

ENERGY SERVICES AGREEMENT

Between

CITY OF GUSTINE

(as "Owner")

and

SCHNEIDER ELECTRIC BUILDINGS AMERICAS, INC.

(as "Contractor")

TABLE OF CONTENTS

| | |
|---|-----------|
| COVER PAGE | 6 |
| 1. GENERAL DEFINITIONS | 8 |
| 1.1 Interpretation | 8 |
| 1.2 Defined Terms | 8 |
| 2. CONTRACTOR'S OBLIGATIONS | 16 |
| 2.1 Scope of Work | 16 |
| 2.2 Performance of the Work | 17 |
| 2.3 Construction of Agreement | 17 |
| 2.4 Contractor Personnel | 17 |
| 2.5 Contractor Responsibility | 19 |
| 2.6 Subcontractors and Other Contracts for Portions of the Work | 19 |
| 2.7 Supply and Procurement of Equipment | 20 |
| 2.8 Utilities | 20 |
| 2.9 Utility Rate Changes | 20 |
| 2.10 Incentives | 21 |
| 2.11 Permits and Approvals | 21 |
| 2.12 Testing and Inspection | 21 |
| 2.13 Local and General Conditions | 23 |
| 2.14 Safety Precautions and Programs | 24 |
| 2.15 Protection of Work and Property | 25 |
| 2.16 Emergencies | 26 |
| 2.17 Hazardous Materials | 26 |
| 2.18 Changes and Extra Work | 27 |
| 2.19 System Manuals and Drawings | 30 |
| 2.20 Warranties | 31 |
| 2.21 Insurance | 33 |
| 2.22 Performance and Payment Bonds | 36 |
| 2.23 Owner's Right to Stop the Work | 36 |
| 2.24 Owner's Right To Carry Out The Work | 36 |
| 3. PRICE AND PAYMENT | 36 |
| 3.1 Contract Price | 36 |
| 3.2 Allowances | 37 |
| 3.3 Material Storage | 37 |
| 3.4 Retention | 37 |
| 3.5 Payment Schedule | 37 |
| 3.6 Application for Payment | 37 |
| 3.7 Review Of Progress Payment | 38 |

| | | |
|-----------|---|-----------|
| 3.8 | <i>Decisions to Withhold Payment</i> | 38 |
| 3.9 | <i>Progress Payment Milestones</i> | 38 |
| 3.10 | <i>Payments and Information to Subcontractors</i> | 38 |
| 3.11 | <i>Waivers and Releases</i> | 39 |
| 3.12 | <i>Progress Payment Terms</i> | 39 |
| 3.13 | <i>Completion of Work</i> | 39 |
| 3.14 | <i>Partial Occupancy or Use</i> | 39 |
| 3.15 | <i>Acceptance, Final Completion Certificate and Final Payment</i> | 39 |
| 3.16 | <i>Substitution of Securities</i> | 40 |
| 3.17 | <i>Taxes</i> | 40 |
| 4. | COMMENCEMENT AND SCHEDULE | 40 |
| 4.1 | <i>Project Schedule</i> | 40 |
| 4.2 | <i>Project Phases And Notice to Proceed</i> | 40 |
| 4.3 | <i>Hours of Work</i> | 43 |
| 4.4 | <i>Progress and Completion</i> | 43 |
| 4.5 | <i>Contractor Schedules and Report Updates</i> | 44 |
| 4.6 | <i>Progress Meetings</i> | 44 |
| 4.7 | <i>Conformity with Project Schedule</i> | 44 |
| 4.8 | <i>Extensions of Time – Liquidated Damages</i> | 45 |
| 4.9 | <i>Government Approvals</i> | 46 |
| 4.10 | <i>Delays Due to Project Site Activities</i> | 46 |
| 5. | REPRESENTATIONS AND WARRANTIES | 47 |
| 5.1 | <i>Representations and Warranties of Contractor</i> | 47 |
| 6. | BREACH AND TERMINATION | 48 |
| 6.1 | <i>Termination by the Owner for Cause</i> | 48 |
| 6.2 | <i>Suspension or Termination by the Owner for Convenience</i> | 48 |
| 6.3 | <i>Termination by the Contractor</i> | 49 |
| 6.4 | <i>Not a Waiver</i> | 49 |
| 6.5 | <i>Early Termination</i> | 49 |
| 6.6 | <i>Indemnification</i> | 49 |
| 6.7 | <i>Claims</i> | 50 |
| 6.8 | <i>Claims of \$375,000 or Less</i> | 51 |
| 6.9 | <i>Claims in Excess of \$375,000</i> | 52 |
| 7. | MISCELLANEOUS | 52 |
| 7.1 | <i>Representatives</i> | 52 |
| 7.2 | <i>Access</i> | 52 |
| 7.3 | <i>Ownership and Use of Drawings, Data, Reports and Other Documents</i> | 52 |
| 7.4 | <i>Royalties and Patents</i> | 53 |

| | | |
|------|---|----|
| 7.5 | <i>Assignment of Antitrust Claims</i> | 53 |
| 7.6 | <i>Audit</i> | 53 |
| 7.7 | <i>Construction</i> | 53 |
| 7.8 | <i>Severability/Governing Law</i> | 54 |
| 7.9 | <i>Notices and Filings</i> | 54 |
| 7.10 | <i>Binding Effect</i> | 54 |
| 7.11 | <i>Amendments</i> | 54 |
| 7.12 | <i>Headings</i> | 54 |
| 7.13 | <i>Execution in Counterparts</i> | 54 |
| 7.14 | <i>Limitations on Liability, Warranties</i> | 54 |
| 7.15 | <i>Term and Termination</i> | 55 |
| 7.16 | <i>Exhibits Incorporated</i> | 55 |
| 7.17 | <i>Entire Agreement</i> | 55 |
| 7.18 | <i>Execution, Correlation, and Intent</i> | 55 |
| 7.19 | <i>Successors And Assigns</i> | 55 |
| 7.20 | <i>Rights and Remedies; No Waiver</i> | 56 |
| 7.21 | <i>Execution of Other Documents</i> | 56 |

EXHIBITS

- Exhibit A – Scope of Work
- Exhibit B – Project Schedule
- Exhibit C – Project Owner Requirements
- Exhibit D – Request for Information Form
- Exhibit E – Form of Change Order
- Exhibit F – Form of Application for Payment
- Exhibit G – Form of Final Completion Certificate
- Exhibit H – Escrow Agreement for Security Deposit In Lieu of Retention
- Exhibit I – Waiver and Release Forms
- Exhibit J – Certification Regarding Claim
- Exhibit K – Performance and Payment Bonds
- Exhibit L – Performance Guarantee
- Exhibit M – Measurement & Verification Plan
- Exhibit N – Customer Responsibilities for Performance Guarantee
- Exhibit O – Applications Instructions

ENERGY SERVICES AGREEMENT

COVER PAGE

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

Schneider Electric Buildings Americas, Inc.
 (“**Contractor**”)
 Attn: Tammy Fulop, Vice President
 1650 West Crosby Road, Carrollton, TX 75006
 Phone No.: 972 323 4761
 Email Address: Tammy.Fulop@schneider-
 electric.com

City of Gustine (“**Owner**”)
 Attn: Doug Dunford, City Manager
 352 Fifth Street
 Gustine, CA 95322
 Phone No.: 209 854 6471
 Email Address: ddunford@cityofgustine.com

| | |
|---|---|
| <p>A. The “Effective Date”: 8/16/2017</p> | <p>B. The “Completion Date”: 7/2/2018</p> |
| <p>C. “Required License”: In accordance with Public Contract Code section 3300, Contractor shall have, throughout the Contract Term, the following license classification issued by the California Contractors State License Board (<i>state license classification(s)</i>): B – General Building Contractor; C-10 Electrical; C-20 Warm-Air Heating, Ventilation and Air Conditioning; c-7 Low Voltage Systems</p> | |
| <p>D. “Contract Price” to be paid to Contractor: The “Contract Price” is the full and complete amount to be paid to the Contractor for the performance of all obligations required by the Contract Documents for all Sites, and shall be in the following amount: \$1,554,438</p> | <p>F. “LD Rate” (see Section 4.8(e)): \$250</p> <p>G. “Utility”: Pacific Gas & Electric</p> |
| <p>G. Contractor Required Insurance: See Section 2.21</p> | |
| <p>H. “Project Sites” or “Sites”: See Section 1.2</p> | |

ENERGY SERVICES AGREEMENT

This Energy Services Agreement for an energy savings assessment and implementation of renewable energy generation and energy management systems (“Agreement”) is made by and between, City of Gustine, a municipal corporation organized and existing under the laws of the State of California (“Owner”), and Schneider Electric Buildings Americas, Inc., a Delaware corporation (“Contractor”).

RECITALS:

WHEREAS, Government Code section 4217.10, *et seq.*, authorizes 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 implementation, including engineering, system design, fabrication and installation, of renewable energy generation and energy management systems that will result in energy savings to the Owner and which shall be a supply of energy to the Owner (collectively, the “Project”) at various sites owned or controlled by Owner (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 City Council, 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 has performed project development by undertaking a comprehensive energy analysis and presenting the Owner with a detailed comprehensive energy analysis report (“CEA Report”) and recommended energy plan to implement certain energy conservation measures (“ECMs”). The CEA Report identifies potential energy and operational savings opportunities at the Project Sites and estimated program costs to implement the recommended ECMs and present an overall potential energy cost and consumption savings of implementing the ECMs. The CEA Report includes data showing that the anticipated cost to the Owner for the recommended ECMs will be less than the anticipated cost to the Owner of electrical or other energy that would have been consumed by the Owner in the absence of the Project;

WHEREAS, the Contractor shall engineer, design, and construct the ECMs pursuant to this Agreement, including all Exhibits and other Contract Documents (as that term is defined in the General Definitions), which Contract Documents are incorporated into the Agreement by this reference;

NOW, THEREFORE, in consideration of the covenants hereinafter contained, including all recitals and Exhibits incorporated herein by this reference, the Owner and Contractor agree as follows:

GENERAL TERMS AND CONDITIONS

ARTICLE ONE

1. GENERAL DEFINITIONS

1.1 Interpretation As used in this Agreement, the terms “herein”, “herewith”, “hereof” are references to this Agreement, taken as a whole, the terms “includes” or “including” shall mean “including, without limitation”, and references to a “Section”, “Article” or “Exhibit” shall mean a Section, Article, or Exhibit of this Agreement, as the case may be, unless in any such case the context requires otherwise. All references to a given Exhibit, agreement, instrument or other document shall be a reference to that agreement, instrument or other document as modified, amended, supplemented and restated through the date as of which such reference is made. A reference to a Person includes its permitted successors and permitted assigns. The singular shall include the plural, the masculine shall include the feminine and neuter, and vice versa.

1.2 Defined Terms Capitalized terms used in this Agreement without other definition shall have the meanings specified in this Section 1.2 unless the context requires otherwise.

“Affiliate” means, with respect to any Person, any other Person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

“Agreement” has the meaning set forth in the preamble and shall include the Cover Page and all Exhibits hereto. The Agreement represents the entire and integrated contract between the Parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Agreement shall not be construed to create any kind of contractual relationship other than between the Owner and Contractor.

“Applicable Law” shall mean, with respect to any Governmental Authority, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, injunction, registration, license, permit, authorization, guideline, governmental approval, act, code, ruling, proclamation, resolution, declaration, requirement or interpretive or advisory opinion or letter of such Governmental Authority, as construed from time to time by any Governmental Authority, in each case, applicable to the Work, the Site, the Project, the Parties or any other matter in question (as applicable).

“Application for Payment” has the meaning set forth in Section 3.6.

“Assessment” shall mean all feasibility and configuration assessments conducted by the Contractor to fulfill its obligations under this Agreement.

“Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday and shall be between the hours of 8:00 a.m. and 5:00 p.m. local time for the relevant Party’s principal place of business.

“Change Order” or “CO” A change order is a written instrument prepared by the Owner and the Contractor pursuant to Section 2.18 stating their agreement upon all of the following: (A) A

change in the Work; (B) the amount of the adjustment in the Contract Price, if any; and (C) the extent of the adjustment in the Project Schedule.

“Completion Date” shall be the date set forth in the Cover Page by which Contractor is guaranteeing Final Completion will be achieved, as may be adjusted from time to time in accordance herewith.

“Comprehensive Energy Analysis Report” or “CEA Report” is the report providing for an assessment of energy and operational savings opportunities and curtailable load capabilities developed during the project development phase of the Project. The CEA Report identifies an energy plan to implement certain ECMs.

“Construction Change Directives” or “CCD” A change order directive 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 Price or Contract Schedule, or both.

“Consultant” shall mean any Person performing or providing expert or professional advice.

“Contract Documents” means shall mean this Agreement and all Drawings, Specifications, surveys, plans, models, reports and designs, addenda thereto (whether or not attached due to their size), the Governmental Approvals, Engineering Documents, Payment Bond, Performance Bond, required insurance certificates, additional insured endorsement and declarations page, list of accepted Subcontractors and Consultants, Non-collusion Declaration, and other documents referred to in the Agreement, and written modifications issued after execution of the Agreement.

“Contract Price” shall mean the amount set forth in the Cover Page, which is the total payable by Owner for the Work under this Agreement, as the same may be modified from time to time in accordance with the terms hereof.

“Contractor” shall have the meaning set forth in the preamble 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.

“Contractor Event of Default” shall have the meaning set forth in Section 6.1.

“Day” shall mean a calendar day unless it is specified that it means a Business Day.

“Design Life” means the period of time during which an item is expected by designers to work within its specified parameters and current technology. This is a theoretical calculation based upon the data and assumptions utilized in those engineering calculations as depicted in the Drawings. Design Life is an estimate of the constructed Project’s time in service and not a guarantee, nor is it tantamount to a manufacturer’s representation of product life. Ultimately, the statistical plot of the actual life cycle for a group of a particular product will result in a lognormal distribution curve with a heavy tail to the right where some products fail sooner than others; in fact, it is possible that certain items will fail prior to the target design life. The Design Life is not intended to extend the Warranty Period or increase the Contractor’s liability should a product prove to fail prior to attaining such theoretical Design Life, and Owner shall not have a reliance claim therefor.

“Dollar” and **“\$”** shall mean the lawful currency of the United States of America.

“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 or its Subcontractor or Consultants.

“Effective Date” shall mean the date on which the Agreement shall become effective as set forth in the Cover Page.

“Equipment” shall mean (a) all materials, supplies, apparatus, machinery, equipment, parts, tools, components, instruments, appliances, spare parts and appurtenances thereto that are required, by the terms of this Agreement, the Contract Documents, and all Legal Requirements to complete the Work and to be incorporated into the Project, and (b) all materials, supplies, apparatus, machinery, equipment, parts, tools, components, instruments, appliances, spare parts and appurtenances thereto described in, required by, reasonably inferable from by the terms of the Agreement, the Contract Documents and all Legal Requirements.

“Equipment Documentation” shall mean copies or originals of (i) all operating specifications, warranties and other similar information obtained by Contractor from equipment vendors or Subcontractors or prepared by Contractor or Subcontractors as part of the Work, (ii) a complete inventory list of all Equipment comprising the System, and (iii) all documentation and identification information with respect to all Equipment comprising part of the Project, including reference or serial numbers for all photovoltaic panels, inverters and other equipment listed in the Scope of Work.

“Equipment Warranties” shall mean the product warranty from any Supplier for the Equipment incorporated into the Project.

“Energy Conservation Measures” or ECMs” shall mean those renewable energy generation and energy efficiency improvements identified and recommended by Contractor during the project development phase of the Project and incorporated in the CEA Report.

“Engineer” shall mean the licensed professional engineer experienced in the design and construction of projects comparable to the Project and responsible for the overall design of the System.

“Engineering Documents” shall mean all documents including Drawings, diagrams, plans, Equipment Documentation, Equipment Warranties, Shop Drawings, Assessments, addenda, reports calculations, performance models and other models, designs schedules, and other documents prepared or furnished by Contractor pursuant to this Agreement in respect of the design, engineering and construction of the System.

“Environmental Law” means all Laws related to health, safety, the protection of the environment or regulation or prohibition of the environmental pollution or contamination, including laws relating to land use, emission and pollution, discharges into or pollution of water, and Hazardous Materials.

“Escrow Agreement” has the meaning set forth in Section 3.4

“Exhibits” means the Exhibits comprising part of this Agreement referenced and listed in the Table of Contents.

“Final Completion” means “Final Completion” of the Project in accordance with Section 4.2(e).

“Final Completion Certificate” has the meaning set forth in Section 4.2(e).

“Final Completion Date” shall mean the actual date on which the Final Completion has occurred, as set forth in the Final Completion Certificate.

“Force Majeure Event” shall mean, when used in connection with the performance of a Party’s obligations under this Agreement, any act or event (to the extent not caused by the fault or negligence of such Party or its agents or employees) which is unforeseeable, or being foreseeable, unavoidable (including by taking prudent protective and preventative measures) and outside the control of the Party which invokes it, and which renders said Party unable to comply totally or partially with its material obligations under this Agreement including natural disasters, acts of God, drought, flood, earthquake, storm, fire, explosion, lightning, epidemic, war, riot, civil disturbance, sabotage, terrorism or threat of terrorism, and strikes, lockouts or other labor disturbances or disputes of a national or regional scope. Notwithstanding the foregoing to the contrary, Force Majeure Events shall not include any of the following:

(a) mechanical or equipment failures (except to the extent any failure is itself caused by a Force Majeure Event);

(b) any condition of the Site for which the affected Party is responsible under this Agreement, other than (1) the discovery of pre-existing Hazardous Materials at the Site so long as the condition was unknown and should not reasonably have been known as of the Effective Date and (2) any Hazardous Materials released at the Site other than by the Contractor, any Subcontractor or Persons acting on behalf of the Contractor;

(c) increases in the cost of performance of a Party’s obligations under this Agreement (except to the extent any such increase is itself caused by a Force Majeure Event);

(d) any delay or other problems associated with the issuance of any Governmental Approval or for the application therefor, other than the failure of the Governmental Authority to issue its approval to start construction of the Project on or before the date specified therefor in the Project Schedule, through no fault of the Party claiming the Force Majeure Event and despite the Party’s best efforts which shall constitute a Force Majeure Event; and

(e) strikes, walkouts, lockouts or other labor disturbances or disputes specific to the Project or such Party claiming a Force Majeure Event.

Notwithstanding the foregoing, each of (x) economic hardship of either Party or (y) increases in the cost of performance of a Party’s obligations, shall not constitute Force Majeure Events under this Agreement.

“Governmental Approval” shall mean each and every national, autonomic, regional and local license, approval, authorization, certification, registration, exemption, filing, recording, permit or other approval with or of any Governmental Authority, including each and every construction or operating permit and any agreement, consent or approval from or with any other Person that is required by any Applicable Law or that is otherwise necessary for the performance of the Work.

“Governmental Authority” shall mean any national, autonomic, regional, provincial, town, city, local or municipal government, authority, body, agency, ministry, court, judicial or administrative body, taxing authority or other governmental organization having jurisdiction over the Work, the Site, the Project, the Parties or any other matter in question (as applicable).

“Hazardous Material” shall mean oil or petroleum and petroleum products, asbestos and any asbestos containing materials, radon, polychlorinated biphenyls (“PCBs”), urea formaldehyde insulation, lead paints and coatings, and all of those chemicals, substances, materials, controlled substances, objects, conditions and waste or combinations thereof which are now or become in the future listed, defined or regulated in any manner by any federal, state or Applicable Law.

“Incentives” shall mean subsidies, rebates, credits, reductions, allowances or other financial incentives which the Contractor shall apply for on behalf of the Owner, which are identified in the CEA Report.

“Industry Standards” shall mean those standards of care and diligence practiced or approved by reasonably prudent contractors of the energy services industry in engineering, designing, constructing, installing and operating energy conservation and renewable energy generation projects with equipment similar to the Project in the United States and in accordance with good engineering and design practices, sound construction procedures, Governmental Approvals, the Contract Documents and other standards established for such Work. Industry Standards are not intended to be limited to optimum practice, methods, equipment specifications or acts to the exclusion of all others, but rather to be a spectrum of reasonable and prudent practices and methods generally accepted within the industry to accomplish the desired results and must take into consideration the conditions specific to any given facility, including to the extent such conditions would require a person to (a) perform its duties in good faith and as a reasonably prudent operator, (b) perform its duties in compliance with the Contract Documents, (c) exercise such care, skill and diligence as a reasonably prudent business company of established reputation engaged in the industry would exercise in the conduct of its business and for the advancement or protection of its own interests, (d) perform the duties in accordance with applicable standards, (e) use sufficient and properly trained and skilled personnel, and (f) use parts and supplies that meet the specifications set forth in the Contract Documents, in all cases with respect to (a) through (f) herein, taking into account all of the costs, expenses and benefits of operation of the System.

“Interconnection Agreement” means an agreement entered into by and between Owner and the Utility which agreement shall provide for (i) the Project to be interconnected with the Utility’s electricity distribution system, (ii) for energy to flow from the Project to such system and (iii) for energy to flow from such system to the Project, as applicable, under the provisions of the Utility’s tariff.

“LD Rate” shall have the meaning set forth in Section 4.8(e).

“Legal Requirement” means the requirement of any Applicable Law, including any Environmental Law or any Governmental Approval.

“Liquidated Damages” shall have the meaning set forth in Section 4.8(e).

“Notice to Proceed to Design” shall mean the written notice Owner may give Contractor authorizing Contractor to proceed with Contractor’s obligations under Section 4.2(a).

“Notice to Proceed to Procurement and Construction” shall mean the written notice Owner may give Contractor authorizing Contractor to proceed with Contractor’s obligations under Section 4.2(c).

“Owner” shall have the meaning set forth in the preamble 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.

“Party” shall mean, individually, each of the parties to this Agreement.

“Person” shall mean any individual, corporation, partnership, company, joint venture, association, trust, unincorporated organization or Governmental Authority or other entity.

“Price and Performance Ratios” shall mean those ratios which establish the baseline for comparisons of the Project to other projects and provide a means of determining whether changes to the Contract Price are warranted based on the impact of approved Change Orders on the Project’s internal rate of return.

“Progress Payment” shall mean a payment made in accordance with the terms of each Progress Payment Milestone.

“Progress Payment Milestones” shall mean the schedule of separately identifiable major portions of the Work, together with the portion of the Contract Price allocable to each such portion of the Work, set forth in Section 3.9.

“Project” shall mean the engineering, design, and total construction of the System and completion of the Work performed in accordance with the Contract Documents.

“Project Phases” shall mean the schedule of separately identifiable major portions of the Work as set forth in Section 4.2.

“Project Manual” shall mean the volume assembled for the Work which shall include, without limitation, Contract Documents, Governmental Approvals, Equipment Documentation, Equipment Warranties, results of the Start Up and Operational Tests and other test conducted under the Testing and Commissioning Plan, Engineering Documents including As-Built Drawings, an O&M manual and all other documents as required with specific instructions and in sufficient scope and detail to permit Owner to safely operate, monitor and maintain the System at its tested output level in the ordinary course of business and to ensure that the Warranties and other obligations hereunder remain valid. The Project Manual shall include a table of contents in a format agreed upon by the Contractor and Owner, which agreement will not be unreasonably withheld, conditioned or delayed.

“Project Owner Requirements” shall mean the specific requirements of the Work required by the Owner and that includes the Site Procedures and other elements set forth in Exhibit C, as may be altered from time to time by the Owner as a ministerial matter.

“Project Schedule” shall mean the schedule for prosecution of the Work, including all project development, engineering, permitting, mobilization, construction, Equipment procurement, testing and commissioning in connection with the Project, as set forth in Exhibit B.

“Punchlist” shall mean the list of Work uncompleted upon the achievement of the Construction Phase, the lack of which or the failure of which to complete (considered individually or in the aggregate) does not or will not, in the reasonable opinion of Owner or the Engineer, adversely affect the performance, reliability, or capacity of the System or the ability of Owner to safely operate, monitor and maintain the System in the ordinary course of business. The Punchlist must be agreed upon by Owner, which agreement will not be unreasonably withheld, and by the Engineer.

“Recovery Plan” shall mean a plan prepared by Contractor, and submitted to the Owner, demonstrating to the Owner’s reasonable satisfaction, the measures that Contractor has taken or will take in order to (i) remedy a delay in completing a portion of the Work by the scheduled dates for such Work as provided in the Project Schedule including achievement of Final Completion by the Completion Date.

“Release” shall mean the discharging, depositing, injecting, dumping, spilling, leaking, placing, pumping, pouring, emitting, emptying, escaping, leaching, disposing, or discarding of any Hazardous Materials into the environment so that such Hazardous Materials or any constituent thereof may enter the environment, or be emitted into the air or discharged into any waters, including ground waters.

“Request for Information” A Request for Information 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 fulfilling the obligations under the Agreement.

“Request for Proposal” A Request for Proposal 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 Price and the Project Schedule.

“Safety Plan” shall mean a plan prepared by Contractor that includes the elements required by Owner and otherwise includes all matters relating to safety as required by Applicable Law and the Contract Documents.

“Samples” shall mean physical examples furnished by Contractor to illustrate materials, equipment, or quality.

“Schedule of Values” means the list of prices to be used for invoicing and the labor and equipment rates for time and material based Change Orders.

“Scope of Work” shall mean the scope of the Work set forth in Section 2.1 and Exhibit A.

“Shop Drawings” shall mean 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.

“Site” or **“Sites”** shall have the meaning set forth in the third recital.

“Site Assessment Table” shall mean a table providing details regarding the Project, the Site(s) and the System at each Site.

“Site Procedures” shall mean the duly authorized procedures developed and implemented by Contractor and approved by Owner as part of the Safety Plan including procedures addressing access, safety, working hours, security, compliance with legal requirements, environmental compliance, the permit to work system, lock-out procedures, tag-out/tag-in procedures and all other standing orders applicable to work carried out on the Site.

“Spare Parts” means those supplies and spare parts required for operation of the System as recommended by the Contractor’s Equipment vendors that shall be supplied by Contractor as part of the Work as specified in Section 2.7(d).

“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.

“Start Up and Operational Tests” shall mean a test of the System.

“Subcontract” shall mean any contract, subcontract, purchase order, or other agreement whereby a Subcontractor undertakes (a) to perform or provide any portion of the Work or (b) to provide all or a portion of the Equipment required by any Person performing or providing any portion of the Work.

“Subcontractor” shall mean (a) any Person, other than Contractor, performing or providing any portion of the Work, whether retained by Contractor, any Affiliate of Contractor or any Person hired by Contractor or any of its Affiliates and including every tier of subcontractors, sub-subcontractors and so forth, and (b) any Supplier.

“Substantial Completion” shall mean satisfaction or waiver of all of the conditions set forth in Section 4.2(c).

“Superintendent” shall have the meaning set forth in Section 2.4(b).

“Supplemental Instruction” or “SI” a Supplemental Instruction is a written instrument prepared by the Owner and submitted to the Contractor requesting a minor change to the Work that does not impact the Contract Price or Project Schedule.

“Suppliers” shall mean any Person providing or supplying all or a portion of the Equipment required by any Person performing or providing any portion of the Work to perform or provide the Work, whether or not incorporated into the System, including any materialman, vendor or supplier.

“System” shall mean the comprehensive energy management system, including all energy efficiency and renewable energy generation components of the ECMs, to be installed by Contractor in order to provide a fully integrated and operational Project, at each Site as applicable, in accordance with the Contract Documents and as more specifically described in the Scope of Work.

“Target Annual Energy Production” shall mean Owner’s desired number of kWh that the solar PV modules installed as part of the System shall produce in the first year following the Final Completion Date.

“Testing and Commissioning Plan” shall mean a plan prepared by Contractor that includes the elements required to implement the Start Up and Operational Tests and otherwise includes all matters relating to testing and commissioning as required by the Contract Documents.

“Utility” shall mean the utility providing electrical services to the Site(s) as set forth in the Cover Page.

“Warranties” shall mean, collectively, the warranties provided by Contractor to the Owner hereunder, as described in Section 2.20.

“Warranty Period” shall have the meaning set forth in Section 2.20(d).

“Work” shall mean (a) complete engineering and design of the System including As-Built Drawings (b) the procurement, installation, construction and erection, commissioning, start-up and testing, and all other services, including all labor, materials’ storage, services, demolition, Site preparation, equipping, verification, training, manuals and other things and actions in connection therewith, as necessary for the Contractor to fulfill all of its obligations pursuant to this Agreement, the Contract Documents, any Change Orders; and, where Contractor installs solar PV modules as part of the System, the requirements of the Utility and the Interconnection Agreement, the Governmental Approvals, and any other Legal Requirement, (c) the provision of Equipment (d) transportation and storage of the Equipment; and (e) all of the foregoing that Contractor performs through any Subcontractor or Consultant.

ARTICLE TWO

2. **CONTRACTOR’S OBLIGATIONS**

2.1 **Scope of Work**

2.1.1 The Contractor agrees to furnish all project development, engineering, system designs, supervision, labor, equipment and materials, tools, utilities, communications, implements, appliances and transportation, to procure all Governmental Approvals, to facilitate completion and execution of any Incentive related documents, the Interconnection Agreement (if applicable) and all related applications, to coordinate with Utility for any and all requirements to allow the Project to be placed in operation, to erect, install, start-up, test and commission the Project, to perform all obligations set forth in the Contract Documents, to perform related activities for the successful completion of the Work and the delivery of the Project in compliance with the Contract Documents 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, the Contract Documents, Industry Standards, Legal Requirements and quality control and inspections relating thereto and so that the Project (i) meets or exceeds all requirements of Legal Requirements and the Project is installed in accordance with manufacturer’s specifications or by methods otherwise approved by the manufacturer; (ii) where Contractor installs solar PV modules as part of the System, complies with all requirements of the

Utility and the Interconnection Agreement; (iii) meets or exceeds the warranties and guarantees set forth in the Contract; (iv) is safe and adequate for the purpose and conditions specified in the Scope Of Work; (v) its free from defects in materials and workmanship; (vi) is comprised of equipment which is new (unless otherwise mutually agreed) and of the agreed 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. 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.

2.1.2 The Scope of Work is more fully and specifically defined in Exhibit A hereto.

2.2 Performance of the Work Contractor shall perform the Work in accordance with requirements of the Contract Documents, the Scope of Work and the Specifications, the Project Owner Requirements, the Utility, Industry Standards, Legal Requirements and the Safety Plan. To the extent that any portion of the Work is provided with the Contractor's own forces, any reference to Subcontractors or Consultants 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 Project Schedule.

2.3 Construction of Agreement It is understood and agreed by Owner and Contractor that the terms of this Agreement, including all Exhibits, may be subject to amendment, replacement or deletion in their entirety based upon the Scope of Work approved by Owner. Owner and Contractor agree to negotiate and amend this Agreement in good faith to amend, replace or delete the terms herein as necessary to accommodate the Scope of Work approved by Owner.

2.4 Contractor Personnel

(a) **Competency** Contractor agrees to use, and agrees that it shall require each Subcontractor to use, only personnel who are qualified and properly trained and who possess every license, permit, registration, certificate or other approval required by Applicable Law or any Governmental Authority to perform the Work. 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.

(b) **Superintendent** Contractor shall provide a competent superintendent and assistants as necessary based on final Scope of Work, all of whom shall be reasonably proficient in speaking, reading and writing English, and, who shall be in attendance at the Project Site(s) during performance of the Work (the "Superintendent"). The Superintendent shall represent the Contractor, and communications given to the Superintendent shall be as binding as if given to the Contractor.

(c) Prevailing Wage The Project is a public work, the Work shall be performed as a public work and 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 Contract. 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.

(d) Penalties 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 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 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.

(e) Debarment A contractor or subcontractor shall not be qualified to enter into, or engage in the performance of, any contract of public work (as defined by Division 2, Part 7, Chapter 1 (§§1720 *et seq.*) of the Labor Code) unless currently registered and qualified under Labor Code section 1725.5 to perform public work. Contractor shall post all required job site notices pursuant to the Labor Code and related regulations.

(f) Working Time Limits 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 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 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 Day during which such worker is required or permitted to work more than 8 hours in any one Day, and 40 hours in any one calendar week, except as herein provided.

(g) 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.

(h) Employment List 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 Contract 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.

(i) Compliance Monitoring This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be the Contractor's sole responsibility to evaluate and pay the cost of complying with all labor compliance requirements under the Contract Documents and applicable law.

(j) Contractor and Subcontractor Registration Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. No bid will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work.

2.5 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. The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents by tests, inspections, or approvals required or performed by persons other than the Contractor. 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.

2.6 Subcontractors and Other Contracts for Portions of the Work

(a) Subcontractors shall be selected by Contractor and presented to 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 Price or the granting of any extension of time for the Project Schedule. 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.

(b) Each Subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

- (i) Assignment is effective only after termination of the Agreement with the Contractor by the Owner for cause pursuant to Section 6.1 and only for those Subcontract agreements which the Owner accepts by notifying the Subcontractor in writing; and
- (ii) Assignment is subject to the prior rights of the surety, if any, obligated under any bond relating to the Agreement.

2.7 Supply and Procurement of Equipment

(a) Except as expressly provided to the contrary in the Scope of Work, Contractor, at its expense, shall purchase, transport and deliver all Equipment and shall inspect, unload, store, construct and install all Equipment required to complete the System. Contractor shall maintain all Equipment Warranties, obtain required extended warranties when available, and, upon the expiration of the Warranty Period, cause any such remaining Equipment Warranties to be assigned and passed-through to Owner. Contractor shall at all times perform the Work in a manner consistent with all such Equipment Warranties and will not perform any actions that may violate such warranties.

(b) Contractor agrees that all materials and Equipment to be supplied or used by Contractor or any Subcontractor in the performance of its obligations under this Agreement shall be new, unless otherwise specified or mutually agreed (if being incorporated into the System) or in good operating condition (if not being incorporated into the System) and fit for the use(s) specifically described in the Scope of Work. Such materials and Equipment shall at all times be maintained, inspected and operated by Contractor pursuant to Industry Standards and as required by Applicable Law until Final Completion. Contractor further agrees that all licenses, permits, registrations and certificates or other approvals required by Applicable Law or any Governmental Authority will be procured and maintained for such materials and Equipment at all times during the use of the same by Contractor or any Subcontractor in the performance of any of Contractor's or such Subcontractor's obligations under this Agreement.

(c) Contractor shall maintain an active inventory list in respect of the System and, upon completion of any Work with respect to the Equipment (including in respect of any claim under the Warranties), Contractor shall update the active inventory list to reflect the serial numbers and all other information reasonably required by Owner with respect to any new Equipment installed as part of such Work.

(d) In addition to warranty obligations under Section 2.20, Contractor shall also procure from each vendor of Equipment a Spare Parts list, as well as pricing of such Spare Parts. Contractor shall supply and store at a designated location at the Site an initial set of Spare Parts for the Project in the type and quantity recommended by the manufacturers or Suppliers of the Equipment which shall include all commissioning spare parts as well as sufficient Spare Parts to operate the Project for two (2) years after Final Completion.

2.8 Utilities Contractor shall supply temporary power, telecommunications, water, waste disposal, and other utilities and services required for performance of the Work. Contractor shall also be responsible for providing Equipment and facilities to enable Owner to interconnect with local telecommunications utilities and obtain permanent telecommunications services such as telephone, television cable and other communications utilities as required for the Project.

2.9 Utility Rate Changes If applicable, 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. 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 the Scope of Work. It is preferred that the switching to these rate schedules happen after the Project has been operational continuously for a thirty (30) day period as required for Final Completion. If the Utility only allows the rate schedule to be changed at the time of interconnection, then the rate schedule change should occur at the time of interconnection.

2.10 Incentives Contractor shall provide such assistance to the Owner as may be reasonably requested to secure any subsidies, rebates or other incentives that may be available to Owner from any Governmental Authority or the Utility in connection with or relating to the installation and operation of the Project or otherwise. Contractor acknowledges that it shall have no right or interest in any such subsidies, rebates or other incentives. Owner acknowledges that the Contractor has no control over final payment or availability of such incentives.

2.11 Permits and Approvals

(a) Contractor shall obtain, maintain and pay for all Governmental Approvals and governmental fees, licenses, and inspections necessary for development, construction, ownership and operation of the Project and the completion of the Work and which are legally required by any Governmental Authority for the Project. In order to assist Contractor to obtain all required Governmental Approvals, Owner shall provide Contractor with such reasonable assistance as Contractor may request. Copies of all Governmental Approvals 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.

(b) If applicable, the Contractor shall file a Notice of Intent to comply with the terms of the general permit to discharge storm water associated with construction activity prior to the start of any construction activity.

(c) Contractor is required to obtain all approvals from any Governmental Authority, including, but not limited to: Incentive program guidelines, fire safety, California Occupational Safety and Health Administration (“OSHA”), Utility interconnection (if applicable), right-of-way permits, easement agreements and other codes and best practices.

2.12 Testing and Inspection The Contractor shall at its own expense conduct the Start Up and Operational Tests and such other tests described in the Scope of Work and shall be responsible for all fees for and coordination with any Governmental Authority for the approval of the Project. Contractor shall 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. Contractor will notify Owner no less than five (5) days prior to the commencement of testing and Owner or its representative will have the right to observe all such tests. Tests, inspections, and approvals of portions of the Work required by the Contract Documents will comply with Title 24, and with all other Legal Requirements. The following shall apply to the testing and inspection of the Project:

(a) **Rejection of Work** The Owner’s selected representative may recommend to the Owner that the Owner reject Work which does not conform to the Contract Documents.

(b) Testing Off-Site Any material shipped by Contractor from the source of supply, prior to having satisfactorily passed testing and inspection requirements per Exhibit A, Applicable Law or the requirements of any Governmental Authority shall not be incorporated in the Project.

(c) 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.

(d) Additional Testing or Inspection, and Costs Related Thereto

(i) If the Owner or Governmental Authority determines that any portion of the Work on the Project require additional testing, inspection, or approval, the Contractor will, upon Owner's written authorization, arrange for such additional testing, inspection, or approval. Owner shall bear such costs except in paragraph (ii), below.

(ii) 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 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.

(iii) Where Contractor installs solar PV modules as part of the System, Contractor will provide flash test data for all PV modules installed as part of the System to Owner in MS Excel format upon procurement of PV modules. Owner, at its sole discretion, may randomly select up to twenty (20) percent twenty (20) PV modules of each type of PV 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.

(e) 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 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.

(f) Covered Work If a portion of the Work is covered contrary to the request of any Governmental Authority, the Owner's request, or to requirements specifically expressed in the Contract Documents, it must, if required by the Governmental Authority or the Owner, be uncovered for the Governmental Authority, or the Owner's observation and be replaced at the Contractor's expense without change in the Contract Price or Project Schedule.

(g) 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.

(h) 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.

2.13 Local and General Conditions

(a) Contractor has conducted a full and complete visual examination of the Site, and acknowledges and agrees that it has satisfied itself as to the general and local conditions and circumstances affecting the Work that could be reasonably ascertained and has identified and conducted all Assessments, at its own cost, required to ensure that the Project can be built according to all Applicable Laws and Industry Standards, is expected to achieve the Design Life target, and, where solar PV modules are installed as part of the System, will meet or exceed the Target Annual Energy Production, including but not limited to (i) geotechnical studies, (ii) atmospheric corrosion studies, (iii) environmental assessments, (iv) shading studies, (v) real property surveys of the Site including an ALTA survey, (vi) title reports, (vii) all staging, storage, delivery, and other areas necessary to perform the Work, (viii) ingress to and egress from the Site for all supplies, personnel and Equipment, (ix) anticipated site layout (x) technical information and requirements, (xi) conditions affecting transportation, disposal, handling and storage of materials, including Hazardous Materials at the Site (excluding pre-existing Hazardous Materials), (xii) availability and conditions of roads, buildings, climatic conditions and seasons, (xiii) existing electrical service and equipment suitability, (xiv) physical conditions at the Site, including topography, flood control requirements and ground surface materials to be encountered, (xv) underground utility surveys, (xvi) Legal Requirements and (xvii) all other matters which a prudent contractor should have discovered upon reasonable investigation and due diligence review, and Contractor accepts the risk of the matters referred to immediately above.

(b) Contractor acknowledges and agrees that where Assessments were conducted, the results have been provided to the Owner within five (5) Business Days of having been received by the Contractor and all costs associated with the results have been accounted for in the Contract Price.

(c) Contractor acknowledges and agrees that it has taken into account all Assessments in any preliminary Engineering Documents that it has provided for use by the Parties in Project modeling and the development of the Contract. All preliminary engineering and installation Drawings were completed to be consistent with Applicable Law, all prevailing construction standards and codes, and the ECMs that Contractor and Owner have agreed to be incorporated into the Project.

(d) When required by the Scope of Work or otherwise required to satisfy Section 2.13(a), 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.

(e) When required by the Scope of Work or otherwise required to satisfy Section (a)2.13(a), 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 Site. 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, 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 of 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.

(f) 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.

2.14 Safety Precautions and Programs

(a) 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 including the Safety Plan, which shall 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.

(b) Prior to beginning construction, Contractor shall provide Owner with a copy of Contractor's Safety Plan, as well as an evaluation and appropriate documentation of the safety record of any licensed Subcontractor that will be performing Work on the Project. The 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.

(c) 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; 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 Legal Requirements, ordinances, rules, regulations, and lawful orders of Governmental Authorities bearing on the safety of persons or property or their protection from damage, injury, or loss.

(d) 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.

(e) Contractor shall have mandatory pre-job safety briefing for all employees and Subcontractor employees on their first day on site. Hard hat stickers shall be issued as a proof of briefing attendance.

(f) Safety meetings will be held once a week during construction with all Contractor employees and Subcontractors employees attending. Printed names will be taken of those attending the meeting. No individual will start work on the Site without having attended a safety briefing on the dangers and protocols of the Site. Records of this training will be kept and provided to Owner. No individual will operate a piece of equipment on which they have not had certification training. Certification shall be carried on the operator at all times.

(g) 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.

(h) Pursuant to Labor Code section 6705, if the Contract Price 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 Safety Plan, 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 Safety Plan or Applicable Law. Pursuant to Labor Code section 6705, nothing in this Article shall impose tort liability upon the Owner or any of its employees.

2.15 Protection of Work and Property Contractor and Subcontractors shall continuously protect and secure the Work, materials and Equipment, 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 following shall apply to the protection of Work and property:

(a) Contractor shall at all times comply with the requirements of the Project Owner Requirements, Legal Requirements and the Safety Plan with respect to the use, occupancy and condition of the Site, including the location and maintenance of storage and laydown areas used by Contractor.

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

(c) If the Project 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 Site(s), 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.

(d) 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 Section 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.

(e) 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.

(f) The Contractor shall keep the Site and surrounding area free from accumulation of waste material or rubbish caused by operations under the Contract. 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.

2.16 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 Section 4.8 and requested in accordance with Section 2.18. 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.

2.17 Hazardous Materials In the event the Contractor encounters or suspects the presence on the Site of 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. Contractor will be accountable for costs or penalties associated with the presence of hazardous materials and with delays due to the presence of hazardous materials where the presence of such hazardous materials is attributable to Contractor's negligent acts or omissions. To the extent Owner is aware of the presence of any hazardous waste at any Site, Owner shall be responsible for informing Contractor of the location of such hazardous waste and shall bear responsibility for reasonable damages for personal injury or property damage caused by its failure to disclose the presence of such hazardous waste to Contractor.

2.18 Changes and Extra Work

(a) 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 Engineering Documents 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.

(b) 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 wrongful acts or omissions on the part Contractor, or as a result of any errors or omissions in the Engineering Documents 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 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:

(i) The costs of all engineering, design, labor, and materials necessary to fully correct the wrongful acts or omissions on the part of Contractor, or the error or omission in the Engineering Documents for the Project;

(ii) Any other costs or damages which the Owner incurs as a result of wrongful acts or omissions on the part Contractor, or of errors or omissions in the Engineering Documents for the Project, including but not limited to any delay damages the Owner incurs; and

(iii) 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 wrongful acts or omissions on the part of Contractor, or of errors or omissions in the Engineering Documents 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 Agreement 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 wrongful act or omission occurred or whether there was an error or

omission in the Engineering Documents 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.

(c) Owner reserves the right to make such alterations, deviations, additions to, or deletions from the Engineering Documents, 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 Engineering Documents, 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 Engineering Documents 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.

(d) A Supplemental Instruction (SI) can order changes in the work that does not affect the Contract Price and/or Project Schedule. A SI can be made in a Request for Information response by issuing a formal SI document or by written letter from the Owner.

(e) All Requests for Information should be substantially in the form of Exhibit D and 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 Price, Project Schedule, 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) 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 professional judgment of Owner and the Owner's representatives 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.

(f) 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 Price and/or Project Schedule is not altered. If the RFI response alters the Contract Price and/or Project Schedule, a Change Order may be issued for the changed condition(s).

(g) The Owner will have authority to order minor changes in the Work provided that there is: (i) no adjustment in the Contract Price, (ii) no extension of the Project Schedule, or (iii)

any other 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.

(h) To request a Change Order, Owner or Contractor shall prepare and submit a draft Change Order in the form of Exhibit E for review by the other Party.

(i) Each Change Order request, whether proposed by Contractor or Owner, shall include: (i) a detailed statement of the reason for and a description of the change; (ii) the estimated price of the proposed change, including the proposed change in the Contract Price and any costs or savings for carrying out the change including a complete itemized cost breakdown of all labor and material showing actual quantities, hours, unit prices, wage rates, required for the change; (ii) the projected effect of such proposed change on the Project Schedule including the relevant scheduled completion dates and deadlines; (iii) the projected effect of such proposed change on Contractor's ability to comply with any of its obligations hereunder, including the Warranties, Target Annual Energy Production and Price and Performance Ratios (iv) and shall be accompanied by supporting documentation necessary to evidence the costs or savings and schedule adjustments requested therein.

(j) When the Contractor is requesting a Change Order, notice thereof must be provided to the Owner within ten (10) Days after the occurrence of the event giving rise to the claim. 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 2.16 hereof. No notice shall be considered unless made in accordance with this Section; 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 Project Schedule, and/or the increase in the Contract Price. Contractor shall proceed to execute the Work even though the adjustment has not been agreed upon. Any change in the Contract Price or extension of the Project Schedule resulting from such claim shall be authorized by a Change Order.

(k) Within ten (10) Days after receipt of a Change Order request from Contractor or Owner, the receiving Party shall either (i) accept such Change Order request by execution thereof and deliver an executed copy to the initiating Party or (ii) reject such Change Order request and provide appropriate written explanation of the reasons therefor (which may include a request for additional information, documentation or cost detail).

(l) The amount of the increase or decrease in the Contract Price resulting from a Change Order, 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 in accordance with the rates specified in the Schedule of Values. 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.

(m) The Owner may by means of a Construction Change Directive (CCD), without invalidating the Agreement, order changes in the Work within the general scope of the Agreement consisting of additions, deletions, or other revisions, with the Contract Price and Project Schedule being adjusted accordingly. A CCD shall be used in the absence of agreement on the terms of a Change Order.

(n) 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.

(o) A Request for Proposal issued by the Owner shall contain adequate information, including any necessary Drawings and specifications, to enable Contractor to provide the cost breakdowns required by Section 2.18(1). The Contractor shall not be entitled to any additional compensation for preparing a response to a Request for Proposal, whether ultimately accepted or not.

2.19 System Manuals and Drawings

(a) Submittal Contractor shall obtain and shall submit to Owner all required Engineering Documents and Samples in accordance with the Project Schedule and as required in the Contract Documents with such promptness as to cause no delay in its own Work or in that of any other contractor. Owner shall have the right, but not the obligation, to review all Engineering Documents and may direct Contractor to make such changes to the design and engineering of the Project as Owner reasonably believes are necessary and as are requested within a reasonable time after the Engineering Documents are submitted, so long as any such changes are within the Scope of Work (or, if not, a Change Order has been executed with respect to such changes), provided however, that no such review or requested changed shall impose any liability on Owner (other than to make payment in accordance with any applicable Change Order) or relieve Contractor of any of its responsibility for the design, engineering and performance of the Project as provided in this Agreement. Any submission, which in Owner's opinion is incomplete, contains numerous errors, or has been checked only superficially by Contractor, will be returned unviewed by the Owner for resubmission by the Contractor. Contractor shall not commence any portion of the Work requiring an Engineering Document or Sample submission until the Owner has approved the submission.

(b) Samples Where Samples are requested by the Owner, and Work is approved based on the Samples, all Work shall be in accordance with the approved Samples.

(c) Extent of Review In reviewing Engineering Documents, the Owner will not verify dimensions and field conditions. The Owner will review and approve Engineering Documents, 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 Engineering Documents.

(d) Substitution Unless the Contract Documents 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.

(e) Project Manual A Project Manual shall be assembled by Contractor and provided to Owner as a requirement for achieving Final Completion.

(f) 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 a 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, Engineering Documents, Samples, and similar required submittals.

2.20 Warranties

(a) Contractor Warranties Contractor warrants that, throughout and until the end of the Warranty Period:

(i) The Project will be developed, designed, engineered and constructed to satisfy all applicable Legal Requirements, the requirements of the Utility, the requirements of the Contract Documents, and all descriptions set forth herein, applicable construction codes and standards and all other requirements of this Agreement, and to produce a fully functional Project that is capable of operating free of major defects for a Design Life of at least 25 years, assuming customary operation and maintenance.

(ii) All Equipment installed as part of the agreed upon ECMs shall conform in all respects to the requirements of the Contract Documents, Legal Requirements, the requirements of the Owner, the Utility and all other requirements of this Agreement and shall be new, unused (unless otherwise mutually agreed in writing) and undamaged at the time it is put into service upon, and will be installed in accordance with the Equipment Documentation (including all requirements necessary to preserve and maintain in effect any and all Equipment Warranties) and all Equipment Warranties are in effect.

(iii) The Work, including all workmanship and materials incorporated therein, will be of suitable grade of their respective kinds for their use as specified in the Scope of Work herein, will be free from defects in design, engineering, materials, construction, and workmanship, and shall conform in all respects with all Legal Requirements, the requirements of the Utility, requirements of the Owner, the requirements of the Contract Documents, and all descriptions set forth herein, applicable construction codes and standards and all other requirements of this Agreement;

(b) Subcontractor and Supplier Warranties Contractor shall, for the protection of Owner, use commercially reasonable efforts to obtain from all Suppliers 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 Equipment Warranties that can be should be extended to the maximum standard warranty

length available provided that such extensions shall not accrue additional costs. Contractor shall assign all remaining Equipment Warranties to the Owner upon expiration of the Warranty Period. Contractor shall deliver to Owner promptly following execution or receipt of the applicable agreement copies of all warranties and guarantees received from any Subcontractor or Suppliers, together with copies of such agreements (redacting confidential information as required thereunder).

(c) Independent Warranties Contractor's Warranties under Section 2.20(a) are separate and independent of one another. Contractor's failure to meet any of the foregoing warranties shall be deemed a breach of the Warranties.

(d) Warranty Period. Contractor shall remedy any breach of the Warranties set forth in this Section 2.20(a) occurring during the period commencing on the date of completion of the Commissioning Phase and ending on the date that is one (1) year after the date of completion of the Commissioning Phase (the "Warranty Period").

(e) Remedies

(i) If any Warranty set forth in Section 2.20(a) is breached or a defect or deficiency is discovered during the Warranty Period, Contractor shall, upon notice from Owner of a Warranty claim prior to the expiration of the Warranty Period, at Contractor's sole option, re-perform, repair, replace and/or correct the applicable Work and resulting damage to the System caused by such defective Work on a reasonably expedited basis while minimizing any impact of the failure on the availability, output and functionality of the System. Contractor shall have reasonable access to the System as necessary to perform its Warranty obligations hereunder. All costs of or incidental to Contractor's performance of its Warranty obligations shall be borne by Contractor, including, where required, revising or re-engineering any deficient systems, the removal, replacement and reinstallation of all equipment necessary to gain access to defective Work, the repair of any and all damage to any part of the System or the Site, and the cost of conducting all tests to confirm that all necessary corrective action has occurred. If the Project Warranties failure has the effect of voiding any Equipment Warranty, then Contractor will at its own expense correct and condition as required in order to ensure that the Equipment Warranty is reinstated by the manufacturer on such item, or that a replacement item with full Equipment Warranty is provided and installed.

(ii) Should Contractor fail to begin to perform such necessary repairs, replacement, or correction within ten (10) Days of notice of a Warranty claim or such shorter period as necessary in the event of an emergency (but not less than twenty-four (24) hours) and thereafter diligently pursue such correction, Owner shall have the right to perform such repair, replacement or correction, and Contractor shall be liable for all reasonable costs, charges and expenses incurred by Owner in connection with such repair or replacement and shall forthwith pay to Owner an amount equal to such costs, charges and expenses upon receipt of invoices certified by Owner. Owner's action in correcting defects in accordance with this Section shall not void Contractor's Warranty obligations hereunder, except in the case of Owner's or its agent's (other than Contractor or any Subcontractor) gross negligence or willful misconduct.

(f) Warranty Exclusions. The Warranty obligations of Contractor do not extend to Work that is damaged by (i) the gross negligence or willful misconduct of Owner (ii) the failure of Owner to maintain and operate the Equipment materially in accordance with all instructions, practices and procedures of which Owner has been advised in writing by Contractor (except if such

failure is caused by Contractor or any Subcontractor), (iii) normal wear and tear or Force Majeure Events not caused by Contractor or any Subcontractor or a defect or deficiency in the Work or (iv) any alteration, repair or replacement made by a Person other than Contractor or any Subcontractor without the prior written approval of Contractor (excluding alterations, repairs or replacements made pursuant to Section 2.20(e)), except in the case of Owner's or its agent's (other than Contractor or any Subcontractor) gross negligence or willful misconduct in the performance thereof or contrary to instructions from Contractor; provided that Contractor's Warranty obligations shall continue for all but the portion of the Work so altered.

2.21 Insurance

(a) Required Coverage Contractor shall not commence Work for the Owner until it has provided evidence to the Owner it has secured all insurance required under this section. In addition, Contractor shall not allow any Consultant or Subcontractor to commence work on any subcontract until it has secured all insurance required under this section.

(i) *Commercial General Liability Insurance*: The Contractor shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to the Owner.

(1) Coverage for Commercial General Liability insurance shall be at least as broad as Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 00 01) or exact equivalent with limits of \$1,000,000 per occurrence/\$2,000,000 aggregate.

(2) Commercial General Liability Insurance must include coverage for the following: bodily injury and property damage; personal injury/advertising injury; premises/operations liability; products/completed operations liability; aggregate limits that apply per project; explosion, collapse and underground (UCX) exclusion deleted; contractual liability with respect to this Agreement; broad form property damage; independent contractor coverage.

(3) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

(4) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, provided that such deductibles shall not apply to the Owner as an additional insured.

(5) The policy shall give Owner, its officials, officers, employees, agents and Owner designated volunteers additional insured status using ISO endorsement forms CG 20 10 04 13 and 20 37 04 13.

(6) The policy shall each contain a provision stating that Contractor's policy is primary insurance and that any insurance, self-insurance or other coverage maintained by the Owner or any named insureds shall not be called upon to contribute to any loss.

(7) The policy shall contain or be endorsed to contain a waiver of subrogation in favor of the Owner, its officials, officers, employees, agents, and volunteers or shall specifically allow Contractor or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against Owner, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

(ii) *Automobile Liability.* At all times during the performance of the work under this Agreement, the Contractor shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the Owner.

(1) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto) with limits of \$1,000,000 combined single limit for bodily injury and property damage.

(2) The policy shall give Owner, its officials, officers, employees, agents and Owner designated volunteers additional insured status.

(3) The policy shall each contain a provision stating that Contractor's policy is primary insurance and that any insurance, self-insurance or other coverage maintained by the Owner or any named insureds shall not be called upon to contribute to any loss.

(4) The policy shall contain or be endorsed to contain a waiver of subrogation in favor of the Owner, its officials, officers, employees, agents, and volunteers or shall specifically allow Contractor or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against Owner, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

(iii) *Worker's Compensation/Employer's Liability Insurance* All engineers, experts, Consultants and Subcontractors the Contractor intends to employ shall have taken out workers' compensation/employer's liability 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. The Employer's Liability Policy shall have limits of \$1,000,000 each accident. 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/employer's liability insurance to the Owner immediately upon employment. 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.

(1) The policy shall contain or be endorsed to contain a waiver of subrogation in favor of the Owner, its officials, officers, employees, agents, and volunteers or shall specifically allow Contractor or others providing insurance evidence in compliance with these specifications to waive their right of recovery

prior to a loss. Contractor hereby waives its own right of recovery against Owner, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

(iv) Errors and Omissions Insurance Errors and omissions insurance on a claims made basis with limits of at least \$1,000,000 per claim and aggregate, and Contractor will maintain such coverage for a period of five (5) years following the Final Completion Date.

(v) [Intentionally omitted]

(b) Requirements Not Limiting. Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as Additional Insured pursuant to this Agreement.

(c) Consultants and Subcontractors. Each of Contractor's Consultants and Subcontractors shall carry coverage and limits proportionate to each such Consultant and Subcontractor's scope of work, and Contractor shall include such provisions in its contracts with them. If any policy carried by any of the Consultants or Subcontractors 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 Consultant or Subcontractor, and the Owner shall have the right in its reasonable discretion to approve or reject the proposed coverage in each such case. Policies of commercial general liability insurance provided by such Consultants and Subcontractors shall be endorsed to name the Owner as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Contractor, Owner may approve different scopes or minimum limits of insurance for particular Consultants and Subcontractors.

(d) Occupancy 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.

(e) Proof of Carriage of Insurance The Contractor shall not commence Work nor shall it allow any Subcontractor or Consultant to commence Work under this Agreement until all required insurance certificates and additional insured endorsements have been obtained for the period covered by this Agreement and delivered in duplicate to the Owner for approval, and such approval shall not be unreasonably withheld.

(f) Notice of Cancellation or Non-Renewal The Contractor shall notify Owner within thirty (30) Days of its receipt of written notice from an applicable insurer that a policy required hereunder will be canceled. The Contractor shall indemnify the Owner for any damages that Owner sustains that are attributable to the Contractor's failure to provide notice to Owner within three (3) days of its receipt of written notice from an applicable insurer that a policy required hereunder will be canceled.

(g) Project Schedule Changes 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.

(h) Compliance If the Contractor fails to maintain insurance and fails to cure any defects in coverage required herein within five (5) Days of receiving written notice of the defect(s), the Owner may, but shall not be required to, take out such insurance and to deduct and retain the amount of the premiums from any sums due the Contractor under this Agreement.

(i) No Limitation of Liability 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 and Subcontractors shall comply with this Section 2.21, and Contractor shall include such provisions in its contracts with them.

2.22 Performance and Payment Bonds Unless otherwise specified in the Contract Documents, the Contractor shall apply for and furnish Owner a Performance Bond and Payment Bonds on the forms provided by Owner attached hereto as Exhibit K, which shall cover 100% faithful performance of all obligations arising under the Contract Documents and guarantee the payment in full of all costs for labor performed and materials supplied for the Work, respectively. Only bonds executed by admitted Surety insurers as defined in Code of Civil Procedure section 995.120 shall be accepted. Any guarantee of performance hereunder shall not be deemed to be covered by the terms of the Payment Bond or the Performance Bond.

2.23 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, 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.

2.24 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 ten Business 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 from any sums due the Contractor under this Agreement.

ARTICLE THREE

3. PRICE AND PAYMENT

3.1 Contract Price As full and complete compensation for Contractor's obligations under the Contract Documents, Owner shall pay to Contractor in installments in accordance with the Progress Payment Milestones as specified in Section 3.9, 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 Price and as may only be adjusted by Change Orders in accordance with the provisions of this Agreement. Except as otherwise provided in this Agreement, the Contractor shall assume the risk of all costs in excess of the Contract Price in the performance the Work and to provide a fully completed and successfully operational Project, complete in every detail according to the provisions of the Contract Documents 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 Section 2.18 for Change Orders and Section 6.7 for Claims.

3.2 Allowances The Contractor shall include in the Contract Price 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.

3.3 Material Storage 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. 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 Supplier of bills of sale and such other documents reasonably 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.

3.4 Retention 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 the form attached as Exhibit H, 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 Section 3.9(e).

3.5 Payment Schedule The Progress Payment Milestones defined in Section 3.9 shall be used as the basis for preparation of progress invoices. Subject to Section 3.9 and except as provided in the Agreement, Owner shall pay to Contractor the applicable Progress Payment set forth in the Progress Payment Milestones (on a per Site basis where applicable) when:

- (i) Contractor has completed the Work associated with such payment in accordance with the Progress Payment Milestones;
- (ii) Following submittal of the supporting documentation required by Section 3.9 for the respective Progress Payment Milestones to the satisfaction of the Owner;
- (iii) Following submittal of an Application for Payment; and
- (iv) Subject to Retention as provided in Section 0.

Contractor shall be entitled to payment and in the amount specified for each Progress Payment Milestone.

3.6 Application for Payment Except as provided in Section 3.5, Contractor shall submit to Owner an invoice (an "Application for Payment"), substantially in the form of Exhibit F, requesting payment five (5) Business Days prior the anticipated achievement of a Progress Payment Milestone. Together with each Application for Payment, Contractor shall deliver (i) an updated progress schedule in respect of the Work (as compared to the Project Schedule); (ii) a monthly

progress report; and (iii) any other supporting documentation that Owner may reasonably request. Each monthly progress report shall be certified by Contractor as being true and correct as of the date of such Application for Payment. 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.

3.7 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. Owner will pay Contractor the amount Owner approves pursuant to Section 3.8 within thirty (30) after the Application for Payment was properly submitted.

3.8 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 any rights to withhold mentioned in the Contract Documents.

3.9 Progress Payment Milestones Progress Payments shall be made in accordance with Public Contract Code section 20104.50. Owner shall pay the Contract Price to Contractor on a per Project Site basis in accordance with the following schedule and after Contractor has complied with the requirements of this Section, Section 3.5 and the Contract Documents:

(a) Progress Payment 1: ("Design Payment") Fifteen (15) percent of the Contract Price upon Contractor's completion of all work required in the Governmental Approval Phase.

(b) Progress Payment 2: ("Procurement Payment") Forty (40) percent of the Contract Price during the Construction Phase upon written confirmation from the Owner of delivery on the Project Site(s) of all equipment deemed major by agreement between Owner and Contractor and memorialized in a written amendment to this Agreement upon satisfactory completion of Phase 1 of the Project.

(c) Progress Payment 3: ("Construction Payment") Twenty (20) percent of the Contract Price upon Owner's written acknowledgement to Contractor that the Construction Phase has been satisfactorily completed.

(d) Progress Payment 4: ("Commissioning Payment") Fifteen (15) percent of the Contract Price following the completion of the Commissioning Phase.

(e) Progress Payment 5: ("Final Payment"): Ten (10) percent of the Contract Price upon the Owner's delivery of the signed Final Completion Certificate to the Contractor, less any 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.

3.10 Payments and Information to Subcontractors No later than seven (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 Applicable 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.

3.11 Waivers and Releases Within fifteen (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 the Progress Payment as applicable) in a form substantially similar to the forms attached hereto as Exhibit I.

3.12 Progress Payment Terms 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.

3.13 Completion of Work Upon receipt of the Contractor's signed Final Completion Certificate, 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 signed Final Completion Certificate and the Final Payment, diligently complete or correct such item.

3.14 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.

3.15 Acceptance, Final Completion Certificate 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 Payment. After the Owner's representatives find the Work fully performed, the Owner's governing body should accept the Work as fully complete. After completion, the Owner may record a Final Completion Certificate with the Merced County Recorder in accordance with Civil Code section 9204. Contractor shall, upon receipt of Final Payment from Owner, pay the amounts due Subcontractors. Owner shall pay the retainage pursuant to Public Contract Code section 7107. Any application for Final Payment shall be accompanied by the same details required for regular progress payments. Acceptance of the Final 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.

3.16 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 Agreement, 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.

3.17 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.

ARTICLE FOUR

4. COMMENCEMENT AND SCHEDULE

4.1 Project Schedule Time is of the essence in this Agreement, and, subject to the terms of the Contract Documents, the date for Final Completion of the Project shall be the Completion Date as set forth on the Cover Page, and Contractor shall develop, design, install and commission the Project and perform all Work hereunder in accordance with the Project Schedule, Exhibit B. The Project 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 (on a per Site basis where applicable) including but not limited to all anticipated dates for achievement of the Project Phases including the issuance of Notice to Proceed to Design, the anticipated dates for 60%, 90% and 100% Engineering Documents submittal including adequate time for Owner review where required by Section 4.2, the anticipated attainment of each Governmental Approval, the anticipated issuance of the Notice to Proceed to Procurement and Construction, the anticipated award and delivery dates of major pieces of Equipment, the start and completion dates for construction and testing and commissioning, and the Completion Date. The Project Schedule shall include early and late dates and reasonable float for each and shall clearly illustrate the critical path. The Project Schedule will separately identify those milestones or events that must be completed before other portions of the work can be accomplished. 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.

4.2 Project Phases And Notice to Proceed The date of commencement of the Work is the date established in the Notice to Proceed to Design delivered by the Owner. 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 as more fully set forth in the Scope of Work, Exhibit A:

(a) Design Phase Upon Owner's issuance of a written Notice to Proceed to Design, Contractor shall prepare 60% Engineering Documents, and any inspections required by the date specified for each Site in the Project Schedule. Contractor shall deliver 60% Engineering

Documents to Owner for review and approval, which approval shall not be unreasonably withheld. Owner shall diligently review and respond to each submission by Contractor by the date specified in the Project Schedule. Contractor shall incorporate Owner's comments and requested changes unless Contractor can demonstrate that such requested changes would materially impact the Contract Price, the Project Schedule, or any other material requirement of the Contract Documents in which case Contractor shall submit a Change Order in accordance with Section 2.18. Upon resolution of the provision hereinabove set forth, Contractor shall complete and submit the 90% Engineering Documents by the date specified in the Project Schedule. No work shall be performed until Owner's issuance of the Notice to Proceed to Design.

(b) Governmental Approval Phase Upon Owner's written approval of the 90% Engineering Documents, Contractor shall seek all such approvals of all required Engineering Documents and the Project as may be required by any Governmental Authority. Contractor shall exercise all reasonable diligence to ensure that all necessary Governmental Approvals are received by the date specified in the Project Schedule. Owner shall not unreasonably withhold its consent to any modifications to the Engineering Documents that may be requested by any Governmental Authority or quasi-governmental agency with jurisdiction over the Project or the Work, excepting any changes that materially affect the tilt, azimuth or number of PV modules, or other aspects of the original design that may affect the Contract Price or the Target Annual Energy Production or Price and Performance Ratios, or that materially affect the siting of the Project and its impact on Owner's operations. The Engineering Documents with all changes as necessitated by any Governmental Authority and as approved by Owner shall constitute the 100% Engineering Documents and serve as the basis for construction. The receipt and approval of the 100% Engineering Documents and copies of all Governmental Approvals by the Owner shall constitute the completion of the Governmental Approval Phase.

(c) Construction Phase. Within fifteen (15) Business Days of receipt and approval of the 100% Engineering Documents and copies of all Governmental Approvals by the Owner necessary to begin construction of the Project Owner shall issue a Notice to Proceed to Procurement and Construction. Upon receipt of the Notice to Proceed to Procurement and Construction, Contractor shall facilitate, or cooperate with Owner in its efforts to facilitate, a kick-off meeting with Owner, any Owner representatives, Contractor, and any other relevant Party to this Agreement. Following the kick-off meeting, Contractor shall commence the construction of the Project in accordance with the 100% Engineering Documents and all other Contract Documents.

When Contractor believes it has achieved Substantial Completion, Contractor shall notify Owner of the same certifying completion of the Construction Phase. Within ten (10) Business Days after Contractor's submission or Owner's independent receipt of all items required for Substantial Completion, Owner shall either (i) acknowledge and agree in a writing delivered to Contractor that the Construction Phase has been satisfactorily completed, or (ii) advise Contractor by written notice that Substantial Completion has not been achieved and identify any missing items or defects or deficiencies in the Work for which Contractor is responsible or any other reason why the requirements of Substantial Completion have not been met. Completion of the Construction Phase requires that:

(i) The Project has been built in conformance with the terms and conditions of the Contract Documents and the requirements of the Utility;

(ii) The Project complies with all applicable Legal Requirements and has passed all required inspections by any applicable Governmental Authority and all applicable

Governmental Approvals have been received and copies thereof have been delivered to the Owner;

(iii) Submission of a written request to schedule the Utility permission to operate inspection and a copy thereof provided to the Owner.

(iv) Contractor shall have delivered a true, correct, and complete certification of Substantial Completion signed by Contractor and the Engineer.

(d) Commissioning Phase During the construction phase of the work on the Project and before the Completion Date, Contractor shall conduct all commissioning tests in accordance with the Contractor's Testing and Commissioning Plan which shall include but is not limited to the Start Up and Operational Tests. Contractor shall provide notice to Owner of any scheduled test(s) of installed equipment or the System, 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 System, Work and Equipment operations that Contractor provided and installed that may be observed during Equipment commissioning procedures. Completion of the Commissioning Phase requires that:

(i) Where Contractor installs solar PV modules as part of the System, all requirements of the Utility for testing and interconnection of the solar PV modules installed have been satisfied, the System is fully interconnected and operating normally to produce electricity and Contractor has obtained written permission to operate from the Utility for each Site;

(ii) The Start Up and Operational Tests and all other related tests have been completed to the Owner's satisfaction and the results provided to the Owner;

(iii) All Work has been completed other than the Work solely required for Final Completion (including the Work set forth in the Punchlist);

(iv) Contractor has received all local, state and federal Governmental Approvals and other approvals as may be required by Law for the operation and maintenance of the Project, including approvals, if any, required under the California Environmental Quality Act for the Project;

(v) The Project has completed thirty (30) Days of continuous operation and is able to conserve, produce and deliver Energy to Owner pursuant to the terms of this Agreement;

(vi) Contractor has delivered to the Site the Spare Parts in accordance with Section 2.7(d).

(e) Final Completion When Contractor believes it has achieved Final Completion, Contractor shall deliver to Owner the written Final Completion Certificate, in substantially the form of Exhibit G, which certificate shall certify the Final Completion Date and the Contractor's achievement of Final Completion. Within ten (10) Business Days after Contractor's submission or Owner's independent receipt of all items required for Final Completion, Owner shall either (i) deliver such certificate to Contractor, acknowledged and agreed by Owner, and confirming

the Final Completion Date (the “Final Completion Certificate”). The Project may only be accepted as complete by action of the Owner’s City Council. Completion of Final Completion requires that:

(i) Owner has received from Contractor the final Project Manual (electronic and hardcopy format) including two (2) sets of full size as-built drawings approved and stamped by the Engineer of Record (as built drawings shall also be provided to Owner in PDF and native file format);

(ii) Contractor has provided training to the Owner in the operation, emergency shut-down procedures, and recommended operation and maintenance of the Project and has provided Owner will two (2) sets of keys to all locks, equipment, and boxes that are part of the Project;

(iii) All Contractor’s materials and wastes have been removed from the Site and properly disposed of;

(iv) Where Contractor installs solar PV modules as part of the System, Contractor has thoroughly washed the solar PV modules installed in accordance with the manufacturer’s recommendations;

(v) All Punchlist Work with respect to the Project and the Site has been completed to the Owner’s reasonable satisfaction;

(vi) A final walkthrough of the Project and Site has been conducted with Contractor and Owner to determine completion of the terms of the Agreement. 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; and

(vii) Contractor shall have delivered a true, correct, and complete Final Completion Certificate signed by Contractor and the Engineer.

4.3 Hours of Work

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

(b) Performance During Work 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.

4.4 Progress and Completion Time limits stated in the Contract Documents are of the essence of the Agreement. By executing the Agreement the Contractor confirms that the Project Schedule 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 Section 2.21 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 Project Schedule.

4.5 Contractor Schedules and Report Updates Contractor shall prepare and submit to Owner updated Project Schedules and progress reports on a regular basis (no less than monthly and in each case with the Contractor's Application for Payment hereunder) in such detail as Owner may reasonably request as well as such other reports relating to the Work as Owner shall reasonably request from time to time. Contractor shall provide the Project Schedule, and updates and revisions thereto in electronic format as well as hard copy. The Project Schedule provided by Contractor shall not exceed time limits current under the Contract Documents and shall comply with all of the scheduling as required by the Contract Documents. In addition to any remedies that Owner may have, 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 Contractor, or (b) constitute a breach of the Contract entitling Owner to actual damages, in addition to any other remedies provided under Contract, including, in Owner's discretion, termination of the Contract pursuant to the terms hereof.

Contractor shall submit its daily logs for the monthly period 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 the Project Schedule.

4.6 Progress Meetings Unless otherwise stated in the Contract Documents and subject to change by Owner, the Parties shall meet at least biweekly 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 minutes shall be updated during the meeting and distributed at the end of the meeting and Owner shall have five (5) 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.

4.7 Conformity with Project Schedule Contractor shall prosecute the Work, and shall cause each Subcontractor to prosecute the Work, so that the portion of the Work completed at any point in time shall be not less than as is required by the Project Schedule. If the rate of progress is such that the total amount of Work and/or the degree of completion of the Work accomplished by Contractor within any time period required by the Project Schedule and/or the Contract Documents is less than the amount therein specified to be completed within such time, and it reasonably appears that Contractor will be unable to complete any portion of the Work by the corresponding scheduled date or deadline, Contractor shall so notify Owner within ten (10) Days of Contractor's knowledge of the delay, or Owner may notify Contractor of the same. Contractor shall, within ten (10) Business Days of Contractor's knowledge of such delay or receipt of any such notice from Owner, submit a Recovery Plan to Owner. The Recovery Plan must include a revised schedule that would recover the lost time and still complete the Work on the Project by the Completion Date. If Owner directs Contractor to implement the Recovery Plan, then Contractor shall do so immediately. If Owner, acting reasonably, does not agree that Contractor has demonstrated in the proposed Recovery Plan its ability to recapture lost time, meet interim milestones and complete the relevant portion of the Work by the applicable scheduled date or deadline, and the reasons therefor are not an Excusable Delay as outlined in Section 4.8(a), Owner may, without prejudice to any other right or remedies it may have, take one or more of the following actions: (a) require Contractor to employ such extraordinary measures as are necessary to bring the Work into conformity with the Project

Schedule, including, without limitation, requiring Contractor to increase its work force, work overtime, and/or extra shifts (at Contractor's sole cost and expense); and/or (b) withhold progress payments due under Section 3.9, or portions thereof, until such time as the Work is in conformity with the Project Schedule. . If the cause for Contractor's inability to meet the Completion Date are as a result of an Excusable Delay as outlined in Section 4.8(a), then the terms of Section 4.8 shall dictate.

4.8 Extensions of Time – Liquidated Damages

(a) 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 Force Majeure, acts of the Owner or anyone employed by it, acts of another contractor in performance of a contract (other than this Agreement) with the Owner, or delays of Subcontractors due to Force Majeure (collectively "Excusable Delay"). Contractor has the burden of proving that any delay is excusable.

(b) Notice by Contractor Required The Contractor shall within ten (10) Days of beginning of any Excusable Delay (unless Owner grants in writing a further period of time to file such notice prior to the date of final Progress Payment under the Agreement) 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 Section 4.8(a) shall be an extension of the Project Schedule at no cost to the Owner.

(c) 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 Force Majeure, 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 Project Schedule 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 Section 2.18.

(d) Early Completion If Contractor submits a revised schedule showing an earlier completion date for the Project, Owner's acceptance of this revised schedule shall not entitle Contractor to any additional compensation or Claim due to any such revised schedule. 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 the Work or the Project in a shorter period than established in the Contract Documents.

(e) Liquidated Damages If Contractor fails to cause Final Completion to occur on or prior to the Completion Date, as may be extended in accordance with the terms of this Agreement, Contractor shall pay Owner as its sole and exclusive remedy therefore, as liquidated damages and not as a penalty, in an amount equal to the LD Rate (the "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 cause Final Completion to occur on or prior to the Completion Date shall be the Dollar amount specified in Section F of the Cover Page for each Day by which the Work, or portion thereof, is delayed beyond the Completion Date multiplied by the total nameplate capacity for each Site or the Project, as applicable, that has not achieved Final Completion by the Completion Date (the "LD Rate"). 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 LD Rate calculated using the total nameplate capacity required by the Contract Documents to be installed at that Site and by the number of 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, 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 Progress 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.

4.9 Government Approvals Owner shall not be liable for any delays or damages related to the time required to obtain Government Approvals.

4.10 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 where Contractor was notified in writing of such scheduled activities prior to signing this Agreement, including Owner's construction projects and other events which would require access to Project Site(s). Where Owner did not inform Contractor in writing of such scheduled activities, or required activities arise during the Project that were not scheduled prior to Agreement signing and that impact the Project Schedule, Contractor shall request reasonable additional time for the Project Schedule in accordance with Section 2.17.

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 FIVE

5. REPRESENTATIONS AND WARRANTIES

5.1 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.

ARTICLE SIX

6. BREACH AND TERMINATION

6.1 Termination by the Owner for Cause Contractor agrees that Owner shall be entitled to terminate this Agreement upon the occurrence of any of the following circumstances, each of which shall constitute an event of default hereunder (each, a “Contractor Event of Default”): (A) refuses or fails to supply personnel in accordance with Section 2.4 or materials in accordance with Section 2.7; (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 Applicable laws, ordinances, rules, regulations, or orders of a Governmental Authority; or (D) otherwise is in substantial breach of a provision of the Contract Documents.

Owner’s authority to terminate this Agreement for cause shall be contingent upon providing written notice to Contractor of the Contractor Event of Default. Where the Contractor Event of Default can be cured, Contractor shall take action and cure the Contractor Event of Default within fifteen (15) Days after the date of Owner’s written notice. In the event the Contractor Event of Default cannot be cured within fifteen (15) Days, Contractor shall provide written notice to Owner of the requirement of a longer cure period with a timeline for cure and shall commence actions necessary to cure the Contractor Event of Default within fifteen (15) Days and diligently and timely proceed to complete the cure.

When any Contractor Event of Default exists and Contractor fails to cure the same pursuant to the procedure set forth above, 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 Agreement 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 Price 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.

6.2 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 Agreement, 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 Contract. 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 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 not executed.

6.3 Termination by the Contractor Contractor may not terminate for convenience. Contractor may only terminate for cause if the Work is stopped by others for a period of ninety (90) 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 seven (7) 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 Agreement 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.

6.4 Not a Waiver Any suspension or termination by Owner for convenience or cause under this Section 6 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.

6.5 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 Agreement 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.

6.6 Indemnification

(a) To the fullest extent permitted by law, Contractor shall defend (with counsel reasonably approved by the Owner), indemnify and hold the Owner, its officials, officers, employees, agents and volunteers free and harmless from any and all third party claims, demands, causes of action, suits, actions, proceedings, costs, expenses, liability, judgments, awards, decrees, settlements, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, (collectively, "Claims") for bodily injury or damage to tangible property arising out of, pertaining to or relating to the negligence, recklessness or willful misconduct of Contractor, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Contractor's Work, the Project or this Agreement, including without limitation the payment of all expert witness fees and attorneys' fees and other related costs and expenses. If any such claim is made, Contractor, at Contractor's expense, shall defend against and pay any and all costs, expenses (including reasonable fees of attorneys and other retained professionals), and

damages of any kind arising out of such claim, whether or not that claim is successful, provided that Owner: (a) gives Contractor prompt written notice of such claim; and (b) cooperates with Contractor, at Contractor's expense, in the defense of such claim. Contractor shall not be responsible for any settlement made by the indemnified without Contractor's prior written consent. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the Owner, its officials, officers, employees, agents or volunteers. Contractor shall not be liable under this provision to the extent of the gross negligence, recklessness, or willful misconduct of any Indemnitee. The only limitations on this provision shall be those imposed by Civil Code Section 2782 and 2782.8.

(b) Without limiting the foregoing, Contractor shall indemnify, hold harmless, release and defend Owner, its officials, officers, employees, agents and volunteers from and against any and all claims, demands, causes of action, suits, actions, proceedings, costs, expenses, liability, judgments, awards, decrees, settlements, loss, damage or injury of any kind arising out of any alleged or proven violation of California Government Code section 1090. Contractor's indemnity obligations shall survive expiration or termination of this Agreement.

6.7 Claims 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 Section 2.18, as applicable, for the same matters.

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 Exhibit J. 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.

(a) Claims for Concealed or Unknown Conditions

(i) 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 Price, Project Schedule, 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 Contract 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.

(ii) 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:

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

(A) 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.

(B) 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.

(C) 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.

(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.

(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.

6.8 Claims of \$375,000 or Less Notwithstanding any other provision herein, claims of \$375,000 or less shall be handled pursuant to the procedures set forth in Public Contract Code sections 20104.2, including claim, response, informal meet and confer conference, and Government

Code claim. As a precedent to initiation of any litigation against the Owner, Contractor must observe and comply with the Government Code claim procedures in Government Code sections 901 et seq. after completion of the contractual claim procedures above, including but not limited to timely presentation of a Government Code claim. The claim procedures described herein do not supersede or replace the requirement of a Government Code claim, and the two claim procedures shall be sequential.

6.9 Claims in Excess of \$375,000 Claims over \$375,000 shall be handled by Contractor and Owner pursuant to Section 6.8, 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 90 Days of receipt of the Claim, or may request, in writing, within 45 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 45 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 section 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 6.8 above. If Contractor fails to timely notify the Owner that it wishes to mediate pursuant to this Section, then 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.

ARTICLE SEVEN

7. MISCELLANEOUS

7.1 Representatives The Owner may provide administration of the Contract as described in the Contract Documents and may designate one or several agents, representatives, or Consultants to provide administration upon written notice of such to Contractor. When such written notice is provided, 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.

7.2 Access When applicable, Owner will issue necessary keys to Contractor to access Project Site(s). 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. The Contractor shall provide the Owner and the Owner's designees, access to the Work in preparation and progress wherever located.

7.3 Ownership and Use of Drawings, Data, Reports and Other Documents

(a) The Drawings, Engineering Documents, and other Contract Documents prepared on behalf of the Owner are instruments of the services of the Contractor and its Subcontractors and Consultants and are the property of the Owner. The Contractor may retain one contract record set.

(b) Contractor further agrees to grant and hereby grants to Owner a perpetual, fully paid-up, irrevocable, world-wide, transferable, non-exclusive, royalty-free license (which shall

be assignable to all Persons to whom assignment of this Agreement may be made or who take an ownership interest in the System) under all patents, copyrights, proprietary information and other intellectual property rights of Contractor related to the use or enjoyment of all or any part of the Work now or hereafter owned or controlled by Contractor or to the extent otherwise required for the operation, maintenance, repair, modification, alteration or expansion of the System or any subsystem or component thereof designed, specified, or constructed by Contractor under this Agreement. No other license in such patents and proprietary information is granted pursuant to this Agreement. Owner may sublicense the foregoing license rights to third parties solely in connection with the operation, repair, replacement, modification and expansion of the System.

7.4 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.

7.5 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.

7.6 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 for a period of four (4) years following Final Completion and will exclude information that is proprietary and confidential unless required to be disclosed as a condition of funding, by law or by court order.

7.7 Construction In this Agreement, unless a clearly contrary intention appears (a) the singular number includes the plural number and vice versa; (b) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity; (c) reference to any gender includes each other gender; (d) reference to any contract (including this Agreement), document or instrument means such contract, document or instrument (together with all schedules, exhibits, appendices and attachments thereto) as amended or modified or restated and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof; (e) reference to any Article, Section, Schedule or Exhibit means such Article, Section, Schedule or Exhibit to this Agreement, and references in any Article, Section, Schedule, Exhibit or definition to any clause means such clause of such Article, Section, Schedule, Exhibit or definition, unless otherwise expressly set forth herein; (f) "hereunder," "hereof," "hereto," "herein," "herefrom" and words of similar import are references to this Agreement as a whole and not to any particular Section, Article or other provision hereof, unless otherwise expressly set forth herein; (g) relative to the determination of any period of time, "from" means "from and including", "to" means "to but excluding" and "through" means "through and including;" (h) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; and (i) reference to any law (including statutes and ordinances) means such law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder.

7.8 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 California.

7.9 Notices and Filings 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 Contractor, as the case may be, by personal delivery or commercial overnight courier (with a copy sent via fax or regular mail) to the respective addresses given below, or at such address as such party may provide in writing from time to time.

Owner: City of Gustine
352 Fifth Street
Gustine, CA 95322
Attn: Doug Dunford, City Manager
Telephone: 209 854 6471
Email: ddunford@cityofgustine.com

Contractor: Schneider Electric Buildings Americas, Inc.
1650 West Crosby Road
Attn: Tammy Fulop, Vice President
Telephone: 972 323 4761
Email: tammy.fulop@schneider-electric.com

7.10 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.

7.11 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 City Council.

7.12 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.

7.13 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.

7.14 Limitations on Liability, Warranties Notwithstanding any other provision set forth in the Agreement, neither Party shall be liable for any indirect, special, consequential, punitive or exemplary damages of any kind arising out of or in connection with this Agreement. Each Party's liability shall be limited to direct, actual damages only, and a Party's total liability under the Contract, whether based on an action in contract, equity, negligence, tort or otherwise, shall not exceed the Contract Price, provided that the forgoing limitation shall not apply to damages caused by a Party's gross negligence or willful misconduct. Unless otherwise expressly provided in the

Contract, Contractor hereby disclaims all warranties and conditions with regard to the Project, including all warranties, whether express or implied or statutory, of merchantability, and fitness for a particular purpose.

7.15 Term and Termination The term of this Agreement begins on the Effective Date that is indicated on the Cover Page of this Agreement and, unless otherwise terminated in accordance with this Agreement, shall terminate upon the satisfaction of the conditions set forth in Section 4.2, including, but not limited to, the Owner's recordation of the Final Completion Certificate, all in accordance with the Contract Documents. 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 Contract Documents.

7.16 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.

7.17 Entire Agreement This Agreement, and all incorporated Exhibits, recitals and documents, including, but not limited to the Contract Documents, constitute 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 Contract Documents, it is understood and agreed that in the event of a conflict between any term or provision of this Agreement and any other Contract Document, the terms of this Agreement shall govern.

7.18 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. In the event of conflicting provisions between any of the Contract Documents, the provisions shall govern in the following priority: first, duly executed amendments to this Agreement (to the extent not superseded by a subsequent amendment), second, this Agreement and third, the other Contract Documents. Subject to the foregoing, the several instruments forming part of this Agreement are to be taken as mutually explanatory of one another. Each and every provision of law required by law to be inserted in this Contract shall be deemed to be inserted herein, and the Contract 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 Contract shall be amended in writing to make such insertion or correction.

7.19 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 Contract shall assign the Contract 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 Contract.

7.20 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 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.

7.21 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.

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: _____

By: _____

Print Name: Mr. Jordan Lerner

Print Name: _____

Title: _____

Title: _____

EXHIBIT A

SCOPE OF WORK

Water Meter Replacement & Retrofit

The following water meters will be installed with Advanced Metering Infrastructure (AMI) type registers as part of this project. These components will allow the meter readings to be recorded remotely from central data collection units.

This project is dependent on acceptance of grant funding by the State of California Water Resources Control Board. Should the Customer's grant application not be accepted, then Customer is under no obligation to pay ESCO for services rendered up to and including this Agreement.

Water Meter Retrofits

| Size | Type | Quantity | Description |
|--------|-----------------------|----------|---|
| 5/8" | Badger E Series | 1 | Stainless steel housing with ultrasonic reader. ORION transmitter for AMI |
| 3/4" | | 725 | |
| 1" | | 770 | |
| 1 1/2" | | 10 | |
| 2" | | 15 | |
| 4" | | 2 | |
| - | Retrofit Transmitter | 375 | Retrofit AMR devices with ORION transmitter for AMI |
| - | Meter box replacement | 322 | - |

The project includes all necessary project management, labor, and materials to perform the water meter retrofits with AMI as shown above. This scope was created using information from the City of Gustine water billing system, surveys, and estimates from this information. This scope covers the active meter account quantities and types listed above.

- City of Gustine Water Customers will be notified of the meter replacement before performing the actual work. If necessary, the meter work will be scheduled with the customer to avoid any detrimental interruptions.
- The existing piping structure will be examined to verify its condition. Should the service line be in a condition that the existing piping will be damaged or the existing piping has a pre-existing leak then no installation will be performed and the City of Gustine will be notified for further review.
- Should major pipe reconfiguration and/or vault reconstruction be required to incorporate the new meter, no installation shall be performed and the City of Gustine will be notified for further review.
- When needed, the City of Gustine will provide an employee to assist in locating meters and to shut off main valves in situations where the meter isolation valves do not hold. Installation time is estimated at two months of on-site work.
- Meter box and lid shall be inspected. Approval from the City of Gustine will be obtained prior to replacing any damaged meter boxes or lids. If the number of boxes and lids exceeds the amount listed above, the boxes and lids will be replaced as an addition to the project price.
- Meters will be isolated from the up-stream line pressure by use of the inlet curb stop valve. If the curb stop does not exist or if the valve does not operate properly and the installation cannot be performed the City of Gustine will be notified for further review.
- Replacement meter will be installed using new inlet and outlet gaskets. Meters will be replaced like for like. Installation of strainers, test valves, bypasses or piping modifications

is not included.

- Schneider Electric takes responsibility for underground piping and valves for 12 inches on either side of the meter resulting from meter removal or installation. Any leaks caused by the installation of the new meter will be repaired with like for like materials by Schneider Electric.
 - Meters must be accessible to the installation team. The definition of an accessible meter includes:
 - Meter account and location data are accurate
 - Meter access is not blocked (ex: car parked over meter or meter located in a fenced area with a dog)
 - Residential type meter is located no more than 18” below the top of the meter box
- If a meter is not accessible, then no installation will be performed and the City of Gustine will be notified for further review.
- Storage facilities for meter inventory and staging area will be supplied by the City.
 - A hose bib if available and accessible will be opened at the residence to allow line flushing and the purging of any air in the system. The curb stop valve will be reopened and the new meter will be inspected for leaks.
 - Water meters replaced as part of this project will be returned to the City.
 - If needed, City agrees to provide traffic safety during installation as required.
 - As routes are completed, the customer agrees to complete their inspections and sign offs according to the Schneider Electric route acceptance and sign off procedures.
 - City agrees to provide support for hard to find meter locations and system isolation assistance when needed.

Advanced Metering Infrastructure (AMI)

The Advanced Metering Infrastructure system will include the following:

- Fixed Base Data Collector(s)
- Software
- Interface to City’s Billing Software
- Training to Operate System
- 1 year of AMI product support, Beacon data hosting, and Eye-On Water

Scope of work details

- If required during system integration, facilities for the information system manager will be supplied by the City.
- Schneider Electric will provide all necessary data and support for the data integration into the city's billing system. Schneider Electric will coordinate route installations working closely with the city's billing department to execute the project in a planned and organized manner. Schneider Electric will provide training for City personnel for the new AMI system.
- City agrees that data collector antenna(s) will be mounted on City property
- City will provide power for each collector, communication will be cell based.

EXHIBIT B

PROJECT SCHEDULE

The following is an example of a possible schedule for this contract. Factors such as grant submission, grant approval, and issuance of the Notice to Proceed will impact the actual construction schedule. It is anticipated that once the Notice to Proceed has been issued and the grant funded that construction will take approximately six months.

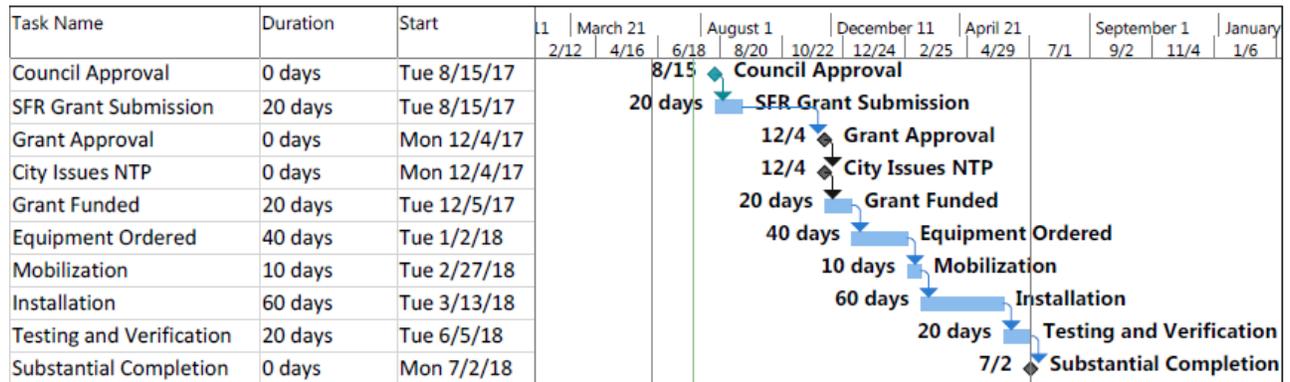


EXHIBIT C

PROJECT OWNER REQUIREMENTS

The Project Owner Requirements identified herein may be altered by Owner from time to time as a ministerial matter.

[INSERT OWNER REQUIREMENTS]

EXHIBIT D

REQUEST FOR INFORMATION FORM

PROJECT _____

PROJECT NO. _____

CONTRACTOR _____

CONTRACT NO. _____

DATE _____

REQUEST FOR INFORMATION NO. _____

| | |
|--------------------------|------------------------|
| FROM: (Name, Co.) | TO: (Name, Co.) |
|--------------------------|------------------------|

FROM CONTRACTOR:

Subject:

Question:

Suggestion:

Estimated Cost (if known): (\$000.00 or N/A)

| | |
|----------------------------|-----------------------|
| REPLY TO CONTRACTOR | DATE ANSWERED: |
|----------------------------|-----------------------|

Per the Contract Documents, Contractor shall not proceed with additive or deductive Work which has change order implications as a result of this RFI without prior written approval from Owner.

Copies to:

- Project Manager
- Owner

EXHIBIT E

FORM OF CHANGE ORDER

PROJECT: _____

CHANGE ORDER NO. _____

DATE APPROVED: _____

CONTRACT SUMMARY

CONTRACT PRICE:

| | | |
|---------------------------------|-----------|----------|
| Original Contract Amount: | \$ | - |
| Change Orders Approved to Date: | \$ | - |
| Pending Change Order Amount: | \$ | - |
| Revised Contract Amount: | \$ | - |

CONTRACT TIME:

| | |
|------------------------------------|---|
| Contract Duration: | 0 |
| Previously Approved Contract Days: | 0 |
| Total Days this Change Order: | 0 |
| Revised Contract Duration: | 0 |
| Revised Completion Date: | |

DESCRIPTION:

All workmanship and materials called for by this Change Order shall be provided in accordance with the original contract documents insofar as the same may be applied without conflict to the conditions set forth by this Change Order. This Change Order shall become an amendment to the above mentioned construction contract.

Execution of this change order by the Contractor constitutes a binding accord and satisfaction that fully satisfies, waives, and releases VCMWD from all claims, demands, costs, and liabilities, in Contract, law or equity, arising out of or related to the subject of the change order, whether known or unknown, including but not limited to direct and indirect costs and/or damages for delay, disruption, acceleration, loss of productivity, and stacking of trades, as well as any and all consequential damages.

Accepted by Contractor: _____ Date: _____

Recommended Project Manager: _____ Date: _____

Approved District Engineer: _____ Date: _____

Approved Director of Finance: _____ Date: _____

Approved General Manager: _____ Date: _____

EXHIBIT G

FORM OF FINAL COMPLETION CERTIFICATE

**RECORDING REQUESTED BY AND
WHEN RECORDED, RETURN TO:**

City of Gustine
352 Fifth Street
Gustine, CA 95322

- above for recorders use only -

NOTICE OF COMPLETION

- 1) The date of completion of the hereinafter described works of improvement is:
- 2) The name and address of the owner of the hereinafter described works of improvement is: City of Gustine, 352 Fifth Street, Gustine, CA 95322
- 3) The nature of the interest of estate Owner in fee of City of Gustine is: the hereinafter described works of improvement located upon easements and property owned by City of Gustine.
- 4) The hereinafter described works of improvement lie within the boundaries of the City of Gustine and generally in [INSERT DESCRIPTION OF SITE], County of Merced, State of California.
- 5) The name of the original contractor for the hereinafter described works of improvement is: Schneider Electric Buildings Americas, Inc.
- 6) The following is a general statement of the kind of work done pursuant to the contract:
- 7) The name of the surety company is:

DATED: _____

CITY OF GUSTINE

By: _____
[INSERT NAME]
[INSERT TITLE]

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

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

- Individual
- Corporate Officer

- _____ Title(s)
- Partner(s) Limited General
 - Attorney-In-Fact
 - Trustee(s)
 - Guardian/Conservator
 - Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

DESCRIPTION OF ATTACHED DOCUMENT

_____ Title or Type of Document

_____ Number of Pages

_____ Date of Document

_____ Signer(s) Other Than Named Above

EXHIBIT H

ESCROW AGREEMENT FOR SECURITY DEPOSIT IN LIEU OF RETENTION

ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION

This Escrow Agreement is made and entered into, as of Month and Day, Year by and between the City of Gustine whose address is 352 Fifth Street, Gustine, CA 95322, hereinafter called "Owner," _____, whose address is _____, hereinafter called "Contractor" and _____, whose address is _____, hereinafter called "Escrow Agent."

For the consideration hereinafter set forth, the 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 District pursuant to the Construction Contract entered into between the District and Contractor for _____ in the amount of _____, dated _____, (hereinafter referred to as the "Contract"). Alternatively, on written request of the Contractor, the District shall make payments of the retention earnings directly to the Escrow Agent. When Contractor deposits the securities as a substitute for Contract earnings, the Escrow Agency shall notify the Owner within ten (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 the Owner and Contractor. Securities shall be held in the name of the Owner, and shall designate the Contractor as the beneficial owner.

(2) The Owner shall make progress payments to the Contractor for those funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the Escrow Agent holds securities in the form and amount specified above.

(3) When the Owner makes payment of retentions earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the Contractor until such time as the escrow created under this Agreement is terminated. The 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 the Owner pays the 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 the Owner. These expenses and payment terms shall be determined by the 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 the 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 accompanied by written authorization from the

Owner to the Escrow Agent that Owner consents to the withdrawal of the amount sought to be withdrawn by Contractor.

(7) The Owner shall have a right to draw upon the securities in the event of default by the Contractor. Upon seven days' written notice to the Escrow Agent from the Owner of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the Owner.

(8) Upon receipt of written notifications from the Owner certifying that the Contract is final and complete, and that the 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 of the Escrow Account. The Escrow shall be closed immediately upon disbursement of all monies and securities on deposit and payments of fees and charges.

(9) Escrow Agent shall rely on the written notification from the Owner and the Contractor pursuant to Sections (5) to (8), inclusive, of this Agreement and the 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 who are authorized to give written notice or to receive written notice on behalf of the Owner and on behalf of Contractor in connection with the foregoing, and exemplars of their respective signatures are as set forth on the following page.

On behalf of Owner:
City of Gustine

On behalf of Contractor:
Schneider Electric Buildings Americas, Inc.

Title

Title

Name

Name

Signature

Signature

On behalf of Escrow Agent:
[INSERT ESCROW AGENT NAME]

Title

Title

Name

Name

Signature

Signature

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

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the date first set forth above.

Owner:
City of Gustine

Contractor:
Schneider Electric Buildings Americas, Inc.

Title

Title

Name

Name

Signature

Signature

Escrow Agent:
[INSERT ESCROW AGENT NAME]

Title

Name

Signature

EXHIBIT I

WAIVER AND RELEASE FORMS

[UNCONDITIONAL WAIVER AND RELEASE FORMS INSERTED BEHIND THIS PAGE]

UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND 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 WAIVER AND RELEASE FORM.

Identifying Information

Name of Claimant: _____

Name of Customer: _____

Job Location: _____

Owner: _____

Through Date: _____

Unconditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has received the following progress payment:

\$ _____

Exceptions

This document does not affect any of the following:

- (1) Retentions.
- (2) Extras for which the claimant has not received payment.
- (3) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.

Signature

Claimant's Signature: _____

Claimant's Title: _____

Date of Signature: _____

UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

NOTICE TO CLAIMANT: THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND 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 WAIVER AND RELEASE FORM.

Identifying Information

Name of Claimant: _____

Name of Customer: _____

Job Location: _____

Owner: _____

Unconditional Waiver and Release

This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for all labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived and released by this document, unless listed as an Exception below. The claimant has been paid in full.

Exceptions

This document does not affect the following:

Disputed claims for extras in the amount of: \$ _____

Signature

Claimant's Signature: _____

Claimant's Title: _____

Date of Signature: _____

EXHIBIT J

CERTIFICATION REGARDING CLAIM

The Contractor shall make a certification at the time of submission of a Claim, substantially in the form below. 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.

The Certification Regarding Claim accompanying every Claim submitted by Contractor shall be in the following format on Contractor’s letterhead:

I, _____, BEING THE DULY AUTHORIZED
_____ (OFFICER) OF _____
(CONTRACTOR), DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA AND DO PERSONALLY CERTIFY AND ATTEST THAT: I HAVE THOROUGHLY REVIEWED THE ATTACHED CLAIM FOR ADDITIONAL COMPENSATION AND/OR EXTENSION OF TIME, AND KNOW ITS CONTENTS, AND DO HEREBY CERTIFY THAT SAID CLAIM IS MADE IN GOOD FAITH; THE SUPPORTING DATA INCLUDED WITH SAID CLAIM IS TRUTHFUL AND ACCURATE; THAT THE AMOUNT REQUESTED ACCURATELY REFLECTS THE CONTRACT ADJUSTMENT FOR WHICH THE CONTRACTOR BELIEVES THE OWNER IS LIABLE; AND, FURTHER, THAT I AM FAMILIAR WITH CALIFORNIA PENAL CODE SECTION 72 AND CALIFORNIA GOVERNMENT CODE SECTION 12650-12655, *ET SEQ.*, PERTAINING TO FALSE CLAIMS, AND FURTHER KNOW AND UNDERSTAND THAT SUBMISSION OR CERTIFICATION OF A FALSE CLAIM MAY LEAD TO FINES, IMPRISONMENT AND/OR OTHER SEVERE LEGAL CONSEQUENCES.

**Schneider Electric Buildings
Americas, Inc.**

By: _____

Its: _____

Dated: _____

EXHIBIT J

PERFORMANCE BOND AND PAYMENT BOND

Performance Bond:

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the City of Gustine, (hereinafter referred to as "District") has awarded to _____, (hereinafter referred to as the "Contractor") an agreement for _____ **Contract**
No. _____, (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 District 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 (1) year guarantee of all materials and workmanship; and shall indemnify and save harmless the District, its officials, officers, employees, and authorized volunteers, 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 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 District in enforcing such obligation.

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above obligation shall hold good for a period of one (1) year after the acceptance of the work by District, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the District from loss or damage resulting from or caused by defective materials or faulty workmanship. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the District'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.

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

- Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or
- 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 District, 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 District under the Contract and any modification thereto, less any amount previously paid by the District to the Contractor and any other set offs pursuant to the Contract Documents.
- Permit the District 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 District under the Contract and any modification thereto, less any amount previously paid by the District to the Contractor and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that the District 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 District, when declaring the Contractor in default, notifies Surety of the District'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.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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

(Corporate Seal)

Contractor/ Principal

By _____

Title _____

(Corporate Seal)

Surety

By _____
Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title _____

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

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

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

- Individual
- Corporate Officer

- _____ Title(s)
- Partner(s) Limited General
 - Attorney-In-Fact
 - Trustee(s)
 - Guardian/Conservator
 - Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

DESCRIPTION OF ATTACHED DOCUMENT

_____ Title or Type of Document

_____ Number of Pages

_____ Date of Document

_____ Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for Contractor/Principal.

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

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

- Individual
- Corporate Officer

- _____ Title(s)
- Partner(s) Limited
 - Attorney-In-Fact General
 - Trustee(s)
 - Guardian/Conservator
 - Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

DESCRIPTION OF ATTACHED DOCUMENT

_____ Title or Type of Document

_____ Number of Pages

_____ Date of Document

_____ Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for the Attorney-in-Fact. The Power-of Attorney to local representatives of the bonding company must also be attached.

Payment Bond:

KNOW ALL MEN BY THESE PRESENTS That

WHEREAS, the City of Gustine (hereinafter designated as the "District"), by action taken or a resolution passed _____, 20____, has awarded to _____ hereinafter designated as the "Principal," a contract for the work described as follows: _____ **Contract No.** _____ (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 District 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 Civil Code Section 9100, 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 Revenue and Taxation Code Section 18663, 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 District 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 Civil Code Section 9100 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 District 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 Civil Code Section 9100, 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, including but not limited to the provisions of sections 2819 and 2845 of the California Civil Code.

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

(Corporate Seal)

Contractor/ Principal

By _____

Title _____

(Corporate Seal)

Surety

By _____

Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title _____

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

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

- Individual
- Corporate Officer

- _____ Title(s)
- Partner(s) Limited General
 - Attorney-In-Fact
 - Trustee(s)
 - Guardian/Conservator
 - Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

DESCRIPTION OF ATTACHED DOCUMENT

_____ Title or Type of Document

_____ Number of Pages

_____ Date of Document

_____ Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for Contractor/Principal.

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

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

- Individual
- Corporate Officer

- _____ Title(s)
- Partner(s)
 - Limited
 - General
 - Attorney-In-Fact
 - Trustee(s)
 - Guardian/Conservator
 - Other:

Signer is representing:
 Name Of Person(s) Or Entity(ies)

DESCRIPTION OF ATTACHED DOCUMENT

_____ Title or Type of Document

_____ Number of Pages

_____ Date of Document

_____ Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for the Attorney-in-Fact. The Power-of-Attorney to local representatives of the bonding company must also be attached.

Exhibit L: Performance guarantee

The Performance Guarantee provided by ESCO will be as follows:

| Year | Annual Guaranteed Savings | Cumulative Guaranteed Savings |
|-------|---------------------------|-------------------------------|
| 1 | \$36,828 | \$36,828 |
| 2 | \$36,828 | \$73,656 |
| 3 | \$36,828 | \$110,484 |
| 4 | \$36,828 | \$147,312 |
| 5 | \$36,828 | \$184,140 |
| 6 | \$36,828 | \$220,968 |
| 7 | \$36,828 | \$257,796 |
| 8 | \$36,828 | \$294,624 |
| 9 | \$36,828 | \$331,452 |
| 10 | \$36,828 | \$368,280 |
| 11 | \$36,828 | \$405,108 |
| 12 | \$36,828 | \$441,936 |
| 13 | \$36,828 | \$478,764 |
| 14 | \$36,828 | \$515,592 |
| 15 | \$36,828 | \$552,420 |
| 16 | \$36,828 | \$589,248 |
| 17 | \$36,828 | \$626,076 |
| 18 | \$36,828 | \$662,904 |
| 19 | \$36,828 | \$699,732 |
| 20 | \$36,828 | \$736,560 |
| Total | \$736,560 | \$736,560 |

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, OR IN ANY CONTRACT DOCUMENT, IN THE EVENT THAT THE PASS AGREEMENT IS CANCELED OR TERMINATED BY CUSTOMER FOR ANY REASON, THE PERFORMANCE GUARANTEE SET FORTH IN EXHIBIT L SHALL BE DEEMED TO HAVE BEEN MET AND FULFILLED AS OF THE EFFECTIVE TERMINATION DATE OF THE PASS AGREEMENT AND ESCO SHALL HAVE NO FURTHER OBLIGATIONS OR LIABILITIES ASSOCIATED WITH SUCH PERFORMANCE GUARANTEE.

The procedure used to calculate savings is described in Exhibit M.

GUARANTEED SAVINGS RECONCILIATION

Customer, if required, will send ESCO all necessary utility or energy data as set forth in Exhibit N herein. Within sixty (60) days of receipt of such information for the previous Guarantee Year, ESCO will determine the Actual Savings for such Guarantee Year hereafter defined as “Savings Reconciliation”.

In the event the Actual Savings are less than the amount stated above, ESCO may, at its sole option, either pay Customer the net present value of the series of annual savings reconciliations at 5% interest rate, each calculated as the difference between the Annual Savings Guarantee and the Actual Savings amount for the corresponding twelve (12) months, calculated as shown herein, or ESCO may elect to pay only for the savings shortfall to date and extend the measurement period for twelve (12) months at no cost to Customer. ESCO will make payments for any savings shortfall to Customer within thirty (30) days of that year's Savings Reconciliation. At the end of this extended measurement period, ESCO will again determine the savings for the remaining guarantee periods using the methodology as set forth in Exhibit M and will again choose to reconcile any shortfalls with the same options presented at the conclusion of the initial measurement period. ESCO will make payments for any savings shortfalls to Customer within thirty (30) days of the Savings Reconciliation.

Customer acknowledges that population growth or shrinkage and changes in commercial business, industrial business and wholesale accounts may affect water consumption and its associated water and sewer revenue. Additionally, revenue will depend on factors other than improved meter accuracy, such as, consumption, water utility rates, and weather among others. The guarantee is limited solely to the accuracy of the water meters, operating under normal conditions.

Exhibit M: Measurement & Verification Plan

Water/Sewer Rate Data

The cost of water in any period will be determined by applying the rates as defined below to the water/sewer water used in a given period for each applicable meter.

Water Rates

| Description | Rate ID | Base Charge | Tier 1 | | Tier 2 | | Tier 3 | | Tier 4 | | Tier 5 | |
|--------------------------|---------|-------------|--------|----------|--------|----------|--------|----------|--------|----------|--------|----------|
| | | | > kGal | \$/kGal |
| Residential | 201a | \$23.55 | 3.74 | \$1.4679 | 7.48 | \$1.7807 | 14.96 | \$2.1390 | 22.44 | \$2.6604 | 29.92 | \$3.2487 |
| Residential Outside City | 204a | \$70.64 | 3.74 | \$1.4679 | 7.48 | \$1.7807 | 14.96 | \$2.1390 | 22.44 | \$2.6604 | 29.92 | \$3.2487 |
| Flat Residential | 205a | \$23.55 | | | | | | | | | | |
| Commercial | 211a | \$23.55 | 3.74 | \$1.4679 | 7.48 | \$1.7807 | 14.96 | \$2.1390 | 22.44 | \$2.6604 | 29.92 | \$3.2487 |
| Fire Hydrant | 212a | \$30.75 | 3.74 | \$1.4679 | 7.48 | \$1.7807 | 14.96 | \$2.1390 | 22.44 | \$2.6604 | 29.92 | \$3.2487 |
| Apartment | 215a | \$29.57 | 3.74 | \$1.4679 | 7.48 | \$1.7807 | 14.96 | \$2.1390 | 22.44 | \$2.6604 | 29.92 | \$3.2487 |
| OLM Catholic School | 216a | \$915.74 | | | | | | | | | | |
| High School | 217a | \$1,013.85 | | | | | | | | | | |
| Middle School | 218a | \$1,079.25 | | | | | | | | | | |
| Elementary School | 219a | \$1,079.25 | | | | | | | | | | |
| No Charge | 220a | \$0.00 | | | | | | | | | | |

Sewer Rates

| Description | Rate ID | Base Charge | Tier 1 | |
|--------------------------|---------|-------------|--------|----------|
| | | | > kGal | \$/kGal |
| Residential | 301a | \$24.76 | | |
| Residential Outside City | 302a | \$40.13 | | |
| Apartments | 304a | \$79.05 | | |
| Mobile Home | 305a | \$1,040.76 | | |
| Flat Commercial | 321a | \$17.64 | | |
| Commercial | 322a | \$17.64 | 5 | \$0.0241 |
| Restaurant | 323a | \$24.76 | 7 | \$0.0428 |
| Light Industry | 324a | \$113.24 | | |
| School | 343a | \$132.50 | | |
| Secondary School | 344a | \$257.50 | | |

Option A – Water Meter Replacement

- A. Overview of M&V Plan, and Savings Calculation
- B. Water/Sewer Water Savings Calculations
- C. Key Parameter Measurement Strategy
- D. Parameter Estimates
- E. Cost Savings Calculations

A. Overview of M&V Plan, and Savings Calculation

Savings in this section are determined by using an “Option A: Retrofit Isolation – Key Parameter Measurement” approach as described in the International Performance Measurement & Verification Protocol (IPMVP Volume I, EVO 10000-1:2012). The remainder of this section describes the water savings calculations, key parameter measurements that will be conducted, parameters that will be estimated and those values, and how cost savings will be calculated. The water and cost savings that are determined using this one-time measurement approach will be the annual savings values used for each year of the Performance Period.

B. Water/Sewer Water Savings Calculations

Provided within this section is an explanation of the calculations that will be used to perform water/sewer water savings calculations for this verification method.

Equations and Analysis of Water/Sewer Water Savings

Savings are calculated as the difference in total billed water consumption from the baseline conditions, and the Performance Period conditions. The below equations will be used to determine savings for water and sewer water.

The baseline billed water consumption is simply the water consumption billed each month across all accounts during the period of August 2015 to July 2016.

The billed water consumption for the Performance Period is a calculated value to allow for a fair comparison to the baseline conditions. To arrive at the Performance Period billed water consumption, the first step is to compute the actual baseline water consumption from the billed baseline water consumption and baseline water meter accuracy. A fair comparison of performance requires the Performance Period actual consumption to be equal to this calculated actual baseline water consumption. The billed consumption for the Performance Period is calculated similarly to the method used to determine the actual baseline consumption but instead uses Performance Period water meter accuracy data. The formulas below define this process.

Equation 1 – Billed Baseline Water Consumption

$$H_m = \sum_{i=1}^{12} B_i$$

Where,

H_m = Billed annual baseline water consumption for account m

B_i = Billed water consumption for calendar month i

Equation 2 – Actual Baseline Water Consumption

$$C_m = \sum_{i=1}^{12} B_i \times \left(\sum_{j=1}^k \frac{P_j}{A_j} \right)$$

Where,

C_m = Actual annual baseline water consumption for account m

P_j = Percent of water consumption for flow rate category j

A_j = Baseline accuracy of water meter in flow category j

Equation 3 – Performance Period Water Consumption

$$D_m = C_m$$

Where,

D_m = Actual annual Performance Period water consumption for account m

Equation 4 – Billed Performance Period Water Consumption

$$E_m = \sum_{i=1}^{12} B_i \times \left(\frac{\sum_{j=1}^k P_j \times F_j}{\sum_{j=1}^k P_j \times A_j} \right)$$

Where,

E_m = Billed annual Performance Period water consumption for account m

F_j = Performance Period accuracy of water meter in flow category j

Equation 5 – Increased Billed Water Consumption

$$G = \sum_{m=1}^n E_m - H_m$$

Where,

G = Water consumption metered and billed due to project on all accounts

C. Key Parameter Measurement Strategy

This section outlines the measurements that will be conducted to determine the measured values in the equations provided above in Paragraph B. Of the four variables that are included as non-calculated inputs to the equations, three will be determined by measurements. Those three are B_i (billed water consumption for calendar month i), A_j (baseline accuracy of water meter in flow category j), and F_j (Performance Period accuracy of water meter in flow category j). The sub-sections below define what will be measured during each phase of the project and the requirements for those measurements.

Pre-Implementation Measurements and Documentation

B_i (billed water consumption for calendar month i) will be recorded for each meter included in the project. This data has been collected by Customer through the water billing performed during the date range specified in Paragraph B. No additional measurements will be taken in association with parameter B_i .

A_j (baseline accuracy of water meter in flow category j) will be determined by taking samples of the accuracy of the pre-project water meters. This will be completed before the existing meters have been replaced. Accuracy will be computed by dividing measured consumption by the actual water

flow during a short term test. These tests may be performed at the meter location or at a remote testing facility. The average accuracy percentage for each class will be used as the appropriate A_j figure for each meter. The table below will be used to list the results of these measurements.

| | Baseline Meter Accuracy Percentage (A_j) | | | |
|---------------------|--|-----------------|-------------------|-----------------|
| | Flow Category 1 | Flow Category 2 | Flow Category ... | Flow Category K |
| Pre Meter Class 1 | | | | |
| Pre Meter Class 2 | | | | |
| Pre Meter Class ... | | | | |
| Pre Meter Class Z | | | | |

Post-Implementation Measurements and Documentation

No Post-Implementation Period measurements are required. All post-project measurements will be performed during the Performance Period.

Performance Period Measurements and Documentation

F_j (Performance Period accuracy of water meter in flow category j) will be determined by taking samples of the accuracy of the post-project water meters. This will be completed at least 12 months after the Date of Commencement of this Contract. Accuracy will be computed by dividing measured consumption by the actual water flow during a short term test. These tests may be performed at the meter location or at a remote testing facility. The average accuracy percentage for each class will be used as the appropriate F_j figure for each meter. The table below shows the minimum sample sizes for each post-project meter class and will be used to record the results of the measurements. There may be different numbers of pre- and post-project meter classes. ESCO may elect to perform additional measurements beyond the sample size minimums for use in determining the F_j values. The minimum sample size for each meter class will be the smaller of 10 meters and 1% of the new population of the meter class.

| | Minimum Sample Size | Performance Period Meter Accuracy Percentage (F_j) | | | |
|----------------------|---------------------|--|-----------------|-------------------|-----------------|
| | | Flow Category 1 | Flow Category 2 | Flow Category ... | Flow Category K |
| Post Meter Class 1 | | | | | |
| Post Meter Class 2 | | | | | |
| Post Meter Class ... | | | | | |
| Post Meter Class Z | | | | | |

D. Parameter Estimates

Of the parameters identified under the equations for water savings in Section B, only P_j (percent of water consumption for flow rate category j) will be estimated. Each water meter will be assigned to a pre-project and post-project meter class. The table below defines the estimated P_j values for each meter class.

| Meter Size | Percentage of Water Consumption (P_j) | | |
|-------------|---|-----------|-----------|
| | Max. Flow | Int. Flow | Min. Flow |
| Commercial | 20% | 70% | 10% |
| Residential | 7% | 78% | 15% |

E. Cost Savings Calculations

Provided below are the methods and equations used to determine the cost savings associated with this particular methodology.

Cost Savings are calculated as the difference between the baseline and Performance Period energy/water costs using the utility rates as defined above in Exhibit M: Water/Sewer Water Rate Data. The applicable water rates will be applied to the baseline and Performance Period water consumption as determined in Paragraph B for each meter.

Exhibit N: Customer Responsibilities For performance guarantee

General Responsibilities

Customer acknowledges and agrees that proper maintenance is essential to any energy conservation program. Therefore, Customer agrees to undertake the following responsibilities:

Customer agrees to: (1) provide, or cause its suppliers to provide, periodic utility invoices to ESCO within ten (10) days of receipt, (2) execute all Customer responsibilities as outlined herein, and (3) provide to ESCO reasonable access to all Customer facilities and information necessary for ESCO to perform its responsibilities. Access will include, but is not limited to, the following items:

- All buildings listed within this Contract
- All buildings served by the meters listed within this Contract
- All mechanical equipment rooms in the buildings listed within this Contract
- All temperature control and energy management systems which control part or all of any of the buildings listed within this Contract
- Personnel with responsibility for operating and/or managing any of the buildings listed within this Contract
- Monthly utility invoices and billing history for all of the meters listed within this Contract
- Construction documents, equipment inventories, and other documents that may be helpful in evaluating a cause for adjustment as listed within this Contract
- Any data from meters or sub-meters relevant to M&V associated with this Contract
- Water meters required for accuracy sampling. If access is not provided, the missing meter's performance will be estimated as equal to the projected performance.

Customer will solely be responsible for providing communications and/or network interface to all buildings for operation and PASS support.

Customer will perform daily facilities monitoring and promptly review any alarm summaries.

Customer will designate a "Primary Operator" of the system. The Primary Operator is defined as the individual who will be trained by ESCO during the installation period and will be responsible for daily operation and maintenance of the equipment and systems necessary to achieve the Performance Guarantee. Customer will notify ESCO within five (5) days after the departure or termination of the Primary Operator. Within ten (10) days of the departure of the current Primary Operator, Customer will designate a new Primary Operator and shall provide ESCO access to train the new Primary Operator. ESCO shall train a new Primary Operator at the sole expense of Customer on a time and materials basis.

Maintenance Responsibilities

Customer agrees to use its best efforts to maintain the ECMs in original operating condition ("Original Operating Condition") with allowance for normal wear and tear. If an ECM is operating at any state other than the Original Operating Condition as defined above ("Failed ECM"), Customer agrees to (1) repair or replace the ECM immediately, and (2) contact a PASS representative at 1-800-274-5551 option 4, within 24 hours of such event. ESCO reserves the right to adjust the amount of Performance Guarantee associated with the Failed ECM for the duration of the failure in the Annual Savings Guarantee.

Customer will agree to maintain all parts of the Project site(s) where the ECM(s) reside including but not limited to components, equipment, machinery, energy management systems, structure of the facility(s), computer hardware, network and IT systems, either existing or newly installed. Customer must comply with the general maintenance requirements specified by equipment manufacturers and the maintenance tasking guidelines included in the operating and maintenance manual. Customer will be responsible to provide to ESCO documentation that proper maintenance has been performed at ESCO'S request within fifteen (15) days of written request.

Notwithstanding anything to the contrary contained herein, all ECM(s) must be maintained in proper working condition in all cases where the performance of said ECM(s) affects or could affect the ability to achieve, measure or verify the Annual Savings Guarantee. Should Customer refuse to perform the required maintenance as required in this Contract, ESCO and Customer shall agree to one of the following means of recourse: (1) ESCO will adjust the Performance Guarantee associated with that ECM pursuant to Exhibit N, or (2) ESCO may terminate this Performance Guarantee and any and all obligations and liabilities of ESCO associated therewith upon fifteen (15) days written notice.

Maintenance Tasking For Water Meter accuracy

As part of this agreement, Customer and ESCO concur that proper maintenance is an essential part of a complete revenue generation program. Therefore; Customer agrees to maintain all new and existing water meter equipment involved with the Performance Contract to ensure maximum operating efficiencies. Standard preventative maintenance and periodic meter testing procedures should be followed to improve equipment performance and extend equipment life. Customer must make available to ESCO all testing and maintenance logs. Any unusual meter conditions must be promptly reported to ESCO for further inspection.

Customer and ESCO agree that hardness of water (ex: calcium and magnesium content) as well as volume of water can adversely affect the accuracy of the meters over time. If a water meter shows signs of excessive damage due to debris passing through the water meter, the water meter will be excluded from the accuracy testing sample.

Customer agrees to operate the installed water meter equipment according to the manufacturer's recommendations.