

Cleared -KS
Dist. WVA 1/27/10

SUBGRANT AGREEMENT

CITY OF LONG BEACH

31764

REGISTRATION NO: K077113
MODIFICATION NO: NEW
SUBGRANTEE CODE: LBC

SUBGRANTOR: State of California
Employment Development Dept.
Workforce Services Division
P.O. Box 826880, MIC 69
Sacramento, CA 94280-0001

SUBGRANTEE: CITY OF LONG BEACH
3447 ATLANTIC AVENUE
LONG BEACH, CA 90807
GOVERNMENTAL ENTITY: YES

This Subgrant Agreement is entered into by and between the State of California, Employment Development Department, hereinafter the Subgrantor, and the CITY OF LONG BEACH, hereinafter the Subgrantee.

This modification consists of this sheet and those of the following exhibits, which are attached hereto and by this reference made a part hereof:

Funding Detail Chart	Exhibit AA, pages 1 through 1
Title V-Z (OTHER PROGRAMS)	Exhibit PP, pages 1 through 1
Energy Commission AB 118 - Clean Energy Project	
General Provisions	Exhibit D 13 Pages

APPROVED AS TO FORM
December 15, 20 09
ROBERT E. SHANNON, City Attorney
By Gary J. Anderson
GARY J. ANDERSON
DEPUTY CITY ATTORNEY

ALLOCATION(s):	PRIOR AMOUNT:	\$0.00
The Subgrantor agrees to reimburse the Subgrantee not to exceed the amount listed hereinafter "TOTAL":	INCREASE/DECREASE:	\$400,000.00
	TOTAL:	\$400,000.00

TERMS OF AGREEMENT:	Terms of Exhibits are as designated on each exhibit
From 10/01/2009 to 06/30/2011	

PURPOSE: To initiate the PY 2009/10 subgrant and incorporate Energy Commission/AB 118 funds into grant code 804 for the Clean Energy Project with term date 10/1/09 to 6/30/11.

APPROVED FOR SUBGRANTOR (EDD) (By Signature)

Bob Hermsmeier
Name and Title
BOB HERMSMEIER
CHIEF
WORKFORCE SERVICES DIVISION

APPROVED FOR SUBGRANTEE (By Signature)

Patrick H. West
Name and Title
Assistant City Manager
**EXECUTED PURSUANT
SECTION 301 OF
CITY MANAGER THE CITY CHARTER.**

I hereby certify that to my knowledge, the budgeted funds are available for the period and purpose of expenditures as stated herein:

Marcia Walton
Signature of EDD Accounting Officer

This Agreement does not fall within the meaning of Section 10295 of Chapter 2 of Part 2 of Division 2 of the Public Contract Code of the State of California and pursuant to 58 OPS Cal. Atty. Gen. 586, is exempt from review or approval of the Dept. of General Services and the Dept. of Finance:

[Signature]
Signature of EDD Contract Officer

SUBGRANT AGREEMENT
FUNDING DETAIL SHEET

Exhibit AA
Page 1 of 1

SUBGRANTEE NAME: CITY OF LONG BEACH

SUBGRANT NO: K077113
MODIFICATION NO: NEW

I. ALLOCATION

FUNDING SOURCE	PRIOR AMOUNT	INCREASE	DECREASE	ADJUSTED ALLOCATION
TITLE V-Z:				
96550 OTHER PROGRAMS (804) EC-AB118 : 10/01/2009 to 06/30/2011 Prog/Element 61/35 Ref 001 Fed Catlg	\$0.00	\$400,000.00	\$0.00	\$400,000.00
TOTAL TITLE V-Z	\$0.00	\$400,000.00	\$0.00	\$400,000.00
GRAND TOTAL:	\$0.00	\$400,000.00	\$0.00	\$400,000.00

EXHIBIT COVER SHEET

SUBGRANT NO: K077113
MODIFICATION NO: 00

EXHIBIT PP
Page 1 OF 1

SUBGRANTEE: CITY OF LONG BEACH
FUNDING SOURCE: AB 118 RENEWABLE 61.40 804

TERM OF THESE FUNDS: 10/01/2009 TO: 06/30/2011

Use of funds added by this modification is limited to this period and additionally limited by the recapture provisions applicable to this funding source. The state may at its discretion recapture funds obligated under this exhibit, if expenditure plans are not being met.

PROGRAM NARRATIVE

The purpose of this action is to initiate this new Program Year (PY) 2009/10 subgrant agreement for the Clean Energy Project. This project has total funding of \$500,000 from WIA/ARRA 15% and Energy Commission/AB 118. This initial subgrant agreement provides \$400,000 of Energy Commission/AB 118 funds into grant code 804. The term of this agreement is from 10/1/09 to 6/30/11.

This initial agreement will allow you to begin allowable activities based on your project proposal as early as 10/1/09. However, the grant funds available are limited to 10% of the total award for the PY 2009/10.

Atl. & Renewable Fuel and Vehicle Tech Workforce Develop.	
K074146 WIA/ARRA 15%	-GC 127-\$100,000-CFDA #17.258
K077113 EC AB 118	-GC 804-\$400,000-No CFDA #

Total	\$500,000

You must submit a modification incorporating project specific exhibits (listed below) to this initial agreement within 60 days of the execution date before additional grant funds will be released. Your Regional Advisor will work with you to complete the agreement exhibits to include:

- | | |
|---|--------------------|
| Project Narrative | Participant Plan |
| Expenditure Plan | Proposal Work Plan |
| Partner Roles and Responsibilities | |
| Target Group Planning Chart | Budget Plan |
| Supplemental Budget Plan for Equipment (if necessary) | |

During the interim, as the agreement is refined, you must ensure that all activities are allowable uses of the funds as stated in the Solicitation for Proposal and your original proposal as governed by its associated federal regulations, State and federal directives, and federal Office of Management and Budget (OMB) Circulars.

This exhibit adds to and does not replace the terms and conditions of any other exhibit included in this agreement which terms and conditions remain in full force and effect.

EXHIBIT D
General Provisions

This Subgrant Agreement is entered into by and between the State of California, Employment Development Department, hereinafter the Subgrantor, and the City of Long Beach, hereinafter the Subgrantee. The Subgrantor is administering this subgrant in support of the State of California Energy Commission's Alternative and Renewable Fuel and Vehicle Technology Program, and the requirements of Assembly Bill (AB) 118. The Subgrantee agrees to operate a program in accordance with the provisions of this subgrant. For purposes of this Exhibit D, the term "vendor" refers to those entities defined as such by OMB Circular A-133.

1. STANDARDS OF PERFORMANCE

The Subgrantee shall be responsible in the performance of the Subgrantee/vendor's work under this Agreement for exercising the degree of skill and care required by customarily accepted good professional practices and procedures. The Subgrantee/vendor and not the Subgrantor shall bear any costs for failure to meet these standards, or otherwise defective services, which require reperformance as directed by the Subgrantor or its designee. In the event the Subgrantee/vendor 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 Subgrantor may have under law.

- A. The Subgrantee/vendor will reperform, at its own expense, any task that was not performed to the Subgrantor's reasonable satisfaction. Any work reperformed pursuant to this paragraph shall be completed within the time limitations originally set forth for the specific task involved. The Subgrantee/vendor shall work any overtime required to meet the deadline for the task at no additional cost to the Subgrantor.
- B. The Subgrantor 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 Subgrantor directs the Subgrantee/vendors not to reperform a task, the Subgrantor and the Subgrantee/vendors shall negotiate a reasonable settlement for satisfactory services rendered. No previous payment shall be considered a waiver of the Subgrantor's right to reimbursement.

2. RECORDKEEPING AND INSPECTION OF RECORDS

The Subgrantee shall retain backup source documentation for audit purposes, and make the documentation available to the Subgrantor, its designees, the Energy Commission and the Federal government upon request. The Subgrantee's accounting records must be supported by documentation that includes but is not limited to cancelled checks, paid bills, payrolls, time and attendance records, and contract and subgrant award documents. The Subgrantee agrees to maintain records that directly pertain to, and involve transactions relating to, this Agreement for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. The Subgrantee shall include appropriate provisions in each of its subawards to secure adequate backup

documentation to verify all subgrantee and vendor services and expenses invoiced for payment under this Agreement.

The Subgrantee agrees that it shall permit the State of California, the United States Comptroller General or his representative, or the appropriate Inspector General appointed under Section 3 or 8G of the United States Inspector General Act of 1978 or his representative to: (1) examine any records that directly pertain to, and involve transactions relating to, this Agreement; and (2) interview any officer or employee of the Subgrantee or any of its subgrantees or vendors regarding the activities funded. The Subgrantee shall include this provision in all of its agreements with its subgrantees, and vendors from whom it acquires goods or services in its execution of this work.

3. **SUBAWARDS**

- A. Nothing contained in this Agreement or otherwise shall create any contractual relation between the Subgrantor and any of the Subgrantee's subgrantees or vendors, and no agreement shall relieve the Subgrantee of its responsibilities and obligations under this Agreement. The Subgrantee agrees to be as fully responsible to the Subgrantor for the acts and omissions of its subgrantees, vendors, 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 Subgrantee. The Subgrantee's obligation to pay its subgrantees and vendors is an independent obligation from the Subgrantor's obligation to make payments to the Subgrantee. As a result, the Subgrantor shall have no obligation to pay or to enforce the payment of any monies from the Subgrantee to any of its subgrantees or vendors.
- B. The Subgrantee shall be responsible for establishing and maintaining contractual agreements with and the reimbursement of each of its subgrantees and vendors for work performed in accordance with the terms of this Agreement. The Subgrantee shall be responsible for: 1) scheduling and assigning its subgrantees and vendors to specific tasks in the manner described in this Agreement; 2) coordinating the Subgrantees's accessibility to Subgrantor staff; and 3) submitting completed products to the Subgrantor.
- C. All subawards shall contain the following:
 - 1. The Recordkeeping and Inspection of Records paragraph of this Agreement.
 - 2. Provisions recognizing the applicability of the funding limitations contained within AB 118.

4. **REPORTS AND INFORMATION DISCLOSURE**

The Subgrantee shall submit to the Subgrantor all reports the Subgrantor requires which include: expenditure and participant data along with any progress, annual and final reports.

- A. **Ownership:** Each report shall become the property of the Subgrantor/ Energy Commission.

- B. **Non-disclosure:** The Subgrantee will not disclose data or disseminate the contents of the final or any progress report without written permission of the Energy Commission and the Subgrantor, except as provided in D, below. Permission to disclose information on one occasion or at public hearings held by the Energy Commission or the Subgrantor relating to the same shall not authorize the Subgrantee to further disclose and disseminate the information on any other occasion. The Subgrantee will not comment publicly to the press or any other media regarding its report, or the Energy Commission's actions on the same, except to the Energy Commission staff, the Subgrantor or the Subgrantee's own personnel involved in the performance of this contract, 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 the Subgrantee or the content of any preliminary or final report, the Subgrantee may, if it believes the statement to be incorrect, state publicly what it believes is correct.
- C. **Confidentiality:** Neither the Subgrantee, its employees, or any tier of subgrantees may disclose any record that has been designated as confidential or is the subject of a pending application of confidentiality, except as provided in 20 California Code of Regulations (CCR), Sections 2506 and 2507, unless disclosure is ordered by a court of competent jurisdiction (20 CCR, Sections 2501, et seq.). At the election of the Subgrantor, the Subgrantee's employees, and any subgrantee shall execute a "Confidentiality Agreement," supplied by the Energy Commission. Each subaward shall contain provisions similar to the foregoing related to the confidentiality and nondisclosure of data.
- D. **Disclosure:** Ninety (90) days after any document submitted by the Subgrantee is deemed by the Energy Commission's Contract Manager to be a part of the public records of the State, the Subgrantee 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. 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, subgrantors, and subgrantees 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 passed upon the accuracy or adequacy of the information in this report. "

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(THE COPYRIGHT HOLDER'S NAME)
ALL RIGHTS RESERVED

5. 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 Subgrantor/Energy Commission and shall belong to the Subgrantor/Energy Commission.
- C. "Proprietary data" is such data as the Subgrantee has identified in a satisfactory manner as being under Subgrantee's control prior to commencement of performance of this Agreement, and which Subgrantee 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 Subgrantee throughout the term of this Agreement and thereafter. The extent of the Subgrantor/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 Subgrantee 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 Subgrantee in the performance of this Agreement at the Subgrantor/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 Subgrantor/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 Subgrantee 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, Subgrantee shall preserve the same in a form which may be introduced as evidence in a court of law at Subgrantee's own expense for a period of not less than three years after receipt by the Subgrantor/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, Subgrantee shall notify the Subgrantor/Energy Commission of any contemplated action and the Subgrantor/Energy Commission may, within thirty (30) days after notification, determine whether it desires the data to be preserved. If the Subgrantor/Energy Commission so elects, the expense of

further preserving data shall be paid for by the Subgrantor/Energy Commission. Subgrantee agrees that the Subgrantor/Energy Commission may at its own expense, have reasonable access to data throughout the time during which data is preserved. Subgrantee agrees to use its best efforts to furnish competent witnesses or to identify competent witnesses to testify in any court of law regarding data.

6. **PURCHASE OF EQUIPMENT**

No equipment is to be purchased with under this Agreement.

7. **PUBLIC HEARINGS**

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

8. **RIGHT OF PARTIES REGARDING INTELLECTUAL PROPERTY**

The Subgrantor/Energy Commission reserves all rights to use, modify, translate, publish, reproduce, display, disseminate and dispose of all deliverables under this Agreement.

9. **CONFIDENTIALITY**

The State of California and the Subgrantee will exchange various kinds of information pursuant to this Agreement. That information will include data, applications, program files, and databases. These data and information are confidential when they define an individual or an employing unit. Confidential information requires special precautions to protect it from unauthorized use, access, disclosure, modification, and destruction. The sources of information may include, but are not limited to, the Employment Development Department, the California Department of Social Services, the California Department of Education, the California Department of Corrections, the County Welfare Department(s), the County IV-D Directors Office of Child Support, the Office of the District Attorney, the California Department of Mental Health, the California Office of Community Colleges and the Department of Alcohol and Drug Programs.

The Subgrantor and Subgrantee agree that:

- A. Each party shall keep all information that is exchanged between them in the strictest confidence and make such information available to their own employees only on a "need-to-know" basis.
- B. Each party shall provide security sufficient to ensure protection of confidential information from improper use and disclosures, including sufficient administrative, physical, and technical safeguards to protect this information from reasonable unanticipated threats to the security or confidentiality of the information.
- C. The Subgrantee agrees that information obtained under this Agreement will not be reproduced, published, sold or released in original or in any other form for any purpose other than those specifically identified in this Agreement.

- 1) **Aggregate Summaries:** All reports and/or publications developed by the Subgrantee based on data obtained under this Agreement shall contain confidential data in aggregated or statistical summary form only. "Aggregated" refers to a data output that does not allow identification of an individual or employer unit.
- 2) **Publication:** Prior to publication, Subgrantee shall carefully analyze aggregated data outputs to ensure the identity of individuals and/or employer units cannot be inferred pursuant to Unemployment Insurance Code section 1094(c). Personal identifiers must be removed. Geographic identifiers should be specified only in large areas and as needed, and variables should be recorded in order to protect confidentiality.
- 3) **Minimum Data Cell Size:** The minimum data cell size or derivation thereof shall be three participants for any data table released to outside parties or to the public.

D. Each parties agrees that no disaggregate data, identifying individuals or employers, shall be released to outside parties or the the public.

E. The Subgrantee shall notify Subgrantor's Information Security Office of any actual or attempted information security incidents, within 24 hours of initial detection, by telephone at (916) 654-6231. Information Security Incidents include, but are not limited to, any event (intentional or unintentional), that causes the loss, damage, or destruction, or unauthorized access, use, modification, or disclosure of information assets.

The Subgrantee shall cooperate with the Subgrantor in any investigation or security incidents. The system or device affected by an information security incident and containing confidential data obtained in the administration of this program shall be immediately removed from operation upon confidential data exposure or a known security breach. It shall remain removed from operation until correction and mitigation measures are applied.

If the Subgrantee learns of a breach in the security of the system which contains confidential data obtained under this Agreement, then the Subgrantee must provide notification to individuals pursuant to Civil Code section 1798.82.

F. The Subgrantee shall provide for the management and control of physical access to information assets (including personal computer systems, computer terminals, mobile computing devices, and various electronic storage media) used in performance of this Agreement. This shall include, but is not limited to, security measures to physically protect data, systems, and workstations from unauthorized access and malicious activity; the prevention, detection, and suppression of fires; and the prevention, detection, and minimization of water damage.

G. At no time will confidential data obtained pursuant to this Agreement be placed on a mobile computing device, or on any form of removable electronic storage media of any kind unless the data are fully encrypted.

H. Each party shall provide its employees with access to confidential information with written instructions fully disclosing and explaining the penalties for unauthorized use or disclosure of confidential information found in section

1798.55 of the Civil Code, section 502 of the Penal Code, section 2111 of the Unemployment Insurance Code, section 10850 of the Welfare and Institutions Code and other applicable local, state and federal laws.

- I. Each party shall (where it is appropriate) store and process information in electronic format, in such a way that unauthorized persons cannot reasonably retrieve the information by means of a computer.
- J. Each party shall promptly return to the other party confidential information when its use ends, or destroy the confidential information utilizing an approved method of destroying confidential information: shredding, burning, or certified or witnessed destruction. Magnetic media are to be degaussed or returned to the other party.
- K. If the Subgrantee enters into an agreement with a third party to provide WIA services, the Subgrantor or Subgrantee agrees to include these data and security and confidentiality requirements in the agreement with that third party. In no event shall said information be disclosed to any individual outside of that third party's authorized staff, subcontractor(s), service providers, or employees.
- L. The Subgrantee may, in its operation of the One-Stops, permit a One-Stop Operator to enter into a subcontract to manage confidential information. This subcontract may allow an individual to register for resume-distribution services at the same time the individual enrolls in CalJOBSSM. Subgrantee shall ensure that all such subcontracts comply with the intellectual provisions of paragraph 8 of this Agreement, the confidentiality requirements of paragraph 9 of this Agreement and any other terms of this Agreement that may be applicable. In addition, the following requirements must be included in the subcontracts:
 - 1) All client information submitted over the Internet to the subcontractor's databases must be protected, at a minimum, by 128-bit Secure Socket Layer (SSL) encryption. Clients' social security numbers must be stored in a separate database within the subcontractor's network of servers, and protected by a firewall and a secondary database server firewall or AES¹ data encryption. If a subcontractor receives client social security numbers or other confidential information in the course of business, for example a resume-distribution service that provides enrollment in CalJOBSSM, social security numbers must be destroyed within two days after the client registers for CalJOBSSM. If a subcontractor obtains confidential information as an agent of the subgrantee, the subcontract must specifically state the purpose for the data collection and the term of records retention must be stated, and directly related, to the purpose and use of the information. In accordance with 29 Code of Federal Regulations 97.42, social security numbers and other client specific information shall not be retained for more than three years after a client completes services. The subgrantee should extend this period, only if any litigation, claim, negotiation, audit, or other action involving the records has been started before the end of the three-year retention period. In this case the records should be maintained until completion of the action and resolution of all issues arising from it, or until the close of the three-year retention period, whichever is later.
 - 2) Client information (personal information that identifies a client such as name and social security number) and/or demographic information of a

client (such as wage history, address, and previous employment) shall not be used as a basis for commercial solicitation during the time the client or agency is using the subcontractor's services. Client information and/or demographic information shall not be used for any purposes other than those specific program purposes set forth in the subcontract.

- 3) A One-Stop client must still be given the option to use the One-Stop's services, including CalJOBSSM, even if he or she chooses not to use any services of the subcontractor. This option shall be prominently, clearly and immediately communicated to the client upon registration within the One-Stop or for CalJOBSSM, the subcontractor's resume-distribution services, or any other services subcontractor offers to the client or the One-Stop Operator.
- 4) The subcontractor must clearly disclose all of its potential and intended uses of the client's personal and/or demographic information for the services the clients seeks and for any other services the subcontractor offers. The subcontractor shall not use a client's personal and/or demographic information without the client's prior permission. A link to the subcontractor's Privacy Policy shall appear prominently on the registration screens that list the potential and intended uses of the client's personal and/or demographic information.
- 5) When the subcontractor modifies State automated systems such as the State CalJOBSSM System, it shall provide reasonable notice of such changes to the Subgrantee. The Subgrantee shall be responsible to communicate such changes to the One-Stop Operator(s) in the local area.

- M. Each party shall designate an employee who shall be responsible for overall security and confidentiality of its data and information systems and each party shall notify the other of any changes in that designation. As of this date, the following are those individuals:

FOR THE SUBGRANTOR

Name: Denise Miller
Title: Workforce Collaborative Section Manager
Address: P.O. Box 826880, MIC 88
Sacramento, CA 94280-0001
Telephone: (916) 654-7988
Fax: (916) 653-2467

FOR THE SUBGRANTEE

Name: Bryan S. Rogers
Title: WIB Executive Director
Telephone: 562.570.3701
Fax: 562.570.3704

10. **DISPUTES**

In the event of an Agreement dispute or grievance between the Subgrantee and the Subgrantor/Energy Commission, all parties shall follow the procedure below. The Subgrantee shall continue with the responsibilities under this Agreement during any dispute.

A. Energy Commission Dispute Resolution

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

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

11. **TERMINATION**

The parties agree that because the Subgrantor/Energy Commission are state entities, they must be able to immediately terminate the Agreement upon the default of Subgrantee, and to proceed with the work required under the Agreement in any manner the Subgrantor/Energy Commission deems proper. The Subgrantee specifically acknowledges that the Subgrantor/Energy Commission's unilateral termination of the Agreement under the terms below is an essential term of the Agreement, without which the Subgrantor/Energy Commission will not enter into the Agreement. The Subgrantee further agrees that upon any of the events triggering the Subgrantor/Energy Commission's unilateral termination the Agreement, the Subgrantor/Energy Commission has the sole right to terminate the Agreement, and it would constitute bad faith of the Subgrantee to interfere with the immediate termination of the Agreement by the Subgrantor/Energy Commission.

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

A. With Cause

In the event of any breach by the Subgrantee of the conditions set forth in this Agreement, the Subgrantor/Energy Commission may, without prejudice to any of its legal remedies, terminate this Agreement for cause upon five (5) days written notice to the Subgrantee. In such event, the Subgrantor/Energy Commission shall pay the Subgrantee only the reasonable value of the services rendered by the Subgrantee prior to termination, as may be agreed upon by the parties or determined by a court of law, but not in excess of the contract 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) Inability of the Subgrantee to pay its debts as they become due and/or the Subgrantee's default of an obligation that impacts its ability to perform under this Agreement; or
- 3) Determination by the Subgrantor/Energy Commission or the Energy Commission Executive Director after notice and hearing that the Subgrantee or any agent or representative of the Subgrantee offered or gave gratuities to any officer or employee of the Subgrantor/Energy Commission, with a view toward securing an Agreement or favorable treatment with respect to awarding, amending, or making a determination with respect to performance of the Agreement; or
- 4) Significant change in Subgrantor/Energy Commission policy such that the work or product being funded would not be supported by the Subgrantor/Energy Commission; or
- 5) Reorganization to a business entity unsatisfactory to the Subgrantor/Energy Commission; or
- 6) The retention or hiring of subcontractors, or the replacement or addition of personnel who fail to perform to the standards and requirements of this Agreement.

B. Without Cause

The Subgrantor/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 Subgrantee. In such event, the Subgrantee agrees to use all reasonable efforts to mitigate the Subgrantee's expenses and obligations hereunder. Also, in such event, the Subgrantor/Energy Commission shall pay the Subgrantee for all satisfactory services rendered and expenses incurred within 30 days of notice of termination that the Subgrantee could not have avoided by reasonable efforts, but not in excess of the maximum payable under this Agreement.

- 1) All notices of termination must be in writing and be delivered personally, overnight mail, or by deposit in the U. S. Mail, postage prepaid, "Certified Mail-Return Receipt Requested", and will be deemed to have been given at the time of personal delivery, overnight mail receipt to the person identified below, or of the date of postmark by the U. S. Postal Service.

Notices to the Subgrantee will be addressed to:

Bryan S. Rogers WIB Executive Director
3447 Atlantic Ave. Long Beach, CA 90807

Notices to the Subgrantor will be addressed to:

Denise Miller
Workforce Collaborative Section
Deputy Director's Office
Workforce Services Branch
Employment Development Department
P. O. Box 826880, MIC 88
Sacramento, CA 94280-0001

12. **ENFORCEABILITY**

The Subgrantee agrees that if it or one of its subgrantees or vendors fails to comply with all applicable Federal and State requirements governing the use of the funds provided by AB 118, the Subgrantor/Energy Commission may withhold or suspend, in whole or in part, funds awarded under the program, or recover misspent funds following an audit. This provision is in addition to all other remedies available to the Subgrantor/Energy Commission under all applicable State and Federal laws.

13. **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, meaning in addition to every other remedy provided therein or by law. The failure of the Subgrantor/Energy Commission to enforce at any time any of the provisions of this Agreement, or to require at any time performance by the Subgrantee 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 Subgrantor/Energy Commission to thereafter enforce each and every such provision.

14. **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.

15. **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.

16. **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 paragraph 11 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.

17. **STOP WORK**

The Subgrantor/Energy Commission may, at any time, by written notice to the Subgrantee, require the Subgrantee 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, and misrepresentations.

A. Compliance: Upon receipt of such stop work order, the Subgrantee shall immediately take all necessary steps to comply with the order and to minimize the incurrence of costs allocable to work stopped.

B. Equitable Adjustment: The Subgrantor/Energy Commission shall make an equitable adjustment based upon the Subgrantee's written request. The Subgrantee must make such adjustment request within thirty (30) days from the date of receipt of the stop work notice.

C. Revoking a Stop Work Order: The Subgrantee shall resume the stopped work only upon receipt of written instructions from the Subgrantor/Energy Commission's Contract Officer canceling the stop work order.

18. **BUSINESS ACTIVITY REPORTING**

Subgrantee shall promptly notify the Subgrantor of the occurrence of any of the following:

- A. A change of address.
- B. A change in the business name or ownership.
- C. The existence of any litigation or other legal proceeding affecting this Agreement.
- D. The occurrence of any casualty or other loss to Project personnel, equipment or third parties.
- E. Subgrantees receipt of notice of any claim or potential claim against Subgrantee for patent, copyright, trademark, service mark and/or trade secret infringement that could affect the Subgrantor/Energy Commission's rights.

19. **ACCESS TO SITES AND RECORDS**

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

20. **AMENDMENTS**

- A. This Agreement may be amended to make changes, including without limitation: additional funds, additional time, additional or modified tasks, and additional or modified terms. Amendments may be made without competitively bidding, so long as the amendment is exempt from competitive bidding pursuant to Public Contract Code section 10335, Government Code section 11010.5 and the State Contract Manual. Amendments may require prior written approval from Energy Commission/DOE.
- B. The Subgrantee acknowledges that provisions included in this Agreement pursuant to Federal or State law, regulation or policies are subject to change. The Subgrantee agrees to comply with any amendments that the Subgrantor/Energy Commission makes to this Agreement to comply with Federal or State law, regulation, or policy.
- C. Amendments

The Subgrantor may approve changes to this Agreement, including changes required to comply with Federal or State law, regulation, or policy through unilateral modification (Subgrantor signature only) of the Agreement.