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NOTICE CALLING FOR BIDS

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<th>MERCED COMMUNITY COLLEGE DISTRICT</th>
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<td>PROJECT DESCRIPTION</td>
<td>RFP# 2018-14 SOLAR PROJECT AT THE LOS BANOS CAMPUS</td>
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<td>PROJECT BUDGET</td>
<td>$1,420,000 (Dollars)</td>
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<td>LATEST TIME/DATE FOR SUBMISSION OF BID PROPOSALS</td>
<td>2:00 P.M. Monday, March 11, 2019</td>
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<td>LOCATION FOR SUBMISSION OF BID PROPOSALS</td>
<td>Merced College, Purchasing Office (Corner University Drive and West Community College Drive) 3600 M Street, Merced, California 95348</td>
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NOTICE IS HEREBY GIVEN that the Merced Community College District (District), acting by and through its Board of Trustees, will receive up to, but not later than the above-stated date and time, sealed Bid Proposals for the Contract for the Work generally described as RFP# 2018-14 SOLAR PROJECT AT THE LOS BANOS CAMPUS.

1. Submittal of Bid Proposals. All Bid Proposals must be submitted on forms furnished by the District prior to the last time for submission of Bid Proposals and the District’s public opening and reading of Bid Proposals.

2. Documents Accompanying Bid Proposal. Each Bid Proposal shall be accompanied by: (i) the required Bid Security; (ii) Subcontractors List; (iii) Statement of Qualifications; (iv) Non-Collusion Affidavit; and (v) DIR Registration Verification.

3. Project Budget. The Project Budget for the Work is set forth above. If bidding for the Work includes Alternate Bid Items, the selection of Alternate Bid Items for determination of the lowest priced Bid Proposal will be by priority of Alternate Bid Items, up to but not exceeding the Project Budget. If bidding for the Work does not include Alternate Bid Items, the Project Budget set forth above is for information purposes only.

4. Pre-Bid Inquiries. Bidders may submit pre-bid inquiries or clarification requests. Bidders are solely and exclusively responsible for submitting pre-bid inquiries or clarification requests no later than 4:00 PM SEVEN (7) days before the latest date for submittal of Bid Proposals. Pre-bid inquiries or clarification requests shall be submitted to: Charles Hergenraeder; Charles.hergenraeder@mccd.edu.

5. Prevailing Wage Rates. The Contractor and all Subcontractors shall pay not less than the applicable prevailing wage rate for the classification of labor provided by their respective workers to execute the Work. Copies of the prevailing wage rates in the locality where the Work is to be performed, entitled PREVAILING WAGE SCALE are available to any interested party on the INTERNET at http://www.dir.ca.gov/dlsr/statistics_research.html. In addition to compliance with prevailing wage requirements, the successful Bidder shall comply with all other applicable provisions of the Labor Code, the California Code of Regulations and rulings or determinations of the California Department of Industrial Relations. During the Work and pursuant to Labor Code §1771.4(a)(4), the Department of Industrial Relations shall monitor compliance with prevailing wage rate requirements and enforce the Contractor’s prevailing wage rate obligations.
6. **Contractors’ License Classification.** Bidders must possess the following classification(s) of California Contractors License at the time that the Bid Proposal is submitted and at time the Contract for the Work is awarded: **B - General Building or C-46 Solar.** The Bid Proposal of a Bidder who does not possess a valid and in good standing Contractors’ License in the classification(s) set forth above will be rejected for non-responsiveness. Any Bidder not duly and properly licensed is subject to all penalties imposed by law. No payment shall be made for the Work unless and until the Registrar of Contractors verifies to the District that the Bidder awarded the Contract is properly and duly licensed for the Work.

7. **Contract Time.** Substantial Completion of the Work shall be achieved within the time set forth in Contract Documents after the date for commencement of the Work established in the Notice to Proceed issued by the District. Failure to achieve Substantial Completion within the Contract Time will result in the assessment of Liquidated Damages as set forth in the Contract.

8. **Bid Security.** Each Bid Proposal shall be accompanied by Bid Security in an amount equal to TEN PERCENT (10%) of the maximum amount of the Bid Proposal, inclusive of the value of any additive Alternate Bid Item(s). A Bid Proposal not accompanied by Bid Security in the form and in the amount required is non-responsive and will be rejected by the District.

9. **Payment Bond; Performance Bond.** Prior to commencement of the Work, the Bidder awarded the Contract shall deliver to the District a Payment Bond and a Performance Bond issued by a California Admitted Surety in the form and content included in the Contract Documents in a penal sum equal to One Hundred Percent (100%) of the Contract Price. The Payment Bond and the Performance Bond shall be issued by a California Admitted Surety in the form and content included in the Contract Documents.

14. **Return of Executed Agreement.** The Bidder awarded the Contract shall execute the Agreement and return the executed Agreement to the District within fifteen (15) calendar days from the date of receiving notification that it is the Bidder to whom the Contract has been awarded. If the successful Bidder fails to return the executed Agreement pursuant to the foregoing, the District may declare the Bidder’s Bid Security forfeited as damages caused by the failure of the Bidder to enter into the Contract and may thereupon award the Contract for the Work to the responsible Bidder submitting the next best Bid Proposal or may call for new bids, in its sole and exclusive discretion.

10. **Job-Walk.** The District will conduct a Mandatory Job Walk on Wednesday, January 23, 2019, beginning at 10:00 AM. Bidders are to meet at 10am at 22240 Hwy 152, Los Banos, CA 93635 for conduct of the Job Walk. If the Job Walk is mandatory, the Bid Proposal submitted by a Bidder whose representative(s) did not attend the entirety of the Mandatory Job Walk will be rejected by the District as being non-responsive. Access to the Job Walk will be available to Bidders for ten (10) minutes after the scheduled start time of the Job Walk; no access to the Job Walk will be permitted thereafter. A Bidder whose representative(s) arrive at the Job Walk location more than ten (10) minutes after the scheduled start of the Job Walk will be denied access and will not be deemed to have attended the Job Walk.

11. **Waiver of Irregularities.** The District reserves the right to reject any or all Bid Proposals or to waive any irregularities or informalities in any Bid Proposal or in the bidding.

12. **Award of Contract.** The Contract for the Work, if awarded, will be by action of the District’s Board of Trustees to the responsible Bidder submitting the lowest priced responsive Bid Proposal. If the Bid Proposal requires Bidders to propose prices for Alternate Bid Items, the District’s selection of Alternate Bid Items, if any, for determination of the lowest priced Bid Proposal and for inclusion in the scope of the Contract to be awarded shall be in accordance with the Instructions for Bidders.

/s/ Merced Community College District


[END OF SECTION]
INSTRUCTIONS FOR BIDDERS

1. Preparation and Submittal of Bid Proposal.

1.1. **Bid Proposal Preparation.** All information required by the bid forms must be completely and accurately provided. Numbers shall be stated in both words and figures where required in the bid forms; conflicts between a number stated in words and in figures are governed by the words. Partially completed Bid Proposals or Bid Proposals submitted on other than the bid forms included herein are non-responsive and will be rejected. Bid Proposals not conforming to these Instructions for Bidders and the Notice to Contractors Calling for Bids (“Call for Bids”) may be deemed non-responsive and rejected.

1.2. **Bid Proposal Submittal.** Bid Proposals shall be submitted at the place designated in the Call for Bids in sealed envelopes bearing on the outside the Bidder’s name and address along with an identification of the Work for which the Bid Proposal is submitted. Bidders are solely responsible for timely submission of Bid Proposals to the District at the place designated in the Call for Bids.

1.3. **Date and Time of Bid Proposal Submittal.** A Bid Proposal is submitted only if the outer envelope containing the Bid Proposal is marked with the Project title and is received by a District Purchasing Department representative for logging-in at (or before) the latest date and time for submittal of Bid Proposals. The official U.S. time-clock website: [http://www.time.gov/timezone.cgi?Pacific/d/-8/java](http://www.time.gov/timezone.cgi?Pacific/d/-8/java) is controlling and determinative as to the time of the Bidder’s submittal of the Bid Proposal. The foregoing notwithstanding, whether or not Bid Proposals are opened exactly at the time fixed in the Call for Bids, no Bid Proposals shall be received or considered by the District after it has commenced the public opening and reading of Bid Proposals; Bid Proposals submitted after such time are non-responsive and will be returned to the Bidder unopened.

2. **Bid Security.** Each Bid Proposal shall be accompanied by Bid Security in the form of: (i) cash, (ii) a certified or cashier’s check made payable to the District or (iii) a Bid Bond, in the form and included with the Contract Documents (the “Bid Security”) in at least the amount set forth in the Call for Bids. A Bid Proposal submitted without the required Bid Security is non-responsive and will be rejected. If the Bid Security is in the form of a Bid Bond, the Bidder’s Bid Proposal is deemed responsive only if the Bid Bond is in the form and content included herein and the Surety is an Admitted Surety Insurer under Code of Civil Procedure §995.120.

3. **Documents Accompanying Bid Proposal; Signatures.** The Bid Proposal and all other documents required to be submitted with the Bid Proposal shall be executed by an individual duly authorized to execute the same on behalf of the Bidder; failure of a Bid Proposal to conform to the foregoing will render the Bid Proposal non-responsive and rejected.

4. **Bidder and Subcontractors’ DIR Registered Contractor Status.** Each Bidder must be a DIR Registered Contractor when submitting a Bid Proposal. The Bid Proposal of a Bidder who is not a DIR Registered Contractor when the Bid Proposal is submitted will be rejected for non-responsiveness. All Subcontractors identified in a Bidder's Subcontractors’ List must be DIR Registered contractors at the time the Bid Proposal is submitted. The foregoing notwithstanding, a Bid Proposal is subject to rejection for non-responsiveness for listing Subcontractor the Subcontractors List who is/are not DIR Registered contractor(s) if such Subcontractor(s) complete DIR Registration pursuant to Labor Code §1771.1(c)(1) or (2). Further, a Bid Proposal is not subject to rejection if the Bidder submitting the Bid Proposal lists any Subcontractor(s) who is/are not DIR Registered contractors and such Subcontractor(s) do not become DIR Registered pursuant to Labor Code §1771.1(c)(1) or (2) prior to award of the Contract, the Bidder, if awarded the Contract, must request consent of the District to substitute a DIR Registered Subcontractor for any non-DIR Registered Subcontractor(s) pursuant to Labor Code §1771.1(c)(3) without adjustment of the Contract Price or the Contract Time.

5. **Modifications or Withdrawal of Bid Proposal.** Changes to the bid forms which are not specifically called for or permitted may result in the District’s rejection of the Bid Proposal as being non-
responsive. No oral or telephonic modification of any submitted Bid Proposal will be considered. After submittal of a Bid Proposal, a Bidder may modify or withdraw its Bid Proposal only by written request actually received by the District prior to the scheduled closing time for the receipt of Bid Proposals and the District's public opening and reading of Bid Proposals; written requests to withdraw or modify a submitted Bid Proposal received by the District after the scheduled closing time for receipt of Bid Proposals shall not be considered by the District, nor effective to withdraw such Bid Proposal.

6. **Erasures; Inconsistent or Illegible Bid Proposals.** Erasures, interlineations or other corrections to any document submitted with a Bid Proposal shall be suitably authenticated by affixing in the margin immediately opposite such erasure, interlineations or correction the surname(s) of the person(s) signing the Bid Proposal. Any Bid Proposal not conforming to the foregoing may be deemed by the District to be non-responsive. If any Bid Proposal or portions thereof, is determined by the District to be illegible, ambiguous or inconsistent, the District may reject such a Bid Proposal as being non-responsive.

7. **Examination of Site and Contract Documents.** Each Bidder shall, at its sole cost and expense, inspect the Site and to become fully acquainted with the Contract Documents and conditions affecting the Work. Failure of a Bidder to receive or examine any of the Contract Documents or to inspect the Site shall not relieve such Bidder from any obligation with respect to the Bid Proposal, or the Work required under the Contract Documents. The District assumes no responsibility or liability to any Bidder for, nor shall the District be bound by, any understandings, representations or agreements of the District’s agents, employees or officers concerning the Contract Documents or the Work made prior to execution of the Contract which are not in the form of Bid Addenda duly issued by the District. The submission of a Bid Proposal shall be deemed prima facie evidence of the Bidder’s full compliance with the requirements of this section.

8. **Agreement and Bonds.** The Agreement which the successful Bidder, as Contractor, will be required to execute along with the forms Payment Bond, Performance Bond and other documents and instruments which are required to be furnished are included in the Contract Documents and shall be carefully examined by the Bidder.

9. **Interpretation of Drawings, Specifications or Contract Documents.** The District will respond to any pre-bid inquiry submitted in accordance with requirements established in the Call for Bids. If in the sole discretion of the District, a response to a pre-bid inquiry affects or potentially affects other Bidders, the Work, the Contract Documents or other requirements, the District will issue addenda. A copy of any such addendum will be delivered by fax, email or mail to each Bidder receiving a set of the Contract Documents. No person is authorized to render an oral interpretation or correction of any portion of the Contract Documents to any Bidder, and no Bidder is authorized to rely on any such oral interpretation or correction. Failure to request interpretation or clarification of any portion of the Contract Documents pursuant to the foregoing is a waiver of any discrepancy, defect or conflict therein.

10. **District’s Right to Modify Contract Documents.** Before the public opening and reading of Bid Proposals, the District may modify the Work, the Contract Documents, or any portion(s) thereof by the issuance of written addenda disseminated to all Bidders who have obtained a copy of the Specifications, Drawings and Contract Documents pursuant to the Call for Bids. If the District issues any addenda during the bidding, the failure of any Bidder to acknowledge such addenda in its Bid Proposal will render the Bid Proposal non-responsive and rejected.

11. **Bidders Interested in More Than One Bid Proposal; Non-Collusion Affidavit.** No person, firm, corporation or other entity shall submit or be interested in more than one Bid Proposal for the same Work; provided, however, that a person, firm or corporation that has submitted a sub-proposal to a Bidder or who has quoted prices for materials to a Bidder is not disqualified from submitting a sub-proposal, quoting prices to other Bidders or submitting a Bid Proposal for the proposed Work to the District. The form of Non-Collusion Affidavit included in the Contract Documents must be completed.
12. Award of Contract.

12.1. Waiver of Irregularities or Informalities. The District reserves the right to reject any and all Bid Proposals or to waive any irregularities or informalities in any Bid Proposal or in the bidding.

12.2. Award to the Highest Scored Proposal. The award of the Contract, if made by the District through action of its Board of Trustees, will be to the Bidder submitting the highest scored proposal in accordance with the Request for Proposals.

12.3. Alternate Bid Items Not Included in Award of Contract. Bidders are referred to the provisions of the Contract Documents permitting the District, during performance of the Work, to add or delete from the scope of the Work any or all of the Alternate Bid Items with the cost or credit of the same being the amount(s) set forth by in the Alternate Bid Items Bid on the Proposal.

12.4. Responsive Bid Proposal. A responsive Bid Proposal shall mean a Bid Proposal which conforms, in all material respects, to requirements of the Bid and Contract Documents.

12.5. Responsible Bidder. Determination of the responsibility of Bidders is based on the following evaluation criteria.

12.5.1. Bidder Capacity. Factors affecting the Bidder’s capacity to perform and complete the Work will be assessed, including: (i) Bidder’s access to labor, materials and other resources necessary to complete the Work; (ii) Bidder’s ability to complete the Work within the time established for completion of the Work, or portions thereof; and (iii) Bidder’s ability to complete warranty obligations.

12.5.2. Bidder Character, Integrity. Factors reflecting the character and integrity of the Bidder, including: (i) other public agency finding/determination, within the past five (5) years, that the Bidder is not responsible; (ii) currently debarred from bidding public works projects or debarment from bidding within past five (5) years; and (iii) false claims liability within the past five (5) years under local, state or federal laws.

12.5.3. Bidder Financial Capability. Factors considered include: (i) sufficiency of the Bidder’s financial resources; (ii) whether the Bidder is current in payment of debts and performance of other financial obligations; and (iii) bankruptcy or insolvency proceedings have been instituted within the past five (5) years.

12.5.4. Bidder Prior Performance. The Bidder’s prior performance on prior public works contracts, including without limitation: (i) cost overruns; (ii) compliance with general conditions and other contractual requirements, including schedule development, schedule updates and coordination of labor, material/equipment procurements and subcontractors; (iii) completion within allocated time; (iv) submittal of unsubstantiated, unsupported or excessive cost proposals, claims or contract adjustment requests; (iv) completion of a project by a surety; (vi) owner’s exercise of default remedies; and (vii) finding or determination by any public agency that the Bidder is not a responsible bidder.

12.5.5. Safety. Factors include: (i) findings of serious or willful safety violations of safety laws, regulations or requirements by any local, state or federal agency within the past five (5) years; (ii) adequacy and implementation of safety plans, programs for on-site and off-site construction and construction related activities; and (iii) Workers Compensation Insurance EMR rating exceeding 1.25.

13. Subcontractors.
13.1. **Designation of Subcontractors; Subcontractors List.** Each Bidder shall submit a list of its proposed Subcontractors for the proposed Work as required by the Subletting and Subcontracting Fair Practices Act (California Public Contract Code §§ 4100 et seq.) on the form furnished. The failure of any Bid Proposal to include all information required by the Subcontractors List will result in rejection of the Bid Proposal for non-responsiveness.

13.2. **Work of Subcontractors.** All Bidders are referred to the Contract Documents and the notation therein that all Contract Documents are intended to be complimentary and that the organization or arrangements of the Specifications and Drawings shall not limit the extent of the Work of the Contract Documents. Accordingly, all Bidders are encouraged to disseminate all of the Specifications, Drawings and other Contract Documents to all persons or entities submitting sub-bids to the Bidder. The omission of any portion or item of Work from the Bid Proposal or from the sub-bidders’ sub-bids which is/are necessary to produce the intended results and/or which are reasonably inerrable from the Contract Documents is not a basis for adjustment of the Contract Price or the Contract Time.

14.4. **Subcontractor Bonds.** In accordance with California Public Contract Code §4108, if a Bidder requires a bond or bonds of its Subcontractor(s), whether the expense of procuring such bond or bonds are to be borne by the Bidder or the Subcontractor(s), such requirements shall be specified in the Bidder’s written or published request for sub-bids. Failure of the Bidder to comply with these requirements shall preclude the Bidder from imposing bonding requirements upon its Subcontractor(s) or rejection of a Subcontractor’s bid under California Public Contract Code §4108(b).

13 **Workers’ Compensation Insurance.** Pursuant to California Labor Code § 3700, the successful Bidder shall secure Workers’ Compensation Insurance for its employees engaged in the Work of the Contract. The successful Bidder shall execute and deliver to the District the form of Workers Compensation Certification included in the Contract Documents concurrently with such Bidder’s delivery of the executed Agreement to the District.

15. **Bid Security Return.** The Bid Security of the Bidders submitting the three lowest priced Bid Proposals, the number being solely at the discretion of the District, will be held by the District for ten (10) days after the period for which Bid Proposals must be held open (which is set forth in the Call for Bids) or until posting by the successful Bidder(s) of the bonds, certificates of insurance required and return of executed copies of the Agreement, whichever first occurs, at which time the Bid Security of such other Bidders will be returned to them.

16. **Contractor’s License.** No Bid Proposal will be considered from a Bidder who, at the time Bid Proposals are opened, is not licensed to perform the Work of the Contract Documents, in accordance with the Contractors’ License Law, California Business & Professions Code §§7000 et seq. This requirement is not a mere formality and will not be waived by the District or its Board of Trustees. The required California Contractors’ License classification(s) for the Work is set forth in the Call for Bids.

17. **Non-Discriminatory Practices.** It is the policy of the District that there be no discrimination against any prospective or active employee engaged in the Work because of race, color, ancestry, national origin, religious creed, sex, age, marital status or other legally protected classification. All Bidders agree to comply with the District’s non-discrimination policy and all applicable Federal and California anti-discrimination laws including but not limited to the California Fair Employment & Housing Act beginning with California Government Code §§ 12940 et seq. and California Labor Code § 1735. In addition, all Bidders agree to require like compliance by any Subcontractor employed by them on the Work of the Contract.

18. **Bidder’s Qualifications.** Each Bidder shall submit with its Bid Proposal the form of Statement of Bidder’s Qualifications, which is included within the Contract Documents. All information required
by Statement of Bidder’s Qualifications shall be completely and fully provided. Any Bid Proposal not accompanied by the Statement of Bidder’s Qualifications completed with all information required and bearing the signature of the Bidder’s duly authorized representative under penalty of perjury will render the Bid Proposal non-responsive and rejected. If the District determines that any information provided by a Bidder in the Statement of Bidder’s Qualifications is false or misleading, or is incomplete so as to be false or misleading, the District may reject the Bid Proposal submitted by such Bidder as being non-responsive.

19. Job-Walk. The District will conduct a Job-Walk at the time(s) and place(s) designated in the Call for Bids. The District may, in its sole and exclusive discretion, elect to conduct one or more Job-Walk(s) in addition to that set forth in the Call for Bids, in which event the District shall notify all Bidders who have theretofore obtained the Contract Documents pursuant to the Call for Bids of any such additional Job-Walk. If the District elects to conduct any Job-Walk in addition to that set forth in the Call for Bids, the District shall, in its notice of any such additional Job-Walk(s), indicate whether Bidders’ attendance at such additional Job-Walk(s) is/are mandatory. If attendance at the Job Walk is indicated in the Call for Bids as being mandatory, the failure of any Bidder to have its authorized representative present at the entirety of the Job-Walk will render the Bid Proposal of such Bidder to be non-responsive. Where the Job-Walk is mandatory, a Bidder may have more than one authorized representative and/or representatives of its Subcontractors present at the Job-Walk; provided, however that attendance by representatives of the Bidder’s Subcontractors without attendance by a representative of the Bidder shall not be sufficient to meet the Bidder’s obligations hereunder and will render the Bid Proposal of such Bidder to be non-responsive. The District will reject the Bid Proposal of a Bidder who obtains the Bid and Contract Documents after the date of the Mandatory Job-Walks set forth in the Call for Bids unless a Job-Walk is requested by such Bidder and a Job-Walk is conducted by the District in accordance with the following provisions. The District may, in its sole and exclusive discretion, conduct such requested Job-Walk taking into consideration factors such as the time remaining prior to the scheduled opening of Bid Proposals. Any such requested Job Walk will be conducted only upon the requesting Bidder’s agreement to reimburse the District for the actual and/or reasonable costs for the District’s staff and its agents and representatives in arranging for and conducting such additional Job-Walk.

20. Public Records. Bid Proposals and other documents responding to the Call for Bids become the exclusive property of the District upon submittal to the District. At such time as the District issues the Notice of Intent to award the Contract pursuant to these Instructions for Bidders, all Bid Proposals and other documents submitted in response to the Call for Bids become a matter of public record and shall be thereupon be considered public records, except for information contained in such Bid Proposals deemed to be Trade Secrets (as defined in California Civil Code § 3426.1) and information provided in response to the Statement of Qualifications. A Bidder that indiscriminately marks all or most of its Bid Proposal as exempt from disclosure to a public record, whether by the notations of “Trade Secret,” “Confidential,” “Proprietary,” or other similar notations, may result in, or render, the Bid Proposal non-responsive and rejected. The District is not liable or responsible for the disclosure of such records, including those exempt from disclosure if disclosure is deemed required by law, by an order of Court, or which occurs through inadvertence, mistake or negligence on the part of the District or its officers, employees or agents. At such time as Bid Proposals are deemed a matter of public record, pursuant to the above, any Bidder or other party shall be afforded access for inspection and/or copying of such Bid Proposals, by request made to the District in conformity with the California Access to Public Records Act, California Government Code §§ 6250, et. seq. If the District is required to defend or otherwise respond to any action or proceeding wherein request is made for the disclosure of the contents of any portion of a Bid Proposal deemed exempt from disclosure hereunder, the Bidder submitting the materials sought by such action or proceeding agrees to defend, indemnify and hold harmless the District in any action or proceeding from and against any liability, including without limitation attorneys’ fees arising therefrom. The party submitting materials sought by any other party shall be solely responsible for the cost and defense...
in any action or proceeding seeking to compel disclosure of such materials; the District’s sole involvement in any such action shall be that of a stakeholder, retaining the requested materials until otherwise ordered by a court of competent jurisdiction.

21. Drug Free Workplace Certificate. In accordance with California Government Code §§ 8350 et seq., the Drug Free Workplace Act of 1990, the successful Bidder will be required to execute a Drug Free Workplace Certificate concurrently with execution of the Agreement. The successful Bidder will be required to implement and take the affirmative measures outlined in the Drug Free Workplace Certificate and in California Government Code §§8350 et seq. Failure of the successful Bidder to comply with the measures outlined in the Drug Free Workplace Certificate and in California Government Code §§ 8350 et seq. may result in penalties, including without limitation, the termination of the Agreement, the suspension of any payment of the Contract Price otherwise due under the Contract Documents and/or debarment of the successful Bidder.

22. Notice of Intent to Award Contract. Following the public opening and reading of Bid Proposals, the District will issue a Notice of Intent to Award the Contract, identifying the Bidder to whom the District intends to award the Contract and the date/time/place of the District’s Board of Trustees meeting at which award of the Contract will be considered.

23. Bid Protest.

23.4. Submittal of Bid Protest. Any Bidder submitting a Bid Proposal to the District may file a protest of the District’s intent to award the Contract provided that all of the following are complied with: (i) the bid protest is in writing; (ii) the bid protest is filed and received by the District’s Vice-President, Administrative Services not more than five (5) calendar days following the date of issuance of the District’s Notice of Intent to Award the Contract; and (iii) the written bid protest sets forth, in detail, all grounds for the bid protest, including without limitation all facts, supporting documentation, legal authorities and argument in support of the grounds for the bid protest; any matters not set forth in the written bid protest shall be deemed waived. All factual contentions must be supported by competent, admissible and creditable evidence. Any bid protest not conforming to the foregoing shall be rejected by the District as invalid.

23.5. District Review and Disposition of Bid Protest. Provided that a bid protest is filed in strict conformity with the foregoing, the District’s Vice-President, Administrative Services or such individual(s) as may be designated by him/her (Designee), shall review and evaluate the basis of the bid protest. The District’s Vice-President, Administrative Services or Designee shall provide the Bidder submitting the bid protest with a written statement concurring with or denying the bid protest (Bid Protest Response). The Bid Protest Response is deemed the final action of the District and not subject to appeal or reconsideration by any other employee or officer of the District or the Board of Trustees of the District. The issuance of the Bid Protest Response by the District’s Vice-President, Administrative Services or the Designee is an express condition precedent to the institution of any legal or equitable proceedings relative to the bidding process, the District’s intent to award the Contract, the District’s disposition of any bid protest or the District’s decision to reject all Bid Proposals. If any such legal or equitable proceedings are instituted and the District is named as a party thereto, the prevailing party(ies) shall recover from the other party(ies), as costs, all attorneys’ fees and costs incurred in connection with any such proceeding, including any appeal arising therefrom.

[End of Section]
BID PROPOSAL

Project: RFP# 2018-14 SOLAR PROJECT AT THE LOS BANOS CAMPUS

1. **Bid Proposal.**
   1.1 **Acknowledgment of Bid Addenda.** The Bidder confirms that this Bid Proposal incorporates and is inclusive of, all items or other matters contained in the Request for Proposals and all Bid Addenda issued by or on behalf of the District.

   Addenda Nos. __________________ received, acknowledged
   (initial) and incorporated into this Bid Proposal.

   1.2 The Bidder proposes and agrees to perform the Contract including, without limitation, providing and furnishing any and all of the labor, materials, tools, equipment and services necessary to perform all obligations under the Request for Proposal and the Contract Documents and to complete the Work required for the sum provided on the Bid Sheet.

   1.3 **Alternate Bid Items.** The Bidder’s proposed pricing for each Alternate Bid Item, if any, are set forth in the accompanying form of Alternate Bid Items Proposal. Failure of a Bidder to propose pricing for each Alternate Bid Item set forth in the accompanying Alternate Bid Items Proposal will result in the Bid Proposal being deemed non-responsive and rejected.

2. **Documents Accompanying Bid Proposal.** The Bidder has submitted with this Bid Proposal the following: (i) Bid Security; (ii) Subcontractors List; (iii) Statement of Qualifications; (iv) Non-Collusion Affidavit; (v) DIR Registration Verification; and (vi) all other requirements laid out in the Attachment D.1: Proposal Checklist for Contractor, most importantly Attachment B.2: Pricing Proposal and Production Form (Bid Sheet). The Bidder acknowledges that if this Bid Proposal and the foregoing documents are not fully in compliance with applicable requirements set forth in the Call for Bids, the Instructions for Bidders and in each of the foregoing documents, the Bid Proposal may be rejected as non-responsive.

3. **Award of Contract.** Concurrently with delivery of the executed Agreement to the District, the Bidder awarded the Contract shall deliver to the District: (i) Certificates of Insurance evidencing all insurance coverages required under the Contract Documents; (ii) Performance Bond; (iii) Labor and Material Payment Bond; (iv) Certificate of Workers’ Compensation Insurance; and (iv) Drug-Free Workplace Certificate. Failure of the Bidder awarded the Contract to strictly comply with the preceding may result in the District’s rescinding award of the Contract and/or forfeiture of the Bidder’s Bid Security.

4. **Bidder Certifications.** The Bidder certifies the following to the District:
   4.1 **Contractor License.** The Bidder certifies that: (i) it is possesses a valid and in good standing Contractors’ License, in the necessary class(es), for performing the Work as set for in the Call for Bids; (ii) that such license shall be in full force and effect throughout the duration of the performance of the Work; and (ii) that all Subcontractors providing or performing any portion of the Work are properly licensed to perform their respective portions of the Work at the time of submitting this Bid Proposal and at all times during their performance of the Work.

   4.2 **DIR Registration.** The Bidder certifies to the District that the Bidder is a DIR Registered contractor and that during the Work, the Bidder will verify that all subcontractors, of any tier performing any portion of the Work are DIR Registered contractors. All Work will be performed and completed by DIR Registered contractors.

5. **Agreement to Bidding Requirements and Attorneys’ Fees.** The undersigned Bidder acknowledges and confirms its receipt, review and agreement with, the contractual requirements set forth in this Bid Proposal and the Contract Documents. By executing this Bid Proposal hereinbelow, the Bidder expressly acknowledges and agrees that if the Bidder institutes any
legal or equitable proceedings in connection with this Bid Proposal and the District is named as a party thereto, the prevailing party(ies) shall recover from the other party(ies), as costs, all attorneys’ fees and costs incurred in connection with any such proceeding, including any appeal arising therefrom. This provision shall constitute a binding attorneys’ fee agreement in accordance with and pursuant to California Civil Code §1717 which shall be enforceable against the Bidder and the District. This attorneys fee provision shall be solely limited to legal or equitable proceedings arising out of a bid protest or the bidding process and shall not extend to or have any force and effect on the Contract for the Work or to modify the terms of the Contract Documents for the Work.

6. **Acknowledgment and Confirmation.** The undersigned Bidder acknowledges its receipt, review and understanding of the Drawings, the Specifications and other Contract Documents pertaining to the proposed Work. The undersigned Bidder certifies that the Contract Documents are, in its opinion, adequate, feasible and complete for providing, performing and constructing the Work in a sound and suitable manner for the use specified and intended by the Contract Documents. The undersigned Bidder certifies that it has, or has available, all necessary equipment, personnel, materials, facilities and technical and financial ability to complete the Work for the amount bid herein within the Contract Time and in accordance with the Contract Documents.

By:

(Signature of Bidder’s Authorized Officer or Representative)

(Typed or Printed Name)

Title: ____________________________
SUBCONTRACTORS LIST

<table>
<thead>
<tr>
<th>Licensed Name of Subcontractor</th>
<th>Trade or Portion of Work</th>
<th>Address of Office, Mill or Shop</th>
<th>Subcontractor CSLB License No.</th>
<th>DIR Registration No.</th>
</tr>
</thead>
<tbody>
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</table>

DUPLICATE THIS PAGE AS NECESSARY FOR LISTING ADDITIONAL SUBCONTRACTORS
VERIFICATION OF CONTRACTOR AND
SUBCONTRACTORS’ DIR REGISTRATION

I am the _______________________ of ___________________________________ (“Bidder”)

(Title/Position) (Bidder Name)

submitting the accompanying Bid Proposal for the Work described as RFP# 2018-14 SOLAR PROJECT AT THE LOS BANOS CAMPUS.

1. The Bidder is currently registered as a contractor with the Department of Industrial Relations (“DIR”).
2. The Bidder’s DIR Registration Number is: ________________. The expiration date of the Bidder’s DIR Registration is June 30, 20__.
3. If the expiration date of the Bidder’s DIR Registration will occur prior to expiration of the Contract Time for the Work and the Bidder is awarded the Contract for the Work, prior to the Bidder’s DIR Registration expiration, the Bidder will take all measures necessary to renew the Bidder’s DIR Registration so that there is no lapse in the Bidder’s DIR Registration.
4. The Bidder, if awarded the Contract for the Work will remain a DIR registered contractor for the entire duration of the Work.
5. The Bidder has independently verified that each Subcontractor identified in the Subcontractors List is currently a DIR registered contractor.
6. The Bidder’s solicitation of subcontractor bids included notice to prospective subcontractors that: (i) all sub-tier subcontractors must be DIR registered contractors at all times during performance of the Work; and (ii) prospective subcontractors may only solicit sub-bids from and contract with lower-tier subcontractors who are DIR registered contractors.
7. If any of the statements herein are false or omit material facts rendering a statement to be false or misleading, the Bidder’s Bid Proposal is subject to rejection for non-responsiveness.
8. I have personal first hand knowledge of all of the foregoing.

I declare under penalty of perjury under California law that the foregoing is true and correct.

Executed this ____ day of ____________________, 20___ at ___________________________.

(City and State)

_______________________________
(Signature)

_______________________________
(Name, typed or printed)
## STATEMENT OF QUALIFICATIONS

### 1. Bidder Information
#### 1.1. Contact Information

<table>
<thead>
<tr>
<th>Mailing Address</th>
<th>Street Address</th>
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<tbody>
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<table>
<thead>
<tr>
<th>City, State, Zip Code</th>
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<table>
<thead>
<tr>
<th>Physical Location (if different from mailing address)</th>
<th>Street Address</th>
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<tr>
<th>City, State, Zip Code</th>
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<tr>
<th>Telephone/Fax</th>
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<th>Fax</th>
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### 1.2. Bidder Contacts

<table>
<thead>
<tr>
<th>Name</th>
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<table>
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<tr>
<th>Contact Information</th>
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<th>Fax</th>
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### 1.3. California Contractors' License

<table>
<thead>
<tr>
<th>License Number(s)</th>
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<th>License Classification(s)</th>
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<thead>
<tr>
<th>Responsible Managing Employee; Responsible Managing Officer</th>
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<tr>
<th>Expiration Date(s)</th>
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</table>

### 1.4. Bidder Form of Entity

- Corporation
- General Partnership
- Limited Partnership
- Limited Liability Company
- Limited Liability Partnership
- Joint Venture
- Sole Proprietorship

[CONTINUED NEXT PAGE]
2. Revenue. Complete the following for the Applicant’s construction operations; if any portion of the revenue disclosed is generated by non-construction operations or activities, the Applicant must identify the portion of revenue attributed to construction operations and generally describe business activities of the Applicant that generates non-construction operations related revenue.

<table>
<thead>
<tr>
<th>Calendar Year/ Fiscal Year</th>
<th>Annual Gross Revenue</th>
<th>Average Dollar Value of all Contracts</th>
<th>Dollar Value of Largest Contract</th>
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</thead>
<tbody>
<tr>
<td>Choose an item.</td>
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<td>Choose an item.</td>
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<tr>
<td>Choose an item.</td>
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3. References.

**DSA Project Inspectors**

<table>
<thead>
<tr>
<th>Firm Name</th>
<th>Address</th>
<th>Telephone No.</th>
<th>Contact Name</th>
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**Owners (K-12 school districts or community colleges preferred)**

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<thead>
<tr>
<th>Owner Name</th>
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<th>Telephone No.</th>
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**Architects (K-12 or Community College Projects)**

<table>
<thead>
<tr>
<th>Architect Firm Name &amp; Architect Firm Contact Name</th>
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<th>Telephone No.</th>
<th>Contact Name</th>
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[CONTINUED NEXT PAGE]
4. Insurance.

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<td>Commercial General Liability Insurance</td>
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<td>Broker</td>
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<td>___________________________</td>
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<td>(Street Address)</td>
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<td>(City, State &amp; Zip Code)</td>
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<th>Insurer:</th>
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<tbody>
<tr>
<td>Bid, Performance and Labor &amp; Materials Payment Bond Surety</td>
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<td>Surety Broker</td>
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<td>(Street Address)</td>
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[CONTINUED NEXT PAGE]
5. **Essential Requirements.** A Bidder will not be deemed qualified if the answer to any of the following questions results in a “not qualified” response and the Bid Proposal submitted by such a Bidder will be rejected for non-responsiveness.

5.1. Bidder possesses a valid and currently in good standing California Contractors’ license for the Classification(s) of Contractors’ License required by the Call for Bids.

   _Yes _ No (Not Qualified)

5.2. Bidder is currently a DIR Registered contractor.

   _Yes _ No (Not Qualified)

5.3. Bidder has a current commercial general liability insurance policy with coverage limits which are equal to or greater than minimum coverage limits set forth in the Special Conditions.

   _Yes _ No (Not Qualified)

5.4. Bidder has a current workers’ compensation insurance policy as required by the Labor Code or is legally self-insured pursuant to Labor Code §3700.

   _Yes _ No (Not Qualified)

   _Bidder is exempt from this requirement, because it has no employees

5.5. The Bidder ineligible or debarred from submitting Bid Proposals for public works projects or public works contracts pursuant Labor Code §1777.1 or Labor Code §1777.7.

   _Yes (Not Qualified) _ No

5.6. A public agency, within the past five (5) years conducted proceedings that resulted in a finding that the Bidder, or any predecessor to the Bidder, is not a “responsible” bidder for a public works project or a public works contract.

   _Yes (Not Qualified) _ No

5.7. During the last five (5) years, the Bidder or any predecessor to the Bidder, or any of the equity owners of the Bidder has been convicted of a federal or state crime involving fraud, theft, or any other act of dishonesty?

   _Yes (Not Qualified) _ No

5.8. During the past five (5) years a Surety has completed any project or the Bidder’s obligations under a construction contract.

   _Yes (Not Qualified) _ No

5.9. During the past five (5) years the Bidder has been declared in default under any construction contract to which the Bidder was a party.

   _Yes (Not Qualified) _ No

5.10. The Bidder’s Worker’s Compensation Insurance average Experience Modification Rating ("EMR") rating over the past five (5) years is more than 1.25.

   _Yes (Not Qualified) _ No

5.11. The Bidder’s Workers Compensation Insurance EMR for the current policy term is more than 1.25.

   _Yes (Not Qualified) _ No

6. **Accuracy and Authority.** The undersigned is duly authorized to execute this Statement of Qualifications under penalty of perjury on behalf of the above-identified Bidder. The undersigned warrants and represents that he/she has personal knowledge of each of the responses to this Statement of Qualifications and/or that he/she has conducted all necessary and appropriate inquiries to determine the truth, completeness and accuracy of responses to this Statement of Qualifications. The undersigned declares and certifies that the responses to this Statement of Qualifications are complete and accurate; there are no omissions of material fact or information that render any response to be false or misleading and there are no misstatements of fact in any of the responses. The above-identified Bidder acknowledges and agrees that if the District determines
that any response herein is false or misleading or contains misstatements of fact so as to be false or misleading, the Bidder’s Bid Proposal may be rejected by the District for non-responsiveness.

Executed this ___ day of __________________ 20__ at _________________________.

(City and State)

I declare under penalty of perjury under California law that the foregoing is true and correct.

By: ____________________________

(Signature of Bidder’s Authorized Officer or Representative)

_______________________________

(Typed or Printed Name)

Title: ____________________________

__________________________________________

(By: ____________________________

Title: ____________________________
NON-COLLUSION AFFIDAVIT

STATE OF CALIFORNIA
COUNTY OF _________________________

I, __________________________________, being first duly sworn, deposes and says that I am
(Typed or Printed Name)
the __________________________________ of ___________________________________, the party submitting
(Title) (Bidder Name)
the foregoing Bid Proposal ("the Bidder"). In connection with the foregoing Bid Proposal, the
undersigned declares, states and certifies that:

1. The Bid Proposal is not made in the interest of, or on behalf of, any undisclosed person,
   partnership, company, association, organization or corporation.

2. The Bid Proposal is genuine and not collusive or sham.

3. The Bidder has not directly or indirectly induced or solicited any other bidder to put in a false
   or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any other
   bidder or anyone else to put in sham bid, or to refrain from bidding.

4. The Bidder has not in any manner, directly or indirectly, sought by agreement,
   communication, or conference with anyone to fix the bid price, or that of any other bidder, or to fix any
   overhead, profit or cost element of the bid price or that of any other bidder, or to secure any advantage
   against the public body awarding the contract or of anyone interested in the proposed contract.

5. All statements contained in the Bid Proposal and related documents are true.

6. The bidder has not, directly or indirectly, submitted the bid price or any breakdown thereof,
   or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any
   fee to any person, corporation, partnership, company, association, organization, bid depository, or to
   any member or agent thereof to effectuate a collusive or sham bid.

   Executed this ____ day of ____________, 20__ at _________________________________.
   (City, County and State)

   I declare under penalty of perjury under the laws of the State of California that the foregoing is
   true and correct.

______________________________
Signature

______________________________
Name Printed or Typed

(_____) ______________________
(Area Code and Telephone Number)
CERTIFICATE OF WORKERS’ COMPENSATION INSURANCE

I, ___________________________ the ___________________________ of ___________________________, declare, state and certify that:

1. I am aware that California Labor Code § 3700(a) and (b) provides:
   “Every employer except the state shall secure the payment of compensation in one or more of the following ways:
   (a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this state.
   (b) By securing from the Director of Industrial Relations a certificate of consent to self-insure either as an individual employer, or one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees.”

2. I am aware that the provisions of California Labor Code §3700 require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of this Contract.

________________________
(Contractor Name)

By: ______________________
(Signature)

________________________
(Typed or printed name)
AGREEMENT

THIS AGREEMENT is entered into Click here to enter a date. in the City of Merced, County of Merced, State of California, by and between MERCED COMMUNITY COLLEGE DISTRICT, a California Community College District hereinafter “District” and ___________________ (“Contractor”).

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

1. The Work. Within the Contract Time and for the Contract Price, subject to adjustments thereto pursuant to the Contract Documents, the Contractor shall perform and provide all necessary labor, materials, tools, equipment, utilities, services and transportation to complete in a workmanlike manner all of the Work required in connection with the work of improvement commonly referred to as RFP# 2018-14 SOLAR PROJECT AT THE LOS BANOS CAMPUS. Contractor shall complete all Work covered by the Contract Documents, including without limitation, the Drawings and Specifications prepared by the Architect, ______________ and other Contract Documents enumerated in Article 5 below, along with all modifications and addenda thereto issued in accordance with the Contract Documents.

2. Contract Time. The Work shall be commenced on the date stated in the District’s Notice to Proceed; the Contractor shall achieve Substantial Completion of the Work within the Contract Time set forth in the Contract Documents.

3. Contract Price. The District shall pay the Contractor as full consideration for the Contractor’s full, complete and faithful performance of the Contractor’s obligations under the Contract Documents, subject to adjustments of the Contract Price in accordance with the Contract Documents, the Contract Price of $_______________. The District’s payment of the Contract Price shall be in accordance with the Contract Documents. The Contract Price is based upon the Contractor’s Base Bid Proposal and the following Alternate Bid Items, if any: ________________________________.

4. Liquidated Damages. If the Contractor fails to achieve Substantial Completion of the Work within the Contract Time, including adjustments thereto authorized by the Contract Documents, the Contractor shall be subject to assessment of Liquidated Damages in accordance with the Contract Documents. Failure of the Contractor to complete Punchlist items noted upon Substantial Completion within the time established to complete the Punchlist items will result in the District’s assessment of Liquidated Damages in accordance with the Contract Documents.

5. The Contract Documents. The documents forming a part of the Contract Documents consist of the following, all of which are component parts of the Contract Documents.

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>00 01 10</td>
<td>Table of Contents</td>
<td>00 61 10</td>
<td>Bid Bond</td>
</tr>
<tr>
<td>00 11 13</td>
<td>Notice Calling for Bids</td>
<td>00 61 13</td>
<td>Performance Bond</td>
</tr>
<tr>
<td>00 21 13</td>
<td>Instructions for Bidders</td>
<td>00 61 14</td>
<td>Labor &amp; Materials Payment Bond</td>
</tr>
<tr>
<td>00 41 22</td>
<td>Bid Proposal</td>
<td>00 62 90</td>
<td>Verification of Certified Payroll Records Submittal to Labor Commissioner</td>
</tr>
<tr>
<td>00 43 13</td>
<td>Bid Proposal; Alternate Bid Items Proposal</td>
<td>00 65 01</td>
<td>Conditional Waiver &amp; Release on Progress Payment</td>
</tr>
<tr>
<td>00 43 36</td>
<td>Subcontractors List</td>
<td>00 65 02</td>
<td>Unconditional Waiver &amp; Release on Progress Payment</td>
</tr>
<tr>
<td>00 45 10</td>
<td>DIR Registration Verification</td>
<td>00 65 03</td>
<td>Conditional Waiver &amp; Release on Final Payment</td>
</tr>
<tr>
<td>00 45 13</td>
<td>Statement of Qualifications</td>
<td>00 65 04</td>
<td>Unconditional Waiver &amp; Release on Final Payment</td>
</tr>
<tr>
<td>00 45 19</td>
<td>Non-Collusion Affidavit</td>
<td>00 65 36</td>
<td>Contractor Guarantee Form</td>
</tr>
<tr>
<td>00 45 23</td>
<td>Certificate of Workers Compensation Insurance</td>
<td>00 65 37</td>
<td>Contractor Certification of Subcontractor Claim</td>
</tr>
<tr>
<td>00 45 27</td>
<td>Drug-Free Workplace Certification</td>
<td>00 72 13</td>
<td>General Conditions</td>
</tr>
</tbody>
</table>
6. Authority to Execute. The individual(s) executing this Agreement on behalf of the Contractor is/are duly and fully authorized to execute this Agreement on behalf of Contractor and to bind the Contractor to each and every term, condition and covenant of the Contract Documents.

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

IN WITNESS WHEREOF, this Agreement has been duly executed by the District and the Contractor as of the date set forth above.

District
Merced Community College District
By: __________________________
Title: __________________________

Contractor
[Contractor Name]
By: __________________________
Title: __________________________
BID BOND

KNOW ALL MEN BY THESE PRESENTS that we, ________________________________, as Surety and ___________________________________, as Principal, are jointly and severally, along with their respective heirs, executors, administrators, successors and assigns, held and firmly bound unto MERCED COMMUNITY COLLEGE DISTRICT ("the Obligee") for payment of the penal sum hereof in lawful money of the United States, as more particularly set forth herein.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the Principal has submitted the accompanying Bid Proposal to the Obligee for the Work commonly described as RFP# 2018-14 SOLAR PROJECT AT THE LOS BANOS CAMPUS.

WHEREAS, subject to the terms of this Bond, the Surety and the Principal are jointly and severally firmly bound unto the Obligee in the penal sum equal to Ten Percent (10%) of the maximum amount of the Bid Proposal submitted by the Principal to the Obligee, inclusive of amounts proposed for Alternate Bid Items, if any.

NOW THEREFORE, if the Principal shall not withdraw said Bid Proposal within the period specified therein after the opening of the same, or, if no period be specified, for sixty (60) days after opening of said Bid Proposal; and if the Principal is awarded the Contract, and shall within the period specified therefore, or if no period be specified, within five (5) days after the prescribed forms are presented to him for signature, enter into a written contract with the Obligee, in accordance with the Bid Proposal as accepted and give such bond(s) with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such Contract and for the payment for labor and materials used for the performance of the Contract, or in the event of the withdrawal of said Bid Proposal within the period specified for the holding open of the Bid Proposal or the failure of the Principal to enter into such Contract and give such bonds within the time specified, if the Principal shall pay the Obligee the difference between the amount specified in said Bid Proposal and the amount for which the Obligee may procure the required Work and/or supplies, if the latter amount be in excess of the former, together with all costs incurred by the Obligee in again calling for Bids, then the above obligation shall be void and of no effect, otherwise to remain in full force and effect.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or the Call for Bids, the Work to be performed thereunder, the Drawings or the Specifications accompanying the same, or any other portion of the Contract Documents shall in no way affect its obligations under this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of said Contract, the Call for Bids, the Work, the Drawings or the Specifications, or any other portion of the Contract Documents.

If suit or other proceeding is brought upon this Bond by the Obligee, the Surety and Principal shall be jointly and severally liable for payment to the Obligee all costs, expenses and fees

[CONTINUED NEXT PAGE]
incurred by the Obligee in connection therewith, including without limitation, attorneys’ fees.

IN WITNESS WHEREOF, the Principal and Surety have executed this instrument this ________ day of ______________, 20___ by their duly authorized agents or representatives.

---

(Bidder/Principal Name)
By: __________________________________________
(Signature)
Typed or Printed Name)
Title: __________________________________________
(Attach Notary Public Acknowledgement of Principal’s Signature)

---

(Surety Name)
By: __________________________________________
(Signature of Attorney-In-Fact for Surety)
Typed or Printed Name of Attorney-In-Fact)
(Attach: (i) Attorney-In-Fact Certification; (ii) Notary Public Acknowledgment of Authorizing Signature on Attorney-Fact Certification; and (iii) Notary Public Acknowledgement of Attorney-In-Fact's Signature.)

---

Contact name, address, telephone number and email address for notices to the Surety

(Contact Name)
(Street Address)
(City, State & Zip Code)
(_____) _________ (_____) ___________
Telephone Fax
____________________________________________
(Email address)
PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS that we, ________________________________, as Surety and __________________________________, as Principal, are jointly and severally, along with their respective heirs, executors, administrators, successors and assigns, held and firmly bound unto MERCED COMMUNITY COLLEGE DISTRICT ("the Obligee") for payment of the penal sum the penal sum of ___________________________________________________________ Dollars ($______________________) in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the Obligee, by resolution of its Board of Trustees has awarded to the Principal a Contract for the Work described as RFP# 2018-14 SOLAR PROJECT AT THE LOS BANOS CAMPUS.

WHEREAS, the Principal, has entered into an agreement with the Obligee for performance of the Work; the Agreement and all other Contract Documents set forth therein are incorporated herein and made a part hereof by this reference.

WHEREAS, by the terms of the Contract Documents, the Principal is required to furnish a bond ensuring the Principal’s prompt, full and faithful performance of the Work of the Contract Documents.

NOW THEREFORE, if the Principal promptly, fully and faithfully performs each and all of the obligations and things to be done and performed by the Principal in strict accordance with the terms of the Contract Documents as they may be modified or amended from time to time; and if the Principal shall indemnify, defend and hold harmless the Obligee and all of its officers, agents and employees from any and all losses, liability and damages, claims, judgments, liens, costs, and fees of every description, which may be incurred by the Obligee by reason of the failure or default on the part of the Principal in the performance of any or all of the terms or the obligations of the Contract Documents, including all modifications, and amendments, thereto, and any warranties or guarantees required thereunder; then this obligation shall be void; otherwise, it shall be, and remain, in full force and effect.

The Surety, for value received, stipulates and agrees that no change, adjustment of the Contract Time, adjustment of the Contract Price, alterations, deletions, additions, or any other modifications to the terms of the Contract Documents, the Work, or to the Specifications or the Drawings shall limit, restrict or otherwise impair Surety’s obligations or Obligee’s rights hereunder; Surety waives notice from the Obligee of any such changes, adjustments of Contract Time, adjustments of Contract Price, alterations, deletions, additions or other modifications to the Contract Documents, the Work, or the Drawings or the Specifications.

In the event of the Obligee’s termination of the Contract due to the Principal’s breach or default of the Principal’s obligations thereunder, within twenty (20) days after written notice from the Obligee to the Surety of the Principal’s breach or default of the Contract Documents and Obligee’s termination of the Contract, the Surety shall notify Obligee in writing of Surety’s assumption of obligations hereunder by its election to either remedy the default or breach of the Principal or to take charge of the Work of the Contract Documents and complete the Work at its own expense ("the Notice of Election"); provided, however, that the procedure by which the Surety undertakes to discharge its obligations under this

[CONTINUED NEXT PAGE]
The bond shall be subject to the advance written approval of the Obligee, which approval shall not be unreasonably withheld, limited or restricted. The insolvency of the Principal or the Principal's denial of a failure of performance or default under the Contract Documents shall not by itself, without the Surety's prompt, diligent inquiry and investigation of such denial, be justification for Surety's failure to give the Notice of Election or for its failure to promptly remedy the failure of performance or default of the Principal or to complete the Work.

If the Surety fails to issue its Notice of Election to Obligee within the time provided for hereinabove, the Obligee may thereafter cause the cure or remedy of the Principal's failure of performance or default or to complete the Work. The Principal and the Surety are jointly and severally liable to the Obligee for all damages and costs sustained by the Obligee as a result of the Principal's failure of performance under the Contract Documents or default in its performance of obligations thereunder, including without limitation the costs of cure or completion of the Work exceeding the then remaining balance of the Contract Price; provided that the Surety's liability hereunder for the costs of performance, damages and other costs sustained by the Obligee upon the Principal's failure of performance or default under the Contract Documents is limited to the penal sum hereof, which includes the costs or value of any Changes to the Work which increases the Contract Price.

If suit or other proceeding is brought upon this Bond by the Obligee, the Surety and Principal are jointly and severally liable for payment to the Obligee of all costs, expenses and fees incurred by the Obligee therewith, including without limitation, attorneys' fees.

IN WITNESS WHEREOF, the Principal and Surety have executed this instrument this _____day of ___________, 20__ by their duly authorized agent or representative.

---

**Contractor-Principal Name**

By:  
(Signature)  
(Typed or Printed Name)  
(Contact: Notary Public Acknowledgement of Principal's Signature)

**Surety Name**

By:  
(Signature of Attorney-In-Fact for Surety)  
(Typed or Printed Name of Attorney-In-Fact)  
(Attach: (i) Attorney-In-Fact Certification; (ii) Notary Public Acknowledgement of Authorizing Signature on Attorney-Fact Certification; and (iii) Notary Public Acknowledgement of Attorney-In-Fact's Signature.)

---

**Contact name, address, telephone number and email address for notices to the Surety**

(Contact Name)  
(Street Address)  
(City, State & Zip Code)  
(______) _____________  (______) ______________  Telephone  Fax  
(Email address)
LABOR AND MATERIAL PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS that we, ________________________________, as Surety and __________________________________, as Principal, are jointly and severally, along with their respective heirs, executors, administrators, successors and assigns, held and firmly bound unto MERCED COMMUNITY COLLEGE DISTRICT ("the Obligee") for payment of the penal sum the penal sum of ___________________________________________________________ Dollars ($______________________) in lawful money of the United States, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the Obligee, by resolution of its Board of Trustees has awarded to the Principal a Contract for the Work described as RFP# 2018-14 SOLAR PROJECT AT THE LOS BANOS CAMPUS.

WHEREAS, the Principal, has entered into an Agreement with the Obligee for performance of the Work, the Agreement and all other Contract Documents set forth therein are incorporated herein by this reference and made a part hereof.

WHEREAS, by the terms of the Contract Documents, the Principal is required to furnish a bond for the prompt, full and faithful payment to any Claimant, as hereinafter defined, for all labor materials or services used, or reasonably required for use, in the performance of the Work.

NOW THEREFORE, if the Principal shall promptly, fully and faithfully make payment: (i) to any Claimant for all labor, materials or services used or reasonably required for use in the performance of the Work; (ii) of amounts due under the Unemployment Insurance Code for work or labor performed under the Contract; and (iii) of amounts required to be deducted, withheld and paid to the Employment Development Department from wages of the employees of the Principal and its Subcontractors under Section 13020 of the Unemployment Insurance Code with respect to work and labor under the Contract then this obligation shall be void; otherwise, it shall be, and remain, in full force and effect.

The term “Claimant” shall refer to any person, corporation, partnership, proprietorship or other entity including without limitation, all persons and entities described in California Civil Code §9100, providing or furnishing labor, materials or services used or reasonably required for use in the performance of the Work under the Contract Documents, without regard for whether such labor, materials or services were sold, leased or rented. This Bond shall inure to the benefit of all Claimants so as to give them, or their assigns and successors, a right of action upon this Bond.

If suit is brought on this Bond by any Claimant for amounts due such Claimant for labor, materials or services provided or furnished by such Claimant, the Surety shall pay for the same and reasonable attorneys’ fees pursuant to California Civil Code §9554.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, deletion, addition, or any other modification to the terms of the Contract Documents, the Work to be performed thereunder, the Specifications or the Drawings, or any other portion of the Contract Documents, shall in any way limit, restrict or otherwise affect its obligations under this Bond; the Surety hereby waives notice from the Obligee of any such change, extension of time, alteration

[CONTINUED NEXT PAGE]
deletion, addition or other modification to the Contract Documents, the Work to be performed under the Contract Documents, the Drawings or the Specifications of any other portion of the Contract Documents.

IN WITNESS WHEREOF, the Principal and Surety have executed this instrument this ________ day of __________, 20__ by their duly authorized agent or representative.

________________________
(Contractor-Principal Name)
By: 

(Signature)

Typed or Printed Name)

Title: 

(Attach Notary Public Acknowledgement of Principal's Signature)

________________________
(Surety Name)
By: 

(Signature of Attorney-In-Fact for Surety)

Typed or Printed Name of Attorney-In-Fact)

(Attach: (i) Attorney-In-Fact Certification; (ii) Notary Public Acknowledgment of Authorizing Signature on Attorney-Fact Certification; and (iii) Notary Public Acknowledgement of Attorney-In-Fact’s Signature)

Contact name, address, telephone number and email address for notices to the Surety

(Contact Name)

(Street Address)

(City, State & Zip Code)

(______) _____________  (______) ______________
Telephone  Fax

(Email address)
VERIFICATION OF CERTIFIED PAYROLL RECORDS SUBMITTAL TO LABOR COMMISSIONER

I am the ________________________________ for ______________________________ in connection with RFP# 2018-14 SOLAR PROJECT AT THE LOS BANOS CAMPUS.

1. This Verification is submitted to Merced Community College District concurrently with the Contractor’s submittal of an Application for Progress Payment to the District, identified as Application For Progress Payment No. ________________ (“the Pay Application”).

2. The Pay Application requests the District’s disbursement of a Progress Payment for the value of Work performed between ______________, 20___ and ______________, 20___.

3. The Contractor has submitted Certified Payroll Records (“CPR”) to the Labor Commissioner for all employees of the Contractor engaged in performance of Work subject to prevailing wage rate requirements for the period of time covered by the Pay Application.

4. All Subcontractors who are entitled to any portion of payment to be disbursed pursuant to the Pay Application have submitted their CPRs to the Labor Commissioner for all of their employees performing Work subject to prevailing wage rate requirements for the period of time covered by the Pay Application.

5. I have reviewed the Contractor's CPRs submitted to the Labor Commissioner. The CPRs submitted to the Labor Commissioner by the Contractor are complete and accurate for the period of time covered by the Pay Application.

6. I have reviewed the Subcontractors’ CPRs submitted to the Labor Commissioner. The CPRs submitted to the Labor Commissioner by the Subcontractors are complete and accurate for the period of time covered by the Pay Application.

I declare under penalty of perjury under California law that the foregoing is true and correct. I executed this Certification on the ____ day of _________________, 20___.

(City and State)

By: ________________________________

(Typed or Printed Name)
THIS PAGE INTENTIONALLY BLANK
CONDITIONAL WAIVER AND RELEASE
ON PROGRESS PAYMENT
(Civil Code §8132)

NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT’S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

Identifying Information

<table>
<thead>
<tr>
<th>Name of Claimant</th>
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<tr>
<td>Name of Customer</td>
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<tr>
<td>Job Location</td>
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<tr>
<td>Owner</td>
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<tr>
<td>Through Date</td>
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</table>

Conditional 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. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

<table>
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<tr>
<th>Maker of Check</th>
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<tr>
<td>Amount of Check</td>
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<tr>
<td>Check Payable To</td>
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</table>

Exceptions

This document does not affect any of the following:
1. Retentions.
2. Extras for which the claimant has not received payment.
3. The following payments for which the claimant has previously given a conditional waiver and release but has not received payment:
   Date(s) of waiver and release: ________________
   Amount(s) of unpaid payment(s): ________________
4. 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 PROGRESS PAYMENT
(Civil Code §8134)

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

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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: ______________________________________________
CONDITIONAL WAIVER AND RELEASE
ON FINAL PAYMENT
(Civil Code §8136)

NOTICE: THIS DOCUMENT WAIVES THE CLAIMANT’S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

Identifying Information

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Conditional 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. 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. This document is effective only on the claimant's receipt of payment from the financial institution on which the following checks are drawn:

<table>
<thead>
<tr>
<th>Maker of Check</th>
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<tr>
<th>Check Payable To</th>
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Exceptions

This document does not affect any of the following:
Disputed claims for extras in the amount of: $_________________

Signature

Claimant's Signature: ____________________________
Claimant's Title: ________________________________
Date of Signature: ______________________________
UNCONDITIONAL WAIVER AND RELEASE
ON FINAL PAYMENT
(Civil Code §8138)

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.

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</table>

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: ________________________________
Contractor Guarantee

District: Merced Community College District
Project Name: RFP# 2018-14 SOLAR PROJECT AT THE LOS BANOS CAMPUS

Contractor Name: ______________________________

The Contractor hereby warrants and guarantees to the District that all work, materials, equipment and workmanship provided, furnished or installed by or on behalf of Contractor in connection with the above-referenced Project (the "Work") have been provided, furnished and installed in strict conformity with the Contract Documents for the Work, including without limitation, the Drawings and the Specifications. Contractor further warrants and guarantees that all work, materials, equipment and workmanship as provided, furnished and/or installed are fit for use as specified and fulfill all applicable requirements of the Contract Documents including without limitation, the Drawings and the Specifications. Contractor shall, at its sole cost and expense, repair, correct and/or replace any or all of the work, materials, equipment and/or workmanship of the Work, together with any other items which may be affected by any such repairs, corrections or replacement, that may be unfit for use as specified or defective within a period of one (1) year from the date of the District's Final Acceptance of the Work, ordinary wear and tear and unusual abuse or neglect excepted.

In the event of the Contractor's failure and/or refusal to comply with the provisions of this Guarantee, within the period of time set forth in the Contract Documents after the District's issuance of the Notice to the Contractor of any defect(s) in the Work, materials, equipment or workmanship, Contractor authorizes the District, without further notice to Contractor, to repair, correct and/or replace any such defective item at the expense of the Contractor. The Contractor shall reimburse the District for all costs, expenses or fees incurred by the District in providing or performing such repairs, corrections or replacements within ten (10) days of the District's presentation of a demand to the Contractor for the same.

The provisions of this Guarantee and the provisions of the Contract Documents for the Work relating to the Contractor's Guarantee(s) and warranties relating to the Work shall be binding upon the Contractor's Performance Bond Surety and all successors or assigns of Contractor and/or Contractor's Performance Bond Surety.

The provisions of this Guarantee are in addition to, and not in lieu of, any provisions of the Contract Documents for the Work relating to the Contractor's guarantee(s) and warranties or any guarantee(s) or warranties provided by any material supplier or manufacturer of any equipment, materials or other items forming a part of, or incorporated into the Work, or any other guarantee or warranty obligation of the Contractor, prescribed, implied or imposed by law.

The undersigned individual executing this Guarantee on behalf of Contractor warrants and represents that he/she is duly authorized to execute this Guarantee on behalf of Contractor and to bind Contractor to each and every provision hereof.

Dated: ________________       By: ______________________________

(Signature)

_______________________________________
(Typewritten or Handwritten Name)

_______________________________________
(Title)
CONTRACTOR CERTIFICATION OF SUBCONTRACTOR CLAIM

TO: MERCED COMMUNITY COLLEGE DISTRICT ("DISTRICT")

RE: RFP# 2018-14 SOLAR PROJECT AT THE LOS BANOS CAMPUS (Project)
    YYY (Contractor)
    ZZZZ (Subcontractor)

Subcontractor Claim

This Contractor Certification of Subcontractor Claim is submitted by YYY relating to RFP# 2018-14 SOLAR PROJECT AT THE LOS BANOS CAMPUS to the District on behalf of ZZZZ.

1. I am the ______________________ of the Contractor in connection with the above-described Project.

2. The Subcontractor has submitted the accompanying Subcontractor Claim to the Contractor for presentation to the District pursuant to Public Contract Code §9204.

3. I have personally reviewed the entirety of the Subcontractor Claim and all substantiating documentation in support of the Subcontractor Claim.

4. The Subcontractor Claim is made by the Subcontractor in good faith.

5. The Subcontractor Claim is supported by reasonable documentation establishing entitlement to the relief requested and District liability therefor.

6. The Subcontractor Claim does not incorporate any request constituting a False Claim under applicable law, including the California False Claim Act (Government Code §12650 et. seq.).

7. I am authorized: (i) to execute this Certification on behalf of the Contractor; and (ii) to submit this Certification and the accompanying Subcontractor Claim to the District.

8. I have personal first-hand knowledge of all of the foregoing.

6. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

7. Executed at __________________________, California, on ___________________, 20___.

8. ________________________________

9. (Signature)

________________________________________
(Print Name)

________________________________________
(Title)
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1.1 District. The “District” refers to Merced Community College District and unless otherwise stated, includes the District’s authorized representatives, including the Project Manager, if a Project Manager is designated, the District’s Board of Trustees and the District’s officers, employees, agents and representatives.

1.2 Contractor. The Contractor is the person or entity identified as such in the Agreement; references to “Contractor” include the Contractor’s authorized representative.

1.3 Owner’s Representative. The Owner’s Representative is the consulting firm hired by the District to provide solar consulting services for the project, verify and quantify the aspects of the project.

1.4 Request for Proposal. The Request for Proposal is the document the District uses to procure a Design Build Contractor for the design and construction of a solar photovoltaic (PV) system. The Request for Proposal contains the location drawings, the Performance Specifications, the Commissioning Requirements and Performance Tests required to be included in the Bidder’s Bid to design and install the PV system. The RFP requirements shall be included in the Agreement between the District and the Contractor.

1.5 The Work. The Work is the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment or services provided or to be provided by the Contractor to fulfill the Contractor’s obligations under the Contract Documents. The Work may constitute the whole or a part of the Project.

1.6 The Project. The Project is the total construction of which the Work performed by the Contractor under the Contract Documents may be the whole or a part of the Project and which may include construction by the District or by separate contractors.

1.7 Surety. The Surety is the person or entity that executes, as surety, the Contractor’s Labor and Material Payment Bond and/or Performance Bond.

1.8 Subcontractors; Sub-Subcontractors. A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work. “Subcontractor” does not include a separate contractor to the District or subcontractors of any separate contractor. A Sub-Subcontractor is a person or entity of any tier, who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the Site. References to “Subcontractor” herein include all subcontractors of any tier.

1.9 Material Supplier. A Material Supplier is any person or entity who only furnishes materials, equipment or supplies for the Work without fabricating, installing or consuming them in the Work.

1.10 Drawings and Specifications. The Drawings are the graphic and pictorial representation of the proposed Work, wherever located and whenever issued, showing generally, the design, location and dimensions of the Work and may include without limitation, plans, elevations, sections, details, schedules or diagrams. The Specifications are the written requirements for materials, equipment, construction systems, standards, criteria and workmanship for the Work and related services.

1.11 Special Conditions; Supplemental Conditions. Special Conditions and/or Supplemental Conditions, if any are special or supplemental provisions, not otherwise provided for in the Agreement or the General Conditions.

1.12 Contract Documents. The Contract Documents consist of the Agreement between the District and the Contractor, Conditions of the Contract (whether General, Special, Supplemental or otherwise), Drawings and Specifications from the RFP, including addenda thereto issued prior to execution of the Agreement and any other documents listed in the Agreement. The Contract Documents shall include...
1.13 **Shop Drawings; Samples; Product Data (“Submittals”).** Shop Drawings are diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Material Supplier, or others to illustrate some portion of the Work. Samples are physical examples of materials, equipment or workmanship forming a part of, or to be incorporated into the Work. Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work. Shop Drawings, Samples and Product Data prepared or furnished by the Contractor, Subcontractors or Material Suppliers are collectively referred to as “Submittals”.

1.14 **Division of State Architect (“DSA”).** DSA is the California Division of the State Architect including without limitation DSA’s Office of Construction Services, Office of Design Services and the Office of Regulatory Services; references to the DSA in the Contract Documents shall mean the DSA, its offices and its authorized employees and agents. The authority of the DSA over the Work and the performance thereof shall be as set forth in the Contract Documents and Title 24 of the California Code of Regulations.

1.15 **District’s Inspector.** The District’s Inspector is the individual designated and employed by the District in accordance with the requirements of Title 24 of the California Code of Regulations. The District’s Inspector shall be authorized to act on behalf of the District as provided for in the Contract Documents and in Title 24 of the California Code of Regulations, as the same may be amended from time to time.

1.16 **Contract Document Terms.** The term “provide” means “provide complete in place” or to “furnish and install” such item. Unless otherwise provided in the Contract Documents, the terms “approved;” “directed;” “satisfactory;” “accepted;” “acceptable;” “proper;” “required;” “necessary” and “equal” shall mean as approved, directed, satisfactory, accepted, acceptable, proper, required, necessary and equal, in the opinion of the Architect. The term “typical” as used in the Drawings shall require the installation or furnishing of such item(s) of the Work designated as “typical” in all other areas similarly marked as “typical”; Work in such other areas shall conform to that shown as “typical” or as reasonably inferable therefrom.

1.17 **Contractor’s Superintendent.** The Contractor’s Superintendent is the individual employed by the Contractor whose principal responsibility shall be the supervision and coordination of the Work; the Contractor’s Superintendent shall not perform routine construction labor.

1.18 **Record Drawings.** The Record Drawings are a set of the Drawings marked by the Contractor during the performance of the Work to indicate completely and accurately the actual as-built condition of the Work. The Record Drawings shall be sufficient for a capable and qualified draftsman to modify the Drawings to reflect and indicate the Work actually in place at Final Completion of the Work.

1.19 **Project Manager.** The Project Manager is the employee of the contractor who is responsible for the overall implementation and delivery of the Project on-schedule and on-budget.

1.20 **Construction Equipment.** Construction Equipment is equipment utilized for the performance of any portion of the Work, but which is not incorporated into the Work.

1.21 **Site.** The Site is the physical area designated in the Contract Documents for Contractor's performance, construction and installation of the Work.

1.22 **Field Clarifications.** A written or graphic document consisting of supplementary details, instructions or information issued on behalf of the District which clarifies or supplements the Contract Documents and which becomes a part of the Contract Documents upon issuance. Field Clarifications do not constitute an adjustment of the Contract Time or the Contract Price, unless a Change Order relating to a Field Clarification is authorized and issued under the Contract Documents.

1.23 **Defective or Non-Conforming Work.** Defective or Non-Conforming Work is any Work which is
unsatisfactory, faulty or deficient by: (i) not conforming to the requirements of the Contract Documents; (ii) not conforming to the standards of workmanship of the applicable trade or industry; (iii) not being in compliance with the requirements of any inspection, reference, standard, test, or approval required by the Contract Documents; or (iv) damage occurring prior to Final Completion of all of the Work.

1.24 **Delivery.** Delivery used in conjunction with any equipment, materials or other items to be incorporated into the Work shall mean the unloading and storage in a protected condition at the Site pending incorporation into the Work.

1.25 **Notice to Proceed.** The Notice to Proceed is the written notice issued by or on behalf of the District to the Contractor authorizing the Contractor to proceed with commencement of the Work and which establishes the date for commencement of the Contract Time.

1.26 **Progress Reports; Verified Reports.** Progress Reports, if required, are written reports prepared by the Contractor and periodically submitted to the District in the form and content as required by the Contract Documents. Verified Reports are periodic written reports prepared by the Contractor and submitted to the DSA; Verified Reports shall be in such form and content as required by the applicable provisions of Title 24 of the California Code of Regulations. A material obligation of the Contractor is the preparation of complete and accurate Progress Reports, if required, and Verified Reports as well as the timely submission of the same.

1.27 **Laws.** Laws refer to all laws, ordinances, codes, rules and/or regulations promulgated by any governmental or quasi-governmental agency with jurisdiction over any portion of the Work and which apply to any portion of the Work, including those in effect as of the execution of the Agreement, amendments thereto and subsequently enacted Laws that take effect during the performance of the Work. No adjustment of the Contract Time or the Contract Price shall be allowed for the Contractor's compliance with the Laws.

1.28 **Construction Change Directive.** A Construction Change Directive is a written instrument issued by or on behalf of the District to the Contractor directing a Change to the Work prior to the Contractor and District reaching full agreement on an adjustment of the Contract Time and/or Contract Price on account of such Change. A material obligation of the Contractor is timely performance of Work noted in a Construction Change Directive.

**ARTICLE 2: DISTRICT**

2.1 **Information Required of District.**

2.1.1 **Surveys; Site Information.** Information, if any, concerning physical characteristics of the Site, including without limitation, surveys, soils reports, and utility locations, to be provided by the District are set forth in the Contract Documents. Information not provided by the District or necessary information in addition to that provided by the District concerning physical characteristics of the Site which is required shall be obtained by Contractor without adjustment to the Contract Price or the Contract Time.

2.1.2 **Permits, Licenses, Approvals.** Except as otherwise provided in the Contract Documents, the District shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities which relate to the Work of the Contractor under the Contract Documents. If permits, licenses, approvals or similar approvals relating to the Work, or the installation/construction thereof are designated as the responsibility of the Contractor under the Contract Documents, the Contractor shall obtain the same without adjustment of the Contract Price or the Contract Time.

2.1.3 **Drawings and Specifications.** Except as otherwise provided for in the Contract Documents, the District shall furnish the Contractor the number of copies of the Request for Proposals as required. All of the Drawings and the Specifications provided by the District to the
Contractor remain the property of the District; the Contractor shall not use the Drawings or the Specifications in connection with any other work of improvement other than the Work.

2.1.4 Furnishing of Information. Information or services to be provided by the District under the Contract Documents shall be furnished by the District with reasonable promptness to avoid delay in the orderly progress of the Work. Information about existing conditions furnished by the District under the Contract Documents is obtained from sources believed to be reliable, but the District neither guarantees nor warrants that such information is complete and accurate. The Contractor shall verify all information provided by the District. If the Contract Documents depict existing conditions on or about the Site, or the Work involves the renovation, removal or remodeling of existing improvements or the Work involves any tie-in or other connection with existing improvements, the conditions and/or existing improvements depicted in the Contract Documents are as they are believed to exist. The Contractor shall bear the risk of any variations between conditions or existing improvements depicted in the Contract Documents and those conditions or existing improvements actually encountered in the performance of the Work. The existence of any variations between conditions or existing improvements actually encountered in the performance of the Work shall not result in any District liability therefor, nor shall any such variations result in an adjustment of the Contract Time or the Contract Price.

2.2 District’s Right to Stop the Work. In addition to the District’s right to suspend the Work or terminate the Contract pursuant to the Contract Documents, the District, may, by written order, direct the Contractor to stop the Work, or any portion thereof, until the cause for such stop work order has been eliminated if the Contractor: (i) fails to correct Work which is not in conformity and in accordance with the requirements of the Contract Documents, or (ii) otherwise fails to carry out the Work in conformity and accordance with the Contract Documents. The right of the District to stop the Work hereunder shall not be deemed a duty on the part of the District to exercise such right for the benefit of the Contractor or any other person or entity, nor shall the District’s exercise of such right: (i) waive or limit the exercise of any other right or remedy of the District under the Contract Documents or the Laws; or (ii) result in adjustment of the Contract Time or Contract Price.

2.3 Partial Occupancy or Use.

2.3.1 District’s Right to Partial Occupancy. The District may occupy or use any completed or partially completed portion of the Work, provided that: (i) the District has obtained the consent of, or is otherwise authorized by, public authorities with jurisdiction thereof, to so occupy or use such portion of the Work and (ii) the District and the Contractor have accepted, in writing, the responsibilities assigned to each of them for security, maintenance, utilities, damage to the Work, insurance, the period for correction of the Work and commencement of warranties required by the Contract Documents for such portion of the Work partially used or occupied by the District. If the Contractor and the District are unable to agree upon the matters set forth in (ii) above, the District may nevertheless use or occupy any portion of the Work, with the responsibility for such matters subject to resolution in accordance with the Contract Documents. Immediately prior to such partial occupancy or use of the Work, or portions thereof, the District, the District’s Inspector, the Contractor and the Architect shall jointly inspect the portions of the Work to be occupied or to be used to determine and record the condition of the Work. Repairs, replacements or other corrective action noted in such inspection shall be promptly performed and completed by the Contractor so that the portion of the Work to be occupied or used by the District is in conformity with the requirements of the Contract Documents and the District’s occupancy or use thereof is not impaired. The District’s use or occupancy of the Work or portions thereof pursuant to the preceding shall not be deemed “completion” of the Work as that term is used in Public Contract Code §7107.

2.4 No Acceptance of Defective or Nonconforming Work. The District’s partial occupancy or use of the Work or any portion thereof, shall not constitute the District’s acceptance of the Work which is
2.5 District’s Inspector

2.5.1 Authority of District’s Inspector. In addition to the authority and rights of the District’s Inspector as provided for elsewhere in the Contract Documents and/or the Laws, all of the Work shall be performed under the observation of the District’s Inspector. The foregoing notwithstanding, the Contractor shall not perform any Work deviating from the Contract Documents solely on the basis of direction by the District’s Inspector; such deviations shall be deemed defective or non-conforming Work subject to correction or replacement at the sole cost of the Contractor and without adjustment of the Contract Time. The performance of the duties of the District’s Inspector shall not relieve or limit the Contractor’s performance of its obligations under the Contract Documents.

2.5.2 Limitations on District’s Inspector. The District does not have authority to interpret the Contract Documents or to modify the Work depicted in the Contract Documents. The District’s Inspector has no authority relative to the content or scope of the Contractor’s safety plan/program. The Contractor shall not perform any Work deviating from the Contract Documents solely on the basis of direction by the District’s Inspector; such deviations shall be deemed Defective or Non-Conforming Work subject to correction or replacement at the sole cost of the Contractor and without adjustment of the Contract Time.

2.5.3 Contractor Access for District’s Inspector. The Contractor shall provide the District’s Inspector with access to all parts of the Work at any time, wherever located and whether partially or completely fabricated, manufactured, furnished or installed.

2.5.4 Contractor and District Responsibilities for Costs and Fees of District’s Inspector. The District is responsible only for payment of the fees of the District’s Inspector for standard eight (8) hour work day Mondays through Fridays, excepting holiday days (“District’s Inspector Standard Workdays”). Unless the District directs the Contractor to perform Work exceeding the District’s Inspector Standard Workdays, for any Work performed by the Contractor outside the District’s Inspector Standard Workdays, the Contractor shall be responsible for payment of District’s Inspector fees for District’s Inspector services relating to such Work. All services provided by the District’s Inspector exceeding an eight (8) hour workday Mondays through Fridays and/or the first eight (8) hours on Saturdays shall be at one and one-half (1½) times the District’s Inspector’s basic hourly rate. All hours of service provided by the District’s Inspector in excess of eight (8) hours on Saturdays, and all hours of service provided by the District’s Inspector on holiday days or on Sundays are at two (2) times the District’s Inspector’s basic hourly rate. Fees for services provided by the District’s Inspector beyond the District’s Inspector Standard Workdays set forth above are the sole responsibility of the Contractor; the District may deduct such fees from the Contract Price then or thereafter due the Contractor.

ARTICLE 3: THE CONTRACTOR

3.1 Contractor Review of Contract Documents.

3.1.1 Field Measurements. Prior to commencement of the Work, or portions thereof, the Contractor shall take field measurements and verify field conditions at the Site and shall carefully compare such field measurements and conditions with information provided in the Contract Documents.

3.1.2 Dimensions; Layouts and Field Engineering. Unless otherwise expressly provided, dimensions indicated in the Drawings are intended for reference only. The Drawings are intended to be diagrammatic and schematic in nature; the Contractor is solely responsible for dimensioning and coordinating the Work of the Contract Documents. All field engineering required for laying out the Work and establishing grades for earthwork operations shall be by the Contractor at its expense. Any field engineering or other engineering to be provided or performed by the Contractor under the Contract Documents and required or necessary for the
proper execution or installation of the Work shall be provided and performed by the an engineer duly registered under the laws of the State of California in the engineering discipline for such portion of the Work.

3.1.3 Work in Accordance With Contract Documents. The Contractor shall perform all of the Work in strict conformity with the Contract Documents, the Laws and Owner’s Representative accepted Submittals.

3.2 Site Investigation; Subsurface Conditions.

3.2.1 Contractor Investigation. The Contractor is responsible for, and by executing the Agreement acknowledges, that it has carefully examined the Site and has taken all steps it deems reasonably necessary to ascertain all conditions which may affect the Work, or the cost thereof, including, without limitation, conditions bearing upon transportation, disposal, handling or storage of materials; availability of labor or utilities; access to the Site; and the physical conditions and the character of equipment, materials, labor and services necessary to perform the Work. Any failure of the Contractor to do so will not relieve it from the responsibility for fully and completely performing all Work without adjustment to the Contract Price or the Contract Time. The District assumes no responsibility to the Contractor for any understandings or representations concerning conditions or characteristics of the Site, or the Work, made by any of its officers, employees or agents prior to the execution of the Agreement, unless such understandings or representations are expressly set forth in the Contract Documents.

3.2.2 Subsurface Data. By executing the Agreement, the Contractor acknowledges that it has examined the boring data and other subsurface data available and satisfied itself as to the character, quality and quantity of surface and subsurface materials, including without limitation, obstacles which may be encountered in performance of the Work, insofar as this information is reasonably ascertainable from an inspection of the Site, review of available subsurface data and analysis of information furnished by the District under the Contract Documents. Subsurface data or other soils investigation report provided by the District hereunder are not a part of the Contract Documents. Information contained in such data or report regarding subsurface conditions, elevations of existing grades or below grade elevations are approximate only and are neither guaranteed or warranted by the District to be complete and accurate. The Contractor shall examine all boring and other subsurface data to make its own independent interpretation of the subsurface conditions and acknowledges that its bid is based upon its own opinion of the conditions which may be encountered. The District assumes no responsibility for any conclusions or interpretations made by Contractor on the basis of available subsurface data or other information furnished by District under the Contract Documents.

3.2.3 Subsurface Conditions. If the Work involves digging trenches or other excavations that extend deeper than four feet below the surface, the Contractor shall promptly and before the following conditions are disturbed, notify the District’s Inspector, in writing, of any: (i) material that the Contractor believes may be material that is hazardous waste, as defined in California Health and Safety Code §25117, that is required to be removed to a Class I or Class II or Class III disposal site in accordance with provisions of existing law; (ii) subsurface or latent physical conditions at the site differing from those indicated; or (iii) unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in the Work or the character provided for in the Contract Documents. If upon notice to the District of the conditions described above and upon the District’s investigation thereof, the District determines that the conditions so materially differ or involve such hazardous materials which require an adjustment to the Contract Price or the Contract Time, the District shall issue a Change Order in accordance with Article 9 hereof. In accordance with California Public Contract Code §7104, any dispute arising between the Contractor and the District as to any of the conditions listed in (i), (ii) or (iii) above, shall not excuse the Contractor from the completion of the Work within the Contract Time and the Contractor shall proceed with all Work to be performed under the Contract Documents. The District reserves the right to terminate the
3.3 Supervision and Construction Procedures.

3.3.1 Supervision of the Work. The Contractor shall supervise and direct performance of the Work, using the Contractor’s best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract Documents, unless Contract Documents give other specific instructions concerning these matters. The Contractor shall be responsible for inspection of completed or partially completed portions of Work to determine that such portions are in proper condition to receive subsequent Work.

3.3.2 Responsibility for the Work. The Contractor is responsible to the District for acts and omissions of the Contractor’s employees, Subcontractors and their agents and employees, and all other persons performing any portion of the Work under a contract with the Contractor. The Contractor is not relieved from its obligation to perform the Work in accordance with the Contract Documents either by activities or duties of the Project Manager, District’s Inspector, or by tests, inspections or approvals required or performed by persons other than the Contractor.

3.3.3 Surveys. The Contractor shall prepare or cause to be prepared all detailed surveys necessary for performance of the Work, including without limitation, slope stakes, points, lines and elevations. The Contractor is responsible for the establishment, location, maintenance and preservation of benchmarks, reference points and stakes for the Work without adjustment of the Contract Price. The Contractor is solely responsible for all loss or costs resulting from the loss, destruction, disturbance or damage of benchmarks, reference points or stakes.

3.3.4 Construction Utilities. The District will furnish and pay the costs of utility services for the Work as set forth in the Special Conditions; all other utilities necessary to complete the Work and the Contractor’s obligations hereunder shall be obtained by the Contractor without adjustment of the Contract Price or the Contract Time. The Contractor shall furnish and install necessary or appropriate temporary distributions of utilities, including utilities furnished by the District. Any such temporary distributions shall be removed by the Contractor upon completion of the Work. The costs of all such utility services, including the installation, relocations and removal of temporary distributions thereof, shall be borne by the Contractor and included in the Contract Price.

3.3.5 Existing Utilities; Removal, Relocation and Protection. In accordance with California Government Code §4215, the District assumes responsibility for the timely removal, relocation, or protection of existing main or trunkline utility facilities located on the Site which are not identified in the Drawings, Specifications or other Contract Documents. Contractor shall be compensated for the costs of locating, repairing damage not due to the Contractor’s failure to exercise reasonable care, and removing or relocating such utility facilities not indicated in the Drawings, Specifications and other Contract Documents with reasonable accuracy and for equipment on the Site necessarily idled during such work. Contractor shall not be assessed Liquidated Damages for delay in completion of the Work when such delay is caused by the failure of the District or the owner of the utility to provide for removal or relocation of such utility facilities. The foregoing notwithstanding, the District is not required to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities can be inferred from the presence of other visible facilities, such as buildings, meters and junction boxes, on or adjacent to the Site. If the Contractor encounters utility facilities not identified by the District in the Drawings, Specifications, or other Contract Documents, the Contractor shall immediately notify, in writing, the District, the District’s inspector, the Project Manager and the utility owner. If utility facilities are owned by a public utility, the public utility shall have the sole discretion to perform repairs or relocation work or permit the Contractor to do such repairs or relocation work at a reasonable price.

3.3.6 Conferences and Meetings. A material obligation of the Contractor under the Contract
Documents is the attendance by the Contractor’s supervisory personnel for the Work and the Contractor’s management personnel as required by the Contract Documents or as requested by the District. The Contractor’s personnel participating in conferences and meetings relating to the Work shall be authorized to act on behalf of the Contractor and to bind the Contractor. The Contractor is solely responsible for arranging for the attendance by Subcontractors, Material Suppliers at meetings and conferences relating to the Work as necessary, appropriate or as requested by the District.

3.3.6.1 Pre-Construction Conference. The Contractor’s representatives (and representatives of Subcontractors as requested by the District) shall attend a Pre-Construction Conference at such time and place as designated by the District. The Pre-Construction Conference will address items such as the Contractor’s access to the Site, review of construction procedures and requirements and other matters pertaining generally to construction of the Work.

3.3.6.2 Progress Meetings. Progress meetings will be conducted on regular intervals (weekly unless otherwise expressly indicated elsewhere in the Contract Documents). The Contractor’s representatives and representatives of Subcontractors (as requested by the District) shall attend Progress Meetings. Progress Meetings will be chaired by the Project Manager and will generally include as agenda items: Site safety, field issues, coordination of Work, construction progress and impacts to timely completion, if any. The purposes of the Progress Meetings include: a formal and regular forum for discussion of the status and progress of the Work by all Project participants, a review of progress or resolution of previously raised issues and action items assigned to the Project participants, and reviews of the Construction Schedule and Submittals.

3.3.6.3 Special Meetings. As deemed necessary or appropriate by the District, Special Meetings will be conducted with the participation of the Contractor, Subcontractors and other Project participants as requested by the District.

3.3.6.4 Minutes of Meetings. Following conclusion of the Pre-Construction Conference, Progress Meetings and Special Meetings, the Project Manager will prepare and distribute minutes reflecting the items addressed and actions taken at a meeting or conference. Unless the Contractor notifies the Project Manager in writing of objections or corrections to minutes prepared hereunder within five (5) days of the date of distribution of the minutes, the minutes as distributed shall constitute the official record of the meeting or conference. No objections or corrections of any Subcontractor or Material Supplier shall be submitted directly to the Project Manager; such objections or corrections shall be submitted to the Project Manager through the Contractor. If the Contractor timely interposes objections or notes corrections, the resolution of such matters shall be addressed at the next scheduled Progress Meeting.

3.4 Labor and Materials.

3.4.1 Payment for Labor, Materials and Services. Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, Construction Equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated in the Work.

3.4.2 Employee Discipline. The Contractor shall enforce strict discipline and good order among the Contractor’s employees, the employees of any Subcontractor or Sub-subcontractor, and all other persons performing any part of the Work at the Site. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The Contractor shall dismiss from its employ and direct any Subcontractor or Sub-subcontractor to dismiss from their employment any person deemed by the District to be unfit or incompetent to perform Work and thereafter, the Contractor shall not employ nor permit the employment of such person for performance of any part of the Work without the prior written consent of the District,
which consent may be withheld in the reasonable discretion of the District.

3.4.3 Compliance with Immigration Reform and Control Act of 1986. The Contractor is solely and exclusively responsible for employment of individuals for the Work of the Contract in conformity with the Immigration Reform and Control Act of 1986, 8 USC §§1101 et seq. (the “IRCA”); the Contractor shall also require Subcontractors and any other person or entity employing labor in connection with any of the Work to so similarly comply with the IRCA. The foregoing includes without limitation, verification that individuals engaged in any Work are legally entitled to do so.

3.4.4 Contractor’s Supervisory Personnel. Prior to start of Work at the Site, the Contractor shall submit to the District and Owner’s Representative a written statement of the qualifications of the Contractor’s proposed Superintendent and Project Manager for the Work. Acceptance of the Contractor’s proposed Superintendent and Project Manager is subject to establishing their: (i) skills, experience and other capabilities to supervise, coordinate and manage the Work; (ii) fluent verbal and written English language capabilities; (iii) competency in reading, comprehending and understanding drawings, specifications and other technical construction-related materials; and (iv) recent experience of in completing construction projects similar to the Work within the budget and time established for such other construction projects. Upon acceptance of the Contractor’s Superintendent or Project Manager by the District, the Contractor shall not be change such personnel without prior consent of the District, unless such personnel: (i) are unsatisfactory to the Contractor and ceases to be employed by the Contractor for the Work; or (ii) is determined by the District to be unfit, incompetent or incapable of performing functions and responsibilities assigned.

3.4.5 Prohibition on Harassment.

3.4.5.1 District’s Policy Prohibiting Harassment. The District is committed to providing a campus and workplace free of sexual harassment and harassment based on factors such as race, color religion, national origin, ancestry, age, medical condition, marital status, disability, veteran status or other legally protected classification. Harassment includes without limitation, verbal, physical or visual conduct which creates an intimidating, offensive or hostile environment such as racial slurs; ethnic jokes; posting of offensive statements, posters or cartoons or similar conduct. Sexual harassment includes without limitation the solicitation of sexual favors, unwelcome sexual advances, or other verbal, visual or physical conduct of a sexual nature.

3.4.5.2 Contractor’s Adoption of Anti-Harassment Policy. Contractor shall adopt and implement all appropriate and necessary policies prohibiting any form of discrimination in the workplace, including without limitation harassment on the basis of any classification protected under local, state or federal law, regulation or policy. Contractor shall take all reasonable steps to prevent harassment from occurring, including without limitation affirmatively raising the subject of harassment among its employees, expressing strong disapproval of any form of harassment, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment and informing complainants of the outcome of an investigation into a harassment claim. Contractor shall require that any Subcontractor or Sub-subcontractor performing any portion of the Work to adopt and implement policies in conformity with this Article 4.4.4.

3.4.5.3 Prohibition on Harassment at the Site. Contractor shall not permit any person, whether employed by Contractor, a Subcontractor, or any other person or entity, performing any Work at or about the Site to engage in any prohibited form of harassment. Any such person engaging in a prohibited form of harassment directed to any individual performing or providing any portion of the Work at or about the Site shall be subject to appropriate sanctions in accordance with the anti-harassment policy adopted and implemented pursuant to Article 4.4.4.2 above. Any person, performing or providing Work on or about the Site engaging in a prohibited form of harassment directed to any
student, faculty member or staff of the District or directed to any other person on or about the Site shall be subject to immediate removal and shall be prohibited thereafter from providing or performing any portion of the Work. Upon the District’s receipt of any notice or complaint that any person employed directly or indirectly by Contractor in performing or providing the Work has engaged in a prohibited form of harassment, the District will promptly undertake an investigation of such notice or complaint. If the District, after such investigation, reasonably determines that a prohibited form of harassment has occurred, the District shall promptly notify the Contractor of the same and direct that the person engaging in such conduct be immediately removed from the Site. Unless the District’s determination that a prohibited form of harassment has occurred is grossly negligent or without reasonable cause, District shall have no liability for directing the removal of any person determined to have engaged in a prohibited form of harassment nor shall the Contract Price or the Contract Time be adjusted on account thereof. Contractor and the Surety shall defend, indemnify and hold harmless the District and its employees, officers, board of trustees, agents, and representatives from any and all claims, liabilities, judgments, awards, actions or causes of actions, including without limitation, attorneys’ fees, which arise out of, or pertain in any manner to: (i) the assertion by any person dismissed from performing or providing work at the direction of the District pursuant to this Article 4.4.4.3; or (ii) the assertion by any person that any person directly or indirectly under the employment or direction of the Contractor has engaged in a prohibited form of harassment directed to or affecting such person. The obligations of the Contractor and the Surety under the preceding sentence are in addition to, and not in lieu of, any other obligation of defense, indemnity and hold harmless whether arising under the Contract Documents, at law or otherwise; these obligations survive completion of the Work or the termination of the Contract.

3.5 Taxes. The Contractor shall pay, without adjustment of the Contract Price, all sales, consumer, use and other taxes for the Work or portions thereof provided by the Contractor under the Contract Documents.

3.6 Permits, Fees and Notices; Compliance With Laws.

3.6.1 Payment of Permits, Fees. Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permits, other permits, governmental fees, licenses and inspections necessary or required for the proper execution and completion of the Work.

3.6.2 Compliance With Laws. The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and other orders of public authorities bearing on performance of the Work.

3.6.3 Notice of Variation From Laws. If the Contractor knows, or has reason to believe, that any portion of the Contract Documents are at variance with applicable laws, statutes, ordinances, building codes, regulations or rules, the Contractor shall promptly notify the District’s Inspector, in writing, of the same. If the Contractor performs Work knowing, or with reasonable diligence should have known, it to be contrary to laws, statutes, ordinances, building codes, rules or regulations applicable to the Work without such notice to the District’s Inspector, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs arising or associated therefrom, including without limitation, the removal, replacement or correction of the same.

3.7 Submittals.

3.7.1 Purpose of Submittals. Submittals are not Contract Documents. Submittals are for the purpose of demonstrating, for those portions of the Work for which Submittals are required, the manner in which the Contractor proposes to provide or incorporate such item of the Work in conformity with the information given and the design concept expressed in the Contract.
Documents.

3.7.2 Contractor’s Submittals.

3.7.2.1 Prompt Submittals. The Contractor shall review, approve and submit to the Owner’s Representative or such other person or entity designated by the District or the Contract Documents, the number of copies of Submittals required by the Contract Documents. All Submittals required by the Contract Documents shall be prepared, assembled and submitted by the Contractor within the time frames set forth in the Submittal Schedule incorporated and made a part of the Approved Construction Schedule. Contractor’s submission of Submittals in conformity with the Submittal Schedule is a material obligation of the Contractor. If the Contractor fails or refuses to deliver Submittals in accordance with the Submittal Schedule, the Contractor shall be subject to per diem assessments in the amount set forth in the Special Conditions for each day of delayed submission for any Submittal beyond the date set forth in the Submittal Schedule for Contractor’s submission of such Submittal. Contractor and the District acknowledge and agree that the per diem assessment for delayed submission of Submittals set forth in the Special Conditions represents a reasonable estimate of costs and expenses the District will incur as a result of delayed submission of Submittals and that the same is not a penalty. Notwithstanding Contractor’s submission of all required Submittals in accordance with the Submittal Schedule, in the event that the District or the Owner’s Representative reasonably determines that all or any portion of such Submittals fail to comply with the requirements of Articles 4.7.2.2, 4.7.2.3 and 4.7.2.4 of these General Conditions and/or such Submittals are not otherwise complete and accurate so as to require re-submission, Contractor shall bear all costs associated with the review and approval of resubmitted Submittals, including without limitation Owner’s Representative’s fees incurred in connection therewith; provided that such costs are in addition to, and not in lieu of, Liquidated Damages imposed under this Article 4.7.2.1 for Contractor’s delayed submission of Submittals. If Liquidated Damages are assessed for the Contractor’s delayed submission of Submittals or if the Contractor is assessed Owner’s Representative’s fees to review incomplete or inaccurate Submittals, the District may deduct the same from any portion the Contract Price then or thereafter due the Contractor. Submittals not required by the Contract Documents or which do not otherwise conform to the requirements of the Contract Documents may be returned without action. No adjustment to the Contract Time or the Contract Price shall be granted to the Contractor on account of its failure to timely submit any Submittal.

3.7.2.2 Approval of Subcontractor Submittals. All Submittals prepared by Subcontractors, Material Suppliers, manufacturers or distributors shall bear the written approval of the Contractor thereto prior to submission to the Owner’s Representative for review. Any Submittal not bearing the Contractor’s written approval shall be subject to return to the Contractor for re-submittal in conformity herewith, with the same being deemed to not have been submitted. Any delay, impact or cost associated therewith shall be the sole and exclusive responsibility of the Contractor without adjustment to the Contract Time or the Contract Price.

3.7.2.3 Verification of Submittal Information. By approving and submission of Submittals, the Contractor represents to the District that the Contractor has determined and verified materials, field measurements, field construction criteria, catalog numbers and similar data related thereto and has checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Contract Documents.

3.7.2.4 Information Included in Submittals. All Submittals shall be accompanied by a written transmittal or other writing by the Contractor providing an identification of the portion of the Drawings or the Specifications pertaining to the Submittal, with each Submittal numbered consecutively for ease of reference along with the following information: (i) date of submission; (ii) project name; (iii) name of submitting...
Subcontractor; and (iv) if applicable, the revision number. The foregoing information is in addition to, and not in lieu of, any other information required by the Contract Documents for the District or Owner’s Representative’s review, evaluation and acceptance of the Contractor’s Submittals.

3.7.2.5 Contractor Responsibility for Deviations. The Contractor shall not be relieved of responsibility for correcting deviations from the requirements of the Contract Documents by the District or Owner’s Representative’s review of Submittals unless the Contractor has specifically informed the District or Owner’s Representative in writing of such deviation at the time of submission of the Submittal and the District or Owner’s Representative has given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Submittals by the District or Owner’s Representative’s review thereof.

3.7.2.6 No Performance of Work Without Architect Review. The Contractor shall perform no portion of the Work requiring the District or Owner’s Representative’s review of Submittals until the District or Owner’s Representative has completed its review and returned the Submittal to the Contractor indicating “No Exception Taken” to such Submittal. The Contractor shall not perform any portion of the Work forming a part of a Submittal or which is affected by a related Submittal until the entirety of the Submittal or other related Submittal has been fully processed. Such Work shall be in accordance with the final action taken by the District or Owner’s Representative in review of Submittals and other applicable portions of the Contract Documents.

3.7.3 Owner’s Representative Review of Submittals. The purpose of the Owner’s Representative’s review of Submittals and the time for the Owner’s Representative’s return of Submittals to the Contractor shall be as set forth elsewhere in the Contract Documents. If the Owner’s Representative returns a Submittal as rejected or requiring correction(s) with re-submission, the Contractor, so as not to delay the progress of the Work, shall promptly thereafter resubmit a Submittal conforming to the requirements of the Contract Documents; the resubmitted Submittal shall indicate the portions thereof modified in accordance with the Owner’s Representative’s direction. When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Owner’s Representative shall be entitled to rely upon the accuracy and completeness of such calculations and certifications accompanying Submittals. The Owner’s Representative’s review of the Submittals is for the limited purposes described in the Contract Documents. The following notations or notations of a similar nature noted on a reviewed Submittal will require the Contractor action noted below.

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<tr>
<th>Notation</th>
<th>Action Required</th>
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<tr>
<td>No Exceptions Taken</td>
<td>No formal revision required</td>
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<tr>
<td>Make Corrections Noted</td>
<td>Make revision noted; re-submission of revised Submittal not required</td>
</tr>
<tr>
<td>Revise and Re-Submit</td>
<td>Revise Submittal in accordance with notations and re-submit for revision</td>
</tr>
<tr>
<td>Rejected Re-Submit</td>
<td>Prepare new alternative Submittal and re-submit for review</td>
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3.7.4 Deferred Approval Items. If any portion of the Work is designated in the Contract Documents as a “Deferred Approval” item, Contractor shall be solely and exclusively responsible for: (i) the design, engineering and specifying the materials/equipment forming any part of the Deferred Approval Item; (ii) integrating and/or coordinating the Deferred Approval Item with other portions of the Work; (iii) preparation of Submittals for such item(s) in a timely manner so as not to delay or hinder the completion of the Work within the Contract Time; and
(iv) timely obtaining DSA approval thereof.

3.8 Materials and Equipment.

3.8.1 Specified Materials, Equipment. References in the Contract Documents to any specific article, device, equipment, product, material, fixture, patented process, form, method or type of construction, by name, make, trade name, or catalog number, with or without the words “or equal” shall be deemed to establish a minimum standard of quality or performance, and shall not be construed as limiting competition.

3.8.2 Approval of Substitutions or Alternatives. The Contractor may propose to furnish alternatives or substitutes for a particular item specified in the Contract Documents, provided that: (i) such proposed substitution or alternative complies with the requirements of the Specifications relating to substitutions of specified items; (ii) the Contractor certifies to the Owner’s Representative and District that the quality, performance capability and functionality (including visual and/or aesthetic effect) of the proposed alternative or substitute meet or exceed the quality, performance capability and functionality of the item or process specified; and (iii) demonstrate to the reasonable satisfaction of the Owner’s Representative and District that the use of the substitution or alternative is appropriate and will not delay completion of the Work or result in an increase to the Contract Price. The Contractor shall submit calculations engineering, construction, dimension, visual, aesthetic and performance data to the Owner’s Representative to permit its proper evaluation of the proposed substitution or alternative. If requested by the Owner’s Representative, Contractor shall promptly furnish any additional information or data regarding a proposed substitution or alternative which the Owner’s Representative deems reasonably necessary for the evaluation of the proposed substitution or alternative. The Contractor shall not provide, furnish or install any substitution or alternative without the Owner’s Representative’s review and final action on the proposed substitution or alternative. Any alternative or substitution installed or incorporated into the Work without first obtaining the Owner’s Representative’s review and final action of the same shall be subject to removal pursuant to Article 12 hereof. The Owner’s Representative’s decision evaluating the Contractor’s proposed substitutions or alternatives shall be final. Neither the Contract Time nor the Contract Price shall be increased on account of any substitution or alternative proposed by the Contractor and which is accepted by the Owner’s Representative; provided, however, that in the event a substitution or alternative accepted by the Owner’s Representative and purchase, fabrication and/or installation or such accepted substitution or alternative shall be less expensive than the originally specified item, the Contract Price shall be reduced by the actual cost savings realized by the Contractor’s furnishing and/or installation of such approved substitution or alternative. The Contractor shall be solely responsible for all costs and fees incurred by the District to review a proposed substitution or alternative, including without limitation fees of the Owner’s Representative, and/or governmental agencies to review and/or approve any proposed substitution or alternative. The Contractor shall be solely responsible for any increase in the cost of any accepted substitution or alternative or any Work affected by such alternative or substitution. The foregoing notwithstanding, all requests for the Owner’s Representative’s review and approval of any proposed substitution or alternative and all engineering, construction, dimension and performance data substantiating the equivalency of the proposed substitution or alternative shall be submitted by Contractor not later than thirty-five (35) days following the date of the District’s award of the Contract to Contractor by action of the District’s Board of Trustees; any request for approval of proposed alternatives or substitutions submitted thereafter may be rejected summarily. The foregoing process and time limits shall apply to any proposed substitution or alternative regardless of whether the substitute or alternate item is to be provided, furnished or installed by Contractor, any Subcontractor, any Sub-Subcontractor, Material Supplier or Manufacturer.

3.8.3 Placement of Material and Equipment Orders. Contractor shall, after award of the Contract, promptly and timely place all orders for materials and/or equipment necessary for
completion of the Work so that delivery of the same shall be made without delay or interruption to the timely completion of the Work. Contractor shall require that any Subcontractor similarly place orders for all materials and/or equipment to be furnished by any such Subcontractor in a prompt and timely manner so that delivery of the same shall be made without delay or interruption to the timely completion of the Work. Upon request of the District, Project Manager or the Owner’s Representative, the Contractor shall furnish reasonably satisfactory written evidence of the placement of orders for materials and/or equipment necessary for completion of the Work, including without limitation, orders for materials and/or equipment to be provided, furnished or installed by any Subcontractor.

3.8.4 District’s Right to Place Orders for Materials and/or Equipment. Notwithstanding any other provision of the Contract Documents, if the Contractor shall, upon request of the District, Project Manager or the Owner’s Representative, fail or refuses, for any reason, to provide reasonably satisfactory written evidence of the placement of orders for materials and/or equipment necessary for completion of the Work, or should the District determine, in its sole and reasonable discretion, that any orders for materials and/or equipment have not been placed in a manner so that such materials and/or equipment will be delivered to the Site so the Work can be completed without delay or interruption, the District shall have the right, but not the obligation, to place such orders on behalf of the Contractor. If the District exercises the right to place orders for materials and/or equipment pursuant to the foregoing, the District’s conduct shall not be deemed to be an exercise, by the District, of any control over the means, methods, techniques, sequences or procedures for completion of the Work, all of which remain the responsibility and obligation of the Contractor. Notwithstanding the right of the District to place orders for materials and/or equipment pursuant to the foregoing, the election of the District to exercise, or not to exercise, such right shall not relieve the Contractor from any of Contractor’s obligations under the Contract Documents, including without limitation, completion of the Work within the Contract Time and for the Contract Price. If the District exercises the right hereunder to place orders for materials and/or equipment on behalf of Contractor pursuant to the foregoing, Contractor shall reimburse the District for all costs and fees incurred by the District in placing such orders; such costs and fees may be deducted by the District from the Contract Price then or thereafter due the Contractor.

3.8.5 Contractor and Subcontractor Communication. All written communications between the Contractor and any Subcontractor, Material Supplier or others directly or indirectly engaged by the Contractor to perform or provide any portion of the Work shall be available to the District, the Project Manager and the Owner’s Representative for review, inspection and reproduction as may be requested from time to time. The foregoing is a material obligation of the Contractor hereunder.

3.9 Safety

3.9.1 Safety Programs. The Contractor shall be solely responsible for initiating, maintaining and supervising all safety programs required by applicable law, ordinance, regulation or governmental orders in connection with the performance of the Contract, or otherwise required by the type or nature of the Work. The Contractor’s safety program shall include all actions and programs necessary for compliance with California or federally statutorily mandated workplace safety programs, including without limitation, compliance with the California Drug Free Workplace Act of 1990 (California Government Code §§8350 et seq.). Without limiting or relieving the Contractor from any of Contractor’s obligations under the Contract Documents, including without limitation, completion of the Work within the Contract Time and for the Contract Price. If the District exercises the right hereunder to place orders for materials and/or equipment on behalf of Contractor pursuant to the foregoing, Contractor shall reimburse the District for all costs and fees incurred by the District in placing such orders; such costs and fees may be deducted by the District from the Contract Price then or thereafter due to the Contractor.
acceptance thereof. Notwithstanding the District’s acceptance of the Contractor’s Safety Plan, the Contractor shall remain solely responsible for implementing the Safety Plan and implementing measures as necessary to maintain safety of persons and property at and about the Site. The District’s acceptance of the Contractor’s Safety Plan shall not limit, restrict or otherwise modify the Contractor’s obligations relating to safety at or about the Site in accordance with the Contract Documents and the Laws.

3.9.3 Safety Precautions. The Contractor shall be solely responsible for initiating and maintaining reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to: (i) employees on the Work and other persons who may be affected thereby; (ii) the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site, under care, custody or control of the Contractor or Subcontractors; and (iii) other property or items at the Site, or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement.

3.9.4 Safety Signs, Barricades. The Contractor shall erect and maintain, as required by existing conditions and conditions resulting from performance of the Contract, reasonable safeguards for safety and protection of property and persons, including, without limitation, posting danger signs and other warnings against hazards, barricades, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

3.9.5 Safety Notices. The Contractor shall give or post all safety notices required by the Laws and comply with the Laws bearing on safety of persons or property or their protection from damage, injury or loss.

3.9.6 Safety Coordinator. The Contractor shall designate a responsible member of the Contractor’s organization at the Site whose duty shall be the prevention of accidents and the implementation and maintenance safety precautions and programs. This person shall be the Contractor’s superintendent unless otherwise designated by the Contractor in writing to the Project Manager, District’s Inspector and the Owner’s Representative.

3.9.7 Emergencies. In an emergency affecting safety of persons or property, the Contractor shall act, to prevent threatened damage, injury or loss.

3.9.8 Hazardous Materials.

3.9.8.1 General. If the Contractor, any Subcontractor or anyone employed directly or indirectly by them shall use, at the Site, or incorporate into the Work, any material or substance deemed to be hazardous or toxic under any law, rule, ordinance, regulation or interpretation thereof (collectively “Hazardous Materials”), the Contractor shall comply with all Laws applicable thereto and shall exercise all necessary safety precautions relating to the use, storage or disposal thereof.

3.9.8.2 Prohibition on Use of Asbestos Construction Building Materials (“ACBMs”). Notwithstanding any provision of the Drawings or the Specifications to the contrary, it is the intent of the District that ACBMs not be used or incorporated into any portion of the Work. In the event that any portion of the Work depicted in the Drawings or the Specifications shall require materials or products which the Contractor knows, or should have known with reasonably diligent investigation, to contain ACBMs, Contractor shall promptly notify the Project Manager and the District’s Inspector of the same so that an appropriate alternative can be made in a timely manner so as not to delay the progress of the Work. Contractor warrants to the District that there are no materials or products used or incorporated into the Work which contain ACBMs. Whether before or after completion of the Work, if it is discovered that any product or material forming a part of the Work or incorporated into the Work contains ACBMs, the Contractor shall at its sole cost and expense remove such product or material in accordance with any laws, rules, procedures and regulations applicable to the handling, removal and disposal of ACBMs and to replace such product or material with non-ACBM products or materials and to return the affected portion(s) of the Work to the finish condition depicted in the Drawings.
and Specifications relating to such portion(s) of the Work. Contractor’s obligations under the preceding sentence shall survive the termination of the Contract, the warranty period provided under the Contract Documents, the Contractor’s completion of the Work or the District’s acceptance of the Work. If the Contractor fails or refuses, for any reason, to commence the removal and replacement of any material or product containing ACBMs forming a part of, or incorporated into the Work, within ten (10) days of the date of the District’s written notice to the Contractor of the existence of ACBM materials or products in the Work, the District may thereafter proceed to cause the removal and replacement of such materials or products in any manner which the District determines to be reasonably necessary and appropriate; all costs, expenses and fees, including without limitation fees and costs of consultants and attorneys, incurred by the District in connection with such removal and replacement shall be the responsibility of the Contractor and the Surety.

3.9.8.3 Disposal of Hazardous Materials. Contractor shall be solely and exclusively responsible for the disposal of any Hazardous Materials on or about the Site. The Contractor’s obligations hereunder shall include without limitation, the transportation and disposal of any Hazardous Materials in strict conformity with the Laws.

3.10 Maintenance of Documents

3.10.1 Documents at Site. The Contractor shall maintain at the Site: (i) one record copy of the Drawings, Specifications and all addenda thereto; (ii) Change Orders approved by the District and all other modifications to the Contract Documents; (iii) Submittals reviewed by the Owner's Representative; (iv) Record Drawings; (v) Material Safety Data Sheets ("MSDS") accompanying any materials, equipment or products delivered or stored at the Site or incorporated into the Work; and (vi) all building and other codes or regulations applicable to the Work, including without limitation, Title 24, Part 2 of the California Code of Regulations. During performance of the Work, all documents maintained by Contractor at the Site shall be available to the District, the Project Manager, the Owner’s Representative, the District’s Inspector and DSA for review, inspection or reproduction. Upon completion of the Work, all documents maintained at the Site by the Contractor pursuant to the foregoing shall be assembled and transmitted to the Owner’s Representative for delivery to the District.

3.10.2 Maintenance of Record Drawings. During its performance of the Work, the Contractor shall maintain Record Drawings consisting of a set of the Drawings which are marked to indicate all field changes made to adapt the Work depicted in the Drawings to field conditions, changes resulting from Change Orders and all concealed or buried installations, including without limitation, piping, conduit and utility services. All buried or concealed items of Work shall be completely and accurately marked and located on the Record Drawings. The Record Drawings shall be clean and all changes, corrections and dimensions shall be marked in a neat and legible manner in a contrasting color. Record Drawings relating to the Structural, Mechanical, Electrical and Plumbing portions of the Work shall indicate without limitation, circuiting, wiring sizes, equipment/member sizing and shall depict the entirety of the as built conditions of such portions of the Work. The Record Drawings shall be continuously maintained by the Contractor during the performance of the Work. At any time during the Contractor’s performance of the Work, upon the request of the District, the District’s Inspector or the Owner’s Representative, the Contractor shall make the Record Drawings maintained here under available for the District’s review and inspection. The District’s review and inspection of the Record Drawings during the Contractor’s performance of the Work shall be only for the purpose of generally verifying that Contractor is continuously maintaining the Record Drawings in a complete and accurate manner; any such inspection or review shall not be deemed to be the District’s approval or verification of the completeness or accuracy thereof. The failure or refusal of the Contractor to continuously maintain complete and accurate Record Drawings or to make available the Record Drawings for inspection and review by the District may be deemed by the District to be
Contractor’s default of a material obligation hereunder. Without waiving, restricting or limiting any other right or remedy of the District for the Contractor’s failure or refusal to continuously maintain the Record Drawings, the District may, upon reasonably determining that the Contractor has not, or is not, continuously maintaining the Record Drawings in a complete and accurate manner, take appropriate action to cause the continuous maintenance of complete and accurate Record Drawings, in which event all fees and costs incurred or associated with such action shall be charged to the Contractor and the District may deduct the amount of such fees and costs from any portion of the Contract Price then or thereafter due the Contractor. In accordance with Article 8.4.2 of these General Conditions, prior to receipt of the Final Payment, Contractor shall deliver the Record Drawings to the Owner’s Representative.

3.11 Use of Site. The Contractor shall confine operations at the Site to areas permitted by the Laws, subject to any restrictions or limitations set forth in the Contract Documents. The Contractor shall not unreasonably encumber the Site or adjoining areas with materials or equipment. The Contractor shall be solely responsible for providing security at the Site with all such costs included in the Contract Price. The District shall at all times have access to the Site.

3.12 Clean-Up. The Contractor shall at all times keep the Site and all adjoining areas free from the accumulation of any waste material or rubbish caused or generated by performance of the Work. Without limiting the generality of the foregoing, Contractor shall maintain the Site in a “rake-clean” standard on a daily basis. If the Work includes painting and/or the installation of floor covering, before any painting operations or the installation of any flooring covering, the area and adjoining areas of the Site where paint is to be applied or floor covering is to be installed shall be in a “broom-clean” condition. Prior to completion of the Work, Contractor shall remove from the Site all rubbish, waste materials, excess excavated materials, tools, Construction Equipment, machinery, surplus materials and any other items which are not the property of the District under the Contract Documents. Upon completion of the Work, the Site and all adjoining areas shall be left by the Contractor in a neat and broom clean condition satisfactory to District. The District’s Inspector or Project Manager shall be authorized to direct the Contractor’s clean-up obligations hereunder. If the Contractor fails to clean up as provided for in the Contract Documents, the District may do so, and all costs incurred in connection therewith shall be charged to the Contractor; the District may deduct such costs from any portion of the Contract Price then or thereafter due the Contractor.

3.13 Access to the Work. The Contractor shall provide DSA, the District, the Project Manager, the District’s Inspector and the Owner’s Representative access to the Work, whether in place, preparation and progress and wherever located.

3.14 Facilities and Information for the District’s Inspector.
3.14.1 Information to District’s Inspector. The Contractor shall furnish the District’s Inspector access to the Work for obtaining such information as may be necessary to keep the District’s Inspector fully informed respecting the progress, quality and character of the Work and materials, equipment or other items incorporated therein.
3.14.2 Facilities for District’s Inspector. Facilities, services or other items to be provided by the Contractor for use by the District’s Inspector, if any, shall be as set forth in the Special Conditions. If any such facilities, services or other items are designated in the Special Conditions and the Contractor fails or refuses to provide the same, the District may furnish such facilities, services or other items, with the costs, fees or expenses incurred to furnish the same being deducted from the Contract Price.

3.15 Patents and Royalties. The Contractor and the Surety shall defend, indemnify and hold harmless the District and its agents, employees and officers from any claim, demand or legal proceeding arising out of or pertaining, in any manner, to any actual or claimed infringement of patent rights in connection with performance of the Work.

3.16 Cutting and Patching. The Contractor is responsible for cutting, fitting or patching required to
complete the Work or to make the component parts thereof fit together properly. The Contractor shall not damage or endanger any portion of the Work, or the fully or partially completed construction of the District or separate contractors by cutting, patching, excavation or other alteration. The Contractor shall not cut, patch or otherwise alter the construction by the District or separate contractor without the prior written consent of the District or separate contractor thereto, which consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold consent to the request of the District or separate contractor to cut, patch or otherwise alter the Work.

3.17 **Encountering of Hazardous Materials.** If the Contractor encounters Hazardous Materials at the Site which have not been rendered harmless or for which there is no provision in the Contract Documents for containment, removal, abatement or handling of such Hazardous Materials, the Contractor shall immediately stop the Work in the affected area, but shall diligently proceed with the Work in all other unaffected areas. Upon encountering such Hazardous Materials, the Contractor shall immediately notify the District’s Inspector and the Project Manager, in writing, of such condition. The Contractor shall proceed with the Work in such affected area only after such Hazardous Materials have been rendered harmless, contained, removed or abated. If such Hazardous Materials are encountered, the Contractor shall be entitled to an adjustment of the Contract Time to the extent that the Work is stopped and Substantial Completion of the Work is affected thereby. In no event shall there be an adjustment to the Contract Price solely on account of the Contractor encountering such Hazardous Materials.

3.18 **Wage Rates; Employment of Labor.**

3.18.1 **Determination of Prevailing Rates.** Pursuant to the provisions of Division 2, Part 7, Chapter 1, Article 2 of the California Labor Code at §§1770 et seq., the District has obtained from the Director of the Department of Industrial Relations the general prevailing rate of per diem wages and the prevailing rate for holiday and overtime work in the locality in which the Work is to be performed. Holidays shall be as defined in the collective bargaining agreement applicable to each particular craft, classification or type of worker employed under the Contract. Per diem wages include employer payments for health and welfare, pensions, vacation, travel time and subsistence pay as provided in California Labor Code §1773.8, apprenticeship or other training programs authorized by California Labor Code §3093, and similar purposes when the term “per diem wages” is used herein. Holiday and overtime work, when permitted by law, shall be paid for at the rate of at least one and one-half (1½) times the above specified rate of per diem wages, unless otherwise specified. The Contractor shall post, at appropriate and conspicuous locations on the Site, a schedule showing all determined general prevailing wage rates.

3.18.2 **Payment of Prevailing Rates.** There shall be paid each worker of the engaged in the Work, not less than the general prevailing wage rate for the classification of Work performed, regardless of any contractual relationship which may be alleged to exist between the Contractor or any Subcontractor and such worker.

3.18.3 **Prevailing Rate Penalty.** The Contractor shall, as a penalty, forfeit not more than Two Hundred Dollars ($200.00) to the District for each calendar day or portion thereof, for each worker paid less than the prevailing rates for such work or craft in which such worker is employed for the Work by the Contractor or by any Subcontractor, of any tier, in connection with the Work. The amount of the penalty for failure to pay applicable prevailing wage rates shall be determined and assessed in accordance with the standards established pursuant to Labor Code §1775(a)(2). The amount of the penalty shall be determined based on consideration of both of the following: (i) whether the failure of the Contractor or Subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the Contractor or Subcontractor; and (ii) whether the Contractor or Subcontractor has a prior record of failing to meet its prevailing wage obligations. The penalty may not be less than forty dollars ($40) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, unless the failure of the Contractor or Subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the
error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor. The penalty may not be less than eighty dollars ($80) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the Contractor or Subcontractor has been assessed penalties within the previous three years for failing to meet its prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned. The penalty may not be less than one hundred twenty dollars ($120) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the Labor Commissioner determines that the violation was willful, as defined in subdivision (c) of Section 1777.1. When the penalty amount due hereunder is collected from the Contractor or Subcontractor, any outstanding wage claim under Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 against that Contractor or Subcontractor shall be satisfied before applying that amount to the penalty imposed on that Contractor or Subcontractor hereunder. The difference between prevailing wage rates and the amount paid to each worker each calendar day, or portion thereof, for which each worker paid less than the prevailing wage rate, shall be paid to each worker by the Contractor.

3.18.4 Certified Payroll Records.

3.18.4.1 Maintenance of Certified Payroll Records. Pursuant to California Labor Code §1776, the Contractor and each Subcontractor, of any tier, shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each person employed for the Work.

3.18.4.2 Submittal of Certified Payroll Records to Labor Commissioner. The Contractor and each Subcontractor shall submit their respective Certified Payroll Records to the Labor Commissioner on forms, in the manner and within the times prescribed by the Labor Commissioner.

3.18.4.3 Inspection of Certified Payroll Records. The Certified Payroll Records of the Contractor and Subcontractors shall be available for inspection at all reasonable hours at the principal office of the Contractor on the following basis: (i) a certified copy of an employee’s payroll record shall be made available for inspection or furnished to such employee or his/her authorized representative on request; (ii) a certified copy of all payroll records shall be made available for inspection or furnished upon request to the District, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations; (iii) a certified copy of payroll records shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the District, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested Certified Payroll Records have not been provided, the requesting party shall, prior to being provided the records, reimburse the cost of preparation by the Contractor, Subcontractors and the entity through which the request was made; the public shall not be given access to such records at the principal office of the Contractor; (iv) the Contractor shall file a certified copy of the Certified Payroll Records with the entity that requested such records within ten (10) days after receipt of a written request; (v) any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the District, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual’s name, address and social security number. The name and address of the Contractor or any Subcontractor, of any tier, performing a part of the Work shall not be marked or obliterated. The Contractor shall inform the District of the location of Certified Payroll Records, including the street address, city and county and shall, within five (5) working days, provide a notice of a change or location and address. In the event of noncompliance with the requirements of this Article 4.18.4, the Contractor shall have ten
(10) days in which to comply, subsequent to receipt of written notice specifying in what respects the Contractor must comply herewith. Should noncompliance still be evident after such 10-day period, the Contractor shall, as a penalty to the District, forfeit One Hundred Dollars ($100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from any portion of the Contract Price then or thereafter due the Contractor. The Contractor is solely responsible for compliance with the foregoing provisions.

3.18.5 Hours of Work.

3.18.5.1 Limits on Hours of Work. Pursuant to California Labor Code §1810, eight (8) hours of labor shall constitute a legal day’s work. Pursuant to California Labor Code §1811, the time of service of any worker employed at any time by the Contractor or by a Subcontractor, of any tier, upon the Work or upon any part of the Work, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as hereafter provided. Notwithstanding the foregoing provisions, Work performed by employees of Contractor or any Subcontractor, of any tier, in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (12) times the basic rate of pay.

3.18.5.2 Penalty for Excess Hours. The Contractor shall pay to the District a penalty of Twenty-five Dollars ($25.00) for each worker employed on the Work by the Contractor or any Subcontractor, of any tier, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week, in violation of the provisions of the California Labor Code, unless compensation to the worker so employed by the Contractor is not less than one and one-half (12) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

3.18.5.3 Contractor Responsibility. Any Work performed by workers necessary to be performed after regular working hours or on Sundays or other holidays shall be performed without adjustment to the Contract Price or any other additional expense to the District.

3.18.6 Apprentices.

3.18.6.1 Employment of Apprentices. Any apprentices employed to perform any of the Work shall be paid the standard wage paid to apprentices under the regulations of the craft or trade for which such apprentice is employed, and such individual shall be employed only for the work of the craft or trade to which such individual is registered. Only apprentices, as defined in California Labor Code §3077 who are in training under apprenticeship standards and written apprenticeship agreements under California Labor Code §§3070 et seq. are eligible to be employed for the Work. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which such apprentice is training.

3.18.6.2 Apprenticeship Certificate. When the Contractor or any Subcontractor, of any tier, in performing any of the Work employs workers in any Apprenticeable Craft or Trade, the Contractor and such Subcontractor shall apply to the Joint Apprenticeship Committee administering the apprenticeship standards of the craft or trade in the area of the site of the Work for a certificate approving the Contractor or such Subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected, provided, however, that the approval as established by the Joint Apprenticeship Committee or Committees shall be subject to the approval of the Administrator of Apprenticeship. The Joint Apprenticeship Committee or Committees, subsequent to approving the Contractor or Subcontractor, shall arrange for the dispatch
of apprentices to the Contractor or such Subcontractor in order to comply with California Labor Code §1777.5. The Contractor and Subcontractors shall submit contract award information to the applicable Joint Apprenticeship Committee which shall include an estimate of journeyman hours to be performed under the Contract, the number of apprentices to be employed, and the approximate dates the apprentices will be employed. There shall be an affirmative duty upon the Joint Apprenticeship Committee or Committees, administering the apprenticeship standards of the crafts or trades in the area of the site of the Work, to ensure equal employment and affirmative action and apprenticeship for women and minorities. Contractors or Subcontractors shall not be required to submit individual applications for approval to local Joint Apprenticeship Committees provided they are already covered by the local apprenticeship standards.  

3.18.6.3 Ratio of Apprentices to Journeymen. The ratio of Work performed by apprentices to journeymen, who shall be employed in the Work, may be the ratio stipulated in the apprenticeship standards under which the Joint Apprenticeship Committee operates, but in no case shall the ratio be less than one hour of apprentice work for each five hours of labor performed by a journeyman, except as otherwise provided in California Labor Code §1777.5. The minimum ratio for the land surveyor classification shall not be less than one apprentice for each five journeymen. Any ratio shall apply during any day or portion of a day when any journeyman, or the higher standard stipulated by the Joint Apprenticeship Committee, is employed at the site of the Work and shall be computed on the basis of the hours worked during the day by journeymen so employed, except for the land surveyor classification. The Contractor shall employ apprentices for the number of hours computed as above before the completion of the Work. The Contractor shall, however, endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the site of the Work. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Division of Apprenticeship Standards, upon application of a Joint Apprenticeship Committee, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification. The Contractor or any Subcontractor covered by this Article and California Labor Code §1777.5, upon the issuance of the approval certificate, or if it has been previously approved in such craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the apprenticeship standards. Upon proper showing by the Contractor that it employs apprentices in such craft or trade in the State of California on all of its contracts on an annual average of not less than one apprentice to each five journeymen, the Division of Apprenticeship Standards may grant a certificate exempting the Contractor from the 1-to-5 ratio as set forth in this Article and California Labor Code §1777.5. This Article shall not apply to contracts of general contractors, or to contracts of specialty contractors not bidding for work through a general or prime contractor, involving less than Thirty Thousand Dollars ($30,000.00) or twenty (20) working days. The term “Apprenticeable Craft or Trade,” as used herein shall mean a craft or trade determined as an Apprenticeable occupation in accordance with rules and regulations prescribed by the Apprenticeship Council.  

3.18.6.4 Exemption From Ratios. The Joint Apprenticeship Committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the Contractor from the 1-to-5 ratio set forth in this Article when it finds that any one of the following conditions are met: (i) unemployment for the previous three-month period in such area exceeds an average of fifteen percent (15%) or; (ii) the number of apprentices in training in such area exceeds a ratio of 1-to-5 in relation to journeymen, or; (iii) the Apprenticeable Craft or Trade is replacing at least one-thirtieth (1/30) of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis, or; (iv) if assignment of an
apprentice to any Work performed under the Contract Documents would create a condition which would jeopardize such apprentice’s life or the life, safety or property of fellow employees or the public at large, or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyman. When such exemptions from the 1-to-5 ratio between apprentices and journeymen are granted to an organization which represents contractors in a specific trade on a local or statewide basis, the member contractors will not be required to submit individual applications for approval to local Joint Apprenticeship Committees, provided they are already covered by the local apprenticeship standards.

3.18.6.5 Contributions to Trust Funds. The Contractor or any Subcontractor, of any tier, who, performs any of the Work by employment of journeymen or apprentices in any Apprenticeable Craft or Trade and who is not contributing to a fund or funds to administer and conduct the apprenticeship program in any such craft or trade in the area of the site of the Work, to which fund or funds other contractors in the area of the site of the Work are contributing, shall contribute to the fund or funds in each craft or trade in which it employs journeymen or apprentices in the same amount or upon the same basis and in the same manner as the other contractors do, but where the trust fund administrators are unable to accept such funds, contractors not signatory to the trust agreement shall pay a like amount to the California Apprenticeship Council. The Division of Labor Standards Enforcement is authorized to enforce the payment of such contributions to such fund(s) as set forth in California Labor Code §227. Such contributions shall not result in an increase in the Contract Price.

3.18.6.6 Contractor’s Compliance. The responsibility of compliance with this Article for all Apprenticeable Trades or Crafts is solely and exclusively that of the Contractor. All decisions of the Joint Apprenticeship Committee(s) under this Article are subject to the provisions of California Labor Code §3081. In the event the Contractor willfully fails to comply with the provisions of this Article and California Labor Code §1777.5, pursuant to California Labor Code §1777.7, the Contractor shall: (i) be denied the right to bid on any public works contract for a period of one (1) year from the date the determination of non-compliance is made by the Administrator of Apprenticeship; and (ii) forfeit, as a civil penalty, Fifty Dollars ($50.00) for each calendar day of noncompliance. Notwithstanding the provisions of California Labor Code §1727, upon receipt of such determination, the District shall withhold such amount from the Contract Price then due or to become due. Any such determination shall be issued after a full investigation, a fair and impartial hearing, and reasonable notice thereof in accordance with reasonable rules and procedures prescribed by the California Apprenticeship Council. Any funds withheld by the District pursuant to this Article shall be deposited in the General Fund or other similar fund of the District. The interpretation and enforcement of California Labor Code §§1777.5 and 1777.7 shall be in accordance with the rules and procedures of the California Apprenticeship Council.

3.18.7 Employment of Independent Contractors. Pursuant to California Labor Code §1021.5, Contractor shall not willingly and knowingly enter into any agreement with any person, as an independent contractor, to provide any services in connection with the Work where the services provided or to be provided requires that such person hold a valid contractors’ license issued pursuant to California Business and Professions Code §§7000 et seq. and such person does not meet the burden of proof of his/her independent contractor status pursuant to California Labor Code §2750.5. In the event that Contractor shall employ any person in violation of the foregoing, Contractor shall be subject to the civil penalties under California Labor Code §1021.5 and any other penalty provided by law. In addition to the penalties provided under California Labor Code §1021.5, Contractor’s violation of this Article 4.18.7 or the provisions of California Labor Code §1021.5 shall be deemed an event of Contractor’s default under Article 15.1 of these General Conditions. The Contractor shall require Subcontractors performing or providing
3.19 **Assignment of Antitrust Claims.** Pursuant to California Government Code §4551, the Contractor and its Subcontractor(s), of any tier, hereby offers and agrees to assign to the District all rights, title and interest in and to all causes of action they may have under Section 4 of the Clayton Act, (15 U.S.C. §15) or under the Cartwright Act (California Business and Professions Code §§16700 et seq.), arising from purchases of goods, services or materials hereunder or any Subcontract. This assignment shall be made and become effective at the time the District tenders Final Payment to the Contractor, without further acknowledgment by the parties. If the District receives, either through judgment or settlement, a monetary recovery in connection with a cause of action assigned under California Government Code §§4550 et seq., the assignor thereof shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the District any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the District as part of the Contract Price, less the expenses incurred by the District in obtaining that portion of the recovery. Upon demand in writing by the assignor, the District shall, within one year from such demand, reassign the cause of action assigned pursuant to this Article if the assignor has been or may have been injured by the violation of law for which the cause of action arose: and (i) the District has not been injured thereby; or (ii) the District declines to file a court action for the cause of action.

3.20 **Limitations Upon Site Activities.** Except in the circumstances of an emergency, no construction activities shall be permitted at or about the Site except during the District's hours and days set forth in the Special Conditions. Work performed outside of the hours and days noted in the Special Conditions will not result in adjustment of the Contract Time or the Contract Price; unless Work outside of the hours and days noted in the Special Conditions is expressly authorized by the District.

3.21 **Progress Reports; DSA Verified Reports.**

3.21.1 **DSA Verified Reports: Contractor Actions.** A material obligation of the Contractor is the completion by the Contractor of all actions and activities which by the Contract Documents or by the Laws are the responsibility of the Contractor relating to DSA reporting requirements pursuant to Education Code §81141 (including amendments thereto) and issuance of DSA's Certificate of Compliance for the Project pursuant to Education Code §81147 (including amendments thereto) upon completion of the Work. The foregoing shall include without limitation, the timely preparation, completion and filing of Verified Reports during Project construction and the filing of the Final Verified Report with DSA within ten (10) days of the determination of Final Completion. Concurrently with submittal to DSA, the Contractor shall provide the District, District's Inspector, Owner’s Representative and Construction Manager with copies of all Verified Reports completed by the Contractor and submitted to DSA.

3.21.2 **District Withholdings From Final Payment.** The completion and filing of the Final Verified Report with DSA by the Contractor is an express condition precedent to the District's disbursement of the Final Payment. If the Contractor fails to prepare and file the Final Verified Report with DSA within ten (10) days of the determination of Final Completion, the District may in the sole and exclusive discretion of the District retain and withhold an amount not to exceed ten percent (10%) of the Final Payment from disbursement to the Contractor as damages for the failure of the Contractor to have timely and completely discharged its obligations hereunder. The Contractor acknowledges and agrees that the foregoing withholdings by the District is a reasonable estimate of the damages and other losses the District will sustain due to the failure of the Contractor to have timely and fully discharged its obligations hereunder.

3.21.3 **Progress Reports.** Progress Reports shall be completed by the Contractor for each day of construction activities at the Site and submitted to the District or Project Manager not later than 9:00 A.M. of the ensuing business day.

**ARTICLE 4: SUBCONTRACTORS**

4.1 **Subcontracts.** Any Work performed for the Contractor by a Subcontractor shall be pursuant to any portion of the Work to adhere to and comply with the foregoing provisions.
a written agreement between the Contractor and such Subcontractor which specifically incorporates by reference the Contract Documents and which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents, including without limitation, the policies of insurance required under Article 6 of these General Conditions and obligates the Subcontractor to assume toward the Contractor all the obligations and responsibilities of the Contractor which by the Contract Documents the Contractor assumes toward the District and the Owner’s Representative. The foregoing notwithstanding, no contractual relationship shall exist, or be deemed to exist, between any Subcontractor and the District, unless the Contract is terminated and District, in writing, elects to assume the Subcontract. Each Subcontract for a portion of the Work shall provide that such Subcontract may be assigned to the District if the Contract is terminated by the District pursuant to Article 15 hereof, subject to the prior rights of the Surety if the District terminates the Contract for the Contractor’s default. The Contractor shall provide to the District copies of all executed Subcontracts and Purchase Orders to which Contractor is a party within thirty (30) days after Contractor’s execution of the Agreement. During performance of the Work, the Contractor shall, from time to time, and when requested by the District, the Owner’s Representative or the Project Manager provide the District with copies of any and all Subcontracts or Purchase Orders relating to the Work and all modifications thereto. The Contractor’s failure or refusal, for any reason, to provide copies of such Subcontracts or Purchase Orders in accordance with the two preceding sentences is Contractor’s default of a material term of the Contract Documents.

4.2 Subcontractor DIR Contractor Registration.

4.2.1 No Subcontractor Performance of Work Without DIR Registration. No portion of the Work is permitted to be performed by a Subcontractor unless the Subcontractor is a DIR Registered contractor. The foregoing DIR contractor registration requirement is applicable for all Subcontractors, including without limitation, lower tier Subcontractors and Subcontractors who are not identified in the Contractor’s Subcontractors List.

4.2.2 Contractor Obligation to Verify Subcontractor DIR Registration Status. An affirmative and on-going obligation of the Contractor under the Contract Documents is the Contractor’s verification that all Subcontractors are at all times during performance of the Work in full and strict compliance with DIR contractor registration requirements. The Contractor shall not permit or allow any Subcontractor to perform any Work without the Contractor’s verification that the Subcontractor is in full and strict compliance with DIR contractor registration requirements.

4.2.3 Contractor Obligation to Request Substitution of Listed Subcontractor Who Is Not DIR Registered Contractor. If any Subcontractor identified in the Contractor’s Subcontractors List submitted with the Contractor’s proposal for the Work is not a DIR registered contractor at the time of opening of proposals for the Work or if a Subcontractor’s DIR contractor registration lapses prior to or during a Subcontractor’s performance of Work, the Contractor shall request the District’s consent to substitute the Subcontractor who is not a DIR registered contractor pursuant to Labor Code §1771.1(c)(3) and/or Labor Code §1771.1(d).

4.3 Substitution of Listed Subcontractor.

4.3.1 Substitution Process. Request of the Contractor to substitute a listed Subcontractor will be considered only if in strict conformity with this Article 5.2 and California Public Contract Code §4107. All costs incurred by the District, including without limitation, costs of the District’s Inspector, the Owner’s Representative, the Project Manager or attorneys’ fees in the review and evaluation of a request to substitute a listed Subcontractor shall be borne by the Contractor; such costs may be deducted by the District from the Contract Price then or thereafter due the Contractor.

4.3.2 Responsibilities of Contractor Upon Substitution of Subcontractor. The District’s consent to Contractor’s substitution of a listed Subcontractor shall not relieve Contractor from its obligation to complete the Work within the Contract Time and for the Contract Price. The substitution of a listed Subcontractor shall not, under any circumstance, result in, or give rise to any to any increase of the Contract Price or the Contract Time on account of such substitution.
If the District consents to substitution of a listed Subcontractor, the Project Manager shall determine the extent to which, if any, revised or additional Submittals will be required of the newly substituted Subcontractor (“Substituted Subcontractor”). If the Project Manager determines that revised or additional Submittals are required of a Substituted Subcontractor, the Project Manager shall promptly notify the Contractor, in writing, of such requirement. In such event, revised or additional Submittals shall be submitted to Project Manager not later than thirty (30) days following the date of the Project Manager’s written notice to the Contractor pursuant to the foregoing sentence; provided that if in the reasonable and good faith judgment of the Project Manager, the progress of the Work or completion of the Work requires submission of additional or revised Submittals by a Substituted Subcontractor in less than thirty (30) days, the Project Manager shall so state in its written notice to the Contractor. If the revised or additional Submittals are not submitted by Contractor within thirty (30) days, or such earlier time as determined by the Project Manager pursuant to the preceding sentence, following the Project Manager’s written notice of the requirement for revised or additional Submittals, Contractor shall be subject to the per diem assessments for late Submittals as set forth in Article 4.7.2.1 of these General Conditions. Any revised or additional Submittals required pursuant to this Article 5.3.2 shall conform to the requirements of Article 4.7 of these General Conditions. Contractor shall reimburse the District for all fees and costs, including without limitation fees of the Project Manager, the District’s administrative costs and DSA fees, incurred or associated with the processing, review and evaluation of any revised or additional Submittals required pursuant to this Article 5.3.2; the District may deduct such fees and costs from any portion of the Contract Price then or thereafter due the Contractor. In the event that additional or revised Submittals are required pursuant to this Article 5.3.2, such requirement shall not result in an increase to the Contract Time or the Contract Price.

4.4 Subcontractors’ Work. Whenever the Work of a Subcontractor is dependent upon the Work of the Contractor or another Subcontractor, the Contractor shall require the Subcontractor to: (i) coordinate its Work with the dependent Work; (ii) provide necessary dependent data and requirements; (iii) supply and/or install items to built into the dependent Work of others; (iv) make appropriate provisions for dependent Work of others; (v) carefully examine and understand the portions of the Contract Documents (including Drawings, Specifications and Field Clarifications) and Submittals relating to the dependent Work; and (vi) examine the existing dependent Work and verify that the dependent Work is in proper condition for the Subcontractor’s Work. If the dependent Work is not in a proper condition, the Subcontractor shall notify the Contractor in writing and not proceed with the Subcontractor’s Work until the dependent Work has been corrected or replaced and is in a proper condition for the Subcontractor’s Work.

ARTICLE 5: INSURANCE; INDEMNITY; BONDS

5.1 Workers’ Compensation Insurance; Employer’s Liability Insurance. The Contractor shall purchase and maintain Workers’ Compensation Insurance as will protect the Contractor from claims under workers’ or workmen’s compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Contractor shall purchase and maintain Employer’s Liability Insurance covering bodily injury (including death) by accident or disease to any employee which arises out of the employee’s employment by Contractor. The Employer’s Liability Insurance required of Contractor hereunder may be obtained by Contractor as a separate policy of insurance or as an additional coverage under the Workers’ Compensation Insurance required to be obtained and maintained by Contractor hereunder. The limits of liability for the Employer’s Liability Insurance required hereunder shall be as set forth in the Special Conditions.

5.2 Commercial General Liability. The Contractor shall purchase and maintain Commercial General Liability, including coverage for the types of claims set forth below which may arise out of or result from
Contractor’s performance of the Work: (i) claims for damages because of bodily injury, sickness or disease or death of any person other than the Contractor’s employees; (ii) claims for damages insured by usual personal injury liability coverage; (iii) claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; (iv) claims for damages because of bodily injury, death of a person or property damages arising out of ownership, maintenance or use of a motor vehicle; (v) contractual liability insurance applicable to the Contractor’s obligations under the Contract Documents; (vi) Completed Operations; and (vii) Contractor’s Pollution Liability.

5.3 Builder’s Risk “All-Risk” Insurance. The Contractor, during the progress of the Work and until Final Acceptance of all Work by the District, shall maintain Builder’s Risk “All-Risk” Completed Value Insurance Coverage on all insurable Work included under the Contract Documents which coverage is to provide extended coverage and insurance against vandalism and malicious mischief, perils of fire, sprinkler leakage, civil authority, sonic boom, collapse and flood upon the entire Work which is the subject of the Contract Documents, and including completed Work and Work in progress to the full insurable value thereof. Contractor’s Builders Risk Insurance shall include coverage and insurance against the perils of earthquake if so indicated in the Special Conditions. Such insurance shall include the District as an additional named insured, and any other person with an insurable interest designated by the District as an additional named insured. The risk of damage to the Work due to the perils covered by the Builder’s Risk “All Risk” Insurance, as well as any other hazard which might result in damage to the Work, is that of the Contractor and the Surety, and no claims for such loss or damage shall be recognized by the District, nor will such loss or damage excuse the complete and satisfactory performance of the Contract by the Contractor.

5.4 Insurance Requirements.
5.4.1 Coverage Limits. Minimum coverage limits for each policy of insurance required of the Contractor hereunder are set forth in the Special Conditions.
5.4.2 Deductibles. The Contractor is solely and exclusively responsible for the payment of deductibles, if any, under any policy of insurance required of the Contractor hereunder, without adjustment to the Contract Price on account thereof.
5.4.3 No Modification or Cancellation Without Prior Notice to District. Coverages afforded under policies of insurance required of the Contractor shall include provisions to the effect that coverage thereunder will not be canceled or allowed to expire until at least thirty (30) days prior written notice has been given to the District. Should any policy of insurance be canceled before Final Acceptance of the Work by the District and the Contractor fails to immediately procure replacement insurance as required, the District reserves the right to procure such insurance and to deduct the premium cost thereof and other costs incurred by the District in connection therewith from any sum then or thereafter due the Contractor under the Contract Documents.
5.4.4 District Additional Insured. The District shall be an additional insured under the Contractor’s Commercial Liability and Builders Risk policies of insurance. The additional Insured acknowledgement shall be submitted as a separate declaration from the Contractor’s insurance provider (ACCORD form modifications are not acceptable).
5.4.5 Certificates of Insurance. Prior to commencing the Work, Contractor shall deliver to the District Certificates of Insurance evidencing the insurance coverages required by the Contract Documents. Failure or refusal of the Contractor to so deliver Certificates of Insurance may be deemed by the District to be a default of a material obligation of the Contractor under the Contract Documents, and thereupon the District may proceed to exercise any right or remedy provided for under the Contract Documents or at law. The Contractor shall, from time to time, furnish the District, when requested, with satisfactory proof of coverage of each type of insurance required by the Contract Documents; failure of the Contractor to comply with the District’s request may be deemed by the District to be a default of a material obligation of the Contractor under the Contract Documents.
5.5 **Subcontractors’ Insurance.** Contractor shall require that every Subcontractor, to obtain and maintain the policies of insurance set forth in Articles 6.1, 6.2 and 6.4 of these General Conditions; the coverages and limits of liability of such policies of insurance to be obtained and maintained by Subcontractors shall be as set forth in the Special Conditions. The policies of insurance to be obtained and maintained by Subcontractors hereunder are in addition to, and not in lieu of, Contractor obtaining and maintaining such policies of insurance. Each of the policies of insurance obtained and maintained by a Subcontractor hereunder shall conform with the requirements of this Article 6. Upon request of the District, Contractor shall promptly deliver to the District Certificates of Insurance evidencing that the Subcontractors have obtained and maintained policies of insurance in conformity with the requirements of this Article 6. Failure or refusal of the Contractor to provide the District with Subcontractors’ Certificates of Insurance evidencing the insurance coverages required hereunder is a material default of Contractor hereunder.

5.6 **Maintenance of Insurance.** Any insurance bearing on the adequacy of performance of Work shall be maintained after the District’s Final Acceptance of all of the Work for the full one year correction of Work period and any longer specific guarantee or warranty periods set forth in the Contract Documents. Should such insurance be canceled before the end of any such periods and the Contractor fails to immediately procure replacement insurance as specified, the District reserves the right to procure such insurance and to charge the cost thereof to the Contractor. Nothing contained in these insurance requirements is to be construed as limiting the extent of the Contractor’s responsibility for payment of damages resulting from its operations or performance of the Work under the Contract Documents, including without limitation the Contractor’s obligation to pay Liquidated Damages. In no instance will the District’s exercise of its option to occupy and use completed portions of the Work relieve the Contractor of its obligation to maintain insurance required under this Article until the date of Final Acceptance of the Work by the District, or such time thereafter as required by the Contract Documents.

The insurer providing any insurance coverage required hereunder shall be to the reasonable satisfaction of the District.

5.7 **Contractor’s Insurance Primary.** All insurance and the coverages thereunder required to be obtained and maintained by Contractor hereunder, if overlapping with any policy of insurance maintained by the District, shall be deemed to be primary and non-contributing with any policy maintained by the District and any policy or coverage thereunder maintained by District shall be deemed excess insurance. To the extent that the District maintains a policy of insurance covering property damage arising out of the perils of fire or other casualty covered by the Contractor’s Builder’s Risk Insurance or the Comprehensive General Liability Insurance of the Contractor or any Subcontractor, the District, Contractor and all Subcontractors waive rights of subrogation against the others. The costs for obtaining and maintaining the insurance coverages required herein shall be included in the Contract Price.

5.8 **Indemnity.** Unless arising solely out of the active negligence, gross negligence or willful misconduct the District, the Contractor shall indemnify, defend and hold harmless the Indemnified Parties who are: (i) the District and its Board of Trustees, officers, employees, agents and representatives (including the District’s Inspector); (ii) the Owner’s Representative its respective agents and employees; and (iii) if one is designated by the District for the Work, the Project Manager and its agents and employees. The Contractor’s obligations hereunder includes indemnity, defense and hold harmless of the Indemnified Parties from and against any and all damages, losses, claims, demands or liabilities whether for damages, losses or other relief, including, without limitation attorneys’ fees and costs which arise, in whole or in part, from the Work, the Contract Documents or the negligent, grossly negligent or willful acts, omissions or other conduct of the Contractor, any Subcontractor or any person or entity engaged by them for the Work. The Contractor’s obligations under the foregoing include without limitation: (i) injuries to or death of persons; (ii) damage to property; or (iii) theft or loss of property; (iv) Stop Payment Notice claims asserted by any person or entity in connection with the Work; and (v) other losses, liabilities, damages or costs resulting from, in whole or part, any acts, omissions
or other conduct of Contractor, any of Contractor’s Subcontractors, of any tier, or any other person or entity employed directly or indirectly by Contractor in connection with the Work and their respective agents, officers or employees. If any action or proceeding, whether judicial, administrative, arbitration or otherwise, shall be commenced on account of any claim, demand or liability subject to Contractor’s obligations hereunder, and such action or proceeding names any of the Indemnified Parties as a party thereto, the Contractor shall, at its sole cost and expense, defend the named Indemnified Parties in such action or proceeding with counsel reasonably satisfactory to the named Indemnified Parties. In the event that there shall be any judgment, award, ruling, settlement, or other relief arising out of any such action or proceeding to which any of the Indemnified Parties are bound by, Contractor shall pay, satisfy or otherwise discharge any such judgment, award, ruling, settlement or relief; Contractor shall indemnify and hold harmless the Indemnified Parties from any and all liability or responsibility arising out of any such judgment, award, ruling, settlement or relief. The Contractor’s obligations hereunder are binding upon Contractor’s Performance Bond Surety and these obligations shall survive notwithstanding Contractor’s completion of the Work or the termination of the Contract.

5.9 Payment Bond; Performance Bond. Prior to commencement of the Work, the Contractor shall furnish a Performance Bond as security for Contractor’s faithful performance of the Contract and a Labor and Material Payment Bond as security for payment of persons or entities performing work, labor or furnishing materials in connection with Contractor’s performance of the Work under the Contract Documents. Unless otherwise stated in the Special Conditions, the amounts of the Performance Bond and the Payment Bond required hereunder shall be one hundred percent (100%) of the Contract Price. Said Labor and Material Payment Bond and Performance Bond shall be in the form and content set forth in the Contract Documents. The failure or refusal of the Contractor to furnish either the Performance Bond or the Labor and Material Payment Bond in strict conformity with this Article 6.9 may be deemed by the District as a default by the Contractor of a material obligation hereunder. The Surety on any bond required under the Contract Documents shall be an Admitted Surety Insurer as that term is defined in California Code of Civil Procedure §995.120.

ARTICLE 6: CONTRACT TIME

6.1 Substantial Completion of the Work Within Contract Time. Unless otherwise expressly provided in the Contract Documents, the Contract Time is the period of time, including authorized adjustments thereto, allotted in the Contract Documents for achieving Substantial Completion of the Work. The date for commencement of the Work is the date established by the Notice to Proceed issued by the District pursuant to the Agreement, which shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible. The date of Substantial Completion is the date certified by the Project Manager and the District’s Inspector as such in accordance with the Contract Documents.

6.2 Progress and Completion of the Work.
6.2.1 Time of Essence. Time limits stated in the Contract Documents are of the essence. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing and achieving Substantial Completion of the Work. The Contractor shall employ and supply a sufficient force of workers, material and equipment, and prosecute the Work with diligence so as to maintain progress, to prevent Work stoppage and to achieve Substantial Completion of the Work within the Contract Time.

6.2.2 Substantial Completion. Substantial Completion is that stage in the progress of the Work when the Work or any designated portion thereof (whether described as milestones, phases, segments or other similar terms) is complete in accordance with the Contract Documents so the District can occupy or use the Work or designated portion thereof for its intended purpose. Substantial Completion shall be determined by the Project Manager, if any, and the District’s Inspector upon request by the Contractor in accordance with the Contract Documents. The good faith and reasonable determination of Substantial Completion by the District’s Inspector, Project Manager, if any shall be controlling and final.
6.2.3 Correction or Completion of the Work After Substantial Completion.
6.2.3.1 Punchlist. Upon achieving Substantial Completion of the Work, the District, the District’s Inspector, the Project Manager, if any, the Owner’s Representative and the Contractor shall jointly inspect the Work and prepare a comprehensive list of items of the Work to be corrected or completed by the Contractor (“the Punchlist”). The exclusion of, or failure to include, any item on the Punchlist shall not alter or limit the obligation of the Contractor to complete or correct any portion of the Work in accordance with the Contract Documents.

6.2.3.2 Time for Completing Punchlist Items. In addition to establishing the Punchlist items pursuant to Article 7.2.3.1, the Project Manager, if any, Contractor and Owner’s Representative shall, after the joint inspection, establish a reasonable time for Contractor’s completion of all Punchlist items. If mutual agreement is not reached to establish the time for the Contractor’s completion of Punchlist items, the Owner’s Representative shall determine such time, and in such event, the time determined by the Owner’s Representative shall be final and binding upon the District and Contractor so long as the Owner’s Representative’s determination is made in good faith. The Contractor shall promptly and diligently proceed to complete all Punchlist items within the time established. If the Contractor fails or refuses, for any reason, to complete all Punchlist items within the time established, Contractor shall be subject to assessment of Liquidated Damages in accordance with Article 7.4 hereof. The foregoing notwithstanding, if the Contractor fails or refuses to complete all Punchlist items, the District may in its sole and exclusive discretion and without further notice to Contractor, elect to cause the completion of all remaining Punchlist items provided, however that such election by the District is in addition to and not in lieu of any other right or remedy of the District under the Contract Documents or at law. If the District elects to complete Punchlist items of the Work, pursuant to the foregoing, Contractor shall be responsible for all costs incurred by the District in connection herewith and the District may deduct such costs from the Contract Price then or thereafter due the Contractor, if these costs exceed the remaining Contract Price due to the Contractor, the Contractor and the Performance Bond Surety are jointly and severally liable to District for any such excess costs.

6.2.4 Final Completion. Final Completion is that stage of the Work when all Work has been completed in accordance with the Contract Documents, including without limitation, all Punchlist items noted upon Substantial Completion, and the Contract has been otherwise fully performed by the Contractor. Final Completion shall be determined by the Owner’s Representative, Project Manager, if any and the District’s Inspector upon request of the Contractor. The good faith and reasonable determination of Final Completion by the District’s Inspector, Project Manager, if any, and the Owner’s Representative shall be controlling and final.

6.2.5 Contractor Responsibility for Multiple Inspections. If the Contractor requests determination of Substantial Completion or Final Completion by the District’s Inspector, Project Manager, if any, and the Owner’s Representative and it is determined by the District’s Inspector, Project Manager, if any, or the Owner’s Representative that the Work does not then justify certification of Substantial Completion or Final Completion and re-inspection is required at a subsequent time to make such determination, the Contractor shall be responsible for all costs of such re-inspection, including without limitation, the fees of the Owner’s Representative, Project Manager, if any, and the District’s Inspector. The District may deduct such costs from the Contract Price then due or thereafter due to the Contractor.

6.2.6 Final Acceptance. Final Acceptance of the Work shall occur upon approval of the Work by the District’s Board of Trustees; such approval shall be submitted for adoption at the next regularly scheduled meeting of the District’s Board of Trustees after the determination of Final Completion. The commencement of any warranty or guarantee period under the Contract Documents is the date upon which the District’s Board of Trustees approves of the Final
Acceptance of the Work.

6.3 Construction Schedule.

6.3.1 Submittal of Preliminary Construction Schedule. Within five (5) days following execution of the Agreement, the Contractor shall prepare and submit to the District, the Project Manager, if any, and the Owner’s Representative a Preliminary Construction Schedule indicating, in graphic form, the estimated rate of progress and sequence of all Work required under the Contract Documents. The purpose of the Preliminary Construction Schedule is to assure adequate planning and execution of the Work so that it is completed within the Contract Time and to permit evaluation of the progress of the Work. Unless otherwise provided in the Special Conditions, the Construction Schedules required under this Article 7 shall: (i) be prepared with a commercially available computer software program in a critical path format; (ii) indicate the date(s) for commencement and completion of various portions of the Work including without limitation, procurement, fabrication and delivery of major items, materials or equipment; (iii) indicate manpower and other resources required for completion of each Construction Schedule activity; (iv) indicate costs for completion of each Construction Schedule activity; (v) identify each Submittal required by the Contract Documents, the date for the Contractor’s submission of each Submittal and the date for the return of the reviewed Submittal to the Contractor. The Contractor may submit a Preliminary Construction Schedule depicting completion of the Work in a duration shorter than the Contract Time; provided that such Preliminary Construction Schedule shall not be a basis for adjustment to the Contract Price in the event that completion of the Work shall occur after the time depicted therein, nor shall such Preliminary Construction Schedule be the basis for any extension of the Contract Time, the Contractor’s entitlement to any extension of the Contract Time shall be based upon the Contract Time and not on any shorter duration which may be depicted in the Contractor’s Preliminary Construction Schedule. If the Construction Schedules required under this Article 7.3 incorporate therein any “float” time, such float shall be deemed to jointly belong to and owned by the District and the Contractor. As used herein, “float time” shall be deemed to refer to the time between earliest finish date and the latest finish date of each activity shown on the Construction Schedule.

6.3.2 Review of Preliminary Construction Schedule. The District, the Project Manager, if any, and the Owner’s Representative shall review the Preliminary Construction Schedule submitted by the Contractor pursuant to Article 7.3.1 above for conformity with the requirements of the Contract Documents. Within fifteen (15) days of the date of receipt of the Preliminary Construction Schedule, the Preliminary Construction Schedule will be returned to the Contractor with comments to the form or content thereof. Review of the Preliminary Construction Schedule and any comments thereto by the District, the Project Manager and/or the Owner’s Representative shall not be deemed to be the assumption of construction means, methods or sequences by the District, the Project Manager or the Owner’s Representative, all of which remain the Contractor’s obligations under the Contract Documents.

6.3.3 Preparation and Submittal of Contract Construction Schedule. Within ten (10) days of the District’s return of the Preliminary Construction Schedule to the Contractor pursuant to Article 7.3.2 above, the Contractor shall prepare and submit to the Owner’s Representative and the Project Manager, if any, the Construction Schedule which incorporates therein the comments to the Preliminary Construction Schedule. Upon the Contractor’s submittal of such Construction Schedule, the District, the Project Manager and the Owner’s Representative shall review the same for purposes of determining conformity with the requirements of the Contract Documents. Within fifteen (15) days of the receipt of the Construction Schedule, the District will approve such Construction Schedule or will return the same to the Contractor with comments to the form or content. In the event there are comments to the form or content thereof, the Contractor, shall within seven (7) days of receipt of such comments, revise and resubmit the Construction Schedule incorporating therein such comments. Upon the District’s approval of the form and content of a Construction Schedule, the same shall be deemed the “Approved
Construction Schedule.” The District’s approval of a Construction Schedule shall be for the sole and limited purpose of determining conformity with the requirements of the Contract Documents. By the Approved Construction Schedule, the District shall not be deemed to have exercised control over, or approval of, construction means, methods or sequences, all of which remain the responsibility and obligation of the Contractor in accordance with the terms of the Contract Documents. Further, the Approved Construction Schedule shall not operate to limit or restrict any of Contractor’s obligations under the Contract Documents nor relieve the Contractor from the full, faithful and timely performance of such obligations in accordance with the terms of the Contract Documents. The activities, commencement and completion dates of activities, and the sequencing of activities depicted on the Approved Construction Schedule shall not be modified or revised by the Contractor without the prior consent, or direction, of the District and the Owner’s Representative. Updates to the Approved Construction Schedule pursuant to Article 7.3.5 below shall not be deemed revisions to the Approved Construction Schedule. If the Approved Construction Schedule depicts completion of the Work in a duration shorter than the Contract Time, the same shall not be a basis for an adjustment of the Contract Time or the Contract Price in the event that actual completion of the Work shall occur after such the time depicted in such Approved Construction Schedule. In such event, the Contract Price shall not be subject to adjustment on account of any additional costs incurred by the Contractor to complete the Work prior to the Contract Time, as adjusted in accordance with the terms of the Contract Documents. Any adjustment of the Contract Time or the Contract Price shall be based upon the Contract Time set forth in the Contract Documents and not any shorter duration which may depicted in the Approved Construction Schedule.

6.3.4 Revisions to Approved Construction Schedule. In the event that the progress of the Work or the sequencing of the activities of the Work shall materially differ from that indicated in the Approved Construction Schedule, as determined by the District in its reasonable discretion and judgment, the District may direct the Contractor to revise the Approved Construction Schedule; within fifteen (15) days of the District’s direction, the Contractor shall prepare and submit to the Owner’s Representative and the Project Manager a revised Approved Construction Schedule, for review and approval by the District. The Contractor may request consent of the District to revise the Approved Construction Schedule. Any such request shall be considered by the District only if in writing setting forth the Contractor’s proposed revision(s) to the Approved Construction Schedule and the reason(s) therefor. The District may consent to, or deny, any such request of the Contractor to revise the Approved Construction Schedule in its reasonable discretion.

6.3.5 Updates to Approved Construction Schedule. The Contractor shall monitor and update the Approved Construction Schedule on a monthly basis, or more frequently as required by the conditions or progress of the Work, or as may be requested by the District. The Contractor shall provide the District, the Project Manager and the Owner’s Representative with updated Approved Construction Schedules indicating progress achieved and activities commenced or completed within the prior updated Approved Construction Schedule. Updates to the Approved Construction Schedule shall not include any revisions to the activities, commencement and completion dates of activities or the sequencing of activities depicted on the Approved Construction Schedule. Any such revisions to the Approved Construction Schedule shall result in the District’s rejection of such update and Contractor shall, within seven (7) days of the District’s rejection of such update, submit to the Owner’s Representative and the Project Manager an Updated Approved Construction Schedule which does not incorporate any such revisions. If requested by the District, the Contractor shall also submit, with its updates to the Approved Construction Schedule a narrative statement including a description of current and anticipated problem areas of the Work, delaying factors and their impact, and an explanation of corrective action taken or proposed by the Contractor. If the progress of the Work is behind the Approved Construction Schedule, the Contractor shall indicate what measures will be taken to place the Work back on schedule. The District may, from time to time, and in the District’s sole
and exclusive discretion, transmit to the Contractor’s Performance Bond Surety the Approved Construction Schedule, any updates thereof and the narrative statement described hereinabove. The District’s election to transmit, or not to transmit such information, to the Contractor’s Performance Bond Surety shall not limit the Contractor’s obligations under the Contract Documents.

6.3.6 Contractor Responsibility for Construction Schedule. The Contractor shall be responsible for the preparation, submittal and maintenance of the Construction Schedules required by the Contract Documents, and any failure of the Contractor to do so may be deemed by the District as the Contractor’s default in the performance of a material obligation under Contract Documents. Any and all costs or expenses required or incurred to prepare, submit, maintain, and update the Construction Schedules shall be solely that of the Contractor and no such cost or expense shall be charged to the District. The Contract Price shall not be subject to adjustment on account of costs, fees or expenses incurred or associated with the Contractor’s preparation, submittal, maintenance or updating of the Construction Schedules.

6.4 Adjustment of Contract Time. If Substantial Completion is delayed, adjustment, if any, to the Contract Time on account of such delay shall be in accordance with this Article 7.4.

6.4.1 Excusable Delays. If Substantial Completion of the Work is delayed by Excusable Delays, the Contract Time shall be subject to adjustment for such reasonable period of time as determined by the Owner’s Representative; Excusable Delays shall not result in any increase in the Contract Price. Excusable Delays refer to unforeseeable and unavoidable casualties or other unforeseen causes beyond the control, and without fault or neglect, of the Contractor, any Subcontractor, Material Supplier or other person directly or indirectly engaged by the Contractor in performance of any portion of the Work. Excusable Delays include unanticipated and unavoidable labor disputes, unusual and unanticipated delays in transportation of equipment, materials or Construction Equipment reasonably necessary for completion and proper execution of the Work, unanticipated unusually severe weather conditions or DSA directive to stop the Work. Neither the financial resources of the Contractor or any person or entity directly or indirectly engaged by the Contractor in performance of any portion of the Work shall be deemed conditions beyond the control of the Contractor. If an event of Excusable Delay occurs, the Contract Time shall be subject to adjustment hereunder only if the Contractor establishes: (i) full compliance with all applicable provisions of the Contract Documents relative to the method, manner and time for Contractor’s notice and request for adjustment of the Contract Time; (ii) that the event(s) forming the basis for Contractor’s request to adjust the Contract Time are outside the reasonable control and without any fault or neglect of the Contractor or any person or entity directly or indirectly engaged by Contractor in performance of any portion of the Work; and (iii) that the event(s) forming the basis for Contractor’s request to adjust the Contract Time directly and adversely impacted the progress of the Work as indicated in the Approved Construction Schedule or the most recent updated Approved Construction Schedule relative to the date(s) of the claimed event(s) of Excusable Delay. The foregoing provisions notwithstanding, if the Special Conditions set forth a number of “Rain Days” to be anticipated during performance of the Work, the Contract Time shall not be adjusted for rain related unusually severe weather conditions until and unless the actual number of Rain Days during performance of the Work exceeds those noted in the Special Conditions and such additional Rain Days directly and adversely impact the critical path progress of the Work as depicted in the Approved Construction Schedule or the most recent updated Approved Construction Schedule relative to the date(s) of such additional Rain Days.

6.4.2 Compensable Delays. If Substantial Completion of the Work is delayed and such delay is caused by the acts or omissions of the District, the Owner’s Representative, or separate contractor employed by the District (collectively “Compensable Delays”), upon Contractor’s request and notice, in strict conformity with Articles 7 and 9 of these General Conditions, the Contract Time will be adjusted by Change Order for such reasonable period of time as
determined by the Owner’s Representative and the District. In accordance with California Public Contract Code §7102, if the Contractor’s progress is delayed by any of the events described in the preceding sentence, Contractor shall not be precluded from the recovery of damages directly and proximately resulting therefrom, provided that the District is liable for the delay, the delay is unreasonable under the circumstances involved and the delay was not within the reasonable contemplation of the District and the Contractor at the time of execution of the Agreement. In such event, Contractor’s damages, if any, shall be limited to direct, actual and unavoidable additional costs of labor, materials or Construction Equipment directly resulting from such delay, and shall exclude indirect or other consequential damages, including without limitation, home office expenses, bond capacity impairment or loss of prospective economic advantage. Except as expressly provided for herein, Contractor shall not have any other claim, demand or right to adjustment of the Contract Price arising out of delay, interruption, hindrance or disruption to the progress of the Work. Adjustments to the Contract Price and the Contract Time, if any, on account of Changes to the Work or Suspension of the Work shall be governed by the applicable provisions of the Contract Documents, including without limitation, Articles 9 and 14 of these General Conditions.

6.4.3 Unexcusable Delays. Unexcusable Delays refer to any delay to the progress of the Work caused by events or factors other than those specifically identified in Articles 7.4.1 and 7.4.2 above. Neither the Contract Price nor the Contract Time shall be adjusted on account of Unexcusable Delays.

6.4.4 Adjustment of Contract Time.

6.4.4.1 Procedure for Adjustment of Contract Time. The Contract Time shall be subject to adjustment only in strict conformity with applicable provisions of the Contract Documents. Failure of Contractor to request adjustment(s) of the Contract Time in strict conformity with applicable provisions of the Contract Documents shall be deemed Contractor’s waiver of the same.

6.4.4.2 Limitations Upon Adjustment of Contract Time on Account of Delays. Any adjustment of the Contract Time on account of an Excusable Delay or a Compensable Delay shall be limited as set forth herein. If an Excusable Delay and a Compensable Delay occur concurrently, the maximum extension of the Contract Time shall be the number of days from the commencement of the first delay to the cessation of the delay which ends last. If an Unexcusable Delay occurs concurrently with either an Excusable Delay or a Compensable Delay, the maximum extension of the Contract Time shall be the number of days, if any, which the Excusable Delay or the Compensable Delay exceeds the period of time of the Unexcusable Delay. In addition to the foregoing limitations upon extension of the Contract Time, no adjustment of the Contract Time shall be made on account of any Excusable Delays or Compensable Delays unless such delay(s) actually and directly impact Work or Work activities on the critical path of the then current and updated Approved Construction Schedule as of the date on which such delay first occurs. The District shall not be deemed in breach of, or otherwise in default of any obligation hereunder, if the District shall deny any request by the Contractor for an adjustment of the Contract Time for any delay which does not actually and directly impact Work or Work activities on the critical path of the then current and updated Approved Construction Schedule.

6.5 Liquidated Damages. Should the Contractor neglect, fail or refuse to: (i) submit Submittals in accordance with the Approved Construction Schedule; (ii) achieve Substantial Completion of the Work or designated portions thereof within the Contract Time, (subject to adjustments authorized under the Contract Documents); (iii) or to complete Punchlist items within the time established pursuant to the Contract Documents, the Contractor agrees to pay to the District the amount of per diem Liquidated Damages set forth in the Special Conditions, not as a penalty but as Liquidated Damages, for every day beyond the Contract Time, as adjusted, until Submittals are submitted, Substantial Completion or
completion of the Punchlist items are achieved. The Liquidated Damages amounts set forth in the Special Conditions are agreed upon by and between the Contractor and the District because of the difficulty of fixing the District's actual damages in the event of delayed submission of Submittals, Substantial Completion or completion of Punchlist items. The Contractor and the District specifically agree that said amounts are reasonable estimates of the District's damages in such event, and that such amounts do not constitute a penalty. Liquidated Damages may be deducted from the Contract Price then or thereafter due the Contractor. The Contractor and the Surety shall be liable to the District for any Liquidated Damages exceeding any amount of the Contract Price then held or retained by the District. In the event that the Contractor shall fail or refuse to complete Punchlist items and the District elects to exercise its right to cause completion or correction of such items pursuant to Article 7.2.3.2 hereof, the District's assessment of Liquidated Damages pursuant to the foregoing shall be in addition, and not in lieu of, the District's right to charge Contractor with the cost of completing or correcting such items of the Work, as provided for under Article 7.2.3.2. The Contractor and the District acknowledge and agree that the provisions of this Article 7.5 are reasonable under the circumstances existing at the time of the Contractor's execution of the Agreement.

ARTICLE 7: CONTRACT PRICE

7.1 **Contract Price.** The Contract Price is the amount stated in the Agreement and subject to adjustments thereto in accordance with the Contract Documents, is the total amount payable by the District to the Contractor for completion of the Work and other obligations of the Contractor under the Contract Documents. The District's payment of the Contract Price to the Contractor shall be in accordance with the Contract Documents.

7.2 **Cost Breakdown.** Within fifteen (15) days of the execution of the Agreement by Contractor, Contractor shall furnish, in a form acceptable to the District, a detailed estimate and complete Cost Breakdown of the Contract Price. The Cost Breakdown is subject to the District's review and approval of the form and content thereof. If the District objects to any portion of the Cost Breakdown, within ten (10) days of the District's receipt of the Cost Breakdown, the District shall notify the Contractor, in writing, of the District's objection(s) to the Cost Breakdown. Within five (5) days of the date of the District's written objection(s), Contractor shall submit a revised Cost Breakdown to the District for review and approval. The foregoing procedure for the preparation, review and approval of the Cost Breakdown shall continue until the District has approved of the entirety of the Cost Breakdown. Upon the District's approval of the Cost Breakdown, the Cost Breakdown shall not be thereafter modified or amended by the Contractor without the prior consent and approval of the District, which may be granted, conditioned or withheld in the sole discretion of the District. Notwithstanding any provision of the Contract Documents to the contrary, payment of the Contractor's overhead, supervision and general conditions costs and profit, as such items are reflected in the Cost Breakdown, shall be made by the District in equal installments with its disbursements of Progress Payments and the Final Payment with the amount of each such installment equal to the aggregate amount of such items as reflected in the Cost Breakdown divided by the number of months of the Contract Time.

7.3 **Progress Payments.**

7.3.1 **Applications for Progress Payments.** During the Contractor's performance of the Work, the Contractor shall submit monthly, on the first working day of each month, to the District, District's Inspector, Project Manager, if any, and the Owner's Representative, Applications for Progress Payments ("Payment Applications"), on forms approved by the District, setting forth an itemized estimate of Work completed in the preceding month for the purpose of the District's making of Progress Payments thereon. Values utilized in the Payment Applications shall be based upon the District approved Cost Breakdown pursuant to Article 8.2 above provided that such values are only for determining the basis of Progress Payments to Contractor, and shall not be considered as fixing a basis for adjustments, whether additive or deductive, to the Contract Price, or for determining the extent of Work actually completed.

7.3.2 **Payment Application Review for Determination of Proper Payment Application.** Pursuant
to Public Contract Code §20104.50, upon receipt of a Payment Application, the District’s Inspector, the Project Manager, if any, and the Owner’s Representative will review the Payment Application as soon as practicable for the purpose of determining that the Payment Application is a proper Payment Application. A Payment Application is “proper” only if information required by the form of Payment Application is completely and accurately provided by the Contractor and the Payment Application is accompanied by: (i) a summary listing of the Subcontractors/Material Suppliers entitled to payment of any portion of the requested Progress Payment, along with the amount of payment each Subcontractor/Material Supplier is entitled to receive from the Contractor from the proceeds of the requested Progress Payment; (ii) completed and executed form of Verification of Certified Payroll Records Submittal To Labor Commissioner; (iii) duly completed and executed forms of Conditional Waiver and Release of Rights Upon Progress Payment in accordance with California Civil Code §8132 of the Contractor and Subcontractors/Material Suppliers covering the Progress Payment requested; (iv) duly completed and executed forms of Unconditional Waiver and Release of Rights upon Progress Payment in accordance with California Civil Code §8134 of the Contractor and Subcontractors/Material Suppliers covering the Progress Payment received by the Contractor under the immediately preceding Payment Application; (v) if applicable, a current union statement reflecting that the Contractor and Subcontractors are current in the payment of any supplemental fringe benefits required pursuant to any collective bargaining agreement to which the Contractor or any such Subcontractor is a party to or is otherwise bound by; and (vi) a certification by the Contractor that it has continuously maintained the Record Drawings reflecting the actual as-built conditions of the Work performed be for which the Progress Payment is requested, it being understood that such certification is subject to verification by the District, Owner’s Representative or the Project Manager prior to disbursement of the Progress Payment. Pursuant to Public Contract Code §20104.50, if a Payment Application determined by the District not to be a proper Payment Application it shall be returned by the District to the Contractor as soon as is practicable after receipt thereof, but in no event not more than seven (7) days after receipt. The District’s return of any Payment Application pursuant to the preceding sentence shall be accompanied by a written document setting forth the reason(s) why the Payment Application is not proper.

7.3.3 Verification of Work Completed. Upon receipt of a Payment Application, the Owner’s Representative, Project Manager, if any and the District’s Inspector shall inspect and verify the Work to determine whether it has been performed in accordance with requirements of the Contract Documents and to determine the portion of the Payment Application which is properly due to the Contractor under the terms of the Contract Documents.

7.3.4 District’s Disbursement of Progress Payments.

7.3.4.1 Timely Disbursement of Progress Payments. Pursuant to Public Contract Code §20104.50, within thirty (30) days after the District’s receipt of a proper Payment Application, there shall be paid, by District, to Contractor a sum equal to ninety-five percent (95%) of the value of the Work indicated in the Payment Application which is actually in place as of the date of the Payment Application, as verified by the District’s Inspector, Project Manager, if any, and the Owner’s Representative and the pro rata portion of the Contractor’s overhead, supervision and general conditions costs and profit for that month; provided, however, that the District’s obligation to disburse any Progress Payment shall be subject to the District’s receipt of all documents set forth in Article 8.3.2 above, each and all of which are conditions precedent to the District’s obligation to disburse Progress Payments. If a Payment Application is determined not to be proper due to the failure or refusal of the Contractor to submit documents with the Payment Application, as required by Article 8.3.2, or incompleteness or inaccuracies in any such documents submitted or if it is reasonably determined that the Record Drawings have not been continuously maintained to reflect the actual as built conditions of the Work completed in the period for which the Progress Payment is requested, the thirty (30) day
period hereunder for the District’s timely disbursement of a Progress Payment is deemed
to commence on the date that the District is actually in receipt of documents not
submitted with the Payment Application, or corrections to documents with the Payment
Application so as to render them complete and accurate, or the date upon which the
Contractor accurately and fully completes preparation of the Record Drawings relating
to the Work for which the Progress Payment is requested.

7.3.4.2 Un timely Disbursement of ProgressPayments. Pursuant to Public Contract
Code §20104.50, if the District fails to make a Progress Payment within thirty (30) days
after receipt of an undisputed and proper Payment Application, the District shall pay the
Contractor interest on the undisputed amount of such Payment Application at the legal
rate of interest set forth in California Code of Civil Procedure §685.010(a). The foregoing
notwithstanding, if the District determines that any Payment Application is not proper,
pursuant to Article 8.3.2 above, and the District does not return such Payment
Application within the seven (7) day period provided for in Article 8.3.2, the period of time
for the District’s disbursement of the Progress Payment on such Payment Application
without incurring interest liability shall be reduced by the number of days exceeding the
seven (7) day return period.

7.3.4.3 District’s Right to Disburse Payments by Joint Checks. The District, may, in its
sole discretion, issue joint checks to the Contractor and Subcontractors/Material
Suppliers in satisfaction of its obligation to make Progress Payments or the Final
Payment due hereunder.

7.3.4.4 No Waiver of Defective or Non-Conforming Work. The approval of any Payment
Application or the disbursement of any Progress Payment to the Contractor shall not be
deemed nor constitute acceptance of defective or non-conforming Work.

7.3.5 Progress Payments for Changed Work. The Contractor’s Payment Applications may
include requests for payment on account of Changes in the Work which have been properly
authorized and approved by the District’s Inspector, the Owner’s Representative and all other
governmental agencies with jurisdiction over such Change in accordance with the terms of the
Contract Documents and for which a Change Order has been issued. Except as provided for
herein, no other payment shall be made by the District for Changes in the Work.

7.3.6 Materials or Equipment Not Incorporated Into the Work.

7.3.6.1 Limitations Upon Payment. Except as expressly provided for herein, no
payments shall be made by the District on account of any item of the Work, including
without limitation, materials or equipment which, at the time of the Contractor’s submittal
of a Payment Application, has/have not been incorporated into and made a part of the
Work.

7.3.6.2 Materials or Equipment Delivered and Stored at the Site. The District may, in its
sole and exclusive discretion, make payment for materials or equipment not yet
incorporated into the Work if, at or prior to the time of the Contractor’s submittal of a
Payment Application requesting payment for such materials or equipment if all of the
following are complied with: (i) the materials or equipment have been delivered to the
Site; (ii) adequate arrangements, reasonably satisfactory to the District, have been made
by the Contractor to store and protect such materials or equipment at the Site including
without limitation, insurance reasonably satisfactory to the District, covering and
protecting against the risk of loss, destruction, theft or other damage to such materials
or equipment while in storage; and (iii) the establishment of procedures reasonably
satisfactory to the District by which title to such materials or equipment will be vested in
the District upon the District’s payment therefor. The Contractor acknowledges that the
discretion to make, or not to make, payment for materials or equipment delivered or
stored at the Site pursuant to the preceding sentence shall be exercised exclusively by
the District; the District’s exercise of discretion not to make payment shall not be deemed
the District’s default hereunder. If the District elects to make payment for materials or
equipment delivered and stored at the Site, the costs and expenses incurred to comply
with the requirements of (ii) and (iii) of this Article 8.3.6.2 shall be borne solely and
exclusively by the Contractor and no payment shall be made by the District on account
of such costs and expenses.
7.3.6.3 Materials or Equipment Not Delivered or Stored at the Site. No payments shall
be made by the District for materials or equipment to be incorporated into the Work where
such materials or equipment have not been delivered or stored at the Site or which are
in the process of fabrication or transportation to the Site.
7.3.7 Exclusions From Progress Payments. In addition to the District’s right to withhold
disbursement of any Progress Payment provided for in the Contract Documents, neither the
Contractor’s Payment Application shall include, nor shall the District be obligated to disburse
any portion of the Contract Price for amounts which the Contractor does not intend to pay any
Subcontractor or Material Supplier because of a dispute or any other reason.
7.3.8 Title to Work. The Contractor warrants that title to all Work covered by an Payment
Application will pass to the District no later than the time of payment. The Contractor further
warrants that upon submittal of a Payment Application, all Work for which a Progress Payment
has been previously disbursed and the Contractor has received payment from the District
erfore shall, to the best of the Contractor’s knowledge, information and belief, be free and clear
of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors,
Material Suppliers or other persons or entities making a claim by reason of having provided
labor, materials and equipment relating to the Work.
7.3.9 Substitute Security for Retention. Pursuant to California Public Contract Code §22300,
eligible and equivalent securities may be substituted for any monies withheld by the District to
ensure the Contractor’s performance under the Contract Documents at the request and expense
of the Contractor and in conformity with the provisions of California Public Contract Code
§22300. The foregoing and the provisions of California Public Contract Code §22300
notwithstanding, failure of the Contractor to request the substitution of eligible and equivalent
securities for monies to be withheld by the District within ten (10) days following the date of
award of the Contract to Contractor shall be deemed a waiver of such right.

7.4 Final Payment.
7.4.1 Application for Final Payment. When the Contractor has achieved Final Completion of
the Work and has otherwise fully performed its obligations under the Contract Documents, the
Contractor shall submit an Application for Final Payment on such form as approved by the
District. Thereupon, the Owner’s Representative, Project Manager, if any, and the District’s
Inspector will promptly make a final inspection of the Work and when the Owner’s
Representative, Project Manager, if any and the District’s Inspector find the Work acceptable
under the Contract Documents and that the Contract has been fully performed by the Contractor,
the Owner’s Representative, Project Manager, if any, and the District’s Inspector will thereupon
promptly approve the Application for Final Payment, stating that to the best their knowledge,
information and belief, the Work has been completed in accordance with the terms of the
Contract Documents. The Final Payment shall include the remaining balance of the Contract
Price and any retention from Progress Payments previously withheld by the District.
7.4.2 Conditions Precedent to Disbursement of Final Payment. Neither Final Payment nor any
remaining Contract Price shall become due until the Contractor submits to the District each and
all of the following, the submittal of which are conditions precedent to the District’s obligation to
disburse the Final Payment: (i) an affidavit or certification by the Contractor that payrolls, bills
for materials and other indebtedness incurred in connection with the Work for which the District
or the District’s property may or might be responsible or encumbered have been paid or
otherwise satisfied; (ii) a certificate evidencing that insurance required by the Contract
Documents to remain in force after the Contractor’s receipt of Final Payment is currently in effect;
(iii) a written statement that the Contractor knows of no substantial reason that the insurance
will not be renewable to cover any period following Final Payment as required by the Contract Documents; (iv) consent of the Surety on the Labor and Material Payment Bond and Performance Bond, to Final Payment if required; (v) duly completed and executed forms of Conditional or Unconditional Waivers and Releases of rights upon Final Payment of the Contractor, Subcontractors/Material Suppliers in accordance with California Civil Code §§8136 or 8138, with each of the same stating that there are, or will be, no claims for additional compensation after disbursement of the Final Payment; (vi) Operations and Maintenance manuals and separate warranties provided by any manufacturer or distributor of any materials or equipment incorporated into the Work; (vii) the Record Drawings; (viii) the form of Guarantee included in the Contract Documents duly executed by an authorized representative of the Contractor; (ix) any and all other items or documents required by the Contract Documents to be delivered to the District upon completion of the Work; (x) the completion and submittal of all reports required by the Contract Documents, including without limitation, verified reports required by applicable provisions of the California Code of Regulations; and (xi) if required by the District, such other data establishing payment or satisfaction of obligations such as receipts, releases and waivers of liens, Stop Payment Notices, claims, security interest or encumbrances arising out of the Contract to the extent and in such form as may be required by the District.

7.4.3 Disbursement of Final Payment. Provided that the District is then in receipt of all documents and other items in Article 8.4.2 above as conditions precedent to the District’s obligation to disburse Final Payment, not later than sixty (60) days following Final Acceptance the District shall disburse the Final Payment to the Contractor. Pursuant to California Public Contract Code §7107, if there is any dispute between the District and the Contractor at the time that disbursement of the Final Payment is due, the District may withhold from disbursement of the Final Payment an amount not to exceed one hundred fifty percent (150%) of the amount in dispute. If the Contractor fails to timely submit completed DSA Reports in accordance with Article 4.21.1 above, the Final Payment due the Contractor shall be reduced in accordance with Article 4.21.2 above.

7.4.4 Waiver of Claims. The Contractor’s acceptance of the Final Payment is a waiver and release by the Contractor of any and all claims against the District for compensation or otherwise in connection with the Contractor’s performance of the Contract.

7.4.5 Claims Asserted After Final Payment. Any lien, Stop Payment Notice or other claim filed or asserted after the Contractor’s acceptance of the Final Payment by any Subcontractor, laborer, Material Supplier or others in connection with or for Work performed under the Contract Documents shall be the sole and exclusive responsibility of the Contractor and the Surety. The Contractor and Surety shall indemnify, defend and hold harmless the District and its officers, agents, representatives and employees from and against any claims, demands or judgments arising or associated therewith, including without limitation attorneys fees incurred by the District in connection therewith.

7.5 Withholding of Payments. The District may withhold any Progress Payment or the Final Payment, in whole or in part, or backcharge the Contractor to the extent it may deem advisable to protect the District on account of: (i) defective Work or Work not in conformity with the requirements of the Contract Documents which is not remedied; (ii) failure of the Contractor to make payments when due Subcontractors/Material Suppliers; (iii) claims filed or reasonable evidence of the probable filing of claims by Subcontractors, laborers, Material Suppliers, or others performing any portion of the Work under the Contract Documents for which the District may be liable or responsible including, without limitation, Stop Payment Notice Claims filed with the District pursuant to California Civil Code §9350 et seq.; (iv) a reasonable doubt that the Contract can be completed for the then unpaid balance of the Contract Price; (v) tax demands filed in accordance with California Government Code §12419.4; (vi) other claims, penalties and/or forfeitures for which the District is required or authorized to retain funds otherwise due the Contractor; (vii) any amounts due from the Contractor to the District under the terms of the Contract Documents; or (viii) the Contractor’s failure to perform any of its obligations under the
Contract Documents, its default under the Contract Documents or its failure to maintain adequate progress of the Work. In addition to the foregoing, the District shall not be obligated to process any Payment Application or Application for Final Payment, nor shall Contractor be entitled to any Progress Payment or Final Payment so long as any lawful or proper direction concerning the Work or the performance thereof or any portion thereof, given by the District, the District’s Inspector, the Owner’s Representative or any public authority having jurisdiction over the Work, or any portion thereof, shall not be fully and completely complied with by the Contractor. When the District is reasonably satisfied that the Contractor has remedied any such deficiency, payment shall be made of the amount withheld.

7.6 Payments to Subcontractors. The Contractor shall pay all Subcontractors for and on account of Work of the Contract performed by such Subcontractors in accordance with the terms of their respective subcontracts and as provided for pursuant to California Public Contract Code §10262, the provisions of which are deemed incorporated herein by this reference. If the Contractor fails to make payment to Subcontractors in conformity with California Public Contract Code §10262, the provisions of California Public Contract Code §10253 shall apply; by this reference, the provisions of California Public Contract Code §10253 are incorporated herein in its entirety, except that the references in said Section 10253 to “the director” shall be deemed to refer to the District. The Contractor shall timely make payment of retention due Subcontractors in accordance with Public Contract Code §7107.

7.7 Computerized Job Cost Reporting System.

7.7.1 Job Cost Reporting. The Contractor and each Subcontractor with a Subcontract valued at One Million Five Hundred Thousand Dollars ($1.5M) or greater shall maintain a computerized job cost reporting system conforming to the requirements set forth herein. The computer program(s) utilized by the Contractor and applicable Subcontractors shall be subject to the review and acceptance by the District. The job cost reporting systems for the Work shall be updated in regular intervals of not more than one (1) calendar month.

7.7.2 Job Cost Reporting System Requirements. The computerized job cost programs utilized by the Contractor and applicable Subcontractors shall conform and comply with generally accepted accounting principles applied in a consistent manner and with recognized and generally accepted construction industry accounting standards, guidelines and procedures. The job cost reporting system format and configuration shall follow the general format of the District approved Cost Breakdown and budgets established for each line item shall be traceable to a bid estimate of costs. The job cost reporting systems utilized by the Contractor and applicable Subcontractors shall be capable of: (i) providing overall cost status on a monthly and cumulative basis; (ii) providing comparative analysis of the original budgeted costs, actual costs, remaining budget, and projected cost of completion; the job cost reporting system shall be capable of providing comparative analysis for individual line items and the totality of the Work reflected in the job cost report and; (ii) tracking adjustments to original budget amounts for Changes to the Work (including, without limitation, issued, pending and potential Change Orders).

7.7.3 Job Cost System Information. Upon request of the District, the Contractor and applicable Subcontractors shall make available written job cost reports and/or provide the District with the electronic files of the then current or requested job cost report. The Contractor’s obligations hereunder are material.

ARTICLE 8: CHANGES

8.1 Changes in the Work. The District, at any time, by written order, may make Changes within the general scope of the Work under the Contract Documents or issue additional instructions, require additional Work or direct deletion of Work. The Contractor shall not proceed with any Change involving an increase or decrease in the Contract Price or the Contract Time without prior written authorization from the District. The foregoing notwithstanding, the Contractor shall promptly commence and diligently complete any Change to the Work subject to the District’s written authorization issued pursuant to the preceding sentence; the Contractor is not relieved or excused from its obligation to promptly commence and diligently complete any Change subject to the District’s written authorization by virtue of the
absence or inability of the Contractor and the District to agree upon the extent of any adjustment to the Contract Time or the Contract Price on account of such Change. The issuance of a Change Order pursuant to this Article 9 in connection with any Change authorized by the District under this Article 9.1 is not a condition precedent to Contractor’s obligation to promptly commence and diligently complete any such Change authorized by the District hereunder. The District’s right to make Changes shall not invalidate the Contract nor relieve the Contractor of any liability or other obligations under the Contract Documents. Any requirement of notice of Changes in the scope of Work to the Surety shall be the responsibility of the Contractor. Changes to the Work depicted or described in the Drawings or the Specifications shall be subject to approval by the DSA. The District may make Changes to bring the Work or the Project into compliance with environmental requirements or standards established by state or federal statutes and regulations enacted after award of the Contract.

8.2 Construction Change Directive. A Construction Change Directive is a written instrument issued by or on behalf of the District directing a Change to the Work prior to the Contractor and District reaching full agreement on an adjustment of the Contract Time and/or Contract Price on account of such Change. The Contractor shall promptly commence and diligently complete any Change to the Work subject to a Construction Change Directive issued hereunder. The issuance of a Change Order pursuant to this Article 9 in connection with any Construction Change Directive authorized by the District is not a condition precedent to Contractor’s obligation to promptly commence and diligently complete any such Construction Change Directive. Upon completion of the Work subject to a Construction Change Directive, if the Contractor and District have not agreed on the adjustment of Contract Time and/or Contract Price for such Change, District shall issue a Unilateral Change Order pursuant to this Article 9.

8.3 Oral Order of Change in the Work. Any oral order, direction, instruction, interpretation, or determination from the District or the Owner’s Representative which in the opinion of the Contractor constitutes a Change to the Work, or otherwise requires an adjustment to the Contract Price or the Contract Time, shall be treated as a Change only if the Contractor gives the Owner’s Representative, Project Manager, if any and the District’s Inspector written notice within ten (10) days of the order, directions, instructions, interpretation or determination and prior to acting in accordance therewith. Time is of the essence in Contractor’s written notice pursuant to the preceding sentence. Accordingly, Contractor acknowledges that its failure, for any reason, to give written notice within ten (10) days of such order, direction, instruction, interpretation or determination is the Contractor’s waiver of any right to assert or claim any entitlement to an adjustment of the Contract Time or the Contract Price on account of such order, direction, instruction, interpretation or determination. The written notice shall state the date, circumstances, extent of adjustment to the Contract Price or the Contract Time, if any, requested, and the source of the order, directions, instructions, interpretation or determination that the Contractor regards as a Change. Unless the Contractor acts in strict accordance with this procedure, any such order, direction, instruction, interpretation or determination shall not be treated as a Change and the Contractor waives any claim for any adjustment to the Contract Price or the Contract Time on account thereof.

8.4 Contractor Submittal of Data. Within thirty (30) days after receipt of a written order directing a Change in the Work or furnishing the written notice regarding any oral order directing a Change in the Work, the Contractor shall submit to the Owner’s Representative, Project Manager, if any, the District’s Inspector and the District a detailed written statement setting forth the general nature of the Change, the adjustment to the Contract Price on account thereof, properly itemized and supported by sufficient substantiating data to permit evaluation of the same, and the extent of adjustment of the Contract Time, if any, required by such Change. No claim or adjustment to the Contract Price or the Contract Time shall be allowed if not asserted by the Contractor in strict conformity herewith or if asserted after Final Payment is made under the Contract Documents.

8.5 Adjustment to Contract Price and Contract Time on Account of Changes to the Work.

8.5.1 Adjustment to Contract Price. Adjustments to the Contract Price due to Changes in the
Work shall be determined by application of one of the following methods, in the following order of priority:

8.5.1.1 Mutual Agreement. By negotiation and mutual agreement, on a lump sum basis, between the District and the Contractor on the basis of the estimate of the actual and direct increase or decrease in costs on account of the Change. Upon request of the District, or the Project Manager, if any, the Contractor shall provide a detailed estimate of increase or decrease in costs directly associated with performance of the Change along with cost breakdowns of the components of the Change and supporting data and documentation. The Contractor’s estimate of increase or decrease in costs pursuant to the foregoing, if requested, shall be in sufficient detail and in such form as to allow the District, the District’s Inspector and the Project Manager to review and assess the completeness and accuracy thereof. The Contractor shall be solely responsible for any additional costs or additional time arising out of, or related in any manner to, its failure to provide the estimate of costs within the time specified in the request of the District or the Project Manager for such estimate.

8.5.1.2 Determination by the District. By the District, whether or not negotiations are initiated pursuant to Article 9.5.1.1 above, based upon actual and necessary costs incurred by the Contractor as determined by the District on the basis of the Contractor’s records. In the event that the procedure set forth in this Article 9.5.1.2 is utilized to determine the extent of adjustment to the Contract Price on account of Changes to the Work, promptly upon determining the extent of adjustment to the Contract Price, the District shall notify the Contractor in writing of the same; the Contractor is deemed to have accepted the District’s determination of the amount of adjustment to the Contract Price on account of a Change to the Work unless Contractor notifies the District, the Project Manager, if any, and the District’s Inspector, in writing, not more than fifteen (15) days from the date of the District’s written notice, of any objection to the District’s determination. Failure of the Contractor to timely notify the District, the Project Manager and the District’s Inspector of Contractor’s objections to the District’s determination of the extent of adjustment to the Contract Price shall be deemed Contractor’s acceptance of the District’s determination and a waiver of any right or basis of the Contractor to thereafter protest or otherwise object to the District’s determination. Notwithstanding any objection of the Contractor to the District’s determination of the extent of any adjustment to the Contract Price pursuant to this Article 9.5.1.2, Contractor shall, pursuant to Article 9.8 below, diligently proceed to perform and complete any such Change.

8.5.1.3 Basis for Adjustment of Contract Price. If Changes in the Work require an adjustment of the Contract Price pursuant to Articles 9.5.1.1 or 9.5.1.2 above, the basis for adjustment of the Contract Price shall be as follows:

8.5.1.3.1 Labor. Contractor shall be compensated for the costs of labor actually and directly utilized in the performance of the Change. Such labor costs shall be limited to field labor for which there is a prevailing wage rate classification. Wage rates for labor shall not exceed the prevailing wage rates in the locality of the Site and shall be in the labor classification(s) necessary for the performance of the Change. Use of a labor classification which would increase labor costs associated with any Change shall not be permitted. Labor costs shall exclude costs incurred by the Contractor in preparing estimate(s) of the costs of the Change, in the maintenance of records relating to the costs of the Change, coordination and assembly of materials and information relating to the Change or performance thereof, or the supervision and other overhead and general conditions costs associated with the Change or performance thereof.
8.5.1.3.2 Materials and Equipment. Contractor shall be compensated for the costs of materials and equipment necessarily and actually used or consumed in connection with the performance of Changes. Costs of materials and equipment may include reasonable costs of transportation from a source closest to the site of the Work and delivery to the Site. If discounts by Material Suppliers are available for materials necessarily used in the performance of Changes, they shall be credited to the District. If materials and/or equipment necessarily used in the performance of Changes are obtained from a supplier or source owned in whole or in part by the Contractor, compensation therefor shall not exceed the current wholesale price for such materials or equipment. If, in the reasonable opinion of the District, the costs asserted by the Contractor for materials and/or equipment in connection with any Change is excessive, or if the Contractor fails to provide satisfactory evidence of the actual costs of such materials and/or equipment from its supplier or vendor of the same, the costs of such materials and/or equipment and the District's obligation for payment of the same shall be limited to the then lowest wholesale price at which similar materials and/or equipment are available in the quantities required to perform the Change. The District may elect to furnish materials and/or equipment for Changes to the Work, in which event the Contractor shall not be compensated for the costs of furnishing such materials and/or equipment or any mark-up thereon.

8.5.1.3.3 Construction Equipment. Contractor shall be compensated for the actual cost of the necessary and direct use of Construction Equipment in the performance of Changes to the Work. Use of such Construction Equipment in the performance of Changes to the Work shall be compensated in increments of fifteen (15) minutes. Rental time for Construction Equipment moved by its own power shall include time required to move such Construction Equipment to the site of the Work from the nearest available rental source of the same. If Construction Equipment is not moved to the Site by its own power, Contractor will be compensated for the loading and transportation costs in lieu of rental time. The foregoing notwithstanding, neither moving time or loading and transportation time shall be allowed if the Construction Equipment is used for performance of any portion of the Work other than Changes to the Work. Unless prior approval in writing is obtained by the Contractor from the Project Manager, if any, the District's Inspector and the District, no costs or compensation shall be allowed for time while Construction Equipment is inoperative, idle or on standby, for any reason. The Contractor shall not be entitled to an allowance or any other compensation for Construction Equipment or tools used in the performance of Changes to the Work where such Construction Equipment or tools have a replacement value of $500.00 or less. Construction Equipment costs claimed by the Contractor in connection with the performance of any Change to the Work shall not exceed rental rates established by distributors or construction equipment rental agencies in the locality of the Site; any costs asserted which exceed such rental rates shall not be allowed or paid. Unless otherwise specifically approved in writing by the Project Manager, if any, the District's Inspector and the District, the allowable rate for the use of Construction Equipment in connection with Changes to the Work shall constitute full compensation to the Contractor for the cost of rental, fuel, power, oil, lubrication,
supplies, necessary attachments, repairs or maintenance of any kind, depreciation, storage, insurance, labor (exclusive of labor costs of the Construction Equipment operator), and any all other costs incurred by the Contractor incidental to the use of such Construction Equipment.

8.5.1.3.4 Mark-up on Costs of Changes to the Work. In determining the cost to the District and the extent of increase to the Contract Price resulting from a Change adding to the Work, the allowance for mark-ups on the costs of the Change for all overhead (including home office and field overhead), general conditions costs and profit associated with the Change shall not exceed the percentage set forth in the Special Conditions, regardless of the number of Subcontractors, of any tier, performing any portion of any Change to the Work. If a Change to the Work reduces the Contract Price, no profit, general conditions or overhead costs shall be paid by the District to the Contractor for the reduced or deleted Work. In such event, the adjustment to the Contract Price shall be the actual cost reduction realized by the reduced or deleted Work multiplied by the percentage set forth in the Special Conditions for mark-ups on the cost of a Change adding to the scope of the Work.

8.5.1.4 Contractor Maintenance of Records. If the Contractor is directed to perform any Changes to the Work pursuant to Article 9.1, 9.2 or 9.3, or should the Contractor encounter conditions which the Contractor believes to obligate the District to adjust the Contract Price and/or the Contract Time, Contractor shall maintain detailed records on a daily basis. Such records shall include without limitation hourly records for labor and Construction Equipment and itemized records of materials and equipment used that day in connection with the performance of any Change to the Work. If more than one Change to the Work is performed by the Contractor in a calendar day, Contractor shall maintain separate records of labor, Construction Equipment, materials and equipment for each such Change. If any Subcontractor provides or performs any portion of a Change to the Work, Contractor shall require that each such Subcontractor maintain records in accordance with this Article. Each daily record maintained hereunder shall be signed by Contractor’s Superintendent or Contractor’s authorized representative which shall constitute the Contractor’s representation and warranty to the District that all information contained therein is true, accurate, complete and relate only to the Change referenced therein. All records maintained by a Subcontractor relating to the costs of a Change to the Work shall be signed by such Subcontractor’s authorized representative or Superintendent. All records maintained hereunder shall be subject to inspection, review and/or reproduction by the District, the Project Manager, if any or the District’s Inspector upon request. If the Contractor fails or refuses, for any reason, to maintain or make available for inspection, review and/or reproduction such records and the adjustment to the Contract Price on account of any Change to the Work, the District’s reasonable good faith determination of the extent of adjustment to the Contract Price on account of such Change shall be final, conclusive, dispositive and binding upon Contractor. Contractor’s obligation to maintain records hereunder is in addition to, and not in lieu of, any other Contractor obligation under the Contract Documents with respect to Changes to the Work.

8.5.2 Adjustment to Contract Time. If any Change to the Work authorized pursuant to this Article 9, the Contract Time affects the critical path of the Work, the Contract Time shall be extended or reduced by Change Order for a period of time commensurate with the time reasonably necessary to perform such Change. The Contractor is solely responsible for submitting scheduling data, analysis and other materials necessary or required by the District to substantiate the Contract Time adjustment requested by the Contractor for a Change. The District is not obligated to consider any adjustment to the Contract Time on account of a Change
until the Contractor has submitted such scheduling data, analysis and other materials.

8.5.3 Addition or Deletion of Alternate Bid Item(s). If the Bid Proposal for the Work includes proposal(s) for Alternate Bid Item(s), during Contractor’s performance of the Work, the District may elect, pursuant to this Article to add any such Alternate Bid Item(s) if the same did not form a basis for award of the Contract or delete any such Alternate Bid Item(s) if the same formed a basis for award of the Contract. If the District elects to add or delete any such Alternate Bid Item(s) pursuant to the foregoing, the cost or credit for such Alternate Bid Item(s) shall be as set forth in the Contractor’s Bid. If any Alternate Bid Item is added or deleted from the Work pursuant to the foregoing, the Contract Time shall be adjusted by the number of days allocated for the added or deleted Alternate Bid Item in the Contract Documents; if days are not allocated for any Alternate Bid Item added or deleted pursuant to the foregoing, the Contract Time shall be equitably adjusted.

8.6 Change Orders. If the District approves of a Change, a written Change Order prepared by the Project Manager on behalf of the District shall be forwarded to the Contractor describing the Change and setting forth the adjustment to the Contract Time and the Contract Price, if any, on account of such Change. All Change Orders shall be in full payment and final settlement of all claims for direct, indirect and consequential costs, including without limitation, costs of delays or impacts related to, or arising out of, items covered and affected by the Change Order, as well as any adjustments to the Contract Time. Any claim or item relating to any Change incorporated into a Change Order not presented by the Contractor for inclusion in the Change Order shall be deemed waived. The Contractor shall execute the Change Order prepared pursuant to the foregoing; once the Change Order has been prepared and forwarded to the Contractor for execution, without the prior approval of the District which may be granted or withheld in the sole and exclusive discretion of the District, the Contractor shall not modify or amend the form or content of such Change Order, or any portion thereof. The Contractor’s attempted or purported modification or amendment of any such Change Order, without the prior approval of the District, shall not be binding upon the District; any such unapproved modification or amendment to such Change Order shall be null, void and unenforceable. Unless otherwise expressly provided for in the Contract Documents or in the Change Order, any Change Order issued hereunder shall be binding upon the District only upon action of the District’s Board of Trustees approving and ratifying such Change Order. In the event of any amendment or modification made by the Contractor to a Change Order for which there is no prior approval by the District, in accordance with the provisions of this Article 9.6, unless otherwise expressly stated in its approval and ratification of such Change Order, any action of the Board of Trustees to approve and ratify such Change Order shall be deemed to be limited to the Change Order as prepared by the Project Manager; such approval and ratification of such Change Order shall not be deemed the District’s approval and ratification of any unapproved amendment or modification by the Contractor to such Change Order.

8.7 Contractor Notice of Changes. If the Contractor claims that any instruction, request, the Drawings, the Specifications, action, condition, omission, default, or other situation obligates the District to increase the Contract Price or to extend the Contract Time, the Contractor shall notify the Project Manager, if any, the District’s Inspector and the Owner’s Representative, in writing, of such claim within ten (10) days from the date of its actual or constructive notice of the factual basis supporting the same. The District shall consider any such claim of the Contractor only if sufficient supporting documentation is submitted with the Contractor’s notice to the District’s Inspector and the Owner’s Representative. Time is of the essence in Contractor’s written notice pursuant to the preceding sentence so that the District can promptly investigate and consider alternative measures to the address such instruction, request, Drawings, Specifications, action, condition, omission, default or other situation. Accordingly, Contractor acknowledges that its failure, for any reason, to give written notice (with sufficient supporting documentation to permit the District’s review and evaluation) within ten (10) days of its actual or constructive knowledge of any instruction, request, Drawings, Specifications, action, condition, omission, default or other situation for which the Contractor believes there should an adjustment of the Contract Time or the Contract Price shall be deemed Contractor’s waiver, release, discharge and
relinquishment of any right to assert or claim any entitlement to an adjustment of the Contract Time or the Contract Price on account of any such instruction, request, Drawings, Specifications, action, condition, omission, default or other situation. In the event that the District determines that the Contract Price or the Contract Time are subject to adjustment based upon the events, circumstances and supporting documentation submitted with the Contractor’s written notice under this Article 9.7, any such adjustment shall be determined in accordance with the provisions of Articles 9.5.1 and 9.5.2.

8.8 Disputed Changes. If there is any dispute or disagreement between the Contractor and the District or the Project Manager regarding the characterization of any item as a Change to the Work or as to the appropriate adjustment of the Contract Price or the Contract Time on account thereof, the Contractor shall promptly proceed with the performance of such item of the Work, subject to a subsequent resolution of such dispute or disagreement in accordance with the terms of the Contract Documents. The Contractor’s failure or refusal to so proceed with such Work may be deemed to be Contractor’s default of a material obligation of the Contractor under the Contract Documents.

8.9 Emergencies. In an emergency affecting or threatening the safety of persons, or which affects or threatens the Work, or property, the Contractor, without special instruction or prior authorization from the District, Project Manager or the Owner’s Representative, is permitted to act at its discretion to prevent such threatened loss or injury. Any compensation claimed by the Contractor on account of such emergency work shall be submitted and determined in accordance with this Article 9.

8.10 Minor Changes in the Work. The Project Manager may order minor Changes in the Work not involving an adjustment in the Contract Price or the Contract Time and not inconsistent with the intent of the Contract Documents. Such Changes shall be effected by written order and shall be binding on the District and the Contractor. The Contractor shall carry out such orders promptly.

8.11 Unauthorized Changes. Any Work beyond the lines and grades shown on the Contract Documents, or any extra Work performed or provided by the Contractor without notice to the Project Manager and the District’s Inspector in the manner and within the time set forth in Articles 9.2 or 9.7 shall be considered unauthorized and at the sole expense of the Contractor. Work so done will not be measured or paid for, no extension to the Contract Time will be granted on account thereof and any such Work may be ordered removed at the Contractor’s sole cost and expense. The failure of the District to direct or order removal of such Work shall not constitute acceptance or approval of such Work nor relieve the Contractor from any liability on account thereof.

ARTICLE 9: SEPARATE CONTRACTORS

9.1 District’s Right to Award Separate Contracts. The District reserves the right to perform construction or operations related to the Project with the District’s own forces or to award separate contracts in connection with other portions of the Project or other construction or operations at or about the Site. If the Contractor claims that delay or additional cost is involved because of such action by the District, the Contractor shall seek an adjustment to the Contract Price or the Contract Time as provided for in the Contract Documents. Failure of the Contractor to request such an adjustment of the Contract Time or the Contract Price in strict conformity with the provisions of the Contract Documents applicable thereto shall be deemed a waiver of the same.

9.2 District’s Coordination of Separate Contractors. The District shall provide for coordination of the activities of the District’s own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the District in reviewing their respective Construction Schedules when directed to do so. The Contractor shall make any revisions to the Approved Construction Schedule for the Work hereunder deemed necessary after a joint review and mutual agreement. The Construction Schedules shall then constitute the Construction Schedules to be used by the Contractor, separate contractors and the District until subsequently revised.

9.3 Mutual Responsibility. The Contractor shall afford the District and separate contractors of the
District reasonable opportunity for storage of their materials and equipment and performance of their activities at the Site and shall connect and coordinate the Contractor's Work, construction and operations with theirs as required by the Contract Documents.

9.4 **Discrepancies or Defects.** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the District or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Owner's Representative, Project Manager, if any and the District's Inspector any apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor to so report shall constitute an acknowledgment that the District's or separate contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then discoverable by the Contractor's reasonable diligence.

**ARTICLE 10: TESTS AND INSPECTIONS**

10.1 **Tests; Inspections; Observations.**

10.1.1 **Contractor's Notice.** If the Contract Documents, the Laws or any public authority with jurisdiction over the Work requires the Work, or any portion thereof, to be specially tested, inspected or approved, the Contractor shall give the Owner's Representative, the Project Manager and the District's Inspector written notice of the readiness of such Work for observation, testing or inspection at least two (2) working days prior to the time for the conducting of such test, inspection or observation. The Contractor shall not cover up any portion of the Work subject to tests, inspections or observations prior to the completion and satisfaction of the requirements of such test, inspection or observation. If any portion of the Work subject to tests, inspection or approval is covered up by Contractor prior to completion and satisfaction of the requirements of such tests, inspection or approval, Contractor shall be responsible for the uncovering of such portion of the Work as is necessary for performing such tests, inspection or approval without adjustment of the Contract Price or the Contract Time on account thereof.

10.1.2 **Cost of Tests and Inspections.** The District will pay for fees, costs and expenses for the initial tests/inspections of materials/equipment which are conducted at the Site or locations within a one hundred (100) mile radius of the Site. All fees, costs or expenses for subsequent tests/inspections or for tests/inspections conducted at a location more than a one hundred (100) mile radius from the Site (including without limitation, travel and travel-related expenses) shall be borne solely and exclusively by the Contractor.

10.1.3 **Testing/Inspection Laboratory.** The District shall select duly qualified person(s) or testing laboratory(ies) to conduct the tests and inspections to be paid for by the District and required by the Contract Documents. All such tests and inspections shall be in conformity with the Laws, including without limitation, Title 24 of the California Code of Regulations. Where inspection or testing is to be conducted by an independent laboratory or testing agency, materials or samples thereof shall be selected by the laboratory, testing agency, the District's Inspector, the Project Manager or the Owner's Representative and not by the Contractor.

10.1.4 **Additional Tests, Inspections and Approvals.** If the Owner's Representative, the Project Manager, the District's Inspector or public authorities having jurisdiction over the Work determine that portions of the Work require additional testing, inspection or approval, the Owner's Representative or Project Manager, if any will, upon written authorization from the District, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the District, and the Contractor shall give timely notice to the Owner's Representative, the Project Manager and the District's Inspector of when and where tests and inspections are to be made so the District's Inspector and the Owner's Representative may observe such procedures. The District shall bear the costs of such additional tests, inspections or approvals, except to the extent that such additional tests, inspections or approvals reveal any failure of the Work to comply with the requirements of the Contract Documents, in which case the Contractor shall bear all costs made necessary by such failures, including without
limitation, the costs of corrections, repeat tests, inspections or approvals and the fees of the Owner’s Representative, Project Manager, if any, and the District’s Inspector in connection therewith.

10.2 **Delivery of Certificates.** Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Owner’s Representative.

10.3 **Timeliness of Tests, Inspections and Approvals.** Tests or inspections required and conducted pursuant to the Contract Documents shall be made or arranged by Contractor to avoid delay in the progress of the Work.

**ARTICLE 11: UNCOVERING AND CORRECTION OF WORK**

11.1 **Inspection of the Work.**

11.1.1 **Access to the Work.** All Work and all materials and equipment forming a part of the Work or incorporated into the Work are subject to inspection by the District, the Project Manager, the Owner’s Representative and the District’s Inspector for conformity with the Contract Documents. The Contractor shall, at its cost and without adjustment to the Contract Price or the Contract Time, furnish any facilities necessary for sufficient and safe access to the Work for purposes of inspection by the District, the Project Manager, the Owner’s Representative, the District’s Inspector, DSA or any other public or quasi-public authority with jurisdiction over the Work or any portion thereof.

11.1.2 **Limitations Upon Inspections.** Inspections, tests, measurements, or other acts of the Owner’s Representative and the District’s Inspector hereunder are for the sole purpose of assisting them in determining that the Work, materials, equipment, progress of the Work, and quantities generally comply and conform with the requirements of the Contract Documents. These acts or functions shall not relieve the Contractor from performing the Work in full compliance with the Contract Documents. No inspection by the Owner’s Representative or the District’s Inspector shall constitute or imply acceptance of Work inspected. Inspection of the Work hereunder is in addition to, and not in lieu of, any other testing, inspections or approvals of the Work required under the Contract Documents.

11.2 **Uncovering of Work.** If any portion of the Work is covered contrary to the request of the Owner’s Representative, the District’s Inspector or the requirements of the Contract Documents, it must, if required by the Owner’s Representative or the District’s Inspector, be uncovered for observation by the Owner’s Representative and the District’s Inspector and be replaced at the Contractor’s expense without adjustment of the Contract Time or the Contract Price.

11.3 **Rejection of Work.** Prior to the District’s Final Acceptance of the Work, any Work or materials or equipment forming a part of the Work or incorporated into the Work which is defective or not in conformity with the Contract Documents may be rejected by the District, the Project Manager the Owner’s Representative or the District’s Inspector and the Contractor shall correct such rejected Work without any adjustment to the Contract Price or the Contract Time, even if the Work, materials or equipment have been previously inspected by the Owner’s Representative or the District’s Inspector or even if they failed to observe the defective or non-conforming Work, materials or equipment.

11.4 **Correction of Work.** The Contractor shall promptly correct any portion of the Work rejected by the District, the Project Manager, the Owner’s Representative or the District’s Inspector for failing to conform to the requirements of the Contract Documents, or which is determined by them to be defective, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including additional testing and inspections and compensation for the Owner’s Representative’s services and expenses made necessary thereby. The Contractor shall bear all costs of correcting destroyed or damaged construction, whether completed or partially completed, of the District or separate contractors, caused
by the Contractor’s correction or removal of Work which is not in accordance with the requirements of the Contract Documents, or which is defective.

11.5 Removal of Non-Conforming or Defective Work. The Contractor shall, at its sole cost and expense, remove from the Site all portions of the Work which are defective or are not in accordance with the requirements of the Contract Documents which are neither corrected by the Contractor nor accepted by the District.

11.6 Failure of Contractor to Correct Work. If the Contractor fails to commence to correct defective or non-conforming Work within three (3) days of notice of such condition and promptly thereafter complete the same within a reasonable time, the District may correct it in accordance with the Contract Documents. If the Contractor does not proceed with correction of such defective or non-conforming Work within the time fixed herein, the District may remove it and store the salvable materials or equipment at the Contractor’s expense. If the Contractor does not pay costs of such removal and storage after written notice, the District may sell such materials or equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including without limitation compensation for the Owner’s Representative’s services, attorneys fees and other expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Price shall be reduced by the deficiency. If payments of the Contract Price then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor and the Surety shall be jointly and severally liable to the District for any such excess amount.

11.7 Acceptance of Defective or Non-Conforming Work. The District may, in its sole and exclusive discretion, elect to accept Work which is defective or which is not in accordance with the requirements of the Contract Documents, instead of requiring its removal and correction, in which case the Contract Price shall be reduced as appropriate and equitable. The District’s determination of the extent of reduction of the Contract Price on account of defective or non-conforming Work accepted by the District shall be binding, conclusive, dispositive and not subject to appeal or other dispute resolution procedures, unless such determination is manifestly unreasonable.

ARTICLE 12: WARRANTIES

12.1 Workmanship and Materials. The Contractor warrants to the District that: (i) all materials and equipment furnished under the Contract Documents conform to requirements of the Contract Documents and are new, of good quality and of the most suitable grade and quality for the purpose intended, unless otherwise specified in the Contract Documents; and (ii) all Work and workmanship is of good quality, free from faults and defects and in conformity with the requirements of the Contract Documents. If required by the Owner’s Representative or the District, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment incorporated into the Work. Any Work or portion thereof not conforming to these requirements, including substitutions or alternatives not properly approved in accordance with the Contract Documents may be deemed defective. Where there is an approved substitution of, or alternative to, material or equipment specified in the Contract Documents, the Contractor warrants to the District that such installation, construction, material, or equipment will equally perform the function and have the quality of the originally specified material or equipment. The Contractor expressly warrants the merchantability, the fitness for use, and quality of all substitute or alternative items in addition to any warranty given by the manufacturer or supplier of such item.

12.2 Warranty Work. If, within one (1) year after the date of Final Acceptance, or such other time frame set forth elsewhere in the Contract Documents, any of the Work is found to be defective or not in accordance with the requirements of the Contract Documents, or otherwise contrary to the warranties contained in the Contract Documents, the Contractor shall commence all necessary corrective action not more than seven (7) days after receipt of a written notice from the District to do so, and to thereafter diligently complete the same. In the event that Contractor shall fail or refuse to commence correction
of any such item within said seven (7) day period or to diligently prosecute such corrective actions to completion, the District may, without further notice to Contractor, cause such corrective Work to be performed and completed. In such event, Contractor and Contractor’s Performance Bond Surety shall be responsible for all costs in connection with such corrective Work, including without limitation, general administrative overhead costs of the District in securing and overseeing such corrective Work. Nothing contained herein shall be construed to establish a period of limitation with respect to any obligation of the Contractor under the Contract Documents. The obligations of the Contractor hereunder shall be in addition to, and not in lieu of, any other obligations imposed by any special guarantee or warranty required by the Contract Documents, guarantees or warranties provided by any manufacturer of any item or equipment forming a part of, or incorporated into the Work, or otherwise recognized, prescribed or imposed by law. Neither the District’s Final Acceptance, the making of Final Payment, any provision in Contract Documents, nor the use or occupancy of the Work, in whole or in part, by District shall constitute acceptance of Work not in accordance with the Contract Documents nor relieve the Contractor or the Contractor’s Performance Bond Surety from liability with respect to any warranties or responsibility for faulty or defective Work or materials, equipment and workmanship incorporated therein.

12.3 Guarantee. Upon completion of the Work, Contractor shall execute and deliver to the District the form of Guarantee included with the Contract Documents. The Contractor’s execution and delivery of the form of Guarantee is an express condition precedent to any obligation of the District to disburse the Final Payment to the Contractor.

12.4 Survival of Warranties; Surety Obligations. The Contractor’s warranty obligations hereunder shall survive the Contractor’s completion of Work under the Contract Documents, the District’s Final Acceptance or the termination of the Contract. The obligations of the Surety issuing the Performance Bond shall include assumption and discharge of the Contractor’s warranty obligations if the Contractor fails or refuses to perform its warranty obligations hereunder in strict conformity herewith.

ARTICLE 13: SUSPENSION OF WORK

13.1 District’s Right to Suspend Work. The District may, without cause, and without invalidating or terminating the Contract, order the Contractor, in writing, to suspend, delay or interrupt the Work in whole or in part for such period of time as the District may determine. The Contractor shall resume and complete the Work suspended by the District in accordance with the District’s directive, whether issued at the time of the directive suspending the Work or subsequent thereto.

13.2 Adjustments to Contract Price and Contract Time. If the District directs suspension of the Work, an adjustment shall be made to the Contract Price for increases in the direct cost of performance of the Work of the Contract Documents, actually caused by suspension, delay or interruption ordered by the District; provided however that no adjustment of the Contract Price shall be made to the extent: (i) that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible under the Contract Documents; or (ii) that an equitable adjustment is made or denied under another provision of the Contract Documents. The foregoing notwithstanding, any such adjustment of the Contract Price shall not include any adjustment to increase the Contractor’s overhead, general administrative costs or profit, all of which will remain as reflected in the Cost Breakdown submitted by the Contractor pursuant to the Contract Documents. In the event of the District’s suspension of the Work, the Contract Time shall be equitably adjusted.

ARTICLE 14: TERMINATION

14.1 Termination for Cause.

14.1.1 District’s Right to Terminate. The District may terminate the Contract upon the occurrence of any one or more of the following events of the Contractor’s default: (i) if the Contractor refuses or fails to prosecute the Work with diligence as will insure Substantial Completion of the Work within the Contract Time, or if the Contractor fails to substantially
Complete the Work within the Contract Time; (ii) if the Contractor becomes bankrupt or insolvent, or makes a general assignment for the benefit of creditors, or if the Contractor or a third party files a petition to reorganize or for protection under any bankruptcy or similar laws, or if a trustee or receiver is appointed for the Contractor or for any of the Contractor’s property on account of the Contractor’s insolvency, and the Contractor or its successor in interest does not provide adequate assurance of future performance in accordance with the Contract Documents within ten (10) days of receipt of a request for such assurance from the District; (iii) if the Contractor repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment; (iv) if the Contractor repeatedly fails to make prompt payments to any Subcontractor, of any tier, or Material Suppliers or others for labor, materials or equipment; (v) if the Contractor disregards laws, ordinances, rules, codes, regulations, orders applicable to the Work or similar requirements of any public entity having jurisdiction over the Work; (vi) if the Contractor disregards proper directives of the Owner’s Representative, the District's Inspector or District under the Contract Documents; (vii) if the Contractor performs Work which deviates from the Contract Documents and neglects or refuses to correct such Work; or (viii) if the Contractor otherwise violates in any material way any provisions or requirements of the Contract Documents. Once the District determines that sufficient cause exists to justify the action, the District may terminate the Contract without prejudice to any other right or remedy the District may have, after giving the Contractor and the Surety at least seven (7) days advance written notice of the effective date of termination. The District shall have the sole discretion to permit the Contractor to remedy the cause for the termination without waiving the District’s right to terminate the Contract, or otherwise waiving, restricting or limiting any other right or remedy of the District under the Contract Documents or at law.

14.1.2 District’s Rights Upon Termination. If the Contract is terminated pursuant to this Article 15.1, the District may take over the Work and prosecute it to completion, by contract or otherwise, and may exclude the Contractor from the site. The District may take possession of the Work and of all of the Contractor’s tools, appliances, construction equipment, machinery, materials, and plant which may be on or about the Site, and use the same to the full extent they could be used by the Contractor without liability to the Contractor. In exercising the District’s right to prosecute the completion of the Work, the District may also take possession of all materials and equipment at or about the Site or for which the District has paid the Contractor but which are stored elsewhere, and finish the Work as the District deems expedient. In exercising the District’s right to prosecute the completion of the Work, the District shall have the right to exercise its sole discretion as to the manner, methods, and reasonableness of the costs of completing the Work and the District shall not be required to obtain the lowest price for completion of the Work. If the District takes bids for remedial Work or completion of the Work, the Contractor shall not be eligible for the award of such contract(s).

14.1.3 Completion by the Surety. If the Contract is terminated pursuant to this Article 15.1, the District may demand that the Surety take over and complete the Work. The District may require that in so doing, the Surety not utilize the Contractor in performing and completing the Work. Upon the failure or refusal of the Surety to take over and begin completion of the Work within twenty (20) days after demand therefor, the District may take over the Work and prosecute it to completion as provided for above.

14.1.4 Assignment and Assumption of Subcontracts. The District shall, in its sole and exclusive discretion, have the option of requiring any Subcontractor or Material Supplier to perform in accordance with its Subcontract or Purchase Order with the Contractor and assign the Subcontract or Purchase Order to the District or such other person or entity selected by the District to complete the Work.

14.1.5 Costs of Completion. In the event of termination under this Article 15.1, the Contractor shall not be entitled to receive any further payment of the Contract Price until the Work is completed. If the unpaid balance of the Contract Price as of the date of termination exceeds the District’s direct and indirect costs and expenses for completing the Work, including without...
14.1.6 Contractor Responsibility for Damages. The Contractor and the Surety shall be jointly and severally liable for all damage sustained by the District resulting from, in any manner, the termination of Contract under this Article 15.1, including without limitation, attorneys’ fees, and for all costs necessary for repair and completion of the Work exceeding the Contract Price.

14.1.7 Conversion to Termination for Convenience. In the event the Contract is terminated under this Article 15.1, and it is determined, for any reason, that the Contractor was not in default under the provisions hereof, the termination shall be deemed a Termination for Convenience of the District and thereupon, the rights and obligations of the District and the Contractor shall be determined in accordance with Article 15.2 hereof.

14.1.8 District’s Rights Cumulative. In the event the Contract is terminated pursuant to this Article 15.1, the termination shall not affect or limit any rights or remedies of the District against the Contractor or the Surety. The rights and remedies of the District under this Article 15.1 are in addition to, and not in lieu of, any other rights and remedies provided by the Laws or under the Contract Documents. Any retention or payment of monies to the Contractor by the District shall not be deemed to release the Contractor or the Surety from any liability hereunder.

14.2 Termination for Convenience of the District. The District may at any time, in its sole and exclusive discretion, by written notice to the Contractor, terminate the Contract in whole or in part when it is in the interest of, or for the convenience of, the District. In such case, the Contractor shall be entitled to payment for: (i) Work actually performed and in place as of the effective date of such termination for convenience of the District, with a reasonable allowance for profit and overhead on such Work, and (ii) reasonable termination expenses for reasonable protection of Work in place and suitable storage and protection of materials and equipment delivered to the site of the Work but not yet incorporated into the Work, provided that such payments exclusive of termination expenses shall not exceed the total Contract Price as reduced by payments previously made to the Contractor and as further reduced by the value of the Work as not yet completed. The Contractor shall not be entitled to profit and overhead on Work which was not performed as of the effective date of the termination for convenience of the District. The District may, in its sole discretion, elect to have Subcontracts assigned pursuant to Article 15.1.4 above after exercising the right hereunder to terminate for the District’s convenience.

ARTICLE 15: MISCELLANEOUS

15.1 Governing Law. This Contract shall be governed by and interpreted in accordance with the laws of the State of California.

15.2 Marginal Headings; Interpretation. The titles of the various Articles of these General Conditions and elsewhere in the Contract Documents are used for convenience of reference only and are not intended to, and shall in no way, enlarge or diminish the rights or obligations of the District or the Contractor and shall have no effect upon the construction or interpretation of the Contract Documents. The Contract Documents shall be construed as a whole in accordance with their fair meaning and not strictly for or against the District or the Contractor.

15.3 Successors and Assigns. Except as otherwise expressly provided in the Contract Documents, all terms, conditions and covenants of the Contract Documents shall be binding upon, and shall inure to the benefit of the District and the Contractor and their respective heirs, representatives, successors-in-interest and assigns.

15.4 Cumulative 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 in lieu of or
otherwise a limitation or restriction of duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the District shall constitute a waiver of a right or remedy afforded it under the Contract Documents or at law nor shall such an action or failure to act constitute approval of or acquiescence in a breach hereunder, except as may be specifically agreed in writing.

15.5 **Severability.** In the event any provision of the Contract Documents shall be deemed illegal, invalid, unenforceable and/or void, by a court or any other governmental agency of competent jurisdiction, such provision shall be deemed to be severed and deleted from the Contract Documents, but all remaining provisions hereof, shall in all other respects, continue in full force and effect.

15.6 **No Assignment by Contractor.** The Contractor shall not sublet or assign the Contract, or any portion thereof, or any monies due thereunder, without the express prior written consent and approval of the District, which approval may be withheld in the sole and exclusive discretion of the District. The District's approval to such assignment shall be upon such terms and conditions as determined by the District in its sole and exclusive discretion.

15.7 **Gender and Number.** Whenever the context of the Contract Documents so require, the neuter gender shall include the feminine and masculine, the masculine gender shall include the feminine and neuter, the singular number shall include the plural and the plural number shall include the singular.

15.8 **Independent Contractor Status.** In performing its obligations under the Contract Documents, the Contractor is an independent contractor to the District and not an agent or employee of the District.

15.9 **Notices.** Except as otherwise expressly provided for in the Contract Documents, all notices which the District or the Contractor may be required, or may desire, to serve on the other, shall be effective only if delivered by personal delivery or by postage prepaid, First Class Certified Return Receipt Requested United States Mail, addressed to the District or the Contractor at their respective address set forth in the Contract Documents, or such other address(es) as either the District or the Contractor may designate from time to time by written notice to the other in conformity with the provisions hereof. In the event of personal delivery, such notices shall be deemed effective upon delivery, provided that such personal delivery requires a signed receipt by the recipient acknowledging delivery of the same. In the event of mailed notices, such notice shall be deemed effective on the third working day after deposit in the mail.

15.10 **Disputes; Continuation of Work.** Notwithstanding any claim, dispute or other disagreement between the District and the Contractor regarding performance under the Contract Documents, the scope of Work thereunder, or any other matter arising out of or related to, in any manner, the Contract Documents, the Contractor shall proceed diligently with performance of the Work in accordance with the District’s written direction, pending any final determination or decision regarding any such claim, dispute or disagreement.

15.11 **Dispute/Claims Resolution.**

15.11.1 **Public Contract Code §9204 Claims Resolution Procedures.** Claims of the Contractor are subject to the non-binding dispute resolution procedures set forth in Public Contract Code §9204 (“Section 9204”) provided, however, that the Contractor’s initiation of Section 9204 procedures is expressly subject to the Contractor’s prior full and timely compliance with requirements and procedures of the Contract Documents relating to procedures for resolution of claims, change orders, disputes and other matters in controversy under the Contract Documents.

15.11.1.1 **Claim Defined.** The term “Claim” shall be as defined in Section 9204.

15.11.1.2 **Claim Documentation.** The Contractor shall furnish reasonable documentation to support each Claim. “Reasonable documentation” includes, without limitation: (i) contractual and legal basis establishing Claim entitlement or merit; (ii) factual basis establishing District liability for the Claim; (iii) detailed breakdown of labor, materials, equipment and other costs included in the Claim; and (iv) detailed basis,
including Construction Schedule analysis and fragments supporting any Contract Time adjustment or Liquidated Damages relief included in the scope of a Claim.

15.11.1.3 District Claim Review Statement. Within forty five (45) days (or such other time mutually agreed to by the District and the Contractor) after receipt of a properly submitted and properly documented Claim, the District will conduct a reasonable review of the Claim and provide the Contractor with a written statement identifying the disputed and undisputed portions of the Claim (“Claim Review Statement”). If the District does not provide the Contractor with the Claim Review Statement for any Claim within forty five (45) days (or other time mutually agreed to by the District and the Contractor) after receipt of a properly submitted and properly documented Claim, the Claim is deemed rejected in its entirety and thereupon, the Contractor may initiate the Meet and Confer process described below. A Claim deemed rejected pursuant to the foregoing does not constitute an adverse finding of Claim merit or the Contractor’s responsibility or qualifications. If the Claim Review Statement identifies any undisputed portion of a Claim (“Undisputed Claim”) and payment is due from the District on the Undisputed Claim, the District shall process and make payment on the Undisputed Claim within sixty (60) days after the issuance date of the Claim Review Statement.

15.11.1.4 Meet and Confer.

15.11.1.4.1 Meet and Confer Demand. If the Contractor disputes any portion of the Claim Review Statement, or if a Claim is deemed rejected by the District not providing the Contractor with the Claim Review Statement within the time permitted under Section 9204, the Contractor may demand an informal conference to meet and confer with the District for settlement of the issues in dispute (“Meet and Confer”). The Contractor’s Meet and Confer request must be submitted to the District: (i) in writing; (ii) by registered mail or certified mail, return receipt requested; and (iii) within ten (10) days after the Claim Review Statement is submitted to the Contractor or within ten (10) days after the date the Claim is deemed rejected, as applicable. Failure of the Contractor to strictly comply with the foregoing is deemed a waiver of the Contractor’s right to request the Meet and Confer and the Non-Binding Mediation procedures under Section 9204. If the Contractor strictly complies with the foregoing, the District will schedule the Meet and Confer conference within thirty (30) days of the Contractor’s Meet and Confer request for settlement of disputed portions of the Claim Review Statement.

15.11.1.4.2 Meet and Confer Statement. Within ten (10) business days after conclusion of the Meet and Confer conference, if any portion of a Claim remains disputed, the District shall provide the Contractor a written statement identifying the disputed and undisputed portions of the Claim (“Meet and Confer Statement”). If the Meet and Confer Statement identifies any Undisputed Claim and payment is due from the District on the Undisputed Claim, the District shall process and make payment on the Undisputed Claim within sixty (60) days after date the Meet and Confer Statement is issued.

15.11.1.5 Non-Binding Mediation.

15.11.1.5.1 Contractor Initiation. The Contractor may request nonbinding mediation (“Mediation”) of disputed portions of a Claim identified in the Meet and Confer Statement. The Contractor’s Mediation demand must be submitted to the District: (i) in writing; (ii) by registered mail or certified mail, return receipt requested; (iii) within ten (10) days after the Meet and Confer Statement is submitted to the Contractor; and (iv) with specific identification of the disputed
Claims issues subject to Mediation. Failure of the Contractor to strictly comply with the foregoing is deemed a waiver of the Contractor’s right to demand Mediation procedures under Section 9204.

15.11.1.5.2 **Mediator Selection.** The District and Contractor shall mutually agree to a mediator within ten (10) business days after the date of the Contractor’s demand for Mediation. If the District and Contractor do not mutually agree to a mediator, the District and Contractor shall each select a mediator and the District/Contractor selected mediators shall select a qualified neutral third party to mediate the disputed portion of the Claim.

15.11.1.5.3 **Mediation Procedures.** Mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the District and Contractor in dispute resolution through negotiation or by issuance of an evaluation.

15.11.1.5.4 **Mediation Costs.** All costs, fees and expenses of the mediator(s) and mediation administration shall be shared equally by the District and Contractor. The foregoing notwithstanding, the Contractor and District shall each bear the costs, fees and expenses of their own attorneys, experts and consultants.

15.11.1.5.5 **Post-Mediation Disputed Claims.** Any Claims issues in dispute after Mediation shall be resolved in accordance with the applicable provisions of the Contract Documents.

15.11.1.5.6 **Waiver.** The District and Contractor may mutually agree to waive, in writing, Mediation under Section 9204 and subject to the Contractor’s compliance with Government Code Claim requirements, proceed directly to commencement of a civil action or binding arbitration.

15.11.2 **Payments of Undisputed Claims.** If a payment due from the District for Undisputed Claims identified in the Claim Review Statement or the Meet and Confer Statement issued for a Claim is not made within the time established under Section 9204 the overdue portion of such payment shall bear interest at the rate of seven percent (7%) per annum from the date due. The District’s credit application of any amount due for an Undisputed Claim against amounts due from the Contractor under the Contract Documents shall be deemed payment of the Undisputed Claim.

15.11.3 **Subcontractor Claims.**

15.11.3.1 **Subcontractor Claim Submittal.** If a Subcontractor, of any tier (collectively “Subcontractor”) lacks legal standing to assert a Claim against the District because privity of contract does not exist, the Contractor may present the District a Claim on behalf of the Subcontractor (“Subcontractor Claim”). Each Subcontractor requesting submittal of a Subcontractor Claim to the District shall furnish reasonable documentation to support the Subcontractor Claim. Within forty-five (45) days of receipt of a Subcontractor’s written request to submit a Subcontractor Claim, the Contractor shall notify the Subcontractor in writing as to whether the Contractor presented the Subcontractor Claim to the District. If the Contractor did not present the Subcontractor Claim, the Contractor shall provide the Subcontractor with a statement of the reasons for not having done so.

15.11.3.2 **Contractor Certification of Subcontractor Claim.** The District’s review of Subcontractor Claims is expressly subject to the Contractor’s submittal of a duly completed and executed form of Contractor Certification of Subcontractor Claim.
certifying that the Contractor has thoroughly reviewed the Subcontractor Claim and based on the Contractor’s review, certify that: (i) the Subcontractor Claim is made by the Subcontractor in good faith; (ii) the Subcontractor Claim is supported by reasonable documentation establishing entitlement to the relief requested and District liability therefor; and (iii) the Subcontractor Claim does not incorporate any request constituting a False Claim under applicable law, including the California False Claim Act (Government Code §12650 et seq). The form of Contractor Certification of Subcontractor Claim is included in the Contract Documents.

15.11.3.3 District Review of Subcontractor Claim. Subcontractor Claims presented by the Contractor to the District are subject to the Section 9204 non-binding dispute resolution procedures set forth above, as modified herein. Requests for the District to conduct Meet and Confer and/or non-binding mediation procedures must be submitted jointly by the Contractor and the Subcontractor submitting the Subcontractor Claim. If Mediation proceedings are initiated in connection with a Subcontractor Claim, mediator and mediation administration fees and costs shall be borne equally by the District, Contractor and Subcontractor.

15.11.3.4 Disputed Subcontractor Claims. Subcontractor Claims which are not fully resolved by the Section 9204 non-binding dispute resolution procedures shall be resolved by Section 20104.4 Dispute Resolution Procedures or binding arbitration, as applicable. Commencement of Section 20104.4 Dispute Resolution Procedures or binding arbitration proceedings in connection with any Subcontractor Claim is subject to compliance with Government Code Claims requirements.

15.11.4 Government Code Claim Requirements. Pursuant to Government Code §930.6, any claim, demand, dispute, disagreement or other matter in controversy asserted by the Contractor, whether on behalf of itself or a Subcontractor, against the District for money or damages, including without limitation Claims or portions thereof remaining in dispute after completion of the Section 9204 non-binding dispute resolution procedures described above are deemed a “suit for money or damages” and shall be subject to the provisions of Government Code §§945.4, 945.6 and 946 (“Government Code Claims Process”). An express condition precedent to the Contractor’s initiation of Section 20104.4 Dispute Resolution Procedures or binding arbitration proceedings pursuant to the following is the Contractor’s compliance with the Government Code Claims Process, including without limitation, presentation of the claim, demand, dispute, disagreement or other matter in controversy between the Contractor and the District seeking money or damages to the District and acted upon or deemed rejected by the District in accordance with Government Code §900, et seq.

15.11.5 Section 20104.4 Dispute Resolution Procedures; Claims Less Than $375,000. Any Claim, or portion thereof, in dispute after completion of the Section 9204 non-binding dispute resolution procedures and the Government Code Claims Process which is equal to or less $375,000 shall be resolved in accordance with the civil action procedures established in Public Contract Code §20104.4. Unless otherwise agreed to by the District and the Contractor in writing, the mediation conducted pursuant to Section 9204 procedures shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

15.11.5.1 Binding Arbitration of Claims Exceeding $375,000.

15.11.5.1.1 JAMS Arbitration. Any Claim, or portion thereof in dispute after completion of the Section 9204 procedures and the Government Code Claims Process which exceeds $375,000 and any other claims, disputes, disagreements or other matters in controversy between the District and the Contractor arising out of, or related, in any manner, to the Contract Documents, or the interpretation, clarification or enforcement thereof shall be resolved by
binding arbitration conducted before one (1) retired judge in accordance with the Construction Arbitration Rules and Procedures of Judicial Arbitration Mediation Services ("JAMS") in effect as of the date that a Demand for Arbitration is filed, except as expressly modified herein. The locale for any arbitration commenced hereunder shall be the regional office of the JAMS closest to the Site.

15.11.5.2 Demand for Arbitration. A Demand for Arbitration shall be filed and served within a reasonable time after the occurrence of the claim, dispute or other disagreement giving rise to the Demand for Arbitration, but in no event shall a Demand for Arbitration be filed or served after the date when the institution of legal or equitable proceedings based upon such claim, dispute or other disagreement would be barred by the applicable statute of limitations. If more than one Demand for Arbitration is filed by either the District or the Contractor relating to the Work or the Contract Documents, all Demands for Arbitration shall be consolidated into a single arbitration proceeding, unless otherwise agreed to by the District and the Contractor. The Contractor's Surety, a Subcontractor or Material Supplier to the Contractor and other third parties may be permitted to join in and be bound by an arbitration commenced hereunder if required by the terms of their respective agreements with the Contractor, except to the extent that such joinder would unduly delay or complicate the expeditious resolution of the claim, dispute or other disagreement between the District and the Contractor, in which case an appropriate severance order shall be issued by the Arbitrator(s).

15.11.5.3 Discovery. In connection with any arbitration proceeding commenced hereunder, the discovery rights and procedures provided for in California Code of Civil Procedure §1283.05 shall be applicable, and the same shall be deemed incorporated herein by this reference.

15.11.5.4 Arbitration Award. The award rendered by the Arbitrator(s) ("Arbitration Award") shall be final and binding upon the District and the Contractor only if the Arbitration Award is: (i) supported by substantial evidence; (ii) based on applicable legal standards in effect that the time the Arbitration Award is issued; and (iii) supported by written findings of fact and conclusions of law in conformity with California Code of Civil Procedure §1296. Any Arbitration Award that does not conform to the foregoing is invalid and unenforceable. The District and Contractor hereby expressly agree that the Court shall, subject to California Code of Civil Procedure §§1286.4 and 1296, vacate the Arbitration Award if, after review, the Court determines either that the Arbitration Award does not fully conform to the foregoing. The confirmation, enforcement, vacation or correction of an arbitration award rendered hereunder shall be made by the Superior Court of the State of California for the county in which the Site is situated. The substantive and procedural rules for such post-award proceedings shall be as set forth in California Code of Civil Procedure §1285 et seq.

15.11.5.5 Arbitration Fees and Expenses. The expenses and fees of the Arbitrator(s) shall be divided equally among all of the parties to the arbitration. Each party to any arbitration commenced hereunder shall be responsible for and shall bear its own attorneys’ fees, witness fees and other costs or expenses incurred in connection with such arbitration. The foregoing notwithstanding, the Arbitrator(s) may award arbitration costs, including Arbitrators’ fees but excluding attorneys’ fees, to the prevailing party. By this arbitration provision, the District and the Contractor acknowledge and agree that neither shall recover from the other any attorney’s fees associated with or arising out of any legal, administrative or other proceedings filed or instituted in connection with or arising out of the Contract Documents or the performance of either the District or the Contractor thereunder. The limited exceptions in the Contract Documents that provide attorney’s fees for specific issues shall neither be construed as
applying to this arbitration provision under California Civil Code §1717(a) nor be deemed to be “authorized by the Laws.”

15.11.5.6 **Limitation on Arbitrator.** The Superior Court for the State of California for the County in which the Project Site is situated has the sole and exclusive jurisdiction, and an arbitrator has no authority, to hear and/or determine a challenge to the commencement or maintenance of an arbitration proceeding on the grounds that: (i) the subject matter of the arbitration proceeding is barred by the applicable statute of limitations; (ii) the subject matter of the arbitration proceeding is barred by a provision of the California Government Claims Act; (iii) the subject matter of the arbitration proceeding is outside the scope of the arbitration clause; (iv) the Contractor has failed to satisfy all conditions precedent to commencement or maintenance of arbitration proceeding; (v) waiver of the right to compel arbitration; (vi) grounds exist for the revocation of the arbitration agreement; and/or, (vii) there is the prospect that a ruling in arbitration would conflict or potentially with a ruling in a pending proceeding regarding the Project on a common issue of law or fact.

15.11.6 **Inapplicability to Bid Bond.** The arbitration proceedings described above are not applicable to disputes, disagreements or enforcement of rights or obligations under the Bid Bond. All claims, disputes and actions to enforce rights or obligations under the Bid Bond shall be adjudicated only by judicial proceedings commenced in a court of competent jurisdiction.

15.12 **Limitation on Special/Consequential Damages.** In the event of the District’s breach or default of its obligations under the Contract Documents, the damages, if any, recoverable by the Contractor shall be limited to general damages which are directly caused by the breach or default of the District and shall exclude any and all special or consequential damages, if any. The Contractor expressly acknowledges the foregoing limitation to recovery of only general damages from the District if the District is in breach or default of its obligations under the Contract Documents; the Contractor expressly waives and relinquishes any recovery of special or consequential damages from the District.

15.13 **Capitalized Terms.** Except as otherwise expressly provided, capitalized terms used in the Contract Documents shall have the meaning and definition for such term as set forth in the Contract Documents.

15.14 **Attorneys’ Fees.** Except as expressly provided for in the Contract Documents, or authorized by law, neither the District nor the Contractor shall recover from the other any attorney’s fees or other costs associated with or arising out of any legal, administrative or other proceedings filed or instituted in connection with or arising out of the Contract Documents or the performance of either the District or the Contractor thereunder.

15.15 **Provisions Required by Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in the Contract Documents is deemed to be inserted herein and the Contract Documents shall be read and enforced as though such provision or clause are included herein, and if through mistake, or otherwise, any such provision or clause is not inserted or if not correctly inserted, then upon application of either party, the Contract Documents shall forthwith be physically amended to make such insertion or correction.

15.16 **Days.** Unless otherwise expressly stated, references to “days” in the Contract Documents shall be deemed to be calendar days.

15.17 **Entire Agreement.** The Contract Documents contain the entire agreement and understanding between the District and the Contractor concerning the subject matter hereof, and supersedes and replaces all prior negotiations, proposed agreements or amendments, whether written or oral. No amendment or modification to any provision of the Contract Documents shall be effective or enforceable except by an agreement in writing executed by the District and the Contractor.
[END OF SECTION]
SPECIAL CONDITIONS

1. **Application of Special Conditions.** These Special Conditions for a part of the Contract Documents for the Work described as **RFP# 2018-14 SOLAR PROJECT AT THE LOS BANOS CAMPUS**.

2. **Project Manager.** The District’s Project Manager for the Work is _________________________.

3. **Drawings and Specifications.** The number of sets of the Drawings and Specifications which the District will provide to the Contractor, pursuant to Article 2.1.3 of the General Conditions is **Choose an item.** Additional sets of the Drawings and Specifications may be obtained by the Contractor from the District at the cost of reproduction.

4. **Insurance Coverages.**
4.1. **Contractor Insurance.** Pursuant to Article 6 of the General Conditions, the Contractor shall obtain and maintain the following insurance coverages with minimum coverage amounts as set forth below:

<table>
<thead>
<tr>
<th>Policy of Insurance</th>
<th>Minimum Coverage Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial General Liability Insurance</td>
<td>Per Occurrence: One Million Dollars ($1,000,000)</td>
</tr>
<tr>
<td>Workers Compensation</td>
<td>In accordance with the Laws</td>
</tr>
<tr>
<td>Employers Liability</td>
<td>One Million Dollars ($1,000,000)</td>
</tr>
<tr>
<td>Builders Risk</td>
<td>Full insurable value of the Work; Seismic coverage: <strong>Choose an item.</strong></td>
</tr>
</tbody>
</table>

4.2. **Subcontractor Insurance.** Pursuant to Article 6 of the General Conditions, each Subcontractor shall obtain and maintain the following insurance coverages with minimum coverage amounts as set forth below:

<table>
<thead>
<tr>
<th>Policy of Insurance</th>
<th>Minimum Coverage Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial General Liability Insurance</td>
<td>Per Occurrence: <strong>Choose an item.</strong></td>
</tr>
<tr>
<td>Workers Compensation</td>
<td>In accordance with the Laws</td>
</tr>
<tr>
<td>Employers Liability</td>
<td>One Million Dollars ($1,000,000)</td>
</tr>
</tbody>
</table>

5. **Contract Time.** The commencement date of the Contract Time of the Work shall be as set forth in the Notice to Proceed issued by or on behalf of the District. The Contractor shall achieve Substantial Completion of the Work ninety (90) calendar days after the date for commencement of the Work set forth in the Notice to Proceed. The Contract Time shall not be extended if the Contractor commences Work after the date established in the Notice to Proceed for commencement of Work without fault or neglect of the District.

6. **Liquidated Damages.** The per diem rate of Liquidated Damages for delayed Substantial Completion, delayed submission of Submittals and delayed completion of Punchlist shall be as set forth herein.

6.1. **Delayed Substantial Completion.** If Substantial Completion is not achieved on or before expiration of the Contract Time, the Contractor shall be liable to the District for Liquidated Damages from the date of expiration of the Contract Time to the date that the Contractor
achieves Substantial Completion of the Work at the per diem rate of ________________ Dollars ($__________).

6.2. **Delayed Submission of Submittals.** If the Contractor fails to submit a Submittal in accordance with the Submittal Schedule, the Contractor shall be liable to the District for Liquidated Damages for each delayed Submittal at the per diem rate of ________________ Dollars ($__________) from the date that such Submittal was due to be submitted pursuant to the Submittal Schedule and the date that the Contractor actually submits the Submittal to the District.

6.3. **Delayed Punchlist Completion.** If the Contractor fails to complete Punchlist within the time established pursuant to the Contract Documents, the Contractor shall be liable to the District for Liquidated Damages from the date established for completion of Punchlist until the date that all Punchlist is actually completed at the per diem rate of ________________ Dollars ($__________).

6.4. **Surety Liability.** Subject only to limitations established by the penal sum of the Performance Bond, the Surety issuing the Performance Bond shall be liable to the District for Liquidated Damages due from the Contractor.

7. **Mark-Ups on Changes to the Work.** In the event of Changes to the Work, pursuant to Article 9 of the General Conditions, the mark-up for all overhead (including home and field office overhead), general conditions costs and profit, shall not exceed the percentage of allowable direct actual costs for performance of the Change as set forth below.

7.1. **Subcontractor Performed Changes.** For the portion of any Change performed by Subcontractors of any tier, the percentage mark-up on allowable actual direct labor and materials costs incurred by all Subcontractors of any tier shall be Choose an item.. In addition, for the portion of any Change performed by a Subcontractor of any tier, the Contractor may add an amount equal to Choose an item. of the allowable actual direct labor and materials costs of Subcontractors performing the Change; the foregoing mark-up shall not be applied to the Subcontractor mark-up.

7.2. **Contractor Performed Changes.** For the portion of any Change performed by the Contractor’s own forces, the mark-up on the allowable actual direct labor and materials costs of such portion of a Change shall be Choose an item..

7.3. **Bond Premium Costs.** In addition to the foregoing mark-ups on the direct costs of labor and materials, a bond premium expense in an amount equal to the lesser of the Contractor’s actual bond premium rate of Choose an item. of the total actual direct costs of labor and materials (before Subcontractor and Contractor mark-ups) will be allowed.

7.4. **Exclusions From Mark-Up of Actual Costs.** Mark-ups on the actual cost of materials/equipment incorporated into a Change or for purchase/rental of Construction Equipment shall not be applied to any portion of such costs which are for sales, use or other taxes arising out of the purchase of materials/equipment and/or for purchase/rental of Construction Equipment

8. **Rain Days.**

8.1. **Rain Days Defined and Limitations on Rain Days.** In addition to the requirements and limitations set forth in the Contract Documents, including without limitation Article 7.4.1 of the General Conditions, the Contract Time will be adjusted for unusually severe weather conditions resulting from rainfall only if: (i) the Contractor has taken reasonable measures to proceed with the Work notwithstanding inclement weather conditions;(ii) the Contractor demonstrates (by schedule analysis or other means) to the reasonable satisfaction of the District that the progress of Work on the critical path of the then current Construction Schedule was affected by unusually severe weather conditions resulting from rainfall; and (iii) the Contractor demonstrates to the reasonable satisfaction of the District that the Contractor could not re-sequence Work so that Work activities (whether or not on the critical path of the then current Construction Schedule) not affected by rainfall could have been performed on a Rain Day. The occurrence of precipitation by itself shall
not constitute a Rain Day. For purposes of the Contract Documents, a Rain Day occurs when: (ii) there is measurable rainfall occurring on a day when Work is scheduled to be performed at the Site; (ii) there is rainfall sufficiently continuous for at least a three (3) hour period; (iv) the rainfall is sufficiently severe to prevent performance of Work at the Site (rainfall is not deemed sufficiently severe to prevent Work at the Site if there are Work activities which are not materially affected by rainfall and which can be reasonably performed by the Contractor by re-sequencing Work activities); and (iv) after a Rain Day (as defined in (i), (ii) and (iii) above) has occurred, the conditions at the Site are adversely affected by rainfall so that a period of time is necessary to permit sufficient “drying out” of wet conditions at the Site sufficient to permit the continuation of Work.

8.2. **Rain Days Incorporated Into Construction Schedules.** Construction Schedules prepared by the Contractor shall incorporate the following Rain Days. The Contract Time shall not be subject to adjustment for unusually severe weather conditions until the number of Rain Days noted below are exceeded.

<table>
<thead>
<tr>
<th>Month</th>
<th>Rain Days</th>
</tr>
</thead>
<tbody>
<tr>
<td>January</td>
<td>four (4)</td>
</tr>
<tr>
<td>February</td>
<td>four (4)</td>
</tr>
<tr>
<td>March</td>
<td>three (3)</td>
</tr>
<tr>
<td>April</td>
<td>two (2)</td>
</tr>
<tr>
<td>May</td>
<td>two (2)</td>
</tr>
<tr>
<td>June</td>
<td>none</td>
</tr>
<tr>
<td>July</td>
<td>none</td>
</tr>
<tr>
<td>August</td>
<td>none</td>
</tr>
<tr>
<td>September</td>
<td>none</td>
</tr>
<tr>
<td>October</td>
<td>two (2)</td>
</tr>
<tr>
<td>November</td>
<td>three (3)</td>
</tr>
<tr>
<td>December</td>
<td>four (4)</td>
</tr>
</tbody>
</table>

9. **Hours and Days of Work at the Site.**

9.1. **Work Hours/Days.** Subject to limitations set forth elsewhere in the Contract Documents and below, the hours/days of Work at the Site are: 7am – 5pm Mondays through Fridays, except for holiday days.

9.2. **Limitations on Work Hours/Days.** Work activities at the Site will be limited or prohibited on days: (i) devoted to student testing or when testing of students may be adversely affected by Work activities at the Site; or (ii) when other special events or functions are scheduled. The Contractor shall familiarize itself with District activities at the Site to avoid Work activity interferences or disturbances to such District activities. The Contractor’s Construction Schedule shall take into account the District activities which limit or preclude Work activities at the Site.

9.3. **Facilities/Services for District Inspector.** Unless otherwise expressly provided in the Contract Documents, pursuant to Article 4.14.2 of the General Conditions, the Contractor, without adjustment of the Contract Price, shall provide, or cause to be provided, for use by the District Inspector during prosecution of the Work, the following: (i) lockable temporary office space consisting of sufficient space to accommodate Project Inspectors assigned to the Work; (ii) furniture and furnishings consisting of desks and chairs for use by Project Inspectors assigned to the Work, file storage, one (1) conference table and seating sufficient to accommodate seating for at least four (4) people; (iii) landline phone; (iv) plain paper fax machine; (v) landline telephone and fax service; (vi) internet service; and (vii) plain paper copier with copy speed of no greater than thirty five (35) pages per minute.
10. Permits, Fees and Approvals. In addition to permits or approvals obtained by the District for the Work, the Contractor shall obtain the following permits, approvals and other authorizations from any public agency with jurisdiction over any portion of the Work. The Contractor shall obtain the permits, approvals and/or authorizations set forth below: (i) without adjustment of the Contract Price, unless otherwise indicated below; and (ii) without adjustment of the Contract Time.

<table>
<thead>
<tr>
<th>Contractor Obtained Permit, Approval or Authorization</th>
<th>Cost Reimbursement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deferred Approval Items</td>
<td>No reimbursement to Contractor; cost included in Contract Price.</td>
</tr>
<tr>
<td>Choose an item.</td>
<td></td>
</tr>
</tbody>
</table>

For any off-site work requiring City or County review and/or approval, Contractor shall coordinate and schedule inspections with City or County.

11. Construction Utilities. The Contractor shall obtain and pay for all site utilities required to complete the Work.

12. Use of Site.
12.1. Staging/Storage. Staging/storage areas shall be restricted to areas designated in the Contract Documents for such purposes. The Contractor, without adjustment of the Contract Price or the Contract Time, shall secure and pay for the use of additional storage, staging areas, or work areas needed for operations. The Contractor and Subcontractors are responsible for following the requirements established in the Contract Documents for deliveries, storage trailers, office trailers and temporary utilities. The Contractor and Subcontractors shall coordinate material and equipment deliveries with the District and to ensure that materials can be off-loaded efficiently and that Site use operations are maintained in an orderly fashion. If any materials or equipment stored at the Site obstruct the performance of any portion of the Project or otherwise interfere with District operations or activities, these materials shall be removed and relocated by the Contractor without adjustment of the Contract Price or the Contract Time. If the Contractor fails or refuses to comply with the foregoing staging/storage requirements and limitations within a reasonable time, but not more than twenty four (24) hours after notice, the District reserves the right to take measures to comply with such requirements or limitations, with the costs of such measures being the sole responsibility of the Contractor.

12.2. Site Logistics Plan. Prior to commencement of Work at the Contractor, the Contractor prepare a Site Logistics Plan which include, without limitation: delivery routes, storage/staging areas, jobsite trailer locations, wash out areas, and other similar activities. The Site Logistics Plan shall: (i) take into account emergency vehicle ingress/egress; pedestrian paths of travel and disabled persons paths of travel; (ii) be subject to review and acceptance by the District; and (iii) be subject to modification during performance of the Work.

12.3. Parking. Personnel of the Contractor, Subcontractors and others performing Work at the Site will be allowed to park vehicles in areas outside the Site, with a valid District parking permit, in the parking spaces at a location designated by the District. Parking permit charges, if any, shall be borne and paid by the Contractor without adjustment of the Contract Price. The foregoing notwithstanding, the extent or location of parking for such personnel may be limited, restricted, eliminated or modified by the District as reasonably necessary to facilitate and accommodate necessary parking for the District’s students, staff and visitors. Neither the Contract Price nor the Contract Time shall be adjusted as a result of any such District modifications to the extent or location of parking.

12.4. Prohibition on Smoking. The District has implemented policies and practices limiting and restricting smoking on District property, including the Site. The Contractor is solely responsible.
for obtaining the District's current non-smoking policy and: (i) notifying Subcontractors of the District's non-smoking policies; (ii) informing employees of the Contractor and Subcontractors of the District's non-smoking policies; (iii) posting notices at the Site summarizing the District's non-smoking policies; (iv) complying with the Laws relating to smoking limitations and restrictions; and (v) taking appropriate actions if the District's non-smoking policies are violated or limitations/restrictions imposed by the Laws are violated, including without limitation, removal of personnel violating such policies, limitations or restrictions.

[END OF SECTION]
Merced Community College District

REQUEST FOR PROPOSAL
RFP #: 2018-14

Solar Project at the Los Banos Campus

Issue Date: Friday December 21st, 2018

Proposal Due Date: Monday March 11th, 2019

Contact: Chuck Hergenraeder
Purchasing Manager
Merced College
3600 M Street, Merced, CA 95348
P 209-384-6300
Charles.hergenraeder@mccd.edu
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Attachment A.3 – Existing Electrical Plans
Attachment A.4 – Geotechnical Surveys
Attachment A.5 – Existing Utility Load data

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Attachment B.2 – Pricing Proposal and Production Form (Bid Sheet)

C. CUSTOMER INFORMATION

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Attachment C.2 – Example Design-Build Agreement
Attachment C.3 – CEC Loan Agreement Requirements
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Merced Long Form Documents – Prevailing Wage Agreement
Merced Long Form Documents – Workers Compensation Certification
Attachment C.7 – Asbestos Certification
Merced Long Form Documents – DIR Registration Verification
Merced Long Form Documents – Payment Bond
Merced Long Form Documents – Designated Subcontractor List

D. PROPOSAL CHECKLIST

Attachment D.1 – Proposal Checklist
1. OVERVIEW

1.1 General Background & Notice to Contractors Inviting Proposals

The Merced Community College District ("Customer") is committed to creating a more vibrant, healthy, prosperous and sustainable community. The Customer is interested in generating electric power with solar systems on one (1) site, Los Banos Campus, serviced by Pacific Gas and Electric.

The Customer is issuing this Request for Proposals ("RFP") to solicit proposals from qualified Solar Contractor(s) ("Contractor") interested in the development of a solar generation system. The District has arranged a CEC loan for the construction of this project and has $1,420,000 available to purchase as large a PV system as it can for this price. This money must pay for the system, the performance guarantee and $20,000 potential interconnection costs. Contractors are encouraged to bid this full amount and will not be rewarded for bidding less.

The Contractor is required to bid on a parking lot shade structure system installed within the available area indicated in Attachment A.1. The parking lot shade structure system must meet ADA requirements, fire department requirements and DSA requirements as part of the project budget.

The bids will be partially scored based on the most kWh generated by the proposed systems, all of which will have similar prices.

Government Code Section 4217.10, et. seq., specifically, Section 4217.16, authorizes public agencies to solicit proposals from qualified persons and to award a contract on the basis of the experience of the Contractor, the type of technology employed by the Contractor, the cost to the local agency, and any other relevant considerations, provided that the projects deliver net cost savings to the public agency. The successful Contractor will be required to enter into a contract with the Customer. Contractors are asked to provide the Customer with the highest quality products at the best possible price.

Each Contractor shall be a licensed contractor pursuant to the California Business and Professions Code Section 7028.15 and California Public Contract Code Section 3300, and shall be licensed in the following classification as required by the scope of work: C-46 Solar OR B General Building license.

Any Contractor not licensed at the time of the RFQ/RFP opening will be rejected as non-responsive.

Pursuant to Section 1720.6 and Section 1771 of the Labor Code, the Project is subject to the payment of prevailing wages. The Director of Industrial Relations has determined the general prevailing rate of per diem wages in the locality in which this work is to be performed for each craft or type of worker needed to execute the Contract which will be awarded to the successful Contractor, copies of which are on file and will be made available to any interested party upon request at the Customer offices or online at http://www.dir.ca.gov/dlsr. A copy of these rates shall be posted by the successful Contractor at the job site. The successful Contractor, and all subcontractors under it, shall comply with all applicable laws and regulations, including but not limited to, the Labor Code provisions, which include hours of work, overtime and the employment of apprentices.
Pursuant to California Public Contract Code Section 22300, the successful Contractor may substitute certain securities for funds withheld by the Customer.

The successful Contractor will be required to furnish the Customer with a Payment and a Performance Bond equal to 100% of the Contract price, prior to execution of the Contract. All bonds are to be secured from a surety that meets all of the State of California bonding requirements, as defined in Code of Civil Procedure Section 995.120. Proposals shall include the cost of obtaining such bonds.

Contractors shall execute the “Non-Collusion Declaration” attached to the RFQ/RFP as Appendix C.3.

The successful Contractor shall be required to comply with all applicable laws, including but not limited to, the Labor Code and the prevailing wage laws.

Included in the base cost should be one (1) solar tracking data acquisition system (DAS) to provide monitored data and can be available for educational purposes.

All proposals must also provide pricing, terms and conditions outlining a minimum 25-year system performance guarantee.

The Customer has identified the following site to install solar:

<table>
<thead>
<tr>
<th>Solar Site</th>
<th>Site Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Los Banos Campus</td>
<td>22240 CA-152, Los Banos, CA 93635</td>
</tr>
</tbody>
</table>

At a minimum, Contractors must have successfully developed at least 5 solar projects totaling at least 100 kW each, which are in commercial operation at the time of the issuance of this RFP, and who have experience in successfully completing DSA certified projects for education institutions using a design-build delivery method. The Customer reserves the right to deem any proposals which do not meet this standard as non-responsive.

1.2 Process Timeline

<table>
<thead>
<tr>
<th>EVENT</th>
<th>DATE*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Issue RFP</td>
<td>Friday December 21st, 2018</td>
</tr>
<tr>
<td>Site Tours and Pre-Proposal Conference</td>
<td>Wednesday January 23rd, 2019; 10:00 AM</td>
</tr>
<tr>
<td>Last Day for Questions/Clarifications</td>
<td>Friday February 8th, 2019</td>
</tr>
<tr>
<td>Addendum 1 Issued</td>
<td>Friday February 15th, 2019</td>
</tr>
<tr>
<td>RFP Response Due</td>
<td>Monday March 11th, 2019</td>
</tr>
</tbody>
</table>

*Note: Timeline is approximate and subject to change at the Customer's sole discretion.*
2. **SOLICITATION PROCESS**

2.1 **Process**

This RFP will be evaluated in two stages. In the first stage, the Customer will review Contractor qualifications and price proposals. In the second stage, the Customer intends to conduct interviews only with Contractors within competitive range, as determined by the Selection Committee, based on the evaluation of first stage proposals using the criteria outlined in section 2.3. All addenda and notices related to this solicitation will be posted by the District on Purchasing Services’ website at: [http://www.mccd.edu/offices/purchasing/bids.html](http://www.mccd.edu/offices/purchasing/bids.html)

The Customer reserves and may exercise one or more of the following rights and options in its sole discretion with respect to this RFP:

- Reject any or all proposals;
- Supplement, amend or otherwise modify this RFP;
- Cancel this RFP with or without the substitution of another RFP;
- Issue additional or subsequent RFPs;
- Conduct investigations with respect to the qualifications of any Contractor;
- Change any time for performance set forth in this RFP;
- Waive any non-material deviation from this RFP; and
- Negotiate bid-pricing and conditions

2.2 **Selection Committee**

The Selection Committee will consist of representatives selected by the Customer who will evaluate all proposals in accordance with evaluation criteria set forth in this RFP. During evaluation of the proposals, the Selection Committee may contact Contractors or their references for written clarification or additional information at the Customer’s discretion.

2.3 **Evaluation Criteria**

The Customer reserves the right to determine the number of Contractors who will advance to oral presentations. The preliminary scoring will be based on the total points awarded by the Selection Committee to each proposal. Each proposal will be scored on a scale from 0 to 100 points.

<table>
<thead>
<tr>
<th>Proposal Evaluation Criteria</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. <strong>Completeness of Proposal</strong>: ALL required schedules, forms and informational items have been submitted by the specified due date and time. Responses to this RFP must be complete. Responses that do not include the proposal content requirements identified within this RFP and Attachments may be considered incomplete and rated a Fail in the Evaluation Criteria.</td>
<td>Pass/Fail</td>
</tr>
<tr>
<td>B. <strong>Technical Proposal &amp; Approach</strong>: Contractors will be evaluated based on the completeness and quality of technical documentation for proposed systems, including preliminary module layouts and electrical diagrams. One design type will be considered: parking lot shade structures. The contractor designs will be evaluated separately. Submittal should account for available space, proposed orientation and tilt, and site-specific construction conditions (soils issues, etc.). Total projected energy production for the proposed PV system designs should be realistic while accounting for a production guarantee and site-specific design constraints. Module and inverter supply, availability, and quality must meet or</td>
<td>30</td>
</tr>
</tbody>
</table>
The Merced CCD must be clearly stated. Contractors do not need to provide estimated benefits.

C. **Project Benefit**: Contractors will be required to optimize the available CEC funds for direct cash purchase (per rated Watt DC) by the customer including optional add-ons, as specified in the bid sheet, Attachment B.2. The Contractor will be evaluated based the net benefit the solar system provides the Customer. Customer will determine the benefit based on the systems’ price and production. Contractors do not need to provide estimated benefits. Costs should be appropriate given proposed system size, estimated production, and forecasted energy use of the facility.

F. **Qualifications and Experience**: Contractors will be evaluated based on their demonstrated experience in bringing solar energy projects with 5 systems of at least 100 kW each generation capacity of to commercial operation. In addition, Contractors will be evaluated on their demonstrated experience of the team’s senior management personnel in structuring such projects and bringing such projects into operation for public higher education institutions on time. If the Contractor is a team or joint venture of multiple companies, the Selection Committee will consider the experience of each member of the team or joint venture, in light of their role in the proposed team or joint venture.

G. **Contract Terms and Conditions**: Contractors will be evaluated based on their conformance with contract language and unique contracting requirements included in RFP specifications and Attachments, providing maximum value and lowest scheduling, performance and cost risks. Any exclusions and exemptions must be clearly stated in part X of your response.

H. **CEC Loan Requirements**: Ensuring the project will work for the CEC timeline (estimated completion date 30 June 2019) and within the 20 year payback. (Extension will likely be requested)

<table>
<thead>
<tr>
<th>Proposal Evaluation Criteria</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>exceed RFP requirements and have a proven track record. Monitoring system and plan should ensure accurate billing and performance tracking, while offering the ability to view monitoring data online, and providing a public view of high-level performance information. The project schedule and timetable should be complete, realistic, with risk mitigation and escalation processes, and appropriate for RFP requirements. Project plan and schedule should account for RFP submittal requirements, complexity of project, and demonstrate methodology for management of multiple projects simultaneously.</td>
<td></td>
</tr>
<tr>
<td>C. <strong>Project Benefit</strong>: Contractors will be required to optimize the available CEC funds for direct cash purchase (per rated Watt DC) by the customer including optional add-ons, as specified in the bid sheet, Attachment B.2. The Contractor will be evaluated based the net benefit the solar system provides the Customer. Customer will determine the benefit based on the systems’ price and production. Contractors do not need to provide estimated benefits. Costs should be appropriate given proposed system size, estimated production, and forecasted energy use of the facility.</td>
<td>40</td>
</tr>
<tr>
<td>F. <strong>Qualifications and Experience</strong>: Contractors will be evaluated based on their demonstrated experience in bringing solar energy projects with 5 systems of at least 100 kW each generation capacity of to commercial operation. In addition, Contractors will be evaluated on their demonstrated experience of the team’s senior management personnel in structuring such projects and bringing such projects into operation for public higher education institutions on time. If the Contractor is a team or joint venture of multiple companies, the Selection Committee will consider the experience of each member of the team or joint venture, in light of their role in the proposed team or joint venture.</td>
<td>20</td>
</tr>
<tr>
<td>G. <strong>Contract Terms and Conditions</strong>: Contractors will be evaluated based on their conformance with contract language and unique contracting requirements included in RFP specifications and Attachments, providing maximum value and lowest scheduling, performance and cost risks. Any exclusions and exemptions must be clearly stated in part X of your response.</td>
<td>5</td>
</tr>
<tr>
<td>H. <strong>CEC Loan Requirements</strong>: Ensuring the project will work for the CEC timeline (estimated completion date 30 June 2019) and within the 20 year payback. (Extension will likely be requested)</td>
<td>5</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>100</td>
</tr>
</tbody>
</table>

### 2.4 Oral Proposals & Interviews

The Customer will compile a list of Contractors to interview, as determined by the Selection Committee, based on the evaluation of first stage proposals, using the criteria noted above. If selected for an interview, the Contractor will deliver a concise 20-minute presentation, with an additional 20 minutes allocated for questions. Each interview will be scored on a scale of 0 to 50 points. Additional points from oral presentations will be added to a Contractor’s proposal evaluation score from the first stage. The point total from the proposal and oral presentation evaluations will be the basis from which the Selection Committee will make award decisions.

<table>
<thead>
<tr>
<th>Oral Presentation Evaluation Criteria</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. <strong>Clarity of Presentation</strong>: Ability to deliver a concise and professional presentation.</td>
<td>20</td>
</tr>
</tbody>
</table>
Customer reserves the right to negotiate final offers with select Contractors.

3. **SCOPE OF SERVICES (OWNERSHIP LANGUAGE)**

The scope of this RFP is to identify qualified Contractors to design and install solar generation systems. The Customer has secured a California Energy Commission (CEC) loan for the solar PV project. The Contractor is required to bid a parking lot shade structure solar design maximizing generation based on the available site area indicated in Attachment A.1. The customer will evaluate contractor bids separately before selecting a shortlist for interviews.

Customer will be using a direct purchase method of purchasing solar systems, as opposed to a Power Purchase Agreement (PPA). The Customer’s Design Build agreement is attached hereto as Attachment C.2. The Customer’s direct purchase will be using state CEC (state) funding. The contractual obligation will be to provide design, construction/installation and commissioning of PV systems under a direct purchase within the requirements of the CEC loan contract.

Although the Customer has conducted site surveys and other due diligence, each Contractor’s submitted pricing should anticipate that the site may have unforeseen conditions or other factors that may result in the inability to proceed with the site as described. In such cases, the Customer must have an opportunity to identify and substitute alternate sites of a similar size to those described within this solicitation. The site must be mutually acceptable to both the Customer and the Contractor. However, the Customer is under no obligation to identify a substitute site. Furthermore, the Customer reserves the right to determine whether to accept the Recommendation for Award and pricing as submitted. Pricing will be submitted using Attachment B.2.

Additional site information is available in Attachment A.1. Contractors should refer to this attachment for site specific requirements and constraints: layouts, site specific schedule constraints, site access constraints, interconnection, etc. Information is also available in Attachment A.2, which describes the full scope of services and the requirements thereof, as requested by the Customer. Information regarding the Customer’s existing electrical infrastructure and the available geo-technical reports can be found in Attachment A.3 and A.4, respectively.

3.1 **Contractor Responsibilities**

The Contractor must design, install, and maintain a turn-key solar photovoltaic project on Customer facilities. In addition, the Contractor must include terms and conditions for a performance guarantee for a minimum period of twenty-five (25) years. The Contractor must fulfill all requirements in the CEC Loan Agreement, Attachment C.3, including Final Reporting.
3.1.1 Pre-/Construction, Implementation, and Maintenance

All solar power generation systems proposed under this RFP must conform to industry best practices and the requirements described in detail in Attachment A.2, along with site information provided in Attachment A.1, and during site walks, regardless of financing offered. Attachment A.2 provides the system’s minimum specifications, warranty requirements, operations and maintenance requirements and performance guarantees. The Contractor must demonstrate how their proposal will meet these technical requirements and pricing must include these specifications.

4. PROJECT AND SITE

The Customer has identified one parking lot shade structure site that it is making available for Contractors to price as part of this solicitation. Contractors shall submit a proposal for the one site to deliver a proposal which maximizes the net benefit to the Customer. The Contractor is encouraged to submit one parking lot shade structure solar design for the site. The design will be evaluated on ability to meet the needs of the Customer while maximizing the use of the CEC loan funds.

4.1 Project

Site information has been provided for the Contractors’ reference. All referenced documents are available in Attachments A.1-A.5 in this RFP.

   a) Site Technical Overview – Attachment A.1
   b) Design Specifications – Attachment A.2
   c) Existing Electrical Plans / Single Line Diagram – Attachment A.3
   d) Geotechnical Surveys – Attachment A.4
   e) Existing Utility Data – Attachment A.5

The Customer makes no representations with respect to the site, including their suitability for the installation of PV system or any other purpose. The Contractor and its partners, if any, take sole and full responsibility for conducting any necessary due diligence and assessing the site and its conditions in developing its proposal.

4.1.1 Preliminary Site Assessment Data

Detailed site information regarding the site is included in Attachment A.1 for Contractor review.

4.1.2 Mandatory Site Visit

The Customer plans to coordinate an individual site visit for the site listed in this RFP. A list and schedule of the bid walk will be provided to Contractors in an Addendum. The site walk is mandatory, and Contractors will be expected to make themselves aware of all site conditions at the site prior to submitting a proposal.

5. INSTRUCTIONS

5.1 Customer Contact
5.2 Determination of Responsibility

Upon request by the Customer or the Selection Committee, the Contractor will affirmatively demonstrate its responsibility in connection with this RFP. The Customer reserves the right to consider as non-responsible a Contractor that has previously failed to perform properly or to complete, in a timely manner, contracts of a similar nature, or if investigation shows the Contractor to be unable or unlikely to perform the requirements of the contract.

At any time, the Customer may request a Contractor to provide additional information, references and other documentation and information that relate to the determination of responsibility. Failure of a Contractor to furnish requested information may constitute grounds for a finding of non-responsibility of the Contractor. The Customer may deny the award, renewal, or assignment of a contract to or for any Contractor that is in default of payment of any money due the Customer.

Factors that may be considered in connection with a determination of responsibility include:

- The ability, capacity, organization, facilities, and skill of the Contractor to perform the contract or provide the goods or services required;
- The ability of the Contractor to perform the contract or provide the services within the time specified without delay, interruption or interference;
- The integrity, reputation, and experience of the Contractor, and its key personnel;
- The quality of performance of previous contracts or services for the Customer or other entities. Past unsatisfactory performance, for any reason, is sufficient to justify a finding of non-responsibility;
- The sufficiency of financial resources of the Contractor to perform the contract or provide the services;
- Provide Performance Bond, during the construction of solar system only;
- The certification of an appropriate accounting system, if required by the contract type; and
- Past debarment by the Customer or other entity.

The Customer may require the Contractor to furnish satisfactory evidence that they are qualified and regularly engaged in performing the services for which they are submitting a proposal, and that they maintain a regularly established place of business. An authorized representative of the Customer may visit any Contractor’s place of business during normal business hours to determine ability, capacity, reliability, financial stability and other factors necessary to perform the contract. If so requested, a Contractor must submit information about its reputation, past performance, business and financial capability, and other factors that demonstrate that the Contractor is capable of satisfying the Customer’s needs and requirements for a specific contract.

5.3 Late Proposals
Responses to each step of this RFP received after the date and time specified are considered late, and will not, under any circumstances, be considered for any award resulting from this RFP.

5.4 Proposal Withdrawal/Modification

A Contractor may withdraw or modify a proposal upon receipt by the Customer of a written request received from the Contractor before the deadline specified for the submission of proposals.

5.5 Proprietary & Confidential Information

All correspondence with the Customer including responses to this RFP will become the exclusive property of the Customer and will become public records under the California Public Records Act (Cal. Government Code section 6250 et seq.) Pursuant to Michaelis, Montanari, & Johnson v. Superior Court (2006) 38 Cal. 4th 1065, proposals submitted in response to this RFP shall be held confidential by the Customer and shall not be subject to disclosure under the California Public Records Act until after either the Customer and the successful Proposer have completed negotiations and a recommendation has been made for award of a Contract or the Customer has rejected all proposals. Furthermore, the Customer will have no liability to the Proposers or other parties as a result of any public disclosure of any proposal or the Contract.

After the announcement of a recommended award, all proposals received in response to this RFP will be subject to public disclosure. If a Proposer desires to exclude a portion of its proposal from disclosure under the Public Records Act, the Proposer must mark it as such and state the specific provision in the California Public Records Act which provides the exemption as well as the factual basis for claiming the exemption. For example, if a Proposer submits trade secret information, the Proposer must plainly mark the information as “Trade Secret” and refer to the appropriate section of the California Public Records Act which provides the exemption as well as the factual basis for claiming the exemption. Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the Customer is not in a position to establish that the information that a Proposer submits is a trade secret. If a request is made for information marked “Confidential”, “Trade Secret” or “Proprietary”, the Customer will provide Proposers who submitted the information with reasonable notice to seek protection from disclosure by a court of competent jurisdiction.

5.6 Proposal Preparation Expenses

All costs incurred in the preparation and submission of proposals, participating in interviews and responding to requests for additional information will be borne by the Contractor and will not be incurred in anticipation of receiving reimbursement from the Customer. The Customer makes no representation that any Contract will be awarded in response to this RFP. The Customer will not be liable for any costs incurred by the Contractor incidental to the preparation and presentation of qualifications either orally or in the proposal.

5.7 Verbal Explanations

Verbal explanations or instructions given by an agent or employee of the Customer to a Contractor in regard to this proposal will not be binding on the Customer. Any binding information given to a Contractor in response to a request will be furnished to all Contractors as an RFP Amendment or Addendum, if such information is deemed necessary for the preparation of
proposals, or if the lack of such information would be detrimental to the uninformed Contractors. Only such RFP Amendments or Addenda, when issued by the Customer, will be considered binding on the Customer.

5.8 Terms & Conditions

Any Contract awarded as a result of this proposal will contain the RFP Terms and Conditions of the Contract between the Customer and the Contractor contained in Attachment C.1 of this RFP, except and unless modified by the Customer prior to the Stage 2 process. In addition, a Contract involving deliveries of energy conforming to the Clean Renewable Energy requirements described below will contain Contractor warranties, representations and covenants with respect to meeting such requirements.

Each Contractor must acknowledge that it agrees to all Electricity Purchase Terms and Conditions of Contract.

6. PROPOSAL OUTLINE

The Contractor shall submit one (1) hard copies and one (1) electronic copy of their proposal. The electronic copy of the proposal must be in either Adobe PDF or Microsoft Word format, with exception of the pricing sheet and production data (Attachment B.2), which may only be provided in Microsoft Excel format and shall be stored and submitted on a flash drive.

In order to facilitate quick review, accurate scoring and timely award of the project, the Contractor must submit their proposal within the following guidelines and format. Efforts to keep the proposal as concise as possible should be made. Proposals should not be longer than fifty (50) pages, excluding appendices.

Contractors shall utilize Attachment D.1 - Proposal Checklist to ensure all necessary items are included in the submittal. Incomplete proposals will not be considered for award.

Cover Letter

Proposal shall begin with a signed cover letter stating commitment to all material within the proposal.

PART I Table of Contents

Proposals shall include a table 006Ff contents listing the individual sections of the proposal and their corresponding page numbers.

PART II Project Narrative

Each Contractor should provide a summary of no more than four (4) pages of the information contained in the following sections. Bid responses shall include a description of the Contractor’s capabilities and approach in providing its goods and/or services to the Customer, and provide a brief synopsis of the highlights of the Proposal and overall benefits of the Proposal to the Customer.

PART III Qualifications and Experience
Contractors are to complete the Experience Form contained in Attachment B.1 providing information demonstrating relevant project experience in terms of project type, size, client type, and financing mechanism. Contractors shall identify the number of installations completed, including system sizes, in the past three years, broken down by system type.

In addition to completing the Experience Form, Contractors are encouraged to provide additional information describing their relevant experience and why it makes them the most qualified firm to perform the work.

PART IV Key Personnel

Proposals shall include a complete list of all key personnel associated with the solar systems being delivered. This list must include all key personnel who will provide services/training to Customer staff and all key personnel who will provide financing (if applicable), maintenance and support services for all project phases. Shall not exceed 25 pages. For each person on the list, the following information shall be included:

- The person’s relationship with the Contractor, including job title and years of employment with the Contractor;
- The role that the person will play in connection with the solar power generation systems being delivered;
- Address, telephone, fax numbers, and e-mail address;
- Person’s educational background; and
- Person’s relevant experience, certifications, and/or merits and track record of successfully delivering renewable energy systems.

PART V Pricing Proposal and Production Form

The Contractor shall submit project pricing and solar production in the form of a completed worksheet from Attachment B.2 in an unlocked electronic Excel format.

PART VI Technical Proposal

The Technical Proposal shall describe the equipment, materials, and methods to be employed by the Contractor to meet the goals of the Customer for the Project and the requirements set forth in this RFP. Contractors shall provide a narrative that describes the equipment and systems proposed, and demonstrates how they meet the requirements of the RFP and site specific constraints (roof type and age, soils issues, etc.). The technical Proposal shall include the following:

- Proposed System Overview: Technical narrative that describes the proposed systems, including but not limited to: general considerations, rated kWp DC capacity, expected kWh AC output in the first year and over a twenty-five (25) year period, mounting approach (tilt, tracking), system layout and design, and total area required for the PV system.

- Proposed Equipment List: Model, technical specifications, quantity and characteristics of: modules, inverters, mounting structures, tracking system (if any), generation meters, Data Acquisition System (DAS), and monitoring system. The Technical proposal will describe the availability, supply and quality of proposed equipment. Equipment cut sheets shall be included as appendices.
• **Proposed Equipment Warranties:** Documentation describing warranties for all major system components including modules, inverters, monitoring systems, tracking systems (if any), and mounting structures. See **Attachment A.2** for details. Documentation must describe the duration of the warranty, and the nature of the performance guarantee(s). Actual warranties shall be included as appendices.

• **Preliminary Layout of the System:** Provide a plan view layout drawing describing the locations of modules, inverters, inverter pads and shelters, transformers, trench and conduit runs, and other relevant information. Inverter locations shall be shown on each layout and scaled to convey the approximate space needed for the inverters and all associated equipment to be installed in the same location.

• **Canopy and Racking Details:** Explain in detail how proposed layouts and racking systems will facilitate easy access to canopy structures for ongoing maintenance and repairs. Place particular emphasis on adherence to the specifications in **Attachment A.1**.

• **Preliminary Single-line Electrical Diagram of Proposed Systems:** Provide a single line diagram showing the electrical schematic of the solar system.

• **Monitoring System Preliminary Design:** Overview of the proposed Data Acquisition System (DAS), including quantity and model of proposed sensors, data acquisition hardware and software, screen shots of proposed solutions, and IT requirements. Contractors shall identify requirements for connecting the DAS to the Internet.

• **Monitoring / Data Presentation Information:** Specifications of proposed monitoring software, including screenshots of user interface and system diagnostic capabilities, as well as hosting requirements, performance data and billing management plan and processes. Monitoring systems (DAS) will continuously update webpages with current campus electricity use and PV system production. The electricity and weather data will be archived and continuously available to the Customer for the life of system.

• **Supporting Data:** Contractors shall also submit annual estimated production data copied and pasted into the appropriate cells in **Attachment B.2**. Contractor must also submit estimated production results report(s) from PVsyst or equivalent software for each site. All assumptions used in creating the production data shall be listed.

• **Performance Guarantee:** Contractors are to submit and briefly describe the Performance Guarantee. See **Attachment A.2** for details.

**PART VII Proposed Project Approach**

The Proposal shall include a description of the approach the Contractor will use to design, procure long-lead time equipment, construct, and commission the solar power generation systems to meet the goals of the Customer as described in this RFP. The Proposal shall describe how the Contractor will comply with the requirements of the RFP, obtain timely permits and approvals, and accommodate ongoing operations during construction, including how the Contractor intends to meet the Customer’s schedule and the requirements of the CEC loan schedule.
The Proposal shall describe the Contractor’s approach to the Project and construction management, document control, and Project administration, including risk mitigation and escalation processes. The Contractor shall clearly indicate how the work will be phased to meet the goals of the Customer. The Proposal shall include a narrative addressing how the Contractor recommends phasing the work in order to efficiently execute the design, Design Review, installation, and commissioning of the systems. The Proposal shall also describe quality assurance procedures and safety plans. The Proposal shall contain a description of the Contractor’s strategy for communicating with the Customer and assisting them in their efforts to achieve the overall objective(s) of the Project as described herein. Shall not exceed 10 pages.

PART VIII Financial Strength

All Contractors must provide information as requested below relating to their team’s financial ability to build and operate (if necessary) the Project. Please note that at any time during the entire selection and implementation process, the Customer may request additional financial information. Please acknowledge your understanding of this statement and discuss any limiting considerations.

If available, provide audited financial statements for the past three years for the prime contractor and all supporting contractors (excluding financing partners). Links to this information would be preferable.

If audited financial statements are not available then describe each contractor’s financial ability to build and operate (if necessary) the Project. Please include the following information:

- Liquidity, including cash on hand and/or ways to finance short-term cash flow requirements (lines of credit, revolving debt, etc.).
- The basis for the ability to meet ongoing construction, operating and debt commitments (i.e. annual “free cash flow”).
- Are there any current, pending or anticipated lawsuits, commitments or other issues that would preclude the building, owning or operating the Project?
  - If so, describe how you would mitigate these issues in connection with the Project.
- The number of employees at each contractor.

Contractor must indicate any and all suits or claims in which the Contractor or its personnel were parties and which related to construction projects within the past five (5) years. If a suit or claim was limited to a claim from a subcontractor to the Contractor or a supplier to the Contractor and did not include a project’s owner, you need not include that suit or claim in the Statement and Proposal.

- Include a claim or other demand asserted against any bid bond, performance bond, or payment bond posted by your Firm in connection with any construction contract or your submittal of a bid/proposal for a construction contract or photovoltaic solar generating project contract.

- Has your Firm ever been declared in default or terminated for cause under a construction contract or photovoltaic solar generating project contract? If “yes” provide details of that situation.
• Has your Firm or any predecessor to your Firm, or any of its owners, officers, or partners ever been found liable in a civil suit, or found guilty in a criminal action, or for making any false claim or material misrepresentation to any public agency or entity? If “yes” provide details of each conviction.

• In the past five (5) years, has your Firm or any predecessor to your Firm, been denied an award of a public works contract based on a finding by a public agency that your organization was not qualified or not a responsible bidder? If “yes” provide details of that situation.

Describe any litigation or formal complaint(s), including mechanics liens filed against or by the Contractor resulting from or attributable to its current or past involvement with any major construction projects (having an estimated construction cost exceeding $4 million). Describe any current or past disciplinary action(s) taken by the California Contractors State License Board. Failure to properly make this disclosure may result in the rejection of all or any part of Contractor’s proposal or termination of any contract or agreement entered into pursuant to this RFP process.

PART IX Implementation Plan

Contractors are to provide a detailed GANTT style schedule describing all phases of the project and the Contractor’s services, major milestones, and task dependencies associated with financing (if applicable), designing, permitting, and installing the sites. This implementation narrative shall include the financing strategy and timing, the procurement strategy for equipment and materials, steel fabrication plan, workforce plan, staging, construction, equipment installation, acceptance testing, project close-out, and commitment from financial partners and suppliers and/or manufacturers substantiating the availability of major long lead-time equipment or resources to meet the proposed schedule.

This implementation plan must inform the Customer of critical path decision milestones, and include time for review and approvals. Contractors must identify the allocation of staffing resources necessary to deliver the project. The plan, excluding the electronically submitted schedule, should be no more than five pages in total.

PART X Exception and Exclusion

Contractor shall discuss all exceptions and exclusions to the RFP package, including the Design-Build agreement. Failure by the Contractor to markup the Design-Build agreement in the written RFP response shall be deemed a waiver of the Contractor’s rights to challenge the terms of the agreement, and the Contractor, by its submission of the proposal, does hereby consent to such waiver.
1. Carport Area

For the carport design, the entire parking lot on the Los Banos Campus is available for solar shade structures. This is outlined in the figure above. Contractors are encouraged to design as large of a solar PV system as financially feasible within these space constraints.
For context, the District will also have future campus expansion plans as indicated in the figure above.
Solar PV System Technical Design Specifications and Requirements
# Table of Contents

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   1.2 Project Management ........................................................................................................................................ 1  
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1. Specifications and Requirements

1.1 SITE ACCESS

Design-Builder shall conform to Customer rules and requirements for accessing sites. Road usage, road closures, number of vehicles, access points, etc., may be regulated by the Customer. Site visits shall be approved and proper check-in requirements must be followed.

1.2 PROJECT MANAGEMENT

1.2.1 Project Manager

Design-Builder shall assign a Project Manager from their firm upon execution of the Agreement and receipt of Notice to Proceed. The Project Manager shall manage all design, procurement, construction, and commissioning phases of the Project. The construction of PV systems shall be accomplished by Design-Builder with an on-site construction management team. The Project Manager shall ensure that all contract, schedule, and reporting requirements of the Project are met and shall be the primary point of contact for the Customer.

1.2.2 Project Schedule

A Project Schedule is to be prepared and submitted to the Customer within 14 days of Agreement execution. The Customer will review and approve the Project Schedule prior to the initiation of work. Updates shall be submitted every other week, though the Customer may allow less frequent updates at their discretion. The submittal shall be a Critical Path Method (CPM) schedule describing all Project activities, dependencies, and sequencing of tasks. In particular, Design-Builder shall include Customer review of submittals on the Critical Path. The Project Schedule shall describe all elements of project design, equipment procurement, construction and commissioning, and shall be submitted in electronic format (MS Project or Primavera P6). Adobe Acrobat is not acceptable. The schedule shall also reflect the requirement that construction activities must be coordinated to minimize impacts on normal operations at each site, including ongoing construction activities.

Sufficient information shall be shown on the Project Schedule to enable proper control and monitoring of the Work. The Project Schedule shall show the intended time for starting and completing each activity; the duration of each activity; submittal and approval times; design; delivery of materials, equipment and software; all testing; and other significant items related to the progress of the Work. The Project Schedule shall include a CPM network diagram of sufficient detail to show how Mandatory Milestones are intended to be met. If a schedule submitted by Design-Builder includes changes affecting the achievement of Mandatory Milestones, Design-Builder should clearly identify and justify those changes.

Design-Builder is encouraged to phase the Work in a way that supports efficient and effective delivery of design and build services. The following Mandatory Milestones shall be reflected in the schedule and represents the dates upon which each milestone is to be achieved for all sites in the Agreement.
1.2.3 Submittals

Design-Builder shall provide the following submittals as part of the performance of the Work. The cost of developing and providing submittals shall be included in the Project price.

**Agreement Submittals**

<table>
<thead>
<tr>
<th>Submittal</th>
<th>Submittal Date</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>I. System Design</strong></td>
<td></td>
</tr>
<tr>
<td>a. System Design Documentation</td>
<td>At each design milestone</td>
</tr>
<tr>
<td>b. Warranties</td>
<td>At Construction Documents milestone</td>
</tr>
<tr>
<td>c. Testing Plan</td>
<td>At Construction Documents milestone</td>
</tr>
<tr>
<td>d. Training Plan</td>
<td>At Construction Documents milestone</td>
</tr>
<tr>
<td>e. Power production modeling</td>
<td>At Construction Documents milestone, As-Built Documentation, and any time system changes cause change in production of 0.5%</td>
</tr>
<tr>
<td><strong>II. Procurements and Construction</strong></td>
<td></td>
</tr>
<tr>
<td>a. Quality Assurance / Quality Control (QA/QC) Plan</td>
<td>30 days before commencement of construction</td>
</tr>
<tr>
<td>b. As-built Documentation</td>
<td>After completion of Proving Period</td>
</tr>
<tr>
<td><strong>III. Testing</strong></td>
<td></td>
</tr>
<tr>
<td>a. System commissioning Results</td>
<td>After System commissioning</td>
</tr>
<tr>
<td>b. Startup Test Results</td>
<td>After Startup Test</td>
</tr>
<tr>
<td>c. Monitoring Data (Proving Period)</td>
<td>Continually throughout Proving Period</td>
</tr>
<tr>
<td>d. Proving Period Report</td>
<td>30 days after System Startup</td>
</tr>
<tr>
<td><strong>IV. Training</strong></td>
<td></td>
</tr>
<tr>
<td>a. Training Materials</td>
<td>30 days before Training Session</td>
</tr>
<tr>
<td>b. Monitoring Manual</td>
<td>30 days before Training Session</td>
</tr>
<tr>
<td>c. Operations &amp; Maintenance Manual</td>
<td>30 days before Training Session</td>
</tr>
</tbody>
</table>

1.2.4 Solar Incentives

If applicable, Design-Builder shall be responsible for Customer receipt of incentives, including all actions necessary to ensure compliance with the Utility’s net metering program and all interconnection agreements and related documents for the Customer participation and utilization of the benefits of the program. Design-Builder shall attend all site verification visits conducted by the applicable utility or Governmental Authority and shall assist the Customer in satisfying the requirements of the Rebate Program. Design-Builder shall be responsible for providing updated documentation to Rebate Program.
administrators throughout the project, as required by rules of the relevant Rebate Programs. All incentives shall be paid to the Customer and used to offset the cost of the project.
1.3 SYSTEM DESIGN

1.3.1 Design Review Process/ Phases

The Customer will review and approve design documentation based on the requirements in this RFP. Additional documents may be requested by the Customer as needed. The precise organization and format of the design submittals shall be agreed upon by Design-Builder and the Customer prior to the first design submission. The Customer will review all submittals, provide written comments, and conduct Design Review Meetings for each stage of the process. Design-Builder shall provide additional detail, as required, at each successive stage of the Design Review. Design-Builder shall not order equipment and materials until Schematic Design submittals have been approved. Design-Builder shall not begin construction until Construction Documents have been approved and all required permits have been obtained. The Customer will formally approve, in writing, each phase of the design and is the sole arbiter of whether each phase of the design has been completed. The Design-Builder shall not enter a subsequent design phase without the approval of the Customer.

Design-Builder shall be held solely responsible for obtaining approvals from the Customer, including revising designs as necessary until they are given approval by the Customer and all other required entities and organizations. A description of requirements for each design phase is provided below. System design shall comply with all applicable laws, statutes, ordinances, codes, rules, and regulations for construction projects of jurisdictions with authority over the Customer. Design-Builder is responsible for providing designs approved by the appropriate professional engineers registered in the State of California. System designs must take into account Customer aesthetic issues and not conflict with any current Customer operations.

1.3.1.1 Schematic Design

Design-Builder shall prepare Schematic Design documents consisting of drawings and other documents illustrating the scale and relationship of Project components, including but not limited to, schematic design studies, site utilization plans, PV array layouts, a shading analysis, electrical single-line diagrams, equipment lists and bills of material, identified interconnection point, and equipment cut sheets or specifications. All issues with existing Customer equipment that may interfere with the performance of the solar system or prevent the system from interconnection to the utility must be identified at the time of the schematic design submittal. Owner is responsible for non-solar infrastructure upgrades but necessary upgrades need to be identified early in the process (i.e. transformers, switchgear, etc.).

1.3.1.2 Design Development

Design Development documents shall consist of elevations, cross sections, and other drawings and documents necessary to depict the design of the Project. This submittal shall include architectural, structural, geotechnical, mechanical and electrical design documents and equipment specifications to illustrate the size, character, and quality of the Project and demonstrate that it meets the performance specifications defined in this RFP. The Design Development documents shall represent 100% of the intended scope for the Project.

1.3.1.3 Construction Documents

Design-Builder shall prepare Construction Documents (CDs) depicting the detailed construction requirements of the Project. CDs shall conform to all applicable governmental, regulatory, and code requirements, and all pertinent federal, state, and local permitting agencies. The CDs shall show the work to be done, as well as the materials, workmanship, finishes, and equipment required for the
Attachment A.4 – Solar PV System Technical Design Specifications and Requirements

Project. CDs shall comply with and illustrate methods to achieve the performance specifications of this RFP. CDs shall be stamped by the engineer of record and any other required engineering disciplines.

System production will be updated to reflect final design. This production will be used for the Production Guarantee. The same assumptions will be used to establish as the original estimate.

1.3.2 Design-Builders’ License Classification

In accordance with the provisions of California Public Contract Code §3300, the Customer requires that Respondents possess, at the time of submission of a Proposal, at the time of award of the Agreement and at all time during construction activities, a General Contractor License (B) and Electrical Contractor License (C-10). It shall be acceptable for a Respondent that does not possess a C-10 License to list a Subcontractor with a C-10 License. A Solar Contractor License (C-46) is desired in addition, but not mandatory.

1.3.3 Design Submittals

Design-Build shall prepare a comprehensive submittal package for each phase of the Work that will be reviewed and approved by the Customer. Each submittal package shall include, at a minimum, the required elements that convey in sufficient detail for each phase of the design, the necessary documentation as follows:

- Site Layout Drawings
- Construction Specifications (trenching, mounting, etc.)
- Equipment Layout Drawings
- Detailed Drawings
- Fire Access Lane Details (For the parking lot, as necessary)
- Single-Line Diagrams
- Network Connection Diagrams
- Architectural Drawings
- Mechanical Drawings
- Geotechnical Drawings
- Manufacturer’s Cut Sheets
- Equipment Specifications
- Data Acquisition System (DAS) Specifications, Cut Sheets, and Data Specifications

Design-Build shall include adequate time for Customer review and approval of submittals, as well as re-submittals and re-reviews. Minimum Customer review time shall be ten (10) days from the date of receipt of each submittal package during each phase of the Design Review.

1.3.4 Division of the State Architect Review

Construction Documents must be reviewed and approved by the Division of the State Architect (DSA). Design-Build shall be responsible for obtaining all DSA approvals and shall account for DSA requirements in their system designs, project pricing, and schedule. The Customer will not grant Design-Build relief based on Design-Build’s incomplete or incorrect understanding of DSA requirements.

1.3.5 Technical Requirements
1.3.5.1 General Considerations

All documentation and components furnished by Design-Build shall be developed, designed, and/or fabricated using high quality design, materials, and workmanship meeting the requirements of the Customer and all applicable industry codes and standards. Reference is made in these specifications to various standards under which the Work is to be performed or tested. The installations shall comply with, at least, but not limited to, the latest approved versions of the International Building Code (IBC), National Electrical Code (NEC), Utility Interconnection Requirements, and all other federal, state, and local jurisdictions having authority.

1.3.5.2 Existing Conditions

Design-Build shall have thirty (30) days after the Contract has been executed to conduct detailed examinations of the Site(s). The examinations will confirm all measurements, specifications and conditions affecting the Work to be performed at the Site(s). Design-Build shall request specific changes to the Services, Work, Guaranteed Substantial Completion Dates, Scheduled Final Completion Dates and Total System Price that are required in light of such examinations. Design-Build should include switchgear condition, transformer size, high voltage electrical lines, easements, underground utilities, etc. into the investigation.

1.3.5.3 Electrical Design Standards

The design, products, and installation shall comply with at least, but not limited to, the following electrical industry standards, wherever applicable:

- Electronic Industries Association (EIA) Standard 569
- Illumination Engineering Society of North America (IESNA) Lighting Standards
- Institute of Electrical and Electronics Engineers (IEEE) Standards
- National Electrical Manufacturers Association (NEMA)
- National Electric Code (NEC)
- Insulated Power Cable Engineers Association (IPCEA)
- Certified Ballast Manufacturers Association (CBMA)
- Underwriters Laboratories, Inc. (UL)
- National Fire Protection Association (NFPA)
- Utility(s) Requirements
- American National Standards Institute (ANSI)
- Occupational Health and Safety Administration (OSHA)
- American Disabilities Act (ADA)
- American Society for Testing and Materials (ASTM)
- National Electrical Contractors Association (NECA)
- National Electrical Testing Association (NETA)
- International Building Code (IBC)
- All other Authorities Having Jurisdiction

1.3.5.4 Modules

In addition to the above, the PV modules proposed by Design-Build shall comply with at least, but not limited to, the following:
• IEEE 1262 “Recommended Practice for Qualifications of Photovoltaic Modules”.
• Modules shall be new, undamaged, fully warranted without defect.
• Modules shall comply with the State of California SB1 Guidelines for Eligibility, listed at: http://www.gosolarcalifornia.org/equipment/pv_modules.php
• Modules shall have minimum maintenance requirements and high reliability, have a minimum 25-year design life, and be designed for normal, unattended operation.
• All PV modules for this project shall be classified by the solar finance industry as Tier 1.
• Acceptable mounting methods for unframed modules shall be provided by the manufacturer. Bolted and similar connections shall be non-corrosive and include locking devices designed to prevent twisting over the 25-year design life of the PV system.
• If PV modules using hazardous materials are to be provided, then the environmental impact of the hazardous material usage must be disclosed, including any special maintenance requirements and proper disposal/recycling of the modules at the end of their useful life.

1.3.5.5 Inverters

In addition to the above, inverters proposed by Design-Builder must comply with at least, but not limited to the following:

• Inverters shall be suitable for grid interconnection and shall be compliant with all Utility interconnection requirements.
• Inverters shall comply with the State of California SB1 Guidelines for Eligibility, listed at: http://www.gosolarcalifornia.org/equipment/inverters.php
• Inverters must automatically reset and resume normal operation after a power limiting operation.
• The inverter shall be capable of continuous operation into a system with voltage variation of plus or minus 10% of nominal. The inverter shall operate in an ambient temperature range of -20°C to +50°C.
• Inverters shall include all necessary self-protective features and self-diagnostic features to protect the inverter from damage (in the event of component failure or from parameters beyond normal operating range due to internal or external causes). The self-protective features shall not allow the inverters to be operated in a manner which may be unsafe or damaging.
• Inverters shall be true sine wave high frequency PWM with galvanic isolation.
• Inverters shall be sized to provide maximum power point tracking for voltage and current range expected from PV array for temperatures and solar insolation conditions expected for Project conditions.
• Inverters shall be capable of adjusting to "sun splash" from all possible combinations of cloud fringe effects without interruption of electrical production.
• Isolation transformers shall be provided.
• Inverters shall be UL 1741 and IEEE 1547 compliant.
• Inverters shall have a THD < 5%.
• Enclosures shall be rated NEMA 3R when the inverter is located outdoors. For outdoor installations in corrosive environments, NEMA 4X series 300 stainless steel enclosures must be used.
• Power factor shall be 0.99 or higher.
- Inverter selection shall take into account anticipated noise levels produced and minimize interference with Customer activities.
- Inverters shall have a minimum efficiency, based on the device’s power rating, meeting the following specifications:

**Inverter Efficiency Requirements**

<table>
<thead>
<tr>
<th>Inverter Power Rating Range</th>
<th>Minimum Efficiency</th>
</tr>
</thead>
<tbody>
<tr>
<td>1000+ kW</td>
<td>96%</td>
</tr>
<tr>
<td>500-999 kW</td>
<td>97%</td>
</tr>
<tr>
<td>250-499 kW</td>
<td>96.8%</td>
</tr>
<tr>
<td>100-249 kW</td>
<td>95.8%</td>
</tr>
<tr>
<td>50-99 kW</td>
<td>94.5%</td>
</tr>
<tr>
<td>0-49 kW</td>
<td>93.5%</td>
</tr>
</tbody>
</table>

1.3.5.6 Mounting Systems

The mounting systems shall be designed and installed such that the PV modules may be fixed or tracking with reliable components proven in similar projects, and shall be designed to resist dead load, live load, corrosion UV degradation, wind loads, and seismic loads appropriate to the geographic area over the expected 25-year lifetime. The Design-Builder’s design shall sufficiently respond to the design requirements imposed by Federal, State, and local jurisdictions in effect at the time of Agreement execution and any pending code decisions affecting the design shall be identified during Schematic Design. Design-Builder shall conduct an analysis, and submit evidence thereof, including calculations, of each structure affected by the performance of the scope. The analysis shall demonstrate that existing structures are not compromised or adversely impacted by the installation of PV, equipment, or other activity related to this scope. Mounting systems must also meet the following requirements at a minimum:

- All structural components, including array structures, shall be designed in a manner commensurate with attaining a minimum 25-year design life. Particular attention shall be given to the prevention of corrosion at the connections between dissimilar metals.
- Thermal loads caused by fluctuations of component and ambient temperatures shall be accounted for in the design and selection of mounting systems such that neither the mounting system nor the surface on which it is mounted shall degrade or be damaged over time.
- Each PV module mounting system must be certified by the module manufacturer as (1) an acceptable mounting system that shall not void the module warranty, and (2) that it conforms to the module manufacturer’s mounting parameters.
- Final coating and paint colors shall be reviewed and approved by the Customer during Design Review.
- Painting or other coatings must not interfere with the grounding and bonding of the array.

1.3.5.7 Shade Structure Requirements

Design-Builder will be responsible for incorporating the following elements in the design and construction of the System:
All shade structures shall be installed with a fascia surrounding the exposed edge of the structure’s purlins.

Shade structures located in parking lots shall have a concrete bollards installed on support posts. The bollards shall extend up to a minimum elevation of 36” above finished grade.

Efforts should be made to minimize loss of parking spaces. Customer prefers to loss zero parking spaces.

Shade structure columns, beams, and fascia shall be painted to match site colors or to a color of the Customer’s approval.

Minimum height of nine (9) feet

Shade structures and all attached equipment shall be designed and installed so as to minimize the ability to climb structures

Shade structures shall be installed such that the finished height of the array is uniform and is subject to the Customer’s approval at design submittal.

Carport structural foundations shall be designed in accordance with preliminary geotechnical data. Foundations are assumed to be 12’ deep and 3’ above grade.

Designs shall be refined by Design-Builder based on site specific investigations performed with borings co-located within proposed array locations.

1.3.5.8 Ground Mount Requirements

- Install ground mount PV racks with adequate ground clearance for weed control.
- Install weed resistant ground cloth under entire PV array and surrounding disturbed areas.
- Install surface covering as dictated by the campus.

1.3.5.9 Roofing Requirements

The installation of PV modules, inverters and other equipment shall provide adequate room for access and maintenance of existing equipment on the building roofs. A minimum of three feet of clearance will be provided between PV equipment and existing mechanical equipment and other equipment mounted on the roof. A minimum of four feet of clearance shall be provided between PV equipment and the edge of the roof. Clearance guidelines of the DSA as well as the local fire marshal shall be followed. The installation of solar systems of roof tops will be reviewed by the DSA for code compliance by adherence to the State Fire Marshal Solar Photovoltaic Installation Guideline. The PV equipment shall not be installed in a way that obstructs air flow into or out of building systems or equipment.

Proposed roof top mounted systems may be ballasted or penetrating systems and must meet or exceed the following requirements:

- Systems shall not exceed the ability of the existing structure to support the entire solar system and withstand increased wind uplift and seismic loads. The capability of the existing structure to support proposed solar systems shall be verified by Design-Builder prior to design approval.
- All racking systems shall allow for the Client staff to perform roof inspection, cleaning, and maintenance operations with minimal obstructions from the racking; maintenance activities include, but are not limited to, leak identification, or repair once the solar system is installed.
- Roof penetrations, if part of the mounting solution, shall be kept to a minimum.
- Design-Builder shall perform all work so that existing roof warranties shall not be voided, reduced, or otherwise negatively impacted.
• No work shall compromise roof drainage, cause damming or standing water or cause excessive soil build-up.
• All materials and/or sealants must be chemically compatible.
• Thermal movement that causes scuffing to the roof must be mitigated as part of the mounting solution.
• All penetrations shall be waterproofed.
• Detail(s) for the sealing of any roof penetrations shall be approved in writing to the Client, as well as the manufacturer of the existing roofing system, as part of system design review and approval – prior to Design-Builder proceeding with work. The Client will make available the roofing manufacturer for each building for consultation with Design-Builder as part of the design process.
• All roofing work shall be performed by a licensed roofing contractor who is certified by the roofing materials manufacturer for the specific materials or systems comprising each roof upon which a solar system will be installed. The roofing contractor shall also be safety prequalified by the Client.
• As part of the design submittals, Design-Builder shall include signed certificates from the roofing manufacturer stating:
  o The roofing contractor is certified installer of Complete Roofing System.
  o The manufacturer’s Technical Representative is qualified and authorized to approve project.
  o Project Plans and specs meet the requirements of the warranty of the Complete Roofing System for the specified period.
  o Existing warranty incorporates the new roofing work and flashing work.
• Any damage to roofing material during installation of solar systems must be remedied by Design-Builder.
• The installation of PV modules, inverters and other equipment on building roofs will be designed to minimize visibility of the equipment from the ground.

1.3.5.10 System Security Requirements

Design-Builder shall:

• Utilize tamper-resistant PV module to rack fasteners for all PV module mounting.
• Utilize tamper-resistant fasteners for all electrical fittings, pull boxes and other enclosures.
• Design the solar system so that sensitive components are as protected against vandalism as possible.
• Position inverter on/off switches so that they are not easily accessible while still maintaining fire code.
• Install a 6 foot chain link fence around any ground mounted solar and electrical equipment with a lockable gate for access.

1.3.5.11 Corrosion Control

• Each PV system and associated components must be designed and selected to withstand the environmental conditions of the site (e.g., temperatures, winds, rain, flooding, etc.) to which they will be exposed.
• Particular attention shall be given to the prevention of corrosion at the connections between dissimilar metals.
1.3.5.12 Ancillary Equipment Enclosures

Design-BUILDER will be responsible for incorporating the following elements in the design and construction of the System:

- Fencing: all ancillary equipment be grouped to a single location per site and shall be surrounded by a fence to prevent unauthorized access. The fence shall be a six (6) foot high chain link fence with vinyl privacy slats.
- Location: all ancillary equipment shall be located in a manner that minimizes its impact to normal Customer operations and minimizes the visual impacts to the site.

1.3.5.13 Lightning and Surge Protection

- Design-BUILDER shall utilize lightning arrestors to protect appropriate equipment from lightning strikes.
- Design-BUILDER shall utilize surge suppressors to protect the appropriate equipment from electrical surges.

1.3.5.14 Short Circuit Coordination Study

- In the event the utility, during the interconnection application process, requires a short circuit coordination study, the Design-BUILDER shall be responsible for conducting a short-circuit and coordination study (SCCS) that includes all of the overcurrent protective devices installed on the project (AC/DC fuses and AC/DC circuit breakers). This study will ensure that the devices installed as part of the PV project are coordinated with the rest of each site’s distribution, preventing an unintentional outage due to an isolated PV system fault.
- The study shall be submitted, with calculations, to the Customer.

1.3.5.15 Wiring and Cabling Runs

- Design-BUILDER shall layout and install all AC conductors in conduit.
- Conduit buried underground shall be suitable for the application and compliant with all applicable codes. PVC shall be constructed of a virgin homopolymer PVC compound and be manufactured according to NEMA and UL specifications. All PVC conduit feeders shall contain a copper grounding conductor sized per NEC requirements and continuity shall be maintained throughout conduit runs and pull-boxes. Minimum conduit size shall be ¾". A tracing/caution tape must be installed in the trench over all buried conduit. All underground conduits placed in trenches, buried under roadways, or swales shall be encased with red dyed concrete slurry cap.
- Conduit installed using horizontal directional boring (HDB), shall include tracer tape or traceable conduit. The minimum depth of the conduit shall be per NEC 2011 Article 300.5. The Design-BUILDER is responsible for demonstrating that all conduits installed utilizing horizontal boring meets the minimum depth requirement and is solely responsible for any remediation costs and schedule impacts if the specification is not met. The HDB contractor must provide documentation of final depth and routes of all conduit installed in horizontal bores.
- Conduit installed on building roofs shall not be installed near roof edges or parapets to reduce visibility. Any conduit penetrations through roof surfaces shall not be made within five (5) feet of the roof edge to reduce visibility. If conduit is installed on the exterior face of any building, it shall be painted to match the existing building color. In all cases, the visible impact of conduit runs
shall be minimized and the design and placement of conduit shall be reviewed and approved by the Customer as part of Design Review.

- Electro-metallic tubing (EMT) shall be used in indoor, above grade locations and where conduit needs to be protected from damage. EMT shall not be installed underground, outdoors, or embedded in concrete. EMT shall be cold-rolled zinc coated steel and be manufactured to UL and ANSI standards. Fittings shall be watertight and malleable gripping ring compression type. Pressure cast material for nuts of compression ring type fittings and set-screw type connections are not acceptable.

- Galvanized Rigid Conduit (GRC) shall be used where exposed to weather or where subject to physical damage in exposed areas. GRC shall be continuous hot-dipped galvanized manufactured per UL and ANSI requirements. Rigid aluminum conduit is not acceptable. Conduit bodies for use with steel conduit, rigid or flexible, shall be manufactured per UL requirements and shall be cast metal with gasketed closures. Fittings for GRC conduit shall be malleable iron or forged steel with cadmium or zinc coating. Union couplings for joining rigid conduit at intermediate runs shall be of the same material as the conduit. Couplings shall be threaded concrete-tight to permit completing conduit runs when neither conduit can be turned and to permit breaking the conduit run at the union. Set screw connectors are not acceptable.

- Minimum conduit size shall be ¾”.

- All conduits, boxes, enclosures, etc. shall be secured per NEC 690 requirements.

- All conductors shall be insulated copper or aluminum rated for 600V or 1000V, maximum. DC conductors shall be USE-2 600V or 1000V UL Listed Sunlight resistant wire.

- All items shall be U.L. listed and shall bear the U.L. label.

- All spare conduits shall be cleaned, mandrelled, and provided with a pull-wire. Spare conduits shall be installed to support the future installation of security cameras and emergency call boxes for parking lot carport systems.

- All feeders and branch circuits shall be sized to minimize voltage drop and losses and shall be in compliance with NEC requirements.

- Design-Builder shall furnish, install, and connect combiners and recombiners as necessary to complete the System. Enclosures for combiners and recombiners shall be NEMA 4 or 4X rated.

- All systems, conduit, boxes, components, etc. shall be grounded and bonded per NEC requirements and in accordance with Section 1.3.5.16.

- Design-Builder will be responsible for locating, identifying and protecting existing underground utilities conduits, piping, substructures, etc. and ensuring that no damage is inflicted upon existing infrastructure.

- Design Builder shall install the exposed string cable homeruns along the beams or structure where the combiner box is installed.

- All exposed string wiring must be installed above the lower surface of the structural purlins and beams. Wire loops under framing members are not acceptable.

1.3.5.16  Grounding and Bonding

- Module ground wiring splices shall be made with irreversible crimp connectors.

- All exposed ground wiring must be routed above the lower surface of any structural framing.

- For shade structure installations, grounding electrode conductors shall be bonded to structure columns either just below grade or below the top surface of concrete bollards.

1.3.5.17  System Security Requirements
Attachment A.4 – Solar PV System Technical Design Specifications and Requirements

- Design-Builder shall utilize tamper-resistant PV module to rack fasteners for all PV module mounting.
- Design-Builder shall utilize tamper-resistant fasteners for all electrical fittings, pull boxes and other enclosures.

1.3.5.18 Meters

- Design-Builder shall supply and install Utility approved a Net Generation Output Meter (NGOM) for each PV system.
- Generation Meters shall use Internet Protocol (IP) communication and shall not require a custom network for connection.
- Generation Meters shall have the capability to store metered data (including instantaneous kW, kWh, voltage, current, and phase information) in fifteen (15) minute intervals and retain such information for at least seven (7) days.

1.3.5.19 Shade Structure Lighting

- Installation of shade structure PV systems in all locations shall include the installation of new security high efficiency lighting. Installation of shade structure PV systems shall include the removal of existing security light poles, foundations, and fixtures that are no longer effective.
- Lighting shall be LED lighting
- New parking lot fixtures shall be installed to provide parking lot illumination compliant with IESNA requirements or recommendations for illumination and safety.
- Minimum horizontal illuminance of one (1) foot-candle shall be maintained at ground level with a uniformity ratio (maximum to minimum) of 15:1.
- The new lighting is required to illuminate the entire parking area and adjacent pedestrian walkways affected by the removal of existing lights, not just the area under the PV modules.
- A photometric illumination plot must be submitted for each parking lot showing all existing lighting and proposed new SSS canopy lighting.
- Submit California Title 24 Outdoor Lighting calculations with all lighting drawings and show evidence of compliance.

Photocell controls shall be used in conjunction with a lighting control system for all exterior lighting and energize lighting when ambient lighting levels fall below two (2) foot-candles measured horizontally at ground level. Lighting shall also be permitted to operate manually without regards to photocell input. Replacement parking lot lighting shall be served from an existing parking lot lighting circuit and any existing circuits and existing control function shall be maintained, or if replaced, done so at the approval of the Customer.

1.3.5.20 Monitoring System, DAS, and Reporting

Design-Builder shall design, build, activate and ensure proper functioning of Data Acquisition Systems (DAS) that enable the Customer to track the performance of the PV Systems as well as environmental conditions through an online web-enabled graphical user interface and information displays. Design-Builder shall provide equipment to connect the DAS via existing Wi-Fi network or cellular data network at all locations. The means of data connection will be determined during design. The Customer will pay for the cost of cellular data service if needed, but not for the modem or other equipment needed to connect to the cellular network.

The DAS(s) shall provide access to at least the following data:
Attachment A.4 – Solar PV System Technical Design Specifications and Requirements

- Instantaneous AC system output (kW)
- PV System production (kWh) over pre-defined intervals that may be user configured
- AC and DC voltage
- Horizontal and in-plane irradiance (at least three (3) sensors for each, at different positions in the array)
- Ambient and back-of-cell temperature (at least two (2) sensors for each, at different positions in the array)
- Inverter status flags and general system status information
- System availability
- Site Load information. Available load data for the meter the system is connected to shall be collected by the solar monitoring solution as part of the DAS.

Environmental data (temperatures, wind speed, and irradiance) shall be collected via an individual weather station installed for each system.

Data collected by the DAS shall be presented in an online web interface, accessible from any computer through the Internet with appropriate security (e.g., password controlled access). The user interface shall allow visualization of the data at least in the following increments: 15 minutes, hour, day, week, month, and year. The interface shall access data recorded in a server that may be stored on-site or remotely with unfettered access by the Customer for the life of the Project. The online interface shall enable users to export all available data in Excel or ASCII comma-separated format for further analysis and data shall be downloadable in at least 15 minute intervals for daily, weekly, monthly and annual production.

The Monitoring system shall enable Customer staff to diagnose potential problems and perform remediating action. The monitoring system shall provide alerts when the system is not functioning within acceptable operating parameters. These parameters shall be defined during the design phase of the Project and specified in the DAS design document.

Additionally, Design-Builder shall provide the following reports for the life of the Project:

- Monthly Production report shall be available online to the Customer personnel.
- Annual Performance report shall be sent electronically to the Customer personnel.
- System performance data shall be made available electronically to the Customer in a format and at a frequency to be determined during the Design Review process.
- Additional reports shall be made available to the Customer to assist the Customer in reconciling system output with utility bills and the production guarantee, as determined in the Design Review process.

A Monitoring Manual shall be provided to the Customer in printed or on-line form that describes how to use the monitoring system, including the export of data and the creation of custom reports.

1.3.5.21 Other Considerations

- All Balance of Systems (wiring, components, conduits, and connections) must be suited for conditions for which they are to be installed.
- Local DC and AC disconnects shall be located in accessible locations near inverters.
- Outdoor enclosures shall be rated NEMA 3R, NEMA 4, or NEMA 4X.
1.3.5.22  Permits and Approvals

Design-Builder shall produce required documentation in sufficient detail to obtain all regulatory approvals requested for design, construction and operation of the system, including but not limited to all federal, state, and local permits. Securing all approvals, all permits and paying all fees shall be the sole responsibility of Design-Builder. To that end, Respondent shall provide a design that is acceptable to the state, county, and local authorities having jurisdiction over this project. The proposed design shall be suitable for construction under the guidelines and regulations in effect at the time the Agreement is executed. The Customer will not accept responsibility for cost increases or delays resulting from inaccurate interpretation of existing codes and standards.

1.3.5.23  FAA Requirements

Design-Builder shall be responsible to submit the appropriate FAA Form 7460-1, along with any other required forms and documentation, for all proposed PV systems within the approach or takeoff paths or on the property of airports as defined by the Code of Federal Regulations Title 14 Part 77.9.

1.3.5.24  Interconnection

Design-Builder is responsible for obtaining all necessary Utility interconnection approvals for each PV system being installed. Design-Builder must comply with all interconnection requirements, such as CPUC Rule 21 for the Utility service territory. Design-Builder is responsible for the proper planning and scheduling of interconnection approvals and any potential interconnection study. Systems installed as part of this project will take advantage of Net Energy Metering (NEM) and Aggregate Net Energy Metering (ANEM). Design-Builder shall be responsible for ensuring the system design and interconnection qualifies for NEM and ANEM.

1.3.5.25  Production Modeling

Production modeling of the PV systems shall be performed using PVSYST or equivalent modeling software using the most appropriate available TMY3 weather data. The simulations shall accurately simulate energy production for proposed system layouts, sizes, and orientation. It is critical that PV production models are accurate with all methodology and assumptions described. The Customer will independently verify production models are accurate to the designed systems and utilize simulation results for economic evaluations. Design-Builder shall be responsible for providing updated production models each time sufficient changes are made to the proposed system designs that will impact production, considered to be minimally 0.5%. Production models shall be submitted at minimum for the Construction Documents phase and the As-Built phase.

1.3.5.26  Shading

Design-Builder shall adhere to the following requirements in order to avoid excessive shading on modules. For any object near an array that is higher than the lowest point of that array by height H, Design-Builder shall locate the array farther from the object than:

- 3H to the North of the object
- 3H to the East or West of the object
- 3H to any non-cardinal direction of the object

Any Design-Builder whose system design does not adhere to these rules shall perform a shading analysis justifying the basis for their design, including any proposed tree removal, and explaining why shading does not create an adverse performance and/or economic impact.
Any trees that are in the footprint of systems to be installed by the Design-BUILDER shall be removed by the Design-BUILDER at their expense, subject to the approval of the Customer. A tree shall be considered to be in the footprint of a system if its canopy would extend over any part of the system, including structural components or modules. The Customer will remove or prune, at its discretion, trees planted outside of the work area that shade PV systems (at present time or in the foreseeable future), provided the Design-BUILDER identifies these trees during the design process. The Design-BUILDER shall be responsible for any required tree remediation efforts resulting from tree removal that is deemed the Design-BUILDER’s responsibility.

1.3.5.27 Warranties

Design-BUILDER shall provide a comprehensive ten (10) year warranty on all system components against defects in materials and workmanship under normal application, installation, and use and service conditions.

Additionally, the following minimum warranties are required:

- **PV Modules**: The PV modules are to be warranted for twenty (20) year. The PV modules shall be warranted against excessive degradation of power output.
- **Inverter**: The inverter shall carry an extended warranty of at least ten (10) years.
- **Meters**: At minimum, meters shall have a one (1) year warranty. For meters integrated in inverters, the meter warranty period must match the inverter.
- **Mounting system**: twenty (20) year warranty, covering at least structural integrity and corrosion.
- **Balance of system components**: the remainder of system components shall carry manufacturer warranties which conform to industry standards.

All work performed by Design-BUILDER must not render void, violate, or otherwise jeopardize any preexisting Customer facility or building warranties or the warranties of system components.

1.4 PROCUREMENT/CONSTRUCTION

1.4.1 Scope of Supply

Design-BUILDER shall provide all necessary labor, materials, equipment, and services required to install complete integrated turnkey PV systems. Design-BUILDER shall supply all solar modules, mounting equipment, inverters, AC and DC disconnect switches, metering, related wiring, monitoring equipment, and all ancillary equipment necessary to install the PV system and interconnect it to the Customer electrical distribution system. The PV system installations shall comply with all contract requirements, technical specifications, approved design documents, and applicable regulatory codes and requirements. Design-BUILDER shall submit As-Built Construction Drawings in hard copy with four (4) sets and an electronic copy in DWG format on compact disc to the Customer after completion of the Proving Period for each system at each site.

1.4.2 Materials and Equipment

Materials and equipment incorporated in the Work shall be new and suitable for the use intended. No material or equipment shall be used for any purpose other than that for which it is designed, specified or indicated.
Design-Builder shall use means necessary to protect the materials and equipment before, during and after installation. Design-Builder shall promptly replace lost or damaged materials and equipment with equal, or Customer-approved, replacements, or repair them, at no additional cost to the Customer.

1.4.3 Quality Assurance and Quality Control

Design-Builder shall implement a Quality Assurance / Quality Control (QA/QC) plan for construction activities on Customer sites. At least 30 days prior to the planned commencement of construction, Design-Builder shall submit a copy of the QA/QC Plan for review and approval by the Customer.

To ensure the highest quality of the installation, Design-Builder shall:

- Implement policies and procedures to ensure proper oversight of construction work, verification of adherence to construction documents and contractual requirements, and rapid identification and mitigation of issues and risks.
- Utilize best practice methods for communicating progress, performing work according to the approved Project schedule, and completing the Project on-time.
- Keep the Site clean and orderly throughout the duration of construction. All trash and rubbish shall be disposed of off-site by licensed waste disposal companies and in accordance with applicable Law.
- Provide equipment marking, as well as labeling and signage for the Project that shall be removed after Project completion.
- Fully comply with all applicable notification, safety and Work rules (including Customer safety standards) when working on or near Customer facilities.
- Route all electrical collection system wiring and conduits in a neat and orderly fashion and in accordance with all applicable code requirements. All cable terminations, excluding module-to-module and module-to-cable harness connections, shall be permanently labeled.
- Provide all temporary road and warning signs, flagmen or equipment as required to safely execute the Work. Street sweeping services shall also be provided as required to keep any dirt, soil, mud, etc. off of roads. Comply with all state and local storm water pollution prevention (SWPP) ordinances.

1.5 TESTING

Following completion of construction, Design-Builder shall provide the following services related to startup and performance testing of the PV systems:

- System commissioning
- System Startup
- Proving Period

A detailed Testing Plan covering each of the phases above shall be submitted and approved by the Customer prior to substantial completion of construction. A detailed description of each phase is provided below.

1.5.1 System Commissioning

Design-Builder shall perform a complete system commissioning for each PV System. The system commissioning procedures include component tests as well as other standard tests, inspections, safety
and quality checks. All testing and commissioning shall be conducted in accordance with the manufacturer’s specifications.

The section of the Testing Plan that covers System commissioning shall be equivalent or superior to both the CEC (California Energy Commission) “Guide to Photovoltaic (PV) System Design and Installation”, Section 4 and ASTM International Standards E2848 and E2939. The testing plan shall cover at least the following:

- Detailed test methods, including sample calculations and reference to standards as required or applicable, and list of tested equipment.
- Pre-test checklist to ensure readiness and any safety measures are in-place.
- Details of all necessary adjustments, balancing, required equipment isolation or configuration, test equipment and instruments, calibration, and personnel needed.
- Acceptance Criteria: For each test phase, specifically indicate what is considered an acceptable test result.

The System commissioning section of the Testing Plan shall include (but not be limited to) the following tests:

- String-level testing for all PV strings and the ability of monitoring to identify string outages.
- Inverter testing for all inverters. The inverters shall be commissioned on-site by a qualified technician and shall confirm that the inverter can be operated locally per specification and that automatic operations such as wake-up and sleep routines, power tracking and fault detection responses occur as specified.
- Testing of all sensors of the DAS and the ability of monitoring to identify sensor errors.
- Testing of the Data Presentation interface of the DAS.

After Design-Builder conducts all System commissioning based on the Testing Plan approved by the Customer prior to substantial completion, Design-Builder shall submit a detailed System commissioning Report to the Customer for review. Module (if applicable), string level, and inverter level fault detection shall be scripted in the Testing Plan and carried out during System Commissioning, with the DAS fully operational per the specifications of the Contract.

The System Commissioning Report shall document the results of the tests conducted following the Testing Plan, and include additional information such as the date and time each test was performed. It shall also make reference to any problem and deficiencies found during testing. If there was troubleshooting done, the Report shall describe the troubleshooting methods and strategy. Design-Builder shall be responsible for providing the labor and equipment necessary to troubleshoot the System.

1.5.2 System Startup

Following Customer approval of the System commissioning Report, Design-Builder shall conduct tests over twenty-four (24) hours and at a time resolution of fifteen (15) minutes, recording the following data:

- Average AC output (kW)
- Average DC output (kW)
- Hourly PV system production (kWh)
- AC and DC voltage
- Horizontal and in-plane irradiance
Attachment A.4 – Solar PV System Technical Design Specifications and Requirements

- Ambient and cell temperature
- Inverter status flags and general system status information

These data points shall be presented in a manner that best depicts the actual performance of the system for Customer review and approval and shall be submitted as part of the Startup Test Report.

1.5.3 Proving Period (30 days)

Upon completion of system commissioning, utility permission to operate (PTO), System Startup, and approval by the Customer, Design-Builder shall monitor the system during a thirty (30) day Proving Period and submit a report for Customer review and approval prior to final acceptance by the Customer. This includes monitoring system output and ensuring the correct functioning of system components over this time. The values for the following data shall be acquired every fifteen (15) minutes over thirty (30) days:

- AC system output (kW)
- PV system production (kWh)
- AC and DC voltage
- Horizontal and in-plane irradiance
- Ambient and cell temperature
- Inverter status flags and general system status information
- System availability

Design-Builder shall utilize calibrated test instruments and the DAS and monitoring system to collect the test data described above, which shall be made available to the Customer for access throughout the Proving Period. Pyranometers must be properly cleaned and provide irradiance measurements within 3% of one another. Design-Builder shall determine through analysis of data from the Proving Period whether the PV system delivers the expected production as determined by the final approved design (i.e., Construction Documents). Expected production calculation methodology must be described and the calculations provided. Actual production shall be compared against expected production using actual weather data and other system inputs (such as module cell temperature factor, module mismatch, inverter efficiency, and wiring losses) for calculating expected production. The production figures for all meters, whether existing or installed by or on behalf of the IOU or by or on behalf of the Respondent, shall be correlated during this test to verify their accuracy in measuring system production.

If the PV system does not perform to design specifications, diagnostic testing shall be performed by Design-Builder, deficiencies shall be identified with proposed corrective actions submitted to the Customer, and the Proving Period test repeated. Design-Builder shall be responsible for providing the labor and equipment necessary to troubleshoot the system. The Proving Period Report shall be submitted after the successful completion of this phase and submitted to the Customer for review and approval. The report shall contain, but not be limited to, the following information; calculations shall be provided in Excel format with formulas visible to allow for peer review:

- System description
- Test period
- Test results
- Anomalies identified during test
- Corrective action performed
- Actual measured performance
- Calculations detailing expected performance under TMY conditions

1.6 OPERATIONS AND MAINTENANCE
Design-Build shall offer Operations and Maintenance services for twenty (20) years with their Proposal. The Customer reserves the right to not execute the Operations and Maintenance services agreement. In offering such services, Design-Build shall perform all necessary preventive and corrective maintenance, which includes routine maintenance adjustments, replacements, and electrical panel/transformer/ inverter cleaning (interior and exterior) with supporting documentation delivered to the Customer after the Work has been performed. Maintenance by Design-Build shall ensure that all warranties, particularly inverter warranties, are preserved. The frequency and timing of panel wash-downs shall be determined by Design-Build based on system monitoring data. Environmental sensors such as pyranometers shall be tested and recalibrated at least once a year.

Design-Build shall perform the following maintenance services, at a minimum, as described in the following sections:

1.6.1 Preventative Maintenance

Preventive Maintenance shall be performed at least annually and include:

- System testing (voltage/amperage)
- System visual inspection and necessary corrections:
  - Inspect for stolen, broken or damaged PV modules, record damage and location. Report to the Customer and wait for the Customer to authorize a course of action.
  - Inspect PV wiring for loose connections and wire condition. Resolve issues as needed or report larger issues to the Customer.
  - Inspect for wires in contact with the structure or hanging loose from racking and resolve issues as needed.
  - Check mechanical attachment of the PV modules to the racking and resolve issue as needed.
  - Check attachment of racking components to each other and the structure and resolve issue as needed.
  - Verify proper system grounding is in place from panels to the inverter and resolve issue as needed.
  - Check conduits and raceways for proper anchorage to structures and resolve issue as needed.
  - Inspect all metallic parts for corrosion and resolve issue as needed.
  - Check combiner boxes for proper fuse sizes and continuity and resolve issue as needed.
  - Inspect all wiring connections for signs of poor contact at terminals (burning, discoloration, etc.) and resolve issue as needed.
  - Inspect disconnects for proper operation and resolve issues as needed.
  - Survey entire jobsite for debris or obstructions and resolve issues as needed.
  - Inspect fasteners for proper torque and corrosion and resolve issues as needed.
  - Inspect inverter pad for cracking or settling and resolve issues as needed.
  - Inspect electrical hardware for proper warning and rating labeling and resolve issues as needed.
  - Review as built documentation as needed.
  - Inspect alignment of arrays and racking to identify settling foundations or loose attachments and resolve issues as needed or report issues to the Customer.
  - Inspect operation of tracking hinges, pivots, motors and actuators if present and resolve issues as needed.
  - Check for proper operation and reporting of monitoring hardware and resolve issues as needed.
1.6.4 Troubleshooting, Inspection and Additional Repairs

- Dispatch of field service resources within two business days of notification (via automated or manual means) for repairs as necessary to maintain system performance.
- Any corrective action required to restore the system to fully operational status shall be completed within 24 hours of the service resources arriving on-site.
- Major system repairs, not to include mid-voltage switchgear or transformers.

1.6.3 Customer Service Support

- Support telephone line made available to Customer staff to answer questions or report issues.
- Support line shall be staffed during operational hours from 8 am – 6 pm California Standard Time. During times outside of this operational period, an urgent call shall be able to be routed to a supervisor for immediate action.

1.6.4 Major Component Maintenance and Repair

- Inverter repair and component replacement and refurbishment as required in the event of inverter failure.
- Inverter inspection and regular servicing as required under inverter manufacturer’s warranty specifications. Those include but are not limited to the following annually:
  - Check appearance/cleanliness of the cabinet, ventilation system and all exposed surfaces.
  - Inspect, clean/replace air filter elements
  - Check for corrosion on all terminals, cables and enclosure.
  - Check all fuses.
  - Perform a complete visual inspection of all internally mounted equipment including subassemblies, wiring harnesses, contactors, power supplies and all major components.
  - Check condition of all the AC and DC surge suppressors.
  - Torque terminals and all fasteners in electrical power connections.
  - Check the operation of all safety devices (E-stop, door switches).
  - Record all operating voltages and current readings via the front display panel.
  - Record all inspections completed.
  - Inform inverter manufacturer of all deficiencies identified.
  - Oversee inverter manufacturer performance of In-Warranty replacement of failed inverter components.
• Customer advocacy with vendors.
• Service Level Agreement shall be provided to deliver tiered response to problems according to their level of importance. For each tier, the number of hours to acknowledge, respond, and resolve each of the faults shall be as defined in the O&M Agreement.

1.6.5 Other System Services

• O&M Manuals – Design-Builder shall provide three (3) copies of O&M Manuals. Updated editions of O&M Manuals shall be sent electronically to the Customer as they become available.
• Management of long term service and warranty agreements, ongoing.
• Design-Builder shall log all maintenance calls and document all maintenance activities. These activities shall be presented in a report, which is to be submitted to the Customer on a minimum monthly basis and shall include automatically and manually identified faults.

O&M services shall be priced separately from the design and construction of the PV system. Design-Builder shall submit a detailed description of their O&M services, detailing the activities and the intervals at which they will be performed, with their Proposal.

1.7 PERFORMANCE GUARANTEE

Contractor shall offer a Performance Guarantee for twenty-five (25) years with their Proposal. The cost of the Guarantee shall be included in Appendix B.2. The Customer reserves the right to not execute the Performance Guarantee.

The Performance Guarantee obligates Contractor to compensate the Customer for the cost of utility electricity purchases that the Customer would not have incurred had the PV System performed at a 100% level of performance. The cost of utility will be established and incorporated into the final Performance Guarantee language. The guaranteed annual output shall be decreased by an appropriate PV module degradation. Determinations of under-performance (i.e., the amount of kWh below the guaranteed output level), if any, shall be made every five years. Contractor is not entitled to any payments for over production.

Guaranteed production levels shall be adjusted to account for any changes in the proposed system design and will be appropriate for the final designed system. Downward adjustments in expected performance may be permitted in the following cases:

1. There is any failure of the System to perform caused by legislative, administrative or executive action, regulation, order or requisition of any federal, state or local government, local utility or public utilities commission;
2. There is an event of Force Majeure as defined in the Contract executed between the College and Contractor;
3. An act of vandalism results in reduced system performance; or
4. There are changes related to the Site, or buildings at or near the Site, without the prior written approval of Contractor, that can be reasonably expected to reduce solar PV performance.

In cases 1-4 above, Contractor shall develop and submit for approval an estimate of the lost kWh output attributable to these causes and the performance requirement for the applicable year shall be adjusted accordingly.
Downward adjustments in the guaranteed output level may not be made for reasons of equipment underperformance, malfunction, or failure, whether or not the equipment is under warranty.

1.8 TRAINING

The Respondent shall provide twelve (12) hours of on-site training for Customer personnel in all aspects of operation, routine maintenance, and safety of the PV systems, DAS, and monitoring solution.

At a minimum, training topics shall include the following:

- PV system safety, including shut-down procedures
- PV module maintenance and troubleshooting
- Structural elements maintenance and repair guidelines
- Inverter overview and maintenance procedures
- Calibration and adjustment procedures for the inverters and tracking systems (if any)
- Solar panel replacement
- DAS and monitoring solution, including standard and custom reporting

Design-Builder shall submit a proposed Training Plan during the design process for approval and provide all training materials and manuals to support on-site training in advance of scheduled training sessions (see schedule of submittals in Section 2.2.3, “Submittals”). The on-site portion of the training program shall be scheduled to take place at the jobsite at a time agreeable to both the Customer and Design-Builder.

1.9 EDUCATIONAL PROGRAMS

Design-Builder shall develop and deploy an educational program consisting of the following mandatory elements with a maximum allocation of 20 hours:

- Curriculum development for Community College Programming
- Sample lesson plans including teaching materials

The mandatory educational program shall leverage the installed solar systems as well as available data from the DAS and monitoring systems. Additional, optional educational programs may also be deployed. These may include:

- Physical design elements
- Outdoor classroom space
- Promotion of solar career opportunities
October 5, 2018
Kleinfelder Project No. 20191498.001A

Mr. Ronald Perez
Merced College
3600 M Street
Merced, California 95348

Subject: Geotechnical Engineering Investigation
Merced College Solar Improvements
Los Banos Campus
22240 Highway 152
Los Banos, California

Dear Mr. Perez:

Kleinfelder is pleased to present the attached Geotechnical Investigation Report for the proposed solar improvements at the Merced College Los Banos campus located at 22240 Highway 152 in Los Banos, California. The propose of the investigation was to explore and evaluate the subsurface conditions and to develop geotechnical engineering recommendations to aid in project design and construction.

Kleinfelder appreciates the opportunity to provide geotechnical engineering services to Merced College. We trust this information meets your current needs. If there are any questions concerning the information presented in this report, please contact this office at your convenience.

Respectfully submitted,

KLEINFELDER, INC.

Adam AhTye, EIT
Staff Engineer

Stephen P. Plauson, PE, GE
Principal Geotechnical Engineer

AA:SPP:jb
A Report Prepared for:

Mr. Ronald Perez  
Merced College  
3600 M Street  
Merced, California 95348

GEOTECHNICAL INVESTIGATION REPORT  
MERCED COLLEGE SOLAR IMPROVEMENTS  
LOS BANOS CAMPUS  
LOS BANOS, CALIFORNIA

Prepared by:

Adam AhTye, EIT  
Staff Engineer

Reviewed by:

Stephen P. Plauson, PE, GE  
Principal Geotechnical Engineer

KLEINFELDER, INC.  
3731 W. Ashcroft Avenue  
Fresno, California 93722  
(559) 486-0750

October 5, 2018
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- SITE VICINITY MAP | 1
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**APPENDIX A**

- LOG KEY | A
- BORING LOGS | A-1/A-8

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October 5, 2018

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1 INTRODUCTION

1.1 GENERAL

This report presents the results of a geotechnical investigation for the proposed Merced College Los Banos campus solar improvements located at 22240 Highway 152 in Los Banos, California. The purpose of the investigation was to explore and evaluate the subsurface conditions at the site and to develop geotechnical engineering recommendations to aid in the project design and construction. The Site Vicinity Map, Figure 1, shows the location of the project. The Exploration Location Map, presented on Figure 2, displays the proposed improvements and the approximate boring locations.

This report includes recommendations related to the geotechnical aspects of project design and construction. Conclusions and recommendations presented in this report are based on the subsurface conditions encountered at the locations of the exploration and the provisions and requirements outlined in the “Additional Services” and “Limitations” Sections of this report. Recommendations presented herein should not be extrapolated to other areas or used for other projects without prior review.

1.2 PROJECT DESCRIPTION

An understanding of the project is based upon email conversations with Mr. Ronald Perez. The project is anticipated to include the design and construction of three (3) new solar fields to be located on the perimeter of the campus building improvements. The proposed solar fields are anticipated to consist of photovoltaic solar panels, transformers, inverters, switch gears, and other miscellaneous solar equipment and be encompassed entirely by the Merced College campus. The solar panels are anticipated to be supported on steel racking structures supported drilled pier foundations in parking areas or driven steel plies in nan-paved areas. The embedment depth of the foundations will ultimately be dictated by the soil conditions at the site and demand loads. The proposed inverters, transformers, switch gears, and other miscellaneous equipment is anticipated to be supported on the structures or concrete slab foundations.
1.3 SCOPE OF SERVICES

The purpose of the investigation was to explore the site subsurface conditions and develop recommendations and opinions to assist in project design and construction. This report addresses the following items:

- A description of the proposed project, including a vicinity map showing the location of the site and a site plan showing the locations of the exploration points for this study
- A description of the site surface and subsurface conditions encountered during the field investigation, including boring logs
- A summary of the field exploration and laboratory testing program
- Recommended seismic design criteria
- Recommendations for site preparation and earthwork, including the use of on-site soils for engineered fill and recommended import fill specifications
- Recommendations for pier and steel post foundations; including axial and lateral capacity,
- Recommended L-Pile parameters for use in evaluating resistance of lateral loads
- Recommendations to aid in design of concrete mat/slab foundations, including modulus of subgrade reaction
- Recommendations for resistance of lateral loads, including passive pressure and friction coefficient
- Comments on the corrosion potential of on-site soils to buried metal and concrete
- Comments on general site drainage
2 FIELD EXPLORATION

2.1 FIELD EXPLORATION

The field exploration was conducted on August 27, 2018 and consisted of drilling six (6) exploratory test borings and conducting a site reconnaissance by a staff engineer. The test borings were drilled with a CME 45 truck-mounted drill rig using hollow stem drilling techniques. The borings were completed to depths of 16.5 feet below the existing ground surface. The approximate locations of the test borings are indicated on the Exploration Location Map, Figure 2.

The soils encountered in the boring were visually classified in the field and a continuous log was recorded. Relatively undisturbed samples were collected from the test boring at selected depths by driving a 2.5-inch I.D. split barrel sampler containing brass liners into the undisturbed soil with a 140-pound automatic hammer free falling a distance of 30 inches. In addition, samples of the subsurface material were obtained using a 1.4-inch I.D. standard penetrometer, driven 18 inches in accordance with ASTM D1586 test procedures. The sampler was used without liners. Resistance to sampler penetration was noted on the boring logs as the number of blows per foot over the last 12 inches of sampler penetration. The blow counts listed in the boring logs have not been corrected for the effects of overburden pressure, rod length, sampler size, or hammer efficiency.

2.2 FIELD AND LABORATORY TESTS

2.2.1 Field Testing

Penetration rates determined in general accordance with ASTM D1586 were used to aid in evaluating the consistency, compression, and strength characteristics of the foundation soils. Correlation to the penetration rates were also used in the engineering analyses.
2.2.2 Laboratory Tests

Kleinfelder performed laboratory tests on selected near surface samples to evaluate their physical characteristics. The following laboratory tests were used to aid in developing the design geotechnical parameters:

- Unit weight (ASTM D2937)
- Moisture content (ASTM D2216)
- Expansion Index (ASTM D4829)
- Direct Shear (ASTM D3080)
- pH and Minimum Resistivity (California Test Method No. 532)
- Soluble Sulfate Content (California Test Method No. 417)
- Soluble Chloride Content (California Test Method No. 422)
3 SITE CONDITIONS

3.1 SURFACE

The proposed solar improvements are anticipated to be located within the existing parking lots and within an undeveloped portion of land located in the northwest corner of the school campus. The existing parking lots consisted of asphalt paved concrete surface which appeared to relatively flat and at a similar elevation to Highway 152 to the south. The undeveloped portion of land consisted of bare soil with a light to moderate seasonal growth of weeds on the surface. Additionally, a soil stockpile was located within this portion of land approximately 310 feet long, 30 feet wide, and 10 feet tall.

3.2 FEMA FLOOD ZONE

According to the Federal Emergency Management Act (FEMA), the project site lies primarily within a Zone X flood designation (Map Number 06047C0825G, dated December 2, 2008), indicating areas of minimal flood hazard.

3.3 SUBSURFACE CONDITIONS

The project site soil consists of Holocene aged alluvial sediments consisting of gravel, sand, and clay of the valley areas. The general earth material profile depicted by the subsurface exploration consisted of sandy lean clay throughout all of borings B-1, B-2, and B-6, and in the upper 4 feet of borings B-3, B-4, and B-5 underlain by laterally discontinuous layers of sandy lean clay, silty sand, poorly graded sand with silt, and poorly graded gravel to the depth explored, 16.5 feet bgs. The granular soils had a relative consistency of medium dense and the fine-grained soils had a relative consistency of medium stiff to hard.

The above is a general description of the earth material profile. A more detailed representation of the stratigraphy at the specific exploration locations are provided on the boring logs in Appendix A.
3.4 GROUNDWATER CONDITIONS

Groundwater was not encountered within the depth of exploration, 16.5 feet below existing ground surface. The California Department of Water Resources “Groundwater Information Center Interactive Map Application”, indicates the depth to groundwater is approximately 25 feet below site grade. It is possible that groundwater conditions at the site could vary between boring locations or could change at some time in the future due to variations in the rainfall, groundwater withdrawal, construction activities, or other factors due to variations in the rainfall, groundwater withdrawal, construction activities, or other factors not apparent at the time of our field reconnaissance. Based on the boring data collected for the study, groundwater is not anticipated to impact design or construction.
4 GEOLOGIC CONDITIONS

4.1 REGIONAL GEOLOGY

The project site and its vicinity are located in an area traditionally characterized by relatively moderate to high seismic activity. Faulting and seismic ground shaking is usually associated with known fault systems. The site is not located in an Alquist-Priolo Earthquake Fault Zone as established by the Alquist-Priolo Fault Zone Act (Section 2622 of Chapter 7.5, Division 2 of the California Public Resources Code).

Based on a review of published data and a current understanding of the geologic framework and tectonic setting of the proposed facility, there are no known faults which traverse through the local soils in or near the site. The primary source of seismic shaking is anticipated to be the Coast Ranges-Sierran Block, which is located approximately 8 kilometers west of the project site.

4.2 SEISMIC DESIGN CRITERIA

Seismic design information has been updated, based upon the 2016 CBC, which utilizes the 2016 ASCE 7-10. The Maximum Considered Earthquake (MCE) mapped spectral accelerations for 0.2 second and 1 second periods (S₂ and S₁), mapped peak ground acceleration (PGA), and mapped long-period transition period (Tₗ) were estimated based on Section 1613 of the CBC and Chapter 22 of the ASCE 7-10 using the United States Geological Survey (USGS) U.S. seismic design maps. The mapped acceleration values, associated soil amplification factors (Fₐ and Fᵥ), and corresponding site modified (Sₘₛ and Sₘ₁) and design spectral accelerations (Sₖₛ and Sₖ₁), based on CBC, are presented in Table 4.2-1. The Site Class is D. The Seismic Design Category is estimated to be at least D.
TABLE 4.2-1
GROUND MOTION PARAMETERS
2016 CBC/ASCE 7-10

<table>
<thead>
<tr>
<th>Parameter</th>
<th>Value</th>
<th>Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>$S_S$</td>
<td>1.661g</td>
<td>2016 CBC Section 1613.3.1</td>
</tr>
<tr>
<td>$S_1$</td>
<td>0.554g</td>
<td>2016 CBC Section 1613.3.1</td>
</tr>
<tr>
<td>Site Class</td>
<td>D</td>
<td>2016 CBC Section 1613.3.2</td>
</tr>
<tr>
<td>Seismic Design Category</td>
<td>D</td>
<td>2016 CBC Tables 1613.3.5 (1) and (2)</td>
</tr>
<tr>
<td>$F_a$</td>
<td>1.000</td>
<td>2016 CBC Table 1613.3.3(1)</td>
</tr>
<tr>
<td>$F_v$</td>
<td>1.500</td>
<td>2016 CBC Table 1613.3.3(2)</td>
</tr>
<tr>
<td>$S_{MS}$</td>
<td>1.661g</td>
<td>2016 CBC Section 1613.3.3</td>
</tr>
<tr>
<td>$S_{M1}$</td>
<td>0.830g</td>
<td>2016 CBC Section 1613.3.3</td>
</tr>
<tr>
<td>$S_{DS}$</td>
<td>1.107g</td>
<td>2016 CBC Section 1613.4.4</td>
</tr>
<tr>
<td>$S_{D1}$</td>
<td>0.554g</td>
<td>2016 CBC Section 1613.4.4</td>
</tr>
<tr>
<td>PGA</td>
<td>0.655g</td>
<td>ASCE 7-10 Figure 22-7</td>
</tr>
<tr>
<td>$F_{PGA}$</td>
<td>1.000</td>
<td>ASCE 7-10 Table 11.8-1</td>
</tr>
<tr>
<td>PGA_M</td>
<td>0.655g</td>
<td>ASCE 7-10 Section 11.8.3</td>
</tr>
<tr>
<td>$C_{RS}$</td>
<td>0.917</td>
<td>ASCE 7-10 Figure 22-17</td>
</tr>
<tr>
<td>$C_{R1}$</td>
<td>0.940</td>
<td>ASCE 7-10 Figure 22-18</td>
</tr>
<tr>
<td>$T_L$</td>
<td>8 s</td>
<td>ASCE 7-10 Figure 22-12</td>
</tr>
</tbody>
</table>

A maximum moment magnitude ($M_{max}$) associated with ground shaking on the Coast Ranges-Sierran Block is anticipated to be 6.57, based on the 2014 Unified Hazard Tool.

4.2.1 Liquefaction

In order for liquefaction of soils due to ground shaking to occur, it is generally accepted that four conditions will exist:

- The subsurface soils are in a relatively loose state,
- The soils are saturated,
- The soils are granular,
- Ground shaking is of sufficient intensity should occur to act as a triggering mechanism.

Saturated granular sediments can experience liquefaction if subject to seismically induced ground motion of sufficient intensity and duration. The absence of groundwater within the upper 25 feet of the site would preclude the occurrence of liquefaction. Based on the ground shaking which
may be expected at this site, the relative soil density, soil type, and depth to groundwater, liquefaction and associated seismically induced settlement is considered unlikely.
5 DESIGN RECOMMENDATIONS

5.1 GENERAL

Based on the laboratory data, field exploration, and geotechnical analyses conducted by Kleinfelder for this study, it is geotechnically feasible to construct the proposed solar improvements, as currently envisioned. The proposed solar improvements can be constructed using conventional grading and foundation construction techniques. The proposed structural elements of the improvements may be supported by shallow pier footings supported on approved undisturbed native soil or properly engineered fill.

The following recommendations are based on the assumption that for new foundations the recommendations in Section 5, “Earthwork”, have been implemented. Recommendations regarding the geotechnical aspects of structure design are presented in subsequent sections.

5.2 PIER AND DRIVEN PILE FOUNDATIONS

5.2.1 Allowable Vertical Axial Capacity and Settlements

The solar structures can be supported by drilled pier and, or driven steel post foundations. Table 5.2-1 provides expressions for the allowable and ultimate axial capacity using friction to resist axial loads. If the design of the pier foundations includes end bearing to resist axial loads, the design may utilize an allowable bearing capacity of up to 2,000 psf for static loading (D.L. + long term L.L.). The end bearing capacity may be increased 50 percent for total combined loading (D.L. + L.L. + transient loading, such as wind or seismic).
**TABLE 5.2-1**
Allowable Axial Capacity

<table>
<thead>
<tr>
<th></th>
<th>Frictional Resistance for Vertical Loads in Compression (lbs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Static Loading</td>
<td>35 DL² + 785 DL</td>
</tr>
<tr>
<td>Total Combined Loading</td>
<td>45 DL² + 1,045 DL</td>
</tr>
<tr>
<td>Unfactored Ultimate Capacity</td>
<td>70 DL² + 1,570 DL</td>
</tr>
</tbody>
</table>

Note: 1) D is pier diameter or post perimeter in feet and L is embedment length in feet.
2) The allowable uplift resistance would be 70 percent of the compressional resistance.

The total settlement of friction piers and posts designed in accordance with the above recommendations should be less than 0.002 times the pier diameter or post perimeter in inches. If design incorporates end bearing to resist axial loading, the estimated settlement would increase to approximately 0.018 times the pier diameter or steel post perimeter in inches. The concrete mix and reinforcement for drilled pier/caisson foundations should be designed by the project structural engineer.

### 5.2.2 Lateral Resistance

Methods by ASHTO and Caltrans can be used to evaluate the lateral capacity of pier footings. The allowable passive pressure to resist lateral loads on isolated piers is presented in Table 5.2-2.

<table>
<thead>
<tr>
<th></th>
<th>Allowable</th>
<th>Ultimate</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Static</td>
<td>Total Combined</td>
</tr>
<tr>
<td></td>
<td>740 psf + 360 psf/ft of depth +</td>
<td>985 psf + 480 psf/ft of depth +</td>
</tr>
</tbody>
</table>

Due to the presence of expansive soils, passive resistance should not be used within the greater of the top 18 inches or 1.5 times the diameter of the pier/post footing unless abutted by hardscape. The passive pressure values already consider arching and, as such, should not be increased further. The passive pressure only considers soil strength. Tolerable pier deflection may govern the design lateral resistance. If provided with pier geometry, lateral load, and loading eccentricity, Kleinfelder can provide the estimated pier head deflection.
The allowable passive pressure provided above would not be appropriate for use in place of the values given in Table No. 1806.2 of the 2016 California Building Code (CBC) if pier foundation design utilizes the pole formulas in the CBC. If design uses the pole formulas in the CBC, the appropriate class of material in Table 1806.2 would be No. 5 (Clay and Silt). Based on the strength of the on-site soils, a lateral bearing pressure of 120 psf/ft of embedment below the site grade may be used in place of the value given in Table 1806.2.

As an alternative analysis, the resistance to lateral loads provided by the soil against the pile foundations and by the bending stiffness of the piles can be assessed using the LPILE computer program (by Ensoft, Inc., Version 2018). Table 5.2-3 contains input soil parameters for lateral analysis of pile foundations using the LPILE.

<table>
<thead>
<tr>
<th>Depth (feet)</th>
<th>P-Y Curve Soil Model</th>
<th>γ&lt;sub&gt;effective&lt;/sub&gt; (pcf)</th>
<th>C (psf)</th>
<th>ϕ (degree)</th>
<th>k (pci)</th>
<th>E50</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 to 5</td>
<td>Stiff Clay w/o Free Water</td>
<td>110</td>
<td>500</td>
<td>22</td>
<td>300</td>
<td>0.01</td>
</tr>
<tr>
<td>5 to 12</td>
<td>API Sand</td>
<td>105</td>
<td>--</td>
<td>32</td>
<td>150</td>
<td>--</td>
</tr>
<tr>
<td>12 to 15</td>
<td>Stiff Clay w/o Free Water</td>
<td>115</td>
<td>500</td>
<td>22</td>
<td>300</td>
<td>0.01</td>
</tr>
</tbody>
</table>

Note: Due to the presence of expansive soils, passive resistance should not be used within the greater of the top 18 inches or 1.5 times the diameter of the pier/post footing unless abutted by hardscape.

### 5.2.3 Design and Construction Considerations

Prior to placing steel or concrete, footing excavations should be cleaned of all debris, loose soil, soft soil, and water. All footing excavations should be observed by the project Geotechnical Engineer just prior to placing steel or concrete. The purpose of these observations is to check that the bearing soils actually encountered in the foundation excavations are similar to those assumed in analysis and to verify the recommendations contained herein are implemented during construction.
5.3 SPREAD FOUNDATIONS

5.3.1 General

Solar inverters, transformers, and other miscellaneous improvements may be supported on spread foundations. Based on the anticipated expansive nature of the foundation soils, it is recommended that spread footings consist of reinforced foundations, embedded a minimum of 18 inches below the lowest adjacent grade. Footings should be reinforced with one #4 bar near the top and one #4 bar near the bottom (2 total). Foundation depths and reinforcement should also satisfy structural and constructability considerations. Clay subgrade soil within 6 inches of the bottom of footings and within sidewalls should have a moisture content of at least 3 percent above optimum, immediately prior to pouring foundation concrete.

Should inverters, transformers, and other miscellaneous improvements be supported on mat/slab foundations, minimum reinforcement should consist of number 4 bars spaced at 18 inches on center in both principle directions or equivalent. In lieu of thickening the slab to achieve the minimum footing embedment, edges of the slab should be downturned at the perimeter extending to a depth of 18 inches below grade.

5.3.2 Allowable Vertical Bearing Pressures and Settlement

Presented in Table 5.3-1 is the allowable bearing capacity for static loading (D.L. + long term L.L.), total combined loading (D.L. + L.L. + transient loading, such as wind or seismic), and unfactored ultimate bearing.

<table>
<thead>
<tr>
<th>Allowable Bearing (psf)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Static Loading</td>
</tr>
<tr>
<td>Total Combined Loading</td>
</tr>
<tr>
<td>Unfactored Ultimate Bearing</td>
</tr>
</tbody>
</table>

The above values are appropriated for design using the Basic and Alternate Load Combinations in Section 1605.3 of the 2016 CBC. Based on the anticipated foundation loads of the inverters and other miscellaneous solar improvements supported on spread foundations, the estimated
settlement is anticipated to be less than 1 inch. Settlement is expected to occur primarily throughout the construction process.

Should spread footings be utilized to support solar structures (not including inverters, transformers, and other miscellaneous improvements), Kleinfelder should be contacted to provide additional foundation recommendations.

5.4 CORROSION POTENTIAL

A soil sample obtained from the near surface site soil were tested to evaluate pH, minimum electrical resistivity, and soluble sulfate and chloride content.

The pH of the soil tested was 7.55 and the minimum electrical resistivity was 18,000 ohm-cm. These values are generally representative of an environment that would be mildly to moderately corrosive to buried unprotected metals.

Test results suggest that a low level of soluble sulfate (36 ppm) and soluble chlorides (11 ppm) are present in on-site soils. Normal cement (Type II) and reinforcement cover should be adequate in foundation concrete that comes in contact with the foundation soils. Reinforcement cover need not be increased for concrete that comes in contact with the on-site soil.

Corrosion is dependent upon a complex variety of conditions, which are beyond the geotechnical practice. Consequently, a qualified corrosion engineer should be consulted if the owners desires more specific recommendations.

5.5 EARTHWORK

Earthwork is anticipated to be limited to removal of the fill stockpile, clearing and minor leveling of the field, and excavation of pier foundations of the solar field and thus the special earthwork requirements would generally not apply.

General recommendations regarding site grading are presented below if planning calls for placement of fill, underground trench backfill, construction of slabs-on-grade for support of equipment, and, or pavements; or if surface repairs are necessary within the solar array due to the presence of areas or pockets of soft or loose soils void spaces made by burrowing animals, undocumented fill, or other disturbed soil that are encountered.
All reference to relative compaction, maximum density, and optimum moisture is based on ASTM Test Method D1557. Earthwork, if any, shall extend horizontally a minimum distance of 5 feet beyond the perimeter of the improvements. If the current site elevations will be raised, the earthwork shall extend horizontally a minimum distance of 5 feet plus the depth of fill above the existing/pre-construction site grade.

Prior to placing fill of constructing slabs, on grade, or pavements, the vegetation should be stripped and removed from the project site. Stripping need not occur in the solar array provided construction follows the existing site contours (e.g. requires no new fills) and provided the solar rack systems are supported on concrete steel columns.

All engineered fill soils should be nearly free of organic or other deleterious debris and less than 3 inches in maximum dimension. The on-site soil exclusive debris may be used as engineered fill, provided it contains less than 3 percent organics by weight (ASTM D2974). Should any imported material be used for engineered fill, it should be sampled and tested and approved by the Geotechnical Engineer prior to being transported to the site. In general, soils similar to the on-site are considered suitable.

Soils used as engineered fill should be uniformly moisture conditioned to at, or above optimum moisture, placed in horizontal lifts less than 8 inches in loose thickness, and compacted to at least 90 percent relative compaction. If on-site or import clay soil or is used for fill, the fill should be uniformly moisture conditioned to 3 percent above optimum moisture, placed in horizontal lifts less than 8 inches in loose thickness, and compacted to between 88 and 92 percent relative compaction. Discing and/or blending may be required to uniformly moisture-condition soils used for engineered fill.

5.6 SITE DRAINAGE

Maintaining adequate site drainage to prevent entrapment and ponding of surface water and excessive moisture migration into the subgrade soil is very important. Poor perimeter or surface drainage could cause reduced subgrade support. The maintenance personnel must maintain the established drainage by not blocking or obstructing gradients away from structures without providing some alternative drainage means (e.g. area drains and subsurface pipes). Where planter areas are near or adjacent to the structure, it is important to prevent surface run-off from
entering the planter care must be taken not to over irrigate and to maintain a leak-free sprinkler piping system.
6 ADDITIONAL SERVICES

6.1 PLANS AND SPECIFICATIONS REVIEW

It is recommended Kleinfelder conduct a general review of final plans and specifications to evaluate that earthwork and foundation recommendations have been properly interpreted and implemented during design. In the event Kleinfelder is not retained to perform this recommended review, no responsibility for misinterpretation of the recommendations is assumed.

6.2 CONSTRUCTION OBSERVATION AND TESTING

It is recommended that all earthwork during construction be monitored by a representative from Kleinfelder, including site preparation, placement of all engineered fill and backfill, construction of subgrades, and all foundation excavations. The purpose of these services would be to provide Kleinfelder the opportunity to observe the soil conditions encountered during construction, evaluate the applicability of the recommendations presented in this report to the soil conditions encountered, and recommend appropriate changes in design or construction procedures if conditions differ from those described herein.
7 LIMITATIONS

Recommendations contained in this report are based on field observations and the subsurface exploration, laboratory tests, and present knowledge of the proposed construction. It is possible that soil conditions could vary beyond the point explored. If soil conditions are encountered during construction, which differ from those described herein, Kleinfelder should be notified immediately in order that a review may be made, and any supplemental recommendations provided. If the scope of the proposed construction changes from that described in this report, the recommendations should also be reviewed.

This report has been prepared in substantial accordance with the generally accepted geotechnical engineering practice as it exists at the time of the study. No warranty is expressed or implied. The recommendations provided in this report are based on the assumption that an adequate program of tests and observations will be conducted by Kleinfelder during the construction phase in order to evaluate compliance with the recommendations.

This report is intended to be used by the Merced College, their designers, and regulatory agencies, and only for the purposes stated, within a reasonable time from its issuance. Land use, site conditions (both on site and off site) or other factors may change over time, and additional work may be required with the passage of time. Any other party who wishes to use this report shall notify Kleinfelder of such intended use. Based on the intended use of the report, Kleinfelder may require that additional work be performed and that an updated report be issued. Non-compliance with any of these requirements by the client or anyone else will release Kleinfelder from any liability resulting from the use of this report by any unauthorized party.
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**ABBREVIATIONS**
- WOH - Weight of Hammer
- WOR - Weight of Rod

**Coarse Grained Soils**
- (More than half of material is larger than the #200 sieve)
- Clean Gravels, Gravel-Sand Mixtures with little or no fines
- Poorly Graded Gravels, Gravel-Sand Mixtures with little or no fines

**Sands**
- (More than half of coarse fraction is smaller than the #4 sieve)
- Clean Sands, Sand-Gravel Mixtures with little or no fines
- Poorly Graded Sands, Sand-Gravel Mixtures with little or no fines

**Fines Grained Soils**
- (Liquid Limit less than 50)
- Inorganic Silts and very fine Sands, Silty or Clayey Fine Sands, Silts with Slight Plasticity
- Inorganic Clays of Low to Medium Plasticity, Gravelly Clays, Sandy Clays, Silty Clays, Lean Clays
- Organic Silts & Organic Silty Clays of Low Plasticity
- Inorganic Clays of High Plasticity, Fat Clays
- Organic Clays & Organic Silts of Medium-to-High Plasticity

**Ground Water Graphics**
- Observed Seepage
- Water Level (level after exploration completion)
- Water Level (level where first observed)
- Water Level (additional levels after exploration)

**UNIFIED SOIL CLASSIFICATION SYSTEM (ASTM D 2487)**

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**GRAPHICS KEY**

**FIGURE**
A-1

**MERCED COLLEGE SOLAR IMPROVEMENTS**
22240 CA 152
LOS BANOS, CALIFORNIA
### Soil Description Key

**SOIL DESCRIPTION KEY**

**PROJECT NO.:** 20191498  
**DRAWN BY:** -  
**CHECKED BY:** -  
**DATE:** -  
**REVISED:** -  

**FIGURE**  
**MERCED COLLEGE SOLAR IMPROVEMENTS**  
**22240 CA 152**  
**LOS BANOS, CALIFORNIA**

---

**CONSISTENCY - FINE-GRAINED SOIL**

<table>
<thead>
<tr>
<th>CONSISTENCY</th>
<th>SPT - N&lt;sub&gt;s&lt;/sub&gt; (# blows/ft)</th>
<th>Pocket Pen (tsf)</th>
<th>UNCONFINED COMPRESSIVE STRENGTH (Q/psf)</th>
<th>VISUAL / MANUAL CRITERIA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very Soft</td>
<td>&lt;2</td>
<td>PP &lt; 0.25</td>
<td>&lt;500</td>
<td>Thumb will penetrate more than 1 inch (25 mm). Exudates between fingers when squeezed.</td>
</tr>
<tr>
<td>Soft</td>
<td>2 - 4</td>
<td>0.25 PP &lt; 0.5</td>
<td>500 - 1000</td>
<td>Thumb will penetrate soil about 1 inch (25 mm). Remolded by light finger pressure.</td>
</tr>
<tr>
<td>Medium Stiff</td>
<td>4 - 8</td>
<td>0.5 PP &lt; 1</td>
<td>1000 - 2000</td>
<td>Thumb will penetrate soil about 1 1/4 inch (6 mm). Remolded by strong finger pressure.</td>
</tr>
<tr>
<td>Stiff</td>
<td>8 - 15</td>
<td>1 PP &lt; 2</td>
<td>2000 - 4000</td>
<td>Can be imprinted with considerable pressure from thumb.</td>
</tr>
<tr>
<td>Very Stiff</td>
<td>15 - 30</td>
<td>2 PP &lt; 2</td>
<td>4000 - 6000</td>
<td>Thumb will not indent soil but readily indented with thumbnail.</td>
</tr>
<tr>
<td>Hard</td>
<td>&gt;30</td>
<td>4 PP</td>
<td>&gt;8000</td>
<td>Thumb will not indent soil.</td>
</tr>
</tbody>
</table>

**APPEARANCE / RELATIVE DENSITY - COARSE-GRAINED SOIL**

<table>
<thead>
<tr>
<th>APPEARANCE DENSITY</th>
<th>SPT-N&lt;sub&gt;b&lt;/sub&gt; (# blows/ft)</th>
<th>MODIFIED CALIFORNIA SAMPLER (# blows/ft)</th>
<th>CALIFORNIA SAMPLER (# blows/ft)</th>
<th>RELATIVE DENSITY (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very Loose</td>
<td>&lt;4</td>
<td>&lt;4</td>
<td>&lt;5</td>
<td>0 - 15</td>
</tr>
<tr>
<td>Loose</td>
<td>4 - 10</td>
<td>5 - 12</td>
<td>5 - 15</td>
<td>15 - 35</td>
</tr>
<tr>
<td>Medium Dense</td>
<td>10 - 30</td>
<td>12 - 35</td>
<td>15 - 40</td>
<td>35 - 65</td>
</tr>
<tr>
<td>Dense</td>
<td>30 - 50</td>
<td>35 - 60</td>
<td>40 - 70</td>
<td>65 - 85</td>
</tr>
<tr>
<td>Very Dense</td>
<td>&gt;50</td>
<td>&gt;60</td>
<td>&gt;70</td>
<td>85 - 100</td>
</tr>
</tbody>
</table>

**REACTIVITY WITH HYDROCHLORIC ACID**

<table>
<thead>
<tr>
<th>DESCRIPTION</th>
<th>FIELD TEST</th>
</tr>
</thead>
<tbody>
<tr>
<td>None</td>
<td>No visible reaction</td>
</tr>
<tr>
<td>Weak</td>
<td>Some reaction, with bubbles forming slowly</td>
</tr>
<tr>
<td>Strong</td>
<td>Violent reaction, with bubbles forming immediately</td>
</tr>
</tbody>
</table>

**PLASTICITY**

<table>
<thead>
<tr>
<th>DESCRIPTION</th>
<th>LL</th>
<th>FIELD TEST</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-plastic</td>
<td>NP</td>
<td>The thread cannot be rolled at any water content.</td>
</tr>
<tr>
<td>Low (L)</td>
<td>&lt; 30</td>
<td>The thread can barely be rolled and the lump or thread cannot be formed when drier than the plastic limit.</td>
</tr>
<tr>
<td>Medium (M)</td>
<td>30 - 50</td>
<td>The thread is easy to roll and not much time is required to reach the plastic limit. The thread cannot be rolled after reaching the plastic limit. The lump or thread crumbles when drier than the plastic limit.</td>
</tr>
<tr>
<td>High (H)</td>
<td>&gt; 50</td>
<td>It takes considerable time rolling and treading to reach the plastic limit. The thread can be rolled several times after reaching the plastic limit. The lump or thread can be formed without crumbling when drier than the plastic limit.</td>
</tr>
</tbody>
</table>

**ANGULARITY**

<table>
<thead>
<tr>
<th>DESCRIPTION</th>
<th>CRITERIA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Angular</td>
<td>Particles have sharp edges and relatively plane sides with unpolished surfaces.</td>
</tr>
<tr>
<td>Subangular</td>
<td>Particles are similar to angular description but have rounded edges.</td>
</tr>
<tr>
<td>Subrounded</td>
<td>Particles have nearly plane sides but have well-rounded corners and edges.</td>
</tr>
<tr>
<td>Rounded</td>
<td>Particles have smoothly curved sides and no edges.</td>
</tr>
</tbody>
</table>

---

**MOISTURE CONTENT**

<table>
<thead>
<tr>
<th>DESCRIPTION</th>
<th>FIELD TEST</th>
</tr>
</thead>
<tbody>
<tr>
<td>Moist</td>
<td>Damp but no visible water</td>
</tr>
<tr>
<td>Wet</td>
<td>Visible free water, usually soil is below water table</td>
</tr>
</tbody>
</table>

**CONSISTENCY - FINE-GRAINED SOIL**

<table>
<thead>
<tr>
<th>CONSISTENCY</th>
<th>SPT - N&lt;sub&gt;b&lt;/sub&gt; (# blows/ft)</th>
<th>Pocket Pen (tsf)</th>
<th>UNCONFINED COMPRESSIVE STRENGTH (Q/psf)</th>
<th>VISUAL / MANUAL CRITERIA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very Soft</td>
<td>&lt;2</td>
<td>PP &lt; 0.25</td>
<td>&lt;500</td>
<td>Thumb will penetrate more than 1 inch (25 mm). Exudates between fingers when squeezed.</td>
</tr>
<tr>
<td>Soft</td>
<td>2 - 4</td>
<td>0.25 PP &lt; 0.5</td>
<td>500 - 1000</td>
<td>Thumb will penetrate soil about 1 inch (25 mm). Remolded by light finger pressure.</td>
</tr>
<tr>
<td>Medium Stiff</td>
<td>4 - 8</td>
<td>0.5 PP &lt; 1</td>
<td>1000 - 2000</td>
<td>Thumb will penetrate soil about 1 1/4 inch (6 mm). Remolded by strong finger pressure.</td>
</tr>
<tr>
<td>Stiff</td>
<td>8 - 15</td>
<td>1 PP &lt; 2</td>
<td>2000 - 4000</td>
<td>Can be imprinted with considerable pressure from thumb.</td>
</tr>
<tr>
<td>Very Stiff</td>
<td>15 - 30</td>
<td>2 PP &lt; 2</td>
<td>4000 - 6000</td>
<td>Thumb will not indent soil but readily indented with thumbnail.</td>
</tr>
<tr>
<td>Hard</td>
<td>&gt;30</td>
<td>4 PP</td>
<td>&gt;8000</td>
<td>Thumb will not indent soil.</td>
</tr>
</tbody>
</table>

**APPEARANCE / RELATIVE DENSITY - COARSE-GRAINED SOIL**

<table>
<thead>
<tr>
<th>APPEARANCE DENSITY</th>
<th>SPT-N&lt;sub&gt;b&lt;/sub&gt; (# blows/ft)</th>
<th>MODIFIED CALIFORNIA SAMPLER (# blows/ft)</th>
<th>CALIFORNIA SAMPLER (# blows/ft)</th>
<th>RELATIVE DENSITY (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very Loose</td>
<td>&lt;4</td>
<td>&lt;4</td>
<td>&lt;5</td>
<td>0 - 15</td>
</tr>
<tr>
<td>Loose</td>
<td>4 - 10</td>
<td>5 - 12</td>
<td>5 - 15</td>
<td>15 - 35</td>
</tr>
<tr>
<td>Medium Dense</td>
<td>10 - 30</td>
<td>12 - 35</td>
<td>15 - 40</td>
<td>35 - 65</td>
</tr>
<tr>
<td>Dense</td>
<td>30 - 50</td>
<td>35 - 60</td>
<td>40 - 70</td>
<td>65 - 85</td>
</tr>
<tr>
<td>Very Dense</td>
<td>&gt;50</td>
<td>&gt;60</td>
<td>&gt;70</td>
<td>85 - 100</td>
</tr>
</tbody>
</table>

**REACTIVITY WITH HYDROCHLORIC ACID**

<table>
<thead>
<tr>
<th>DESCRIPTION</th>
<th>FIELD TEST</th>
</tr>
</thead>
<tbody>
<tr>
<td>None</td>
<td>No visible reaction</td>
</tr>
<tr>
<td>Weak</td>
<td>Some reaction, with bubbles forming slowly</td>
</tr>
<tr>
<td>Strong</td>
<td>Violent reaction, with bubbles forming immediately</td>
</tr>
</tbody>
</table>

**PLASTICITY**

<table>
<thead>
<tr>
<th>DESCRIPTION</th>
<th>LL</th>
<th>FIELD TEST</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-plastic</td>
<td>NP</td>
<td>The thread cannot be rolled at any water content.</td>
</tr>
<tr>
<td>Low (L)</td>
<td>&lt; 30</td>
<td>The thread can barely be rolled and the lump or thread cannot be formed when drier than the plastic limit.</td>
</tr>
<tr>
<td>Medium (M)</td>
<td>30 - 50</td>
<td>The thread is easy to roll and not much time is required to reach the plastic limit. The thread cannot be rolled after reaching the plastic limit. The lump or thread crumbles when drier than the plastic limit.</td>
</tr>
<tr>
<td>High (H)</td>
<td>&gt; 50</td>
<td>It takes considerable time rolling and treading to reach the plastic limit. The thread can be rolled several times after reaching the plastic limit. The lump or thread can be formed without crumbling when drier than the plastic limit.</td>
</tr>
</tbody>
</table>

**ANGULARITY**

<table>
<thead>
<tr>
<th>DESCRIPTION</th>
<th>CRITERIA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Angular</td>
<td>Particles have sharp edges and relatively plane sides with unpolished surfaces.</td>
</tr>
<tr>
<td>Subangular</td>
<td>Particles are similar to angular description but have rounded edges.</td>
</tr>
<tr>
<td>Subrounded</td>
<td>Particles have nearly plane sides but have well-rounded corners and edges.</td>
</tr>
<tr>
<td>Rounded</td>
<td>Particles have smoothly curved sides and no edges.</td>
</tr>
</tbody>
</table>
The boring was terminated at approximately 16.5 ft. below ground surface. The boring was backfilled with auger cuttings on August 27, 2018.

GROUNDWATER LEVEL INFORMATION:
Groundwater was not observed during drilling or after completion.

GENERAL NOTES:

LABORATORY RESULTS

<table>
<thead>
<tr>
<th>Depth (feet)</th>
<th>Lithologic Description</th>
<th>Sample Type</th>
<th>Blow Counts in Uncorr. Blows/6 in.</th>
<th>Recovery (%)</th>
<th>N63 Value</th>
<th>Water Content (%)</th>
<th>Dry Unit Weight (pcf)</th>
<th>Passing #4 (%)</th>
<th>Passing #200 (%)</th>
<th>Liquid Limit</th>
<th>Plasticity Index (NP=NonPlastic)</th>
<th>Expansion Index</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>Asphalt Aggregate Base</td>
<td>BC=5</td>
<td>6</td>
<td>9</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Lean Clay with Silt (CL): with pinhole voids, low plasticity, olive brown, moist, stiff</td>
<td>BC=5</td>
<td>6</td>
<td>10</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>no pinhole voids</td>
<td>BC=3</td>
<td>3</td>
<td>5</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>20</td>
<td></td>
<td>BC=2</td>
<td>7</td>
<td>13</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Direct Shear:
Peak Cohesion: 140 ksf
Peak Friction Angle: 29.7°
The boring was terminated at approximately 16.5 ft. below ground surface. The boring was backfilled with auger cuttings on August 27, 2018.

Groundwater was not observed during drilling or after completion.

GENERAL NOTES:

GROUNDWATER LEVEL INFORMATION:

Groundwater was not observed during drilling or after completion.
The boring was terminated at approximately 16.5 ft. below ground surface. The boring was backfilled with auger cuttings on August 27, 2018.
The boring was terminated at approximately 16.5 ft. below ground surface. The boring was backfilled with auger cuttings on August 27, 2018.

**GROUNDWATER LEVEL INFORMATION:**
Groundwater was not observed during drilling or after completion.

**GENERAL NOTES:**
The boring was terminated at approximately 16.5 ft below ground surface. The boring was backfilled with auger cuttings on August 27, 2018.

GROUNDWATER LEVEL INFORMATION:
Groundwater was not observed during drilling or after completion.

GENERAL NOTES:
Lean CLAY with Silt (CL): low plasticity, olive brown, moist, stiff, trace roots

The boring was terminated at approximately 16.5 ft. below ground surface. The boring was backfilled with auger cuttings on August 27, 2018.
### Laboratory Test Result Summary

<table>
<thead>
<tr>
<th>Exploration ID</th>
<th>Depth (ft.)</th>
<th>Sample Description</th>
<th>Water Content (%)</th>
<th>Dry Unit Wt. (pcf)</th>
<th>Sieve Analysis (%)</th>
<th>Atterberg Limits</th>
<th>Additional Tests</th>
</tr>
</thead>
<tbody>
<tr>
<td>B-1</td>
<td>0.0 - 3.0</td>
<td>LEAN CLAY (CL)</td>
<td>9.8</td>
<td>108.2</td>
<td></td>
<td></td>
<td>Expansion Index= 6</td>
</tr>
<tr>
<td></td>
<td>1.0 - 2.5</td>
<td>LEAN CLAY (CL)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Peak Cohesion: 140 ksf</td>
</tr>
<tr>
<td>B-2</td>
<td>10.0</td>
<td></td>
<td>5.1</td>
<td>114.8</td>
<td></td>
<td></td>
<td>Peak Friction Angle: 29.7°</td>
</tr>
<tr>
<td>B-4</td>
<td>1.5</td>
<td></td>
<td>7.8</td>
<td>119.9</td>
<td></td>
<td></td>
<td>pH= 7.55</td>
</tr>
<tr>
<td>B-4</td>
<td>5.0</td>
<td></td>
<td>4.5</td>
<td>117.9</td>
<td></td>
<td></td>
<td>Resistivity= 18000</td>
</tr>
<tr>
<td>B-5</td>
<td>0.0</td>
<td></td>
<td>4.5</td>
<td>117.9</td>
<td></td>
<td></td>
<td>Chlorides= 10.7</td>
</tr>
<tr>
<td>B-5</td>
<td>5.0</td>
<td></td>
<td>3.6</td>
<td>101.8</td>
<td></td>
<td></td>
<td>Direct Shear=</td>
</tr>
<tr>
<td>B-6</td>
<td>1.0 - 2.0</td>
<td>LEAN CLAY (CL)</td>
<td>7.9</td>
<td>106.6</td>
<td></td>
<td></td>
<td>Peak Cohesion: 546.67 ksf</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Peak Friction Angle: 21.8°</td>
</tr>
</tbody>
</table>

Refer to the Geotechnical Evaluation Report or the supplemental plates for the method used for the testing performed above.

NP = NonPlastic
Testing performed in general accordance with ASTM D3080.

NP = Nonplastic
NM = Not Measured
### Exploration Details

**Exploration ID** | **Depth (ft.)** | **Sample Description**  
--- | --- | ---  
B-6 | 1 - 2.5 | LEAN CLAY (CL)

| Specimen No. | Water Content (%) | Dry Unit Weight (pcf) | Saturation (%) | Void Ratio | Area (in²) | Height (in)  
--- | --- | --- | --- | --- | --- | ---  
Initial  
1 | 6.8 | 107.0 | 33.1 | 0.545 | 4.60 | 0.96  
2 | 7.6 | 106.6 | 36.7 | 0.551 | 4.60 | 0.96  
3 | 7.4 | 105.8 | 34.6 | 0.563 | 4.60 | 0.96  
ALT Test  
1 | 22.0 | 107.4 | 0.527 | 4.60 | 0.95  
2 | 21.7 | 109.1 | 0.509 | 4.60 | 0.93  
3 | 21.6 | 108.5 | 0.530 | 4.60 | 0.94

### Test Results

| Specimen No. | Peak Shear Stress (ksf) | Residual Shear Stress (ksf) | Horizontal Displacement (in) | Normal Stress (ksf) | Strain Rate (in/min)  
--- | --- | --- | --- | --- | ---  
1 | 980 | 0.0930 | 1000 | 0.003  
2 | 1280 | 0.0550 | 2000 | 0.003  
3 | 1780 | 0.2000 | 3000 | 0.003

### Friction and Traction

| Results | Cohesion (ksf) | Friction (deg) | Tan (deg)  
--- | --- | --- | ---  
Peak | 546.67 | 21.8 |  
Residual |  |  |  

Testing performed in general accordance with ASTM D3080.

NP = Nonplastic  
NM = Not Measured
# Experience Form

**Part 1 - Summary of Project Experience**
Below, list the number of PV projects installed within the **past five years** in which the Contractor (acting as main General Contractor) and at least one member of their proposed team worked together. Projects completed in other sectors (commercial, schools, etc.) may be featured in the Reference Projects section below.

<table>
<thead>
<tr>
<th>Projects By Financing Approach</th>
<th>In California</th>
<th>For Educational Institutions in CA</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td># Completed</td>
<td>Size (kWp DC)</td>
</tr>
<tr>
<td>Cash Purchase</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>PPA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lease</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other*</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

* Describe "other" financing approach(s) here.

**Part 2 - Reference Projects**
Please provide the following information for at least 5 PV projects in California where the Contractor (acting as main General Contractor) and at least one member of their proposed team worked together, preferably within the last five (5) years. At least one of the reference projects must be for a public-sector educational institution client in California.

**Project 1**
- Location:
- Work Scope and Size:
- Client:
- Project Start and Completion Dates:
- Client Financing Type:
- Project Contact Name:
- Project Contact Email:
- Project Contact Phone:
- Financing Partner(s):

**Project 2**
- Location:
- Work Scope and Size:
- Client:
- Project Start and Completion Dates:
- Client Financing Type:
- Project Contact Name:
- Project Contact Email:
- Project Contact Phone:
- Financing Partner(s):

**Project 3**
- Location:
- Work Scope and Size:
- Client:
- Project Start and Completion Dates:
- Client Financing Type:
- Project Contact Name:
- Project Contact Email:
- Project Contact Phone:
- Financing Partner(s):

**Project 4**
- Location:
- Work Scope and Size:
- Client:
- Project Start and Completion Dates:
- Client Financing Type:
- Project Contact Name:
- Project Contact Email:
- Project Contact Phone:
### Financing Partner(s)

#### Project 5
- **Location**
- **Work Scope and Size**
- **Client**
- **Project Start and Completion Dates**
- **Client Financing Type**
- **Project Contact Name**
- **Project Contact Email**
- **Project Contact Phone**

#### Project 6
- **Location**
- **Work Scope and Size**
- **Client**
- **Project Start and Completion Dates**
- **Client Financing Type**
- **Project Contact Name**
- **Project Contact Email**
- **Project Contact Phone**

#### Project 7
- **Location**
- **Work Scope and Size**
- **Client**
- **Project Start and Completion Dates**
- **Client Financing Type**
- **Project Contact Name**
- **Project Contact Email**
- **Project Contact Phone**

#### Project 8
- **Location**
- **Work Scope and Size**
- **Client**
- **Project Start and Completion Dates**
- **Client Financing Type**
- **Project Contact Name**
- **Project Contact Email**
- **Project Contact Phone**

#### Project 9
- **Location**
- **Work Scope and Size**
- **Client**
- **Project Start and Completion Dates**
- **Client Financing Type**
- **Project Contact Name**
- **Project Contact Email**
- **Project Contact Phone**

#### Project 10
- **Location**
- **Work Scope and Size**
- **Client**
- **Project Start and Completion Dates**
- **Client Financing Type**
- **Project Contact Name**
- **Project Contact Email**
- **Project Contact Phone**
## Bid Sheet

**Bidder:**

<table>
<thead>
<tr>
<th>Bidder Representative Name:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Bidder Representative Title:</td>
<td></td>
</tr>
<tr>
<td>Bidder Representative Email:</td>
<td></td>
</tr>
<tr>
<td>Bidder Representative Phone Number:</td>
<td></td>
</tr>
<tr>
<td>Bidder Mailing Address (Line 1):</td>
<td></td>
</tr>
<tr>
<td>Bidder Mailing Address (Line 2):</td>
<td></td>
</tr>
<tr>
<td>California Contractors’ License Number</td>
<td></td>
</tr>
<tr>
<td>California Contractors’ License Classification &amp; Expiration Date</td>
<td></td>
</tr>
</tbody>
</table>

**Site:**

<table>
<thead>
<tr>
<th>Los Banos Parking Lot Shade Structure Solar PV System</th>
</tr>
</thead>
</table>

**System Information:**

<table>
<thead>
<tr>
<th>System Size (kWdc)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>System Output (kWh)*</td>
<td>-</td>
</tr>
</tbody>
</table>

*Totaled from 8760 Generation Worksheet

**Ownership System Pricing**

**Solar System Capital Costs:**

- Project Management & Administration
- Design
- PV Modules
- Inverters
- Electrical Switchgear and Metering
- Structures
- Construction
- Balance of System Components (e.g., Wiring, Conduit, Junction Boxes, Fuses, Fencing, Signage, etc.)
- Parking Lot Striping
- Monitoring System & Weather Station
- Testing (Start-up, Acceptance, Inspections, etc.)
- Other (e.g., Training, Documentation, Permits, Warranties, etc.)

<table>
<thead>
<tr>
<th>Subtotal Capital Costs</th>
<th>$</th>
</tr>
</thead>
</table>

**Operations and Maintenance Costs:**

- Year One Operation & Maintenance Cost
- O&M Escalator

**Performance Guarantee Costs:**

- 25 Year Performance Guarantee Costs:
TERMS AND CONDITIONS

RFP.

Merced College Solar PV Installation Project

1. NOTICE TO PROCEED: District shall provide a Notice to Proceed to Contractor pursuant to the Contract at which time Contractor shall proceed with all services proposed by Contractor and accepted by District and as otherwise set forth in the Contract (“Services”).

2. STANDARD OF CARE: Contractor shall perform such Services in a diligent and workmanlike manner in accordance with the schedule and in strict conformity with all RFP documents and the Contract.

3. SITE EXAMINATION: Contractor has examined the Solar Site and certifies that it accepts all measurements, specifications and conditions affecting the Services to be performed at the Solar Site. By submitting its proposal, Contractor warrants that it has made all site examination(s) that it deems necessary as to the condition of the Solar Site, accessibility for materials, workers and utilities, and Contractor’s ability to protect existing surface and subsurface improvements. No claim for allowance of time or money will be allowed as to any other undiscovered condition on the Solar Site.

4. PERMITS AND LICENSES: Contractor and all of its employees, agents, and subcontractors shall secure and maintain in force and effect, at Contractor’s sole cost and expense, all licenses and permits as are required by law, in connection with the furnishing of materials, supplies, or services herein listed.

5. PROJECT INSPECTION CARD: Contractor shall verify that forms DSA 152 Project Inspection Card (or current version) are issued for the Project prior to commencement of construction.

6. NOTIFICATION: Contractor shall notify District, its architect and project inspector, in writing, of the commencement and completion of construction of each and every aspect of the Project at least forty eight (48) hours in advance by submitting form DSA 156 (or the most current version) to the District’s project inspector. Forms are available on the DSA’s website at: http://www.dgs.ca.gov/dsa/Forms.aspx.

7. EQUIPMENT AND LABOR: Contractor shall furnish all tools, equipment, apparatus, facilities, transportation, labor, and material necessary to furnish the services herein described, the services to be performed at such times and places as directed by and subject to the approval of the authorized District representative indicated in the work specifications attached hereto.

8. SUBSTITUTIONS: No substitutions of material from those specified in the work specifications shall be made without the prior written approval of District. Contractor shall be responsible for any redesign costs occasioned by District’s acceptance and/or approval of any substitute, as well as any costs that District incurs for professional services, including DSA fees. District may deduct those costs from any amounts owing to Contractor for the review of the request for substitution, even if the request for substitution is not approved. Contractor shall, in the event that a substitute is less costly than that specified, credit District with one-hundred percent (100%) of the net difference between the substitute and the originally specified material.

9. INDEPENDENT CONTRACTOR STATUS: While engaged in carrying out the Services of this Contract, Contractor is an independent contractor, and not an officer, employee, agent, partner, or joint venture of District. Contractor shall be solely responsible for its own Workers’ Compensation insurance, taxes, and other similar charges or obligations. Contractor shall be liable for its own actions, including its negligence or gross negligence, and shall be liable for the acts, omissions, and errors of its agents and employees.
10. **CONTRACTOR SUPERVISION:** Contractor shall provide competent supervision of personnel employed on the Project, use of equipment, and quality of workmanship.

11. **WORKERS:** Contractor shall at all times enforce strict discipline and good order among its employees and the employees of its subcontractors and shall not employ or work any unfit person or anyone not skilled in work assigned to him or her. Any person in the employ of Contractor or a subcontractor whom District may deem incompetent or unfit shall be dismissed from the Project and shall not again be employed on the Project without the prior written consent of the District.

12. **SUBCONTRACTORS:** Subcontractors, if any, engaged by Contractor for any Service or work under this Contract shall be subject to the approval of District. Contractor agrees to bind every subcontractor by the terms of the Contract as far as such terms are applicable to subcontractor’s work, including, without limitation, all indemnification, insurance, bond, and warranty requirements. If Contractor shall subcontract any part of this Contract, Contractor shall be fully responsible to District for acts and omissions of its subcontractor and of persons either directly or indirectly employed by it. Nothing contained in the RFP documents shall create any contractual relations between any subcontractor and District. All subcontractors (of any tier) performing any portion of the work must comply with the Labor Code §§1725.5 and 1771.1 and must be properly and currently registered with the California Department of Industrial Relations (DIR) and qualified to perform public works pursuant to Labor Code §1725.5 throughout the duration of the Project. No portion of the work is permitted to be performed by a subcontractor of any tier unless the subcontractor is properly registered with DIR. Any subcontractors of any tier not properly registered with DIR shall be substituted in accordance with Labor Code §1771.1.

13. **SAFETY AND SECURITY:** Contractor is responsible for maintaining safety in the performance of this Contract. Contractor shall be responsible to ascertain from District the rules and regulations pertaining to safety, security, and driving on campus.

14. **TRENCH SHORING:** If this Contract is in excess of Twenty-Five Thousand Dollars ($25,000) and is for the excavation of any trench deeper than five (5) feet, Contractor must submit and obtain District acceptance, in advance of excavation, of a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If the plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer.

15. **EXCAVATIONS OVER FOUR (4) FEET:** If this Contract includes excavations over four (4) feet, Contractor shall promptly, and before the following conditions are disturbed, notify District, in writing, of any: (i) material that Contractor believes may be material that is hazardous waste, as defined in §25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; (ii) subsurface or latent physical conditions at the site differing from those indicated; or (iii) 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. District shall promptly investigate the conditions, and if it finds that the conditions materially do differ, or do involve hazardous waste, and cause a decrease or increase in 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. In the event that a dispute arises between District and Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the work, Contractor shall not be excused from any scheduled completion date provided for by the contract, but shall proceed with all Services to be performed under the Contract. 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.

16. **LEAD-BASED PAINT:** Pursuant to the Lead-Safe Schools Protection Act (Education Code §32240 et seq.) and other applicable law, no lead-based paint, lead plumbing and solders, or other potential sources of lead contamination shall be utilized on this Project, and only trained and state-certified contractors,
inspectors and workers shall undertake any action to abate existing risk factors for lead. Pursuant to the Renovation, Repair and Painting Rule (title 40 of the Code of Federal Regulations part 745 (40 CFR 745)), all contractors who disturb lead-based paint in a six-square-foot area or greater indoors or a 20-square-foot area outdoors must be trained by an EPA-accredited provider and certified by the EPA. Contractor must execute the Lead-Based Paint Certification, if applicable.

17. **CLEAN UP:** Debris shall be removed from the Solar Site. The Solar Site shall be in good order at all times when work is not actually being performed and shall be maintained in a reasonably clean and safe condition.

18. **PROTECTION OF WORK AND PROPERTY:** Contractor shall erect and properly maintain at all times, as required by conditions and progress of the work, all necessary safeguards, signs, barriers, lights, and security persons for protection of workers and the public, and shall post danger signs warning against hazards created by the work. In an emergency affecting life and safety of life or of work or of adjoining property, Contractor, without special instruction or authorization from District, is permitted to act at its discretion to prevent such threatened loss or injury.

19. **FORCE MAJEURE:** Contractor shall be excused from performance under the Contract during the time and to the extent that it is prevented from performing by act of God, fire, strike, loss, or shortage of transportation facilities, lock-out, commandeering of materials, product, plant, or facilities by the government, when satisfactory evidence thereof is presented to District, provided that it is satisfactorily established that the non-performance is not due to the fault or neglect of Contractor.

20. **CORRECTION OF ERRORS:** Contractor shall perform, at its own cost and expense and without reimbursement from District, any work necessary to correct errors or omissions in the work on the Project.

21. **ACCESS TO WORK:** District representatives, including the architect, and project inspector, shall at all times have access to the work wherever it is in preparation or in progress. Contractor shall provide safe and proper facilities for such access.

22. **OCCUPANCY:** District reserves the right to occupy buildings at any time before formal Project completion and such occupancy shall not constitute final acceptance or approval of any part of the Services covered by the Contract, nor shall such occupancy extend the date specified for completion of the Services.

23. **CHANGE IN SCOPE OF WORK:** Any change in the scope of the Services, method of performance, nature of materials or price thereof, or any other matter materially affecting the performance or nature of the Services shall not be paid for or accepted unless such change, addition, or deletion is approved in advance and in writing by a valid change order executed by District. Contractor specifically understands, acknowledges, and agrees that District shall have the right to request any alterations, deviations, reductions, or additions to the Project or Services, and the cost thereof shall be added to or deducted from the amount of the Contract Price by fair and reasonable valuations. Contractor also agrees to provide District with all information requested to substantiate the cost of the change order and to inform District whether the Services will be done by Contractor or a subcontractor. In addition to any other information requested, Contractor shall submit, prior to approval of the change order, its request for a time extension (if any), as well as all information necessary to substantiate its belief that such change will delay the completion of the Services. If Contractor fails to submit its request for a time extension or the necessary supporting information, it shall be deemed to have waived its right to request such extension.

24. **INDEMNIFICATION:** To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless District, the Project architect, the Project inspector of record, the State of California, and their respective agents, consultants, employees, officers, directors, and volunteers (the “Indemnities”) from and against claims, damages, losses, and expenses, including but not limited to, attorneys’ fees and costs (including fees of consultants) arising out of or resulting from: (i) performance of the Services,
including but not limited to, Contractor's or its subcontractors' use of the Solar Site; (ii) Contractor's or its subcontractors' construction of the Project, or failure to construct the Project, or any portion thereof; (iii) the use, misuse, erection, maintenance, operation, or failure of any machinery or equipment, including but not limited to, scaffolds, derricks, ladders, hoists, and rigging supports, whether or not such machinery or equipment was furnished, rented, or loaned by any of the Indemnitees; or (iv) any act, omission, negligence, or willful misconduct of Contractor or its subcontractors or their respective agents, employees, material or equipment suppliers, invitees, or licensees. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party, person, or entity described in this paragraph.

Contractor shall require all subcontractors to comply and provide the foregoing indemnification obligation in favor of the Indemnitees.

Notwithstanding the foregoing, to the extent Contractor’s Services are subject to Civil Code section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant. Further, to the extent Contractor’s Services are subject to Civil Code section 2782, the above indemnity shall, to the extent required by Civil Code section 2782, not apply to the active negligence of the Indemnitees.

25. JOINT AND SEVERAL LIABILITY. In the event that Contractor and one or more subcontractor is connected with an accident or occurrence covered by the indemnification obligations herein, then Contractor and all such subcontractors shall be jointly and severally responsible to each of the Indemnitees for indemnification, and the ultimate responsibility among Contractor and indemnifying subcontractors for the loss and expense of any such indemnification shall be resolved without jeopardy to any Indemnitee.

26. NO LIMITATION. Contractor's and its subcontractors’ obligation to indemnify and defend the Indemnitees hereunder shall include, without limitation, any and all claims, damages, and costs for injury to persons and property and death of any person; for breach of any warranty, express or implied; for failure of Contractor or its subcontractor, to comply with any applicable governmental law, rule, regulation, or other requirement; and for products installed in or used in connection with the Services and the Project. Contractor's and its subcontractors’ obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the Indemnitees.

27. PAYMENT BOND AND PERFORMANCE BOND: Contractor shall not commence the Services until it has provided to District, in a form acceptable to District, a Payment (Labor and Material) Bond and a Performance Bond, each in an amount equivalent to one hundred percent (100%) of the cost of the Project, as determined by the District in its sole discretion, issued by a surety admitted to issue bonds in the State of California and otherwise acceptable to District.

28. CONTRACTOR'S INSURANCE: Contractor must, at its expense, purchase and maintain in full force and effect such insurance as will protect itself and District from claims which may arise from the Work required by the Contract Documents, whether such Work is done by Contractor, by any subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The coverages required herein shall not in any way limit the liability of Contractor. All insurance purchased pursuant to these Terms and Conditions shall be in policies subject to the prior written approval of District as to form, content, liability limits, cost and issuing company. The requirements in these Terms and Conditions shall apply to Contractor, subcontractors and sub-subcontractors performing Work on the Project. Contractor and all subcontractors shall furnish Certificates of Insurance, as required below, evidencing said coverage before commencing work on the Project. The insurance policies for insurance required of Contractor and all subcontractors shall be written for not less than the following minimum limits:

  Commercial Form General Liability Insurance:
### Insurance Requirements

<table>
<thead>
<tr>
<th>Type of Insurance</th>
<th>Contractor</th>
<th>Subcontractor(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Per Occurrence</td>
<td>$1,000,000.00</td>
<td>$1,000,000.00</td>
</tr>
<tr>
<td>General Aggregate</td>
<td>$2,000,000.00</td>
<td>$2,000,000.00</td>
</tr>
<tr>
<td>Products/Completed Operations Aggregate</td>
<td>$1,000,000.00</td>
<td>$1,000,000.00</td>
</tr>
<tr>
<td>Personal/Advertising Injury Aggregate</td>
<td>$1,000,000.00</td>
<td>$1,000,000.00</td>
</tr>
</tbody>
</table>

#### Automobile Liability Insurance:

<table>
<thead>
<tr>
<th>Type of Coverage</th>
<th>Contractor</th>
<th>Subcontractor(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bodily Injury and Property Damage Combined Single Limit</td>
<td>$1,000,000.00</td>
<td>$1,000,000.00</td>
</tr>
</tbody>
</table>

#### Professional Errors and Omissions Liability Insurance:

<table>
<thead>
<tr>
<th>Type of Coverage</th>
<th>Contractor</th>
<th>Subcontractor(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Per Occurrence</td>
<td>$1,000,000.00</td>
<td>$1,000,000.00</td>
</tr>
<tr>
<td>General Aggregate</td>
<td>$1,000,000.00</td>
<td>$1,000,000.00</td>
</tr>
</tbody>
</table>

#### Workers’ Compensation/Employer’s Liability Insurance:

<table>
<thead>
<tr>
<th>Type of Coverage</th>
<th>Contractor</th>
<th>Subcontractor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Each Accident</td>
<td>$1,000,000.00</td>
<td>$1,000,000.00</td>
</tr>
</tbody>
</table>

**NOTE:** These limits can be attained by individual policies or by combining primary and umbrella policies.

Contractor shall provide to District certificate(s) of insurance and endorsements satisfactory to District. The policy(ies) shall not be amended or modified and the coverage amounts shall not be reduced without thirty (30) days written notice to District prior to cancellation. **Except for worker’s compensation insurance and professional liability insurance, the Indemnities shall be named as an additional insured on all policies. Except for professional liability insurance,** Contractor’s policy(ies) shall be endorsed to contain a waiver of subrogation in favor of the Indemnites. Contractor’s policy(ies) shall be primary; any insurance carried by the Indemnites shall only be secondary and supplemental. Contractor shall not allow any subcontractor, employee, or agent to commence work on this Contract or any subcontract until the insurance required of Contractor, subcontractor, or agent has been obtained. Certificates and insurance policies shall include the following clause: “This policy shall not be cancelled or reduced in required limits of liability or amounts of insurance until notice has been mailed to the Merced Community College District. Date of cancellation or reduction may not be less than Thirty (30) days, or Ten (10) days for nonpayment of premium, after date of mailing notice.”

### 29. GUARANTEE TO REPAIR PERIOD AND CORRECTION OF DEFECTIVE WORK:

Unless a longer warranty is called for elsewhere in the RFP documents, Contractor, manufacturer, or their assigned agents shall guarantee the workmanship, product or service performed against defective workmanship, defects or failures of materials (the “Defective Work”) for a minimum period of a one (1) year guarantee to repair period from the filing date of the Notice of Completion with the County of San Bernardino, or one (1) year from written acceptance of the Project by the District. All workmanship and merchandise must be warranted to be in compliance with applicable California energy, conservation, environmental, and educational standards.

Contractor shall (i) correct Defective Work that becomes apparent during the progress of the Work or during the Guarantee to Repair Period and (ii) replace, repair, or restore to District’s satisfaction any other parts of the Work and any other real or personal property which is damaged or destroyed as a result of Defective Work or the correction of Defective Work. Contractor shall promptly commence such correction, replacement, repair, or restoration upon notice from District, but in no case later than ten (10) days after receipt of such notice; and Contractor shall diligently and continuously prosecute such correction to completion. Contractor shall bear all costs resulting from such Defective Work, including any costs of District in resolving the Defective Work (i.e., increased consultant costs, attorneys’ fees, etc…).
30. **CONFIDENTIALITY**: Contractor shall maintain the confidentiality of all information, documents, programs, procedures, and all other items that Contractor encounters while performing Contractor’s Services to the extent allowed by law. This requirement shall be ongoing and shall survive the expiration or termination of this Contract and specifically includes all student, parent, and disciplinary information.

31. **COMPLIANCE WITH LAWS**: Contractor shall give all notices and comply with all laws, ordinance, rules and regulations bearing on conduct of the Services as indicated or specified. If Contractor observes that any of the Services required by this Contract is at variance with any such laws, ordinance, rules or regulations, Contractor shall notify District, in writing, and, at the sole option of District, any necessary changes to the scope of the Services shall be made and this Contract shall be appropriately amended in writing, or this Contract shall be terminated effective upon Contractor’s receipt of a written termination notice from District. If Contractor performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying District of the violation, Contractor shall bear all costs arising therefrom.

32. **LABOR CODE AND DIR REGISTRATION REQUIREMENTS**: Contractor shall comply with all applicable provisions of the California Labor Code, Division 3, Part 7, Chapter 1, Articles 1 – 5, including, without limitation, the payment of the general prevailing per diem wage rates for public work projects of more than One Thousand Dollars ($1,000). Copies of the prevailing rate of per diem wages are on file with District or available online at [http://www.dir.ca.gov/dlsr](http://www.dir.ca.gov/dlsr). In addition, Contractor and each subcontractor shall comply with Chapter 1 of Division 2, Part 7 of the California Labor Code, beginning with §1720, and including §§1735, 1777.5 and 1777.6, forbidding discrimination, and §§1776, 1777.5 and 1777.6 concerning the employment of apprentices by Contractor or subcontractors. Willful failure to comply may result in penalties, including loss of the right to bid on or receive public works contracts. Strict compliance with all DIR registration requirements in accordance with Labor Code §§1725.5 and 1771.1 is a material obligation of Contractor and all of its subcontractors (of any tier) under the Contract Documents. The foregoing includes, without limitation, compliance with DIR registration requirements at all times during performance of the Work by Contractor and all of its subcontractors of any tier. The failure of Contractor and all subcontractors of any tier to be properly registered with DIR at all times during performance of the work is a material breach of the Contract and subject to termination for cause. Monitoring and enforcement of the prevailing wage laws and related requirements will be performed by the Labor Commissioner/Department of Labor Standards Enforcement (DLSE).

33. **PREVAILING WAGES AND CERTIFIED PAYROLL RECORDS**: Pursuant to §§1720.6 and 1771 of the Labor Code, the Project is subject to the payment of prevailing wages. The Director of Industrial Relations has determined the general prevailing rate of per diem wages in the locality in which this work is to be performed for each craft or type of worker needed to execute the Contract which will be awarded to the successful Proposer, copies of which are on file and will be made available to any interested party upon request at District offices or online at [http://www.dir.ca.gov/dlsr](http://www.dir.ca.gov/dlsr). A copy of these rates shall be posted by the successful Proposer at the job site. The successful Proposer and all subcontractors under it, shall comply with all applicable laws and regulations, including but not limited to, the Labor Code provisions, which include hours of work, overtime and the employment of apprentices.

Contractor and all subcontractors shall furnish certified payroll records as required pursuant to Labor Code §1776 directly to the DIR in accordance with Labor Code §1771.4 on a weekly basis and in the format prescribed by the DIR, which may include electronic submission. Monitoring and enforcement of the prevailing wage laws and related requirements will be performed by the Labor Commissioner/Department of Labor Standards Enforcement (DLSE).

Pursuant to §1776 of the Labor Code, Contractor and each subcontractor shall keep accurate payroll records showing the name, address, social security number, work classification, straight time and overtime hours paid each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker or other employee employed in connection with the work. Contractor shall certify under penalty of perjury that records maintained and submitted by Contractor are true and accurate.
Contractor shall comply with all the requirements and regulations from the DIR relating to labor compliance monitoring and enforcement.

34. ANTI-DISCRIMINATION: It is the policy of District that in connection with all work performed under contracts there be no discrimination against any employee engaged in the work because of race, color, ancestry, national origin, or religious creed, and therefore Contractor agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment Practice Act beginning with Government Code §12900 and Labor Code §1735. In addition, Contractor agrees to require like compliance by all its subcontractors.

35. ANTI-TRUST CLAIM: Contractor and its subcontractors agree to assign to District all rights, title, and interest in and to all causes of action they may have under §4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 [commencing with §16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Contract or a subcontract. This assignment shall be made and become effective at the time District tenders final payment to Contractor, without further acknowledgment by the parties.

36. DISPUTES: In the event of a dispute between the parties as to performance of the Services, the interpretation of this Contract, or payment or nonpayment for work performed or not performed, the parties shall attempt to resolve the dispute by those procedures set forth in Public Contract Code §20104, et seq., if applicable. Pending resolution of the dispute, Contractor agrees it will neither rescind the Contract nor stop the progress of the Services, but will allow determination by the court of the State of California, in San Bernardino County, having competent jurisdiction of the dispute. All claims of over $375,000, which are outside the scope of Public Contract Code §20104, et seq., may be determined by mediation if mutually agreeable, otherwise by litigation. Notice of the demand for mediation of a dispute shall be filed in writing with the other party to the Contract. The demand for mediation of any claim of over $375,000 shall be made within a reasonable time after written notice of the dispute has been provided to the other party, but in no case longer than ninety (90) days after initial written notice, and the demand shall not be made later than the time of Contractor submission of the request for final payment.

If a claim, or any portion thereof, remains in dispute upon satisfaction of all applicable dispute resolution requirements, Contractor shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with §900) and Chapter 2 (commencing with §910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to Contractor’s right to bring a civil action against District. For purposes of those provisions, the running of the time within which a claim must be presented to District shall be tolled from the time the claimant submits its written claim until the time the claim is denied, including any time utilized by any applicable meet and confer process.

37. ATTORNEY FEES/COSTS: Should litigation be necessary to enforce any terms or provisions of this Contract, then each party shall bear its own litigation and collection expenses, witness fees, court costs and attorney’s fees.

38. TERMINATION: If Contractor fails to perform the Services and Contractor’s obligations under the Contract to the satisfaction of District, or if Contractor fails to fulfill in a timely and professional manner Contractor’s obligations under the Contract, or if Contractor violates any of the terms or provisions of the Contract, District shall have the right to terminate the Contract effective immediately upon District giving written notice thereof to Contractor. Contractor and its performance bond surety, if any, shall be liable for all damages caused to District by reason of Contractor’s failure to perform and complete the Contract. Contractor shall be owed no overhead credit or lost profits and shall have no right to any special or consequential damages as a result of District’s termination of the Contract for cause. District shall also have the right in its sole discretion to terminate the Contract for its own convenience upon District giving three (3) days written notice thereof to Contractor. In case of a termination for convenience, Contractor shall be paid for the actual cost for labor, materials, and services performed that is unpaid and can be documented through timesheets, invoices, receipts, or otherwise, and five
percent (5%) of the total cost of work performed as of the date of termination, or five percent (5%) of the value of the Services yet to be performed, whichever is less. This five percent (5%) shall be full compensation for all of Contractor's and its subcontractors’ mobilization and/or demobilization costs and any anticipated loss profits resulting from termination of Contractor for convenience. Termination shall have no effect upon any of the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of termination.

39. ASSIGNMENT OF CONTRACT: Contractor shall not assign or transfer in any way any or all of its rights, burdens, duties, or obligations under this Contract without the prior written consent of District.

40. TIME IS OF THE ESSENCE: Time is of the essence in the performance of and compliance with each of the provisions and conditions of this Contract.

41. CALCULATION OF TIME: For the purposes of this Contract, “days” refers to calendar days unless otherwise specified.

42. GOVERNING LAW: This Contract shall be governed by and construed in accordance with the laws of the State of California with venue of any action in San Bernardino County.

43. BINDING CONTRACT: This Contract shall be binding upon the parties hereto and upon their successors and assigns, and shall inure to the benefit of said parties and their successors and assigns.

44. DISTRICT WAIVER: District's waiver of any term, condition, covenant or waiver of a breach of any term, condition or covenant shall not constitute the waiver of any other term, condition or covenant or the waiver of a breach of any other term, condition or covenant.

45. CAPTIONS AND INTERPRETATIONS: Paragraph headings in this Contract are used solely for convenience, and shall be wholly disregarded in the construction of this Contract. No provision of this Contract shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Contract shall be construed as if jointly prepared by the parties.

46. INVALID TERM: If any provision of this Contract is declared or determined by any court of competent jurisdiction to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining parts, terms and provisions shall not be affected thereby, and said illegal, unenforceable or invalid part, term or provision will be deemed not to be a part of this Contract.

47. PROVISIONS REQUIRED BY LAW DEEMED INSERTED: Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and this Contract shall be read and enforced as though it were included therein.

48. ENTIRE CONTRACT: This Contract sets forth the entire Contract between the parties hereto and fully supersedes any and all prior agreements, understanding, written or oral, between the parties hereto pertaining to the subject matter thereof. This Contract may be modified only by a writing upon mutual consent.

[End]
This Agreement for Design, Installation and Commissioning of Solar/Photovoltaic System ("Agreement") is made as of ________________, 20__, between the Merced Community College District ("Client") and ____________ ("Design-Builder") (together, "Parties"). The metered solar facility as set forth herein is referred to as a “System.” The entire project collectively referred to as “Solar System” or “Project.”

A. Through this Agreement, Client intends to contract for the engineering, system design, fabrication and installation of photovoltaic solar systems that will result in energy savings to Client and which shall be a supply of energy to Client.

B. The Design-Builder shall engineer, design, and construct the Project pursuant to certain this Agreement and all other associated documents and requirements referred to herein, which are incorporated herein by this reference.

In consideration of the covenants and conditions contained in this Agreement, the parties agree as follows:

1. **Services.** Design-Builder shall furnish to Client the labor, equipment, material, and services set forth in this Agreement and as otherwise reasonably required to complete all design, engineering, construction, testing and interconnection of the improvements to real property, along with all appurtenances, fixtures, and furnishings, described in Exhibit A-1 “System Description,” Exhibit A-2 “Technical Specifications and Requirements,” attached hereto and incorporated herein by this reference (“Services” or “Work”). All work shall be 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.

2. **Completion Date.** Design-Builder shall commence providing Services under this Agreement upon execution of the Agreement by both Parties, and will diligently perform such Services and Work as described herein and as otherwise reasonably required to achieve Substantial Completion of the System (as defined below) on or before ________________, (the "Guaranteed Substantial Completion Date") and Final Completion of the System (as defined below) on or before _______________ (the "Scheduled Final Completion Date"). The Guaranteed Substantial Completion Date and the Scheduled Final Completion Date shall each be extended on a day for day basis due to any Force Majeure Event or action or delay in the Services or Work that results solely from any action or omission of Client.

2.1. **Substantial Completion.** Substantial Completion means that each of the following has been achieved in accordance with the requirements of this Agreement and each of the documents described in Section 5 below (the “Contract Documents”):

2.1.1. Mechanical Completion- defined as the point at which all work of every kind necessary to make the System usable for its intended function is actually complete and any and all fire/life safety systems are completely installed and fully operational;

2.1.2. Transmission Capability, defined as the point at which all of the electrical systems and all other infrastructure necessary to achieve interconnection of the System with Client’s facilities and the public electrical utility’s electricity transmission system are fully energized and functioning properly, including, without limitation, accurate functioning of all related electricity meters; and

2.1.3. Design-Builder has performed the appropriate testing to confirm, and Pacific Gas & Electric ("THE UTILITY COMPANY") has orally confirmed through inspection, that the System is
2.2. **Punch List.** Upon achieving Substantial Completion with respect to the System, Design-Builder shall provide Client with a list of items still outstanding which are necessary to complete the System in accordance with this Agreement and the related specifications and to achieve Final Completion ("Punch List"). Within five (5) working days after receipt of a proposed Punch List, Client shall either (a) approve the Punch List or (b) request that certain amendments or modifications be made to the Punch List. The Parties shall meet and negotiate in good faith and shall promptly agree on and execute an amended Punch List to be completed by the Design-Builder before Final Completion is achieved.

2.3. **Final Completion.** Final Completion shall occur after Substantial Completion, when each of the following has been achieved in accordance with the requirements of the Contract Documents:

2.3.1. all Punch List items are completed;

2.3.2. all required training as detailed in Exhibit A-2 has occurred; all documentation as detailed in Exhibit A-2 has been provided to Client, including, without limitation, all warranties, final record drawings in Auto-CAD format that incorporates all as-built revisions and comments and operation and maintenance manuals; and

2.3.3. Testing, defined as testing of all systems comprising the System in accordance with the requirements of this Agreement, the results thereof meeting the requirements set forth herein, and acceptance by Client of the successful testing, which acceptance shall not unreasonably be withheld;

2.3.4. Receipt of the Permission to Operate letter from THE UTILITY COMPANY;

2.4. **Client’s Acceptance of Work.** Upon achievement of Substantial Completion or Final Completion, as applicable, Design-Builder shall deliver notice thereof to Client. Client shall inspect the Work and notify Design-Builder that either (a) Substantial Completion or Final Completion has been achieved or (b) the relevant Work has not been completed, stating in reasonable detail the reasons for such determination, including, without limitation, issues remaining undetermined, which may require additional time for evaluation by Client. In either event the applicable notice from Client shall be delivered within fifteen (15) calendar days from the next regularly scheduled Board meeting after receipt of the notice from Design-Builder. If Client fails to provide such notice within such period, Substantial Completion or Final Completion (as applicable) shall be deemed to have occurred as of the date of the applicable notice. If Client notifies Design-Builder that the relevant Work has not been completed, Design-Builder shall take action to promptly complete the relevant Work and shall deliver to Client a notice once completed. This procedure shall be repeated until the relevant Work shall have been accepted by Client.

2.4.1. The Project shall be deemed complete for purposes of Public Contract Code section 7107 only upon acceptance by Client’s Governing Board of Final Completion.

3. **Liquidated Damages.** Time is of the essence for all Work under this Agreement. It is hereby understood and agreed that it is and will be difficult and/or impossible to ascertain and determine the actual damage that Client will sustain in the event of and by reason of Design-Builder’s delay; therefore, Design-Builder agrees that it shall pay to Client the sum of FIVE HUNDRED DOLLARS ($500) per day as liquidated damages for each and every following day’s delay beyond the Guaranteed Substantial Completion Date that Substantial Completion is not achieved.
It is hereby understood and agreed that this amount is not a penalty, but is a reasonable estimate of the damages that Client will incur.

In the event any portion of the liquidated damages is not paid to Client, Client may deduct that amount from any money due or that may become due the Design-Builder under this Agreement, Client may seek recovery of Liquidated Damages from the Respondent’s Performance Bond Surety and/or Client may seek recovery of Liquidated Damages from the Respondent or the Performance Bond Surety without having exhausted remedies against the other.

4. **Grants/Rebates/Incentives.** Design-Builder shall use commercially reasonable efforts to support Client in obtaining or maintaining grants/rebates/incentives for the Site(s). Design-Builder shall use commercially reasonable efforts to support Client in obtaining an extension for the rebates, if allowed and if necessary. If Client does not obtain extensions for the rebates on terms satisfactory to Client on its sole discretion, Client may terminate the Contract Documents upon written notice to Design-Builder subject to Section 36.1.

5. **Submittal of Documents.** Design-Builder shall not commence the Work under this Agreement until the Design-Builder has submitted and Client has approved all herein required documentation, including but not limited to the performance bond, payment (labor and material) bond, the certificate(s) and affidavit(s), and the endorsement(s) of insurance required as indicated below:

   - Signed Agreement
   - Non-collusion Declaration
   - Prevailing Wage Certification
   - Workers’ Compensation Certification
   - Insurance Certificates and Endorsements
   - Performance Bond
   - Payment Bond
   - Project Schedule
   - System Description
   - Scope of Work
   - Solar Operation and Maintenance Agreement
   - Performance Guarantee Agreement
   - D.I.R Registration
   - Drug Free Workplace Certification

   The above-referenced Contract Documents shall be presented to Client for approval prior to execution of the Agreement.

6. **Compensation.** As full and complete compensation for the Work and all other obligations of the Design-Builder contemplated herein, Client shall pay to the Design-Builder in the amount of ______________ DOLLARS ($__________) (“Total System Price”). Exhibit A-3 sets forth the specific components of the Solar System, including all components to be constructed at each separate Site, and the “lump sum” amount for all work at each Site, including but not limited to all labor, materials, equipment and supplies. Such amount shall not be increased without the express approval of the Board.

7. **Expenses.** Client shall not be liable to Design-Builder for any costs or expenses paid or incurred by Design-Builder in performing services for Client.
8. **Payment.** The Total System Price shall be paid in periodic partial payments in accordance with this section.

8.1. Processing of Progress Payments; Retention: Each month while Design-Builder is providing the Work under this Agreement, Client shall pay to Design-Builder a sum equal to ninety-five percent (95%) of value of the Work performed and the value of equipment and material integrated into one or more of the System, up to the last day of the previous month, less aggregate of previous payments (the "Progress Payments"). As the Design-Builder is required to order, obtain, and store materials and equipment sufficiently in advance of its Work at no additional cost or advance payment from Client, to assure that there will be no delays, payment by Client for stored material shall be made only in unusual circumstances where Client specifically approves the payment in writing. The remaining five percent (5%) of such amounts shall be held as the Retention Amount and shall be released in accordance with Public Contract Code section 7107. If all of the necessary information is properly submitted, undisputed and accurate (including the schedule of values and certified payrolls), Client shall approve the Progress Payment in accordance with Public Contract Code section 20104.50.

8.2. Option for Escrow or Securities in Lieu of Retention. Pursuant to the requirements of Public Contract Code Section 22300, upon Design-Builder's request within ten (10) days of execution of this Agreement, Client will make payment to Design-Builder of any earned retention funds withheld from payments under this Agreement if Design-Builder deposits with Client or in escrow with a California or federally chartered bank acceptable to Client, securities eligible for the investment pursuant to Government Code Section 16430 or bank or savings and loan certificates of deposit.

8.2.1. Conditions upon such deposit include the following:

8.2.1.1. Design-Builder shall be the beneficial owner of any securities substituted for retention funds withheld and shall receive any interest thereon.

8.2.1.2. All expenses relating to the substitution of securities under said Section 22300 and under this Article 8.2, including, but not limited to Client’s overhead and administrative expenses, and expenses of escrow agent shall be the responsibility of the Design-Builder.

8.2.1.3. If Design-Builder shall choose to enter into an escrow agreement, such agreement shall be in the form as set forth in Public Contract Code section 22300(f) attached hereto as part of the Project Documents and which shall allow for the conversion to cash to provide funds to meet defaults by the Design-Builder including, but not limited to, termination of the Design-Builder’s control over the work, stop notices filed pursuant to law, assessment of liquidated damages or amount to be kept or retained under the provisions of the Project Documents.

8.2.1.4. Securities, if any, shall be returned to Design-Builder only upon satisfactory completion of the Agreement.

8.2.2. To minimize the expense caused by such substitution of securities, Design-Builder shall, prior to or at the time Design-Builder requests to substitute security, deposit sufficient security to cover the entire amount to be then withheld and to be withheld under the General Conditions of this Agreement. Should the value of such substituted security at any time fall below the amount for which it was substituted, or any other amount which Client determines to withhold, Design-Builder shall immediately, and at Design-Builder’s expense, deposit additional security qualifying under said Section 22300 until the total security deposited is no less than equivalent to the amount subject to withholding under the Agreement for Design, Installation and Commissioning of Solar/Photovoltaic System between ____________ and ____________
Agreement.

8.2.3. In the alternative, under Section 22300, Design-Builder, at its own expense, may request Client to make payment of earned retention funds directly to the escrow agent. Also at the expense of Design-Builder, Design-Builder may direct investment of the payments into securities, and Design-Builder shall receive the interest earned on the investment upon the same conditions as shown in paragraph (a) for securities deposited by Design-Builder. Upon satisfactory completion of the Agreement, Design-Builder shall receive from the escrow agent all securities, interest and payments received by the escrow agent from Client, pursuant to the terms of Section 22300.

8.2.4. If any provision of this Article 8.2 shall be found to be illegal or unenforceable, then, notwithstanding, this Article 8.2 shall remain in full force and effect, and such provision shall be deemed stricken.

8.3. Waiver and Release upon Payment. Each Progress Payment shall be conditioned upon Design-Builder providing to Client with the corresponding Progress Payment Application a conditional waiver and release of claims for payment upon payment from the Design-Builder and each of its subcontractors and materials suppliers in the form required by Civil Code Section 8132, covering all sums requested in such Progress Payment Application, and an unconditional waiver and release of claims for payment from each party, in the form required by Civil Code Section 8132, covering sums disbursed pursuant to the most recently preceding Progress Payment Application. Failure to provide either a condition waiver and release, or unconditional waiver and release shall result in the subject sums being in dispute, and thus withheld from payment.

8.4. Estimated Progress Payments. Progress Payments shall be made on the basis of monthly estimates which shall be prepared by Design-Builder on a form approved by Client and certified by the Project Inspector and QA Engineer, or any other approved representative of Client, and filed before the fifth (5) Day of the month during which payment is to be made. Work completed as estimated shall be an estimate only and no inaccuracy or error in said estimate shall release Design-Builder or any Surety from such work or from enforcing each and every provision of the Agreement and Construction Documents. Client shall have the right subsequently to correct any error made in any estimate for payment.

8.5. Corrective Work and Progress Payment: Design-Builder shall not be entitled to payment for non-conforming work performed, so long as any lawful or proper direction concerning that non-conforming work or any portion thereof given by Client lacks correction by Design-Builder. Client may withhold from the Progress Payments one hundred fifty percent (150%) of the estimated value of any amount in dispute between Client and Design-Builder. This provision shall also apply in the event that a portion of non-complying Work may impact other completed Work, resulting in a need to reconstruct or rework related Work. Client shall not unreasonably withhold payment for unrelated and uninvolved Work in the event of dispute over non-complying Work without entering into negotiations to arrive at settlement of said conflict, unless withholding pursuant to a Stop Payment Notice.

8.6. Title to Delivered Materials. Title to new materials and/or equipment for the Work of this Agreement shall vest in Client upon achievement of Final Completion. However, responsibility for such new material and/or equipment for the Work of this Agreement shall remain with Design-Builder until incorporated into the Work and accepted by Client pursuant to this Agreement; no part of said materials and/or equipment shall be removed from its place of storage except for immediate installation in the Work of this Agreement; and Design-Builders shall keep an accurate inventory of all材料.
said materials and/or equipment in a manner satisfactory to Client or his authorized representative. Design-Builder shall maintain all course of construction and other insurance as necessary to protect said equipment and Work. Client shall not become responsible for risk of loss or other insurable risk until Client’s acceptance of Final Completion of the Project. Nothing in this section shall limit the Design-Builder’s liability for repair, maintenance or replacement of any material and/or equipment for the Work of this Agreement resulting from any breach of this Agreement or pursuant to any warranty or guaranty.

9. Independent Design-Builder. Design-Builder, in the performance of this Agreement, shall be and act as an independent contractor. Design-Builder understands and agrees that he/she and all of his/her employees shall not be considered officers, employees, agents, partner, or joint venture of Client, and are not entitled to benefits of any kind or nature normally provided employees of Client and/or to which Client’s employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker’s Compensation. Design-Builder shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Design-Builder’s employees. Design-Builder shall be liable for its own actions, including its negligence or gross negligence, and shall be liable for the acts, omissions, or errors of its agents or employees.

10. Standard of Care. Design-Builder shall perform its obligations under this Agreement using its best professional skill and judgment, acting with due care and in accordance with the standard of care applicable to the Work and Services to be provided by Design-Builder, the covenants, terms and conditions of this Agreement, and all applicable laws, codes, rules and regulations, including, without limitation, the applicable provisions of the California Building Code (Title 24), the California Code of Regulations, THE UTILITY COMPANY Interconnection Requirements, Client’s Design Guides and Technical Specifications, and all other federal, state, and local jurisdictions having authority. Design-Builder represents and warrants that it is fully experienced in projects of the nature and scope of Work, and that it is properly qualified, licensed and equipped to supply and perform the Work. The Work completed herein must meet the approval of Client and shall be subject to Client’s general right of inspection and supervision to secure the satisfactory completion thereof.

11. Originality of Services. Design-Builder agrees that all technologies, formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions prepared for, written for, or submitted to Client and/or used in connection with this Agreement, shall be the property of Design-Builder, or Design-Builder shall have all necessary rights to use such formulae, procedures, processes, methods, writings, ideas, dialogue, compositions, recordings, teleplays and video productions and to provide the same and derivative works thereof to Client in connection with this Agreement, and shall not otherwise be copied in whole or in part from any other source.

12. Copyright/Trademark/Patent. Except with respect to design pre-check documents and associated works and other third party intellectual property used by Design-Builder on an authorized basis, all drawings, specifications, calculations, data, notes and other materials and documents, including electronic data (other than System performance data provided during operation, which shall not be deemed “Work Product”) furnished by Design-Builder to Client under this Agreement (“Work Product”) shall be and remain the property of Client for the purposes of repair, maintenance, renovation, modernization, and all other purposes related to the System, including, without limitation, additions, alignments, or other development on the Site. Design-Builder, or the author of such works, if other than Design-Builder, will retain all common law, statutory and other reserved rights, including copyrights in the Work Product. Upon Final Completion, Design-Builder will grant Client, and its successors and assigns, a perpetual, royalty-free license to use the Work Product for all pedagogical uses, including without limitation, use in instructional materials. In the event that such rights, including copyright, to Work Product are held by a third party, the use of such material by Client for
pedagogical uses, including without limitation, use in instructional materials within Client, shall be understood and deemed by the parties to be a fair use thereof.

13. **Notice to Proceed.** After the Contract Documents are submitted, Client shall provide a Notice to Proceed to Design-Build for design work, at which time Design-Build shall proceed with the design work. After the design of each of the Systems is approved by Client, Client shall provide a separate Notice to Proceed to Design-Build at which time Design-Build shall proceed with the construction Work.

14. **Site Examination.** Within [__14 days_______] after the Effective Date, Design-Build will conduct detailed examinations of the Site and confirm all measurements, specifications and conditions affecting the Work to be performed at the Site. Following these detailed site examinations (which will include underground surveys as necessary), Design-Build shall either (a) provide written notification to Client that it warrants that it has made Site examination(s) that it deems necessary as to the condition of the Site, its accessibility for materials, workers and utilities, and Design-Build’s ability to protect existing surface and subsurface improvements, or (b) request specific changes to the Services, Work, Guaranteed Substantial Completion Date, Scheduled Final Completion Date and Total System Price that are required in light of such examinations. If Client does not agree with these changes, Client may terminate the Agreement within five (5) Business Days of receipt of such request, without liability to either Party. Thereafter, no claim for allowance of time or money will be allowed as to any other undiscovered condition on the Site, unless permitted pursuant to Public Contract Code section 7104.

14.1. Design-Build acknowledges that it has been provided with information on soils conditions in and with the Request for Proposals from Client, on file in Client’s offices, and acknowledges that any and all conditions disclosed therein, expressly or implicitly, are known to Design-Build (collectively, the “Disclosures”). Except as set forth in this subsection, Design-Build shall have no right to, and shall not make any Claim or other demand for additional compensation, other than as described within the Alternates expressly set forth in Exhibit A-2, which the Parties agree to utilize in the event that the basic foundation system(s) proposed would be deemed inadequate or imprudent according to sound engineering judgment consistent with the Standard of Care under Section 10. In the event that the soils conditions are substantially and materially different from the Disclosures, and neither the basic foundation systems nor the Alternate foundation systems would be deemed adequate or prudent according to sound engineering judgment consistent with the Standard of Care under Section 10, Client may terminate by written notice all further Work toward (but shall pay for all such Work performed as of the effective date of such termination as provided in Article 37.1), and eliminate from the Scope of Work, that specific site pursuant to Article 37.1, or may negotiate with Design-Build in good faith to identify an alternate location for, or other alternatives for a solar photovoltaic array of equal or better characteristics (and the Work and the Total System Price shall not exceed the Alternate foundation systems costs if the Parties agree to any such alternative). For such purposes, Design-Build agrees, acknowledges that it knows and assumes, and is deemed to know and assume, that the conditions at the Sites comport with the least benign conditions disclosed, expressly or implicitly, in the information on soils conditions in and with the Request for Proposals from Client, on file in Client’s offices, all consistent with the Standard of Care under Section 10.

14.2. **Disclaimer of Warranty:** Client does not warrant the soils or geological conditions at the Site. Any information on the soils and geotechnical conditions of the Site is provided for informational purposes, only, and is expressly understood to reflect the professional judgment of the entity that prepared it based on limited sampling and observation and may not be comprehensive or accurate in any of its findings or implications. Client does not warrant the soils or geological conditions of the Site and Design-Build is fully responsible to ascertain all Site conditions for the purposes of determining construction means and methods and costs of construction of the System.
14.3. Existing Utilities. Design-Builder shall be responsible for the investigation of the Site with respect to any underground utilities including, without limitation, trunk, mainline and service utilities. It shall be the responsibility of Design-Builder to determine, within reason, the exact location of all utilities. Design-Builder shall make its own reasonable investigations, including exploratory excavations, to determine the locations and type of service connections, prior to commencing Work which could result in damage to such utilities.

15. Materials. Design-Builder shall furnish, at his/her own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement.

15.1. Anti-Trust Claim. Design-Builder agrees to pass-through any applicable awards received pursuant to causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials provided to Client pursuant to the Agreement.

15.2. Substitutions. No substitutions of material from those specified in the Work Specifications shall be made without the prior written approval of Client.

16. Equipment and Labor. Design-Builder shall furnish all tools, equipment, apparatus, facilities, transportation, labor, and material necessary to furnish the services herein described, the services to be performed at such times and places as directed by and subject to the approval of the authorized Client representative indicated in the Work specifications attached hereto.

17. Warranty/Quality. Unless a longer warranty is called for elsewhere in this Agreement, the Design-Builder, manufacturer, or their assigned agents shall guarantee the workmanship, product or service performed against defective workmanship, defects or failures of materials for a minimum period of one (1) year from filing the Notice of Completion with the county in which the Site is located. All workmanship and merchandise must be warranted to be in compliance with applicable California energy, conservation, environmental, and educational standards, including but not limited to California Solar Initiative Program requirements.

17.1. PV modules used in this project shall have at least a 20-year product warranty from the manufacturer from the date of sale. Such warranties shall be deemed assigned to Client as of the Substantial Completion Date.

17.2. Power Conditioning Equipment, including inverter(s), shall have a 20-year minimum product warranty from the manufacturer from the date of sale. Such warranties shall be deemed assigned to Client as of the Substantial Completion Date.

17.3. Under the terms of the Solar Operation and Maintenance Agreement, Design-Builder shall be responsible for providing no-cost repair and component replacement not covered by the manufacturers of the components of the Systems for a period of 10 years after the Substantial Completion Date on all equipment, systems and controls necessary to endure PV production at the performance level set forth in the Performance Guarantee Agreement.

18. Correction of Errors. Design-Builder shall perform, at its own cost and expense and without reimbursement from Client, any work necessary to correct errors or omissions which are caused by the Design-Builder’s failure to comply with the standard of care required herein.

19. Trench Shoring. If this Agreement is in excess of $25,000 and is for the excavation of any trench deeper than five (5) feet, Design-Builder must submit and obtain Client acceptance, in advance of excavation, of a detailed
plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If the plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer.

20. Excavations Over Four Feet. This Article shall pertain to all Construction comprising the excavation of any trench or trenches four (4) feet or more in depth.

20.1. If applicable, Design-Build shall submit to Client for acceptance, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of any trench or trenches four (4) feet or more in depth. Design-Build’s plan shall be prepared by a registered civil or structural engineer. As a part of the plan, a note shall be included stating that Design-Build’s registered civil or structural engineer certifies that the plan complies with the current and applicable CAL-OSHA Construction Safety Orders, or stating that Design-Build’s registered civil or structural engineer certifies that the plan is not less effective than the shoring, bracing, sloping, or other provisions of the Safety Orders. No excavation of any such trenches shall be commenced until said plan has been accepted by Client or by the person to whom authority to accept has been delegated by Client.

All shoring submittals shall include surcharge loads from adjacent embankments, construction loads, and spoil bank. Submittals shall indicate minimum horizontal distance from top of trench to edge of all surcharge loads for all cases of shoring and side slopes.

Nothing in this Article shall relieve Design-Build of the full responsibility for providing shoring, bracing, sloping, or other provisions adequate for worker protection. Pursuant to Labor Code section 6705, nothing in this Article shall impose tort liability upon Client, its Board, or any of its employees.

20.2. In relation to digging trenches or other excavations that extend deeper than four (4) feet below the surface of the ground, Design-Build shall comply with the following requirements and include similar provisions in any contract for the Project which involves digging trenches or other excavations:

20.2.1. Design-Build shall promptly, and before the following conditions are disturbed, notify Client, in writing, of any:

20.2.1.1. Material that the Design-Build or any Subcontractor or Consultant believes may be material that is hazardous waste, as defined in section 25117 of the Health and Safety Code that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law;

20.2.1.2. Subsurface or latent physical conditions at the Site differing from those indicated;

20.2.1.3. Unknown physical conditions at the Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Construction Provisions.

20.2.2. Client 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 Design-Build’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.

20.2.3. In the event that a dispute arises between Client and the Design-Build, whether the conditions materially differ, involve hazardous waste, or cause a decrease or increase in
the Design-Builder’s cost of or time required for performance of any part of the work, the Design-Builder shall not be excused from any scheduled completion date provided for by the Construction Provisions but shall proceed with all work to be performed under the Construction Provisions. The Design-Builder 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.

21. **Change in Scope of Work.** Any change in the scope of the Work, method of performance, nature of materials or price thereof, or any other matter materially affecting the performance or nature of the Work shall not be paid for or accepted unless such change, addition, or deletion is approved in advance and in writing by a valid change order executed by Client and approved by Client Board. The foregoing notwithstanding, the Design-Builder shall continue to perform its Work under the Agreement with respect to all undisputed portions of the Work and shall not cause a delay of the Work by virtue of the inability of Client and Design-Builder to agree upon the extent of any adjustment to the Contract Time and/or the Total System Price on account of such change. Design-Builder specifically understands, acknowledges, and agrees that Client shall have the right to request any alterations, deviations, reductions, or additions to the Project or Work, and the cost thereof shall be added to or deducted from the amount of the Total System Price by fair and reasonable valuations mutually agreed by the Parties in writing.

21.1. **Adjustment to Total System Price.** Adjustments to the Total System Price due to Changes in the Work shall be determined by application of one of the following methods, in the following order of priority:

21.1.1. **Change Order Mutual Agreement.** By negotiation and mutual written agreement, on a lump sum basis, between Client and Design-Builder on the basis of the estimate of the actual and direct increase or decrease in costs on account of the Change.

21.1.2. **Change Directive per Determination by Client.** Client shall notify Design-Builder in writing of its determination of the actual and necessary costs incurred by the Design-Builder on the basis of Design-Builder’s records. Design-Builder shall be deemed to have accepted Client’s determination of the amount of adjustment to the Total System Price on account of a Change to the Work unless Design-Builder shall notify Client, in writing, not more than fifteen (15) business days from the date of Client’s written notice, of any objection to Client’s determination. In the event that Design-Builder provides such notice, Design-Builder shall proceed to complete the Work as directed by Client, pending resolution of the dispute regarding adjustment to the Total System Price in accordance with section 23.

21.1.3. **Basis for Adjustment of Total System Price.** If Changes in the Work require an adjustment of the Total System Price, the basis for adjustment of the Total System Price shall be as follows:

21.1.3.1. **Labor.** Design-Builder shall be compensated for the actual costs, without markup, of labor actually and directly utilized in the performance of the Change. Such labor costs shall be limited to field labor for which there is a prevailing wage rate classification. Wage rates for labor shall not exceed the prevailing wage rates in the locality of the Site and shall be in the labor classification(s) necessary for the performance of the Change. Use of a labor classification which would increase labor costs associated with any Change shall not be permitted. Labor costs shall exclude costs incurred by the Design-Builder in preparing estimate(s) of the costs of the Change, in the maintenance of records relating to the costs of the Change, coordination and assembly of materials and information relating to the Change or
performance thereof, or the supervision and other overhead and general conditions costs associated with the Change or performance thereof.

21.1.3.2. Materials and Equipment. Design-Builder shall be compensated for the actual costs, without markup, of materials and equipment necessarily and actually used or consumed in connection with the performance of Changes. Costs of materials and equipment may include reasonable costs of transportation from a source closest to the site of the Work and delivery to the Site. If discounts by Material Suppliers are available for materials necessarily used in the performance of Changes, they shall be credited to Client. If materials and/or equipment necessarily used in the performance of Changes are obtained from a supplier or source owned in whole or in part by the Design-Builder, compensation therefor shall not exceed the current wholesale price for such materials or equipment. If, in the reasonable opinion of Client, the costs asserted by the Design-Builder for materials and/or equipment in connection with any Change is excessive, or if the Design-Builder fails to provide satisfactory evidence of the actual costs of such materials and/or equipment from its supplier or vendor of the same, the costs of such materials and/or equipment and Client's obligation for payment of the same shall be limited to the then lowest wholesale price at which similar materials and/or equipment are available in the quantities required to perform the Change. Client may elect to furnish materials and/or equipment for Changes to the Work, in which event the Design-Builder shall not be compensated for the costs of furnishing such materials and/or equipment or any mark-up thereon.

21.1.3.3. Construction Equipment. Design-Builder shall be compensated for the actual cost, without markup, of the necessary and direct use of Construction Equipment in the performance of Changes to the Work. Use of such Construction Equipment in the performance of Changes to the Work shall be compensated in increments of fifteen (15) minutes. Rental time for Construction Equipment moved by its own power shall include time required to move such Construction Equipment to the site of the Work from the nearest available rental source of the same. If Construction Equipment is not moved to the Site by its own power, Design-Builder will be compensated for the loading and transportation costs in lieu of rental time. The foregoing notwithstanding, neither moving time or loading and transportation time shall be allowed if the Construction Equipment is used for performance of any portion of the Work other than Changes to the Work. Unless prior approval in writing is obtained by the Design-Builder from Client, no costs or compensation shall be allowed for time while Construction Equipment is inoperative, idle or on standby, for any reason. Design-Builder shall not be entitled to an allowance or any other compensation for Construction Equipment or tools used in the performance of Changes to the Work where such Construction Equipment or tools have a replacement value of $500.00 or less. Construction Equipment costs claimed by the Design-Builder in connection with the performance of any Change to the Work shall not exceed rental rates established by distributors or construction equipment rental agencies in the locality of the Site; any costs asserted which exceed such rental rates shall not be allowed or paid. Unless otherwise specifically approved in writing by the Architect, the Project Inspector and Client, the allowable rate for the use of Construction Equipment in connection with Changes to the Work shall constitute full compensation to the Design-Builder for the cost of rental, fuel, power, oil, lubrication, supplies, necessary attachments, repairs or maintenance of any kind, depreciation, storage, insurance, labor
(exclusive of labor costs of the Construction Equipment operator), and any all other costs incurred by the Design-Builder incidental to the use of such Construction Equipment.

21.1.3.4. **Overhead.** In determining the cost to Client and the extent of increase to the Total System Price resulting from a Change adding to the Work, the allowance for overhead (including home office and field overhead), general conditions costs and profit (hereinafter "Change Order Overhead") associated with the Change shall not exceed 15% of the direct actual costs for performance of the Change. In the event a portion of Changes to the Work is performed by a first tier subcontractor, the subcontractor Change Order Overhead shall not exceed 15%. In the event a portion of Changes to the Work is performed by a sub-subcontractor, the sub-subcontractor Change Order Overhead shall not exceed 15%. (Change orders cannot exceed 10% of the bid.) The subcontractor markup on the total charges of a sub-subcontractor of any lower tier is limited to 5% of the costs of such change, regardless of the number of subcontractors, of any tier, performing any portion of any Change to the Work.

21.1.3.5. If a Change to the Work reduces the Total System Price, no profit, general conditions or overhead costs shall be paid by Client to the Design-Builder for the reduced or deleted Work.

21.1.3.6. In no event shall a Change Directive increasing the nameplate capacity of the System, or any element thereof, exceed the original cost per kW installed per installation as set forth herein.

21.1.4. **Required Documentation.** Design-Builder agrees to provide Client with all information requested to substantiate the cost of the change order and to inform Client whether the Work will be done by the Design-Builder or a subcontractor. Design-Builder shall maintain detailed records on a daily basis. Such records shall include without limitation hourly records for labor and Construction Equipment and itemized records of materials and equipment used that day in connection with the performance of any Change to the Work. In the event that more than one Change to the Work is performed by the Design-Builder in a calendar day, Design-Builder shall maintain separate records of labor, Construction Equipment, materials and equipment for each such Change. In the event that any Subcontractor, of any tier, shall provide or perform any portion of any Change to the Work, Design-Builder shall require that each such Subcontractor maintain records in accordance with this Article. Each daily record maintained hereunder shall be signed by Design-Builder's Superintendent or Design-Builder's authorized representative; such signature shall be deemed Design-Builder's representation and warranty that all information contained therein is true, accurate, complete, and relate only to the Change referenced therein. All records maintained by a subcontractor, of any tier, relating to the costs of a Change to the Work shall be signed by such subcontractor's authorized representative or superintendent. All records maintained hereunder shall be subject to inspection, review and/or reproduction by Client upon request. In the event that Design-Builder shall fail or refuse, for any reason, to maintain or make available for inspection, review and/or reproduction such records and the adjustment to the Total System Price on account of any Change to the Work is determined pursuant to this Article, Client's reasonable good faith determination of the extent of adjustment to the Total System Price on account of such Change shall be final, conclusive, dispositive and binding upon Design-Builder.
21.2. **Adjustment to Contract Time.** The Contract Time may be extended or reduced by change order if the performance of such Change necessitates such extension or reduction. Design-Builder shall submit, prior to approval of the change order, its request for a time extension (if any), as well as all information necessary to substantiate its belief that such change will delay the completion of the Work. If Design-Builder fails to submit its request for a time extension or the necessary supporting information, it shall be deemed to have waived its right to request such extension.

22. **Claims.** If Design-Builder shall claim compensation for any reason, including, without limitation, changes to the Work or Services, extensions of time, or damages sustained by Design-Builder for which it may seek recovery from Client ("Claim"), Design-Builder shall, within ten (10) business days after the first occurrence giving rise to the Claim, make and deliver to Client a written statement of the amount of the Claim, the first occurrence giving rise to the Claim, and a description of the occurrences, events and bases for the Claim ("Notice of Claim"). Design-Builder shall file with Client an itemized statement of all details and the amount of the Claim within fifteen (15) business days of delivery to Client of the Notice of Claim.

**Bar Against Claims for Failure to Follow Contract Procedures.** Unless the Notice of Claim shall be made as required, Design-Builder’s claim for compensation shall be forfeited and invalidated and it shall not be entitled to consideration for payment on account of any such damage. Design-Builder expressly acknowledges and agrees that this provision shall not be waived or otherwise modified by any communication not rendered to the Design-Builder in writing by Client, and that this is a reasonable notice provision pursuant to Public Contract Code section 7102 and Government Code section 930.2.

23. **Workers.** Design-Builder shall at all times enforce proper discipline and good order among Design-Builder’s employees, Subcontractors, Consultants, and all other invitees to the Site and shall not employ or allow the employment of any unfit person or anyone not skilled in work assigned to Design-Builder.

23.1. Design-Builder shall remove from the Site any person in the employ of Design-Builder or any Subcontractor or Consultant whom the Client may deem incompetent or unfit and such worker shall not again participate in the work and shall not again be employed on it except with written consent of Client.

23.2. Design-Builder shall take all reasonable steps necessary to ensure that any employees of Design-Builder or any of its Subcontractors or Consultants report for work in a manner fit to do their job. Such employees: (i) shall not utilize tobacco on the Site, and (ii) shall not be under the influence of or in possession of any alcoholic beverage or any controlled substance (except a controlled substance as prescribed by a physician so long as the performance or safety at the Site is not affected thereby). Design-Builder shall advise its employees, Subcontractors, suppliers, and invitees of these requirements before they enter on the Site and shall immediately remove from the Site any person in violation of these requirements as determined by Design-Builder or by Client. Design-Builder shall impose these requirements on its Subcontractors, suppliers, and other invitees. Design-Builder shall execute, under penalty of perjury, the certification of a drug-free workplace and certification of a tobacco-free workplace on the forms provided herewith provided herewith.

24. **Wages.** This Project is subject to both the California Prevailing Wage Law and the federal Davis-Bacon prevailing wage law. Design-Builder shall be responsible for complying with the requirements of both legal structures, as set forth herein, including payment of the higher wage rates and other compensation required by either the California Prevailing Wage Law and the federal Davis-Bacon prevailing wage law.

24.1. **The California Prevailing Wage Law.**
24.1.1. Pursuant to the provisions of Article 2 (commencing at Section 1770), Chapter 1, Part 7, Division 2 of the Labor Code of California, the governing body of Client has ascertained the general prevailing rate of per diem wages in the locality in which this public work is to be performed for each craft, classification, or type of workmen needed to execute the Agreement.

24.1.2. Per Diem wages shall be deemed to include employer payments for health and welfare, pension, vacation, travel time and subsistence pay as provided in Labor Code § 1773.1 apprenticeship or other training programs authorized by Labor Code § 3093, and similar purposes when the term “per diem wages” is used herein.

24.1.3. Each worker needed to execute the Work must be paid travel and subsistence payments as defined in the applicable collective bargaining agreements in accordance with Labor Code § 1773.1.

24.1.4. Holiday and overtime work when permitted by law shall be paid for at a rate of at least one and one-half times the above specified rate of per diem wages, unless otherwise specified.

24.1.5. Each worker of Design-Builder and any of its subcontractors engaged in work on the System shall be paid not less than the prevailing wage rate, regardless of any contractual relationship which may be alleged to exist between Design-Builder or any subcontractors and such workers.

24.1.6. Design-Builder shall, as a penalty to Client, forfeit an amount as determined by the Labor Commissioner pursuant to Labor Code § 1775 for each calendar day, or portion thereof, for each worker paid less than the prevailing rate as determined by the director for such work or craft in which such worker is employed for any public work done under the contract by him or by any subcontractor under him. The difference between such prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof, for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by Design-Builder.

24.1.7. Copies of the determined prevailing wage rates are on file and available upon request at Client’s office. Client shall provide Design-Builder with current prevailing wage rates, in writing. Design-Builder shall post, at an appropriate conspicuous point on the Site, a schedule showing all determined general prevailing wage rates.

24.1.8. Any worker employed to perform work on the System which is not covered by any classification available in Client office, shall be paid not less than the minimum rate of wages specified for the classification which most nearly corresponds with work to be performed by him, and that minimum wage rate shall be retroactive to the time of initial employment of the person in the classification.

24.2. Record of Wages Paid: Inspection. Pursuant to Labor Code § 1776, Design-Builder stipulates to the following:

24.2.1. Design-Builder and each subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in
connection with the Project. Such records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information of such forms. The payroll records may consist of payroll data that are maintained as computer records, if printouts contain the same information as the forms provided by the division and the printouts are verified as specified in subdivision (a) of Labor Code § 1776. Design-Builder and all subcontractors must furnish electronic certified payroll records (eCPR) to the Labor Commissioner monthly in PDF format. Registration at https://apps.dir.ca.gov/ecpr/DAS/AltLogin.

24.2.2. The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of Design-Builder on the following basis:

24.2.2.1. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative.

24.2.2.2. A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished to a representative of Client, and to the Division of Labor Standards Enforcement, and Division of Apprenticeship Standards of the Department of Industrial Relations.

24.2.2.3. A certified copy of all payroll records enumerated in subdivision (a) shall be made available to the public for inspection or copies thereof. However, a request by the public shall be made through either Client, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to the above, the requesting party shall, prior to being provided the records, reimburse the costs of preparation by Design-Builder, subcontractors, and the entity through which the request was made. The public shall not be given access to such records at the principal office of Design-Builder.

24.2.2.4. Design-Builder shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested such records within ten (10) days after receipt of the written request.

24.2.2.5. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency, by Client, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual’s name, address and social security number. The name and address of Design-Builder awarded the contract or performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (Section 175a of Title 29 of the United States Code) shall be marked or obliterated only to prevent disclosure of an individual’s name and social security number. Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided non-redacted copies of certified payroll records.
24.2.2.6. Design-Builder shall inform Client of the location of the records enumerated under subdivision (a), including the street address, city, and county, and shall, within five (5) working days, provide a notice of a change of location and address.

24.2.2.7. In the event of noncompliance with the requirements of this Section, Design-Builder shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects Design-Builder must comply with this Section. Should noncompliance still be evident after such 10-day period, Design-Builder shall pay a penalty of TWO HUNDRED DOLLARS ($200.00) to Client for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from the progress payment then due.

24.2.2.8. The responsibility for compliance with this Section shall rest upon Design-Builder.

24.3. The Davis-Bacon Prevailing Wage Law. If the Project is funded in whole or in part with federal funds, Design-Builder shall take all actions necessary to comply with the following requirements of the Federal Davis-Bacon Act, set forth herein per 29 Code of Federal Regulations section 5.5. In each case that the term “contractor” is stated within this Article, it shall mean the Design-Builder. In each case that the term “subcontractor” is stated within this Article, it shall mean any and all subcontractors to the Design-Builder, and each such subcontractor’s subcontractor, through all tiers. Notwithstanding the foregoing, in each case that the term “contractor or subcontractor” is stated within this Article, it shall mean the Design-Builder and any and all subcontractors to the Design-Builder, and each such subcontractor’s subcontractor, through all tiers.

24.3.1. Minimum wages.

24.3.1.1. All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

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

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

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

243.1.1.1.2. The classification is utilized in the area by the construction industry; and

243.1.1.1.3. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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

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

243.1.14. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section,
shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

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

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

24.3.2. Withholding. Client shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis–Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, Client may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

24.3.3. Payrolls and basic records.

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

24.3.1.1. The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee’s social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wht347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Design-Builders and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements.

It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

24.3.1.2. Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

24.3.1.2.1. That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
24.3.3.1.2.2. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

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

24.3.13. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH–347 shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph (a)(3)(ii)(B) of this section.

24.3.14. The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

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

25. Hours of Work.

25.1. As provided in Article 3 (commencing at Section 1810), Chapter 1, Part 7, Division 2 of the Labor Code, Design-Builder stipulates that eight (8) hours of labor shall constitute a legal day’s work. The time of service of any worker employed at any time by Design-Builder or by the work or upon any part of the work contemplated by this contract is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as hereinafter provided. Notwithstanding the provisions hereinabove set forth, work performed by employees of Design-Builder in excess of eight (8) hours per day and forty (40) hours during any one week upon this public work shall be permitted compensation of all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.

25.2. Design-Builder shall pay to Client a penalty of TWENTY-FIVE DOLLARS ($25.00) for each worker employed in the execution of these Construction Provisions by Design-Builder or by any Subcontractor for each calendar day during which such workman is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week in violation of the Agreement for Design, Installation and Commissioning of Solar/Photovoltaic System between __________ and __________
provisions of Article 3 (commencing at Section 1810), Chapter 1, Part 7, Division 2 of the Labor Code, unless compensation to the worker so employed by Design-Builder is not less than one and one-half (1-1/2) times the basic rate of pay for all hours worked in excess of eight (8) hours per day.

25.3. Any work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed without additional expense to Client, unless otherwise agreed to by the parties.

25.4. Construction work under the Construction Provisions shall be accomplished on a schedule consistent with the normal and reasonable practices of Design-Builder and in compliance with applicable ordinances.

26. Apprentices

26.1. All apprentices employed by Design-Builder to perform services under these Construction Provisions shall be paid the standard wage paid to apprentices under the regulation of the craft or trade at which that apprentice is employed, and shall be employed only at the work of the craft or trade in which that apprentice is registered. Only apprentices, as defined in Labor Code § 3077, who are in training under apprenticeship standards and written apprenticeship agreements under Chapter 4 (commencing at Section 3070), Division 3 of the Labor Code, are eligible to be employed under these Construction Provisions. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprenticeship agreements under which that apprentice is training.

26.2. When Design-Builder to whom the work under these Construction Provisions is awarded by Client or any Subcontractor under Design-Builder, in performing any of the work under the Construction Provisions, employs workers in any apprenticeable craft or trade, Design-Builder and Subcontractor shall apply to the joint apprenticeship committee administering the apprenticeship standards of the craft or trade in the area of the Site of the public work, for a certificate approving Design-Builder or Subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, approval as established by the joint apprenticeship committee or committees shall be subject to the approval of the Administrator of Apprenticeship. Design-Builder or Subcontractors shall not be required to submit individual applications for approval to local joint apprenticeship committees provided they are already covered by the local apprenticeship standards. The ratio of work performed by apprentices to journeymen, who shall be employed in the craft or trade on the public work, may be the ratio stipulated in the apprenticeship standards under which the joint apprenticeship committee operates, but in no case shall the ratio be less than one hour of apprentice work for each five (5) hours of labor performed by a journeyman, except as otherwise provided in Section 1777.5 of the Labor Code. However, the minimum ratio for the land surveyor classification shall not be less than one apprentice for each five journeymen.

26.3. “Apprenticeable craft or trade” as used in Labor Code § 1777.5 and this Article, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the Apprenticeship Council.

26.4. Design-Builder, or any Subcontractor which, in performing any of the work under this contract, employs journeymen or apprentices in any apprenticeable craft or trade and which is not contributing to a fund or funds to administer and conduct the apprenticeship programming of any craft or trade in the area of the Site of the public work, to which fund or funds other Design-Builders in the area of the Site of the public work are contributing, shall contribute to the fund or funds in each craft or trade in which that Design-Builder employs journeymen or apprentices on the public work in the same amount or upon the same basis as other Design-Builders do, but where the trust fund

Agreement for Design, Installation and Commissioning of Solar/Photovoltaic System between ___________ and ___________
administrators are unable to accept the funds, Design-Builders not signatory to the trust agreement shall pay like amount to the California Apprenticeship Council. Design-Builder or Subcontractor may add the amount of such contributions in computing their bid for the contract. The Division of Labor Standards Enforcement is authorized to enforce the payment of the contributions to the fund or funds as set forth in Labor Code § 227.

26.5. The responsibility of compliance with Labor Code § 1777.5 and this Article for all apprenticeable occupations is with Design-Builder.

26.6. The interpretation and enforcement of Sections 1777.5 and 1777.7 of the Labor Code shall be in accordance with the rules and procedures of the California Apprenticeship Council.

27. Public Works Contractor Registration. Pursuant to Labor Code sections 1725.5 and 1771.1, the Design-Builder and its Subcontractors must be registered with the Department of Industrial Relations prior to the execution of a contract to perform public works. By entering into this Agreement, Design-Builder represents that it is aware of the registration requirement and is currently registered with the DIR. Design-Builder shall maintain a current registration for the duration of the Project. Design-Builder shall further include the requirements of Labor Code sections 1725.5 and 1771.1 in any subcontract and ensure that all Subcontractors are registered at the time this Agreement is entered into and maintain registration for the duration of the Project.

28. Design-Builder Supervision. Design-Builder shall provide competent supervision of personnel employed on the job Site, use of equipment, and quality of workmanship.

29. Safety and Security. Design-Builder is responsible for maintaining safety in the performance of this Agreement. Design-Builder shall be responsible to ascertain from Client the rules and regulations pertaining to safety and security. Design-Builder shall have the responsibility for initiating, maintaining, and supervising all safety precautions and programs in connection with this Agreement and the Services provided hereunder.

30. Clean Up. Debris shall be removed from the Premises. The Site shall be in order at all times when work is not actually being performed and shall be maintained in a reasonably clean condition.

31. Access to Work. Client representatives shall, at all times, have access to the Work wherever it is in preparation or in progress. Design-Builder shall provide safe and proper facilities for such access.

32. Protection of Work and Property. Design-Builder shall erect and properly maintain at all times, as required by conditions and progress of the Work, all necessary safeguards, signs, barriers, lights, and security persons for protection of workers and the public, and shall post danger signs warning against hazards created by the Work. In an emergency affecting life and safety of life or of Work or of adjoining property, Design-Builder, without special instruction or authorization from Client, is permitted to act at his reasonable discretion to prevent such threatened loss or injury.

33. Occupancy. Client reserves the right to occupy improvements comprising or related to the System at any time before Final Completion and such occupancy shall not constitute final acceptance or approval of any part of the Work covered by this Agreement, nor shall such occupancy extend the date specified for completion of the Work.

34. Termination.

34.1. For Convenience by Client. Client may, at any time, with or without reason, terminate this Agreement and compensate Design-Builder only for the Work and Services rendered to the date of termination and all reasonable costs incurred by Design-Builder as a result of such termination (including in the
termination of subcontracts, vendor agreements and in demobilization), which cannot be mitigated or eliminated through commercially reasonable efforts by Design-Builder. Written notice by Client shall be sufficient to stop further performance of services by Design-Builder. Notice shall be deemed given when received by the Design-Builder or no later than three (3) Business Days after the day of mailing, whichever is sooner. In the event that Client terminates this Agreement pursuant to this section, Client shall compensate Design-Builder for work completed to date.

34.2. With Cause by Client. Client may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:

34.2.1. material violation of this Agreement by the Design-Builder; or

34.2.2. any act by Design-Builder exposing Client to liability to others for personal injury or property damage; or

34.2.3. Design-Builder becomes insolvent; files for federal bankruptcy protection; is adjudged a bankrupt; makes a general assignment for the benefit of creditors; or a receiver is appointed on account of Design-Builder's insolvency.

Written notice by Client shall contain the reasons for such intention to terminate and unless within thirty (30) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall, upon the expiration of the thirty (30) calendar days, cease and terminate. In the event of this termination, Client may secure the required services from another provider. If the documented reasonable expenses, fees, and costs to Client to complete the Services and Work exceed the cost of providing the service pursuant to this Agreement, upon receipt of an invoice and reasonable supporting documentation from Client, Design-Builder shall pay the excess expenses, fees, and/or costs to Client within fifteen (15) Business Days of receipt of Client's notice of these expenses, fees, and/or costs.

34.3. In no event shall any delay in Completion arising during the period from issuance of a notice of termination for cause through the time such condition or violation shall have ceased or been cured be excused, nor shall Design-Builder be relieved of liability for Liquidated Damages relating thereto.

34.4. Upon termination, Design-Builder shall provide Client with all documents produced maintained or collected by Design-Builder pursuant to this Agreement, whether or not such documents are final or draft documents.

35. Indemnification.

35.1. Design-Builder agrees to and does hereby defend, indemnify and hold harmless Client, Inspector, the State of California and their officers, employees, agents and independent contractors (the "Indemnified Parties") from every claim or demand made, and every liability, loss, damage, expense or attorney's fees of any nature whatsoever, which may be incurred by reason of:

35.1.1. Liability for: (1) death or bodily injury to persons; (2) damage or injury to, loss (including theft), or loss of use of, any property; (3) any failure or alleged failure to comply with any provision of law or the Contract Documents; or (4) any other loss, damage or expense, sustained by any person, firm or corporation arising from any act, omission or breach of Design-Builder or any person, firm or corporation employed by, under contract with, or acting on behalf of Design-Builder, arising out of or in any way connected with the Work performed by Design-Builder, its employees, contractors and/or agents pursuant to this Agreement for Design, Installation and Commissioning of Solar/Photovoltaic System between ____________ and ____________.
Agreement or the Contract Documents, whether said injury or damage occurs either on or off Client Property, except for liability resulting from the negligence or the willful misconduct of any of the Indemnified Parties; and

35.1.2. Any dispute between Design-Builder and Design-Builder’s subcontractors, suppliers and/or sureties, including, but not limited to, any failure or alleged failure of the Design-Builder (or any person hired or employed directly or indirectly by the Design-Builder) to pay any subcontractor or materialman of any tier or any other person employed in connection with the Work and/or filing of any stop notice or mechanic’s lien claims.

35.2. Design-Builder, at its own expense, cost, and risk, shall defend any and all third party claims, actions, suits, or other proceedings, including any and all appeals thereof, that may be brought or instituted against Client, its officers, agents or employees, on account of or founded upon any cause, damage, or injury identified in this Section and shall pay or satisfy any final and non-appealable judgment that may be rendered against Client, its officers, agents or employees in any action, suit or other proceedings as a result thereof. Design-Builder may select counsel to provide such defense, subject to acceptance by Client, which acceptance shall not unreasonably be withheld. In any event, Client shall solely control any defense provided by Design-Builder, and counsel defending Client shall have a duty of loyalty and zealous advocacy solely to Client.

35.3. Upon termination, Design-Builder shall provide Client with all documents produced maintained or collected by Design-Builder pursuant to this Agreement, whether or not such documents are final or draft documents.

36. Insurance.

36.1. The Design-Builder shall procure and maintain at all times it performs any portion of the Services the following insurance:

36.1.1. General Liability. Design-Builder shall procure and maintain during the life of this Agreement and for such other period as may be required herein, at its sole expense, occurrence form Commercial General Liability insurance coverage, at least as broad as the most current ISO CG 00 01, in the amount of, at least, ONE MILLION DOLLARS ($1,000,000.00) combined single limit per occurrence and TWO MILLION DOLLARS ($2,000,000.00) in the aggregate, for bodily injury, personal injury and property damage in the form of Comprehensive General Liability and Contractual Liability, including Products Liability and Completed Operations coverage.

36.1.2. Automobile Liability Insurance. Design-Builder shall take out and maintain at all times during the term of this Agreement occurrence form Automobile Liability Insurance at least as broad as ISO CA 00 01 (Code 1 - Any Auto) in the amount of, at least, ONE MILLION DOLLARS ($1,000,000.00) combined single limit per occurrence for any automobile that shall protect the Design-Builder and Client from all claims of bodily injury, property damage, personal injury, death, and medical payments arising performing any portion of the Services by Design-Builder.

36.1.3. Workers’ Compensation and Employers’ Liability Insurance. For all of the Design-Builder’s employees who are subject to this Agreement and to the extent required by the applicable state or federal law, Design-Builder shall keep in full force and effect, a Workers’ Compensation policy. That policy shall provide employers’ liability coverage with minimum liability coverage of ONE MILLION DOLLARS ($1,000,000.00) per accident
for bodily injury or disease. Design-Builder shall provide an endorsement that the insurer waives the right of subrogation against Client and its respective elected officials, officers, employees, agents, representatives, consultants, trustees, and volunteers.

36.1.4. Professional Liability (Errors and Omissions). ONE MILLION DOLLARS ($1,000,000.00) for errors and omissions as appropriate to profession of engineer designing photovoltaic system, coverage to continue through completion of construction plus two years thereafter.

36.1.5. Builder’s Risk Insurance. On a replacement cost value basis, Design-Builder shall procure and maintain, during the life of this Agreement, Builder’s Risk (Course of Construction), or similar first party property coverage to insure against all risks of accidental physical loss and shall include without limitation the perils of vandalism and/or malicious mischief (both without any limitation regarding vacancy or occupancy), sprinkler leakage, theft, sonic disturbance, flood, collapse, wind (excluding Tier 1 counties), fire, lightning, smoke, and rioting. Coverage shall include debris removal, demolition, increased costs due to enforcement of all applicable ordinances and/or laws in the repair and replacement of damaged and undamaged portions of the property, and reasonable costs for engineering services and expenses required as a result of any insured loss upon the Work and Project, including completed Work and Work in progress, to the full replacement value of each installation at each Site.

36.1.6. Umbrella or Excess Liability. FOUR MILLION DOLLARS ($4,000,000.00) per occurrence to meet the policy limit requirements of the required policies if Design-Builder’s underlying policy limits are less than required. There shall be no gap between the per occurrence amount of any underlying policy and the start of the coverage under the Umbrella Liability Insurance Policy. Any Umbrella Liability Insurance Policy shall protect Design-Builder, Client, State, and Project Manager(s) in amounts, and that complies with all requirements for Commercial General Liability and Automobile Liability and Employers’ Liability Insurance.

36.1.7. Other Insurance Provisions: The policies are to contain, or be endorsed to contain, the following provisions:

36.1.7.1. For the general liability, builder’s risk, and automobile liability policies:

36.1.7.1.1. Client, its representatives, consultants, trustees, officers, officials, employees, agents, and volunteers (“Additional Insureds”) are to be covered as additional insureds using, for Contractor’s policy/ies of Commercial General Liability insurance (at least as broad as ISO Form CG 20 10, CG 11 85 or both ISO CG forms 20 10 and 20 37 if later revisions used (or endorsements providing the exact same coverage)), and, for subcontractors’ policies of Commercial General Liability insurance, ISO CG form 20 38 (or endorsements providing the exact same coverage). The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds.

36.1.7.12. For any claims related to the projects, Design-Builder’s insurance coverage shall be primary insurance as respects the Additional Insureds. Any insurance or self-insurance maintained by the Additional Insureds
shall be in excess of the Design-Builder’s insurance and shall not contribute with it.

36.1.7.13. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Additional Insureds.

36.1.7.2. For the general liability, automobile liability, and workers’ compensation/employer’s liability:

36.1.7.2.1. A waiver of subrogation shall be provided in favor of the Additional Insureds.

36.1.7.3. Design-Builder’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.

36.1.7.4. Design-Builder shall furnish Client with Certificates of Insurance showing maintenance of the required insurance coverage and original endorsements affecting coverage. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by Client before Work commence.

36.1.8. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best’s rating of no less than A: VII, unless otherwise acceptable to Client.

36.1.9. Subcontractors. Unless otherwise agreed to in writing by Client, Design-Builder shall require all tiers of Subcontractors working under this Agreement to provide the insurance required under this Agreement, including adding the Client, its representatives, consultants, trustees, officers, officials, employees, agents, and volunteers as Additional Insureds to the Subcontractors’ policies. All policies of Commercial General Liability insurance provided by Subcontractors shall use endorsement form ISO CG 20 38 04 13 (or an endorsement providing the exact same coverage) to effectuate this requirement. Design-Builder shall not allow any Subcontractor to commence work relating to this Agreement until it has provided Client with satisfactory evidence of Subcontractors’ compliance with all insurance requirements under this Agreement.

37. Payment Bond and Performance Bond. Design-Builder shall not commence the Work until it has provided to Client, in a form provided by Client, a Payment (Labor and Material) Bond and a Performance Bond, each in an amount equivalent to one hundred percent (100%) of the Total System Price issued by a surety admitted to issue bonds in the State of California and otherwise acceptable to Client.

37.1. Performance bond liability. Any performance bond issued for a site or system will cease one (1) year from the completion of construction. If a warranty or guarantee is provided under the terms of this Agreement, the balance of any warranty or guarantee beyond one-year term of the applicable performance bond shall continue to be guaranteed solely by Seller under the terms of this Agreement. The performance bond does not guarantee any property restorative requirements.

37.2. Payment bond liability. Any payment bond issued will cease at the termination of any time required by law.
37.3. **Performance Guarantee.** Neither payment bonds, whether for labor or materials, nor performance bonds are applicable to the Performance Guarantee Agreement between the parties.

38. **Permits and Licenses.** Design-Builder and all Design-Builder’s employees or agents shall secure and maintain in force, at Design-Builder’s sole cost and expense, such permits and licenses as are required by law in connection with the furnishing of materials, supplies, or services pursuant to this Agreement.

39. **Assignment.** The rights, burdens, duties, or obligations of Design-Builder pursuant to this Agreement shall not be assigned by the Design-Builder without the prior written consent of Client.

40. **Subcontractors.** If Design-Builder shall subcontract any part of this Agreement, Design-Builder shall be fully responsible to Client for acts and omissions of its subcontractor and of persons either directly or indirectly employed by itself. Nothing contained in this Agreement shall create any contractual relations between any subcontractor and Client.

41. **Compliance with Laws.** Design-Builder shall observe and comply with all rules and regulations of the governing board of Client and all federal, state, and local laws, ordinances and regulations. Design-Builder shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Work as indicated or specified. If Design-Builder observes that any of the Work required by this Agreement is at variance with any such laws, ordinance, rules or regulations, Design-Builder shall notify Client, in writing, and, at the sole option of Client, any necessary changes to the scope of the Work shall be made and this Agreement shall be appropriately amended in writing, or this Agreement shall be terminated effective upon Design-Builder’s receipt of a written termination notice from Client. If Design-Builder performs any work that is in violation of any laws, ordinances, rules or regulations, without such prior notification and approval of Client of the violation, Design-Builder shall bear all costs arising therefrom.

41.1. Design-Builder hereby acknowledges that Client’s representative, the Project Inspector(s), and the Division of the State Architect have authority to approve and/or stop Work if the Design-Builder’s Work does not comply with the requirements of the Contract Documents, Title 24 of the California Code of Regulations, and all applicable laws. Design-Builder shall be liable for any delay caused by its non-compliant Work.

42. **Audit.** Design-Builder shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Design-Builder transacted under this Agreement. Design-Builder shall retain these books, records, and systems of account during the Term of this Agreement and for three (3) years thereafter. Design-Builder shall permit Client, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that Client shall give reasonable prior notice to Design-Builder and shall conduct audit(s) during Design-Builder’s normal business hours, unless Design-Builder otherwise consents.

43. **Environmental Attributes and Energy Credits.** Client shall own all right, title, and interest associated with or resulting from the development, construction, installation and ownership of the System and each of its component parts. This ownership includes the production, sale, purchase or use of the energy output including, and includes without limitation:

43.1. All Environmental Incentives associated in any way with the solar electricity generating facilities provided by this Agreement (“Generating Facilities”). “Environmental Incentives” means all rights, credits (including tax credits), rebates, benefits, reductions, offsets and allowances and entitlements of any kind, howsoever entitled or named (including carbon credits and allowances), whether arising
under federal, state or local law, international treaty, trade association membership or the like arising from the Generating Facilities or the energy produced or otherwise from the development, construction, installation or ownership of the Generating Facilities or the production, sale, purchase, consumption or use of the energy produced from the Generating Facilities. Without limiting the forgoing, Environmental Incentives includes green tags, renewable energy credits, tradable renewable certificates, portfolio energy credits, the right to apply for (and entitlement to receive) incentives under the California Solar Initiative or other incentive programs offered by the State of California and the right to claim federal income tax credits under Section 45 or 48 of the Code as such credits are available arising from the Environmental Attributes of the Generating Facilities or the energy produced from the Generating Facilities or the production, sale, purchase, consumption or use of the energy produced from the Generating Facilities.

43.2. All rights and interests in performance based incentive payments to be made under the California Solar Initiative.

43.3. All reporting rights and the exclusive rights to claim responsibility for the delivery of the energy from the Generating Facilities.

43.4. All reporting rights and the exclusive rights to claim responsibility for the reductions in emissions of pollution and greenhouse gases resulting from the generation and delivery of energy.

43.5. All carbon reduction credits as defined under the California Action Reserve or such similar definition as enacted by the State of California or the U.S. Federal Government.

43.6. All "renewable energy credits," as such term is defined in Section 399.12(h)(2) of the California Public Utilities Code, associated with the Generating Facilities.

43.7. The proceeds of any and all other incentive programs available in relation to the System.

44. Disputes. In the event of a dispute between the parties as to performance of the Work, the interpretation of this Agreement, or payment or nonpayment for work performed or not performed, the parties shall attempt to resolve the dispute by those procedures set forth in Public Contract Code section 20104, et seq., if applicable. Pending resolution of the dispute, Design-Builder agrees it will neither rescind the Agreement nor stop the progress of the Work, but will allow determination by the court of the State of California, in the county in which Client’s administration office is located, having competent jurisdiction of the dispute. All claims of over $375,000, which are outside the scope of Public Contract Code section 20104, et seq., may be determined by mediation if mutually agreeable, otherwise by litigation. The demand for mediation of any claim over $375,000 shall be made within the required Notice of Claim submitted by the Design-Builder as set forth herein, or within a reasonable time after written notice of the dispute has been provided by Client to the Design-Builder.

44.1. In the event of a dispute between the parties described in this Article, pending resolution of the dispute(s), Design-Builder agrees to and shall continue the Work diligently to completion conditioned only on Client’s payment of undisputed amounts. If the dispute is not resolved, Design-Builder agrees it will not stop, delay, or hinder progress of the Work, but shall continue the Work diligently to completion conditioned only on Client’s payment of undisputed amounts.

45. Notice. Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States.
mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, addressed as follows:

<table>
<thead>
<tr>
<th>Client</th>
<th>Design-Builder</th>
</tr>
</thead>
<tbody>
<tr>
<td>[ADDRESS]</td>
<td>[ADDRESS]</td>
</tr>
<tr>
<td>ATTN:</td>
<td>Attn:</td>
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<td>Email:</td>
<td>Email:</td>
</tr>
<tr>
<td>FAX:</td>
<td>FAX:</td>
</tr>
</tbody>
</table>

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

46. **Governing Law.** This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the county in which Client’s administrative offices are located. Any action to enforce the terms of this Agreement shall be brought in the appropriate court for Merced County, California, subject to any motion for change of venue.

47. **Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.

48. **Waiver.** Any delay or forbearance in enforcing, or failure to enforce any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

49. **Captions and Interpretations.** Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.

50. **Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

51. **Cooperation.** The Parties hereto hereby agree to execute all such other documents and to take all such other action as may be reasonably necessary to effect the purposes of this Agreement.

52. **Binding Contract.** This Agreement shall be binding upon the parties hereto and upon their successors and assigns, and shall inure to the benefit of said parties and their successors and assigns.

53. **Authority to Bind Parties.** Neither party in the performance of any and all duties under this Agreement, except as otherwise provided in this Agreement, has any authority to bind the other to any agreements or undertakings.

54. **No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
55. **Signature Authority.** Each party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authorized and empowered to enter into this Agreement.

56. **Counterparts.** This Agreement and all amendments to it may be executed in counterparts, each of which shall be deemed an original. A facsimile or electronic signature shall be deemed to be the equivalent of the actual original signature. All counterparts so executed shall constitute one document binding all the Parties hereto.

57. **Provisions Required by Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.

58. **Entire Contract.** This Agreement sets forth the entire contract between the parties hereto and fully supersedes any and all prior agreements, understandings, written or oral, between the parties hereto pertaining to the subject matter thereof. This Agreement may be modified only in writing upon mutual consent. IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date indicated below.

_______________ CLIENT

Date: ________________, 20__

By: ____________________________

Print Name: ______________________

Print Title: _______________________

Address: ________________________

Telephone: _______________________

Facsimile: _______________________

E-Mail: _________________________

_______________ CORPORATION

Date: ________________, 20__

By: ____________________________

Print Name: ______________________

Print Title: _______________________

Address: ________________________

Telephone: _______________________

Facsimile: _______________________

E-Mail: _________________________
Information regarding Design-Builder:

Proper Name: ________________________________
License No.: ________________________________
Address: __________________________________
           ________________________________
Telephone: __________________________________
Facsimile: __________________________________
E-Mail: _____________________________________

Type of Business Entity:
___ Individual
___ Sole Proprietorship
___ Partnership
___ Limited Partnership
___ Corporation, State: ______________________
___ Limited Liability Company
___ Other: _________________________________

Employer Identification and/or Social Security Number

NOTE: Section 6041 of the Internal Revenue Code (26 U.S.C. 6041) and Section 1.6041-1 of Title 26 of the Code of Federal Regulations (26 C.F.R. 1.6041-1) requires the recipients of $600.00 or more to furnish their taxpayer information to the payer. In order to comply with these requirements, Client requires the Design-Builder to furnish the information requested in this section.
System Description

[THIS IS A DESCRIPTION OF EACH SITE AND SYSTEM. THE DESCRIPTION OF THE SCOPE WILL BE FINALIZED WITH THE SELECTED SOLAR CONTRACTOR.]

Items to be included in scope description:

- System Size (DC kW)
- System Location
- Modules
- Inverter
- Mounting Structure
- Tracking System
- Generation meters
- Data Acquisition System/Monitoring System
- Preliminary Layout of the System
- Expected generation of each system
- Special conditions
- Key elements of Design-Builder’s proposal that need documentation in the Agreement
Technical Requirements and Specifications

Design-Builder’s Proposal is not made part of this Agreement.

[TECHNICAL REQUIREMENTS AND SPECIFICATIONS FROM THE RFP, INCLUDING ADDENDA TO THE RFP AND THE BEST AND FINAL OFFER, IF ANY, WILL BE INSERTED HERE.]
Exhibit A-3

“Bid Sheet”

See Excel file “Client Proposal Sheet”
PREVAILING WAGE CERTIFICATION

I hereby certify that I will conform to the State of California Public Works Contract requirements regarding prevailing wages, benefits, on-site audits with 48-hours’ notice, payroll records, and apprentice and trainee employment requirements, for all Work on the above Project.

Date: 

Name of Design-Builder: 

Signature: 

Print Name: 

Title: 

Agreement for Design, Installation and Commissioning of Solar/Photovoltaic System between __________ and __________
WORKERS’ COMPENSATION CERTIFICATION

Labor Code section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

a. By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.

b. By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work of this Agreement.

Date: ________________________________

Name of Design-Builder: ________________________________

Signature: ________________________________

Print Name: ________________________________

Title: ________________________________

(In accordance with Article 5 - commencing at section 1860, chapter 1, part 7, division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any Work under this Agreement.)
ASBESTOS & OTHER HAZARDOUS MATERIALS CERTIFICATION

Design-Builder hereby certifies that no Asbestos, or Asbestos-Containing Materials, polychlorinated biphenyl (PCB), or any material listed by the federal or state Environmental Protection Agency or federal or state health agencies as a hazardous material, or any other material defined as being hazardous under federal or state laws, rules, or regulations “New Material Hazardous”, shall be furnished, installed, or incorporated in any way into the Project or in any tools, devices, clothing, or equipment used to affect any portion of Design-Builder’s work on the Project for Client.

Design-Builder further certifies that it has instructed its employees with respect to the above-mentioned standards, hazards, risks, and liabilities.

Asbestos and/or asbestos-containing material shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite. Any or all material containing greater than one-tenth of one percent (0.1%) asbestos shall be defined as asbestos-containing material.

Any disputes involving the question of whether or not material is New Hazardous Material shall be settled by electron microscopy or other appropriate and recognized testing procedure, at Client’s determination. The costs of any such tests shall be paid by Design-Builder if the material is found to be New Hazardous Material.

All Work or materials found to be New Hazardous Material or Work or material installed with “New Hazardous Material” containing equipment will be immediately rejected and this Work will be removed at Design-Builder’s expense at no additional cost to Client.

Design-Builder has read and understood the document Hazardous Materials Procedures & Requirements, and shall comply with all the provisions outlined therein.

Date: ________________________________

Name of Design-Builder: ________________________________

Signature: ________________________________

Print Name: ________________________________

Title: ________________________________
PERFORMANCE BOND
(100% of Total System Price)

(Note: Respondents must use this form, NOT a surety company form.)

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the MERCED Community College District, (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 rights.

Agreement for Design, Installation and Commissioning of Solar/Photovoltaic System between _____________ and ___________
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

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)

________________________________________

Design-Builder must attach a Notarial Acknowledgment for all Surety's signatures and a Power of Attorney and Certificate of Authority for Surety. The California Department of Insurance must authorize the Surety to be an admitted surety insurer.
Agreement for Design, Installation and Commissioning of Solar/Photovoltaic System between __________ and __________
PAYMENT BOND
Design-Builder’s Labor & Material Bond
(100% of Total System Price)

(Note: Respondents must use this form, NOT a surety company form.)

KNOW ALL PERSONS BY THESE PRESENTS That

WHEREAS, the Merced Community College District (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: _______________ (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
recission 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__________________________________________

Design-Builder must attach a Notarial Acknowledgment for all Surety's signatures and a Power of Attorney and Certificate of Authority for Surety. The California Department of Insurance must authorize the Surety to be an admitted surety insurer.
EXHIBIT A

ENERGY CONSERVATION ASSISTANCE ACT LOAN AGREEMENT

This Loan Agreement (the “Agreement”) is entered into as of the date it is executed by both parties hereto, between the California Energy Resources Conservation and Development Commission (the “Energy Commission”) and the Merced Community College District (the “Borrower”) located Merced County, CA.

1. STATUTORY AUTHORITY AND LOAN

   A. Pursuant to the purposes authorized by section 25410, et seq., of the California Public Resources Code (the “Energy Conservation Assistance Act”), the Energy Commission has approved the Borrower’s loan application dated October 12, 2017, which is not attached but is expressly incorporated by reference herein.

   B. Subject to the terms, covenants, conditions, and including Special Conditions (if applicable) contained herein, and the Budget Detail/Summary of Project Cost and Savings attached as Exhibit A, Attachment 1 hereto to the extent it modifies the Borrower’s loan application, the Energy Commission shall make a loan to the Borrower (the “Loan”) in the amount of one million six hundred twenty seven thousand six hundred dollars ($1,627,600.00) evidenced by a Promissory Note (the “Promissory Note”) for loan number 004-17-ECG attached hereto as Exhibit B.

2. PURPOSE

   The Borrower agrees to expend all funds disbursed pursuant to this Agreement only for the purposes and in the amounts set forth in Exhibit A, Attachment 1 (the “Project”). Any other use of funds disbursed hereunder shall require prior written approval by the Energy Commission.

3. LOAN DISBURSEMENT SCHEDULE

   A. The Energy Commission agrees to disburse funds to the Borrower upon the Borrower’s execution of the attached Promissory Note and required supplemental documents, including invoices as required in Section 3.B below.

   B. Loan funds shall be disbursed on a reimbursement basis based on invoices submitted by Borrower in a form approved by the Energy Commission. Backup documentation for actual expenditures (such as timecards, vendor invoices, etc) and proof of payment must be provided to
substantiate the request. Energy Commission staff will approve invoices only after verifying requested amounts against backup billings and determining that expenses are appropriate and used for the authorized purposes of this Loan. For executed Agreements, invoices for expenses incurred during the Agreement Term are eligible for reimbursement.

C. All invoices must be submitted within sixty (60) days after Project completion.

D. The final ten percent (10%) of the Loan amount will be withheld as retention until the final report is received from the Borrower and the Commission’s Project Manager determines the Project has been satisfactorily completed.

4. LOAN REPAYMENT AND INTEREST

All funds disbursed hereunder, together with all interest payable thereon, shall be repaid to the Energy Commission in accordance with the terms of the Promissory Note. The Loan shall bear simple interest at the annual rate set forth in the attached Promissory Note on the principal balance of Loan funds disbursed to the Borrower. Payment of said interest shall be due at the time of semiannual scheduled Loan repayment installments to the Energy Commission, and interest shall accrue from the time of disbursal of funds to the Borrower until receipt of full Loan repayment to the Energy Commission.

5. TERM

A. The effective date of this Agreement shall be the date on which it has been executed by both parties hereto. No work is authorized, or shall begin until the Energy Commission signs the Agreement.

B. The Borrower agrees to complete performance of its obligations under this Agreement within the applicable periods stated in this Agreement.

6. PREPAYMENT

The Borrower shall have the right to prepay all or any part of the amount of this Loan at any time without penalty.

7. PROMISSORY NOTE

In order to evidence its debt to the Energy Commission hereunder, the Borrower agrees to, contemporaneously with the execution of this Agreement, execute and deliver to the Energy Commission the Promissory Note (attached as Exhibit B hereto).
8. ACCOUNTS, AUDITS, AND RECORDS

A. The Borrower agrees to establish on its books a separate account for this Loan. This account shall be maintained as long as the Loan obligation remains unsatisfied.

B. The Borrower further agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures drawn on said account for three (3) years after this Loan is repaid in full unless the Energy Commission requests a longer retention period.

C. The Borrower further agrees to utilize a voucher system by which all expenditures from said account will be authorized and authenticated.

D. The Borrower further agrees to allow the Energy Commission or any other agency of the State of California (the "State") or their designated representatives, on written request, to have reasonable access to, and the right of inspection of, all records that pertain to said account or the Project. The Borrower also agrees to submit to an independent audit, if requested by the Energy Commission, at the expense of the Borrower. Borrower agrees to maintain all such records for a minimum of three years after this Loan is repaid in full unless the Energy Commission notifies the Borrower, prior to the expiration of such three-year period, that a longer period of record retention is necessary.

9. SOURCE OF REPAYMENT; OPERATION OF PROJECT

A. Semiannual payments due to the Energy Commission under this Agreement shall be made from savings in energy costs or other legally available funds as the Borrower chooses. If the Borrower is a county, city, town, township, board of education, or school district, the Borrower agrees that the amount of the semiannual Loan repayment shall not be raised by the levy of additional taxes and shall not be an obligation against tax revenues, but shall be obtained either from savings in energy costs resulting from the subject energy conservation projects or other legally available funds as the Borrower chooses.

B. Energy cost savings as determined by the Energy Commission are based on energy usage and serving utility rate schedules at the time the Loan application is submitted, except as specified in Special Conditions, if any, as detailed in this Agreement, and the information and data contained in the Borrower's loan application and technical study. The following will not affect the Energy Commission's initial finding of energy cost savings, and are not a basis for claiming a lack of energy savings: a) changes in
energy use and/or rate schedules which occur after submittal of the Loan application, except as specified in Special Conditions, if any, as detailed in this Agreement, b) deviations in the Project work scope from what was approved by the Energy Commission, c) changes in the Borrower's facility and/or equipment which occur after submittal of the Loan application, including, but not limited to maintenance, operations, schedules, employees and facility alterations and expansions, d) deviations, omissions or errors found in the loan application and technical study after submittal of the Loan application. The Borrower is responsible for ensuring the accuracy of the information contained in its loan application and technical study. In the event annual energy cost savings resulting from the Project, as determined by the Energy Commission, fail to equal or exceed the amount due under this Agreement, this Agreement may be renegotiated to assure that the repayment amount does not exceed the actual energy savings or avoided costs resulting from the Project, and the Promissory Note will be revised accordingly. In no event, however, will the number of semiannual installments payable hereunder and under the Promissory Note exceed forty.

C. The Borrower shall obtain and maintain in its records any and all permits and licenses required to install or operate the Project and shall comply with all local, state, and federal laws, rules and codes concerning the Project. The Borrower shall maintain the Project in good working order for the duration of the Loan and shall insure that staff members are provided appropriate training on the operation and maintenance of the Project. The Borrower shall maintain insurance on the Project and, in the event of any casualty loss covered by such insurance policy, apply the proceeds to the repair of the Project or, with the approval of the Energy Commission, may use the insurance proceeds to install alternate projects to generate alternative energy cost savings to repay the Loan.

D. The Borrower agrees to provide the Energy Commission with the following information for three years following completion of the Project, unless the Energy Commission requests a longer period: (1) the annual computation, required by Section 25414 of the Energy Conservation Assistance Act, of energy cost savings for the most recent fiscal year, calculated in the manner and provided in the format prescribed by the Energy Commission; and (2) any information or change in assumptions or operations which might affect the Energy Commission's initial determination of energy savings.

E. The Borrower authorizes any official or agent of the Energy Commission or the State to conduct physical inspections of the Project before the commencement; during construction, installation and implementation of the Project; and at any time prior to the complete repayment of the Loan.
In each contract entered into with suppliers of goods and services to install, conduct, or operate the Project, including management services, the Borrower shall include terms which allow any officer or agent of the Energy Commission or the State access to the Project site and to any books, documents, or records directly relevant to the Project.

F. If, prior to final repayment of the Loan, the Borrower sells the equipment or material installed with the proceeds of the Loan or sells the building, facility or system in which the Project has been implemented, then the Borrower shall apply the sale proceeds to repay any remaining balance due under this Agreement in full at the time of such sale. The Borrower shall notify the Energy Commission within five business days of the date on which the Borrower enters into an agreement to effect such transaction. The Borrower shall repay the Energy Commission within 30 calendar days of receiving an invoice from the Energy Commission for the balance due.

G. In accordance with Section 25415 of the Energy Conservation Assistance Act, the Borrower covenants to take such action as may be necessary to include all payments due hereunder in its annual budget and to make the necessary annual appropriations for all such payments. The obligation of the Borrower to make such payments shall be limited to the savings realized by the Borrower as a result of implementing the Project funded by the Loan.

10. DEFAULT

A. The Borrower’s failure to comply with any of the terms of this Agreement shall constitute a breach of this Agreement and an event of default. In such case, the Energy Commission may declare this Agreement to have been breached and be released from any further performance hereunder.

B. In the event of any default or breach of this Agreement by the Borrower, the Energy Commission, without limiting any of its other legal rights or remedies, may, to the extent permitted by law, declare the Promissory Note evidencing this Loan to be immediately due and payable.

11. TERMINATION

A. With Cause

The Energy Commission may, at its option, terminate this Agreement with cause in whole or in part, at any time prior to the funding of the Loan, upon giving five (5) days advance notice in writing to the Borrower. "Cause" includes without limitation:
1) Failure to perform or breach of any of the terms or covenants at the time and in the manner provided in this Agreement; or

2) Significant change in Energy Commission or State policy such that the work or product being funded would not be supported by the Energy Commission; or

3) Reorganization to a business entity unsatisfactory to the Energy Commission.

B. Without Cause

The Energy Commission may, at its option, terminate this Agreement without cause in whole or in part, at any time prior to the funding of the Loan, upon giving thirty (30) days advance notice in writing to the Borrower.

12. REPORTING

A. Progress reports are due each calendar quarter until Project completion. At a minimum, Borrower shall submit progress reports in accordance with the following schedule:

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<th>PROGRESS REPORT SCHEDULE</th>
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<td>July 1 through September 30</td>
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<td>October 1 through December 31</td>
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B. A final report is due no later than (sixty) 60 days after Project completion.

C. The Energy Commission will not process an invoice unless the Borrower's report submittals are up to date.

D. If requested by the Energy Commission, Borrower shall submit, within ten (10) days after the Energy Commission's written request, a status report on its activities to date, pursuant to this Agreement.

E. Reports shall be in a format as determined by the Energy Commission.

F. The Borrower shall submit reports regarding energy savings as described in Section 9.D above.
13. GENERAL TERMS

A. Indemnification by the Borrower. The Borrower agrees to indemnify, defend, and save harmless the Energy Commission, the State, and their officers, agents, and employees from any and all claims, losses, or costs (including reasonable attorney fees) arising out of, resulting from, or in any way connected with the Loan or this Agreement, or the financing or the operation of the facilities financed with the Loan.

B. Ownership of Equipment and Material. All equipment and material acquired under this Agreement shall become the property of the Borrower at time of purchase. The Borrower shall obtain and maintain in its records a written waiver of all claims, other than those previously made in writing and still unsettled, from each contractor who supplies goods and services, including management services, in connection with the Project.

C. Independent Capacity. The Borrower, and the agents and employees of the Borrower, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the Energy Commission or the State of California.

D. Assignment. Without the written consent of the Energy Commission, this Agreement is not assignable or transferable by the Borrower either in whole or in part. The Energy Commission may assign its rights under this Agreement for security purposes, and in such event the assignee of this Loan Agreement, including the bond trustee of any bonds which may be secured by repayment of this Loan, shall be entitled to enforce the provisions hereof and shall be a third party beneficiary of this Agreement.

E. Time of the Essence. Time is of the essence in this Agreement. Borrower is required to take timely actions which, taken collectively, move to completion of the purpose for which this Loan was awarded. The Commission Project Manager will periodically evaluate the progress toward completion. If the Commission Project Manager determines that the Borrower is not progressing toward completion within one (1) year after the effective date of this Agreement, the Commission Project Manager may, without penalty or prejudice to any of the Energy Commission’s other remedies, terminate this Agreement.

F. Amendment. No amendment or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.
G. **Severability.** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

H. **Governing Law and Venue.** This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California. Venue shall be in Sacramento County.

I. **Non-discrimination.** During the performance of this Agreement, the Borrower and its contractors and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and family care leave. The Borrower and its contractors and subcontractors shall insure the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Borrower and its contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this agreement by reference and made a part hereof as if set forth in full. The Borrower and its contractors and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. The Borrower and its contractors shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

J. **Incorporation of Energy Conservation Assistance Act.** The Energy Conservation Assistance Act, together with any applicable rules, regulations or procedures authorized by such statute, is incorporated by reference in this Agreement.

K. **Borrower Authorization.** The Borrower certifies it has full power and authority to enter into this Agreement, and this Agreement has been duly authorized, executed and delivered by the Borrower. The Borrower acknowledges the resolution of its governing body or other official action authorizing it to enter into this Agreement. The Borrower also authorizes such further acts as are necessary, including execution of the Promissory Note, to implement and further the intent of this Agreement.
L. **Prevailing Wage.** The Borrower shall comply with Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code relating to the payment of prevailing wage for work performed on the Project financed in whole or in part with the proceeds of the Loan.

M. **Funding Eligibility.** By signing this Agreement, Borrower certifies it is eligible to receive state funding under all applicable laws, including but not limited to Chapter 2.8 “Project Labor Agreements”, of Part 1, of Division 2 of the Public Contract Code.

14. **NOTICE**

Any notice required to be given to the Energy Commission hereunder shall be sent to the person and address listed under Legal Notices in Exhibit G, Contacts, or at such other address as the Energy Commission may designate in writing to the Borrower. Any notice required to be given to the Borrower hereunder shall be sent to the address shown for Borrower in this Agreement, or at such other address as the Borrower shall designate in writing to the Energy Commission. Notice to either party may be given using the following delivery methods: U.S. mail, overnight mail, or personal delivery, providing evidence of receipt, to the respective parties identified in this Agreement. Delivery by fax or e-mail is not considered notice for the purposes of this Agreement. Notice shall be effective when received, unless a legal holiday for the State commences on the date of the attempted delivery in which case the effective date shall be postponed 24 hours, or whenever the next business day occurs.
ASBESTOS & OTHER HAZARDOUS MATERIALS CERTIFICATION

RFP/RFQ

Merced CCD – Los Banos Campus Solar PV Installation

Contractor hereby certifies that no Asbestos, or Asbestos-Containing Materials, polychlorinated biphenyl (PCB), or any material listed by the federal or state Environmental Protection Agency or federal or state health agencies as a hazardous material, or any other material defined as being hazardous under federal or state laws, rules, or regulations, “New Hazardous Material” shall be furnished, installed, or incorporated in any way into the Project or in any tools, devices, clothing, or equipment used to affect any portion of Contractor's work on the Project for District.

Contractor further certifies that it has instructed its employees with respect to the above-mentioned standards, hazards, risks, and liabilities.

Asbestos and/or Asbestos-Containing Materials shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite. Any or all material containing greater than one-tenth of one percent (0.1%) Asbestos shall be defined as Asbestos-Containing Materials.

Any disputes involving the question of whether or not material is New Hazardous Material shall be settled by electron microscopy or other appropriate and recognized testing procedure, at District’s determination. The costs of any such tests shall be paid by Contractor if the material is found to be New Hazardous Material.

All work or materials found to be New Hazardous Material or work or material installed with “New Hazardous Material” containing equipment will be immediately rejected and this work will be removed at Contractor's expense at no additional cost to District.

Contractor has read and understood the document Hazardous Materials Procedures & Requirements, and shall comply with all the provisions outlined therein.

Date: ____________________________________________

Legal Name of Contractor: ____________________________________________

Authorized Signature: ____________________________________________

Print Name: ____________________________________________

Title: ____________________________________________

[End]
# Merced College - Los Banos Campus Solar Proposal Submittal Checklist - For Contractors

Instructions: Complete the blue cells to ensure all required proposal items are submitted.

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<th>Required Item</th>
<th>Required Format</th>
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<th>Notes</th>
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<td><strong>Proposal</strong></td>
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<tr>
<td>Cover Letter</td>
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<tr>
<td>PART I Table of Contents</td>
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<td>PART II Project Narrative</td>
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<td>PART III Qualifications and Experience</td>
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<td>Statement of Qualifications</td>
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<td>Documentation of current and valid required Contractor’s License(s).</td>
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<td>PART IV Key Personnel</td>
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<td>PART V Pricing Proposal and Production Form</td>
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<td>Audited financial statements for the past 3 years.</td>
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