



Liberty Union High School District

20 Oak Street

Brentwood, CA 94513

Request for Qualification

**RFQ CalSHAPE and Energy Efficiency
Projects**

Released:	January 12, 2024
Advertised:	January 12-26, 2024
Bid Opening:	January 29, 2024

NOTICE INVITING BIDS
Liberty Union High SCHOOL DISTRICT

Notice is hereby given that the **Liberty Union High School District (“District” or “Owner”)** will receive sealed bids for the award of contract(s) for:
RFQ 23-24/001Q CalSHAPE HVAC Services.

ALL PROPOSALS ARE DUE BY 1:00 p.m. ON JANUARY 26, 2024, via email.
Electronic submissions are requested, and it is recommended that your submission be sent in advance of the deadline in case of server delays. Each bid must be accompanied by any required security and a list of any proposed contractors. **Proposals received after the exact time and date noted will NOT be considered for the bid process.**

DISTRICT reserves the right to reject any and all bids or to waive irregularities in any bid.

REQUEST FOR QUALIFICATIONS

RFQ CalSHAPE and Energy Efficiency Projects

INTRODUCTION

The Liberty Union High School District ("District") is soliciting qualifications proposal for qualified Firms to provide design, assessment, implementation, documentation, and reporting services required for award and administration of funds under the AB 841 CalSHAPE program. The purpose of this RFQ is to find a qualified firm to complete all necessary steps under AB841 CalSHAPE guidelines, this includes but not limited to the installation of all necessary equipment. This RFQ describes the background and services needed, the selection process and the minimum information that must be included when responding to this RFQ.

The District expects all proposing Firms to be familiar with the CalSHAPE program and supporting Guidelines prepared by the California Energy Commission.

Additionally, Firms will be expected to provide project management under the CalSHAPE Ventilation and/or Plumbing Programs, including, but not limited to, the HVAC assessments, general maintenance, assessment reports, adjustment of ventilation rates, filter replacements, carbon dioxide monitor installation, and documentation for reporting under the requirements of the CalSHAPE Ventilation and/or Plumbing Programs as described in the current Program Guidelines (see exhibit C and exhibit D), as may be updated on an ongoing basis, available here: <https://www.energy.ca.gov/programs-and-topics/programs/californiaschools-healthy-air-plumbing-and-efficiency-program>.

I. RFQ PROCESS

The District intends to award an implementation agreement for energy conservation services under the provisions of California Government Code sections 4217.10-4217.18 which requires that program savings pay for the cost of improvements. The District, at its sole discretion, may select the awarded respondent(s) for subsequent phases of work. The District, at its sole discretion, also reserves the right to reject any or all bidders.

Questions regarding this RFQ must be submitted in writing by e-mail to Liberty Union High School District at mellonip@luhsd.net on or before JANUARY 17, 2024 at 1:00 p.m.. All responses to questions will be sent to respondents by 3:00 p.m. on JANUARY 19, 2024.

ALL PROPOSALS ARE DUE BY 1:00 p.m. ON JANUARY 26, 2024, via email. **Electronic submissions are requested, and it is recommended that your submission be sent in advance of the deadline in case of server delays.** RFQs received after this date and time will not be accepted.

The District anticipates the following proposed timeline for procurement events.

Event	Date
Deadline for Questions	JANUARY 17, 2024 @ 1:00 p.m.
District Issues Responses to all Respondents	JANUARY 19, 2024
Proposal Submittal Deadline	JANUARY 26, 2024 @ 1:00 p.m.
District Evaluation of Proposals	JANUARY 29, 2024
Anticipated Award Date	JANUARY 30, 2024

II. MINIMUM REQUIREMENTS

Respondents must meet the following minimum requirements to participate in the District's RFQ process:

- Successful implementation of at least five (5) California K-12 large-scale CalSHAPE projects, with customer references, for which the respondent has provided turnkey energy services in the past three (3) years.
- Licensed with Contractors State License Board of California, with active standing. Minimum License Requirements: B,C-7, C-10.
- Registered as public works contractor with the Department of Industrial Relations.
- Access to licensed, credentialed, trained, and knowledgeable staff, as follows:
 - Firm must employ or subcontract with a minimum of two (2) mechanical P.E.'s licensed by the state of California.
 - Firm must employ or subcontract with a minimum of one (1) Certified Energy Manager (CEM).
- In order to comply with the requirements of the CalSHAPE Ventilation program, the following qualifications are required for the firm providing the Services. The qualifications must be met by firm's personnel or under subcontract, as described below:
 - Qualified testing personnel, meaning either:
 - (1) An HVAC acceptance test technician certified to complete the forms set forth in subparagraph (B) of paragraph (1) of subdivision (b) of Section 10-103.2 of Part 1 of Title 24 of the California Code of Regulations by an Acceptance Test Technician Certification Provider (ATTCP) that is approved by the Energy Commission to provide that certification.
 - (2) Or, a certified testing, adjusting, and balancing (TAB) technician: A technician certified to perform testing, adjusting, and balancing of HVAC systems by the Associated Air Balance Council (AABC), the National Environmental Balancing

Bureau (NEBB), or the Testing, Adjusting and Balancing Bureau (TABB).

- Qualified adjusting personnel, meaning either:
 - (1) A certified TAB technician, as defined above.
 - (2) A Skilled and Trained Workforce under the supervision of a TAB Technician.
- Extensive experience with Office of Public School Construction (OPSC), CDE, DSA, the public school construction building and design codes, including but not limited to California Building and Electrical Codes, and Title 24 of the California Code of Regulations, is mandatory.
- Firm must have an in-house, full-service automation group capable of installing and servicing various building automation systems.
- Minimum of \$5 Million in bonding capacity.

Failure to provide accurate and complete information as requested is grounds for disqualification.

III. PROJECT DESCRIPTION AND SCOPE OF SERVICES

A. CalSHAPE Ventilation and Plumbing Programs

Assembly Bill 841 authorized the California Energy Commission ("CEC") to design, administer, and implement the California Schools Healthy Air, Plumbing, and Efficiency ("CalSHAPE") Program. CalSHAPE includes two grant programs:

1. **Ventilation Program:** Authorizes funding to local educational agencies for assessing, maintaining, and repairing or upgrading school ventilation systems to ensure that systems meet certain classroom ventilation requirements; however, the initial phase of program awards is limited to assessment and maintenance projects.
2. **Plumbing Program:** Authorizes funding to local educational agencies for the replacement of plumbing fixtures and appliances to ensure that systems meet specified ENERGY STAR® and water efficiency requirements.

Liberty Union High School District ("District") received CalSHAPE grant awards under both programs as follows:

1. **Ventilation Program:** \$1,150,410
2. **Plumbing Program:** \$316,970.06

The District-Wide CalSHAPE Ventilation and Plumbing Programs Project ("Project") will involve all work required for the District's grants under both programs at all District sites in accordance with applicable CalSHAPE Guidelines. The Project is further defined in the attached **APPENDIX A**.

The CEC's CalSHAPE Guidelines for the Ventilation and Plumbing Programs are incorporated herein by reference and are available online at <https://www.energy.ca.gov/programs-and-topics/programs/california-schools-healthy-air-plumbing-and-efficiency-program>.

B. Additional Phases of CalSHAPE and/or Additional Energy Efficiency Projects

The District intends to award an implementation agreement for energy conservation services under the provisions of California Government Code sections 4217.10-4217.18 which requires that program savings pay for the cost of improvements. The District, at its sole discretion, may select the awarded respondent(s) for subsequent phases of work under the CalSHAPE program and/or additional energy efficiency projects. The District, at its sole discretion, also reserves the right to reject any or all bidders.

With the 20% contingent funding, the selected Contractor will provide turnkey implementation services for the approved scope of work including all necessary permits, engineering, any Division of the State Architect (DSA) requirements, procurement, delivery, installation, commissioning, training, warranty service, and compliance with any applicable funding programs. After the scope of work has been fully implemented, the selected respondent will be required to provide measurement & verification services to monitor post-retrofit utility usage and track energy savings.

IV. PROPOSAL SUBMISSION REQUIREMENTS

Proposals shall respond to each item noted and follow the format described below. Please limit response information to no more than twenty (20) pages and include relevant information only (Cover Page, Letter of Interest, Table of Contents, and Resumes do not count towards page count). Submitted materials are limited to 8-1/2 x 11 sized paper. It is the bidder's responsibility to check the district website for any updated documentation required for bid submission. **Late responses will not be accepted.**

Proposals shall be submitted via email to mellonip@luhsd.net by 1:00 p.m. on January 26, 2024. It is recommended that your submission be sent in advance of the deadline in case of server delays.

Proposals should be divided by electronic tab sections according to items in the index. This will assist the evaluating team in identifying items and information submitted with the proposal. The table of contents of the proposal should include a clear and complete identification of the materials submitted by tab section and page number.

Tab 1: Cover Letter/Letter of Interest

Provide a letter no more than two (2) pages of introduction signed by an authorized office of the organization. Clearly identify the individual(s) who are authorized to speak on behalf of the firm during the evaluation process. At a minimum, the cover letter must also include:

- a. A brief statement of interest and summary of relevant qualifications to engage in a professional relationship with the District.
- b. Describe how the Contractor meets the minimum requirements as described in section III of the RFQ/RFP.
- c. A brief explanation of your firm's in-house services and how those services can be directly applied to the requirements of this RFQ/RFP.

Tab 2: Description of Firm and Sub-Consultant Firms

Provide the following information for firm and sub-consultant firm(s) for this project:

- a. Firm Legal Name and principal place of business
- b. Overview of firm's experience with public school HVAC projects
- c. Type of business entity including type of entity and its ownership, size of staff, number of professionals which will perform the work, Location of its principal office
- d. History, number of years in business in California
- e. All applicable firm licenses including license numbers and expirations dates
- f. Provide a statement of the Contractor's financial capacity and capability to perform to the terms of this solicitation request
- g. Sub-Consultant Firm(s): Describe each sub-consultant firm and proposed services and responsibilities for the work; describe the relationship of your firm and sub-consultant firm(s)
- h. Provide a Quality Assurance/Quality Controls plan specific to data collection, data management, testing, maintenance and repair work, and reporting
- i. Firm Track Record: Provide responses to the following items
 - Has your firm ever been terminated or dismissed by a client or replaced by another firm during any educational and/or related project? If so, explain in detail
 - Does your firm have any current or pending litigation? If so, please describe
 - Has your firm ever defaulted on a contract within the past five (5) years or declared bankruptcy, or been placed in receivership within the past five (5) years?

Tab 3: Relevant Project Experience

List relevant K-12 school HVAC projects where like services were performed and include:

- a. Project name and location
- b. Year completed or current status
- c. Client, contact person, and phone number
- d. Services performed
- e. Project/Contract Cost

Tab 4: References

Provide a minimum of three (3) California K-12 districts references for which the responding firm provided turn-key responsibility and similar services in the past three (3) years. Describe the scope of work, start/completion date, services and equipment provided, project size, and results achieved.

Tab 5: Proposed Project Team

Identify key personnel and/or team members and include a clear description of each team member's role and project responsibilities; include an Organization Chart indicating reporting structure.

Provide a resume (2-page max) for each team member including required CalSHAPE HVAC Testing and Adjusting personnel, and licensed professionals. Resumes shall include:

- a. Name of person and title/role
- b. Relevant project experience
- c. Education (institution, degree(s) earned)
- d. Professional registrations and licenses (license number/type/state/year)
- e. Copies of HVAC Testing and Adjusting certificates for required personnel

V. EVALUATION CRITERIA

A "best value" method of selection will be utilized to evaluate proposals. The "best value" method includes, but is not limited to the following selection criteria:

- Technical expertise;
- Team expertise and prior experience;
- Recent success with similar services;
- Proposed team and availability of qualified staff;
- Prior experience with District staff and current consultants.

RFQ/P Selection Criteria	Evaluation Weight %
Proposal Completeness	5%
Firm Information and Qualifications	25%
Prior Project Experience	35%
Proposed Project Team	35%

VI. ATTACHMENTS

- Attachment “A” – List of CalSHAPE school sites and funding
- Attachment “B” - CalSHAPE Ventilation Program Scope of Work
- Attachment “C” – CalSHAPE Plumbing Program Scope of Work
- Attachment “D” – CA Energy Commission, California Schools Healthy Air, Plumbing, and Efficiency (CalSHAPE) Ventilation Program Guidelines District Required Procurement Forms
- Attachment “E”– District Forms – Non-collusion Affidavit, Payment Bond, Performance Bond, Labor and Materials Release Certificate, Contractor’s Liability, Agreement

Attachment “A”

School Site Name	Requested Amount from CDE
Independence High	\$ 145,259.99
Liberty High	\$ 465,354.06
LaPaloma High (Continuation)	\$ 66,397.00
Heritage High	\$ 400,788.01
Freedom High	\$ 389,581.00
Total Requested Amount	\$1,467,380.06

EXHIBIT A Scope of Work

Liberty Union High 07617210000000

Total Number of Sites 5

Site Name

Independence High
Liberty High
La Paloma High (Continuation)
Heritage High
Freedom High

CDS Code

07617210730572
07617210733980
07617210733998
07617210107797
07617210730457

Independence High

Category

Assessment & Maintenance
Filter
Monitor

Unit Count

39
79
27

Liberty High

Category

Assessment & Maintenance
Filter
Monitor

Unit Count

167
468
122

La Paloma High (Continuation)

Category

Assessment & Maintenance
Filter
Monitor

Unit Count

18
44
16

Heritage High

Category

Assessment & Maintenance
Filter
Monitor

Unit Count

186
566
87

Freedom High

Category

Assessment & Maintenance
Filter
Monitor

Unit Count

168
484
94

EXHIBIT A Scope of Work

Liberty Union High 07617210000000
Total Number of Sites 5
Site Name
CDS Code

Independence High

07617210730572

Liberty High

07617210733980

La Paloma High (Continuation)

07617210733998

Heritage High

07617210107797

Freedom High

07617210730457

Independence High
Appliance/Fixture
Unit Count

Interior Faucet

6

Toilet

10

Liberty High
Appliance/Fixture
Unit Count

Clothes Washer

1

Interior Faucet

18

Toilet

16

La Paloma High (Continuation)
Appliance/Fixture
Unit Count

Interior Faucet

5

Heritage High
Appliance/Fixture
Unit Count

Interior Faucet

13

Toilet

2

Urinal

1

Freedom High
Appliance/Fixture
Unit Count

Interior Faucet

3

Toilet

14

Urinal

1

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.

Attachment "E"

NON-COLLUSION AFFIDAVIT TO BE EXECUTED BY BIDDER AND SUBMITTED
(Public Contract Code Section 7106)

State of California

County of xxxxx

I _____, being first duly sworn, deposes and says that he or she is of the party making the foregoing bid that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

Subscribed and sworn to (or affirmed) before me this _____ day of _____, 20 24 .

Signature of Officer

Typed name of Officer

PAYMENT BOND

(Labor and Material Bond)

KNOW ALL MEN BY THESE PRESENTS THAT WHEREAS, the Liberty Union High School District by resolution passed _____ 20____, has awarded to _____ designated as the "Contractor", a contract for the work described as follows:

WHEREAS, said CONTRACTOR is required by Division 3, Part IV, Title XV, Chapter 7, (Commencing at Section 3247) of the California Civil Code to furnish a bond in connection with said contract.

NOW THEREFORE, we, the undersigned CONTRACTOR and _____ as surety are held and firmly bound unto the Liberty Union High School District in the sum of _____ Dollars \$ _____, for which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said CONTRACTOR, his or its heirs, executors, administrators, successors, or assigns, or subcontractors, shall fail to pay any of the persons named in Civil Code Section 3181, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, or for any, amounts required to be deducted, withheld, and paid over to the Franchise Tax Board from the wages of employees of the CONTRACTOR and his subcontractors, with respect to such work and labor, then the surety or sureties herein will pay for the same in an amount not exceeding the sum specified in this bond, otherwise the above obligation shall be void. In case suit is brought upon this bond, the said surety will pay reasonable attorney's fee to be fixed by the court.

This bond shall inure to the benefit of any of the persons named in Civil Code Section 3181 as to give a right of action to such persons or the assigns in any suit brought upon this bond.

And the said surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed there under of the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work, or to the specifications.

IN WITNESS WHEREOF, this instrument has been duly executed by the CONTRACTOR and surety above named, on this _____ day of _____, 20____.

Principal

Surety

Attorney-in-Fact

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS that whereas, Liberty Union High School District by resolution passed _____, 20____, has awarded to _____ hereinafter designated as the "Principal", a contract for the work described as _____ follows:

WHEREAS, said Principal is required under the terms of said contract to furnish a bond for the faithful performance of said contract, NOW THEREFORE, we, the principal and _____ AS SURETY, are held and firmly bound unto the

hereinafter called the "Owner", in the penal sum of _____ Dollars \$ _____, for the payment of which sum well and truly to be made we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITIONS OF THIS OBLIGATION IS SUCH that if the above bounden Principal, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by and well and truly keep and perform, the covenants, conditions and agreements in the said contract and any alteration thereof made as therein provided, on his or their part, to be kept and performed at the times and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the Owner, its officers, and agents, as therein stipulated, then this obligation shall become null and void, otherwise, it shall be and remain in full force and virtue.

And the said Surety, for the value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract to the work to be performed thereunder, or the specifications accompanying same, shall in any way affect its obligation on this bond and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work, or to the specifications.

In the event suit is brought upon this bond by the Owner and judgment is recovered, the Surety shall pay all costs incurred by the Owner in such suit, including a reasonable attorney's fee to be fixed by the court.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal and Surety above named, on this _____ day of _____, 20____.

Principal

By

Surety

By Attorney in Fact

LABOR AND/OR MATERIALS RELEASE CERTIFICATE

The undersigned hereby waives and releases any and all liens or claim or right of lien against the Liberty Union High School District, the property described herein and improvements thereon and for improvements incident thereto.

The undersigned certifies that all workmen and persons employed, all firms supplying materials and all subcontractors upon the project have been paid in full; and that there are no bills outstanding against the project for either labor or materials, except certain items, if any, to be set forth in the affidavit covering disputed items or claims in connection with Notice to Withhold which have been filed under the provisions of the Statues of the State of California.

Date: _____

Notarized by: _____

Signed by: _____

CONTRACTORS' LIABILITY

Each CONTRACTOR to whom a public works contract is awarded shall sign and file with the awarding body the following certification prior to performing the work of the contract.

It is understood that you are aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provision of the code and you will comply with such provisions before commencing the performance of the work of this contract.

It is agreed that the DISTRICT shall be held harmless for any accidents occurring during the Contractor's use of the facilities, unless there be contributory negligence on the part of the DISTRICT.

By: _____

AGREEMENT

THIS AGREEMENT is made this _____ day of _____ 2024, in the City of Brentwood, Contra Costa County, State of California, by and between **Liberty Union High SCHOOL DISTRICT**, a California High School District hereinafter "District" and _____ ("Contractor").

WITNESSETH, that the District and the Contractor in consideration of the mutual covenants contained herein agree as follows:

1. **The Work.** Within the Contract Time and for the Contract Price, subject to adjustments thereto pursuant to the Contract, the Contractor shall perform and provide all necessary labor, materials, tools, equipment, utilities, services, and transportation to complete in a workmanlike manner all of the work required in connection with the work of improvement commonly referred to as:

CalSHAPE HVAC Services 2024

Contractor shall complete all Work covered by the Contract, including without limitation, the Drawings and Specifications prepared by the Architect and other Contract documents enumerated in Article 5 below, along with all modifications and addenda thereto, in strict accordance with the Contract.

2. **Contract Time.** The Work shall be commenced on the date stated in the District's Notice to Proceed; the Contractor shall achieve Substantial Completion of the Work within the Contract Time set forth in the Contract.
3. **Contract Price.** The District shall pay the Contractor as full consideration for the Contractor's full, complete and faithful performance of the Contractor's obligations under the Contract, subject to adjustments of the Contract Price in accordance with the Contract, the Contract Price of _____ Dollars **(\$00)**.
4. **Liquidated Damages.** If the Contractor fails to achieve Substantial Completion of the Work within the Contract Time or fails to achieve a Milestone as set forth in the Special Conditions, including adjustments thereto authorized by the Contract, the Contractor shall be subject to Liquidated Damages in accordance with the Contract.
5. **The Contract.** The documents forming a part of the Contract consist of the following, all of which are component parts of the Contract.

Notice to Contractors Calling For Bids
Instructions For Bidders
Bid Proposal
Subcontractors List
Non-Collusion Affidavit
DVBE Participation Program Policy
DVBE Worksheets
Iran Contracting Act Certificate

Agreement
Performance Bond
Payment Bond
Labor and Materials Certification
Drug-Free Workplace Certification
Certification of Workers Compensation Insurance
General Conditions
Special Conditions
Guarantee

Authority to Execute. The individual(s) executing this Agreement on behalf of the Contractor is/are duly and fully authorized to execute this Agreement on behalf of Contractor and to bind the Contractor to each and every term, condition and covenant of the Contract Documents.

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSE BOARD. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS' STATE LICENSE BOARD, P.O. BOX 2600, SACRAMENTO, CALIFORNIA 95826.

IN WITNESS WHEREOF, this Agreement has been duly executed by the District and the Contractor as of the date set forth above. Liberty Union High School District Board of Education Approval Date: _____

Approved:

CONTRACTOR

Liberty Union High SCHOOL DISTRICT

By

NAME AND TITLE

Title

Date