or related to the products or the Recipient’s performance under this Agreement.

21. Reserved

22. General Provisions

- a. Governing Law

This Agreement is governed by the laws of the State of California as to interpretation and performance.

b. Independent Capacity

In the performance of this Agreement, the Recipient and its agents, subcontractors, and employees will act in an independent capacity and not as officers, employees, or agents of the State of California.

c. Assignment

This Agreement is not assignable or transferable by the Recipient either in whole or in part without the consent of the Energy Commission in the form of an amendment.

d. Timeliness

Time is of the essence in this Agreement.

e. Severability

If any provision of this Agreement is unenforceable or held to be unenforceable, all other provisions of this Agreement will remain in full force and effect.

f. Waiver

No waiver of any breach of this Agreement constitutes waiver of any other breach. All remedies in this Agreement will be taken and construed as cumulative, meaning in addition to every other remedy provided in the Agreement or by law.

g. Assurances

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

h. Change in Business

- 1) The Recipient will promptly notify the Energy Commission of the occurrence of any of the following:
 - a) A change of address.
 - b) A change in business name or ownership.
 - c) The existence of any litigation or other legal proceeding affecting the project or Agreement.
 - d) The occurrence of any casualty or other loss to project personnel, equipment, or third parties.
 - e) Receipt of notice of any claim or potential claim against the Recipient for patent, copyright, trademark, service mark, and/or trade secret infringement that could affect the Energy Commission's rights.
- 2) The Recipient must provide the CalSHAPE Program with written notice of a planned change or reorganization of the type of business entity under which it does business. A change of business entity or name change requires an amendment assigning or novating the Agreement to the changed entity. If the Energy Commission does not seek to amend this Agreement or enter into a new agreement with the changed or new entity for any reason (including that the Commission is not satisfied that the new entity can perform in the same manner as the Recipient), it may terminate this Agreement as provided in the "Termination" section.

i. Access to Sites and Records

Energy Commission and California Public Utilities Commission staff and representatives will have reasonable access to all project sites and to all records related to this Agreement.

j. Prior Dealings, Custom, or Trade Usage

These terms and conditions may not be modified or supplemented by prior dealings, custom, or trade usage.

k. Survival of Terms

Certain provisions will survive the completion or termination date of this Agreement for any reason. The provisions include but are not limited to:

- Legal Statements on Products (included in Section 5, "Products")
- Payment of Funds (Section 8)
- Recordkeeping, Cost Accounting, and Auditing (Section 11)
- Equipment (Section 14)
- Termination (Section 16)
- Indemnification (Section 17)
- Intellectual Property (Section 20)
- Change in Business (see this section)
- Access to Sites and Records (see this section)

23. *Certifications and Compliance*

a. Federal, State, and Local Laws

The Recipient must obtain all required permits and shall comply with all applicable federal, state and local laws, codes, rules, and regulations for all work performed under the Agreement.

b. Nondiscrimination Statement of Compliance

During the performance of this Agreement, the Recipient and its subcontractors will not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition, age, marital status, or denial of family care leave. The Recipient and its subcontractors will ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

The Recipient and its subcontractors will comply with the provisions of the Fair Employment and Housing Act (Government Code Sections 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 11000 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4.1 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part of it as if set forth in full. The Recipient and its subcontractors will give written notice of their obligations under this section to labor organizations with which they have a collective bargaining or other Agreement.

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

c. Drug-Free Workplace Certification

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

- 1) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited, and specifying actions to be taken against employees for violations as required by Government Code Section 8355(a).
- 2) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
 - The dangers of drug abuse in the workplace;
 - The person's or organization's policy of maintaining a drug-free workplace;
 - Any available counseling, rehabilitation, and employee assistance programs; and
 - Penalties that may be imposed upon employees for drug abuse violations.
- 3) Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed project:
 - Will receive a copy of the company's drug-free policy statement; and
 - Will agree to abide by the terms of the company's statement as a condition of employment on the project.

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

d. National Labor Relations Board Certification (Not applicable to public entities)

The Recipient, by signing this Agreement, swears under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against the Recipient within the immediately preceding two year period because of the Recipient's failure to comply with an order of a federal court that orders the Recipient to comply with an order of the National Labor Relations Board.

e. Child Support Compliance Act (Applicable to California Employers)

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

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

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

f. Air or Water Pollution Violation

Under state laws, the Recipient will not be:

- 1) In violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district;
- 2) Subject to a cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or
- 3) Finally determined to be in violation of provisions of federal law relating to air or water pollution.

g. Americans With Disabilities Act

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

24. Reserved

25. Commission Remedies for Recipient's Non-Compliance

Without limiting any of its other remedies, the Commission may, for Recipient's noncompliance of any Agreement requirement, withhold future payments, demand and be entitled to repayment of past reimbursements, or suspend or terminate this Agreement. The tasks in the Scope of Work are non-severable, and completion of all of them is material to this Agreement. Thus, the Commission, without limiting its other remedies, is entitled to repayment of all funds paid to Recipient if the Recipient does not timely complete all tasks in the Scope of Work.

26. Definitions

- **Agreement Term** means the length of this Agreement, as specified on the Agreement signature page (form CEC-146).
- **Data** means any recorded information that relates to the project funded by the Agreement, whether created or collected before or after the Agreement's effective date.
- **Effective Date** means the date on which this Agreement is signed by the last party required to sign, provided that signature occurs after the Agreement has been approved by the Energy Commission at a business meeting or by the Executive Director or his/her designee.

- **Equipment** means products, objects, machinery, apparatus, implements, or tools that are purchased or constructed with Energy Commission funds for the project, and that have a useful life of at least one year and an acquisition unit cost of at least \$5,000. “Equipment” includes products, objects, machinery, apparatus, implements, or tools that are composed by over thirty percent (30%) of materials purchased for the project. For purposes of determining depreciated value of equipment used in the Agreement, the project will terminate at the end of the normal useful life of the equipment purchased and/or developed with Energy Commission funds. The Energy Commission may determine the normal useful life of the equipment.
- **Intellectual Property** means: (a) inventions, technologies, designs, drawings, data, software, formulas, compositions, processes, techniques, works of authorship, trademarks, service marks, and logos that are created, conceived, discovered, made, developed, altered, or reduced to practice with Agreement or match funds during or after the Agreement term; (b) any associated proprietary rights to these items, such as patent and copyright; and (c) any upgrades or revisions to these items.

“Works of authorship” does not include written products created for Agreement reporting and management purposes, such as reports, summaries, lists, letters, agendas, schedules, and invoices.
- **Invention** means intellectual property that is patentable.
- **Match Funds** means cash or in-kind (i.e., non-cash) contributions provided by the Recipient or a third party for a project funded by the Energy Commission. If this Agreement resulted from a solicitation, refer to the solicitation’s discussion of match funding for guidelines specific to the project.
- **Materials** means the substances used to construct, or as part of, a finished object, commodity, device, article, or product and that does not meet the definition of Equipment.
- **Ownership** means exclusive possession of all rights to property, including the right to use and transfer property.
- **Product** means any tangible item specified for delivery to the Energy Commission in the Scope of Work.
- **Project** means the entire effort undertaken and planned by the Recipient and consisting of the work funded by the Energy Commission. The project may coincide with or extend beyond the Agreement term.
- **State** means the state of California and all California state agencies within it, including but not limited to commissions, boards, offices, and departments.

PAYEE DATA RECORD

(Required when receiving payment from the State of California in lieu of IRS W-9 or W-7)

STD 204 (Rev. 2/2022)

Section 1 – Payee Information**NAME** (This is required. Do not leave this line blank. Must match the payee's federal tax return)

Oakland Unified School District

BUSINESS NAME, DBA NAME or DISREGARDED SINGLE MEMBER LLC NAME (if different from above)

Oakland Unified School District

MAILING ADDRESS (number, street, apt. or suite no.) (See Instructions on Page 2)

955 High Street

CITY, STATE, ZIP CODE

Oakland, CA 94601

E-MAIL ADDRESS

tadashi.nakadegawa@ousd.org

Section 2 – Entity Type**Check one (1) box only that matches the entity type of the Payee listed in Section 1 above.** (See instructions on page 2) **SOLE PROPRIETOR / INDIVIDUAL** **SINGLE MEMBER LLC** *Disregarded Entity owned by an Individual* **PARTNERSHIP** **ESTATE OR TRUST** **CORPORATION** (see instructions on page 2) **MEDICAL** (e.g., *dentistry, chiropractic, etc.*) **LEGAL** (e.g., *attorney services*) **EXEMPT** (e.g., *nonprofit*) **ALL OTHERS****Section 3 – Tax Identification Number**Enter your Tax Identification Number (TIN) in the appropriate box. The TIN must match the name given in Section 1 of this form. Do not provide more than one (1) TIN. The TIN is a 9-digit number. **Note:** Payment will not be processed without a TIN.

- For **Individuals**, enter SSN.
- If you are a **Resident Alien**, and you do not have and are not eligible to get an SSN, enter your ITIN.
- Grantor Trusts (such as a Revocable Living Trust while the grantors are alive) may not have a separate FEIN. Those trusts must enter the individual grantor's SSN.
- For **Sole Proprietor or Single Member LLC (disregarded entity)**, in which the sole member is an individual, enter SSN (ITIN if applicable) or FEIN (FTB prefers SSN).
- For **Single Member LLC (disregarded entity)**, in which the sole member is a business entity, enter the owner entity's FEIN. Do not use the disregarded entity's FEIN.
- For all other entities including LLC that is taxed as a corporation or partnership, estates/trusts (with FEINs), enter the entity's FEIN.

Social Security Number (SSN) or Individual Tax Identification Number (ITIN)

9 4 - 6 0 0 0 3 8

OR

Federal Employer Identification Number (FEIN)

Section 4 – Payee Residency Status (See instructions)

- CALIFORNIA RESIDENT** – Qualified to do business in California or maintains a permanent place of business in California.
- CALIFORNIA NONRESIDENT** – Payments to nonresidents for services may be subject to state income tax withholding.
- No services performed in California
- Copy of Franchise Tax Board waiver of state withholding is attached.

Section 5 – Certification*I hereby certify under penalty of perjury that the information provided on this document is true and correct. Should my residency status change, I will promptly notify the state agency below.***NAME OF AUTHORIZED PAYEE REPRESENTATIVE**

Tadashi Nakadegawa

TITLE

Deputy Chief

E-MAIL ADDRESS

tadashi.nakadegawa@ousd.org

SIGNATURE**DATE****TELEPHONE** (include area code)

510-535-7038

Section 6 – Paying State Agency

Please return completed form to:

STATE AGENCY/DEPARTMENT OFFICE

State Controller's Office / LGPSD

UNIT/SECTION

Tax Programs Unit / Tax Administration Section

MAILING ADDRESS

P.O. Box 942850

FAX

(916) 327-3921

TELEPHONE (include area code)

(916) 322-7952

CITY

Sacramento

STATE

CA

ZIP CODE

94250-5880

E-MAIL ADDRESS

GTR@sco.ca.gov

PAYEE DATA RECORD

(Required when receiving payment from the State of California in lieu of IRS W-9 or W-7)

STD 204 (Rev. 03/2021)

GENERAL INSTRUCTIONS

Type or print the information on the Payee Data Record, STD 204 form. Sign, date, and return to the state agency/department office address shown in Section 6. Prompt return of this fully completed form will prevent delays when processing payments.

Information provided in this form will be used by California state agencies/departments to prepare Information Returns (Form 1099).

NOTE: Completion of this form is optional for Government entities, i.e. federal, state, local, and special districts.

A completed Payee Data Record, STD 204 form, is required for all payees (non-governmental entities or individuals) entering into a transaction that may lead to a payment from the state. Each state agency requires a completed, signed, and dated STD 204 on file; therefore, it is possible for you to receive this form from multiple state agencies with which you do business.

Payees who do not wish to complete the STD 204 may elect not to do business with the state. If the payee does not complete the STD 204 and the required payee data is not otherwise provided, payment may be reduced for federal and state backup withholding. Amounts reported on Information Returns (Form 1099) are in accordance with the Internal Revenue Code (IRC) and the California Revenue and Taxation Code (R&TC).

Section 1 – Payee Information

Name – Enter the name that appears on the payee's federal tax return. The name provided shall be the tax liable party and is subject to IRS TIN matching (when applicable).

- Sole Proprietor/Individual/Revocable Trusts – enter the name shown on your federal tax return.
- Single Member Limited Liability Companies (LLCs) that is disregarded as an entity separate from its owner for federal tax purposes - enter the name of the individual or business entity that is tax liable for the business in section 1. Enter the DBA, LLC name, trade, or fictitious name under Business Name.
- Note: for the State of California tax purposes, a Single Member LLC is not disregarded from its owner, even if they may be disregarded at the Federal level.
- Partnerships, Estates/Trusts, or Corporations – enter the entity name as shown on the entity's federal tax return. The name provided in Section 1 must match to the TIN provided in Section 3. Enter any DBA, trade, or fictitious business names under Business Name.

Business Name – Enter the business name, DBA name, trade or fictitious name, or disregarded LLC name.

Mailing Address – The mailing address is the address where the payee will receive information returns. Use form STD 205, Payee Data Record Supplement to provide a remittance address if different from the mailing address for information returns, or make subsequent changes to the remittance address.

Section 2 – Entity Type

If the Payee in Section 1 is a(n)...	THEN Select the Box for...
Individual • Sole Proprietorship • Grantor (Revocable Living) Trust disregarded for federal tax purposes	Sole Proprietor/Individual
Limited Liability Company (LLC) owned by an individual and is disregarded for federal tax purposes	Single Member LLC-owned by an Individual
Partnerships • Limited Liability Partnerships (LLP) • and, LLC treated as a Partnership	Partnerships
Estate • Trust (other than disregarded Grantor Trust)	Estate or Trust
Corporation that is medical in nature (e.g., medical and healthcare services, physician care, nursery care, dentistry, etc.) • LLC that is to be taxed like a Corporation and is medical in nature	Corporation-Medical
Corporation that is legal in nature (e.g., services of attorneys, arbitrators, notary publics involving legal or law related matters, etc.) • LLC that is to be taxed like a Corporation and is legal in nature	Corporation-Legal
Corporation that qualifies for an Exempt status, including 501(c) 3 and domestic non-profit corporations.	Corporation-Exempt
Corporation that does not meet the qualifications of any of the other corporation types listed above • LLC that is to be taxed as a Corporation and does not meet any of the other corporation types listed above	Corporation-All Other

Section 3 – Tax Identification Number

The State of California requires that all parties entering into business transactions that may lead to payment(s) from the state provide their Taxpayer Identification Number (TIN). The TIN is required by R&TC sections 18646 and 18661 to facilitate tax compliance enforcement activities and preparation of Form 1099 and other information returns as required by the IRC section 6109(a) and R&TC section 18662 and its regulations.

Section 4 – Payee Residency Status

Are you a California resident or nonresident?

- A corporation will be defined as a "resident" if it has a permanent place of business in California or is qualified through the Secretary of State to do business in California.
- A partnership is considered a resident partnership if it has a permanent place of business in California.
- An estate is a resident if the decedent was a California resident at time of death.
- A trust is a resident if at least one trustee is a California resident.
 - o For individuals and sole proprietors, the term "resident" includes every individual who is in California for other than a temporary or transitory purpose and any individual domiciled in California who is absent for a temporary or transitory purpose. Generally, an individual who comes to California for a purpose that will extend over a long or indefinite period will be considered a resident. However, an individual who comes to perform a particular contract of short duration will be considered a nonresident.

For information on Nonresident Withholding, contact the Franchise Tax Board at the numbers listed below:

Withholding Services and Compliance Section: 1-866-792-4900

E-mail address: wscs.gen@ftb.ca.gov

For hearing impaired with TDD, call: 1-800-822-6268

Website: www.ftb.ca.gov

Section 5 – Certification

Provide the name, title, email address, signature, and telephone number of individual completing this form and date completed. In the event that a SSN or ITIN is provided, the individual identified as the tax liable party must certify the form. Note: the signee may differ from the tax liable party in this situation if the signee can provide a power of attorney documented for the individual.

Section 6 – Paying State Agency

This section must be completed by the state agency/department requesting the STD 204.

Privacy Statement

Section 7(b) of the Privacy Act of 1974 (Public Law 93-579) requires that any federal, state, or local governmental agency, which requests an individual to disclose their social security account number, shall inform that individual whether that disclosure is mandatory or voluntary, by which statutory or other authority such number is solicited, and what uses will be made of it. It is mandatory to furnish the information requested. Federal law requires that payment for which the requested information is not provided is subject to federal backup withholding and state law imposes noncompliance penalties of up to \$20,000. You have the right to access records containing your personal information, such as your SSN. To exercise that right, please contact the business services unit or the accounts payable unit of the state agency(ies) with which you transact that business.

All questions should be referred to the requesting state agency listed on the bottom front of this form.