

**EXHIBIT A
VENDOR FLOW DOWN PROVISIONS**

The following terms and conditions are derived from the Grant Agreement CBG - _____ signed by the California Energy Commission (“Commission”) and the City of Lemoore (“Recipient”), Exhibit C General Terms and Conditions, Section 10 Contracting and Procurement Procedures, a. General Requirements for all Subcontracts.

16. License

a. The California Energy Commission (“Commission”) shall be granted a no-cost, nonexclusive, nontransferable, irrevocable worldwide license to use or have practiced for or on behalf of the State inventions developed hereunder and patents or patent applications derived from such inventions. City of Lemoore (“Recipient”) must obtain agreements to effectuate this clause with all persons or entities obtaining ownership interest in the patented subject inventions.

b. The Commission makes no claim to intellectual property that existed prior to this Agreement and was developed without Commission funding. If applicable, the Recipient gives notice that the items listed in the Intellectual Property attachment or exhibit have been developed without Commission funding and prior to the start of this Agreement. This list represents a brief description of the prior developed intellectual property. A detailed description of the intellectual property, as it exists on the effective date of this Agreement, may be necessary if Commission funds are used to further develop the listed intellectual property. This information will assist the parties to make an informed decision regarding intellectual property rights.

c. The Commission shall be granted the no-cost use of the technical data first produced or specifically used in the performance of this Agreement.

d. The Commission shall be granted a royalty-free nonexclusive, irrevocable, nontransferable worldwide license to produce, translate, publish, use and dispose of, and to authorize others to produce, translate, publish, use and dispose of all copyrightable material first produced or composed in the performance of this Agreement.

17. Standard of Performance

Recipient, PG&E and their employees, in the performance of work under this Agreement shall be responsible for exercising the degree of skill and care required by customarily accepted good professional practices and procedures used in the Recipient’s field.

Any costs for failure to meet the foregoing standard or to correct otherwise defective work that requires re-performance of the work, as directed by Commission Project Manager, shall be borne in total by the Recipient or PG&E and not the Commission. The failure of a project to achieve the performance goals and objectives stated in the Work Statement is not a basis for requesting re-performance unless the work conducted by Recipient or PG&E is deemed by the Commission to have failed the foregoing standard of performance. In the event Recipient or PG&E fails to perform in accordance with the above standard:

(1) Recipient or PG&E will re-perform, at its own expense, any task which was not performed to the reasonable satisfaction of the Commission Project Manager. Any work re-performed pursuant to this paragraph shall be completed within the time limitations originally set forth for the specific task involved. Recipient or PG&E shall work any overtime required to meet the deadline for the task at no additional cost to the Commission;

(2) The Commission shall provide a new schedule for the re-performance of any task pursuant to this paragraph in the event that re-performance of a task within the original time limitations is not feasible; and

(3) The Commission shall have the option to direct Recipient not to re-perform any task which was not performed to the reasonable satisfaction of the Commission Project Manager pursuant to application of (1) and (2) above. In the event the Commission directs Recipient not to re-perform a task, the Commission and Recipient shall negotiate a reasonable settlement for satisfactory work performed. No previous payment shall be considered a waiver of the Commission's right to reimbursement.

Nothing contained in this section is intended to limit any of the rights or remedies which the Commission may have under law.

19. Fiscal Accounting Requirements

b. Retention of Records

PG&E shall retain all project records (including financial records, progress reports, and payment requests) for a minimum of three (3) years after the final payment has been received or three years after the federal grant term, whichever is later, unless otherwise specified in the funding Agreement.

Records for nonexpendable personal property acquired with grant funds shall be retained for three years after its final disposition or three years after the federal grant term, whichever is later.

c. Audits

Upon written request from the Commission, the PG&E shall provide detailed documentation of all expenses at any time throughout the project. In addition, PG&E agrees to allow the Commission or any other agency of the State or the Federal Government, or their designated representative, upon written request, to have reasonable access to and the right of inspection of all records that pertain to the project during the term of this Agreement and for a period of three (3) years thereafter or three years after the federal grant term, whichever is later, unless the Commission notifies PG&E, prior to the expiration of such three-year period, that a longer period of record retention is necessary. Further, PG&E agrees to incorporate an audit of this project within any scheduled audits, when specifically requested by the State. PG&E agrees to include a similar right to audit in any subcontract.

20. Indemnification

PG&E agrees to indemnify, defend, and save harmless the State, its officers, agents, and employees from any and all claims and losses accruing or resulting to PG&E and to any and all contractors, subcontractors, material men, laborers, and any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by PG&E in the performance of this Agreement.

24. Certifications and Compliance

a. Federal, State and Municipal Requirements

Recipient must obtain any required permits, ensure the safety and structural integrity of any repair, replacement, construction and/or alteration, and shall comply with all applicable federal, State, and municipal laws, rules, codes, and regulations for work performed under this Agreement.

b. State Nondiscrimination Statement of Compliance

During the performance of this Agreement, PG&E shall 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, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. PG&E shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. PG&E shall comply with the provisions of the Fair Employment and Housing Act (Government Code Sections 12990 et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285.0 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 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. PG&E shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement. PG&E shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

c. State Drug-Free Workplace Certification

By signing this Agreement, PG&E hereby certifies under penalty of perjury under the laws of the State of California that PG&E 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;
- 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;
- 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 PG&E may be ineligible for any future State awards if the Commission determines that any of the following has occurred: (1) PG&E has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above.

d. Americans with Disabilities Act

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

25. Additional Requirements for Federally- Funded Grants

a. Site Visits

The California Energy Commission, the federal awarding agency, and/or their designees have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. PG&E must provide and must require sub-awardees to provide reasonable facilities and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

b. Notice Regarding the Purchase of American-Made Equipment and Products– Sense of Congress

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

c. Nondiscrimination Clause

This award is subject to the provisions of 10 CFR Part 1040.1 *et seq.* PG&E will complete and certify by signature on the DOE Form 1600.5, U.S. DOE “Assurance of Compliance, Nondiscrimination in Federally Assisted Programs” (Exhibit C, Attachment C-1) its commitment to comply with this law and return to the Commission Grants and Loans Officer.

d. Certifications Regarding Lobbying and Debarment, Suspension and Other Responsibility Matters

This award is subject to the provisions of 10 CFR Part 601, 2 CFR Part 180, 2 CFR Part 901, and 10 CFR Part 607. PG&E will complete and certify by signature on the attached Form “Certifications Regarding Lobbying and Debarment, Suspension and Other Responsibility Matters” (Exhibit C, Attachment C-2) its commitment to comply with these requirements and return to the Commission Grants and Loans Officer.

e. Lobbying Restrictions

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

PG&E shall disclose lobbying activities by completing and signing the “Disclosure of Lobbying Activities” (Exhibit C, Attachment C-3) and returning it to the Commission Grants and Loans Officer.

f. National Policy Assurances

PG&E agrees to adhere to and include in all sub-awards the requirements set forth in the attached “National Policy Assurances” (Exhibit C, Attachment C-4 of this Agreement). Terms are self-deleting to the extent they do not apply to a particular type of activity or award.

g. Federal Intellectual Property Provisions and Contact Information

(1) In addition to the “License” provisions in Section 16 of this Agreement, PG&E must conform to “Federal Intellectual Property Provisions” (Exhibit C Attachment C-5) included in this Agreement. A list of all intellectual property provisions may be found at http://www.gc.doe.gov/financial_assistance_awards.htm.

(2) Questions regarding intellectual property matters should be referred to the DOE Award Administrator and the Patent Counsel designated as the service provider for the DOE office that issued the award. The IP Service Providers List is found at [http://www.gc.doe.gov/documents/Intellectual_Property_\(IP\)_Service_Providers_for_Acquisition.pdf](http://www.gc.doe.gov/documents/Intellectual_Property_(IP)_Service_Providers_for_Acquisition.pdf)

h. Decontamination and/or Decommissioning (D &D) Costs

Notwithstanding any other provisions of this Agreement, the Government shall not be responsible for or have any obligation to PG&E for (i) Decontamination and/or Decommissioning (D&D) of

any of PG&E's or its sub-contractors' facilities, or (ii) any costs which may be incurred by PG&E in connection with the D&D of any of its facilities due to the performance of the work under this Agreement, whether said work was performed prior to or subsequent to the effective date of this Agreement.

I. Resolution of Conflicting Terms

Any apparent inconsistency between federal and state statutes and regulations and the terms and conditions contained in this award must be referred to the Commission Project Manager or the Commission Grants and Loans Officer for guidance.

o. Specific Requirement to Submit Waste Management Plan

Prior to the proposed project activities generating any waste, the Recipient is required to submit a copy of the Recipient's Waste Management Plan to the Commission Project Manager. This Waste Management Plan will describe the Recipient's plan to dispose of any sanitary or hazardous waste generated by the proposed project activities. Sanitary and hazardous waste includes, but is not limited to, construction and demolition debris, old light bulbs, fluorescent ballasts and lamps, piping, roofing material, discarded equipment, debris, and asbestos. The Recipient's Waste Management Plan must comply with all federal, state, and local laws and regulations governing waste disposal.

q. Cash Management Improvement Act

In accordance with 31 United States Code (U.S.C.) Sections 3335, 6501, and 6503 (the Cash Management Improvement Act, or CMIA) and implementing regulations at 31 CFR Part 205, the Recipient shall minimize the time elapsing between the drawdown of funds from the Energy Commission and the disbursement of funds. The Recipient shall request reimbursement to occur as close as possible to the disbursement. The Recipient agrees that it has reviewed the applicable CMIA rules and regulations, and will follow their requirements in handling funds received pursuant to this Agreement. The Recipient also agrees that it will provide written notification to each of its sub-awardees or vendors, if any, of the CMIA and the need for each sub-awardees or vendor to comply with all applicable CMIA provisions and regulations.

26. Special Provisions Relating to Work Funded Under the American Recovery and Reinvestment Act of 2009

a. ARRA-Funded Project

Funding for this award is from the American Recovery and Reinvestment Act (ARRA) of 2009, Pub. L. 111-5. Funding for this award is authorized by the Energy Efficiency and Conservation Block Grant Program, Federal Grant Number DE-EE0000013, CFDA Number 81.128. The federal grant term expires on September 13, 2012. All recipients and sub-awardees/vendors are subject to audit by appropriate federal or State entities. The State has the right to cancel, terminate, or suspend this Agreement if PG&E or its sub-contractors fail to comply

d. Segregation of Costs and Records

PG&E and its sub-contractors must segregate the obligations and expenditures related to funding under ARRA. Financial and accounting systems should be revised as necessary to segregate, track, and maintain these funds apart and separate from other revenue streams. No part of the funds from ARRA shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for ARRA projects. Pursuant to 10 CFR Section 600.242 (incorporated by reference herein), records must be maintained for three (3) years after the Commission grant term or federal grant term, whichever is later, unless the Commission or Federal Government requests a longer retention period.

PG&E will keep separate records for ARRA funds to ensure those records comply with the requirements of ARRA. If this grant is split-funded with non-ARRA funds, PG&E will track and report the ARRA funds separately to meet the reporting requirements of ARRA and related guidance.

e. Prohibition on Use of ARRA Funds

PG&E agrees that, in accordance with ARRA, Section 1604, that none of the funds provided under this Agreement derived from ARRA may be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

f. Access to Records

In accordance with ARRA Sections 902, 1514, and 1515, PG&E 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 of PG&E's or any of its subcontractors that directly pertain to, and involve transactions relating to, this Agreement; and (2) interview any officer or employee of PG&E or any of its sub-contractors regarding the activities funded with funds appropriated or otherwise made available by ARRA. PG&E shall include this provision in all of its agreements with its sub-awardees/vendors from whom it acquires goods or services in its execution of the ARRA-funded work.

h. Protecting State and Local Government and Contractor Whistleblowers

PG&E agrees that both it and its sub-contractors shall comply with Section 1553 of ARRA, which prohibits all non-federal contractors, including the State, and all contractors of the State, from discharging, demoting or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of: (1) gross mismanagement of a contract relating to ARRA funds; (2) a gross waste of ARRA funds; (3) a substantial and specific danger to public health or safety related to the implementation or use of ARRA funds; (4) an abuse of authority related to implementation or use of ARRA funds; or (5) a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) awarded or issued relating to ARRA funds. PG&E agrees that it and its sub-contractors shall post notice of the rights and remedies available to employees under Section 1553 of Title XV of Division A of the ARRA.

The requirements of Section 1553 of the ARRA are summarized below.
They include, but are not limited to:



Prohibition on Reprisals: An employee of any non-federal employer receiving covered funds under ARRA may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a federal agency, or their representatives, information that the employee believes is evidence of:

- Gross mismanagement of an agency contract or grant relating to covered funds;
- A gross waste of covered funds;
- A substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- An abuse of authority related to the implementation or use of covered funds; or
- A violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

Agency Action: Not later than 30 days after receiving an inspector general report of an alleged reprisal, the head of the agency shall determine whether there is sufficient basis to conclude that the non-federal employer has subjected the employee to a prohibited reprisal. The agency shall either issue an order denying relief in whole or in part or shall take one or more of the following actions:

- Order the employer to take affirmative action to abate the reprisal.
- Order the employer to reinstate the person to the position that the person held before the reprisal, together with compensation including back pay, compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.
- Order the employer to pay the employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the employee for or in connection with, bringing the complaint regarding the reprisal, as determined by the head of a court of competent jurisdiction.

Non-enforceability of Certain Provisions Waiving Rights and Remedies or Requiring Arbitration: Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any pre-dispute arbitration agreement. No pre-dispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

Requirement to Post Notice of Rights and Remedies: Any employer receiving covered funds under ARRA shall post notice of the rights and remedies as required therein. (Refer to Section 1553 of ARRA located at www.recovery.gov, for specific requirements of this section and prescribed language for the notices.)

i. Information in Support of ARRA Reporting

PG&E will be required to submit backup documentation for expenditures of funds under ARRA including such items as timecards and invoices. See Section 18, "Payment of Funds", for more details on invoicing. In addition to the invoicing requirements, PG&E shall provide copies of backup documentation at the request of the U.S. Department of Energy's (DOE's) Contracting Officer or designee, or the Energy Commission's Contract Manager or designee.

j. False Claims Act

PG&E agrees that it shall promptly notify the State and shall refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, sub-awardees/vendor or other person has committed a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving ARRA funds.

l. Reporting and Registration Requirements under Section 1512 of ARRA

(1) This award requires the Recipient to complete projects or activities which are funded under ARRA and to report on use of ARRA funds provided through this award. Information from these reports will be made available to the public.

(2) The reports are due in accordance with Section 7, "Reports", of this Agreement in addition to this section.

(3) Progress reports are due monthly by the third of the following month. For example, the January progress report is due by February 3.

(4) PG&E must maintain current registration in the CCR (<http://www.ccr.gov>) at all times during which it has an active federal award funded with ARRA funds. A DUNS Number (<http://www.dnb.com>) is one of the requirements for registration in the CCR.

(5) The Recipient shall report the information described in Section 1512(c) of ARRA and other information reasonably requested by the State or required by the Federal Government or by the State to meet their obligation to provide accurate, complete, and timely information to the public; to meet the federal program reporting requirements; and/or to comply with State or federal law or regulation. Standard data elements and federal instructions for use in complying with reporting requirements under Section 1512 of ARRA are provided online at www.FederalReporting.gov.

(6) The Recipient shall submit reports to the Commission's Project Manager in a format determined by the Commission. The Recipient must NOT register at [FederalReporting.gov](http://www.FederalReporting.gov).

(7) PG&E will provide information including, but not limited to, the following:

(a) ARRA Section 1512 Report

- Direct jobs created (i.e., new positions created and filled or unfilled positions that are filled) and jobs retained (i.e., previously existing filled positions that are retained as a result of ARRA funds). Only include jobs that are directly funded by ARRA funds. The number shall be expressed as "full-time equivalent" (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule.



- Description of jobs created. Provide a brief description of impact on the Recipient's workforce and include the types of jobs created and retained. Include time base (full-time or part-time) and duration (1 year, 1-2 years, 2-5 years, or more than 5 years).
- Furthermore, sub-recipients will be required to calculate direct jobs created and retained by each subcontractor, including all sub-recipients and many vendors. The requirement to calculate vendor jobs does not apply to subcontracts with material suppliers or central service providers (so-called "indirect" jobs), or to jobs created by the re-spending of worker income within the local community ("induced" jobs). Job calculations will be captured on the FTE Calculator tab of the Sub-recipient 1512 reporting spreadsheet. Per the Single Audit Act Amendments of 1996, sub-recipients should be able to substantiate vendor/subcontractor job hours reported by retaining payroll and project records for a minimum of three (3) years after the final payment has been received, unless a longer period of records retention is stipulated.
- Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number.
- Central Contractor Registration (CCR) number.
- Award number.
- Name (legal name as registered in CCR or D&B).
- The Doing-Business-As (DBA) name as registered in CCR or D&B.
- Address (physical location as listed in the CCR).
- Congressional district (based on physical location address).
- Type of entity (this is the "Business Type" in the CCR).
- Amount awarded (total amount of the Commission agreement).
- Amount received (total cumulative amount of Commission agreement funds received as of the reporting period).
- Date of award (date the Commission agreement was signed).
- Award period (term of the Commission agreement).
- Place of performance (the physical location of primary place of performance, including street address, city, state, zip code+4, country, congressional district, state senate district, and state assembly district).
- Area of benefit (e.g., state, county, city, special district).
- Names and total compensation of five most highly compensated officers for the calendar year in which the agreement is awarded if, In the Recipient's preceding fiscal year, the Recipient received - 80 percent or more of its annual gross revenues from federal contracts (and subcontracts), loans, grants (and sub-grants) and cooperative agreements; and -\$25,000,000 or more in annual gross revenues from federal contracts (and subcontracts), loans, grants (and sub-grants) and cooperative agreements. The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or section 6104 of the Internal Revenue Code of 1986.
- Vendor Data Elements (purchases \$25,000 or above) DUNS or name, Zip code of Headquarters, Description of the product and/or service provided by the vendor, The amount invoiced from the vendor (aggregated) that will be paid with ARRA funds.

(b) Federal and State Program Status Report

- Comparison of the actual accomplishments with the goals and objectives established for the period and reasons why the established goals were not met.
- A discussion of what was accomplished under these goals during this reporting period, including major activities, significant results, major findings or conclusions, key



outcomes or other achievements. This section should not contain any proprietary data or other information not subject to public release. If such information is important to reporting progress, do not include the information, but include a note in the report advising the reader to contact the Principal Investigator or the Project Director for further information.

- Cost Status. Show approved budget by budget period and actual costs incurred. Separate costs by project activities, administration, and evaluation.
- Schedule Status. List milestones, anticipated completion dates, and actual completion dates.
- Any changes in approach or aims, and reasons for change.
- Actual or anticipated problems or delays, and actions taken or planned to resolve them.
- Any absence or changes of key personnel or changes in consortium/teaming arrangement.
- A description of any product produced or technology transfer activities accomplished during this reporting period, such as: Publications (list journal name, volume, issue); conference papers; or other public releases of results, Web site or other Internet sites that reflect the results of this project, Networks or collaborations fostered, Technologies/techniques, Inventions/patent applications, Other products, such as data or databases, physical collections, audio or video, software or net-ware, models, educational aid or curricula, instruments or equipment.
- Performance Metrics: Energy saved (kWh, therms, gallons, Btu, etc.), Renewable energy installed capacity and generated. GHG emissions reduced (tons) (CO₂ equivalents) (methane, carbon, sulfur dioxide, nitrogen oxide, carbon monoxide), Energy cost savings, Funds leveraged, Project type metrics. The key metrics to be reported will vary by project type. See Exhibit C, Attachment C-6, Project Type Metrics.

m. Required Use of American Iron, Steel, and Manufactured Goods (Covered Under International Agreements) — Section 1605 of ARRA

PG&E agrees that in accordance with ARRA, Section 1605, neither it nor its sub-awardees/vendors will use ARRA funds for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel and manufactured goods used in the project are produced in the United States in a manner consistent with United States obligations under international agreements. PG&E understands that this requirement may only be waived by the applicable federal agency in limited situations as set out in ARRA, Section 1605.

(1) Definitions. As used in this award term and condition—

(a) Manufactured good means a good brought to the construction site for incorporation into the building or work that has been—

- Processed into a specific form and shape; or
- Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

(b) Public building and public work means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works



may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

(c) Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(2) Domestic preference.

(a) This award term and condition implements Section 1605 of the ARRA by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraphs 2b and 2c of this section and condition.

(b) This requirement does not apply to the material listed by the Federal Government as follows:
— None.

(c) The award official may add other iron, steel, and/or manufactured goods to the list in paragraph 2b of this section and condition if the Federal Government determines that—

- The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;
- The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
- The application of the restriction of Section 1605 of the ARRA would be inconsistent with the public interest.

(3) Request for determination of inapplicability of Section 1605 of the ARRA.

(a) (i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph 2c of this section shall include adequate information for Federal Government evaluation of the request, including —

- A description of the foreign and domestic iron, steel, and/or manufactured goods;
- Unit of measure;
- Quantity;
- Cost;
- Time of delivery or availability;
- Location of the project;
- Name and address of the proposed supplier; and
- A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph 2c of this section.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph 4 of this section.

(iii) The cost of iron, steel, and/or manufactured goods material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after ARRA funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(b) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to Section 1605 of the ARRA applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is non-availability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds by at least the differential established in 2 CFR 176.110(a).

(c) Unless the Federal Government determines that an exception to Section 1605 of the ARRA applies, use of foreign iron, steel, and/or manufactured goods is non-compliant with Section 1605 of ARRA.

(4) Data. To permit evaluation of requests under paragraph 2 of this section based on unreasonable cost, the Recipient shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Items Cost Comparison

Description Unit of
Measure Quantity Cost (\$s)

Item 1:

Foreign steel, iron, or manufactured good _____

Domestic steel, iron, or manufactured good _____

Item 2:

Foreign steel, iron, or manufactured good _____

Domestic steel, iron, or manufactured good _____

[List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[*Include all delivery costs to the construction site.]

n. Wage Rate Requirements under Section 1606 of ARRA

In accordance with ARRA, Section 1606, PG&E assures that it and its sub-awardees/vendors shall fully comply with said Section and notwithstanding any other provision of law and in a manner consistent with other provisions of ARRA, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to ARRA shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the United States Secretary of Labor in accordance with Subchapter IV of Chapter 31 of Title 40, United States Code (Davis-Bacon Act). It is understood that the Secretary of Labor has the authority and

functions set forth in Reorganization Plan Numbered 14 or 1950 (64 Stat. 1267; 5 U.S.C. App.) and Section 3145 of Title 40, United States Code.

Pursuant to Reorganization Plan No.14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section.

The Recipient will complete and certify by signature on Attachment “K” of the application its commitment to comply with 29 CFR 5.5 and will return it to the Commission Grants and Loans Officer.

o. Davis-Bacon Act and Contract Work Hours and Safety Standards Act

(1) Definitions. For purposes of this section, Davis Bacon Act and Contract Work Hours and Safety Standards Act, the following definitions are applicable:

(a) Award means any grant, cooperative agreement or technology investment agreement made with Recovery Act funds by the Department of Energy (DOE) to a Recipient. Such Award must require compliance with the labor standards clauses and wage rate requirements of the Davis-Bacon Act (DBA) for work performed by all laborers and mechanics employed by Recipients (other than a unit of State or local government whose own employees perform the construction) Sub-recipients, Contractors and subcontractors.

(b) Contractor means an entity that enters into a Contract. For purposes of these clauses, Contractor shall include PG&E. “Contractor” does not mean a unit of State or local government where construction is performed by its own employees.

(c) Contract means a contract executed by a Recipient, Sub-recipient, prime contractor or any tier subcontractor for construction, alteration, or repair. It may also mean (as applicable) (i) financial assistance instruments such as grants, cooperative agreements, technology investment agreements, and loans; and, (ii) Sub awards, contracts and subcontracts issued under financial assistance agreements. “Contract” does not mean a financial assistance instrument with a unit of State or local government where construction is performed by its own employees.

(d) Contracting Officer means the DOE official authorized to execute an Award on behalf of DOE and who is responsible for the business management and non-program aspects of the financial assistance process.

(e) Recipient means any entity other than an individual that receives an Award of Federal funds in the form of a grant, cooperative agreement or technology investment agreement directly from the Federal Government and is financially accountable for the use of any DOE funds or property, and is legally responsible for carrying out the terms and conditions of the program and Award. For purposes of these clauses, Recipient shall mean the City of Lemoore.

(f) Sub-award means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a Recipient to an eligible Sub-recipient or by a Sub-recipient to a lower- tier sub-recipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include the Recipient’s

procurement of goods and services to carry out the program nor does it include any form of assistance which is excluded from the definition of "Award" above.

(g) Sub-recipient means a non-Federal entity that expends Federal funds received from a Recipient to carry out a Federal program, but does not include an individual that is a beneficiary of such a program.

(2) Davis-Bacon Act.

(A) Minimum wages. (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. The most current wage determinations of the Secretary of Labor applicable to this Agreement are posted at www.wdol.gov, and are incorporated by reference into this Agreement. The Secretary of Labor periodically updates wage rates. The Recipient, Sub-recipient, the Recipient's and Sub-recipient's contractors and sub-contractors are responsible for ensuring that the most recent wage rates are incorporated into any contract or subcontract under this Agreement. The weatherization worker wage determination published for the Weatherization Assistance Program may not be used in any contracts or subcontracts under this Agreement.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis- Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to 29 CFR Section 5.5 (a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Section 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR Section 5.5(a)(1)(ii)) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) (a) The Contracting Officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- i. The work to be performed by the classification requested is not performed by a classification in the wage determination; and



- ii. The classification is utilized in the area by the construction industry; and
- iii. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(c) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to 29 CFR Section 5.5 (a)(1)(ii)(B) or (C), shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *provided*, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(B) Withholding. The Department of Energy or the Recipient or Sub-recipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, the



Department of Energy, Recipient, or Sub-recipient, may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(C) Payrolls and basic records. (i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR Section 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii) (a) The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the Department of Energy if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit the payrolls to the Recipient or Sub-recipient (as applicable), applicant, sponsor, or owner, as the case may be, for transmission to the Department of Energy. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR Section 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/whd/forms/wh347instr.htm> or its successor site. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Department of Energy if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit them to the Recipient or Sub-recipient (as applicable), applicant, sponsor, or owner, as the case may be, for transmission to the Department of Energy, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the Recipient or Sub-recipient (as applicable), applicant, sponsor, or owner).



(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

i. That the payroll for the payroll period contains the information required to be provided under Section 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under Section 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

ii. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

iii. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by 29 CFR Section 5.5(a)(3)(ii)(B).

(d) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 3729 of title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under 29 CFR Section 5.5(a)(3)(i) available for inspection, copying, or transcription by authorized representatives of the Department of Energy or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR Section 5.12.

(D) Apprentices and trainees (i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under

the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or sub-contractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR Section 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(E) Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Contract.

(F) Contracts and Subcontracts. The Recipient, Sub-recipient, the Recipient's and Sub-recipient's contractors and subcontractor shall insert in any Contracts the clauses contained in 29 CFR

Sections 5.5(a)(1) through (10) and such other clauses as the Department of Energy may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of the paragraphs in this clause.

(G) Contract termination: debarment. A breach of the Contract clauses in 29 CFR Section 5.5 may be grounds for termination of the Contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR Section 5.12.

(H) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.

(I) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Recipient, Sub-recipient, the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(J) Certification of eligibility (i) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR Section 5.12(a)(1).

(ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR Section 5.12(a)(1).

iii. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. Section 1001.

(K) Requirement to submit copies of certified payrolls

Contractor is responsible to submit to the Energy Commission on a weekly basis from the beginning of work on the project a copy of all certified payrolls prepared in accordance with Section 26(o)(2)(c)(ii) above for all lower tier contractors.

(i) Requirement to notify the Energy Commission of any non-compliance

Contractor is responsible to notify the Energy Commission of any non-compliance with Davis-Bacon Act prevailing wage requirements by any lower tier contractors.

3) Contract Work Hours and Safety Standards Act.

As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(a) Overtime requirements. No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic

receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(b) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in 29 CFR Section 5.5(b)(1) the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in 29 CFR Section 5.5(b)(1), in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in 29 CFR Section 5.5 (b)(1).

(c) Withholding for unpaid wages and liquidated damages. The Department of Energy or the Recipient or Sub-recipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in 29 CFR Section 5.5(b)(2).

(d) Contracts and Subcontracts. The Recipient, Sub-recipient, and Recipient's and Sub-recipient's contractor or subcontractor shall insert in any Contracts, the clauses set forth in 29 CFR Sections 5.5(b)(1) through (4) and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in 29 CFR Sections 5.5(b)(1) through (4).

(e) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Energy and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

p. ARRA Transactions Listed in Schedule of Expenditures of Federal Awards

(1) To maximize the transparency and accountability of funds authorized under ARRA as required by Congress and in accordance with 2 CFR Section 215.21 "Uniform Administrative Requirements for Grants and Agreements" and OMB Circular A-102 Common Rules provisions, the Recipient agrees to maintain records that identify adequately the source and application of

ARRA funds. OMB Circular A-102 is available at
<http://www.whitehouse.gov/omb/circulars/a102/a102.html>.

(2) If the Recipient is covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," the Recipient agrees to separately identify the expenditures for federal awards under the ARRA on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. OMB Circular A-133 is available at
<http://www.whitehouse.gov/omb/circulars/a133/a133.html>. This shall be accomplished by identifying expenditures for federal awards made under the ARRA separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA-" in identifying the name of the federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

(3) The Recipient agrees to separately identify to each sub-awardees and document at the time of sub-award and at the time of disbursement of funds, the federal award number, CFDA number, and amount of ARRA funds. When the Recipient awards ARRA funds for an existing program, the information furnished to sub-awardees shall distinguish the sub-awards of incremental ARRA funds from regular sub-awards under the existing program.

(4) The Recipient agrees to require its sub-awardees to include on their SEFA information to specifically identify ARRA funding similar to the requirements for the recipient SEFA described above. This information is needed to allow the recipient to properly monitor sub-awardees expenditure of ARRA funds as well as oversight by the federal awarding agencies, Offices of Inspector General, and the Government Accountability Office.

q. Recognition of ARRA funding

Recipient shall publicly recognize ARRA as a source of funding for the project(s) funded by this Agreement. The Commission Project Manager shall provide Recipient instructions on how to publicly identify ARRA funding.

32. Separation of Duties from Monitoring, Verification and Evaluation Contractor

The Energy Commission has retained KEMA Inc. to serve as the monitoring, verification and evaluation (MV&E) contractor for all of the Energy Commission's ARRA-funded projects, including projects funded through contracts, grants or loans by the EECBG Program, the State Energy Program, the State Energy Efficient Appliance Rebate Program, and the Energy Assurance Planning Program. In order to achieve the Energy Commission's policy requiring a separation of duties between the MV&E contractor and any projects that it evaluates, PG&E is prohibited from including KEMA Inc. or a related company known as KEMA Services Inc. as a participant in this Project, where KEMA Inc. or KEMA Services Inc. is paid either from these funds as a subcontractor or other lower-tier contractor or from other funds which PG&E has included as cost share to achieve the objectives of this Agreement.