

Addendum #1
BSUSD PV System Bid Period RFI's with District Response
3/6/2020

1. Please confirm that the AC rating for the PV system in the RFP is based on CEC AC rating.
 - a. Yes, the AC rating for the PV System is based on CEC AC rating.
2. Will the new transformer at the Elementary School be provided by the bidder or the district?
 - a. The new transformer at the Elementary School will be provided by the bidder.
3. Is the fire hydrant/line in the Elementary School PV area active? Pictured below:



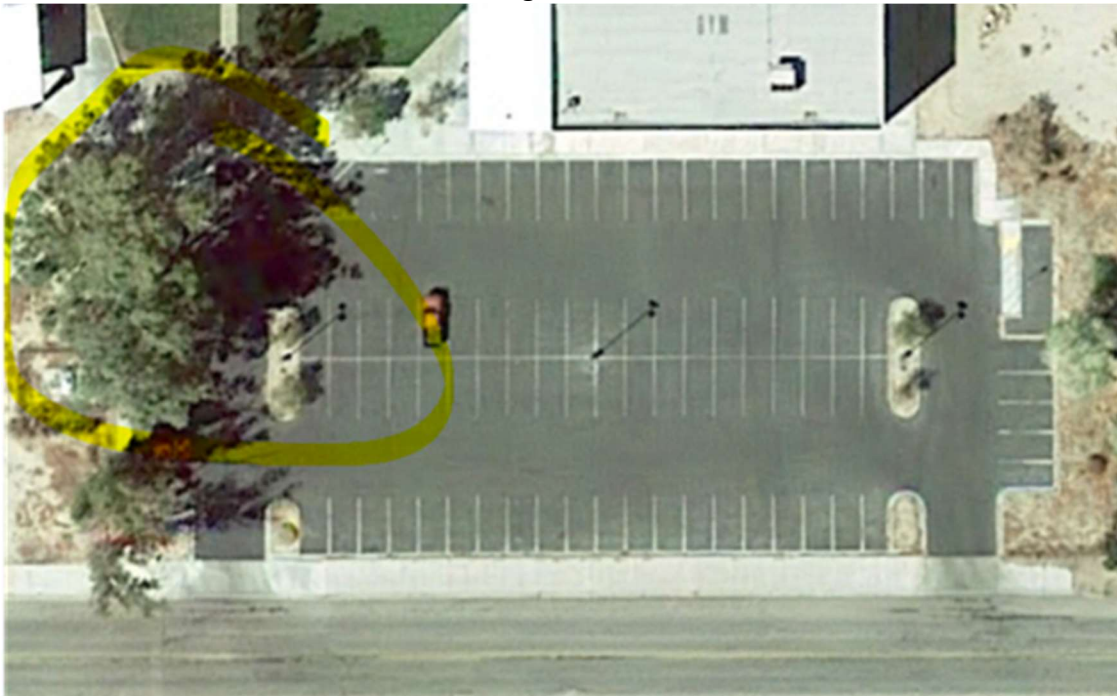
- a. Assume that the fire hydrant/line is active.
4. The general terms and conditions state liquidated damages for delays but do not give an amount. Can you provide the per day amount?
 - a. The final LD's amount shall be subject to negotiation with the selected proposer and memorialized in the final contract based on the proposals and the proposed energy output/savings to be generated. If the proposer's have any specific

requirements, proposed maximums for LD's they may include them in their proposal.

5. Can you provide a copy of the contract agreement?

- a. A draft form of energy services/design-build agreement template is attached to this addendum. This is the form of agreement that the District will require all proposers to execute. Proposers may include any exception/clarifications to the standard form of agreement in their proposals and such requests will be subject to review and negotiation with the selected proposer. However, proposers are advised that the District will not consider substantive amendments to any standard public works requirements and/or design-build risk transfer provision (i.e. limitations of liability will not be accepted).

6. Please confirm the below highlighted trees will be removed by the district at the High School and Middle School Parking lots.





- a. Yes, the highlighted trees will be removed by the District.
- 7. What is the rating of the distribution section in the main switchboard?
 - a. The rating of the distribution section in the HS/MS main switchboard is 1600 amps.
- 8. Is there space available for an additional circuit breaker(s)?
 - a. That determination is up to the bidding contractor.

ENERGY SERVICES AGREEMENT COVER SHEETS

This Energy Service Agreement (“**Agreement**”) is entered into by and between the following parties:

Contractor

Attn: **contact**

Address

Address |

Phone No.: | |

Email Address: | |

BORREGO SPRINGS UNIFIED SCHOOL
DISTRICT (“**District**” or “**Owner**”)

Attn: _____

2281 Diegueno Rd.

Borrego Springs, California 92004

Phone No.: 760-767-5357

Email Address: _____

<p>A. The “Contract Effective Date” shall be <i>(state date on which the Agreement shall become effective)</i>:</p> <p>Month Date, Year </p>	<p>B. The “Final Project Completion Date” or “Completion Date” shall be <i>(state date on which the Project must be 100% completed)</i>:</p> <p>Month Date, Year </p>
<p>C. “Required License” (see Energy Services Agreement, § 1): In accordance with Public Contract Code section 3300, Contractor shall have, beginning on the RFP Response Deadline and throughout the Contract Term, the following license classification issued by the California Contractors State License Board <i>(state license classification(s))</i>: B and C-10</p>	
<p>D. “Contract Sum” to be paid to Contractor (see Energy Services Agreement, § 3):</p> <p>Total amount to be paid to Contractor </p> <p>Per documents in Attachment C and E - Contract Sum is based on the delivery of Solar Energy Generating Facilities (“SEGF”) providing <KW> kW-DC-STC of peak power. The Estimated Annual Energy Production of the SEGF during the first year of operation is <KWH> kWh-AC-yr1. The resulting Sites Contract Sum ratios (“Price Ratios”) are: \$<COST> \$/W-DC-STC and \$<COST> \$/kWh-AC-yr1. The “Performance Ratio” is: <RATIO> kWh-AC/kW-DC-STC.</p>	<p>E. Inspection Distance Limitation (see General Conditions, § 4.3):</p> <p>50 mile radius of the Project Site on which testing or inspection is required </p>
<p>F. “LD Rate” (see Energy Services Agreement, § 2):</p> <p>\$0.____ per un-commissioned kW_{STC} per calendar day per Site </p>	
<p>G. Contractor Required Insurance (see Energy Services Agreement, § 10, General Conditions, Art. 10) <i>(mark each required from Contractor)</i>:</p> <p><input checked="" type="checkbox"/> 1. Commercial general liability, with additional insured endorsement and minimum limits of \$2,000,000 per occurrence/\$4, 000,000 aggregate</p> <p><input checked="" type="checkbox"/> 2. Commercial automobile liability, with minimum limits of \$1,000,000 combined single limit</p> <p><input checked="" type="checkbox"/> 3. Statutory workers’ compensation as required by State law and employers’ liability of at least \$1,000,000</p> <p><input checked="" type="checkbox"/> 4. Professional liability, with minimum limits of \$1,000,000 per occurrence</p> <p><input checked="" type="checkbox"/> 5. Builder’s risk/course-of-construction: Contractor to provide</p>	
<p>H. “Project Sites” or “Sites”:</p> <p>As shown on Attachment C – Site Assessment Table, Preliminary Array Layouts, Single Line Diagrams</p>	

This Agreement incorporates all recitals, cover pages and Attachments, including but not limited to:

Cover Page & Agreement
Attachment A – General Terms and Conditions
Attachment B – Scope of Project
Attachment C – Site Assessment Table, Preliminary Array Layouts, Single Line Diagrams
Attachment D – Final Project Schedule
Attachment E – Cost Breakdown Table and Progress Payment Schedule
Attachment F – Relevant Contact List
Attachment G – Commissioning Schedule
Attachment H – Manufacturer’s Warranties
Attachment J – Payment Bond
Attachment K – Performance Bond
Attachment L – Fingerprinting and Criminal Background Check Certification
Attachment M – Escrow Agreement for Security Deposit In Lieu of Retention
Attachment N – Waiver and Release Forms
Attachment O – Certification Regarding Claim
Attachment P – Subcontractor List – Required at least 15 working days prior to start of on-site work.
Attachment Q – Contractor’s Performance Guarantee Agreement
Attachment R – Contractor’s Operations and Maintenance Agreement

In consideration of the covenants, conditions, and stipulations set forth in this Agreement and for good and valuable consideration, the Parties, intending to be legally bound, agree as set forth in, and execute, this Agreement. Each person executing this Agreement on behalf of a Party represents that he or she is authorized to execute on behalf of, and to commit and bind, the Party to this Agreement.

CONTRACTOR

OWNER

By: _____
Print Name: | |
Title: | |

By: _____
[Insert Name]
[Insert Title]
Borrego Springs Unified School District

AGREEMENT

This Energy Services Agreement for the engineering, system design, fabrication and installation of photovoltaic solar systems ("Agreement") is by and between the Borrego Springs Unified School District, a school district organized and existing under the laws of the State of California (hereinafter referred to as "Owner"), and [*Contractor Name and legal entity designation (e.g., California corporation)*] and contractor licensed by the State of California ("Contractor").

RECITALS:

WHEREAS, Government Code sections 4217.10, *et seq.*, authorize the Owner, as a public agency, to enter into an energy services agreement wherein the Contractor provides conservation services to the Owner from an energy conservation facility on terms that its governing body determines are in the best interest of the Owner;

WHEREAS, pursuant to Government Code section 4217.11(d), "conservation services" include electrical, thermal, or other energy savings resulting from conservation measures, which shall be treated as a supply of such energy;

WHEREAS, through this Agreement, the Owner intends to contract for the engineering, system design, fabrication and installation of photovoltaic solar systems that will result in energy savings to the Owner and which shall be a supply of energy to the Owner (the "Project") at the sites as set forth in Section H of the Cover Page of this Agreement (the "Project Sites" or "Sites", and each individually a "Site"), consistent with the terms of Government Code section 4217.10, *et seq.*;

WHEREAS, the Owner's Governing Board, after holding a hearing at a regularly scheduled public hearing and after having provided two weeks advanced notice of such hearing, made all findings required by Government Code section 4217.12 for the Owner to enter into this Agreement;

WHEREAS, the Contractor shall engineer, design, and construct the Project pursuant to this Agreement, including but not limited to certain General Terms and Conditions ("General Conditions"; see Attachment A) and other Contract Documents (as that term is defined in the General Conditions), which Contract Documents are incorporated into the Agreement by this reference;

NOW, THEREFORE, in consideration of the covenants hereinafter contained in this Agreement, the Owner and Contractor agree as follows:

1. Scope of Work; Subcontractors. The Contractor agrees to furnish all engineering, system designs, labor, equipment and materials, including tools, implements, and appliances required, and to perform all the work in a good and workmanlike manner, free from any and all liens and claims from mechanics, material suppliers, subcontractors, artisans, machinists, teamsters, freight carriers, and laborers required for the Project as defined by the Contract Documents, all in strict compliance with the objectives, descriptions and specifications of Owner, and the Contract Documents relating thereto. The scope of Contractor's Work and the Project is more fully and specifically defined in Attachment B, hereto.

In addition to Contractor assuring that all engineering work is done by properly licensed individuals, in accordance with Section 3300 of the Public Contract Code, Contractor shall hold and maintain Class B and C-10 licenses in good standing for the duration of Contractor's work on the Project (the "Required License").

2. Time to Complete and Liquidated Damages. Time is of the essence in this Agreement, and, subject to the terms of the Contract Documents, the date for completion of the Project shall be the date listed in Section B on the Cover Page, and the date for the completion of each site shall be as set forth in the Final Project Schedule (Attachment D). Failure to complete the Work by such dates and in the manner provided for by the Contract Documents shall subject the Contractor to liquidated damages. The actual occurrence of damages and the actual amount of the damages which the Owner would suffer if the Work were not completed within the specified times set forth are dependent upon many circumstances and conditions which could prevail in various combinations and it is impracticable and extremely difficult to fix the actual damages. Damages that the Owner would suffer in the event of delay include, but are not limited to, loss of the use of the Project and each individual Site, and the energy savings afforded by the Project and each individual Site, disruption of activities, costs of administration, supervision and the loss suffered by the public. Accordingly, the parties agree that the following dollar figures shall be the amount of damages which the Owner shall directly incur upon failure of the Contractor to complete the Work within the time specified: **\$0. __ per Kw [Alternatively Flat Dollar Amount]**, for each calendar day by which the Work, or portion thereof, is delayed beyond the applicable Final Site Completion Date or Completion Date specified (the "LD Rate"). The LD calculation shall be made by taking the total nameplate capacity for each Site that is not Commissioned by the Final Site Completion Date as set forth in the Final Project Schedule (Attachment D) and multiplying by the LD Rate above. For the avoidance of doubt, if Contractor fails to complete the Work at more than one Site within the time set forth above, Owner may assess liquidated damages cumulatively, taking into account all Sites at which Work has not been timely completed, but in no case shall liquidated damages assessed with respect to one Site be greater than the amount that is **\$0. __ per kW** required by the Contract Documents to be installed at that Site multiplied by the number of calendar days by which completion of the Work at that Site is delayed beyond the applicable Completion Date.

If the Contractor becomes liable under this Section or Section 2.1 – Time of Use Damages, the Owner, in addition to all other remedies provided by law, shall have the right to withhold any and all retained percentages of payments, and to collect the interest thereon, which would otherwise be or become due the Contractor until the liability of the Contractor under this Section has been finally determined. If the retained percentage is not sufficient to discharge all liabilities of the Contractor incurred under this Section, the Contractor and its sureties shall continue to remain liable to the Owner for such liabilities until all such liabilities are satisfied in full.

If the Owner accepts any work or makes any payment under this Agreement after a default by reason of delays, the payment or payments shall in no respect constitute a waiver or modification of any Agreement provisions regarding time of completion and liquidated damages.

2.1 Special Time of Use Damages. In the event the Work is not completed prior to the next anticipated change in the "Time of Use" ("TOU") rate, currently anticipated to be ****INSERT DATE****, then the Contractor acknowledges that the Owner, in addition to any other damages, will also incur substantial TOU damages due to the significant change in TOU rates. Accordingly, in addition to any other damages due to the Owner, the Contractor shall also pay the Owner special TOU damages ("TOU Damages") for any unexcused failure to complete the Work prior to the next change in the TOU rate. The TOU Damages shall be calculated by taking the net savings lost under the new TOU rate (4pm-9pm peak rates) versus grandfathered TOU (11-6 peak rates) for the next ten years. The TOU Damages shall be secured by the Contractor through a bond or letter of credit in the favor of the Owner in a form subject to the review and approval of the Owner and provided to the Owner at the time of execution of this Agreement.

3 Contract Sum. As full and complete payment for the Project and Contractor's other obligations under the Contract Documents, Owner shall pay to Contractor in the manner specified in this Section, and Contractor shall accept as payment in full by Owner for the delivery of the Project and its other obligations under the Contract Documents, the contract sum stated in Section D on the Cover Page and as may be adjusted in accordance with the provisions of this Agreement (the "Contract Sum").

a. Contractor may submit a Change Order Request seeking an amendment to the Contract Sum to account for increases in the cost of Contractor's obligations and / or increases in time required for performance of such obligations, where such changes are the result of written direction by the Owner or other unforeseen circumstances which the Contractor could not have reasonably foreseen or mitigated against exercising its required standard of care. Change Orders may be approved by the Owner, in its sole discretion, in order to maintain or improve the Price and Performance Ratios. Contractor shall document, to the Owner's reasonable satisfaction, the changes in the Estimated Annual Energy Production or Price and Performance Ratios, as well as the circumstances and / or supporting documents establishing that a Change Order is necessary and satisfies the requirements of this Section. If a Change Order is disputed, the Parties shall meet and confer and may negotiate reasonable adjustments to the Contract Sum for that Project Site.

"Estimated Annual Energy Production" shall mean Contractor's estimated number of kWh that the Solar Energy Generating Facilities ("SEGF") shall produce in the first year following the Final Project Completion Date based on performance modeling using industry standard tools and assumptions (see Section D on the Cover Page). "Price and Performance Ratios" shall mean those ratios set forth in Section D on the Cover Page of this Agreement, which establish the baseline for comparisons of the SEGF to other projects and provide a means of determining whether changes to the Contract Sum are warranted based on the impact of approved Change Orders on the Project's internal rate of return.

Based upon the services Contractor will have provided in preparing its response to Owner's request for proposals for the Work, and Contractor's duties and responsibilities regarding the engineering and design of the Project, Contractor and Owner intend and expect that Contractor will not submit any change order requests during the construction of the Project based upon alleged errors or omissions in the plans, specifications, drawings, or designs for the Project – including those prepared and provided by Owner and/or Owner's consultants. Rather, the parties intend and expect that change order requests will only be submitted for Owner-requested changes in the scope of work of the Project, or for changes in the work of the Project due to unforeseen conditions of the site, all in accordance with this Agreement and the Contract Documents of the Project.

Notwithstanding any other provision of this Agreement or the Contract Documents, in the event a change order is caused by, or necessitated as a result of negligent or wrongful acts or omissions on the part Contractor, or as a result of any errors or omissions in the plans, specifications, drawings, or designs for the Project – including those prepared and provided by Owner and/or Owner's consultants, or the Owner otherwise incurs costs or damages as a result of negligent or wrongful acts or omissions on the part Contractor, or as a result of any errors or omissions in the plans, specifications, drawings, or designs for the Project, the Contractor shall be responsible for the cost of the following:

a. The costs of all engineering, design, labor, and materials necessary to fully correct the negligent or wrongful acts or omissions on the part Contractor, or the error or omission in the plans, specifications, drawings, or designs for the Project;

b. Any other costs or damages which the Owner incurs as a result of negligent or wrongful acts or omissions on the part Contractor, or of errors or omissions in the plans, specifications, drawings, or designs for the Project, including but not limited to any delay damages the Owner incurs; and

c. The costs of any third-party engineer, contractor or consulting that the Owner, in the Owner's sole discretion, must retain or consult with to ensure the proper rectification of negligent or wrongful acts or omissions on the part Contractor, or of errors or omissions in the plans, specifications, drawings, or designs for the Project.

The Owner may backcharge, and withhold payment from, the Contractor for these costs and damages, and may seek reimbursement for any amount which exceeds any retention of the contract amount at the time of collection. When Owner so backcharges and withholds, upon Contractor's request Owner and Contractor shall meet and confer in good faith in an effort to reach agreement on (a) whether a negligent or wrongful act or omission occurred or whether there was an error or omission in the plans, specifications, drawings, or designs for the Project, (b) whether it caused the change order expense, (c) what damages have been incurred by Owner, and (d) what portion of the damages are attributable to Contractor as described above. If Owner and Contractor do not reach agreement on all four of these items when meeting and conferring, then either Owner or Contractor can initiate a court action to resolve the dispute, subject to the claims provisions of this Agreement.

4. Other Payment Terms. Except as otherwise provided in the General Conditions and this Agreement, the Contractor shall assume the risk of all costs in excess of the Contract Sum in the performance of such work and shall not be entitled to additional payments because of such excess costs. Should the Contractor believe that it is entitled to additional compensation, whether money or time, it must request such compensation pursuant to the procedures in the General Conditions for change orders and claims.

Contractor shall finance the cost of construction of the Project, which costs shall not exceed the Contract Sum, except as otherwise provided in the Contract Documents. The Owner shall pay Contractor progress payments pursuant to the following terms and conditions.

a. For services satisfactorily performed and after receipt of properly documented and submitted applications for payment, the Owner shall pay Contractor progress payments ("Progress Payments" and each individually a "Progress Payment") in accordance with the terms of the Contract Documents at the office of Contractor or to such other person or at such other place as Contractor may from time to time designate in writing. The total Progress Payments made shall not exceed the amount of the Contract Sum. Each month, Contractor shall provide Owner with an itemized summary reflecting the percentage of work performed and signed off on by the Owner's Inspector of Record or other designated employee. The Progress Payments shall be commensurate with the amount of work performed to date, all in accordance with the procedures set forth in the General Conditions. Additional terms regarding Progress Payments are set forth in the General Conditions.

b. In accordance with the General Conditions, the Owner shall, at Contractor's discretion, either retain an amount equal to 5% of each Progress Payment, or, in lieu of said retention, offer to enter into an Escrow Agreement for Security Deposits in Lieu of Retention ("Escrow Agreement") with Contractor, in form attached as Attachment M, as set forth in California Public Contract Code section 22300. Release of the retention or funds deposited with Escrow Agent ("Escrow Funds") pursuant to an Escrow Agreement between the parties, and the final Progress Payment shall be made in the manner described in the General Conditions.

c. The obligation of the Owner to pay Progress Payments hereunder shall constitute a current expense of the Owner and shall not in any way be construed to be a debt of the Owner in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the Owner, nor shall anything contained herein constitute a pledge of the general tax revenues, funds, or moneys of the Owner.

Retention or release of the Progress Payments shall be in accordance with the General Conditions.

5. Changes. Changes in this Agreement or in the Scope of Work to be done under this Agreement shall be made only as provided in the General Conditions.

6. Term and Termination. The term of this Agreement begins on the date that is indicated on the cover of this Agreement and, unless otherwise terminated in accordance with this Agreement, shall terminate upon the satisfaction of the conditions set forth in Section 13. All of the covenants, representations and warranties set forth in the Contract Documents, including indemnification obligations, that are intended to bind the parties after the completion of the Project or termination of the Contract Documents will survive such completion or termination for the periods provided for in the Contract Documents or otherwise allowed by law. The Owner or Contractor may terminate the Contract Documents only as provided in the Agreement.

7. Prevailing Wages. Pursuant to the provisions of Section 1770 *et seq.* of the Labor Code of the State of California, which are hereby incorporated by reference and made a part hereof, the Director of Industrial Relations has determined the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which the work is to be performed, for each craft, classification or type of worker needed to execute this Agreement. Per diem wages shall be deemed to include employer payments for health and welfare, pension, vacation, apprenticeship or other training programs, and similar purposes. Copies of the rates are on file at the Owner's principal office. The rate of prevailing wage for any craft, classification or type of workmanship to be employed on this Project is the rate established by the applicable collective bargaining agreement which rate so provided is hereby adopted by reference and shall be effective for the life of this Agreement or until the Director of the Department of Industrial Relations determines that another rate be adopted. It shall be mandatory upon the Contractor and on any subcontractor to pay not less than the said specified rates to all workers employed in the execution of this Agreement.

The Contractor and any subcontractor under the Contractor as a penalty to the Owner shall forfeit not more than Two Hundred Dollars (\$200.00) for each calendar day or portion thereof for each worker paid less than the stipulated prevailing rates for such work or craft in which such worker is employed. The difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Contractor.

The Contractor and each Subcontractor shall keep or cause to be kept an accurate record for work on this Project showing the names, addresses, social security numbers, work classification, straight time and overtime hours worked and occupations of all laborers, workers and mechanics employed by them in connection with the performance of this Agreement or any subcontract thereunder, and showing also the actual per diem wage paid to each of such workers, which records shall be open at all reasonable hours to inspection by the Owner, its officers and agents and to the representatives of the Division of Labor Law Enforcement of the State Department of Industrial Relations.

This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations in accordance with the provisions of Sections 1725.5, 1771.1, 1771.3, 1771.4, 1771.5, and 1771.7 of the Labor Code. This requirement applies regardless of whether the Project will use State funds. Pursuant to Labor Code section 1771.1, a contractor or subcontractor shall not be qualified to bid on, be listed in a proposal (subject to the requirements of Section 4104 of the Public Contract Code), or engage in the performance of any contract for public work, as defined by Division 2, Part 7, Chapter 1 (§§1720 *et seq.*) of the Labor Code, unless currently registered and qualified to perform public work pursuant to Section 1725.5 of the Labor Code. The Contractor shall keep records of the such registration by subcontractors of all tiers and shall provide such documentation to Owner upon request. Contractor shall post all required job site notices pursuant to the Labor Code and related regulations. Contractor shall submit records, including those specified in Labor Code section 1776, to the Labor Commissioner as required by Sections 1771.4(a)(3), 1771.4(c)(2), and 1776 of the Labor Code. Owner may withhold \$100 for each calendar day after ten days from Contractor's receipt of a request to produce payroll records (as described in Labor Code §1776(a)) that Contractor fails to produce such records.

8. Working Hours. In accordance with the provisions of Sections 1810 to 1815, inclusive, of the Labor Code of the State of California, which are hereby incorporated and made a part hereof, the time of service of any worker employed by the Contractor or a Subcontractor doing or contracting to do any part of the Work contemplated by this Agreement is limited and restricted to 8 hours during any one calendar day and 40 hours during any one calendar week, provided, that work may be performed by such employee in excess of said 8 hours per day or 40 hours per week provided that compensation for all hours worked in excess of 8 hours per day, and 40 hours per week, is paid at a rate not less than 1½ times the basic rate of pay. The Contractor and every Subcontractor shall keep an accurate record showing the name of and the actual hours worked each calendar day and each calendar week by each worker employed by them in connection with the Work. The Contractor and every Subcontractor shall keep the records open at all reasonable hours to inspection by representatives of the Owner and the Division of Labor Law Enforcement. The Contractor shall as a penalty to the Owner forfeit \$25.00 for each worker employed in the execution of this Agreement by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than 8 hours in any one calendar day, and 40 hours in any one calendar week, except as herein provided.

9. Apprentices. The Contractor agrees to comply with Chapter 1, Part 7, Division 2, Sections 1777.5 and 1777.6 of the California Labor Code, which are hereby incorporated and made a part hereof. These sections require that contractors and subcontractors employ apprentices in apprenticeable occupations in a ratio of not less than 1 hour of apprentice's work for each 5 hours of work performed by a journeyman (unless an exemption is granted in accordance with Section 1777.5) and that contractors and subcontractors shall not discriminate among otherwise qualified employees as indentured apprentices on any public works solely on the ground of sex, race, religious creed, national origin, ancestry or color. Only apprentices as defined in Labor Code Section 3077, who are in training under apprenticeship standards and who have signed written apprentice agreements, will be employed on public works in apprenticeable occupations. The responsibility for compliance with these provisions is fixed with the Contractor for all apprenticeable occupations.

10. Indemnification, Insurance and Bonds.

a. Indemnification. Contractor shall make reasonable professional efforts consistent with the required standard of care, to ensure the finished project complies with all standards imposed by the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, disability access

requirements of the State Building Code and any other laws applicable to disability access. If a court, administrative agency or other trier of fact later determines that Contractor has violated any of the above-referenced laws, or Owner, because of Wrongful Acts or Omissions, has violated any of the above-referenced laws, Contractor shall remedy the violation at its own cost. Contractor shall indemnify, defend and hold the Owner harmless pursuant to this Section of this Agreement against claims brought by a party other than the Owner due to any breach of these provisions due to Contractor's negligence, recklessness or willful misconduct. In the event that the Contractor is or becomes aware of possible non-compliance with the foregoing standards, Contractor shall have a duty immediately to notify the Owner in writing of the possible non-compliance.

Contractor represents and warrants that Contractor has the legal right to license any and all copyrights, designs and other intellectual property embodied in plans, specifications, studies, drawings, estimates or other documents that Contractor or its consultants prepares or causes to be prepared pursuant to this Agreement. Contractor shall indemnify, defend and hold the Owner harmless against claims brought by a party other than the Owner pursuant to this Section for any breach of this representation due to Contractor's negligence, recklessness or willful misconduct.

The Contractor shall defend, indemnify, and hold harmless the Owner, the governing Board of the Owner, each member of the Board, and their officers, agents and employees against claims arising out of, pertaining to, or relating to negligence, recklessness or willful misconduct of the Contractor, the Contractor's officers, employees, or consultants in performing or failing to perform any work, services, or functions provided for, referred to, or in any way connected with any work, services, or functions to be performed under this Agreement, except to the extent such claims are due to the negligence or willful misconduct of the Owner or its officers, agents or employees. For purposes of this Section only, "claims" means any and all claims, demands, actions and suits brought by a party other than the Owner for any and all losses, liabilities, costs, expenses, damages and obligations, and the defense obligation shall include but not be limited to payment of the Owner's attorneys' fees, experts' fees, and litigation costs incurred in defense of a claim. This indemnification shall be in addition to the other indemnification provisions contained in the Contract Documents.

b. Public Liability and Property Damage Insurance. Prior to the commencement of services under this Agreement, the Contractor shall furnish to the Owner a certificate of insurance, Additional Insured Endorsement and Declarations Page for the period covered by this Agreement, for public liability and property damage with an insurance carrier satisfactory to the Owner, under forms satisfactory to the Owner, to protect the Contractor and Owner against loss from liability imposed for damages (1) on account of bodily or personal injuries, including death, disease and sickness, accidentally suffered or alleged to have been suffered by any person or persons that may be caused directly or indirectly by the performance of this Agreement, and (2) on account of injury to or destruction of property, including the resultant loss of use of the Project or other Owner facilities or equipment, resulting from acts of commission or omission by the Contractor, or otherwise resulting directly or indirectly from the Contractor's operations in the performance of this Agreement. The Owner shall be named as an additional insured on all such policies.

The following insurance shall be maintained by the Contractor in full force and effect during the entire period of performance of this Agreement, including any extensions, and shall be written on an "occurrence" basis: Commercial general liability insurance, excluding coverage for motor vehicles, shall be in amounts not less than Four Million Dollars (\$4,000,000) general aggregate, Four Million Dollars (\$4,000,000) personal and advertising injury aggregate, with a per occurrence limit of Two Million Dollars (\$2,000,000) (total limits required may be satisfied with an excess or umbrella policy); Automobile liability insurance

covering motor vehicles shall be in an amount not less than One Million Dollars (\$1,000,000) combined single limit.

The Contractor's insurance policies shall contain a provision for thirty (30) days written notice to the Owner of cancellation and for ten (10) days written notice to the Owner of non-payment of premium. The Contractor shall name the Owner as an additional insured on the general liability, automobile liability, and excess/umbrella policies. The Additional Insured Endorsement included on all such insurance policies shall state that coverage is afforded the additional insured with respect to claims arising out of operations performed by or on behalf of the insured. If the additional insureds have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the insurer's liability shall not be reduced by the existence of such other insurance. Contractor shall not commence work under this Agreement until all required insurance certificates, declarations pages and additional insured endorsements have been obtained and delivered in duplicate to the Owner for approval subject to the following requirements. Thereafter Contractor shall produce a certified copy of any insurance policy required under this section upon written request of the Owner.

At the time of making application for any extension of time pursuant to the Contract Documents, Contractor shall submit evidence that insurance policies will be in effect during the requested additional period of time.

If the Contractor fails to maintain such insurance, the Owner may, but shall not be required to, take out such insurance to cover any damages of the above-mentioned classes for which the Owner might be held liable on account of the Contractor's failure to pay such damages, and deduct and retain the amount of the premiums from any sums due the Contractor under this Agreement.

Nothing contained in this Agreement shall be construed as limiting, in any way, the extent to which the Contractor may be held responsible for the payment of damages resulting from the Contractor's operations. Each of Contractor's consultants shall comply with this Section, and Contractor shall include such provisions in its contracts with them.

c. Worker's Compensation Insurance. Prior to the commencement of services under this Agreement, the Contractor shall furnish to the Owner satisfactory proof that the Contractor and all engineers, experts, consultants and subcontractors the Contractor intends to employ have taken out, for the period covered by this Agreement, workers' compensation insurance with an insurance carrier satisfactory to the Owner for all persons whom they may employ in carrying out the work contemplated under this Agreement in accordance with the Workers' Compensation Laws of the State of California. If the Contractor employs any engineer, expert, consultant or subcontractor which it did not intend to employ prior to commencement of services, it must furnish such proof of workers' compensation insurance to the Owner immediately upon employment. Such insurance shall be maintained in full force and effect during the period covered by this Agreement including any extensions of time. If the Contractor is self-insured, the Contractor shall furnish a Certificate of Permission to Self-Insure and a Certificate of Self-Insurance satisfactory to the Owner.

Prior to the commencement of services under this Agreement, the Contractor shall furnish to the Owner satisfactory proof that the Contractor and all engineers, experts, consultants and subcontractors the Contractor intends to employ have taken out employer's liability insurance with an insurance carrier satisfactory to the Owner. During the course of Contractor's services, if Contractor ever intends to employ additional or different engineers, experts, consultants or subcontractors, before so employing them Contractor shall furnish such satisfactory proof of insurance to the Owner. Such insurance shall be

maintained in full force and effect during the period covered by this Agreement including any extensions of time. If the Contractor is self-insured, the Contractor shall furnish a Certificate of Permission to Self-Insure and a Certificate of Self-Insurance satisfactory to the Owner. Any such worker's compensation insurance shall include a provision that Owner will receive 30 days' notice of cancellation and 10 days' written notice of non-payment of premium.

d. Errors and Omissions Insurance. Prior to the commencement of services under this Agreement, the Contractor shall furnish to the Owner satisfactory proof that the Contractor has errors and omissions insurance on a claims made basis with limits of at least One Million Dollars (\$1,000,000) with a deductible in an amount not to exceed the sum of One Hundred Thousand Dollars (\$100,000), and Contractor will maintain such coverage for a period of five (5) years following completion of the Project.

If not covered by Contractor's coverage, each of Contractor's professional sub-consultants (including consultants of Contractor's) shall carry coverage and limits proportionate to each such sub-consultant's scope of work, and Contractor shall include such provisions in its contracts with them. If any policy carried by any of the sub-consultants offers 50% or less of the limits required of the Contractor hereunder for an analogous policy, the Contractor shall notify the Owner of the proposed coverage to be carried by such sub-contractor, and the Owner shall have the right in its reasonable discretion to approve or reject the proposed coverage in each such case.

e. Bonds. Contractor shall provide performance and payment bonds as required by the General Conditions. Notwithstanding anything to the contrary in the Contract Documents, the liability of the surety on the performance bond will continue in accordance with the terms of the bonds and applicable law. Any warranty or guarantee required of Contractor by the Contract Documents shall be included within the surety's performance bond liability, unless such warranty extends beyond the terms of the bond. The liability of the surety on the payment bond shall continue only so long as required by law. Any guarantee of performance of the system hereunder shall not be deemed to be covered by the terms of the payment bond or the performance bond.

11. Representations, Warranties and Covenants of the Owner. The Owner represents and warrants to Contractor that:

a. The Owner is a joint powers authority acting on behalf of public school Owners, duly organized and existing under the Constitution and laws of the State of California with authority to enter into this Agreement and to perform all of its obligations hereunder.

b. The Owner's governing body has duly authorized the execution and delivery of this Agreement and further represents and warrants that all requirements have been met and procedures followed to ensure its enforceability.

12. Representations and Warranties of Contractor. Contractor represents and warrants to the Owner that:

a. Contractor is duly organized, validly existing and in good standing as a contractor and licensed contractor under the laws of the State of California;

b. Contractor has full power, authority and legal right to enter into and perform its obligations under this Agreement, and the execution, delivery and performance of this Agreement have been duly

authorized by all necessary corporate actions on the part of Contractor and do not require any further approvals or consents;

c. The execution, delivery, and performance of this Agreement do not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement, or instrument to which Contractor is a party by which it or its property is bound;

d. There is no pending or, to the knowledge of Contractor, threatened action, or proceeding before any court or administrative agency that will materially adversely affect the ability of Contractor to perform its obligations under this Agreement.

13. Project Acceptance. The Owner shall acknowledge final inspection and completion of the Project by executing a Letter of Acceptance in accordance with the General Conditions.

a. The Owner shall accept completion of the Agreement and issue a Letter of Acceptance and Completion when the entire Project including Contractor's punch list(s) and Owner's final review comments shall have been completed to the satisfaction of the Owner.

b. A final walk through to determine completion of the Agreement and Owner to issue a Letter of Acceptance and Completion shall occur only upon a valid claim by Contractor that the Project is complete except for minor corrective and/or incomplete items. Any erroneous claims of completion by Contractor resulting in a premature walk through shall be at Contractor's sole cost and expense and Owner shall make adjustments to the contract price by reducing the amount thereof to pay for any costs incurred by the Owner due to the erroneous claims by the Contractor that the Project is complete. Minor corrective and/or incomplete items shall be identified in the final walk through of the Project.

14. Entire Agreement. This Agreement constitutes the entire agreement between the parties, and supersedes any prior or contemporaneous agreement between the Parties, oral or written, including the Owner's award of the Project to Contractor, unless such agreement is expressly incorporated herein. The Owner makes no representations or warranties, express or implied, not specified in the Contract Documents. The Contract Documents are intended as the complete and exclusive statement of the parties' agreement pursuant to California Code of Civil Procedure Section 1856. Notwithstanding any provision to the contrary in the General Conditions or other Contract Documents, it is understood and agreed that in the event of a conflict between term or provision of this Agreement and any other Contract Document, the terms of this Agreement shall govern.

15. Execution of Other Documents. The parties to this Agreement shall cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of the Contract Documents.

16. Execution in Counterparts. This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, or an original, with all signatures appended together, shall be deemed a fully executed Agreement.

17. Binding Effect. Contractor, by execution of this Agreement, acknowledges that Contractor has read this Agreement and the other Contract Documents, understands them, and agrees to be bound by their terms and conditions. The Contract Documents shall inure to the benefit of and shall be binding upon the Contractor and the Owner and their respective successors and assigns.

18. **Severability/Governing Law.** If a court of competent jurisdiction shall hold any provision of the Contract Documents invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision hereof. The laws of the State of California shall govern the Contract Documents and venue shall be in the appropriate Superior Court in San Diego County, California.

19. **Amendments.** The terms of the Contract Documents shall not be waived, altered, modified, supplemented, or amended in any manner whatsoever except by written agreement signed by the parties and approved or ratified by the Governing Board.

20. **Assignment of Contract.** The Contractor shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations hereunder without the prior written consent of the surety on the payment bond, the surety on the performance bond, and the Owner. Contractor's assignment or transfer of rights, burdens, duties or obligations without the above required approvals shall be void.

21. **Notices.** Any notices or filings required to be given or made under this Agreement shall be served, given, or made in writing upon the Owner or the Contractor, as the case may be, by personal delivery or registered mail (with a copy sent via email or regular mail) to the respective addresses given below, or at such address as such party may provide in writing from time to time.

If to Contractor:

Phone No.:

Email Address:

Email address:

If to Owner:

BORREGO SPRINGS UNIFIED SCHOOL DISTRICT

Attn: _____

2281 Diegueno Rd.

Borrego Springs, California 92004

Phone No.: 760-767-5357

Email Address: _____

22. **Exhibits Incorporated.** All Recitals, Exhibits and Attachments attached to this Agreement are hereby incorporated into the Agreement by this reference as if set forth in full.

23. **Headings.** The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Sections of this Agreement.

24. **Terms Not Defined.** Capitalized terms used in this Agreement that are not defined shall have the same meaning as in the General Conditions.

DRAFT

ATTACHMENT A
TO ENERGY SERVICES AGREEMENT
GENERAL TERMS AND CONDITIONS

ARTICLE 1

GENERAL CONDITIONS

1.1 BASIC DEFINITIONS

1.1.1 The Contract Documents. The Contract Documents consist of the Energy Services Agreement between Owner and Contractor (the "Agreement"), Conditions of the Agreement (General, Supplementary and other Conditions), Drawings, Specifications, addenda thereto (whether or not attached due to their size), Payment Bond, Performance Bond, required insurance certificates, additional insured endorsement and declarations page, list of accepted Subcontractors, Noncollusion Declaration, and the Fingerprinting Notice and Acknowledgment and Independent Contractor Student Contact Form, other documents referred to or incorporated in the Agreement, and written modifications issued after execution of the Agreement.

1.1.2 The Contract. The Contract Documents form the Agreement. The Agreement represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract Documents shall not be construed to create any kind of contractual relationship other than between the Owner and Contractor.

1.1.3 The Work. The Work shall include all engineering, design, labor, materials, services, manuals, training, as-builts, and equipment necessary for the Contractor to fulfill all of its obligations pursuant to the Contract Documents.

1.1.4 The Project. The Project is the total construction of the Work performed in accordance with the Contract Documents in whole or in part and which may include construction by the Owner or by separate contractors.

1.1.5 The Drawings. The Drawings are graphic and pictorial portions of the Contract Documents prepared for the Project and approved changes thereto, wherever located and whenever issued, showing the design, location, and scope of the Work, generally including plans, elevations, sections, details, schedules, and diagrams as drawn by Contractor.

1.1.6 The Specifications. The Specifications are that portion of the Contract Documents consisting of the written requirements for material, equipment, construction systems, instructions, quality assurance standards, workmanship, and performance of related services.

1.1.7 The Project Manual. The Project Manual is the volume usually assembled for the Work which may include, without limitation, the bidding requirements, sample forms, Agreement, Conditions of the Agreement, and Specifications.

1.1.8 Punch Lists. Punch List means a list of minor items on the Project that remains for Contractor to complete or correct.

1.2 EXECUTION, CORRELATION, AND INTENT. The Contract Documents are complementary and are intended to include all items required for the proper execution and completion of the Work. Any item of work mentioned in the Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Specifications, shall be provided by Contractor as if shown or mentioned in both.

Each and every provision of law required by law to be inserted in this Agreement shall be deemed to be inserted herein, and the Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either party the Agreement shall be amended in writing to make such insertion or correction.

1.3 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS, AND OTHER DOCUMENTS. The Drawings, Specifications, and other documents prepared on behalf of the Owner are instruments of the services of the Contractor and its consultants and are the property of the Owner. The Contractor may retain one contract record set.

1.4 ORDER OF PRECEDENCE. This Agreement and the contract documents referenced and incorporated herein are intended to be complementary, fully cooperative and to agree. However, to the extent that the terms and conditions of any of the Project contract documents conflict, the Contractor shall notify the Owner in writing and the following shall be the order of precedence as between the documents, with the first document taking the highest priority, provided, however, that the order of precedence shall not be so rigidly interpreted as to affect an absurd or costly result:

- i) Amendments to this Agreement
- ii) This Agreement, including all Exhibits and Attachments
- iii) Amendments/Written Changes signed by both parties to Criteria/Scope of Work
- iv) Criteria/Scope of Work
- v) Request for Proposals and all RFP Addenda issued prior to proposal and award dated [IF NEEDED TO BE DETERMINED]
- vi) The Contractor's Proposal dated [IF NEEDED TO BE DETERMINED]

1.4.1 General Order of Precedence

i) Special Conditions shall take precedence over General Conditions. In the event of conflict between Technical Specifications and the General Conditions, the General Conditions shall take precedence. In the event of a conflict between the Technical Specifications and the drawings, the higher quality, higher price, and the most stringent requirements shall be deemed to apply and shall govern as to materials, workmanship, and installation procedures.

ii) Work not particularly shown or specified shall be the same as similar parts that are shown or specified.

iii) Standards, Rules and Regulations referred to are recognized printed standards and shall be considered as one and a part of these specifications and within limits specified.

iv) With regard to drawings: a) Figures govern over scaled dimensions; b) Larger details govern over general drawings; c) Addenda/change order drawings govern over contract drawings; d) Contract drawings govern over standard drawings

ARTICLE 2

OWNER

2.1 DEFINITION. The term "Owner" means the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative.

2.2 EXISTING UTILITY LINES; SITE SURVEY; CONTRACTOR RELIANCE. Notwithstanding Government Code section 4215, and to the fullest extent allowed by law, Contractor shall

be responsible to remove, relocate, and protect utilities located on each Project Site at the time of commencement of construction under the Agreement with respect to any such utility facilities that Owner has not identified, whether or not set forth in the Drawings and Specifications. Contractor may be assessed liquidated damages in accordance the Contract Documents for delay in completion of the Project caused by Contractor's failure to timely remove or relocate such utility facilities. This Subsection shall not be construed to preclude assessment against Contractor for any other delays in completion of the work on the Project. Contractor shall be solely responsible to timely notify all public and private utilities serving the affected Project Site before commencing work on the Project Site. Contractor shall notify and receive clearance from any cooperative agency, such as Underground Service Alert, in accordance with Government Code section 4216, et seq. Contractor shall promptly provide a copy of all such notifications to Owner or its designated representative.

When required by the scope of the Project, the Contractor shall furnish, at its expense, a legal description or a land survey of any or all Project Sites, giving, as applicable, grades and lines of streets, alleys, pavements, adjoining property, rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries, and contours of the site. Additionally, all surveys to determine locations of construction, grading, and site work shall be provided by the Contractor. Contractor shall provide copies of any and all legal descriptions and surveys conducted on the Project Sites to Owner.

When required by the scope of the Project, Contractor will furnish, at its expense, the services of geotechnical engineers or consultants when reasonably required or as required by local or State codes. Such services with reports and appropriate professional recommendations shall include test boring, test pits, soil bearing values, percolation tests, air and water pollution tests, and ground corrosion and resistivity tests, including necessary operations for determining subsoil, air, and water conditions.

Any test borings and soils reports for the Project that have previously been made have been made for the Owner to indicate the subsurface materials that might be encountered at particular locations on the Project. The Owner has made these documents available to the Contractor and the Contractor has studied the results of such test borings and information that it has as to the subsurface conditions and Site geology as set forth in the test borings and soils reports. The Owner does not assume any responsibility whatsoever with respect to the sufficiency or accuracy of the borings made, or of the logs of the test borings, or of other investigations, or of the soils reports furnished pursuant hereto, or of the interpretations to be made beyond the location or depth of the borings. There is no warranty or guarantee, either express or implied that the conditions indicated by such investigations, borings, logs, soil reports or other information are representative of those existing throughout the site of the Project, or any part thereof, or that unforeseen developments may not occur. At the Owner's request, the Contractor shall make available to the Owner the results of any Site investigation, test borings, analyses, studies or other tests conducted by or in the possession of the Contractor or any of its agents. Nothing herein contained shall be deemed a waiver by the Contractor to pursue any available legal right or remedy it may have at any time against any third party who may have prepared any report and/or test relied upon by the Contractor.

Unless specifically stated in writing by Owners, the Contractor may not rely upon the accuracy of any utility services or site survey information that the Owner may provide.

2.3 OWNER'S RIGHT TO STOP THE WORK. If the Contractor fails to correct Work, which is not in accordance with the requirements of the Contract Documents as required by Section 11.2, or persistently fails to carry out Work in accordance with the Contract Documents, the Owner, by written order signed personally or by an agent specifically so empowered by the Owner in writing, may order the Contractor to stop the Work or any portion thereof, until the cause for such order has been eliminated.

2.4 OWNER'S RIGHT TO CARRY OUT THE WORK. If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails (within a seven-day period after

receipt of written notice or the time period expressly stated in the written notice from the Owner) to commence and continue correction of such default or neglect with diligence and promptness, the Owner may correct such deficiencies by whatever reasonable method the Owner may deem expedient without prejudice to other remedies the Owner may have, and may withhold for the cost of such correction.

ARTICLE 3

THE CONTRACTOR

3.1 **DEFINITION.** The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term “Contractor” means the Contractor or the Contractor’s authorized representatives. To the extent that any portion of the Work is provided with the Contractor’s own forces, any reference to Subcontractors shall be equally applicable to the Contractor. If any of the Work is performed by contractors retained directly by the Owner, Contractor shall be responsible for the coordination and sequencing of the Work of those other contractors so as to avoid any impact on the Final Project Schedule (Attachment D).

3.2 SUPERVISION AND CONSTRUCTION PROCEDURES.

3.2.1 **Contractor.** The Contractor shall supervise and direct the Work using the Contractor’s best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, procedures, and coordinating all portions of the Work under the Agreement, unless Contract Documents give other specific instructions concerning these matters.

3.2.2 **Contractor Responsibility.** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor’s employees, Subcontractors, material and equipment suppliers, and their agents, employees, invitees, and other persons performing portions of the Work under direct or indirect contract with the Contractor or any of its Subcontractors.

3.2.3 **Obligations not Changed.** The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents by activities or duties of the Inspector of Record, or by tests, inspections, or approvals required or performed by persons other than the Contractor.

3.2.4 **Contractor Responsibility for Readiness for Work.** The Contractor shall be responsible for inspection of Work already performed under the Contract Documents to determine that such portions are in proper condition to receive subsequent work.

3.3 **SUPERINTENDENT.** The Contractor shall provide a competent superintendent and assistants as necessary, all of whom shall be reasonably proficient in speaking, reading and writing English, and, who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. The Contractor and each Subcontractor shall: furnish a competent and adequate staff as necessary for the proper administration, coordination, supervision, and superintendence of its portion of the Work; organize the procurement of all materials and equipment so that the materials and equipment will be available at the time they are needed for the Work; and keep an adequate force of skilled workers on the job to complete the Work in accordance with all requirements of the Contract Documents. Owner shall have the right, but not the obligation, to require the removal from the Project of any superintendent, staff member, agent, or employee of any Contractor, Subcontractor, material or equipment supplier, etc., for cause.

3.4 **LABOR AND MATERIALS.** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, material, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper

execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

3.5 **WARRANTY.** The Contractor warrants to the Owner that material and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents, per Section 11.2.

3.6 **TAXES.** Contractor will pay all applicable Federal, State, and local taxes on all materials, labor, or services furnished by it, and all taxes arising out of its operations under the Contract Documents. Owner is exempt from Federal Excise Tax, and a Certificate of Exemption shall be provided upon request.

3.7 **PERMITS, FEES AND NOTICES.** The Contractor shall secure and pay for all permits and governmental fees, licenses, and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and are legally required by any authority having jurisdiction over the Project.

3.8 **ALLOWANCES.** The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities against whom the Contractor makes reasonable and timely objection.

3.9 **CONTRACTOR'S PROJECT SCHEDULES.** The Contractor shall provide the Preliminary Project Schedule and the Final Project Schedule, and updates and revisions thereto in electronic format as well as hard copy. The schedules provided by Contractor shall not exceed time limits current under the Contract Documents and shall comply with all of the scheduling as required in the Specifications. Failure of the Contractor to provide proper schedules as required by this Section may, at the sole discretion of Owner, constitute either grounds to withhold, in whole or in part, progress payments to the Contractor, or a breach of contract allowing Owner to terminate the Agreement between Owner and Contractor.

3.9.1 **Preliminary Project Schedule.** Unless specifically stated otherwise in other Contract Documents, a preliminary Project schedule shall be prepared by Contractor in accordance with and attached hereto as additional pages to Attachment D ("Preliminary Project Schedule"). The Owner shall not be bound by the Preliminary Project Schedule and shall not be responsible for any defects or mistakes in the Preliminary Project Schedule. The Contractor is solely responsible for the accuracy, utility and reasonableness of the Preliminary Project Schedule and all subsequent updates or modifications thereto.

3.9.2 **Final Project Schedule.** Unless specifically stated otherwise in other Contract Documents, Contractor shall prepare and submit a final Project schedule, in accordance with and attached hereto as additional pages to Attachment D ("Final Project Schedule"), to Owner within 30 days of the Contract Effective Date. The term Final Project Schedule, as used in this Agreement and other Contract Documents, shall include any revisions thereto that the Parties agree upon in writing, which agreed-upon revisions shall be set forth in a revised Final Project Schedule. Any Final Project Schedule shall replace the Preliminary Project Schedule and all prior Final Project Schedules.

3.9.3 **Compliance with Project Timeline.** No schedule shall exceed time limits current under the Contract Documents and shall comply with all of the scheduling as required by the Contract Documents and any scheduling requirements provided by the Owner to the Contractor at the beginning of the Project. The schedule shall be in the form of a tabulation, chart, or graph and shall be in sufficient detail to show the chronological relationship of all activities of the Project including, but not limited to, estimated starting and completion dates of various activities, (including early and late dates and reasonable float for each

activity), procurement of materials, the critical path, and scheduling of equipment. Float suppression techniques such as preferential sequencing, special lead/lag logic restraints, extended activity durations, or imposed dates shall be apportioned according to the benefit of the Project.

3.9.4 Updated Project Schedules. The Contractor shall submit an updated schedule on a monthly basis that includes an accurate as-built schedule and the current as-planned schedule in conformance with the above standards. The Contractor shall submit its daily logs for the month with the updated schedule. Float is not for the exclusive use or benefit of either Party but it is a jointly owned expiring Project resource available to both Parties as needed to meet schedule milestones. If any change in the Contractor's method of operations will change the Final Project Schedule, the Contractor shall submit to the Owner a revised Final Project Schedule within seven days of the change.

3.9.5 Recovery Plan. If the Contractor's actual progress falls behind the scheduled progress, within seven days of a request by Owner, the Contractor shall prepare and submit a recovery plan. The recovery plan must include a revised schedule that would recover the lost time and still complete the work on the Project by the Final Project Completion Date. The recovery plan shall also list any additional compensation that the Contractor believes it should receive if the Owner chooses to order the Contractor to implement the recovery plan. If the Owner directs the Contractor to implement the recovery plan, then the Contractor shall do so.

3.9.6 Failure to Meet Final Project Schedule. In addition to any remedies that the Owner may have, the Contractor's failure to provide proper project schedules as required by this Section may, at Owner's sole discretion: (a) constitute grounds to withhold, in whole or in part, progress payments to the Contractor, or (b) constitute a breach of the Agreement entitling the Owner to actual damages, in addition to any other remedies provided under the Agreement, including, in the Owner's discretion, termination of the Agreement pursuant to the terms hereof.

3.10 DOCUMENTS AND SAMPLES AT THE SITE. The Contractor shall maintain at the Site for the Owner one applicable copy of Titles 19 and 24 and record copy of the Drawings, Specifications, Addenda, Change Orders, and other Modifications, in good order and marked currently to record changes and selections made during construction. In addition, the Contractor shall maintain at the Site approved Shop Drawings, Product Data, Samples, and similar required submittals.

3.11 SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES.

3.11.1 Shop Drawings. The term "shop drawings" as used herein means drawings, diagrams, schedules, and other data, which are prepared by Contractor, Subcontractors, manufacturers, suppliers, or distributors illustrating some portion of the Work. The Contractor shall obtain and submit with the shop drawings all seismic and other calculations and all product data from equipment manufacturers. Shop drawings shall: establish the actual detail of all manufactured or fabricated items, indicate proper relation to adjoining work, amplify design details of mechanical and electrical systems and equipment in proper relation to physical spaces in the structure, and incorporate minor changes of design or construction to suit actual conditions.

3.11.2 **Samples.** The term “samples” as used herein are physical examples furnished by Contractor to illustrate materials, equipment, or quality. All Work shall be in accordance with the approved samples.

3.11.3 **Contractor’s Responsibility.** The Contractor shall obtain and shall submit to Owner all required shop drawings and samples in accordance with the Final Project Schedule as required in the Specifications with such promptness as to cause no delay in its own Work or in that of any other contractor. Review by Owner shall not relieve the Contractor or any Subcontractor from its responsibility in preparing and submitting proper shop drawings, product data, and samples in accordance with the Contract Documents. Any submission, which in Owner’s opinion is incomplete, contains numerous errors, or has been checked only superficially by Contractor, will be returned unreviewed by the Owner for resubmission by the Contractor. Contractor shall not commence any portion of the Work requiring a shop drawing or sample submission until the Owner has approved the submission.

3.11.4 **Extent of Review.** In reviewing shop drawings, the Owner will not verify dimensions and field conditions. The Owner will review and approve shop drawings, product data, and samples for aesthetics and for conformance with the design concept of the Work and the information given in the Contract Documents. The Owner’s review shall not relieve the Contractor from responsibility for any deviations from the requirements of the Contract Documents unless the Owner has given specific written approval. Contractor and Subcontractors shall be solely responsible for determining any quantities, whether or not shown on the shop drawings.

3.11.5 **Substitution.** Unless the Specifications state that no substitution is permitted, whenever in the Contract Documents any specific brand or trade name is specified such specification shall be deemed to be followed by the words “or equal.” The Owner may consider an untimely substitution request if the product specified is no longer commercially available.

3.12 **CLEANING UP.** The Contractor shall keep the Site and surrounding area free from accumulation of waste material or rubbish caused by operations under the Agreement. The Site shall be maintained in a safe, neat, and orderly condition. If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so, without prior notice to the Contractor and the cost thereof shall be invoiced to the Contractor and withheld from progress payments and/or retention. Upon completion of the Project, Contractor and Subcontractor shall dismantle temporary structures, if any, and remove from the Site all construction and installation equipment, fences, scaffolding, surplus materials, rubbish, and supplies belonging to Contractor or Subcontractor.

3.13 **ACCESS TO WORK.** The Contractor shall provide the Owner, the Owner’s designees, and the Inspector, access to the Work in preparation and progress wherever located.

3.14 **ROYALTIES AND PATENTS.** The Contractor shall pay all royalties and license fees incurred by Contractor in performing the Work of this Agreement. The Contractor shall defend suits or claims of infringement of patent rights and shall hold the Owner harmless and indemnify them from loss on account thereof.

3.15 **INDEMNIFICATION.** The Contractor’s obligations to indemnify the Owner are set forth in section 10 of the Agreement.

ARTICLE 4

ADMINISTRATION OF THE AGREEMENT

4.1 Reserved.

4.2 ADMINISTRATION OF THE AGREEMENT.

4.2.1 Owner and Representatives. The Owner may provide administration of the Agreement as described in the Contract Documents and may designate one or several agents, representatives, or consultants to provide administration.

4.2.2 Limitations of Construction Responsibility. The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Owner or Owner's agents, representatives and consultants, or by tests, inspections, or approvals required or performed by persons other than the Contractor.

4.2.3 Communications Facilitating Agreement Administration. Except as otherwise provided in the Contract Documents or when direct communications are warranted by special circumstances, the Owner and the Contractor shall communicate through the Owner's selected representative.

4.2.4 Rejection of Work. In addition to the rights, duties, and obligations of the Inspector under this Article, the Owner's selected representative may recommend to the Owner that the Owner reject Work which does not conform to the Contract Documents.

4.3 INSPECTOR OF RECORD and OWNER'S PROJECT ENGINEER. One or more project inspectors employed by the Owner and approved by the Division of the State Architect as required will be assigned to the Work in accordance with the requirements of Title 24 of the California Code of Regulations. In addition, the Owner may hire the services of an Owner's Project Engineer. These two (2) parties shall work to assist the Owner with quality control and shall both be provided the access and consideration described herein. Both of these entities shall be allowed to inspect and report as described herein. Except for rights dictated by Title 24 as solely residing with the Inspector of Record, all places where "Inspector" is mentioned shall also consider the Owner's Project Engineer.

The Inspector(s) duties will, at minimum, be as specifically defined in Title 24. All Work shall be under the observation of or with the knowledge of the Inspector. The Inspector shall have free access to any or all parts of the Work at any time. The Contractor shall furnish the Inspector such information as may be necessary to keep the Inspector fully informed regarding progress and manner of work and character of materials. Such observations shall not, in any way, relieve the Contractor from responsibility for full compliance with all terms and conditions of the Agreement, or be construed to lessen to any degree the Contractor's responsibility for providing efficient and capable superintendence. The Inspector is not authorized to make changes in the drawings or specifications. The Inspector shall have the authority to reject work that does not comply with the provisions of the Contract Documents. In addition, the Inspector may stop any Work which poses a probable risk of harm to persons or property. Any costs or expenses of inspection or testing incurred outside of the "Inspection Distance Limitation" stated in Section E on the Cover Page or not located in a contiguous county to the Project Site on which the inspection or testing is required, whichever distance is greater, shall be paid for by Owner, and Owner shall then invoice to Contractor and Contractor shall make payment thereof within 30 days after Contractor receives the invoice; if Contractor fails to do so, Owner shall have the right to withhold the amount from any payment due or to be due to Contractor under the Agreement. No work shall be performed by the Contractor solely upon the instructions or comments by the Inspector of Record. The Inspector of Record has no authority to interpret the Contract Documents or order extra work and any extra work performed without the written instruction of the Owner shall be at Contractor's sole cost and expense and there will be no delay damages incurred by Owner for such work.

4.4 RESPONSIBILITY FOR ADDITIONAL CHARGES INCURRED BY THE OWNER FOR PROFESSIONAL SERVICES. If at any time prior to the completion of the requirements under the Contract Documents, through no fault of its own, the Owner is required to provide or secure additional professional services for any reason by any act or omission of the Contractor, the Contractor shall be

invoiced by the Owner for any actual costs incurred for any such additional services, which costs may, among other remedies, be withheld from the progress payments and/or retention.

4.5 CLAIMS.

4.5.1 General. A Claim is a demand or assertion by Contractor seeking, as a matter of right, adjustment, or interpretation of Agreement terms, payment of money, extension of time, or other relief with respect to the terms of the Agreement. Claims must be made by written notice. The responsibility to substantiate Claims shall rest with the Contractor. Contractor may only submit a Claim after having complied with the requirements in Article 6, as applicable, for the same matters. All public works claims between the Contractor and the Owner shall be resolved pursuant to the procedures set forth in Public Contract Code section 9204 consistent with the specific provisions set forth below.

Claims shall be submitted to the Owner and the Owner's designated representative. A timely decision by the Owner shall be provided. Claims must be made by written notice prior to the final progress payment. An additional Claim made after the initial Claim has been implemented by Change Order will not be considered. The failure of the Contractor to make a Claim within the specified time shall constitute an express waiver of any right to assert such Claim, whether affirmatively or defensively. Despite submission or rejection of a Claim, the Contractor shall proceed diligently with performance of the Agreement, and the Owner shall continue to make any undisputed payments in accordance with the Agreement. When any excavation or trenching extends greater than four feet below the surface, Public Contract Code section 7104 shall control.

The Contractor shall make a certification at the time of submission of a Claim, substantially in the form attached as Attachment O. Contractor understands and agrees that any Claim submitted without this certification does not meet the terms of the Contract Documents, that Owner, or Owner's representatives, may reject the Claim on that basis and that unless Contractor properly and timely files the Claim with the certification, Contractor cannot further pursue the Claim in any forum. A condition precedent will not have been satisfied.

4.5.2 Claims for Concealed or Unknown Conditions

4.5.2.1 Trenches or Excavations Less Than Four Feet Below the Surface. If Contractor encounters conditions at the Site which are subsurface or otherwise concealed physical conditions, which differ materially from those indicated in the Contract Documents, or unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the Contractor shall be given to the Owner promptly before conditions are disturbed and in no event later than ten (10) days after first observance of the conditions. The Owner will promptly investigate such conditions, and if they differ materially and cause an increase or decrease in the Contractor's cost of, time required for, or performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum, Contract Time, or both. If the Owner determines that the conditions at the Site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Agreement is justified, the Owner shall so notify the Contractor in writing, stating the reasons. In the event a dispute arises between the Owner and the Contractor regarding whether the conditions materially differ, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract Documents, but shall proceed with all the work to be performed under the Contract Documents. The Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

4.5.2.2 Trenches or Excavations Greater Than Four Feet Below the Surface. Pursuant to Public Contract Code section 7104, when any excavation or trenching extends greater than four feet below the surface:

4.5.2.2.1 The Contractor shall promptly, and before the following conditions are disturbed, notify the public entity, in writing, of any:

4.5.2.2.1.1 Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, which is required to be removed to a Class I, Class II, or Class III disposal site in accordance with the provisions of existing law.

4.5.2.2.1.2 Subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to bidders prior to the deadline for submitting bids.

4.5.2.2.1.3 Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

4.5.2.2.2 The public entity shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the work shall issue a change order under the procedures described in the Contract.

4.5.2.2.3 In the event that a dispute arises between the public entity and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all work to be performed under the Contract. The Contractor shall retain any and all rights provided either by Contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

4.6 CLAIMS OF \$375,000 OR LESS. Notwithstanding any other provision herein, effective January 1, 1991, Section 20104 et seq., of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial supervised mediation, and judicial arbitration to resolve disputes on construction claims of \$375,000 or less. Effective January 1, 2017, Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Section is to implement Sections 20104 et seq. and Section 9204 of the California Public Contract Code. This Section shall be construed to be consistent with said statutes.

4.7 CLAIMS IN EXCESS OF \$375,000. Claims over \$375,000 shall be handled by the Contractor and the Owner pursuant to Section 4.6, above, except as follows: (a) Procedures in Public Contract Code section 20104.2(b) shall not be applicable; (b) Owner shall respond in writing to all written Claims within 45 days of receipt of the Claim, or may request, in writing, within 30 days of receipt of the Claim, any additional documentation supporting the Claim or relating to defenses to the Claim the Owner may have against the Contractor; (c) Owner shall respond within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or documentation, whichever is greater; and (d) following any meet and confer conference pursuant to Public Contract Code sections 9204 and 20104.2(d), if the Claim or any portion of it remains in dispute and Contractor wishes to pursue it, Contractor must demand in writing within fifteen (15) days that the parties mediate, and such requirement for mediation shall not toll or supersede the requirement for submission of a Government Code claim, as specifically required in Section 4.6 above. If the Contractor fails to timely notify the Owner that it wishes to mediate pursuant to this Section, then the Contractor will

have waived all rights to further pursue the Claim. The parties shall reasonably cooperate to schedule and attend a mediation as soon as reasonably possible.

4.7.1 Supporting Documentation. The Contractor shall submit all claims in the following format:

1. Summary of claim merit and price, and Contract clause pursuant to which the claim is made.
2. List of documents relating to claim:
 - (a) Specifications
 - (b) Drawings
 - (c) Clarifications (Requests for Information)
 - (d) Schedules
 - (e) Other.
3. Chronology of events and correspondence.
4. Analysis of claim merit.
5. Analysis of claim cost.
6. Analysis of time impact analysis in CPM format.
7. If the Contractor's claim is based in whole or in part on an allegation of errors or omissions in the Drawings or Specifications for the Project, Contractor shall provide a summary of the percentage of the claim subject to design errors or omissions and shall obtain a certificate of merit in support of the claim of design errors and omissions.
8. Cover letter and certification of validity of the claim, including any claims from subcontractors of any tier, in accordance with Government Code section 12650 *et seq.*

4.7.2 Owner's Response. Upon receipt of a claim pursuant to this Section, the Owner shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the Contractor a written statement identifying what portion of the claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the claim will be processed and made within 60 days after the Owner issues its written statement.

1. If the Owner needs approval from its governing body to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the claim, and the Owner's governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the Owner shall have up to 3 days following the next duly publicly noticed meeting of the Owner's governing body after the 45-day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.

2. Within 30 days of receipt of a claim, the Owner may request in writing additional documentation supporting the claim or relating to defenses or claims the Owner may have against the Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the Owner and the Contractor. The Owner's written response to the claim, as further documented, shall be submitted to the Contractor within 30 days (if the claim is less than \$15,000, within 15 days) after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.

4.7.3 Meet and Confer. If the Contractor disputes the Owner's written response, or the Owner fails to respond within the time prescribed, the Contractor may so notify the Owner, in writing, either within 15 days of receipt of the Owner's response or within 15 days of the Owner's failure to respond within the time prescribed, respectively, and demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, the Owner shall schedule a meet and confer conference within 30 days for settlement of the dispute.

4.7.4 Mediation. Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the Owner shall provide the Contractor a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the Owner issues its written statement. Any disputed portion of the claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with the Owner and the Contractor sharing the associated costs equally. The Owner and the Contractor shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing, unless the parties agree to select a mediator at a later time.

1. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

2. For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

3. Unless otherwise agreed to by the Owner and the Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Public Contract Code Section 20104.4 to mediate after litigation has been commenced.

4. The mediation shall be held no earlier than the date the Contractor completes the Work or the date that the Contractor last performs Work, whichever is earlier. All unresolved claims shall be considered jointly in a single mediation, unless a new unrelated claim arises after mediation is completed.

4.7.5 Procedures After Mediation. If following the mediation, the claim or any portion remains in dispute, the Contractor must file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code prior to initiating litigation. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the Contractor submits his or her written claim pursuant to subdivision (a) until the time the claim is denied, including any period of time utilized by the meet and confer conference.

4.8 CIVIL ACTIONS. The following procedures are established for all civil actions filed to resolve claims of \$375,000 or less:

1. Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code section 9204 and the terms of this Contract. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of

the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.

2. If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration. In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

4.9 GOVERNMENT CODE CLAIMS. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, construction claims and/or changed conditions, the Contractor must comply with the claim procedures set forth in Government Code Sections 900, et seq. prior to filing any lawsuit against the Owner. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra Work, disputed work, construction claims, and/or changed conditions have been followed by the Contractor. If no such Government Code claim is submitted, or if the prerequisite contractual requirements are not satisfied, no action against the Owner may be filed. A Government Code claim must be filed no earlier than the date the work is completed or the date the Contractor last performs work on the Project, whichever occurs first. A Government Code claim shall be inclusive of all unresolved claims unless a new unrelated claim arises after the Government Code claim is submitted.

4.9.1 Non-Waiver. The Owner's failure to respond to a claim from the Contractor within the time periods described in this Section, or to otherwise meet the time requirements of this Section, shall result in the claim being deemed rejected in its entirety.

ARTICLE 5

SUBCONTRACTORS

5.1 DEFINITIONS.

5.1.1 Subcontractor. A Subcontractor is a person or entity that has a contract with the Contractor to perform a portion of the Work at the Site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor. To the extent that the term Trade Contractor is utilized in the Contract Documents, it shall have the same meaning as the term "Subcontractor."

5.1.2 Sub-Subcontractor. A Sub-subcontractor is a person or entity that has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the Site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK. Subcontractors shall be selected by Contractor and Owner pursuant to the Agreement. Subcontractor substitution shall be handled in accordance with the Agreement. Any substitutions of

Subcontractors shall not result in any increase in the Contract Sum or the granting of any extension of time for the completion of the Project.

5.3 SUBCONTRACTUAL RELATIONS. By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all obligations and responsibilities, which the Contractor, by the Contract Documents, assumes toward the Owner.

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS. Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

5.4.1 Assignment is effective only after termination of the Contract with the Contractor by the Owner for cause pursuant to Article 14 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor in writing; and

5.4.2 Assignment is subject to the prior rights of the surety, if any, obligated under any bond relating to the Contract.

ARTICLE 6

CHANGES IN THE WORK

6.1 CHANGES.

6.1.1 No Changes Without Authorization. The Owner reserves the right to make such alterations, deviations, additions to, or deletions from the plans and specifications, as may be deemed by the Owner to be necessary or advisable for the proper completion or construction of the Work contemplated, and the right to require Contractor to perform such work. There shall be no change whatsoever in the drawings, specifications, or in the Work without an executed Change Order, Construction Change Directive, or order by the Owner for a minor change in the Work as herein provided. Owner shall not be liable for the cost of any extra work or any substitutions, changes, additions, omissions, or deviations from the Drawings and Specifications unless the same shall have been authorized by and the cost thereof approved in writing by Change Order or executed Construction Change Directive. No extension of time for performance of the Work shall be allowed hereunder unless claim for such extension is made at the time changes in the Work are ordered, and such time duly adjusted in writing in the Change Order.

6.1.2 Owner's Authority. The Owner will have authority to order minor changes in the Work not involving any adjustment in the Contract Sum, an extension of the Contract Time, or a change which is inconsistent with the intent of the Contract Documents. Such changes shall be effected by written Change Order and shall be binding on the Owner and the Contractor. The Contractor shall carry out such written orders promptly.

6.2 CHANGE ORDERS ("CO"). A CO is a written instrument prepared by the Owner and the Contractor stating their agreement upon all of the following: (A) A change in the Work; (B) the amount of the adjustment in the Contract Sum, if any; and (C) the extent of the adjustment in the Contract Time, if any.

6.3 CONSTRUCTION CHANGE DIRECTIVES ("CCD"). A CCD is a written order prepared by the Owner, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by CCD, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions,

with the Contract Sum and Contract Time being adjusted accordingly. A CCD shall be used in the absence of agreement on the terms of a CO.

6.4 SUPPLEMENTAL INSTRUCTION (“SI”). A SI is a written instrument prepared by the Owner and submitted to the Contractor. The SI can order changes in the work that does not affect the Contract Sum and/or Time. A SI can be made in an RFI response by issuing a formal SI document or by written letter from the Owner.

6.5 REQUEST FOR INFORMATION (“RFI”). An RFI is a written request prepared by the Contractor asking the Owner to provide additional information above and beyond that which is available in the Contract Documents and all reference standards, regarding the Contractor and fulfilling the Contract coordination requirements for which Contractor is obligated to perform. The RFI shall reference all the applicable Contract Documents including specification section, detail, page numbers, drawing numbers, and sheet numbers, etc. The Contractor shall make suggestions and/or interpretations of the issue raised by the RFI. An RFI cannot modify the Contract Cost, Contract Time, or the Contract Documents. Prior to issuing an RFI the Contractor, Subcontractor, material suppliers and the like shall thoroughly review the Contract Documents and refer to all reference standards for the information sought. The Owner and Contractor agree that an adequate time period for the Owner to respond to an RFI is generally fourteen (14) calendar days after the Owner’s receipt of an RFI, unless the Owner and Contractor agree otherwise in writing. However, in all cases, the Owner shall take such time, whether more or less than 14 days, as is necessary in the Owner and the Owner’s representative’s professional judgment to permit adequate review and evaluation of the RFI. The Contractor shall be invoiced by the Owner for any costs incurred for professional services, which shall be withheld from progress payments and/or retention, if an RFI requests an interpretation or decision of a matter where the information sought is equally available to the party making such request. The Contractor shall make efforts to coordinate the work in a timely fashion, so as to alleviate priority RFI’s. If the RFI is considered a priority, the Contractor shall state the word “Priority” on the document, and the Contractor shall provide weekly RFI Priority Schedules. The Contractor shall issue and maintain weekly RFI Priority Schedules.

The RFI Priority Schedule shall include a listing of pending requests, including the most current request, and rank the RFI’s in order of priority. The Owner shall endeavor to respect the Contractor’s requested order of priorities and requested response dates. The Owner’s response to the RFI shall be considered a Supplemental Instruction (“SI”) in which the Contract Sum and/or Time is not altered. If the RFI response alters the Contract Sum and/or Time, a Construction Change Directive (CCD) may be issued for the changed condition(s). Should the Contractor determine the response to the RFI creates changes in the Contract Sum and/or Time, the Contractor shall submit a change order request (COR) to the Owner for review, along with a Time Extension Request (if required).

6.6 REQUEST FOR PROPOSAL REGARDING CHANGE (“RFP - Change”). An RFP - Change is a written request prepared by the Owner asking the Contractor to submit to the Owner an estimate of the effect of a proposed change on the Contract Sum and the Contract Time. An RFP – Change shall contain adequate information, including any necessary drawings and specifications, to enable Contractor to provide the cost breakdowns required by Section 6.8. The Contractor shall not be entitled to any Additional Compensation for preparing a response to an RFP - Change, whether ultimately accepted or not.

6.7 CHANGE ORDER REQUEST (“COR”). A COR is a written request prepared by the Contractor asking the Owner to incorporate a proposed change called for in an RFP – Change or a notice of claim into a CO. A COR shall include breakdowns to validate any change in Contract Sum due to proposed change or claim. A COR shall also include any additional time required to complete the Project. Any additional time requested shall not be the number of days to make the proposed change, but must be based upon the impact to the Final Project Schedule as defined in Section 3.9 and the Specifications.

6.8 COST OF CHANGE ORDERS.

6.8.1 **Scope.** Within ten (10) days or such lesser period of time as may be required by Owner after a request is made for a change that impacts the Contract Sum or the Contract Time, the Contractor shall provide to the Owner in writing an estimate of the effect of the proposed CO upon the Contract Sum and the actual cost of construction, which shall include a complete itemized cost breakdown of all labor and material showing actual quantities, hours, unit prices, wage rates, required for the change, and the effect upon the Contract Time of such CO. Changes may be made by Owner by an appropriate written CO, or, at the Owner's option, such changes shall be implemented immediately upon the Contractor's receipt of an appropriate written CCD.

6.8.2 **Determination of Cost.** The amount of the increase or decrease in the Contract Sum resulting from a CO, if any, shall be determined in one or more of the following ways as applicable to a specific situation: (A) Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation; (B) unit prices stated in the Contractor's original bid, the Contract Documents, or subsequently agreed upon between the Owner and the Contractor; (C) cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or (D) by cost of material and labor and percentage of overhead and profit. Contractor and Subcontractors may mark up their own work by 5% for overhead, bond and insurance premiums, and profit. Contractor may mark up a Subcontractor's total costs by 5%. It is expressly understood that the value of such extra work or changes, as determined by any of the aforementioned methods, expressly includes any and all of Contractor's costs and expenses, both direct and indirect, resulting from additional time required on the Project or resulting from delay to the Project. Any costs or expenses not included are deemed waived. For purposes of determining the cost, if any, of any change, addition, or omission to the Project, all trade discounts, rebates, refunds, and all returns from the sale of surplus materials and equipment shall accrue and be credited to Contractor, and Contractor shall make provisions so that such discounts, rebates, refunds, and returns may be secured, and the amount thereof shall be allowed as a reduction of Contractor's cost in determining the actual cost of construction for purposes of any change, addition, or omissions in the Project as provided herein.

6.8.3 **Accounting Records.** With respect to portions of the Work performed by COs and CCDs on a time-and-materials, unit-cost, or similar basis, the Contractor shall keep and maintain cost-accounting records satisfactory to the Owner, which shall be available to the Owner on the same terms as any other books and records the Contractor is required to maintain under the Contract Documents.

6.8.4 **Notice Required.** If the Contractor desires an increase in the Contract Sum, or any extension in the Contract Time for completion, it shall give the Owner written notice thereof within ten (10) days after the occurrence of the event giving rise to the claim, together with detailed estimates of the impact on the Contract Sum and/or the Contract Time. This notice shall be given by the Contractor before proceeding to execute the Work, except in an emergency endangering life or property, in which case the Contractor shall proceed in accordance with Section 9.4 hereof. No notice shall be considered unless made in accordance with this Subsection; however, the mere presentation of such claim shall not establish the validity of the cause giving rise to such claim, or of the extension of the Contract Time, and/or the increase in the Contract Sum. Contractor shall proceed to execute the Work even though the adjustment has not been agreed upon. Any change in the Contract Sum or extension of the Contract Time resulting from such claim shall be authorized by a CO.

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6.8.5 Format for Proposed Change Order. The Parties shall use the following format, as applicable, to communicate proposed additions and deductions to the Contract.

SUBCONTRACTOR WORK (list each if more than one)		ADDITIVE	DEDUCTIVE
1	SUBCONTRACTOR LABOR TOTAL ¹	\$ _____	\$ _____
2	SUBCONTRACTOR MATERIAL TOTAL ¹ ,	\$ _____	\$ _____
3	SUBCONTRACTOR EQUIPMENT TOTAL ¹ ,	\$ _____	\$ _____
4	SUBTOTAL #1 (LINES 1, 2 & 3)	\$ _____	\$ _____
5	SUBCONTRACTOR'S OVERHEAD AND PROFIT FOR SUBTOTAL #1 (LINE 4) ²	\$ _____	\$ _____
6	SUBTOTAL #2 (LINES 4 & 5)	\$ _____	\$ _____

CONTRACTOR'S WORK		ADDITIVE	DEDUCTIVE
7	CONTRACTOR LABOR TOTAL ¹ ,	\$ _____	\$ _____
8	CONTRACTOR MATERIAL TOTAL ¹ ,	\$ _____	\$ _____
9	CONTRACTOR EQUIPMENT TOTAL ¹ ,	\$ _____	\$ _____
10	SUBTOTAL #3 (LINES 7, 8 & 9)	\$ _____	\$ _____
11	CONTRACTOR'S OVERHEAD AND PROFIT FOR SUBTOTAL #3 (LINE 10) ⁵	\$ _____	\$ _____
12	CONTRACTOR'S OVERHEAD AND PROFIT FOR SUBTOTAL #2 (LINE 6) ⁶	\$ _____	\$ _____
13	SUBTOTAL #4 (LINES 10, 11 & 12)	\$ _____	\$ _____

14	SUM OF SUBTOTALS #2 & #4	\$ _____	\$ _____
15	CONTRACTOR'S BOND ³	\$ _____	\$ _____
16	NET TOTAL FOR C.O.R. ⁴	\$ _____	

- 1: Attach itemized list(s) indicating hours, rates, material quantity, material costs, unit costs, and taxes
- 2: This item shall not exceed 10% of line 4 and must be supported by detailed breakdown justification of overhead costs, including insurance and fee associated with the change.
- 3: Contractor's bond costs shall not exceed 1% of the Net Total (line 16).
- 4: Includes all direct and indirect costs, including but not limited to, acceleration, cumulative effect of the change(s), expediting the work, etc.
- 5: This item shall not exceed 15% of line 10 and must be supported by detailed breakdown justification of overhead costs, including insurance and fee associated with the change.
- 6: This item shall not exceed 10% of line 6 and must be supported by detailed breakdown justification of overhead costs, including insurance and fee associated with the change.

ARTICLE 7

TIME

7.1 DEFINITIONS.

7.1.1 **Contract Time.** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Completion of the Work.

7.1.2 **Days.** The term “day” as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

7.2 **PROJECT PHASES AND NOTICES TO PROCEED.** The date of commencement of the Work is the date established in the Notice to Proceed. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for which the Contractor is responsible. The Work on the Project shall be performed in accordance with the following phases:

7.2.1 **Design Phase.** Upon Owner’s issuance of a written Notice to Proceed, Contractor shall prepare any necessary designs, Drawings, and Specifications, as well as feasibility and configuration assessments, environmental assessments (collectively “Design Documents”), and other inspections of each Project Site by the date stated in Attachment D for the First Draft of Drawings. Contractor shall deliver draft design Drawings and Specifications to Owner for review and approval or shall otherwise work collaboratively to successfully gain agreement on the design approach, which approval shall not be unreasonably withheld. Owner shall diligently review and respond to each submission by Contractor by the date stated in Attachment D for Owner response. As an alternative, Owner is willing to collaboratively and actively participate in design development and join Contractor at the table for over the shoulder reviews. However, sufficient time must be provided for Owner’s engineering consultant to validate and verify calculations during the design process. The schedule and process for design shall be mutually agreed to prior to start of design. Contractor shall finalize the Design Documents by the date stated on Attachment D for the Final Draft of Drawings.

7.2.2 **Governmental Approval Phase.** Contractor shall seek all such approvals of the Design Documents and the Project as may be required by any governmental entity having jurisdiction over the Project, and including but not limited to the DSA. Contractor shall exercise all reasonable diligence to ensure that all necessary permits and approvals are received by the date stated in Attachment D for Permit Approval. Owner shall not unreasonably withhold its consent to any modifications to the Design Documents that may be requested by any governmental or quasi-governmental agency with jurisdiction over the Project or the work on the Project, excepting any changes that materially affect the tilt, azimuth or number of photovoltaic modules, or other aspects of the original design that may affect the Contract Sum or the Estimated Annual Energy Production or Price and Performance Ratios, or that materially affect the siting of the Project and its impact on Owner’s operations. See Subsection 2.1.3 for additional requirements.

7.2.3 **Construction Phase.** At least 15 working days prior to work on site, Contractor shall facilitate, or cooperate with Owner in its efforts to facilitate, a kick-off meeting with Owner and any of its representatives and Contractor, and any other relevant this Agreement) entered into by the parties. After securing all necessary permits, Contractor shall commence the construction of the Project in accordance with the final Design Documents and all other Contract Documents. The Construction Phase requires, in part, the Inspector of Record’s written notice of substantial completion and submission of a written request to schedule the Utility Permission to Operate inspection.

7.2.4 Commissioning Phase. During the construction phase of the work on the Project and before the Final Project Completion Date, Contractor shall conduct all commissioning tests in accordance with the Commissioning Schedule in Attachment G. Contractor shall provide notice to Owner of any scheduled test(s) of installed equipment, and Owner or its designees shall have the right to be present at any or all such tests conducted by Contractor, any Subcontractor, or manufacturers of the equipment. Contractor shall be responsible for correcting or adjusting all deficiencies in the SEGF and equipment operations that Contractor provided and installed that may be observed during equipment commissioning procedures. The Commissioning Phase requires, in part, the PV system being fully interconnected and operating normally to produce electricity, the Utility's signed Permission to Operate, and the completion, submission and Owner approval of the Commissioning Schedule in Attachment G.

7.2.5 Project Completion and Closeout. Owner shall acknowledge final inspection and completion of the Project by executing a Letter of Acceptance and Completion in accordance with the Contract Documents and applicable laws.

7.3 HOURS OF WORK.

7.3.1 Sufficient Forces. Contractors and Subcontractors shall furnish sufficient forces to ensure the prosecution of the Work in accordance with the Final Project Schedule.

7.3.2 Performance During Working Hours. Work shall be performed during regular working hours except that in the event of an emergency or when required to complete the Work in accordance with job progress, work may be performed outside of regular working hours with the advance written consent of the Owner.

7.3.3 Labor Code Application. As provided in Article 3 (commencing at § 1810), Chapter 1, Part 7, Division 2 of the Labor Code, eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by the Contractor or by any Subcontractor on any subcontract under this Contract, upon the work or upon any part of the work contemplated by this Contract, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as hereinafter provided. Notwithstanding the provision hereinabove set forth, work performed by employees of Contractors in excess of eight (8) hours per day and forty (40) hours during any one week shall be permitted upon this public work with compensation provided for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1-1/2) times the basic rate of pay.

Contractor or subcontractor shall pay to the Owner a penalty of Twenty-five Dollars (\$25.00) for each worker employed in the execution of this Contract by the Contractor, or by any Subcontractor, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one (1) calendar week, in violation of the provisions of Article 3 (commencing at § 1810), Chapter 1, Part 7, Division 2 of the Labor Code, unless compensation for the workers so employed by Contractor is not less than one and one-half (1-1/2) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

7.4 PROGRESS AND COMPLETION. Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work. The Contractor shall not knowingly, except by agreement or instruction of the Owner, in writing, commence operations on the Site or elsewhere prior to the effective date of insurance required by Article 10 to be furnished by the Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance. The Contractor shall proceed expeditiously with adequate forces and shall achieve Completion within the Contract Time.

7.5 EXTENSIONS OF TIME - LIQUIDATED DAMAGES.

7.5.1 Excusable Delay. The Contractor shall not be charged for liquidated damages, as set forth in the Agreement, because of any delays in completion of the Work due to acts of God, acts of public enemy, acts of Government, acts of the Owner or anyone employed by it, acts of another contractor in performance of a contract (other than this Contract) with the Owner, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, or delays of subcontractors due to such causes (collectively “Excusable Delay”). Contractor has the burden of proving that any delay is excusable.

7.5.2 Notice by Contractor Required. The Contractor shall within ten (10) calendar days of beginning of any such delay (unless Owner grants in writing a further period of time to file such notice prior to the date of final payment under the Contract) notify the Owner in writing of causes of delay. Owner will then ascertain the facts and extent of the delay and grant an extension of time for completing the Work when, in its judgment, the findings of fact justify such an extension. The Owner’s findings of fact thereon shall be final and conclusive on the parties. Extensions of time shall apply only to that portion of the Work affected by the delay and shall not apply to other portions of the Work not so affected. The sole remedy of Contractor for extensions of time under Subsection 7.5.1 shall be an extension of the Contract Time at no cost to the Owner.

7.5.3 Conditions for Extension of Time. If the Contractor is delayed at any time in progress of the Work by an act or neglect of the Owner, an employee of Owner, or of a separate contractor employed by the Owner, by changes ordered in the Work, by labor disputes, fire, unusual delay in deliveries, or unavoidable casualties, by delay authorized by the Owner pending arbitration, or by other causes which the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine. Claims relating to time extensions shall be made in accordance with applicable provisions of Article 6.

7.5.4 Early Completion. Regardless of the cause therefore, the Contractor may not maintain any Claim or cause of action against the Owner for damages incurred as a result of its failure or inability to complete its work on the Project in a shorter period than established in the Contract Documents.

7.5.5 Liquidated Damages. Failure to complete the Project within the time and in the manner provided for by the Contract Documents shall subject the Contractor to liquidated damages, as described in the Agreement.

7.6 GOVERNMENT APPROVALS. Owner shall not be liable for any delays or damages related to the time required to obtain government approvals.

7.7 DELAYS DUE TO PROJECT SITE ACTIVITIES. Owner shall not be liable for any damages or compensation to Contractor resulting from, arising out of, or related to any delays caused by scheduled activities at Project Sites, including Standardized Testing and Reporting (“STAR”), and graduation days. Contractor shall request and Owner shall provide a calendar of scheduled activities. Owner and Contractor shall work collaboratively to facilitate special events. Contractor shall integrate these activities into the critical path of the Project Schedule. Owner shall be reasonable in their requests, and Contractor shall reasonably accommodate.

If any part of Contractor’s work depends for proper execution or results upon work of any other contractor, the Contractor shall inspect and promptly report to Owner in writing any defects in such work that render it unsuitable for such proper execution and results. Contractor will be held liable for damages to Owner for that work which it failed to inspect or should have inspected. Contractor’s failure to inspect and report shall constitute its acceptance of other Contractor’s work as fit and proper for reception of its work, except as to defects which may develop in other Contractors’ work after execution of Contractor’s work.

To ensure proper execution of its subsequent work, Contractor shall measure and inspect work already in place and shall at once report to the Owner in writing any discrepancy between executed work and Contract Documents.

It is the obligation of Contractor to ascertain to its own satisfaction the scope of the Project and nature of any other contracts that have been or may be awarded by Owner in prosecution of the Project to the end that Contractor may perform its Contract in the light of such other contracts, if any.

Nothing herein contained shall be interpreted as granting to Contractor exclusive occupancy of the Project. Contractor shall not cause any unnecessary hindrance or delay to any other contractor working on the Project. If simultaneous execution of any contract for the Project is likely to cause interference with performance of some other contract or contracts, Owner shall decide which contractor shall cease work temporarily and which contractor shall continue or whether work can be coordinated so that contractors may proceed simultaneously. If Owner directs Contractor to cease Work temporarily due to the work of another contractor, Contractor shall be entitled to a change order upon documentation of actual, reasonable costs, but such costs shall not include overhead, profit or general conditions for the period of time during which Work has ceased.

If the Project is split into phases and/or separate contracts, then Contractor has made allowances for any delays or damages which may arise from coordination with contractors for other phases or contracts. If any delays should arise from a contractor working on a different phase or contract, Contractor's sole remedy for damages, including delay damages, shall be against the contractor who caused such damage and not the Owner. Contractor shall provide access to contractors for other phases or contracts as necessary to prevent delays and damages to contractors working on other phases or contracts.

ARTICLE 8

PAYMENTS AND COMPLETION

8.1 CONTRACT SUM. The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

8.2 COST BREAKDOWN. On forms approved by the Owner within ten (10) days of the mailing, emailing or delivery of the Notice to Proceed, the Contractor shall furnish a schedule of values and a list of all subcontractors and suppliers. The Owner shall review all submissions received in a timely manner. All submissions must be approved by the Owner before becoming the basis of any payment.

8.3 APPLICATIONS FOR PAYMENT. When the Progress Payment Milestones defined in Subsection 8.6.1 have been met, the Contractor shall submit to the Owner an itemized Application for Payment for Work completed in accordance with the Payment Schedule in Subsection 8.6.1. As the Contractor is required to order, obtain, and store materials and equipment sufficiently in advance of its Work at no additional cost or advance payment from Owner, to assure that there will be no delays, payment by the Owner for stored material shall be made only in unusual circumstances where the Owner specifically approves the payment in writing. The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. Because Contractor must order, obtain, and store materials and equipment sufficiently in advance of its work at no additional cost or advance payment from Owner to assure that there will be no delays on the Project, Owner shall pay for stored materials only in unusual circumstances where Owner specifically approves such payment in writing. If payments are to be made for materials and equipment that are not incorporated in the Work on the Project but delivered and suitably stored at a Project Site or at some other location agreed upon in writing by Owner,

the payments shall be conditioned upon submission by Contractor, Subcontractor, or vendor of bills of sale and such other documents satisfactory to Owner to establish Owner's title to such materials or equipment free of all liens and encumbrances, and otherwise protect Owner's interest, including, without limitation, provision of applicable insurance and transportation to the Project Site. All stored items shall be inventoried, specified by identification numbers (if applicable), released to Owner by the sureties and Subcontractors, and, if stored off the Project Site, stored only in a bonded warehouse.

8.4 REVIEW OF PROGRESS PAYMENT. The Owner will, within seven (7) days after receipt of the Contractor's Application for Payment, either approve such payment or notify the Contractor in writing of the Owner's reasons for withholding approval in whole or in part. The review of the Contractor's Application for Payment by the Owner is based on the Owner's observations at the Site and the data comprising the Application for Payment whether the Work has progressed to the point indicated and whether, to the best of the Owner's knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents.

8.5 DECISIONS TO WITHHOLD PAYMENT. The Owner may decide to withhold payment in whole, or in part, to the extent reasonably necessary to protect the Owner. In addition, the Owner may withhold payment, in whole, or in part, to such extent as may be necessary to protect the Owner from loss because of any acts or omissions by Contractor, including but not necessarily limited to the following:

8.5.1 Failure to provide requested supporting documents;

8.5.2 Defective work not timely remedied;

8.5.3 Stop Payment Notices. If any Stop Payment Notice or other lien is filed on the Project for labor, materials, supplies, equipment or any other thing of value claimed to have been furnished to or incorporated into the work on the Project, or for other alleged contribution thereto, the Owner shall retain from payments otherwise due the Contractor, in addition to other amounts properly withheld under this Section or under other provisions of the Contract, an amount equal to 125 percent (125%) of the amount claimed under such Stop Payment Notice; provided, however, that the Owner may release such funds upon receipt of evidence satisfactory to the Owner to the effect that the Contractor has resolved such claim, by settlement, Stop Payment Notice Release Bond or otherwise. All other provisions of state law with respect to Stop Payment Notices shall also apply;

8.5.4 Liquidated damages assessed against the Contractor;

8.5.5 Commercially reasonable doubt, after consultation with the Contractor, that the work on the Project can be completed for the unpaid balance of any Price or within the Completion Date;

8.5.6 Damage to the Owner, another contractor, or subcontractor, including any sums expended by or on behalf of the Owner in performing any of the Contractor's obligations under the Contract which the Contractor has failed to perform or has performed inadequately;

8.5.7 Unsatisfactory prosecution of the work by the Contractor;

8.5.8 Failure to store and properly secure materials;

8.5.9 Failure of the Contractor to submit on a timely basis, proper and sufficient documentation required by the Contract, including, without limitation, monthly progress schedules, shop drawings, submittal schedules, schedule of values, product data and samples, proposed product lists, executed change orders, and verified reports;

8.5.10 Failure of the Contractor to maintain record drawings;

8.5.11 Erroneous estimates by the Contractor of the value of the work on the Project performed, or other false statements in an Application for Payment;

8.5.12 Unauthorized deviations from the Contract Documents;

8.5.13 Failure of the Contractor to prosecute the work on the Project in a timely manner in compliance with established progress schedules and completion dates; or

8.5.14 Forfeiture of funds pursuant to California Labor Code Section 1727. The Owner shall retain and transfer those funds pursuant to California Labor Code Section 1730.

Subject to the withholding provisions of this Section of the Contract Documents, the Owner will pay the Contractor the amounts set forth below in Section 8.6.

Neither the Owner nor the Owner's Representative will have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law. No payments or approvals/processing of Applications For Payment made by the Owner will constitute acceptance of Defective Work.

8.6 PROGRESS PAYMENTS.

8.6.1 Payment Schedule. Progress payments shall be made in accordance with Public Contract Code section 20104.50. Owner shall pay the Contract Sum to Contractor on a per Project Site basis in accordance with the following schedule and after Contractor has complied with the requirements of Section 8.3 and the Contract Documents:

Payment 1 ("Design Payment"): 15 percent of the Contract Sum upon Contractor's completion of all work required in the Governmental Approval Phase (see Subsection 7.2.2 and all provisions related thereto).

Payment 2 ("Procurement Payment"): 40 percent of the Contract Sum during the Construction Phase (see Section 7.2.3 and all provisions related thereto) upon delivery on the Project Sites of all major equipment, which shall include modules, support structures, combiner boxes, disconnect switches, inverters, PMRS and weather stations, and upon Contractor providing Owner with all documents required of Contractor pursuant to Section 8.3.

Payment 3 ("Construction Payment"): 20 percent of the Contract Sum during the Construction Phase (see Section 7.2.3 and all provisions related thereto) upon Contractor's completion of the Construction Phase.

Payment 4 ("Commissioning Payment"): 15 percent of the Contract Sum during the Commissioning Phase (see Section 7.2.4 and all provisions related thereto) upon Contractor's completion of the Commissioning Phase.

Payment 5 ("DSA Payment"): 5 percent of the Contract Sum upon submission to DSA by Contractor of all forms necessary for DSA's approval / certification of the Project. Notwithstanding the release of such funds upon Contractor's submission of documentation to DSA, Contractor shall continue to be obligated to respond to all inquiries and requests of Owner, Owner's agents or DSA made in connection

with DSA's approval / certification of the Project. If DSA is not involved in the Project, this 5 percent shall be withheld as part of Payment 6.

Payment 6: ("Final Payment"): 5 percent of the Contract Sum upon the Owner's issuance of a Letter of Acceptance and Completion, less any amount or amounts properly withheld by Owner in accordance with the Contract Documents, until such time, if any, that such amount or amounts may be or are required to be released in accordance with the Contract Documents.

8.6.2 Payments and Information to Subcontractors. No later than 7 days after Contractor receives payment from Owner, pursuant to Business and Professions Code section 7108.5, Contractor shall pay to each Subcontractor, out of the amount paid to Contractor on account of such Subcontractor's portion of the work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to Contractor on account of such Subcontractor's portion of the work. Contractor shall, by appropriate subcontract with each Subcontractor, require each Subcontractor to make payments to sub-subcontractors in a similar manner. Owner has no obligation to pay, or to see to the payment of, money to a Subcontractor except as may otherwise be required by law. Owner will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by Contractor, and action taken thereon by Owner, on account of portions of the work done by such Subcontractor.

8.6.3 Waivers and Releases. Within 15 days after receipt of each progress payment and the Final Payment, Contractor shall provide (and shall cause its suppliers and Subcontractors, and their subcontractors to provide) to Owner an unconditional lien waiver and release (related to progress payment or Final Payment as applicable) in a form substantially similar to the forms attached hereto as Attachment N.

8.7 COMPLETION OF THE WORK. Upon receipt of the Contractor's request for final inspection, the Owner will make an inspection to determine whether the Work, or designated portion thereof, is complete. If the Owner's inspection discloses any item which is not completed in accordance with the requirements of the Contract Documents, the Contractor shall, before Owner's issuance of the Letter of Acceptance and Completion, diligently complete or correct such item.

8.8 PARTIAL OCCUPANCY OR USE. Owner may occupy or use any completed or partially completed portion of the Work at any stage without accepting that work and without waiving rights to claim damages as to that work. The Owner and the Contractor shall agree in writing to the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Work, insurance, the period for correction of the Work, and the commencement of warranties required by the Contract Documents.

8.9 LETTER OF ACCEPTANCE AND COMPLETION, AND FINAL PAYMENT. If the Owner's representatives find the Work fully performed under the Contract Documents, they shall so notify Contractor, who shall then submit to the Owner its final application for progress payment. After the Owner's representatives find the Work fully performed the Owner may record a Notice of Completion with the County Recorder in accordance with Civil Code section 3093 and shall issue a Letter of Acceptance and Completion. Contractor shall, upon receipt of final progress payment from Owner, pay the amounts due Subcontractors. Owner shall pay the retainage pursuant to Public Contract Code section 7107. Any application for final progress payment shall be accompanied by the same details required for regular progress payments. Acceptance of final progress payment shall constitute a waiver of Claims except for those previously identified in writing and identified by that payee as unsettled at the time of final payment.

8.10 SUBSTITUTION OF SECURITIES. In accordance with section 22300 of the Public Contract Code, the Owner will permit the substitution of securities for any monies withheld by the Owner to ensure

performance under the Contract. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the Owner, or with a state or federally chartered bank as the escrow agent, who shall then pay such monies to the Contractor. Upon completion of the Contract, the securities shall be returned to the Contractor. Securities eligible for investment under this section shall include those listed in Government Code section 16430, bank or savings and loan certificates of deposit, interest-bearing, demand-deposit accounts, standby letters of credit, or any other security mutually agreed to by the Contractor and the Owner. The Contractor shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon. Any escrow agreement used shall be substantially similar to the form set forth in Public Contract Code section 22300.

ARTICLE 9

PROTECTION OF PERSONS AND PROPERTY

9.1 SAFETY PRECAUTIONS AND PROGRAMS. The Contractor shall have responsibility for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. Subcontractors have the responsibility for participating in, and enforcing, the safety and loss prevention programs established by the Contractor for the Project, which will cover all Work performed by the Contractor and its Subcontractors. Subcontractors shall promptly report in writing and by phone to the Contractor all accidents whatsoever arising out of, or in connection with, the performance of the Work, whether on or off the Site, which caused death, personal injury, or property damage, giving full details and statements of witnesses. The Contractor will provide and maintain at the Site first-aid supplies for minor injuries.

9.2 SAFETY OF PERSONS AND PROPERTY. The Contractor shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury, or loss to: (A) Employees on the Work and other persons who may be affected thereby; (B) the Work, material, and equipment to be incorporated therein, whether in storage on or off the Site, under the care, custody, or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and (C) other property at the Site or adjacent thereto such as trees, shrubs, lawns, walks, pavement, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction. The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on the safety of persons or property or their protection from damage, injury, or loss.

The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent Sites and utilities.

When use or storage of explosives, other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. The Contractor shall notify the Owner any time that explosives or hazardous materials are expected to be stored on Site. Location of storage shall be coordinated with the Owner and local fire authorities.

9.3 PROTECTION OF WORK AND PROPERTY. The Contractor and Subcontractors shall continuously protect the Work, the Owner's property, and the property of others, from damage, injury, or loss arising in connection with operations under the Contract Documents. The Contractor and Subcontractors shall make good any such damage, injury, or loss, except such as may be solely due to, or caused by, agents or employees of the Owner.

The Contractor and the Subcontractors shall use only those ingress and egress routes designated by the Owner, observe the boundaries of the Site designated by the Owner, park only in those areas designated by the Owner, which areas may be on or off the Site, and comply with any parking control program established by the Owner such as furnishing license plate information and placing identifying stickers on vehicles.

9.4 **EMERGENCIES.** In an emergency affecting the safety of persons or property, the Contractor shall take any action necessary, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 7. The Contractor shall promptly report in writing to the Owner all accidents arising out of or in connection with the Work, which caused death, personal injury, or property damage, giving full details, and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner.

9.5 **HAZARDOUS MATERIALS.** In the event the Contractor encounters or suspects the presence on the Site material reasonably believed to be asbestos, polychlorinated biphenyl (PCB), or any other material defined as being hazardous by section 25249.5 of the California Health and Safety Code, which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner in writing, whether or not such material was generated by the Contractor or the Owner.

ARTICLE 10

INSURANCE AND BONDS

10.1. CONTRACTOR'S LIABILITY INSURANCE

10.1.1 **Liability Insurance Requirements.** Before the commencement of the Work and within limits acceptable to the Owner, the Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in California as admitted carriers, having a rating not lower than "A" as rated by A.M. Best Company, Inc. or other independent rating companies, commercial general liability insurance per occurrence for bodily injury, personal injury and property damage, and automobile liability insurance per accident for bodily injury and property damage combined single limit, as will protect the Contractor, which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations are by the Contractor, by a Subcontractor, by Sub-subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. This insurance shall be subject to the approval of Owner, and Owner's approval shall not be unreasonably withheld. The Contractor shall require its Subcontractors and any Sub-subcontractors to take out and maintain similar commercial liability insurance and property damage insurance proportionate to each such Subcontractor scope of work. If any policy carried by any of the Subcontractors offers 50% or less of the limits required of the Contractor hereunder, the Contractor shall notify the Owner of the proposed coverage to be carried by such Subcontractor, and the Owner shall have the right in its reasonable discretion to approve or reject the proposed coverage in each such case.

Owner may partially or fully occupy and/or use the Project before acceptance of the entire Project by the Owner. All of contractor's required insurance must allow such occupancy and/or use without prior consent from insurer.

10.1.2 **Additional Insured Endorsement Requirements.** The Contractor shall name the Owner, the Owner's designated representative, its officials, officers, agents, employees and authorized volunteers as additional insureds on Contractor's commercial general liability, automobile liability, and excess/umbrella policies.

10.1.3 Workers' Compensation Insurance. During the term of this Contract, the Contractor shall provide workers' compensation insurance for all of the Contractor's employees engaged in Work under this Contract on or at the site of the Project and, in case any of the Contractor's work is sublet, the Contractor shall require the Subcontractor to provide workers' compensation insurance for all the Subcontractor's employees engaged in Work under the subcontract.

10.1.4 Builder's Risk/"All Risk" Insurance. Unless otherwise supplied by the Owner, the Contractor, during the progress of the Work and until final acceptance of the Work by Owner upon completion of the entire Contract, shall maintain Builder's Risk/Course-of-Construction insurance, issued on a completed value basis on all insurable Work included under the Contract Documents. This insurance shall be subject to the approval of Owner, and Owner's approval shall not be unreasonably withheld. This insurance shall insure against all risks, including but not limited to the following perils: vandalism, theft, malicious mischief, fire, sprinkler leakage, civil authority, sonic boom, explosion, collapse, flood, wind, hail, lightning, smoke, riot or civil commotion, debris removal (including demolition) and reasonable compensation for the Owner's costs and expenses required as a result of such insured loss. This insurance shall provide coverage in an amount not less than the full cost to repair, replace, or reconstruct the Work. Such insurance shall include the Owner, the Owner's designated representative, and any other person or entity with an insurable interest in the Work as an additional named insured.

10.1.5 Fire Insurance. Before the commencement of the Work, the Contractor shall procure, maintain, and cause to be maintained at the Contractor's expense, fire insurance on all Work included under the Contract Documents, insuring the full replacement value of such Work as well as the cost of any removal and demolition necessary to replace or repair all Work damaged by fire. This insurance shall be subject to the approval of Owner, and Owner's approval shall not be unreasonably withheld. The amount of fire insurance shall be as directed by Owner.

10.1.6 Other Insurance. The Contractor shall provide all other insurance required to be maintained under applicable laws, ordinances, rules, and regulations. Such insurance shall be subject to the approval of Owner, and Owner's approval shall not be unreasonably withheld.

10.1.7 Proof of Carriage of Insurance. The Contractor shall not commence Work nor shall it allow any Subcontractor to commence Work under this Contract until all required insurance, certificates, and an Additional Insured Endorsement and Declarations Page have been obtained and delivered in duplicate to the Owner for approval, and such approval shall not be unreasonably withheld.

10.1.8 Compliance. In the event of the failure of any contractor to furnish and maintain any insurance required by this Article, the Contractor shall be in default under the Contract.

10.2 PERFORMANCE AND PAYMENT BONDS. Unless otherwise specified in the Contract Documents, prior to commencing any portion of the Work, the Contractor shall apply for and furnish Owner separate payment (Attachment J) and performance (Attachment K) bonds for its portion of the Work which shall cover 100% faithful performance of and payment of all obligations arising under the Contract Documents and/or guaranteeing the payment in full of all claims for labor performed and materials supplied for the Work. Only bonds executed by admitted Surety insurers as defined in Code of Civil Procedure section 995.120 shall be accepted. The surety insurers must, unless otherwise agreed to by Owner in writing, at the time of issuance of the bonds, have a rating not lower than "A" as rated by A.M. Best Company, Inc. or other independent rating companies. Owner reserves the right to approve or reject the surety insurers selected by Contractor and to require Contractor to obtain bonds from surety insurers satisfactory to the Owner.

ARTICLE 11

UNCOVERING AND CORRECTION OF WORK

11.1 UNCOVERING OF WORK. If a portion of the Work is covered contrary to the Inspector's request, the Owner's request, or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Inspector or the Owner, be uncovered for the Inspector's or the Owner's observation and be replaced at the Contractor's expense without change in the Contract Sum or Time.

11.2 CORRECTION OF WORK; WORKMANSHIP WARRANTY.

11.2.1 Warranty and System Warranty Period. Contractor warrants and guarantees to Owner that, for the duration of the period commencing on the acceptance by the Owner's governing body of the Work (see Section 8.9) or a designated portion thereof, or by terms of an applicable special warranty required by the Contract Documents, and continuing thereafter for 10 years ("System Warranty Period"), all work on the Project will be substantially free from defects in design, workmanship, materials and equipment, and shall be in accordance with the requirements of the Contract Documents. Work on the Project not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective by Owner. Owner shall provide written notice of any warranty item to Contractor before expiration of the System Warranty Period, and if written notice is provided within the System Warranty Period, Contractor's obligation to correct the warranty item to conform to the requirements of the Contract Documents will continue until the correction is made and completed. Contractor shall ensure that no act or omission of Contractor limits or voids any existing warranty on existing Owner equipment or system, and shall take reasonable steps to ensure any such existing warranties are preserved in full.

11.2.2 Notice and Corrective Work.

11.2.2.1 During the System Warranty Period, if any of the work on the Project is found to be not in accordance with the Contract Documents or otherwise defective, Owner shall provide Contractor with written notice thereof.

11.2.2.2. With two business days of Contractor's receipt of Owner's notice, Contractor shall provide Owner with a written response, acknowledging receipt of the notice and providing Owner with an action plan to remedy the defect or stating the grounds for denial of the warranty work request. Within two business days of Owner's receipt of Contractor's written response, Owner shall provide Contractor with any objections or responses thereto. If the Parties are unable to agree regarding Owner's warranty work request or a plan of action for the corrective work, the Parties shall proceed in accordance with their dispute resolution options under the Contract Documents and at law. The System Warranty Period shall be extended with respect to Contractor's corrective work performed pursuant to this provision by one year, starting on the date that the corrective work is completed in accordance with the plan of action and approved by Owner.

11.2.2.3 Unless the Parties agree in writing otherwise, Contractor shall perform and complete all corrective work stated in the plan of action no later than 10 days following the date of the plan of action. An expiration of the System Warranty Period during the performance of the correct work shall not release Contractor from its obligation to correct the work so long as Owner provided written notice of the warranty work within the System Warranty Period.

11.2.2.4 These corrective requirements on Contractor shall apply regardless of whether the nonconforming work was observed before or after Completion and whether or not fabricated, installed, or completed. The Contractor shall bear costs of correcting the rejected Work, including additional testing,

inspections, and compensation for the Inspector's or the costs and expenses for professional services borne by Owner's made necessary thereby.

11.2.2.5 The Contractor shall remove from the Project Sites portions of the Work which are not in accordance with the requirements of the Contract Documents and are not corrected by the Contractor or accepted by the Owner. If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 2.4. The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Contractor's correction or removal of the nonconforming Work. Nothing in this Section shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents.

11.3 **MANUFACTURER WARRANTIES.** Contractor shall, for the protection of Owner, use commercially reasonable efforts to obtain from all vendors and Subcontractors from which Contractor procures machinery, equipment or materials or services, warranties and guarantees with respect to such machinery, equipment, materials or services, which shall be made available to Owner to the full extent of the terms thereof. At all times during performance of work under the Contract Documents Contractor shall perform the work in a manner consistent with all such warranties and shall not perform any actions that may violate or void such warranties. All applicable manufacturers' warranties shall be a minimum of 10 years. A list of all applicable manufacturers' warranties is attached to this Agreement as Attachment H.

ARTICLE 12

MISCELLANEOUS PROVISIONS

12.1 **GOVERNING LAW.** The Agreement shall be governed by the law of the place where the Project is located.

12.2 **SUCCESSORS AND ASSIGNS.** The Owner and the Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party hereto and to partners, successors, assigns, and legal representatives of such other party in respect to covenants, agreements, and obligations contained in the Contract Documents. Neither party to the Agreement shall assign the Agreement as a whole or in part without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Agreement.

12.3 **RIGHTS AND REMEDIES; NO WAIVER.** Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law. No action or failure to act by the Inspector or the Owner shall constitute a waiver of a right or duty afforded them under the Contract Documents, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

12.4 **TESTS AND INSPECTIONS.** Tests, inspections, and approvals of portions of the Work required by the Contract Documents will comply with Title 24, and with all other laws, ordinances, rules, regulations, or orders of public authorities having jurisdiction.

12.4.1 **Independent Testing Laboratory.** When required by the scope of the Project, Owner will select an independent testing laboratory to conduct all required tests and inspections, and, except as specifically provided otherwise in the Contract Documents, pay for all associated costs. Selection of the materials required to be tested shall be made by the laboratory or Owner and not by Contractor. Any costs or expenses

of inspection or testing incurred outside of the Inspection Distance Limitation stated in E on the Cover page or not located in a contiguous county to the Project Site on which the inspection or testing is required, whichever distance is greater, shall be paid for by Owner, and Owner shall then invoice to Contractor and Contractor shall make payment thereof within 30 days after Contractor receives the invoice; if Contractor fails to do so, Owner shall have the right to withhold the amount from any payment due or to be due to Contractor under the Contract.

12.4.2 Advance Notice to Inspector. Contractor shall notify the Owner and Inspector a sufficient time but no shorter than two (2) working days in advance of its readiness for required observation or inspection so that the Owner and Inspector may arrange for same. Contractor shall notify the Owner and Inspector a sufficient time in advance of the manufacture of material to be supplied under the Contract Documents that must, by terms of the Contract Documents, be tested in order that the Owner and Inspector may arrange for the testing of the material at the source of supply.

12.4.3 Testing Off-Site. Any material shipped by Contractor from the source of supply, prior to having satisfactorily passed such testing and inspection or prior to the receipt of notice from the Inspector that such testing and inspection will not be required, shall not be incorporated in the Project.

12.4.4 Additional Testing or Inspection, and Costs Related Thereto.

12.4.4.1 If the Inspector, Owner, or public authority having jurisdiction over the Project determines that any portion of the work on the Project require additional testing, inspection, or approval, the Inspector will, upon Owner's written authorization, arrange for such additional testing, inspection, or approval. Owner shall bear such costs except in paragraph 12.4.4.2, below.

12.4.4.2 If the testing or inspection of work on the Project reveal that the work does not comply with the Contract Documents, Contractor shall bear all costs arising from such failure, including those of re-testing, re-inspection, approval, or re-approval, including, but not limited to, compensation for services and expenses of the Inspector, testing laboratory, and any other professionals or entities retained by Owner. Any such costs shall be paid for by Owner, and Owner shall then invoice to Contractor and Contractor shall make payment thereof within 30 days after Contractor receives the invoice; if Contractor fails to do so, Owner shall have the right to withhold the amount from any payment due or to be due to Contractor under the Agreement.

12.4.5 Costs for Premature Test. If Contractor requests any test or inspection for any portion of the Project and that portion is not ready for the inspection, Owner shall have the right to invoice Contractor for all costs and expenses relating to the testing or inspection, including, but not limited to, compensation for services and expenses of the Inspector, testing laboratory, and any other professionals or entities retained by Owner. Any such costs shall be paid for by Owner, and Owner shall then invoice to Contractor and Contractor shall make payment thereof within 30 days after Contractor receives the invoice; if Contractor fails to do so, Owner shall have the right to withhold the amount from any payment due or to be due to Contractor under the Contract.

12.4.6 Tests and Inspections Not to Delay Work. Tests and inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the work on the Project.

12.5 TRENCH EXCAVATION. Pursuant to Labor Code section 6705, if the Contract Sum exceeds \$25,000 and involves the excavation of any trench or trenches five (5) feet or more in depth, the Contractor shall, in advance of excavation, submit to the Owner or a registered civil or structural engineer employed by the Owner a detailed plan showing the design of shoring for protection from the hazard of caving ground during the excavation of such trench or trenches. If such plan varies from the Shoring System Standards established by the Construction Safety Orders, the plan shall be prepared by a registered civil or structural

engineer, but in no case shall such plan be less effective than that required by the Construction Safety Orders. Pursuant to Labor Code section 6705, nothing in this Article shall impose tort liability upon the Owner or any of its employees.

12.6 DEBARMENT. Pursuant to Public Contract Code section 6109, no contractor or subcontractor may perform work on a public works project if ineligible to perform work on the project pursuant to sections 1777.1 or 1777.7 of the Labor Code.

12.7 ASSIGNMENT OF ANTITRUST CLAIMS. Pursuant to Government Code section 4552, in entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or Subcontractor offers and agrees to assign to the Owner all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act, (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 [commencing with § 16700] of Part 2 of Division 7 of the Bus. & Prof. Code), arising from the purchase of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgment by the parties.

12.8 AUDIT. Contractor's Agreement books, records, and files shall be subject to audit and examination under Government Code section 8546.7 and any amendments thereto.

12.9 STORM WATER DISCHARGE COMPLIANCE. As applicable, the Contractor shall be required to comply with the State Water Resources Control Board (State Water Board) National Pollutant Discharge Elimination System ("NPDES"), General Permit No. CAS000004 as it may be amended. Contractor shall comply with the lawful requirements of the Owner, State of California, and all applicable municipalities and local agencies regarding trash and discharges to separate storm drain systems or watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs. Contractor shall fully familiarize itself with the Permit. Failure to comply with the Permit is a violation of federal and state law. Contractor hereby agrees to indemnify and hold harmless the Owner, its officials, officers, agents, employees and authorized volunteers from and against any and all Notices of Violation ("NOV"), claims, demands, losses or liabilities of any kind or nature which the Owner, its officials, officers, agents, employees and authorized volunteers may sustain or incur for Contractor's noncompliance with the Permit, except for liability resulting from the sole established negligence or willful misconduct of the Owner, its officials, officers, agents, employees or authorized volunteers.

ARTICLE 13

TERMINATION OR SUSPENSION OF THE AGREEMENT

13.1 TERMINATION BY THE OWNER FOR CAUSE. The Owner may terminate the Agreement if the Contractor: (A) refuses or fails to supply enough properly skilled workers or proper materials; (B) fails to make payment to Subcontractors for materials or labor in accordance with Public Contract Code section 10262 or Business and Professions Code section 7108.5, as applicable; (C) disregards laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction; or (D) otherwise is in substantial breach of a provision of the Contract Documents.

When any of the above reasons exist, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, written notice of seven (7) days, terminate the Contract and may, subject to any prior rights of the surety, (A) take possession of the site and of all material, equipment, tools, and construction equipment and machinery thereon owned by the Contractor, (B) accept assignment of subcontracts, and (C) complete the Work by whatever reasonable method the Owner may deem expedient.

If the unpaid balance of the Contract Sum exceeds costs of completing the Work, including compensation for professional services and expenses made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This payment obligation shall survive completion of the Agreement.

13.2 SUSPENSION OR TERMINATION BY THE OWNER FOR CONVENIENCE. The Owner may, without cause, order the Contractor in writing to suspend, delay, or interrupt the Work in whole or in part for such period of time as the Owner may determine. An adjustment shall be made for increases in the cost of performance of the Contract, including profit on the increased cost of performance caused by suspension, delay, or interruption. No adjustment shall be made to the extent (A) that performance is, was, or would have been so suspended, delayed, or interrupted by another cause for which the Contractor is responsible; or (B) that an equitable adjustment is made or denied under another provision of this Agreement. Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee.

The Owner may, at any time, terminate the Agreement for the Owner's convenience and without cause upon ten (10) days written notice. Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall (1) cease operations as directed by the Owner in the notice; (2) take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and (3) except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders. In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work performed prior to the date of effective date of termination.

13.3 TERMINATION BY CONTRACTOR. Contractor may not terminate for convenience. Contractor may only terminate for cause if the Work is stopped by others for a period of one hundred eighty (180) consecutive days through no act or fault of the Contractor, a Subcontractor of any tier, their agents or employees, or any other persons performing portions of the Work for whom the Contractor is contractually responsible, and the Work was stopped by others for one of the following reasons: (A) Issuance of an order of a court or other public authority having jurisdiction which requires Owner to stop all Work; or (B) an act of government, such as a declaration of national emergency, making material unavailable which requires Owner to stop all Work. If such grounds exist, the Contractor may serve written notice of such belief on Owner and demand a meet-and-confer conference to negotiate a resolution in good faith within twenty (20) days of receipt of such notice. If such conference does not lead to resolution and Contractor believes the grounds for termination still exist, Contractor may terminate the contract and recover from the Owner payment for Work executed and for reasonable verified costs with respect to materials, equipment, tools, construction equipment, and machinery, including reasonable overhead, profit, and damages for the Work executed, but excluding overhead (field and home office) and profit for (i) Work not performed and (ii) the period of time that the Work was stopped.

13.4 NOT A WAIVER

Any suspension or termination by Owner for convenience or cause under this Article 13 shall not act as a waiver of any claims by Owner against Contractor or others for damages based on breach of contract, negligence or other grounds.

13.5 EARLY TERMINATION

Notwithstanding any provision herein to the contrary, if for any fiscal year of this Contract the governing body of the Owner fails to appropriate or allocate funds for future periodic payments under the Contract after exercising reasonable efforts to do so, the Owner may upon thirty (30) days' notice, order work on the

Project to cease. The Owner will remain obligated to pay for the work already performed but shall not be obligated to pay the balance remaining unpaid beyond the fiscal period for which funds have been appropriated or allocated and for which the work has not been done.

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**ATTACHMENT B
TO ENERGY SERVICES AGREEMENT**

SCOPE OF PROJECT

**I.
PROJECT OVERVIEW**

1.1 PROJECT MANAGEMENT. Contractor is required to act as the general contractor and is responsible for overall safety on each Project Site. Contractor is required to conduct all project management activities required to complete the Project, including coordination efforts with Owner's representative, the interconnecting utility, inspectors, permitting agencies, suppliers, sub-contractors, Contractor's office and field Project staff or any other third parties that are involved in or impacted by the Project. The installation must be "turn-key," requiring a minimum level of supervision and project management by Owner, include all materials and labor, and result in a fully commissioned photovoltaic ("PV") system. All incentive program documentation, electric utility related interconnection work and electricity rate change, fees, and installations necessary to make the PV systems operational will be the sole responsibility of the Contractor.

Unless specifically stated otherwise in other Contract Documents, Contractor shall prepare and submit to the applicable agencies, on behalf of Owner, or assist Owner in doing so directly, all applications, proof of progress submittals, or claim forms and documentation necessary for any environmental or financial incentives and rebates ; provided that Owner shall have the opportunity to review, comment on, and approve all such applications and documentation prior to submission by Contractor. If Owner shall decide to prepare and submit such documents, Contractor will coordinate and provide Owner promptly upon Owner's written request all documents reasonably necessary for Owner to do so, including any application submitted by Owner to qualify the Project as a "Qualified Facility" under pertinent rules and regulations of the Federal Energy Regulatory Commission or any other governmental authority. Contractor shall not charge any additional fee for its services related to any environmental or financial incentive programs. Unless stated otherwise in other Contract Documents, Owner shall pay for all fees required to file the applications.

1.2 PERMITTING, CODES, REGULATORY COMPLIANCE, AND REAL ESTATE. Contractor is required to complete all permitting activities for Project construction and operation by obtaining approvals from authorities having jurisdiction over the Project, including, but not limited to: Utility and incentive authorities, the California Energy Commission, the California Division of State Architect ("DSA"), fire safety, California Occupational Safety and Health Administration ("OSHA"), utility interconnection, right-of-way permits, easement agreements and other codes and best practices. Specifically, the Contractor is required to obtain and submit all documents to close out the Project with DSA for release of all retention funds that are undisputed. In addition to stamped and approved plans, Contractor is required to provide the installation compliance confirmation letter from DSA.

1.3 PHYSICAL SITE INVESTIGATION & PROJECT FEASIBILITY ASSESSMENT. Contractor shall conduct feasibility and configuration assessments, environmental assessments, and other inspections of the Project Sites to determine that the Project Sites can support the installation and interconnection of the SEGF. Contractor is required to ensure the existing electrical distribution equipment including the main switchboard and utility transformer will support the interconnection of the PV systems. Contractor shall confirm that PV systems are interconnected to the correct meter at each Project Site by validating the meter and service account identification numbers (SAID) with the Utility. Contractor is required to ensure that each Project Site soil conditions and Project Site terrains are favorable for Project construction. Contractor is required to ensure the existing underground utilities and installations are not impacted by Project construction. In the event Contractor damages or makes inoperable any underground or above ground utilities it will be Contractor's full responsibility to notify Owner immediately and make whole and fully operational to Owner's standards and to Owner's satisfaction.

Contractor is required to identify if any third party site assessments are required. Contractor shall assume any and all costs and risks associated with physical Project Site conditions and real estate constraints. Third party reports which may be required include, but are not limited to:

- Structural Report
- Soils/Geotechnical Report
- ALTA and Topographic Surveys
- Underground Utility Survey
- Title Report

1.4 SYSTEM DESIGN & ENGINEERING. Contractor is responsible for creating a complete system design that meets Owner's Project Objectives and Description as outlined below. The design must include all materials and equipment required to result in the installation of a reliable and operational PV system. Owner's Project Objectives and Description require Contractor to perform each of the following in accordance with the Agreement:

1.4.1 Ensure the safety of Owner's students, staff, and surrounding neighbors during construction.

1.4.2 Ensure that permanent installations under the Project are safe, comply with applicable law, and result in no adverse effect on Owner's students, staff, surrounding neighborhoods, existing installations and buildings, existing power quality, or daily operations at any site throughout the life cycle of the PV installations.

1.4.3 Design, engineer, procure, install, interconnect, and commission PV systems and other systems at Project Sites consistent with the requirements in the Agreement.

1.4.4 Design the PV systems to provide the Target Annual Energy Production (kWh) per meter as indicated in the Site Assessment Table (see Attachment C of the Agreement) at the lowest Levelized Cost of Electricity ("LCOE"). Respondents are not required to perform LCOE calculations. However, respondents are required to optimize the design by balancing the installation costs and the production gains. Other costs including financing and operations and maintenance ("O&M") will be evaluated by Owner.

1.4.5 Meet Project, DSA compliance, and environmental and financial incentive program submittals and completion deadlines. Effectively manage the schedule and coordinate construction activities around the Owner's Capital Facility Improvement construction projects.

1.5 PROCUREMENT. Contractor is required to procure all equipment and services required for Project design, construction, commissioning, system monitoring and warranties, including extended warranties where required by this Agreement. Extended warranty for inverters are required for minimum 20 years.

1.6 CONSTRUCTION. Contractor is required to conduct all construction and construction management work for completion of the Project. All work must be performed and supervised by skilled workers trained and experienced in the installation of photovoltaic solar systems in accordance with equipment manufacturers' installation requirements.

1.7 SYSTEM COMMISSIONING & TESTING. Contractor will be responsible to conduct all activities required for commissioning the Project. Contractor shall develop a Testing and Commissioning Plan that shall at a minimum incorporate Attachment G and provide the plan to Owner for review and approval prior to entering the Commissioning Phase of the Project. Commissioning will include testing all installations and systems to ensure operation per the design parameters, demonstrating that each SEGF is functioning as expected and meets the Target Annual Energy Production and completing the

Commissioning Schedule in Attachment G. Contractor is responsible to schedule necessary inspections and ensure the installations pass final inspections with DSA, the utility, Owner and Owner's representative, and any other required inspectors. Contractor will notify Owner no less than five (5) days prior to the commencement of testing and Owner and / or its representative will have the right to observe all such tests. As part of the commissioning activities, Contractor must confirm that no negative impacts are experienced by the existing facilities that connect or interface with the new installations and systems. Additionally, after initial commissioning and testing Contractor shall provide Owner with comprehensive training in the operation and maintenance of the PV systems.

1.8 **DELIVERABLES.** Deliverables are required as part of the Project completion checklist and release of progress payments. At various times during the design and construction phases, Contractor is required to provide the following deliverables to Owner, all of which must be clearly marked as Progress Payment Milestone deliverables on the Final Project Schedule. Contractor must submit to Owner:

Design Payment

- Completed construction and engineering documents (including calculation sheets) prior to submittal to DSA (1 electronic).
- DSA approved design drawings (3 hardcopy and 1 electronic).

Procurement Payment

- Inspector of Record written notice that all major equipment has been delivered to the project sites (1 electronic).

Construction Payment

- Inspector of Record written notice that construction is substantially complete (1 electronic).
- Copy of the request to the utility to schedule a Permission to Operate inspection (1 electronic).

Commissioning Payment

- Completed Commissioning Schedule from Attachment G (1 electronic).
- Permission to Operate notice from the utility (1 electronic).

Final Payment

- Binder containing materials listed in the Final Binder Table of Contents in Section IV-1.06 (2 hardcopy and 1 electronic).
- Two (2) sets of large format as-built drawings.
- Two (2) sets of keys to all locks, equipment, and boxes installed.

1.9 **COMPLETION CEREMONY AND RENEWABLE ENERGY CURRICULUM.** Contractor shall provide the curriculum and educational services selected by Owner, if any, pursuant to the services offered by the Contractor in response to the Owners Request for Proposals. In addition, Contractor will coordinate a ribbon cutting ceremony at one District location once the Project is completed. The Contract Sum shall be sufficient compensation for all such educational services and / or products provided by the Contractor.

II. PROJECT DESCRIPTION

The solar energy generating facilities (collectively "SEGFs" and each individually, an "SEGF") is intended to be in operation for a *minimum* of 25 years; *therefore*, the life cycle costs (capital expenditures and

operating and maintenance expenses) of all installations and systems must be considered in the design of and material selection for the Project.

2.1 SOLAR ENERGY GENERATION. Sizing of the total installed capacity (kW_{STC}) required to achieve the Target Annual Energy Production (kWh) **per Project Site** will be the responsibility of Contractor. Contractor is required to confirm the specifications provided for the arrays, main switchboard and utility transformer. PV modules shall be monocrystalline or polycrystalline type. Contractor shall confirm that PV systems are interconnected to the correct meter at each Project Site by validating the meter and service account identification numbers (SAID) with the Utility.

2.2 PERFORMANCE MONITORING & REPORTING SERVICE. Contractor is required to provide a five-year Performance Monitoring and Reporting Service (“PMRS”) contract to monitor energy meters, inverters, meteorological stations and all other data points applicable to the Project. Contractor is required to procure, install, and commission the PMRS equipment, any required software and third party Performance Data Provider (“PDP”) services. The following are requirements for the monitoring service:

- Contractor is required to provide sufficient training to Owner for using the PMRS software interface as part of commissioning activities.
- The PMRS software interface must be accessible via a link from each Site’s website and Owner’s District website and must allow the users to view and download real-time and historical electricity usage and production data at each Project Site over a variety of timescales.
- The PMRS software interface must allow the Owner to programmatically download via Application Program Interface (“API”) the real-time and historical electricity usage and production data at each Project Site over a variety of timescales. API should include ability to reference most recent inverter, generation meter, weather station and alarm status readings. API should be accessible through JSONP or CORS.
- All software will be provided with a fully paid perpetual license or if the software is provided on a subscription basis, then such subscription shall be fully paid for the first five (5) years. Owner shall pay for the ongoing costs of the PMRS.
- The PMRS system shall provide spare hardware capacity for up to 20 percent input/output (I/O) after full buildout without requiring additional hardware or server licensing. The PMRS system servers shall provide spare capacity for up to 100 percent additional I/O after full buildout without requiring the PMRS server hardware or software to be upgraded.

2.3 LOAD SITE INTERVAL METERS. Contractor is required to install load side revenue grade interval meters to measure the total (not net) electricity usage, instantaneous demand, power factor, etc. at each main switchboard where the PV Systems are interconnected. The load side revenue grade interval meters shall be installed as part of the PMRS system and send data through the PDP and be displayed on the PMRS software interface.

2.4 METEOROLOGICAL STATIONS. The Project will require installation of one meteorological station per site to include:

- one (1) pyranometer installed at 0° tilt to measure ground horizontal irradiance (GHI)
- one (1) pyranometer installed at each unique azimuth and tilt of the arrays installed,
- one (1) PV module temperature sensor,
- one (1) ambient temperature sensor, and
- one (1) wind speed and direction sensor.

The meteorological stations must be connected to the PMRS so that weather data can be collected along with the production data.

The PV module temperature sensor data shall be linked to the predicted power calculation formula in the PMRS software interface along with the applicable plane of array irradiance data supplied by the pyranometer for each array.

All meteorological station equipment shall be calibrated and tested by original equipment manufacturer or vendor prior to delivery to site.

2.5 DISPLAY KIOSKS. One per Site and one at the District offices at [School District address].

2.6 SAFETY AND SECURITY SYSTEMS. The Project will include installation of conduits at each Project Site sufficient to allow for future installation of security cameras at each array location.

Pull box locations shall not be installed in or near playgrounds and play fields. Locations of all pull boxes shall be reviewed with Owner prior to start of construction.

Inverters shall be placed away from all buildings where the operational noise would disturb the occupants. Inverters may be installed under shade structure arrays in parking lots, if no other viable location is available. Inverters are not required to be covered under shade structure, unless required by the manufacturer.

No trenching is allowed inside playgrounds and play fields. All trenching and / or boring locations must be inspected by an accredited underground line locating company prior to any Work being completed. Contractor shall use GPRS to survey for underground utilities and use best practices when trenching including hand digging near buried lines. Trenching or boring in potentially high risk areas (gas lines) shall take place outside school hours. Trenches in grassy areas shall be covered with new sod. Trenches through concrete shall be replaced joint to joint for each section. All trenching areas shall be backfilled with new engineered fill and compacted to Caltrans specifications.

Shade structures over parking lots are required to include weather proof lighting on independent timers for safe pedestrian travel per Title 24. Contractor shall ensure the level of night time and security lighting is not reduced as a result of the installations at all array locations. All new lighting shall be LED and vandal proof.

Shade structures located in parking lots shall have wheel stops installed in front of columns.

All high voltage and high amperage equipment must be installed in secure, tamper-proof, and locked enclosures to prevent unauthorized tampering for safety and theft prevention. Safety labels are required for high voltage and high amperage equipment. Appropriate safety signs are required to caution drivers for height clearances around shade structures and speed or path restrictions near equipment pads. Safety bollards or traffic pylons with reflective strips shall be installed if the equipment pad is adjacent to a road.

Steel columns in the vicinity of playgrounds must have foam padding up to six feet high from ground level. Installation of 16 gauge galvanized steel wire mesh (1" x 1" mesh) is required under shade structures located near playgrounds.

2.7 COMMUNICATION PROTOCOL. Throughout the entirety of the Project timeline, the representative selected by Owner will be Contractor's source of contact regarding any and all Project issues. At no time between the RFP release date and the solar facility commissioning date may Contractor contact Owner directly without the stated permission of Owner's representative. Unless otherwise stated, Owner's representative will act as a liaison, facilitator and intermediary between Contractor and Owner.

Unless otherwise stated in the Contract Documents and subject to change by Owner, the Parties shall meet at least weekly during the performance of Contractor's work to, among other things, review work performed to date and to be performed. Contractor shall organize the meeting, prepare, and distribute meeting notes. Minute notes shall be taken in satisfactory written form and include 3 week look-ahead schedule, RFI log, and Change Order log. Meeting notes shall be updated during the meeting and distributed at the end of the meeting and Owner shall have five business days after Owner's receipt of such minutes to object to them in writing and provide corrections in writing. A quorum of meeting attendees will be named at the first meeting. The named quorum shall be in attendance in all Project meetings.

2.8 WORK-TIME CONSTRAINTS. Great care shall be taken to avoid interruptions to school activities. Schools will be open 7:00 AM to 5:00 PM. Contractor will be required to provide necessary weekly updates of scheduled activities at each school site to Owner and shall provide sufficient notice for any interruption in electrical service. Reasonable efforts must be taken to minimize noise during school hours.

Deliveries shall take place outside high traffic times including student drop-off and pick-up times.

Contractor shall manage construction activities around and with consideration to the other projects occurring at the same time.

2.9 CONSTRUCTION REQUIREMENTS. Contractor is encouraged to utilize local contractors and source materials and resources locally should they provide requisite qualifications and competitive advantages. Half of the parking lot spots at each Project Site shall remain open for non-construction activities use at each time. Owner may allow Contractor to close an entire parking lot with support from Contractor to direct traffic to temporary parking lots. Contractor shall provide three weeks' notice in advance of each parking lot closure. Contractor shall prepare a communication memo with a site logistics plan for distribution to Project Site stakeholders (staff, teachers, students, parents, etc.).

Contractor shall address Americans with Disabilities Act (ADA) considerations in conjunction with DSA requirements when installing solar shade structures over parking lots. The Contractor shall be responsible for all costs associated with ADA upgrades required.

Contractor shall ensure to reasonable extent and availability of installation space that solar shade structures are built away from the line of sight of neighboring properties.

Contractor shall trim tree branches that would cause shading and reduce production of PV systems. Contractor shall remove trees that would cause shading and reduce production of PV systems or are in direct path of construction. Contractor shall mark each tree and review with Owner and the City Arborist prior to removal. Contractor shall remove the tree stump/grind to 1' below grade and provide a surface flush with surrounding grounds using the same material as the surrounding area.

Contractor shall remove light posts (including concrete bollards and rebar cages) and other non-building fixtures that would cause shading and reduce production of PV systems. Contractor shall mark each light post and fixture and review with Owner prior to removal. After removal of the light post, Contractor shall electrically secure the termination point at ground level and place a traffic rated cover over the Christy box. Metal traffic rated covers will be supplied for all underground Christy box locations. Contractor shall use best efforts to remove the light posts and deliver to Owner at the Project Site in existing condition so the Owner can re-install in other areas. Contractor is not required to include the cost for re-installation in the proposal.

2.10 FINGERPRINTING AND CRIMINAL BACKGROUND CHECK. Contractor shall comply with applicable provisions of the Contract Agreement and laws, including Education Code sections 45125.1 and 45125.2, relating to fingerprinting and criminal background checks for its employees.

Owner will issue necessary keys to Contractor to access Project Sites. Contractor shall return keys to Owner upon Final Completion or at any time upon request by Owner. Contractor shall reimburse Owner for the cost of re-keying all of Owner's locks, if keys are not returned to Owner.

III. PROJECT REQUIREMENTS

3.1 TURNKEY SERVICES. Contractor will provide stamped electrical, civil, structural and other required engineering Drawings, secure all required permits, procure all necessary materials and install the photovoltaic modules, electrical wiring and components including inverters, electrical connection to the existing site electrical infrastructure, and construction of mounting structures on which the photovoltaic modules are installed. Contractor shall commission the SEGFs and support the interconnection process with the local utility provider ("**Utility**"). Contractor shall provide comprehensive on-site construction management for the SEGFs and overall project management for the Project.

Contractor shall perform the work on the Project in accordance with practices generally accepted in the industry, all applicable laws, government approvals and permitting requirements, and quality control and inspections so that each SEGF (i) meets or exceeds all requirements of applicable laws, government approvals and licenses and each SEGF is installed in accordance with manufacturer's specifications or by methods otherwise approved by the manufacturer; (ii) complies with all requirements of the Interconnection Agreement; (iii) meets or exceeds the warranties and guarantees set forth in the Agreement; (iv) is safe and adequate for its intended purpose and conditions; (v) is free from defects; (vi) is comprised of equipment which is new and of good quality when installed, designed and manufactured and of a grade in accordance with generally accepted national standards for the design, manufacture and quality of such equipment; and (viii) meets or exceeds all requirements for any applicable federal, state or other rebates and incentives. For the purposes hereof, "**Interconnection Agreement**" means an agreement entered into by and between Owner and the Utility which agreement shall provide for (i) each SEGF to be interconnected with the Utility's electricity distribution system, (ii) for energy to flow from each SEGF to such system and (iii) for energy to flow from such system to the Project Sites, as applicable, under the provisions of the Utility's tariff.

3.2 FEASIBILITY INSPECTION AND ASSESSMENT. Prior to issuance of Notice to Proceed to Procurement and Construction, Contractor will have conducted feasibility and configuration assessments, environmental assessments, and other inspections of the Project Sites to determine that each Project Site can support the installation of the SEGFs designated therefor, without further modification to any Project Site. Contractor is responsible to obtain all necessary Site data, perform all required geotechnical investigations and determine all Site data for the design and construction of the Project. This shall include determination of code requirements for seismic, snow and wind design loads. Copies of all reports shall be provided to Owner. Required reports include without limitation:

- 3.2.1 Third party Structural Report for all rooftop systems or elevated arrays (shade structures);
- 3.2.2 Any necessary review under the California Environmental Quality Act;
- 3.2.3 Title Report showing any easements, CC&Rs, etc.; and
- 3.2.4 Site electrical service capacities.

Contractor will have prepared an Engineering Design Package (the materials defined in this Attachment B) for use by the Parties in Project modeling and the development of the Agreement. All preliminary engineering and installation Drawings shall be consistent with prevailing construction standards, codes, and

compliance. The system design will comply with all applicable laws and regulations. The preliminary design, Drawings and materials shall be based on Owner's Approved Products as provided in this Attachment B and adhere to Owner's SEGF Specifications consistent with this Attachment B, including all Pre-Agreement Submittals.

3.3 ACCESS TO AND USE OF PROJECT SITES. Owner shall provide space at each Project Site for the performance of the work on the Project, and the installation, storage, and operation of any equipment and materials. As described in and subject to the conditions set forth below and any additional conditions set forth in the Contract Documents, Owner shall provide Contractor with access to the Project Sites, in order for Contractor and Subcontractors to perform the work on the Project during regular business hours, or such other reasonable hours as may be requested by Contractor and acceptable to Owner. Owner will also provide Contractor adequate space, without charge, for office storage trailer and parking for a minimum of twenty (20) vehicles within one-quarter (1/4) mile of each Project Site. Owner will provide Contractor access to the Project Sites in accordance with the following terms:

3.3.1. License. Owner hereby grants a license (the "License") to Contractor in accordance with the terms and conditions hereinafter set forth, to install and construct the Project, including the supporting structures therefor, on the Project Sites, and to access the site of construction of the Project across or through any surrounding or nearby premises owned by Owner, passage through which is reasonably necessary to gain access to the Project. The License may be exercised by Contractor only during such time and during such hours as Owner may at any time specify in writing to Contractor, and Owner reserves the right to reasonably deny Contractor or its employees access to the Sites at any time that such access will impair Owner's operations, except that, subject to the other terms of this Attachment B, Contractor may access the Project Sites at any time for emergency purposes, as reasonably determined by Contractor. In the case of emergency entry, Contractor shall give Owner notice of such entry as soon as reasonably practicable before or after entry, and shall at all other times give Owner reasonable notice before entry onto the Project Sites by Contractor's employees, agents or Subcontractors. Contractor and its employees, agents and Subcontractors shall comply with applicable law regarding construction or maintenance activities at the Project Sites. For the avoidance of doubt, Contractor acknowledges that this License does not entitle Contractor to any rights to the Site not specified by the Contract Documents, including this Attachment B.

3.3.2 Final Project Schedule. Contractor shall coordinate construction with Owner so as to minimize disruption to the Project Sites. Contractor shall prepare and submit project schedules in accordance with the terms and conditions of the Agreement.

3.3.3 Use of Project Sites. Contractor agrees not to do or permit to be done in or about the Project Sites, nor to bring or keep or permit to be brought or kept in or about the Project Sites, anything which is prohibited by or will in any way conflict with any legal requirements or which is prohibited by the standard form of fire insurance policy, or which will in any way increase the existing rate of (or otherwise affect) fire or any other insurance on the Project Sites or any of its contents. Contractor agrees not to commit or suffer to be committed any waste in or upon the Project Sites.

3.4 CONSTRUCTION AND INSTALLATION. Prior to beginning construction, Contractor shall also provide Owner with a copy of Contractor's safety plan, as well as an evaluation and appropriate documentation of the safety record any licensed Subcontractor that will be performing work on the Project. Safety plan shall include the location of emergency utility shutoffs (both manual and electronic shutoffs). Contractor shall review the emergency shut off and evacuation plan with Owner prior to start of construction. Contractor will apply for all permits necessary for development, construction, ownership and operation of the Project. Copies of all applicable permits shall be provided to Owner five (5) business days or less after they are obtained or completed, in all cases before a Notice to Proceed to Procurement and Construction will be issued. Owner will review and approve the documents prior to commencement of construction. It is the Contractor's sole responsibility to ensure that all Site Work complies with all federal,

states and local code requirements and all applicable industry codes and standards, and all other requirements in the Agreement.

3.4.1 **Prepare the site.** This shall include but is not limited to site clearing and grubbing, grading, roads, dust control, drainage required by the civil engineering plan, construction wastewater and storm water disposal and removing excess debris. Contractor shall design and construct Site grading / drainage to minimize potential for Site flooding and shall at a minimum maintain existing drainage. On roof mount systems this shall include but is not limited to pre-installation removal from the roof surface of all existing items that might cause membrane puncture if stepped on.

3.4.2 Contractor will coordinate with Owner when trenching is performed, when laydown areas are determined, when major shipments are planned, or any other activities that might impact Owner's business operations.

3.4.3 AC and DC Wiring, Junction Boxes, Shutoffs, Conduit, trenching.

3.4.4 Modules, mounting system/solution, roof sealing and repairs (if appropriate), foundation work, elevated structure, tracker controllers, actuators, etc.

3.4.5 Inverters, switchgear and transformers and accompanying supports and/or concrete pads.

3.4.6 Temporary security fence (6 feet tall), to be removed at end of construction; Permanent fencing and bollards if required.

3.4.7 Install the balance of the remotely accessible Data Acquisition System (the SEGF monitoring and metering system) including Revenue Grade Metering.

3.5 **MATERIAL PURCHASE.** Contractor will purchase and furnish to the Project Sites the following material without limitation and as appropriate per the Specifications:

3.5.1 Miscellaneous Structural or Module Mounting components.

3.5.2 Components (Nuts, Bolts, Clamps, Conduit, Grounding Lugs, etc.).

3.5.3 Photovoltaic Modules.

3.5.4 All AC and DC wiring.

3.5.5 DC Junction Boxes.

3.5.6 AC and DC shutoffs.

3.5.7 Inverters and applicable shading structure.

3.5.8 Electric Switchgear as needed.

3.5.9 Transformers as needed.

3.5.10 Meteorological Station.

3.5.11 Remotely accessible Data Acquisition Systems including Revenue Grade Metering.

3.5.12 All materials related to drainage required by the civil engineering plan as appropriate.

3.5.13 All security components including fencing, cameras, perimeter monitoring, etc. as required.

3.5.14 All equipment required for interconnection to the utility including any upgrades to existing utility owned equipment.

3.5.15 All other components, parts, products and materials to complete the construction of the SEGF in accordance with the Agreement.

The material will arrive on to the Project Sites as to not delay the completion of the Project. Contractor will provide flash test data for all modules to Owner in MS Excel format upon procurement of modules. Owner, at its sole discretion, may randomly select up to twenty (20) PV modules of each type of photovoltaic modules used in the Project for delivery to a third-party for quality verification testing. The costs of such verification testing shall be the responsibility of Owner.

If the SEGF is in whole or in part ground mounted, or materials shall be stored on-site during construction, prior to the arrival of equipment and materials at the Project Sites, Contractor shall install a fenced secured area and provide 24-hour security for the storage of such equipment and materials, such secured area to be approved by Owner, such approval not to be unreasonably withheld or delayed.

Contractor will be responsible for all storage and receiving of all freight at the Project Sites in a secure manner to be approved by Owner, such approval not to be unreasonably withheld or delayed.

3.6 COMMISSIONING AND UTILITY INTERCONNECTION APPROVAL.

3.6.1 Commission the completed system in accordance with the Commissioning Tests and Procedures in Attachment G to verify that the system is functioning as expected within acceptable parameters and as designed at a nameplate capacity and first year of operation production capacity adjusted for actual weather conditions consistent with the requirements of the Contract Documents.

3.6.2 Facilitate completion or execution of any Incentive related documents.

3.6.3 Contractor will actively coordinate with Utility in preparation for and completion of the facilities' interconnection, as confirmed by the receipt of written approval from the Utility to operate or parallel the SEGF on the Utility's grid.

3.6.4 Contractor will obtain written Permission to Operate from the Utility for each Site and cause the SEGF to produce and deliver energy in accordance with this Agreement.

3.7 **FINAL COMPLETION.** Prior to final completion of the Project, Contractor will perform the following tasks without limitation:

3.7.1 Complete all unfinished work described on a Punch List to be provided by Contractor and approved by Owner.

3.7.2 Final clean up of each Project Site, which shall include Contractor thoroughly washing the PV modules in accordance with the module manufacturer's recommendations as part of Final Completion.

3.7.3 All systems (PV and non-PV) shall operate continuously and without any downtime for a period of 30 days after commissioning as a measure of Final Completion.

3.7.4 Train Owner in the operation, and recommended operation and maintenance, of the SEGF.

3.7.5 Provide Owner with copies of all operation and maintenance manuals and warranties for the Project. Any and all operation and maintenance manuals for the Project shall include warranty cards for all Project equipment signed by Owner.

3.7.6 Provide Final As-Built documents and all other required submittals.

3.7.7 Train Owner on emergency shut-down procedures as well as standard inverter restart procedures.

IV SPECIFICATIONS AND SUBMITTALS

4.1 REFERENCES

4.1.1 All components shall be designed, manufactured and tested in accordance with the latest applicable standards of NEMA, ANSI, NEC and UL.

4.1.2 In addition to the codes cited in Section 16010 of the Construction Specification Institution, specific requirements for individual components of the solar system include but are not limited to the guidelines shown herein.

4.1.3 The work on the Project shall be designed and installed in accordance with the latest edition of all applicable codes, standards, and recommendations of the following agencies:

- 4.1.3.1 ADA – American Disabilities Act
- 4.1.3.2 ANSI-American National Standards Institute.
- 4.1.3.3 ASCE-American Society of Civil Engineers.
- 4.1.3.4 ASME-American Society of Mechanical Engineers.
- 4.1.3.5 CAL OSHA-California /Occupational Safety and Health Administration.
- 4.1.3.6 CBC-California Building Code.
- 4.1.3.7 CEC-California Energy Commission.
- 4.1.3.8 ETL-Electrical Testing Laboratories.
- 4.1.3.9 IEEE-Institute of Electrical and Electronic Engineers.
- 4.1.3.10 ICEA-Insulated Cable Engineer’s Association.
- 4.1.3.11 IAEE-International Association of Electrical Inspectors.
- 4.1.3.12 IPMVP- International Performance Measurements and Verification Protocol.
- 4.1.3.13 NFPA-101-National Fire Protection Association. (Life Safety Code).
- 4.1.3.14 NEMA-National Electrical Manufacturers Association.
- 4.1.3.15 NESC-National Electrical Safety Code.
- 4.1.3.16 NETA-National Electrical Testing Association.
- 4.1.3.17 NEC -National Electrical Code.
- 4.1.3.18 UL-Underwriters Laboratories.
- 4.1.3.19 DSA-Division of the State Architect.
- 4.1.3.20 CSI-California Solar Initiative.
- 4.1.3.21 Caltrans-California Department of Transportation
- 4.1.3.22 All other Authorities having Jurisdiction

4.2 DESIGN / ENGINEERING REQUIREMENTS.

4.2.1 Engineering.

4.2.1.1 Contractor is responsible for all project engineering. Specifically, Contractor must obtain the following before commencing the Work on the Project:

4.2.1.1.1 If ground mounts are used in the system, a study, recommendations and stamp and sign off from a licensed structural and geotechnical engineer shall be required.

- 4.2.1.1.2 If stand-alone elevated system mounts are used in the system, a study, recommendations and stamp and sign off from a licensed structural engineer and geotechnical engineer.
- 4.2.1.1.3 If roof top mounts are used in the system, a structural review including calculations and engineering approval stamp and sign off from a licensed structural engineer. This includes mechanical base anchorage details for mechanical equipment bearing engineer's seal and signature.
- 4.2.1.1.4 Electrical, civil, geotechnical, structural and other engineering designs are to be wet signed and stamped by a licensed engineer.
- 4.2.1.1.5 Voltage drop of less than or equal to 2.0% for the entire system (AC and DC circuits). Each run (Modules to combiners boxes, combiner box to DC Disconnects, etc.) will be individually calculated, Conductor Type, Current at Max Power, Voltage at Max Power, Estimated Length of Line (one-way) and associated Voltage Drop will be shown in a table.
- 4.2.1.1.6 There should be separate single lines for the array, the monitoring system data communications and power, and for the tracking system power (and data communications if the tracker is being monitored separately) if applicable.
- 4.2.1.1.7 In all cases above, the studies and prints designed there from are to be stamped and wet-signed by the engineer as engineer of record.
- 4.2.1.1.8 In all cases, engineers are to be properly licensed by the State.
- 4.2.1.1.9 Structural engineers are to specify grade of steel used in all support structures. Mill certifications showing the identification of the steel to be used on the Project and the quality thereof shall be provided to Owner. Mill certifications shall be checked by Contractor prior to accepting delivery of any steel.
- 4.2.1.1.10 Contractor is responsible for the complete and totally functional operation of the DAS System. Any labor, communications devices, wiring and or other materials shall be included in Contractor's base price. Contractor is responsible for the workmanship and timely completion of any and all Subcontractors that are necessary for the successful completion of the Project.
- 4.2.1.1.11 Contractor must visit the Project Sites to ascertain site conditions, accuracy of provided Drawings and feasibility of design. Contractor is responsible to know what is actually in place no matter what provided drawings say. Contractor is responsible for the upgrades to the existing electrical system required to accommodate the SEGF installation, and is to include those changes in both their price and their design Drawings.
- 4.2.1.1.12 Contractor shall ensure parasitic loads (lights, security cameras, etc.) are not installed on the same circuit as the revenue or generation meter and are installed so that their load is included with the overall Site's load side meter measurement.
- 4.2.2 Design Requirements.**
- 4.2.2.1 Proposed systems will have a shade free window between the hours of 9 am and 3pm (solar time) on the winter solstice.
- 4.2.2.2 Minimum inter-row spacing and setback guidelines for roof mounts and ground mounts will be designed to prevent self-shading.
- 4.2.2.3 Shade structure arrays shall include non-wired extra modules if needed so that the array is a full complete rectangle and does not contain any insets or jagged corners. These non-wired modules must be noted in the string wiring diagrams submitted in the Final Binder.

4.2.2.4 Within the design, stay out zones shall then be calculated and incorporated into the drawing set. Ground mount arrays shall be designed such that a service truck is able to drive in between the rows and make turns outside each row of PV modules. Equipment pads shall be provided with two (2) receptacle 120Vac 20A GFCI convenience outlets.

4.2.2.5 The exact layout, number and type of PV modules must be shown clearly in the Construction Documents. Tables should be added on each page re-capitulating numbers of combiner boxes, modules, etc. as a check on count.

4.2.2.6 All conduits shall enter enclosures from below and be made watertight by sealing with silicone sealing compound.

4.2.2.7 All junction boxes, condolets, etc., are to be sealed with a silicone sealing compound and made watertight. *All Christy boxes shall be covered with traffic rated metal plates bolted / welded down with a permanent marking on the lid "Electrical". Above ground junction boxes shall be equipped with tamperproof screws.*

4.2.2.8 Ground mount PV arrays shall be fenced in accordance with the NEC, NESC and requirements of all authorities having jurisdiction, including but not limited to DSA, and shall include provisions for at least one locking gate.

4.3 SUBMITTALS PRIOR TO PERMIT SUBMITTAL, PROCUREMENT AND CONSTRUCTION.

4.3.1 Contractor shall submit the following information to Owner before commencing the work on the Project:

4.3.1.1 Detailed site plan with detailed solar array layout including inverter location(s), monitoring and security.

4.3.1.2 All required engineers' reports, signed and stamped as well as PVSyst reports for each array in PDF and 8760 spreadsheet formats. A fully signed and stamped set of design prints.

4.3.1.3 A list of those changes made from the original proposal with the reasons therefor.

4.3.1.4 Complete electrical calculations including voltage drops at each run.

4.3.1.5 Updated Bill of Materials with the make and model number of the following equipment; solar modules, inverters, isolation transformers, AC/DC load break disconnect switches, grounding hardware, monitoring components, and all other material equipment.

4.3.1.6 Full details of the mounting system including wind and seismic considerations and calculations.

4.3.1.7 Array wiring diagrams, wiring diagrams for the non-array part of the job, single lines.

4.3.1.8 Electrical Physical Equipment Layout showing combiner boxes and all wiring and equipment required for Monitoring system including revenue meters. All such diagrams to have electrical equipment called out by make and model number. All wires to be called out by size and utility.

4.3.1.9 Book with Product Data sheets on all equipment to be used on the array to include switches and fuses.

4.3.2 The following information shall be submitted to Owner prior to commencing the work on the Project:

4.3.2.1 Microsoft Project or equivalent construction schedule (providing Gantt chart output) showing milestones, equipment order and delivery dates, and staffing requirements. Specific milestones such as conduit installation completion, material required arrival times, Interconnection date, and commissioning timeline, shall be highlighted.

4.3.2.2 Contractor shall develop a complete working plan of the site, showing material storage, a lay-down and layout yard, site office, etc. This plan shall be reviewed by Owner Construction Manager. Contractor shall obtain a signed approval thereof from Owner.

4.3.2.3 Contractor shall develop and submit as a part of this package a complete work plan taking into account such issues as:

4.3.2.3.1 Access and mobilization.

4.3.2.3.2 Crane locations and traffic control.

4.3.2.3.3 Method of installation.

4.3.2.3.4 Staffing.

4.3.2.3.5 Site-specific safety plan – Contractor will develop a site specific OSHA approved safety plan and submit it to Owner for review prior to the start of construction.

4.3.2.3.6 Contractor shall procure and submit as a part of this package any and all permits or other approvals required by authorities having jurisdiction over the Project, to include but not limited to: all incentive program guidelines, the California Division of State Architect (“DSA”), fire safety, California Occupational Safety and Health Administration (“OSHA”), utility interconnection, right-of-way permits, easement agreements and others required by codes and best practices. Contractor is to include all such permit costs in the Contract Sum.

4.3.2.3.7 Contractor will specifically include any meter replacement costs or other electrical service upgrade costs required by the local utility or AHJ.

4.3.2.3.8 For ground mounted systems, Contractor shall supply an erosion control plan, weed abatement plan, and security plan for the site. Such plans shall include estimated costs for contracted services to execute the plan(s) as part of operations and maintenance for the Project. Contractor is required to evaluate whether the Site is in a floodplain and take appropriate precautions to prevent water damage to the Project during a 100 year flood event including a determination of the appropriate height above grade of the PV arrays, inverters, combiner boxes and other materials to be used in the ground mount infrastructure. If no such plans are required a negative statement in the cover letter is required.

4.3.2.3.9 The submittals will be reviewed by Owner. Approval or denial shall be delivered within 14 days.

4.4 **REGULATORY REQUIREMENTS.** All electrical equipment supplied for the Project shall bear a UL, CSA, ETL or UR label. Copies of the listing shall be supplied if Owner requests.

4.5 **DELIVERY, STORAGE, ACCESS, AND HANDLING.**

4.5.1 Equipment shall be stored and handled in accordance with manufacturer’s requirements.

4.5.2 Contractor shall be responsible to fully inspect shipments for damage and report damage to both the Manufacturer and Owner. Further, Contractor is required to file claim upon shipper if any is needed.

4.6 **PRODUCTS - APPROVED MANUFACTURERS AND PRODUCTS.** Only products identified below shall be used in the construction of the Project, unless otherwise approved in writing by Owner.

Owner's Approved PV Module Manufacturer

[TO BE ADDED by Contractor prior to executing Agreement]

Owner's Approved Inverter Manufacturer

[TO BE ADDED by Contractor prior to executing Agreement]

A mandatory 20-year equipment warranty is required for all inverters.

Inverter Manufacturer Preventative Maintenance and Support Services. Owner highly values preventative maintenance support services provided by inverter manufacturers, as well as comprehensive and highly responsive repair service offerings. In addition, Owner will be monitoring the inverters' performance remotely, and require that the inverters utilize an open interface and documented protocols for third party monitoring software.

Approved Mounting Hardware.

[TO BE ADDED by Contractor prior to executing Agreement]

Owner desires to ensure that each SEGF is built with the highest level of structural integrity possible while at the same time minimizing the impact on the Project Sites, Owner's buildings, and land. Owner must be able to remove a SEGF easily if needed, and requires the ability for Owner to accomplish maintenance without unnecessary difficulty.

Shade Structures

[TO BE ADDED by Contractor prior to executing Agreement]

Shade structure columns and beams shall be hot dipped galvanized steel. Purlins shall be G90 galvanized steel. If deemed required, Contractor shall conduct topographic survey to ensure shade structure column heights are designed such that in Project Sites with multiple shade structures the beams are installed in the same horizontal plane. Proposed shade structures shall be DSA Pre-Checked solar shade structures. Weep holes on steel canopy structures will be closed or filled.

Unlisted Mounting and Tracking Systems. Mounting or tracking solutions or systems not listed may be submitted to Owner for review and approval. Owner requires that all mounting solution descriptions clearly identify the mounting hardware, any engineering services related to the mounting solution, and details related to the number of roof penetrations required and the plan to seal and warrant the roof. Mounting solution costs should always take into consideration all of these elements to ensure an equitable comparison. Proposed mounting systems or tracking solutions should be supplied with full Specifications, warranty details, etc.

Approved Data Acquisition System ("DAS")

[TO BE ADDED by Contractor prior to executing Agreement]

Weather Station Requirements

- Module temperature sensor To be provided by Contractor.
- Irradiance sensor (one mounted in-plane with modules) To be provided by Contractor.
- Ambient temp sensor To be provided by Contractor.
- Wind speed sensor To be provided by Contractor.

4.7 UTILITY RATE CHANGES.

4.7.1 Contractor shall be responsible for coordinating the desired rate schedule changes with the Utility for the Project. Desired rate schedules for each Project Utility meter are defined in the Site Assessment Table (see Attachment C). Contractor will be responsible for ensuring that the System meets the requirements for inclusion in the desired rate schedules and will promptly inform Owner if there is any discrepancy between such requirements and the specifications for the System set forth in this Agreement. It is preferred that the switching to these rate tariffs happen after the SEGF has been operational continuously for a thirty (30) day period as required for Final Completion. If the utility only allows to change the rate at interconnection, then the rate change should occur at interconnection.

4.8 Additional Technical Specifications.

4.8.1 Contractor shall be responsible for additional technical specifications appearing in Appendix P. Additional detail is provided around requirements in Appendix P. In the event of conflicts or inconsistencies, this Agreement will take precedent.

**ATTACHMENT C
TO ENERGY SERVICES AGREEMENT**

**SITE ASSESSMENT TABLE, PRELIMINARY ARRAY LAYOUTS, SINGLE LINE DIAGRAMS
[TO BE PROVIDED BY CONTRACTOR]**

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**ATTACHMENT D
TO ENERGY SERVICES AGREEMENT**

FINAL PROJECT SCHEDULE

In accordance with Section 3.9 of Attachment A, Contractor will develop, with input from Owner, a Preliminary Project Schedule and a Final Project Schedule using Microsoft® Project or equivalent and submit the Final Project Schedule to Owner within 30 days after the Contract Effective Date. The Final Project Completion Date shall remain as stated in Section B on the Cover Page of this Agreement. Contractor and Owner will establish a weekly construction meeting at which time the work of the previous week will be reviewed, and a three-week look-ahead schedule will be coordinated. The three-week look-ahead schedule shall be created in MS Excel® and present the list of activities occurring at each Project Site on a daily basis.

The work on the Project and the Project shall be completed on or before the Final Project Completion Date in accordance with the Final Project Schedule set forth below and as may be amended from time to time during the Contract Term but in no case extending beyond the Final Project Completion Date. The Final Project Schedule shall only be modified upon the written approval of Owner. Any modified schedule approved by Owner shall replace the existing Final Project Schedule set forth below.

The Final Project Schedule (Anticipated Key Engineering and Construction Dates) shall include, at a minimum, the following and shall become a part of the Agreement upon Owner's approval:

First Draft of Drawings Due to Owner
Owner Review of First Draft
Final Draft of Drawings Complete
Owner Approval of Final Drawings
Permit Approval
Procurement
Construction Start
Mechanical Completion
Testing & Commissioning
Utility Meter and Rate Switch Completion
Final Completion Date

The Final Project Schedule and the three-week look-ahead schedule shall be developed per Project Site with each site having its own "Final Site Schedule." The Final Site Schedule for each Project Site shall include a "Final Site Completion Date" applicable only to that Project Site.

The Final Project Schedule shall not show more than 10% of the total activities as critical, and no activity shall have a duration longer than thirty (30) days. The Final Project Schedule shall indicate the beginning and completion dates of all phases of construction and shall use the "critical path method" (commonly called CPM) for the planning and scheduling, of all work required under the Project documents. The schedule will separately identify those milestones or events that must be completed before other portions of the work can be accomplished. The Final Project Schedule shall incorporate and schedule float for inclement weather and resulting muddy site conditions due to rain. Scheduled float for non-working rain related days and resulting muddy site conditions shall be based upon the latest and nearest available data from acceptable data issued from the National Weather Service.

A monthly project schedule update shall be provided to accurately indicate the actual progress of the work against the baseline Final Project Schedule for the prior month, and the remaining planned completion of the work.

The scheduling is necessary for the Owner's adequate monitoring of the progress of the work and it is to be used in the preparation of the Progress Payment Applications. The Owner may disapprove such a schedule and require modification to it if, in the opinion of the Owner, adherence to the progress schedule will cause the work not to be completed in accordance with the Agreement. Contractor shall adhere to any such modifications required by the Owner. Between the monthly schedule updates, it is the obligation of the Contractor to monitor the progress of the work against the current construction schedule activities, and to notify the Owner in writing of all changed activity start dates and finish dates.

Contractor will exchange scheduling information with Subcontractors and suppliers. Contractor will order work, equipment and materials with sufficient lead time to avoid interruption of the work.

The Contractor shall also, if requested by the Owner, provide revised schedules within fifteen (15) days if, at any time, the Owner considers the completion date to be in jeopardy. The revised schedule shall be designed to show how the Contractor intends to accomplish the work to meet the original completion date. The form and method employed by the Contractor shall be the same as for the original progress schedule. The Contractor shall modify any portions of the schedule that become infeasible because of "activities behind schedule" or for any other valid reason. Contractor will provide documents and justification for any schedule changes. An activity that cannot be completed by its original completion date shall be deemed to be behind schedule.

IF CONTRACTOR SUBMITS A REVISED SCHEDULE SHOWING AN EARLIER COMPLETION DATE FOR THE PROJECT OR A SITE, OWNER'S ACCEPTANCE OF THIS REVISED SCHEDULE SHALL NOT ENTITLE CONTRACTOR TO ANY ADDITIONAL COMPENSATION OR CLAIM DUE TO ANY SUCH REVISED SCHEDULE.

**ATTACHMENT E
TO ENERGY SERVICES AGREEMENT**

**COST BREAKDOWN TABLE AND PROGRESS PAYMENT SCHEDULE
[TO BE PROVIDED BY CONTRACTOR]**

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**ATTACHMENT F
TO ENERGY SERVICES AGREEMENT**

**RELEVANT CONTACT LIST
[TO BE PROVIDED BY OWNER AND CONTRACTOR]**

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ATTACHMENT G TO ENERGY SERVICES AGREEMENT

Overview:

Contractor technical personnel, with the assistance of the equipment manufacturer(s) as needed, will perform a complete commissioning of each SEGF following at a minimum the Commissioning procedures outlined in this Attachment as well as other standard tests, inspections, safety and quality checks. Contractor shall be solely responsible to perform all tests that are required to verify that the Project was constructed in accordance with all applicable laws and industry standards, is expected to achieve the design life target, and will perform as anticipated to the Contractor guaranteed Contract Quantity. Where forms have not been provided Contractor shall provide the results of any tests in a standard format. All testing and commissioning will be conducted in accordance with the manufacturer's specifications. Owner reserves the right to have the testing and commissioning results verified by a representative designated by Owner to evaluate and certify the capabilities of the SEGFs ("**Commissioning Engineer**").

These commissioning testing procedures for photovoltaic systems and major components are intended to determine system performance to the specification. The tests are designed to verify that the system, as installed, is safe for personnel as well as equipment, and to establish or verify System operation. The tests shall be used to determine actual post-construction operational, performance, and safety characteristics.

Testing and commissioning procedures must comply with the latest revisions of standards by NETA and NEMA. All testing and commissioning reports must be included in the operating and maintenance manuals.

SOLAR ENERGY FACILITY COMMISSIONING RESULTS

Owner Name _____ Project Site Name _____

SEGF Address (City, State, Zip) _____

SEGF Size (kW DC-STC) _____

SEGF Size (kW AC) _____

Utility and Owner meter number _____

Commissioning report submitted by _____

Provider _____

Time and date of commissioning _____

Weather at time of commissioning _____

Record and document inverter serial number and inverter location _____

This checklist is a guide to establish post construction SEGF operation, performance and safety. The local authorities having jurisdiction over the Project or inspector have the final say on what is or is not acceptable. Local codes may modify the requirements of the NEC. This list should be used in conjunction with Article 690 and other applicable articles. If article 690 differs from other articles of the NEC, Article 690 takes precedence.

PV ARRAY – GENERAL

Complete each item on the checklist below, check the box to the left of the item when it is complete

- ☐ Verify that all combiner fuses are removed and that no voltage is present at the output of the combiner box
- ☐ Recheck that fuses are removed and all switches are open
- ☐ Check that non-current carrying metal parts are grounded properly (array frames, metal boxes, etc. are connected to the grounding system)
- ☐ All debris has been removed from roof or ground
- ☐ Take photos of all sub-arrays and all inverters
- ☐ Inspect all roof penetrations and wall penetrations (ensure conduits and structural brackets are properly sealed/waterproofed) (where applicable)
- ☐ Ensure all labels and safety signs required by applicable law and any additional labels and signs specified in the Agreement Documents are in place
- ☐ Check that all home runs are properly identified at the inverter back to the combiner boxes
- ☐ Check that combiner boxes are properly labeled
- ☐ Check source strings in DC combiner box are in the proper order and make sure labeling is clearly visible
- ☐ Verify that all AC and DC disconnect switches are in the open position
- ☐ Check that the solar modules are secured to the mounting system
- ☐ Visually inspect the array for cracked modules
- ☐ Check to see that all wiring is neat and well supported
- ☐ Visually check that the rows of ground mount modules have been installed in straight lines that are parallel to each other.
- ☐ Check that all nuts and bolts have been properly torqued and record results using array naming nomenclature matching the As-Built drawings.

REPETITIVE SOURCE CIRCUIT STRING WIRING

- ☐ Verify that the both the positive and negative string connectors are identified properly with permanent wire marking
- ☐ Repeat this sequence for all source circuit strings
- ☐ **VERIFY POLARITY OF EACH SOURCE CIRCUIT STRING** in the DC String Combiner Box (place common lead on the negative grounding block and the positive on each string connection—pay particular attention to make sure there is NEVER a negative measurement)

WARNING: IF POLARITY OF ONE SOURCE CIRCUIT STRING IS REVERSED, THIS CAN START A FIRE IN THE FUSE BLOCK RESULTING IN THE DESTRUCTION OF THE COMBINER BOX AND POSSIBLY ADJACENT EQUIPMENT. REVERSE POLARITY ON AN INVERTER CAN ALSO CAUSE DAMAGE THAT IS NOT COVERED UNDER THE EQUIPMENT WARRANTY

- ☐ Record the I-V curve for each string using an I-V curve tracer. Results should be submitted as an MS Excel file generated by the I-V curve tracer. The MS Excel files must be named and organized such that the location of the fuse (i.e. facility name, inverter name/size, combiner box name, fuse and string number) can be conveniently identified and the nomenclature shall match that of the as-built drawings.
- ☐ Verify open-circuit voltage of each source circuit string is within proper range according to manufacturer's installation manual and number each string and note string position on as-built drawing. (Record the string voltage for each string using the same nomenclature as used in the as-built drawings in the attached Appendix, provide one attachment per

- ☐ combiner)
- ☐ Retighten all terminals in the DC String Combiner Box

WIRING TESTS

- ☐ Check the AC line voltage(s) at the main AC disconnect and record the voltage here:

- ☐ If installation contains additional AC disconnect switches, repeat the voltage check on each switch working from the main service entrance to the inverter AC disconnect switch, closing each switch after the test is made except for the final switch before the inverter (it is possible that the system only has a single AC switch)
- ☐ Check an electrical connection between the ground and the conductive surface of the PV modules. Perform test with a multi-meter or 100 mA dc source. If the resistance is less than 1 Ω , then the ground is considered good
- ☐ Cable continuity tests shall be performed on all cables in the System and recorded using cable naming nomenclature matching the As-Built drawings. Each cable shall be labeled in the field using the same nomenclature.
- ☐ Insulation resistance tests shall be performed on all cables in the System by qualified personnel using appropriate methods and IR values for the cable being tested (not required for PV string wiring) and recorded using cable naming nomenclature matching the As-Built drawings.

INVERTER STARTUP TESTS

- ☐ Be sure that the inverter is off before proceeding with this section
- ☐ Test the continuity of all DC fuses to be installed in the DC string combiner box, install all string fuses, and close fuse switches in combiner box
- ☐ Check open circuit voltage at DC disconnect(s) switch(s) to ensure it is within proper limits according to the manufacturer's installation manual and record the voltage here:

- ☐ If installation contains additional DC disconnect switches, repeat the voltage check on each switch working from the PV array to the inverter DC disconnect switch, closing each switch after the test is made except for the final switch before the inverter (it is possible that the system only has a single DC switch)
- ☐ At this point, consult the inverter manual and follow proper startup procedure (all power to the inverter should be off at this time)
- ☐ Confirm that the inverter is operating and record the DC operating voltage here:

- ☐ Cross check that the power output shown on the inverter is the same as on the supplied performance meter within a + or - 2% tolerance

Inverter kW _____

ONSITE MONITORING SYSTEM COMMISSIONING – LOAD SITE INTERVAL METERING (Go to metering enclosure and CT location for this section)

- ☐ Check CT's are orientated in the correct direction and take a picture, the black wire's from the CT's should be facing towards the Utility service panel
- ☐ CT's manufacturer _____
- ☐ CT serial numbers A _____ B _____ C _____
- ☐ Meter manufacturer and serial number (Ex: Shark or ION) _____
- ☐ Remove the **meter calibration report** from the monitoring enclosure for delivery to Owner with this report
- ☐ Power Factor (PF) _____ (If the Power Factor is negative then one or more of the

- CT's are installed backwards)
- ☐ Watts (W) _____ Hz _____ Amps _____
- ☐ Volts L-N A _____ B _____ C _____
- ☐ Volts L-L A _____ B _____ C _____
- ☐ If Static IP -- IP Address _____ Subnet _____
Gateway _____
- ☐ Verify that AC Power of Phase A, B and C are positive and within 2% of each other with the PV system disconnected

ONSITE MONITORING SYSTEM COMMISSIONING - GENERATION METER

(Go to metering enclosure and CT location for this section)

- ☐ Check CT's are orientated in the correct direction and take a picture, the black wire's from the CT's should be facing towards the Utility service panel
- ☐ CT's manufacturer _____
- ☐ CT serial numbers A _____ B _____ C _____
- ☐ Meter manufacturer and serial number (Ex: Shark or ION) _____
- ☐ Remove the **meter calibration report** from the monitoring enclosure for delivery to Owner with this report
- ☐ Power Factor (PF) _____ (If the Power Factor is negative then one or more of the CT's are installed backwards)
- ☐ Watts (W) _____ Hz _____ Amps _____
- ☐ Volts L-N A _____ B _____ C _____
- ☐ Volts L-L A _____ B _____ C _____
- ☐ If Static IP -- IP Address _____ Subnet _____
Gateway _____
- ☐ Verify that AC Power of Phase A, B and C are positive and within 2% of each other

ONLINE SYSTEM COMMISSIONING Check that the following field devices are communicating and the data feedback is accurate:

- ☐ Go to [http://www.\[\]](http://www.[])
- ☐ Login to the system provider's website
- ☐ Generation Meter - Check kW output of system is accurate
- ☐ Environment - Check that the feedback from the weather station sensors is accurate
- ☐ Inverter Monitoring
- ☐ DC Monitoring

SYSTEM TEST

- Digital Irradiance Meter
 - Infrared Thermometer
- ☐ PV Module(s) Data Sheet(s)

APPENDIX 1 TO ATTACHMENT G

SYSTEM DATA – COMPLETE ONE FORM FOR EVERY DC STRING COMBINER BOX OR INVERTER

Note: Irradiance must at least measure 500 W/m² during testing

Combiner Box # _____

Combiner box serial number # _____

Inverter _____

Operating Voltage _____

Recorded											Calculated*	
String No.	Ω +/-	Ω +/G	Ω -/G	Polarity	V _{OC}	I	I _{SC}	T _C	T _A	I _{POA}	V _{OC}	I _{SC}
1												
2												
3												
4												
5												
6												
7												
8												
9												
10												

Table Legend

Ω +/- String Wire Resistance Positive to Negative (ohms)

Ω +/G String Wire Resistance Positive to Ground (ohms)

Ω -/G String Wire Resistance Negative to Ground (ohms)

V_{OC} Open Circuit Voltage (V)

I Operating Current (Amp)

I_{SC} Short Circuit Current (Amp)

T_C Cell Temperature (°C)

T_A Ambient Temperature (°C)

I_{POA} Irradiance in Plane of Array (W/m²)

*Note: Calculated V_{OC} and I_{SC} values must be within 5% of the recorded values.

**APPENDIX 2
TO ATTACHMENT G**

**TORQUE SHEETS AND TORQUE CHECKLISTS SHEETS
[TO BE PROVIDED BY CONTRACTOR]**

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**APPENDIX 3
TO ATTACHMENT G**

**FEEDER CONTINUITY TEST SHEETS
[TO BE PROVIDED BY CONTRACTOR]**

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**APPENDIX 4
TO ATTACHMENT G**

**FEEDER RESISTANCE TEST SHEETS
[TO BE PROVIDED BY CONTRACTOR]**

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**APPENDIX 5
TO ATTACHMENT G**

**COMBINER BOX, INVERTER, TRANSFORMER, AND SWITCHBOARD VERIFICATION SHEETS
[TO BE PROVIDED BY CONTRACTOR]**

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**ATTACHMENT H
TO ENERGY SERVICES AGREEMENT**

MANUFACTURERS' WARRANTIES

List of manufacturers' warranties on a site-by-site basis:

Module Manufacturer Warranty [TO BE PROVIDED BY CONTRACTOR]

Inverter Manufacturer Warranty [TO BE PROVIDED BY CONTRACTOR]

Transformer Manufacturer Warranty [TO BE PROVIDED BY CONTRACTOR]

Other Equipment Manufacturer Warranties [TO BE PROVIDED BY CONTRACTOR]

**ATTACHMENT I
TO ENERGY SERVICES AGREEMENT**

OWNER'S SHADING STUDY GUIDELINES

Contractor shall conduct shading study using the SolMetric SunEye to validate shading loss assumptions per array within 10 days beginning design. Shade readings shall be taken at the design height and plane of each array. Results of the study shall be provided by Contractor to Owner by or before first design review.

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ATTACHMENT J
TO ENERGY SERVICES AGREEMENT
PAYMENT BOND

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PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS that

WHEREAS, the **Borrego Springs Unified School District** (hereinafter designated as the "Owner"), by action taken or a resolution passed _____, 20____ has awarded to _____ hereinafter designated as the "Principal," a contract for the work described as follows: _____ (the "Project"); and

WHEREAS, said Principal is required to furnish a bond in connection with said contract; providing that if said Principal or any of its Subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and its Subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

NOW THEREFORE, we, the Principal and _____ as Surety, are held and firmly bound unto the Owner in the penal sum of _____ Dollars (\$_____) lawful money of the United States of America, 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 CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Section 9100 of the Civil Code, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Section 18663 of the Revenue and Taxation Code, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by the Owner in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

This bond shall inure to the benefit of any of the persons named in Section 9100 of the Civil Code so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or Owner and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 9100 of the Civil Code, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed unoriginal thereof, have been duly executed by the Principal and Surety above named, on the ____ day of _____ 20____ the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

(Corporate Seal of Principal,

if corporation)

Principal (Property Name of Contractor)

By _____

(Signature of Contractor)

(Seal of Surety)

Surety

By _____

Attorney in Fact

(Attached Attorney-In-Fact
Certificate and Required
Acknowledgements)

*Note: Appropriate Notarial Acknowledgments of Execution by Contractor and surety and a power of Attorney MUST BE ATTACHED

Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

Name(s) of Signer(s)

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

☐ Individual

☐ Corporate Officer

Title(s)

Title or Type of Document

☐ Partner(s)

☐ Limited

☐ General

Number of Pages

☐ Attorney-In-Fact

☐ Trustee(s)

☐ Guardian/Conservator

Date of Document

☐ Other:

Signer is representing:

Name Of Person(s) Or Entity(ies)

Signer(s) Other Than Named Above

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**ATTACHMENT K
TO ENERGY SERVICES AGREEMENT
PERFORMANCE BOND**

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PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, **Borrego Springs Unified School District** (hereinafter referred to as "Owner") has awarded to _____, (hereinafter referred to as the "Contractor") _____ an agreement for _____ (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required by said Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of said Contract Documents.

NOW, THEREFORE, we, _____, the undersigned Contractor and _____ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the Owner in the sum of _____ DOLLARS, (\$ _____), said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, 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 Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one-year guarantee of all materials and workmanship; and shall indemnify and save harmless the Owner, its officers and agents, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above performance obligation shall hold good for a period of one (1) year after the acceptance of the work by Owner, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the Owner from loss or damage resulting from or caused by defective materials or faulty workmanship the above obligation in penal sum thereof shall remain in full force and effect. However, anything in this paragraph to the contrary notwithstanding, the obligations of Surety hereunder shall continue so long as any obligation of Contractor remains under the Contract or at law. Nothing herein shall limit the Owner's rights or the Contractor or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

As a part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees including reasonable attorney's fees, incurred by Owner in enforcing such obligation.

Whenever Contractor shall be, and is declared by the Owner to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at the Owner's option:

- (1) Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or
- (2) Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and the Owner, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the Owner under the Contract and any modification thereto, less any amount previously paid by the Owner to the Contractor and any other set offs pursuant to the Contract Documents.
- (3) Permit the Owner to complete the Project in any manner consistent with California law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the Owner under the Contract and any modification thereto, less any amount previously paid by the Owner to the Contractor and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that the Owner may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor.

Surety shall not utilize Contractor in completing the Project nor shall Surety accept a bid from Contractor for completion of the Project if the Owner, when declaring the Contractor in default, notifies Surety of the Owner's objection to Contractor's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project to be performed thereunder 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 Documents or to the Project.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 20__.

CONTRACTOR/PRINCIPAL

Name

By _____

SURETY:

By: _____
Attorney-In-Fact

The rate of premium on this bond is _____ per thousand. The total amount of premium charges,
\$ _____.

(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety) _____

(Name and Address of Agent or _____

Representative for service of

process in California, if different
from above)

(Telephone number of Surety and
Agent or Representative for service
of process in California)

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Notary Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally

appeared _____, who proved to me on the basis of satisfactory

Name(s) of Signer(s)

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

☐ Individual

☐ Corporate Officer

Title(s)

Title or Type of Document

☐ Partner(s)

☐ Limited

☐ General

Number of Pages

☐ Attorney-In-Fact

☐ Trustee(s)

☐ Guardian/Conservator

Date of Document

☐ Other:

Signer is representing:

Name Of Person(s) Or Entity(ies)

Signer(s) Other Than Named Above

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**ATTACHMENT L
TO ENERGY SERVICES AGREEMENT**

FINGERPRINTING AND CRIMINAL BACKGROUND CHECK CERTIFICATION

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FINGERPRINTING AND CRIMINAL BACKGROUND CHECK CERTIFICATION

Contractor's Name: _____

Address: _____

Phone No.: _____

In accordance with Education Code section 45125.1 and 45125.2, [School Owner] (Owner) has determined that Contractor may have more than limited contact with students during performance of the contract between Contractor and Owner and that Contractor will not be performing work in an emergency or exceptional situation. Therefore, before Contractor and any of its employees may commence any services under the contract, Contractor must complete and submit this Certification. Upon being executed by Contractor, this Certification shall constitute and be incorporated by reference into the contract between Contractor and Owner.

Contractor shall comply with Option A or Option B below (*mark one*):

___ Option A: Throughout the term of the contract and during all performance of the contract, Contractor shall ensure the safety of students by one or more of the following (*mark as applicable*):

- ___ 1. Install a physical barrier at the worksite to limit contact with students.
- ___ 2. Have an employee, whom the California Department of Justice (DOJ) ascertained has not been convicted of, and do not have any pending criminal proceeding for, a violent felony listed in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c), continually supervise and monitor Contractor's employees at the worksite. The supervising employee shall have completed the fingerprinting and criminal background check required by Education Code sections 45125.1 and 45125.2.

Contractor's DOJ-issued ORI #: _____

Name of supervising employee: _____

Date DOJ verified clearance of supervising employee: _____

- ___ 3. With Owner's prior approval, arrange with Owner to have an Owner personnel provide surveillance of Contractor's employees at the worksite.

___ Option 2: Before commencing any services under the contract, Contractor and each employee who will provide services under the contract with Owner have completed the fingerprinting and criminal background checks required by Education Code sections 45125.1 and 45125.2, and each of them have not been convicted of, and do not have any pending criminal proceeding for, a violent felony listed in Penal Code section 667.5(c) or a serious felony listed in Penal Code section 1192.7(c). Contractor's DOJ-issued ORI # is: _____

If any of Contractor's employees must be fingerprinted and have criminal background check clearances as stated above, Contractor shall, throughout the Contract Term and any period of extension or renewal of the contract, apply for subsequent arrest notifications with DOJ with respect to such employees and shall immediately remove any employee who is convicted of or has a criminal proceeding pending for a violent or serious felony from performing any services under the contract with Owner where the employee will have contact with students.

The undersigned is authorized to execute on behalf of, and to commit and bind, Contractor to this Certification, and hereby certifies that the statements marked as applicable above are true and correct.

Signature: _____

Date: _____

Print Name: _____

Title: _____

NOTE: A copy of Education Code sections 45125.1 and 45125.2, and Penal Code sections 667.5 and 1192.7 are attached in Exhibit A for information only. Contractor is responsible for determining any changes in all applicable laws.

EXHIBIT A
TO FINGERPRINTING AND CRIMINAL BACKGROUND CHECK CERTIFICATION

Contractor is solely responsible for complying with all applicable laws, and therefore, shall review all applicable statutes and regulations. The information in this Exhibit is provided simply to assist Contractor, and may not be relied upon by Contractor, to comply with applicable laws. Contractor may obtain information, instructions, and forms required for fingerprints and criminal background checks from the DOJ's website: <http://ag.ca.gov/fingerprints/agencies.php>.

California Education Code § 45125.1 -- Fingerprinting Certain Employees

- (a) Except as provided in subdivisions (b) and (c), if the employees of any entity that has a contract with a school Owner, as defined in Section 41302.5, to provide any of the following services may have any contact with pupils, those employees shall submit or have submitted their fingerprints in a manner authorized by the Department of Justice together with a fee determined by the Department of Justice to be sufficient to reimburse the department for its costs incurred in processing the application:
 - (1) School and classroom janitorial.
 - (2) School site administrative.
 - (3) School site grounds and landscape maintenance.
 - (4) Pupil transportation.
 - (5) School site food-related.
- (b) This section shall not apply to an entity providing any of the services listed in subdivision (a) to a school Owner in an emergency or exceptional situation, such as when pupil health or safety is endangered or when repairs are needed to make school facilities safe and habitable.
- (c) This section shall not apply to an entity providing any of the services listed in subdivision (a) to a school Owner when the school Owner determines that the employees of the entity will have limited contact with pupils. In determining whether a contract employee has limited contact with pupils, the school Owner shall consider the totality of the circumstances, including factors such as the length of time the contractors will be on school grounds, whether pupils will be in proximity with the site where the contractors will be working, and whether the contractors will be working by themselves or with others. If a school Owner has made this determination, the school Owner shall take appropriate steps to protect the safety of any pupils that may come in contact with these employees.
- (d) A school Owner may determine, on a case-by-case basis, to require an entity providing school site services other than those listed in subdivision (a) or those described in Section 45125.2 and the entity's employees to comply with the requirements of this section, unless the school Owner determines that the employees of the entity will have limited contact with pupils. In determining whether a contract employee will have limited contact with pupils, the school Owner shall consider the totality of the circumstances, including factors such as the length of time the contractors will be on school grounds, whether pupils will be in proximity with the site where the contractors will be working, and whether the contractors will be working by themselves or with others. If a school Owner makes this determination, the school Owner shall take appropriate steps to protect the safety of any pupils that may come in contact with these employees. If a school Owner requires an entity providing services other than those listed in subdivision (a) and its employees to comply with the requirements of this section, the Department of Justice shall comply with subdivision.
- (e)(1) The Department of Justice shall ascertain whether the individual whose fingerprints were submitted to it pursuant to subdivision (a) has been arrested or convicted of any crime insofar as that fact can be ascertained from information available to the department. Upon implementation of an electronic fingerprinting system with terminals located statewide and managed by the Department of Justice, the department shall ascertain the information required pursuant to this section within three working days. When the Department of Justice ascertains that an individual whose fingerprints were submitted to it pursuant to subdivision (a) has a pending criminal proceeding for a felony as defined in Section 45122.1 or has been convicted of a felony as defined in Section 45122.1, the department shall notify the employer designated by the individual of that fact. The notification shall be delivered by telephone or electronic mail to the employer.

- (2) The Department of Justice, at its discretion, may notify the school Owner in instances when the employee is defined as having a pending criminal proceeding described in Section 45122.1 or has been convicted of a felony as defined in Section 45122.1.
- (3) The Department of Justice may forward one copy of the fingerprints to the Federal Bureau of Investigation to verify any record of previous arrests or convictions of the applicant. The Department of Justice shall review the criminal record summary it obtains from the Federal Bureau of Investigation and shall notify the employer only as to whether or not an applicant has any convictions or arrests pending adjudication for offenses, which if committed in California, would have been punishable as a violent or serious felony. The Department of Justice shall not provide any specific offense information received from the Federal Bureau of Investigation. The Department of Justice shall provide written notification to the contract employer only concerning whether an applicant for employment has any conviction or arrest pending final adjudication for any of those crimes, as specified in Section 45122.1, but shall not provide any information identifying any offense for which an existing employee was convicted or has an arrest pending final adjudication.
- (f) An entity having a contract as specified in subdivision (a) and an entity required to comply with this section pursuant to subdivision (d) shall not permit an employee to come in contact with pupils until the Department of Justice has ascertained that the employee has not been convicted of a felony as defined in Section 45122.1.
 - (1) This prohibition does not apply to an employee solely on the basis that the employee has been convicted of a felony if the employee has obtained a certificate of rehabilitation and pardon pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.
 - (2) This prohibition does not apply to an employee solely on the basis that the employee has been convicted of a serious felony that is not also a violent felony if that employee can prove to the sentencing court of the offense in question, by clear and convincing evidence, that he or she has been rehabilitated for the purposes of schoolsite employment for at least one year. If the offense in question occurred outside this state, then the person may seek a finding of rehabilitation from the court in the school Owner in which he or she is resident.
- (g) An entity having a contract as specified in subdivision (a) and an entity required to comply with this section pursuant to subdivision (d) shall certify in writing to the school Owner that neither the employer nor any of its employees who are required by this section to submit or have their fingerprints submitted to the Department of Justice and who may come in contact with pupils have been convicted of a felony as defined in Section 45122.1.
- (h) An entity having a contract as specified in subdivision (a) on the effective date of this section and an entity required to comply with this section pursuant to subdivision (d) by a school Owner with which it has a contract on the effective date of the amendments made to this section during the 1997-98 Regular Session shall complete the requirements of this section within 90 days of that date.
- (i) For purposes of this section, a charter school shall be deemed to be a school Owner.
- (j) Where reasonable access to the statewide electronic fingerprinting network is available, the Department of Justice may mandate electronic submission of the fingerprint cards and other information required by this section.

California Education Code section § 45125.2 -- Ensuring Pupil Safety

- (a) A school Owner contracting with an entity for the construction, reconstruction, rehabilitation, or repair of a school facility where the employees of the entity will have contact, other than limited contact, with pupils shall ensure the safety of the pupils by one or more of the following methods:
 - (1) The installation of a physical barrier at the worksite to limit contact with pupils.
 - (2) Continual supervision and monitoring of all employees of the entity by an employee of the entity whom the Department of Justice has ascertained has not been convicted of a violent or serious felony. For purposes of this paragraph, an employee of the entity may submit his or her fingerprints to the Department of Justice pursuant to subdivision (a) of Section 45125.1 and the department shall comply with subdivision (d) of Section 45125.1.
 - (3) Surveillance of employees of the entity by school personnel.
- (b) An entity that contracts with a school Owner for the construction, reconstruction, rehabilitation, or repair of a school facility is not required to comply with the requirements of Section 45125.1 if one or more of the methods described in subdivision (a) is utilized.
- (c) For purposes of this section, a violent felony is any felony listed in subdivision (c) of Section 667.5 of the Penal Code and a serious felony is any felony listed in subdivision (c) of Section 1192.7 of the Penal Code.

- (d) This section shall not apply to an entity providing construction, reconstruction, rehabilitation, or repair services to a school Owner in an emergency or exceptional situation, such as when pupil health or safety is endangered or when repairs are needed to make school facilities safe and habitable.

California Penal Code § 667.5 – Enhancement of Prison Terms for New Offenses

Enhancement of prison terms for new offenses because of prior prison terms shall be imposed as follows:

- (a) Where one of the new offenses is one of the violent felonies specified in subdivision (c), in addition to and consecutive to any other prison terms therefor, the court shall impose a three-year term for each prior separate prison term served by the defendant where the prior offense was one of the violent felonies specified in subdivision (c). However, no additional term shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.
- (b) Except where subdivision (a) applies, where the new offense is any felony for which a prison sentence is imposed, in addition and consecutive to any other prison terms therefor, the court shall impose a one-year term for each prior separate prison term served for any felony; provided that no additional term shall be imposed under this subdivision for any prison term served prior to a period of five years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.
- (c) For the purpose of this section, “violent felony” shall mean any of the following:
- (1) Murder or voluntary manslaughter.
 - (2) Mayhem.
 - (3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.
 - (4) Sodomy as defined in subdivision (c) or (d) of Section 286.
 - (5) Oral copulation as defined in subdivision (c) or (d) of Section 288a.
 - (6) Lewd or lascivious act as defined in subdivision (a) or (b) of Section 288.
 - (7) Any felony punishable by death or imprisonment in the state prison for life.
 - (8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7, 12022.8, or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in subdivision (a) of Section 12022.3, or Section 12022.5 or 12022.55.
 - (9) Any robbery.
 - (10) Arson, in violation of subdivision (a) or (b) of Section 451.
 - (11) Sexual penetration as defined in subdivision (a) or (j) of Section 289.
 - (12) Attempted murder.
 - (13) A violation of Section 12308, 12309, or 12310.
 - (14) Kidnapping.
 - (15) Assault with the intent to commit a specified felony, in violation of Section 220.
 - (16) Continuous sexual abuse of a child, in violation of Section 288.5.
 - (17) Carjacking, as defined in subdivision (a) of Section 215.
 - (18) Rape, spousal rape, or sexual penetration, in concert, in violation of Section 264.1.
 - (19) Extortion, as defined in Section 518, which would constitute a felony violation of *Section 186.22 of the Penal Code*.
 - (20) Threats to victims or witnesses, as defined in Section 136.1, which would constitute a felony violation of *Section 186.22 of the Penal Code*.
 - (21) Any burglary of the first degree, as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary.
 - (22) Any violation of Section 12022.53.
 - (23) A violation of subdivision (b) or (c) of Section 11418. The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence to display society’s condemnation for these extraordinary crimes of violence against the person.
- (d) For the purposes of this section, the defendant shall be deemed to remain in prison custody for an offense until

the official discharge from custody or until release on parole, whichever first occurs, including any time during which the defendant remains subject to reimprisonment for escape from custody or is reimprisoned on revocation of parole. The additional penalties provided for prior prison terms shall not be imposed unless they are charged and admitted or found true in the action for the new offense.

- (e) The additional penalties provided for prior prison terms shall not be imposed for any felony for which the defendant did not serve a prior separate term in state prison.
- (f) A prior conviction of a felony shall include a conviction in another jurisdiction for an offense which, if committed in California, is punishable by imprisonment in the state prison if the defendant served one year or more in prison for the offense in the other jurisdiction. A prior conviction of a particular felony shall include a conviction in another jurisdiction for an offense which includes all of the elements of the particular felony as defined under California law if the defendant served one year or more in prison for the offense in the other jurisdiction.
- (g) A prior separate prison term for the purposes of this section shall mean a continuous completed period of prison incarceration imposed for the particular offense alone or in combination with concurrent or consecutive sentences for other crimes, including any reimprisonment on revocation of parole which is not accompanied by a new commitment to prison, and including any reimprisonment after an escape from incarceration.
- (h) Serving a prison term includes any confinement time in any state prison or federal penal institution as punishment for commission of an offense, including confinement in a hospital or other institution or facility credited as service of prison time in the jurisdiction of the confinement.
- (i) For the purposes of this section, a commitment to the State Department of Mental Health as a mentally disordered sex offender following a conviction of a felony, which commitment exceeds one year in duration, shall be deemed a prior prison term.
- (j) For the purposes of this section, when a person subject to the custody, control, and discipline of the Director of Corrections is incarcerated at a facility operated by the Department of the Youth Authority, that incarceration shall be deemed to be a term served in state prison.
- (k) Notwithstanding subdivisions (d) and (g) or any other provision of law, where one of the new offenses is committed while the defendant is temporarily removed from prison pursuant to Section 2690 or while the defendant is transferred to a community facility pursuant to Section 3416, 6253, or 6263, or while the defendant is on furlough pursuant to Section 6254, the defendant shall be subject to the full enhancements provided for in this section.

This subdivision shall not apply when a full, separate, and consecutive term is imposed pursuant to any other provision of law.

California Penal Code § 1192.7 -- Limitation of Plea Bargaining

- (a)(1) It is the intent of the Legislature that Owner attorneys prosecute violent sex crimes under statutes that provide sentencing under a “one strike,” “three strikes” or habitual sex offender statute instead of engaging in plea bargaining over those offenses.
- (2) Plea bargaining in any case in which the indictment or information charges any serious felony, any felony in which it is alleged that a firearm was personally used by the defendant, or any offense of driving while under the influence of alcohol, drugs, narcotics, or any other intoxicating substance, or any combination thereof, is prohibited, unless there is insufficient evidence to prove the people’s case, or testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence.
- (3) If the indictment or information charges the defendant with a violent sex crime, as listed in subdivision (c) of Section 667.61, that could be prosecuted under Sections 269, 288.7, subdivisions (b) through (i) of Section 667, Section 667.61, or 667.71, plea bargaining is prohibited unless there is insufficient evidence to prove the people’s case, or testimony of a material witness cannot be obtained, or a reduction or dismissal would not result in a substantial change in sentence. At the time of presenting the agreement to the court, the Owner attorney shall state on the record why a sentence under one of those sections was not sought.
- (b) As used in this section “plea bargaining” means any bargaining, negotiation, or discussion between a criminal defendant, or his or her counsel, and a prosecuting attorney or judge, whereby the defendant agrees to plead guilty or nolo contendere, in exchange for any promises, commitments, concessions, assurances, or consideration by the prosecuting attorney or judge relating to any charge against the defendant or to the sentencing of the defendant.

(c) As used in this section, “serious felony” means any of the following:

- (1) Murder or voluntary manslaughter;
- (2) mayhem;
- (3) rape;
- (4) sodomy by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person;
- (5) oral copulation by force, violence, duress, menace, threat of great bodily injury, or fear of immediate and unlawful bodily injury on the victim or another person;
- (6) lewd or lascivious act on a child under 14 years of age;
- (7) any felony punishable by death or imprisonment in the state prison for life;
- (8) any felony in which the defendant personally inflicts great bodily injury on any person, other than an accomplice, or any felony in which the defendant personally uses a firearm;
- (9) attempted murder;
- (10) assault with intent to commit rape or robbery;
- (11) assault with a deadly weapon or instrument on a peace officer;
- (12) assault by a life prisoner on a non-inmate;
- (13) assault with a deadly weapon by an inmate;
- (14) arson;
- (15) exploding a destructive device or any explosive with intent to injure;
- (16) exploding a destructive device or any explosive causing bodily injury, great bodily injury, or mayhem;
- (17) exploding a destructive device or any explosive with intent to murder;
- (18) any burglary of the first degree;
- (19) robbery or bank robbery;
- (20) kidnapping;
- (21) holding of a hostage by a person confined in a state prison;
- (22) attempt to commit a felony punishable by death or imprisonment in the state prison for life;
- (23) any felony in which the defendant personally used a dangerous or deadly weapon;
- (24) selling, furnishing, administering, giving, or offering to sell, furnish, administer, or give to a minor any heroin, cocaine, phencyclidine (PCP), or any methamphetamine-related drug, as described in paragraph (2) of subdivision (d) of *Section 11055 of the Health and Safety Code*, or any of the precursors of methamphetamines, as described in subparagraph (A) of paragraph (1) of subdivision (f) of *Section 11055* or subdivision (a) of *Section 11100 of the Health and Safety Code*;
- (25) any violation of subdivision (a) of *Section 289* where the act is accomplished against the victim’s will by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person;
- (26) grand theft involving a firearm;
- (27) carjacking;
- (28) any felony offense, which would also constitute a felony violation of *Section 186.22*;
- (29) assault with the intent to commit mayhem, rape, sodomy, or oral copulation, in violation of *Section 220*;
- (30) throwing acid or flammable substances, in violation of *Section 244*;
- (31) assault with a deadly weapon, firearm, machinegun, assault weapon, or semiautomatic firearm or assault on a peace officer or firefighter, in violation of *Section 245*;
- (32) assault with a deadly weapon against a public transit employee, custodial officer, or school employee, in violation of *Sections 245.2, 245.3, or 245.5*;
- (33) discharge of a firearm at an inhabited dwelling, vehicle, or aircraft, in violation of *Section 246*;
- (34) commission of rape or sexual penetration in concert with another person, in violation of *Section 264.1*;
- (35) continuous sexual abuse of a child, in violation of *Section 288.5*;
- (36) shooting from a vehicle, in violation of subdivision (c) or (d) of *Section 12034*;
- (37) intimidation of victims or witnesses, in violation of *Section 136.1*;
- (38) criminal threats, in violation of *Section 422*;
- (39) any attempt to commit a crime listed in this subdivision other than an assault;
- (40) any violation of *Section 12022.53*;
- (41) a violation of subdivision (b) or (c) of *Section 11418*; and
- (42) any conspiracy to commit an offense described in this subdivision.

- (d) As used in this section, “bank robbery” means to take or attempt to take, by force or violence, or by intimidation from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings and loan association.

As used in this subdivision, the following terms have the following meanings:

- (1) “Bank” means any member of the Federal Reserve System, and any bank, banking association, trust company, savings bank, or other banking institution organized or operating under the laws of the United States, and any bank the deposits of which are insured by the Federal Deposit Insurance Corporation.
 - (2) “Savings and loan association” means any federal savings and loan association and any “insured institution” as defined in Section 401 of the National Housing Act, as amended, and any federal credit union as defined in Section 2 of the Federal Credit Union Act.
 - (3) “Credit union” means any federal credit union and any state-chartered credit union the accounts of which are insured by the Administrator of the National Credit Union administration.
- (e) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

**ATTACHMENT M
TO ENERGY SERVICES AGREEMENT**

ESCROW AGREEMENT FOR SECURITY DEPOSIT IN LIEU OF RETENTION

DRAFT

ESCROW AGREEMENT FOR SECURITY DEPOSIT IN LIEU OF RETENTION

This Escrow Agreement For Security Deposit in Lieu of Retention ("Agreement") is made and entered into on _____ by and between [School Owner] ("Owner") whose address is [School Owner address], and _____ ("Contractor") whose address is _____, and _____ ("Escrow Agent"), whose address is _____.

For the consideration described below, Owner, Contractor and Escrow Agent agree as follows:

1. Pursuant to Section 22300 of the Public Contract Code of the State of California, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by Owner pursuant to the Energy Services Agreement entered into between Owner and Contractor, dated _____, for the design and construction of certain solar photovoltaic systems ("Project") in the amount of \$ _____. Alternatively, on written request of Contractor, Owner shall make payments of the retention earnings directly to Escrow Agent. When Contractor deposits the securities as a substitute for Contract earnings, Escrow Agent shall notify Owner within 10 days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Contract between Owner and Contractor. Subsequent to the time of substitution, if the market value of the securities is not at least equal to the cash amount then required to be held as retention under the terms of the Contract between Owner and Contractor, Owner shall notify Contractor and Escrow Agent in writing, and Contractor shall, within 10 business days of such notice, deposit additional securities to comply with the required cash amount. Securities shall be held in the name of Owner, and shall designate Contractor as the beneficial owner.
2. The Owner shall make progress payments to Contractor for those funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that Escrow Agent holds securities in the form and amount specified above.
3. When Owner makes payment of retentions earned directly to Escrow Agent, Escrow Agent shall hold them for the benefit of Contractor until the time that the escrow created under this Agreement is terminated. Contractor may direct the investment of the payments into securities. All terms and conditions of this Agreement, and the rights and responsibilities of the parties shall be equally applicable and binding when Owner pays Escrow Agent directly.
4. Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the escrow account and all expenses of Owner. These expenses and payment terms shall be determined by Owner, Contractor, and Escrow Agent.
5. The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest, shall be for the sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time, without notice to Owner.
6. Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent that Owner consents to the withdrawal of the amount sought to be withdrawn by Contractor, accompanied by written authorization from Owner to Escrow Agent.
7. The Owner shall have the right to draw upon the securities in the event of default by Contractor. Upon seven days written notice of the default by Owner to Escrow Agent, Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by Owner.

8. Upon receipt of written notification from Owner certifying that the Contract is final and complete, and that Contractor has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Contractor all securities and interest on deposit less escrow fees and charges to the Escrow Account. The escrow shall be closed immediately upon disbursement of all monies and securities on deposit and payment of fees and charges.
9. Escrow Agent shall rely on the written notifications from Owner and Contractor pursuant to Sections 5 through 8, inclusive, of this Agreement, and Owner and Contractor shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest as set forth above.
10. The names of the persons authorized to give written notice or to receive written notice on behalf of Owner and on behalf of Contractor in connection with this Agreement and exemplars of their respective signatures are as follows:

OWNER

Signature

Print Name

Title

Address

ESCROW AGENT

Signature

Print Name

Title

Address

CONTRACTOR

Signature

Print Name

Title

Address

At the time the Escrow Account is opened, Owner and Contractor shall deliver to Escrow Agent a fully executed copy of this Agreement.

[SIGNATURES ON SEPARATE PAGE]

As WITNESSES, the parties have executed this Agreement by their proper officers on the first date shown above.

OWNER

CONTRACTOR

Signature

Signature

Print Name

Print Name

Title

Title

ESCROW AGENT

Signature

Print Name

Title

**ATTACHMENT N
TO ENERGY SERVICES AGREEMENT**

WAIVER AND RELEASE FORM

UNCONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

The undersigned has been paid and has received a progress payment in the sum of \$ _____ for labor, services, equipment, or material furnished to Owner on the job located at _____ [Job Description] (the "Project") and does hereby unconditionally and irrevocably waive and release any mechanic's lien, stop notice, or bond right that the undersigned has on the above referenced job to the following extent.

This release covers a progress payment for labor, services, equipment, or materials furnished to the Owner through _____ [Date] only and does not cover any retentions retained before or after the release date; extras furnished before the release date for which payment has not been received; extras or items furnished after the release date. Rights based upon work performed or items furnished under a written change order which has been fully executed by the Parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release. This release of any mechanic's lien, stop notice, or bond right shall not otherwise affect the contract rights, including rights between Parties based upon a rescission, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor, services, equipment, or material was not compensated by the progress payment. If the undersigned has filed with a public agency a U.C.C. Financing Statement evidencing a security interest in equipment delivered or installed in connection with the Project, the undersigned agrees to promptly execute and file with such public agency any documents necessary to terminate the effectiveness of such U.C.C. Financing Statement.

Dated: _____

Contractor

By _____

(Title)

NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.

UNCONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT

The undersigned has been paid in full for all labor, services, equipment, or material furnished to the Owner on the job located at _____ [Job Description] (the "Project") and does hereby unconditionally and irrevocably waive and release any right to a mechanic's lien, stop payment notice, or any right against a labor and material bond on the job, except for disputed claims for extra work in the amount of \$ _____. If the undersigned has filed with a public agency a U.C.C. Financing Statement evidencing a security interest in equipment delivered or installed in connection with the Project, the undersigned agrees to promptly execute and file with such public agency any documents necessary to terminate the effectiveness of such U.C.C. Financing Statement.

Dated: _____

Contractor

By _____

(Title)

NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.

**ATTACHMENT O
TO ENERGY SERVICES AGREEMENT**

CERTIFICATION REGARDING CLAIM

Name of Contractor: _____

Name of Owner: _____

Name of Project: _____

Claim (state any amount and time adjustment requesting: Amount \$ _____
Time _____

The undersigned, whose name and title are stated below, declare the following:

1. The above-listed Contractor has contracted with the above-listed Owner for the Project stated above. I am authorized by Contractor to prepare and did prepare the attached claim for money and/or time extension to Owner regarding the Project. I am the person most knowledgeable at Contractor regarding the attached claim.
2. The attached claim is submitted in compliance with all laws applicable to submission of the claim, including but not limited to California Penal Code section 72, Government Code sections 12650 et seq. (False Claims Act), and Business and Professions Code sections 17200 et seq. (Unfair Business Practices Act). I am aware that submission or certification of false claims or other claims that violate law or the contract with Owner, may lead to fines, imprisonment, and/or other severe legal consequences for myself and/or Contractor.
3. The attached claim does not breach the contract between Contractor Owner for the Project, is not a false claim, does not violate any applicable laws, satisfies all provisions of the contract applicable to the submission of such claim, contains truthful and accurate supporting data, and requests an amount that accurately reflects the adjustments to money and time for which I honestly and in good faith believe that Owner is responsible under the contract.
4. So that I could declare that the statements in this declaration and the attached claim are true and correct, while preparing this declaration and the attached claim, I consulted with others (including attorneys, consultants, or others who work for or are retain by Contractor) when necessary to assure myself that said statements are true and correct.
5. Contractor understands and agrees that any claim submitted without this certification does not meet the terms of the contract and Owner may reject the claim on that basis, and unless Contractor properly and timely files the claim with this certification, Contractor cannot further pursue the claim in any forum and all rights to additional money or time for the issues covered by the claim are waived due to a condition precedent not having been satisfied.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. This certification is executed on the date stated below.

By: _____

Date: _____

Print Name: _____

Title: _____

**ATTACHMENT P
TO ENERGY SERVICES AGREEMENT**

SUBCONTRACTOR LISTING FORM

In compliance with the Subletting and Subcontracting Fair Practices Act of the Public Contract Code of the State of California, the contractor shall set forth below: (a) the name and the location of the place of business, (b) the DIR registration number and (c) the contractor's license class and number, and (d) the portion of the work which will be done by each subcontractor who will perform work or labor or render service to the Contractor in or about the construction of the work in an amount in excess of one-half of one percent (1/2%) of the Contractor's Total Price. Contractor shall be required to complete and provide this form to the Owner at least 15 working days prior to start of on-site work.

If no subcontractor is specified, for a portion of the work, or if more than one subcontractor is specified for the same portion of Work, to be performed under the Contract in excess of one-half of one percent (1/2%) of the Contractor's Total Price, then the Contractor shall be deemed to have agreed that it is fully qualified to perform that Work, and that it shall perform that portion itself.

Portion of Work	Subcontractor	Location of Business	License Class and Number	DIR Registration Number

Portion of Work	Subcontractor	Location of Business	License Class and Number	DIR Registration Number

Name of Contractor _____

Signature _____

Name and Title _____

Dated _____

**ATTACHMENT Q
TO ENERGY SERVICES AGREEMENT**

CONTRACTOR'S PERFORMANCE GUARANTEE AGREEMENT

[To be Inserted]

DRAFT

**ATTACHMENT R
TO ENERGY SERVICES AGREEMENT**

CONTRACTOR'S OPERATIONS AND MAINTENANCE AGREEMENT

[To be Inserted]

DRAFT