

**ITEM NO.**  
**5.2**

**ENERGY SERVICES AGREEMENT**

**COVER PAGE**

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

Pacifico Power LLC (“**Contractor**”)  
 Attn: Jon Hirt  
 30900 Rancho Viejo Rd. Ste. 230  
 San Juan Capistrano, CA 92675  
 Phone No.: 949-436-2482  
 Email Address: jonhirt@pacificopower.com

Santa Clarita Valley Water Agency (“**Owner**”)  
 Attn: Matt Stone  
 27234 Bouquet Canyon Road  
 Santa Clarita, CA 91350  
 Phone No.: 661-513-1211  
 Email Address: mstone@scvwa.org

<p>A. The “<b>Contract Effective Date</b>” shall be <i>(state date on which the Agreement shall become effective)</i>:</p> <p style="text-align: center;"><b>MONTH DAY YEAR</b></p>	<p>B. The “<b>Substantial Completion Date</b>” shall be:</p> <p style="text-align: center;">no later than June [ ], 2024, as may be adjusted pursuant to Article 6 of the General Conditions. Whether substantial completion has occurred is measured in accordance with the criteria set forth on Exhibit M.</p> <p style="text-align: center;">The “<b>Final Project Completion Date</b>” shall be:</p> <p style="text-align: center;">Sixty (60) days after the Substantial Completion Date. The Final Project Completion Date occurs when the Project is 100% completed.</p>
<p>C. “<b>Required License</b>” (see Energy Services Agreement, § 1): In accordance with Public Contract Code section 3300, Contractor shall have, beginning on the RFP Response Deadline and throughout the Contract Term, the following license classification issued by the California Contractors State License Board <i>(state license classification(s))</i>:</p> <p style="text-align: center;">B and C-10</p>	
<p>D. “<b>Contract Sum</b>” to be paid to Contractor (see Energy Services Agreement, § 4):</p> <p style="text-align: center;">Two Million Five Hundred and Fifty-Seven Thousand, nine hundred and sixty-eight dollars, \$2,557,968 Contract Sum is based on the delivery of a Battery Energy Storage (“<b>BESS</b>”) of <b>571.2 kW</b>, <b>2284.8 kWh</b> size manufactured by Tesla with model number Megapack 2 XL, 4-Hour, EC14 (1848844-XX-Y).</p>	<p>E. “<b>Inspection Distance Limitation</b>” (see General Conditions, § 4.3):</p> <p style="text-align: center;">Intentionally left blank</p> <p>F. <b>Liquidated Damages</b> (see Energy Services Agreement, § 3):</p> <p style="text-align: center;">Delay Liquidated Damages: \$438 per day</p>
<p>G. Contractor Required Insurance (see Energy Services Agreement, § 10, General Conditions, Art. 10) <i>(mark each required from Contractor)</i>:</p>	

- 1. Commercial general liability, with additional insured endorsement and minimum limits of \$2,000,000 per occurrence/\$4,000,000 aggregate
- 2. Commercial automobile liability, with minimum limits of \$1,000,000 combined single limit
- 3. Statutory workers' compensation as required by State law and employers' liability of at least \$1,000,000
- 4. Errors and omissions insurance, with minimum limits of \$1,000,000 per occurrence
- 5. Builder's risk/course-of-construction: Contractor to provide

**H. "Project Site" or "Site":**

Rio Vista Water Treatment Plant located at 27234 Bouquet Canyon Road, Santa Clarita, CA 91350

**COVER PAGE**  
**continued**

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

- Cover Page
- Agreement
- Exhibit A – General Terms and Conditions
- Exhibit B – Scope of Work and Technical Specifications
  - Attachment A – Preliminary Engineering Design
  - Attachment B – System Site Assessment Table
  - Attachment C – Project Schedule
  - Attachment D – Commissioning Schedule(s)
- Exhibit C – Progress Payment Schedule
- Exhibit D – Manufacturers’ Warranties
- Exhibit E – Payment Bond
- Exhibit F – Performance Bond
- Exhibit G – Relevant Contact List
- Exhibit H – Escrow Agreement for Security Deposit In Lieu of Retention
- Exhibit I – Waiver and Release Forms
- Exhibit J – Certification Regarding Claim
- Exhibit K – Operations and Maintenance Agreement
- Exhibit L – Conditional Reservation Letters
- Exhibit M – Requirements for Substantial Completion

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

CONTRACTOR

OWNER

By: \_\_\_\_\_  
Print Name: NAME  
Title: TITLE

By: \_\_\_\_\_  
Print Name: Matthew Stone  
Title: General Manager

## AGREEMENT

This Energy Services Agreement for the engineering, system design, fabrication and installation of a battery energy storage system (“**Agreement**”) is by and between Santa Clarita Valley Water Agency, a Water Agency organized and existing under the laws of the State of California (“**Owner**” or “**Agency**”), and Pacifico Power LLC, a Delaware LLC a contractor licensed by the State of California (“**Contractor**”). Owner and Contractor are sometimes hereinafter referred to individually as a “**Party**” and together as the “**Parties**”.

### RECITALS:

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

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

**WHEREAS**, through this Agreement, Owner intends to contract for the engineering, system design, fabrication and installation of a battery energy storage system and all equipment components (the “**BESS**” or the “**System**”) that will result in energy savings to Owner and which shall be a supply of energy to Owner (the “**Project**”) at the site as set forth in Section H of the Cover Page of this Agreement (the “**Project Site**” or “**Site**”), consistent with the terms of Government Code section 4217.10, *et seq.*;

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

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

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

#### **1. Scope of Work; Subcontractors.**

Contractor agrees to furnish all engineering, system designs, labor, equipment and materials, including tools, implements, and appliances required, and to perform all the Work (as defined in Exhibit A) in a good and workmanlike manner, free from any and all liens and claims from mechanics, material suppliers, subcontractors, artisans, machinists, teamsters, freight carriers, and laborers required for the Project as defined by the Contract Documents (except to the extent such liens and claims arise from Owner’s failure to pay undisputed amounts due and owing hereunder), all in compliance with the objectives, descriptions and specifications of Owner, and the Contract Documents relating thereto. The scope of Contractor’s Work and the Project is more fully and specifically defined in Exhibit B – Scope of Work and Technical Conditions, attached hereto (the “**Scope of Work**”).

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

#### **2. Distribution Utility Upgrades.**

The Parties acknowledge that the Work excludes any Distribution Utility Upgrades, and the Contract Sum excludes any costs associated with Distribution Utility Upgrades. “Distribution Utility Upgrades” shall mean that scope of

work and associated costs that the Distribution Utility requires on the Distribution Utility side of the Distribution Utility meter in order for the BESS to interconnect to the Distribution Utility system. "Distribution Utility" shall mean Southern California Edison.

### **3. Time to Complete and Liquidated Damages.**

Time is of the essence in this Agreement, and, subject to the terms of the Contract Documents, the date for Substantial Completion of the Project shall be the Substantial Completion Date listed in Section B on the Cover Page. Failure to Substantially Complete the Work in accordance with Exhibit M by the Substantial Completion Date and in the manner provided for by the Contract Documents shall subject Contractor to Delay Liquidated Damages. Because the actual occurrence of damages and the actual amount of the damages which Owner would suffer if the Work were not completed within the specified times set forth are dependent upon many circumstances and conditions which could prevail in various combinations, and it is impracticable and extremely difficult to fix the actual damages, the Parties acknowledge and agree that (a) the Delay Liquidated Damages contemplated by this Section represent a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from such failure to timely complete the Work, (b) any sums creditable or payable under this Section are in the nature of liquidated damages, and not a penalty, and are fair and reasonable, and (c) Contractor's payment of Delay Liquidated Damages pursuant to and in accordance with this Section shall constitute the sole and exclusive remedy of Owner and the sole and exclusive liability and exclusive measure of damages of Contractor for Contractor's failure, if any, to meet the requirements of Exhibit M on or prior to the Substantial Completion Date.

Accordingly, the Parties agree that the following dollar figures shall be the amount of damages which Owner shall directly incur upon failure of Contractor to complete the Work in accordance with Exhibit M within the time specified: the dollar amount set forth in Section F of the Cover Page for each calendar day by which the Work, or portion thereof, is delayed beyond the Substantial Completion Date (the "**Delay Liquidated Damages**"), provided that Contractor's total liability for liquidated damages with respect to the Project Site under the Agreement shall be limited to twelve percent (12%) of the portion of the Contract Sum applicable to the Project Site. Subject to the offset right below, Delay Liquidated Damages will be payable to Owner within thirty (30) days of the receipt of invoices from Owner.

Further, Contractor is committed to helping Owner secure all of the benefits associated with the construction of the Project, including the California Self Generation Incentive Program ("**SGIP**") and the federal Inflation Reduction Act with respect to prevailing wage and apprenticeship requirements ("**IRA**"). Subject to Contractor's right to an extension of any time periods set forth in the Agreement as a result of Excusable Delays, Contractor recognizes that delays in the timing of construction and completion of the Project may impair Owner's receipt of SGIP and IRA benefits. Therefore, the parties agree that if Contractor fails to properly or timely complete the Work of the Project within sixty (60) days prior to the Reservation Expiration Date (as shown on and defined in the Conditional Reservation Letters from the SGIP administrator attached hereto as Exhibit L), as may be extended by SGIP, including submission of any application or other materials required for Project to qualify for or participate in the SGIP, and such failure is not the result of an Excusable Delay, then Contractor shall pay as additional liquidated damages to Owner an amount equal to 50% of the total Reserved Incentive Amount as shown on and defined in the Conditional Reservation Letters from the SGIP administrator attached hereto as Exhibit L; provided, however, that if the Project fails to qualify for the SGIP solely as a result of the acts or omissions of Owner, or for other causes beyond the control and contractual obligations of Contractor, then Contractor shall not be obligated to pay the liquidated damages pursuant to this paragraph. Except as set forth above, Contractor is not responsible for any failure of Owner to secure any benefits under SGIP or IRA.

If Contractor becomes liable under this Section for Delay Liquidated Damages that are not disputed in good faith, Owner shall have the right to offset any such Delay Liquidated Damages owed by Contractor to Owner from amounts owed by Owner to Contractor under Progress Payments that accrue after the date of Contractor's liability for such Delay Liquidated Damages.

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

#### **4. Contract Sum.**

As full and complete payment for the Project and Contractor's other obligations under the Contract Documents, Owner shall pay to Contractor in the manner specified in this Section and Section 5, and Contractor shall accept as payment in full by Owner for the delivery of the Project and its other obligations under the Contract Documents, the contract sum stated in Section D on the Cover Page and as may be adjusted in accordance with the provisions of this Agreement (the "**Contract Sum**"). Any change in the Contract Sum will be subject to the change order request process as set forth in Exhibit A, Article 6 of this Agreement.

#### **5. Other Payment Terms.**

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

Owner shall pay Contractor progress payments pursuant to the following terms and conditions. Contractor is responsible for providing the working capital necessary to undertake the Work until the Progress Payments are due.

a. For services satisfactorily performed and after receipt of submitted applications for payment in accordance with Article 8 of Exhibit A, Owner shall pay Contractor progress payments ("**Progress Payments**" and each individually a "**Progress Payment**") in accordance with the terms of the Contract Documents at the office of Contractor or to such other person or at such other place as Contractor may from time to time designate in writing. The total Progress Payments made shall not exceed the amount of the Contract Sum. The Progress Payments shall be commensurate with the milestone achieved, invoiced, and signed off by Owner's Inspector or other designated employee to date, all in accordance with the procedures set forth in the General Conditions. Additional terms regarding Progress Payments are set forth in the General Conditions.

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

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

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

#### **6. Changes.**

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

#### **7. Term and Termination.**

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

## **8. Prevailing Wages and Apprentices.**

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

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

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

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

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

c. **Labor Tax Credit Requirements.** This Project is also subject to applicable provisions of The Inflation Reduction Act (“IRA”) (H.R. 5376) concerning the payment of prevailing wages and the use of apprentices. Contractor and its subcontractors shall comply with all applicable provisions of the IRA with respect to the prevailing wage and apprenticeship requirements set forth therein. As of the date of this Agreement, Owner and Contractor agree that the following provisions set forth the obligations of Contractor pursuant to the IRA (in the event of any material change in the following requirements, Contractor will comply with such changes to the extent requested by Owner and subject to an appropriate change order with respect to any increase in Contractor’s cost):

i. In connection with the construction, alteration, or repair of the Project, Contractor shall, and shall cause its Subcontractors to (A) pay Prevailing Wages to each laborer and mechanic; and (B) ensure that not less than [12.5%] of the total Labor Hours of the construction, alteration, or repair work is performed by Qualified Apprentices; and, if Contractor (or any Subcontractor) employs four or more individuals to perform construction, alteration, or repair work, ensure (or require such subcontractor to ensure) that at least one Qualified Apprentice performs such work. Notwithstanding the foregoing, Contractor shall be treated as meeting the apprenticeship requirements if, (x) Contractor’s failure to meet such requirements was not due to intentional disregard, and Contractor makes payment to Owner (which Owner shall remit to Treasury or the IRS) in an amount equal to the product of (1) \$50, and (2) the Labor Hours Shortfall, or (y) Contractor demonstrates (1) that it has requested qualified apprentices from a Registered Apprenticeship Program and such request has been denied (provided, that such denial is not the result of a refusal by Contractors or Subcontractors to comply with the established standards and requirements of the Registered Apprenticeship Program) or (2) the Registered Apprenticeship Program fails to respond to such request within five (5) Business Days after the date on which it received such request.

ii. Without duplication of the foregoing, to the extent of any determination by any applicable taxing authority that the Project has failed to satisfy the Labor Tax Credit Requirements directly as a result of the failure by Contractor or any of its Subcontractors to comply with its or their obligations under Section 8(c)(i) of this Agreement, Contractor shall within thirty (30) days of written notice from Owner, pay or reimburse Owner for any Cure Payment required to be made (whether to any laborer or mechanic or to Treasury or the IRS), and Owner shall remit to the applicable taxing authority, laborer or mechanic. Such Cure Payment(s) shall be Owner’s sole remedy and Contractor’s sole obligation in the event Contractor fails to comply with its obligations set forth in this Section 8(c).

iii. Definitions. For purposes of this Section, the following defined terms shall apply:

- A. **“Cure Payment”** means a payment made to cure a failure to comply with the Labor Tax Credit Requirements described in Section 45(b)(7)(B) and/or Section 45(b)(8)(D)(i) of the Code.
- B. **“IRS”** means the Internal Revenue Service, or any successor agency thereto.
- C. **“Labor Hours”** means the total number of hours devoted to the performance of construction, alteration, or repair work by any individual employed by Contractor or any Subcontractor, other than any hours worked by foremen, superintendents, owners, or persons employed in a bona fide executive, administrative, or professional capacity.
- D. **“Labor Hours Shortfall”** means the difference between (i) the Labor Hours required to be performed by Qualified Apprentices, and (ii) the actual Labor Hours performed by Qualified Apprentices.
- E. **“Labor Tax Credit Requirements”** means the “Prevailing Wage Requirements” and the “Apprenticeship Requirements” described in Code Section 48(a)(10) and Code Section 48(a)(11), as supplemented by IRS Notice 2022-61.
- F. **“Prevailing Wages”** means wages at rates (including both hourly wage rates and fringe benefit rates) not less than the prevailing rates for the applicable classification of laborers or mechanics in the locality in which the Project is located, as published by the United States Secretary of Labor on [www.sam.gov](http://www.sam.gov) or pursuant to a prevailing wage determination (in accordance with Section 45(b)(7) of the Code).
- G. **“Qualified Apprentice”** means an individual who is employed by the Contractor or by any Subcontractor and who is participating in a Registered Apprenticeship Program.



- H. **“Registered Apprenticeship Program”** means an apprenticeship registered under the Act of August 16, 1937 (commonly known as the “National Apprenticeship Act”; 50 Stat. 664, chapter 663; 29 U.S.C. 50 et seq.) that meets the standards of subpart A of part 29 and part 30 of title 29, Code of Federal Regulations.
- I. **“Treasury”** means the U.S. Department of the Treasury.

## **9. Working Hours.**

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

## **10. Indemnification, Insurance and Bonds.**

### **a. Indemnification.**

Contractor represents and warrants that Contractor has the legal right to license any and all copyrights, designs and other intellectual property embodied in plans, specifications, studies, drawings, estimates or other documents that Contractor or its consultants prepares or causes to be prepared pursuant to this Agreement. Contractor shall indemnify, defend and hold Owner harmless against claims brought by a party other than Owner pursuant to this Section for any breach of this representation due to Contractor’s negligence, recklessness or willful misconduct to the extent such claim does not relate to modifications to intellectual property hereunder or combinations of intellectual property hereunder with other intellectual property, in each case, by Owner.

Contractor shall defend, indemnify, and hold harmless Owner, the governing Board of Owner, each member of the Board, and their officers, agents and employees against claims arising out of, pertaining to, or relating to, (i) any negligent or intentional (unless in accordance with applicable law) release of hazardous materials brought onto the Site by Contractor or Contractor’s officers, employees, or consultants; or (ii) personal injury, death or property damage caused by the negligence or willful misconduct of Contractor, Contractor’s officers, employees, or consultants in performing or failing to perform the work, services, or functions provided for, referred to, or in any way connected with this Agreement, except to the extent such claims are due to the negligence or willful misconduct of Owner or its officers, agents or employees.

Owner shall defend, indemnify, and hold harmless Contractor, and its officers, agents and employees against claims arising out of, pertaining to, or relating to (i) the release, pollution or contamination due to pre-existing hazardous materials or any unknown or unforeseen hazardous materials at the Site and (ii) bodily injury, death or physical property damage caused by Owner’s negligence or willful misconduct, except to the extent such claims are due to the negligence or willful misconduct of Contractor or its officers, agents or employees.

For purposes of this Section 10(a) only, “claims” means any and all claims, demands, actions and suits brought by a party other than Owner or Contractor, as applicable, (*i.e.*, third parties) for any and all losses, liabilities, costs, expenses, damages and obligations. In the event that the indemnifying party fails to promptly undertake the defense of a Claim, the indemnified party will further be entitled to its attorneys’ fees, experts’ fees, and litigation costs incurred in defense of a claim. This indemnification shall be in addition to the other indemnification provisions contained in the Contract Documents.

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

The following insurance shall be maintained by Contractor in full force and effect during the entire period of performance of this Agreement, including any extensions, and shall be written on an "occurrence" basis: Commercial general liability insurance, excluding coverage for motor vehicles, shall be in amounts not less than Four Million Dollars (\$4,000,000) general aggregate, Four Million Dollars (\$4,000,000) personal and advertising injury aggregate, with a per occurrence limit of Two Million Dollars (\$2,000,000) (total limits required may be satisfied with an excess or umbrella policy); Automobile liability insurance covering motor vehicles shall be in an amount not less than One Million Dollars (\$1,000,000) combined single limit.

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

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

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

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

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

d. Employer's Liability Insurance. Prior to the commencement of services under this Agreement, Contractor shall furnish to Owner satisfactory proof that Contractor and all engineers, experts, consultants and subcontractors Contractor intends to employ have taken out employer's liability insurance with an insurance carrier satisfactory to Owner. During the course of Contractor's services, if Contractor ever intends to employ additional or different engineers, experts, consultants or subcontractors, before so employing them Contractor shall furnish such satisfactory proof of insurance to Owner. Such insurance shall be maintained in full force and effect during the period covered by this Agreement including any extensions of time. If Contractor is self-insured, Contractor shall furnish a Certificate of Permission to Self-Insure and a Certificate of Self-Insurance satisfactory to Owner. Any such worker's compensation insurance shall include a provision that Owner will receive 30 days' notice of cancellation and 10 days' written notice of non-payment of premium.

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

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

f. Bonds. Contractor shall provide performance and payment bonds as required by the General Conditions. Notwithstanding anything to the contrary in the Contract Documents, the liability of the surety on the performance bond will cease two (2) years after completion of construction on the Project. Any warranty or guarantee required of Contractor by the Contract Documents shall be the sole obligation of Contractor after termination of the surety's performance bond liability.

#### **11. Representations, Warranties and Covenants of Owner.**

Owner represents and warrants to Contractor that:

a. Owner is a public water agency, duly organized and validly existing under the Constitution and laws of the State of California with authority to enter into this Agreement and to perform all of its obligations hereunder.

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

#### **12. Representations and Warranties of Contractor.**

Contractor represents and warrants to Owner that:

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

b. Contractor has full power, authority and legal right to enter into and perform its obligations under this Agreement, and the execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate actions on the part of Contractor and do not require any further approvals or consents;

c. The execution, delivery, and performance of this Agreement do not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement, or instrument to which Contractor is a party by which it or its property is bound and which would cause a materially adverse effect on Contractor's ability to perform under this Agreement;

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

### **13. Substantial Completion; Project Acceptance.**

The requirements for Contractor to substantially complete the Project on or before the Substantial Completion Date are set forth in Exhibit M (“**Substantial Completion**”). Contractor shall provide written notice to Owner once Substantial Completion has been met, and Owner shall provide a written response to Contractor within five (5) days of receipt of such notice confirming that Substantial Completion has been achieved or explaining the reasons Substantial Completion has not been achieved. If Substantial Completion has not been achieved, Contractor shall promptly remedy any issues and resubmit the notice to Owner that the requirements of Substantial Completion have been met and the same process shall be repeated until Owner and Contractor agree that Substantial Completion has been achieved.

Punch List items will be completed no later than the Final Project Completion Date.

After Contractor’s achievement of Substantial Completion and Contractor’s completion of all Punch List items and those items set forth in Article 7 of Exhibit B, Owner shall acknowledge, accept and confirm final inspection and completion of the Project by delivering a written notice of acceptance (“Certificate of Acceptance”) to Contractor setting forth the Final Project Completion Date, and thereafter recording a Notice of Completion in accordance with the General Conditions.

a. Owner shall issue the Certificate of Acceptance and have the Notice of Completion recorded when the entire Project including Contractor’s punch list(s) and Owner’s final review comments shall have been completed to the satisfaction of Owner. The Project may only be accepted as complete by action of Owner’s Governing Board.

b. A final walk through to determine completion of the Project and to record the Notice of Completion shall occur within [ten (10)] days of Contractor’s valid claim to Owner that the Project is complete except for minor corrective and/or incomplete items. Any erroneous claims of completion by Contractor resulting in a premature walk through shall be at Contractor’s sole cost and expense.

### **14. Entire Agreement.**

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

### **15. Execution of Other Documents.**

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

### **16. Execution in Counterparts.**

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

**17. Binding Effect.**

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

**18. Severability/Governing Law.**

If a court of competent jurisdiction shall hold any provision of the Contract Documents invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision hereof. The laws of the State of California shall govern the Contract Documents. The venue for any dispute arising out of or relating to this Agreement shall be in the appropriate Superior Court in Los Angeles County, California.

**19. Amendments.**

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

**20. Assignment of Contract.**

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

**21. Notices.**

Any notices or filings required to be given or made under this Agreement shall be served, given, or made in writing upon Owner or Contractor, as the case may be, by email (provided that email notice will not be effective until confirmed by return email from the recipient), personal delivery or commercial overnight delivery to the respective addresses given below, or at such address as such Party may provide in writing from time to time.

If to Contractor:

Jon Hirt  
30900 Rancho Viejo Rd., Ste. 230,  
San Juan Capistrano, CA 92675  
Phone: 949-436-2482  
jonhirt@pacifico-power.com

If to Owner:

Santa Clarita Valley Water Agency  
Attn: Matt Stone  
Phone No.: 661-513-1211  
Email Address: mstone@scvwa.org

**22. Exhibits Incorporated.**

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

**23. Headings.**

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

**24. Terms Not Defined.**

Capitalized terms used in this Agreement that are not defined shall have the same meaning as in the General Conditions.

**EXHIBIT A  
TO ENERGY SERVICES AGREEMENT**

**EXHIBIT A - GENERAL TERMS AND CONDITIONS**

**1. ARTICLE 1 - GENERAL CONDITIONS**

**1.1. BASIC DEFINITIONS**

1.1.1. **The Contract Documents.** The “Contract Documents” consist of the (i) Energy Services Agreement between Owner and Contractor (the “**Agreement**”), (ii) the Exhibits to this Agreement, including the General Conditions of the Agreement, Scope of Work, Drawings, Specifications, addenda thereto (whether or not attached due to their size), Payment Bond, Performance Bond, as well as (iii) required insurance certificates, additional insured endorsement and declarations page, Non-Collusion Declaration, Sanctioned Country Contracting Act Certification, Certificate Regarding Worker’s Compensation Form, Certificate Regarding Alcoholic Beverage and Tobacco-Free Site Policy, Certificate Regarding Drug-Free Workplace, and written modifications executed by both Parties after execution of the Agreement.

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

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

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

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

1.1.6. **The Specifications.** The Specifications are that portion of the Contract Documents consisting of the written requirements for material, equipment, construction systems, instructions, quality assurance standards, workmanship, and performance of related services. “Specifications” shall refer to Exhibit B – Scope of Work and Technical Specifications.

1.1.7. **Punch Lists.** “Punch List” means a list of minor items on the Project that remains for Contractor to complete or correct following the Substantial Completion Date, including all items necessary for the Project to be 100% complete.

**1.2. EXECUTION, CORRELATION, AND INTENT.**

The Contract Documents are complementary and are intended to include all items required for the proper execution and completion of the Work. Any item of work mentioned in the Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Specifications, shall be provided by Contractor as if shown or mentioned in both. In the event there is a discrepancy between the various Contract Documents, the Agreement shall control, provided, however, that if there is a more specific provision within the Contract Documents that applies with respect to the discrepancy, it will control over a general provision.

### **1.3. OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS, AND OTHER DOCUMENTS.**

The Drawings, Specifications, and other documents prepared on behalf of Owner are instruments of the services of Contractor and its consultants and will become the property of Owner upon Contractor's receipt of final payment from Owner hereunder. Contractor may retain one contract record set.

## **2. ARTICLE 2 – OWNER**

### **2.1. DEFINITION.**

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

### **2.2. EXISTING UTILITY LINES; SITE SURVEY; CONTRACTOR RELIANCE.**

Owner has provided Contractor with the location of all utility installations at the Project Site which are known to Owner, as well as a copy of any title report or survey for the Project Site that is in Owner's possession. Owner does not represent or warrant to Contractor the accuracy of such documentation or that there are no utility installations of which Owner is not aware. Contractor will do such due diligence as it deems necessary to avoid damage to utility installations, including the search of available databases of underground utility installations such as Underground Service Alert.

Notwithstanding Government Code section 4215, and to the fullest extent allowed by law, Contractor shall be responsible to remove, relocate, and protect utilities known by Contractor to be located on the Project Site as necessary to perform the Work. Contractor may be assessed liquidated damages in accordance the Contract Documents for delay in completion of the Project caused by Contractor's failure to timely remove or relocate utility facilities that were disclosed by Owner or readily identifiable through a search of available databases. In the event that utility installations were unknown and not readily identifiable as of the Effective Date, Contractor will be entitled to a CO to address any Excusable Delay, Project delay or additional cost as a result of such utility installations. Contractor shall be solely responsible to timely notify all public and private utilities serving the affected Project Site before commencing the Work on the Project Site. Contractor shall notify and receive clearance from any cooperative agency, such as Underground Service Alert, in accordance with Government Code section 4216, et seq. Contractor shall promptly provide a copy of all such notifications to Owner or its designated representative.

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

Notwithstanding anything to the contrary contained herein, to the extent that there is a subsurface condition that was not disclosed or only partially disclosed by Owner or not identifiable through reasonable due diligence by Contractor, Contractor will be entitled to a CO to address any Excusable Delay, Project delay or additional cost as a result of such subsurface condition.

### **2.3. OWNER'S RIGHT TO STOP THE WORK.**

If Contractor there exists a safety issue that is an imminent threat to persons or property, Owner, by written order signed personally or by an agent specifically so empowered by Owner in writing, may order Contractor to stop the Work or any portion thereof, until the cause for such order has been eliminated.

### **2.4. OWNER'S RIGHT TO CARRY OUT THE WORK.**

If Contractor defaults in accordance with Section 13.1 of this Exhibit A and fails (within a seven-day period after receipt of written notice or the time period expressly stated in the written notice from Owner) to commence and continue correction of such default with diligence and promptness, Owner may correct such default by whatever reasonable method Owner may deem expedient without prejudice to other remedies Owner may have, and may withhold for the cost of such correction.

## **3. ARTICLE 3 - CONTRACTOR**

### **3.1. DEFINITION.**

“**Contractor**” is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term “Contractor” means Contractor or Contractor’s authorized representatives.

### **3.2. SUPERVISION AND CONSTRUCTION PROCEDURES.**

3.2.1. **Contractor.** Contractor shall supervise and direct the Work in accordance with prudent industry practice. Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, procedures, and coordinating all portions of the Work under the Agreement, unless Contract Documents give other specific instructions concerning these matters.

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

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

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

### **3.3. SUPERINTENDENT.**

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

### **3.4. LABOR AND MATERIALS.**



Unless otherwise provided in the Contract Documents, Contractor shall provide and pay for labor, material, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

### **3.5. WARRANTY.**

Contractor shall provide the warranty under Section 11.2 of this Exhibit A.

### **3.6. TAXES.**

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

### **3.7. PERMITS, FEES AND NOTICES.**

Each of Contractor and Owner shall secure and pay for all of its respective permits and governmental fees, licenses, and inspections necessary for proper execution and completion of the Work as set forth in Section 2.8 of Exhibit B.

### **3.8. Reserved.**

### **3.9. CONTRACTOR'S PROJECT SCHEDULES.**

Contractor shall provide the Project Schedule, and updates and revisions thereto in electronic format. The schedules provided by Contractor shall not exceed time limits current under the Contract Documents and shall comply with all of the scheduling as required in the Specifications.

**3.9.1. Project Schedule.** Contractor has prepared and submitted a Project schedule in accordance with and attached hereto as additional pages to Attachment C of Exhibit B ("**Project Schedule**"). The term Project Schedule, as used in this Agreement and other Contract Documents, shall include any revisions thereto that the Parties agree upon in writing, including any COs, which agreed-upon revisions shall be set forth in a revised Project Schedule. Any revised Project Schedule shall replace all prior Project Schedules once agreed to in writing by Owner.

**3.9.2. Compliance with Project Timeline.** No schedule shall exceed time limits current under the Contract Documents unless approved by CO, and shall comply with all of the scheduling as required by the Contract Documents and any scheduling requirements provided by Owner to Contractor at the beginning of the Project. The schedule shall be in the form of a tabulation, chart, or graph and shall be in sufficient detail to show the chronological relationship of all activities of the Project including, but not limited to, estimated starting and completion dates of various activities, (including early and late dates and reasonable float for each activity), procurement of materials, the critical path, and scheduling of equipment. Float suppression techniques such as preferential sequencing, special lead/lag logic restraints, extended activity durations, or imposed dates shall be apportioned according to the benefit of the Project.

**3.9.3. Updated Project Schedules.** Contractor shall submit an updated schedule on a monthly basis that includes an accurate as-built schedule and the current as-planned schedule in conformance with the above standards. Contractor shall submit its daily logs for the month with the updated schedule. If any change in Contractor's method of operations will change the Project Schedule, Contractor shall submit to Owner a revised Project Schedule within seven days of the change.

**3.9.4. Recovery Plan.** If Contractor's actual progress falls behind the scheduled progress, within seven days of a request by Owner, Contractor shall prepare and submit a recovery plan. The recovery plan must include a revised schedule that would recover the lost time and still complete the Work on the Project by the Substantial Completion Date. The recovery plan shall also list any additional compensation that Contractor believes it should receive if

Owner chooses to order Contractor to implement the recovery plan. If Owner directs Contractor to implement the recovery plan, then Contractor shall do so.

**3.9.5. Failure to Meet Project Schedule.** In addition to any remedies that Owner may have, if Contractor fails to Substantially Complete the Project within sixty (60) days after the Substantial Completion Date, Owner will have the right to terminate the Agreement pursuant to the terms hereof in accordance with Section 13.1 of the General Conditions; provided that Contractor shall be paid for Work performed prior to termination.

### **3.10. DOCUMENTS AND SAMPLES AT THE SITE.**

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

### **3.11. SHOP DRAWINGS, PRODUCT DATA, AND SAMPLES.**

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

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

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

**3.11.4. Extent of Review.** In reviewing shop drawings, Owner will not verify dimensions and field conditions. Owner will promptly (so as not to adversely impact the Project schedule) review and approve, but in any event within ten (10) days of receipt from Contractor thereof, shop drawings, product data, and samples for aesthetics and for conformance with the design concept of the Work and the information given in the Contract Documents. Owner’s review shall not relieve Contractor from responsibility for any deviations from the requirements of the Contract Documents unless Owner has given specific written approval. Contractor and Subcontractors shall be solely responsible for determining any quantities, whether or not shown on the shop drawings.

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

### **3.12. CLEANING UP.**

Contractor shall keep the Site and surrounding area free from accumulation of waste material or rubbish caused by operations under the Agreement. The Site shall be maintained in a safe, neat, and orderly condition. If Contractor fails to clean up as provided in the Contract Documents, Owner may do so, with notice to Contractor and the actual,

reasonable and documented cost thereof shall be invoiced to Contractor and withheld from progress payments and/or retention. Upon completion of the Project, Contractor and Subcontractor shall dismantle temporary structures, if any, and remove from the Site all construction and installation equipment, fences, scaffolding, surplus materials, rubbish, and supplies belonging to Contractor or Subcontractor.

### **3.13. ACCESS TO WORK.**

Contractor shall provide Owner, Owner's designees, and Inspector, access to the Work in preparation and progress wherever located.

### **3.14. ROYALTIES AND PATENTS.**

Contractor shall pay all royalties and license fees incurred by Contractor in performing the Work of this Agreement.

### **3.15. INDEMNIFICATION.**

Contractor's obligations to indemnify Owner, including for patent infringement, are set forth in Section 10 of the Agreement.

## **4. ARTICLE 4 – ADMINISTRATION OF THE AGREEMENT**

### **4.1. Reserved.**

### **4.2. ADMINISTRATION OF THE AGREEMENT.**

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

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

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

4.2.4. **Rejection of Work.** In addition to the rights, duties, and obligations of Inspector under this Article, Owner's selected representative may recommend to Owner that Owner reject Work which does not conform to the Contract Documents. If Owner rejects any Work it must be in writing with a detailed description of why it has been rejected. All changes of Scope of Work will necessitate a change review in schedule and price.

### **4.3. INSPECTOR.**

One or more project inspectors employed by Owner (the "**Inspector**") will be assigned to the Work in accordance with the requirements of Title 24 of the California Code of Regulations. The Inspector(s) duties will be as specifically defined in Title 24. All Work shall be under the observation of or with the knowledge of Inspector. The Inspector shall have free access to any or all parts of the Work at any time. Contractor shall furnish Inspector such information as may be necessary to keep Inspector fully informed regarding progress and manner of work and character of materials. Such observations shall not, in any way, relieve Contractor from responsibility for full compliance with all terms and conditions of the Agreement, or be construed to lessen to any degree Contractor's responsibility for providing efficient and capable superintendence. The Inspector is not authorized to make changes in the drawings or specifications. The Inspector shall have the authority to reject work that does not comply with the provisions of the Contract Documents. In addition, Inspector may stop any Work which poses a probable risk of harm to persons or

property. No work shall be performed by Contractor solely upon the instructions or comments by Inspector. The Inspector has no authority to interpret the Contract Documents or order extra work and any extra work performed without the written instruction of Owner shall be at Contractor's sole cost and expense and there will be no delay damages incurred by Owner for such work.

#### **4.4. RESERVED.**

#### **4.5. CLAIMS.**

4.5.1. **General.** A Claim is a demand or assertion by Contractor seeking, as a matter of right, adjustment, or interpretation of Agreement terms, payment of money, extension of time, or other relief with respect to the terms of the Agreement. Claims must be made by written notice. The responsibility to substantiate Claims shall rest with Contractor. Contractor may only submit a Claim after having complied with the requirements in Article 6 of Exhibit A, as applicable, for the same matters.

Claims shall be submitted to Owner and Owner's designated representative. A timely decision by Owner shall be provided. Claims must be made by written notice prior to the final progress payment. An additional Claim made after the initial Claim has been implemented by CO will not be considered with respect to the Work expressly covered by the CO. The failure of Contractor to make a Claim within the specified time shall constitute an express waiver of any right to assert such Claim, whether affirmatively or defensively. Despite submission or rejection of a Claim, Contractor shall proceed diligently with performance of the Agreement, and Owner shall continue to make any undisputed payments in accordance with the Agreement.

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

#### **4.5.2. Claims for Concealed or Unknown Conditions**

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

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

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

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

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

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

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

4.5.2.2.3. In the event that a dispute arises between Owner 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 Documents, but shall proceed with such undisputed Work to be performed under the Contract Documents as long as the disputed Work does not directly or indirectly affect the undisputed Work. Contractor shall retain any and all rights provided either by Contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

#### **4.6. CLAIMS OF \$375,000 OR LESS.**

Notwithstanding any other provision herein, claims of \$375,000 or less shall be handled pursuant to the procedures set forth in Public Contract Code section 20104.2, including claim, response, informal meet and confer conference, and Government Code claim. As a precedent to initiation of any litigation against Owner, Contractor must observe and comply with the Government Code claim procedures in Government Code sections 901 et seq. after completion of the contractual claim procedures above, including but not limited to timely presentation of a Government Code claim. The claim procedures described herein do not supersede or replace the requirement of a Government Code claim, and the two claim procedures shall be sequential.

#### **4.7. CLAIMS IN EXCESS OF \$375,000.**

Claims over \$375,000 shall be handled by Contractor and Owner pursuant to Section 4.6, above, except as follows: (a) Procedures in Public Contract Code section 20104.2(b) shall not be applicable; (b) Owner shall respond in writing to all written Claims within 90 days of receipt of the Claim, or may request, in writing, within 45 days of receipt of the Claim, any additional documentation supporting the Claim or relating to defenses to the Claim Owner may have against Contractor; (c) Owner shall respond within 45 days after receipt of the further documentation, or within a period of time no greater than that taken by Contractor in producing the additional information or documentation, whichever is greater; and (d) following any meet and confer conference pursuant to Public Contract Code section 20104.2(d), if the Claim or any portion of it remains in dispute and Contractor wishes to pursue it, Contractor must demand in writing within thirty (30) days that the Parties mediate, and such requirement for mediation shall not toll or supersede the requirement for submission of a Government Code claim, as specifically required in Section 4.6 above. If Contractor fails to timely notify Owner that it wishes to mediate pursuant to this Section, then Contractor will have waived all rights to further pursue the Claim. The Parties shall reasonably cooperate to schedule and attend a mediation as soon as reasonably possible.

## 5. ARTICLE 5 – SUBCONTRACTORS

### 5.1. DEFINITIONS.

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

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

### 5.2. AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK.

Subcontractors shall be selected by Contractor in its reasonable discretion, provided, however, that Contractor will remain responsible for the proper completion of all Work undertaken by such subcontractors. Subcontractor substitution shall be handled in accordance with the Agreement. Any substitutions of Subcontractors shall not result in any increase in the Contract Sum or the granting of any extension of time for the completion of the Project.

### 5.3. SUBCONTRACTUAL RELATIONS.

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

### 5.4. CONTINGENT ASSIGNMENT OF SUBCONTRACTS.

Each subcontract agreement for a portion of the Work is assigned by Contractor to Owner provided that:

5.4.1. Assignment is effective only after termination of this Agreement with Contractor by Owner for cause pursuant to Article 13 of Exhibit A and only for those subcontract agreements which Owner accepts by notifying the Subcontractor in writing; and

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

## 6. ARTICLE 6 – CHANGES IN THE WORK

### 6.1. CHANGES.

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

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

## **6.2. CHANGE ORDERS ("CO").**

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

## **6.3. Reserved.**

## **6.4. CHANGE ORDERS DUE TO CONTRACTOR ERROR OR OMISSION.**

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

## **6.5. SUPPLEMENTAL INSTRUCTION ("SI").**

A SI is a written instrument prepared by Owner and submitted to Contractor. The SI can order changes in the Work that do not affect the Contract Sum and/or Time. A SI can be made in an RFI response by issuing a formal SI document or by written letter from Owner.

## **6.6. REQUEST FOR INFORMATION ("RFI").**

An RFI is a written request prepared by Contractor asking Owner to provide additional information above and beyond that which is available in the Contract Documents and all reference standards, regarding Contractor and fulfilling the Agreement coordination requirements for which Contractor is obligated to perform. The RFI shall reference all the applicable Contract Documents including specification section, detail, page numbers, drawing numbers, and sheet numbers, etc. Contractor shall make suggestions and/or interpretations of the issue raised by the RFI. An RFI cannot modify the Contract Cost, Contract Time, or the Contract Documents. Prior to issuing an RFI, Contractor, Subcontractor, material suppliers and the like shall thoroughly review the Contract Documents and refer to all reference standards for the information sought. Owner and Contractor agree that an adequate time period for Owner to respond to an RFI is generally seven (7) calendar days, but not to exceed fourteen (14) calendar days after Owner's receipt of an RFI, unless Owner and Contractor agree otherwise in writing. Contractor shall make reasonable efforts to coordinate the Work in a timely fashion, so as to alleviate priority RFIs. If the RFI is considered a priority, Contractor shall state the word "Priority" on the document, and Contractor shall provide weekly RFI Priority Schedules. Contractor shall issue and maintain weekly RFI Priority Schedules. Delays to the schedule due to Owner's failure to provide information in a timely manner will be borne by Owner including extensions of Contract Time and/or increases in Contract Sum, as applicable.

The RFI Priority Schedule shall include a listing of pending requests, including the most current request, and rank the RFIs in order of priority. Owner shall endeavor to respect Contractor's requested order of priorities and requested response dates. Owner's response to the RFI shall be considered a Supplemental Instruction (SI) in which the Contract Sum and/or Time is not altered. If the RFI response alters the Contract Sum and/or Time, a CO may be

mutually executed for the changed condition(s). Should Contractor determine the response to the RFI creates changes in the Contract Sum and/or Time, Contractor shall submit a change order request (COR) to Owner for review, along with a Time Extension Request (if required).

#### **6.7. REQUEST FOR PROPOSAL REGARDING CHANGE (“RFP - Change”).**

An RFP - Change is a written request prepared by Owner asking Contractor to submit to Owner an estimate of the effect of a proposed change on the Contract Sum and the Contract Time. An RFP – Change shall contain adequate information, including any necessary drawings and specifications, to enable Contractor to provide the cost breakdowns required by Section 6.9 below. Contractor shall not be entitled to any Additional Compensation for preparing a response to an RFP - Change, whether ultimately accepted or not.

#### **6.8. CHANGE ORDER REQUEST (“COR”).**

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

#### **6.9. COST OF CHANGE ORDERS.**

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

**6.9.2. Determination of Cost.** The amount of the increase or decrease in the Contract Sum resulting from a CO, if any, shall be determined in one or more of the following ways as applicable to a specific situation: (A) Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation; (B) unit prices stated in Contractor’s original proposal, the Contract Documents, or subsequently agreed upon between Owner and Contractor; (C) cost to be determined in a manner agreed upon by the Parties and a mutually acceptable fixed or percentage fee; and/or (D) by cost of material and labor and percentage of overhead and profit. Except as otherwise set forth in the O&P Percentage Schedule set forth below, Contractor and Subcontractors may mark up their own work by 10% for overhead, bond and insurance premiums, and profit. Contractor may mark up a Subcontractor’s total costs by 10%. It is expressly understood that the value of such extra work or changes, as determined by any of the aforementioned methods, expressly includes any and all of Contractor's costs and expenses, both direct and indirect, resulting from additional time required on the Project or resulting from delay to the Project. Any costs or expenses not included are deemed waived. For purposes of determining the cost, if any, of any change, addition, or omission to the Project, all trade discounts, rebates, refunds, and all returns from the sale of surplus materials and equipment shall accrue and be credited to Contractor, and Contractor shall make provisions so that such discounts, rebates, refunds, and returns may be secured, and the amount thereof shall be allowed as a reduction of Contractor's cost in determining the actual cost of construction for purposes of any change, addition, or omissions in the Project as provided herein.

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

**6.9.4. Notice Required.** If Contractor desires an increase in the Contract Sum, or any extension in the Contract Time for completion, it shall give Owner written notice thereof within ten (10) days after the occurrence of the event giving rise to the claim, together with detailed estimates of the impact on the Contract Sum and/or the Contract Time. This notice shall be given by Contractor before proceeding to execute the Work, except in an emergency endangering life



or property, in which case Contractor shall proceed in accordance with Section 9.4 of this Exhibit A. No notice shall be considered unless made in accordance with this Subsection; however, the mere presentation of such claim shall not establish the validity of the cause giving rise to such claim, or of the extension of the Contract Time, and/or the increase in the Contract Sum. Any change in the Contract Sum or extension of the Contract Time resulting from such claim shall be authorized by a CO.

**6.9.5. Format for Proposed Change Order.** The Parties shall use the following format, as applicable, to communicate proposed additions and deductions to this Agreement.

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

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

<b>14</b>	<b>SUM OF SUBTOTALS #2 &amp; #4</b>	\$ _____	\$ _____
<b>15</b>	<b>CONTRACTOR'S BOND</b> <sup>3</sup>	\$ _____	\$ _____
<b>16</b>	<b>NET TOTAL FOR C.O.R.</b> <sup>4</sup>	\$ _____	

- 1: Attach itemized list(s) indicating hours, rates, material quantity, material costs, unit costs, and taxes
- 2: Refer to the Overhead and Profit Schedule
- 3: Contractor's bond and liability insurance premium, if in fact actual bonds and insurance are to be purchased. Total costs shall not exceed 2% of the Net Total (line 16). Refer to the O&P Schedule.
- 4: Includes all direct and indirect costs, including but not limited to, acceleration, cumulative effect of the change(s), expediting the work, etc.

**NOTE: OVERHEAD AND PROFIT SHALL BE CALCULATED ON THE NET AMOUNT OF THE CHANGE ORDER**

**OVERHEAD & PROFIT (O&P) PERCENTAGE SCHEDULE**

- (i) Refer to the O&P Schedule below. The cost of the work does not include the overhead and profit mark-up.
- (ii) For all work, Contractor’s Bond and Liability Insurance Premium may be added in onto the “Form for EXTRA WORK and/or DEDUCTIVE WORK.”
- (iii) The O&P Schedule shall be used for “Negotiated Sum” and/or “Time and Materials” work. Unit Price work shall not have the overhead and profit mark-up applied to the work, on the basis that the Unit Price includes overhead and profit margins.

	Work by Subcontractor less than or equal to \$2,500	Work by Subcontractor more than \$2,500	Work by Contractor less than or equal to \$2,500	Work by Contractor more than \$2,500
<b>Subcontractor Overhead &amp; Profit</b>	20%	15%	N/A	N/A
<b>Contractor Overhead &amp; Profit</b>	10% Excluding Bond Premium	10% Excluding Bond Premium	15% Excluding Bond Premium	10% Excluding Bond Premium
<b>Total Overhead and Profit, not to exceed:</b>	30%	25%	15%	10%

**7. ARTICLE 7 – TIME**

**7.1. DEFINITIONS.**

7.1.1. **Contract Time.** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for completion of the Work by the Final Project Completion Date as set forth in the Project Schedule.

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

**7.2. PROJECT PHASES.**

The date of commencement of the Work is the date of Agreement execution. The date shall not be postponed by the failure to act of Contractor or of persons or entities for which Contractor is responsible, except to the extent of an Excusable Delay. The Work on the Project shall be performed in accordance with the following phases:

7.2.1. **Design Phase.** Upon Agreement execution, Contractor shall prepare any necessary designs, Drawings, and Specifications, as well as feasibility and configuration assessments, environmental assessments (collectively “**Design Documents**”), and other inspections of the Project Site by the date stated in the Project Schedule for the First Draft of Drawings. Contractor shall deliver draft design Drawings in accordance with the Specifications to Owner for review and approval, which approval shall not be unreasonably withheld. Owner shall diligently review and respond to each submission by Contractor by the date stated in the Project Schedule for Owner response, but in no event longer than fourteen (14) days after such submission. Contractor shall finalize the Design Documents by the date stated on the Project Schedule for the Final Draft of Drawings.

**7.2.2. Governmental Approval Phase.** Upon Owner's written approval of the final Design Documents, Contractor shall seek all such approvals of the Design Documents and the Project as may be required by any governmental entity having jurisdiction over the Project. Contractor shall exercise all reasonable diligence to ensure that all necessary permits and approvals are received by the date stated in the Project Schedule for Permit Approval. Owner shall not unreasonably withhold its consent to any modifications to the Design Documents that may be requested by any governmental or quasi-governmental agency with jurisdiction over the Project or the Work on the Project, excepting any changes that materially affect the tilt, azimuth or number of photovoltaic modules, or other aspects of the original design that may affect the Contract Sum or the Annual Production Estimate, or that materially affect the siting of the Project and its impact on Owner's operations. The Governmental Phase requires, in part, that all approvals necessary for the Project to be constructed have been received and provided to Owner in writing.

**7.2.3. Construction Phase.** Within 15 days of written notice that all permits and approvals necessary to begin construction of the Project have been secured, including but not limited to the approval of Agency's Inspector, Contractor shall facilitate, or cooperate with Owner in its efforts to facilitate, a kick-off meeting with Owner and any of its representatives and Contractor, and any other relevant parties. Following the kick-off meeting, Contractor shall commence the construction of the Project in accordance with the final Design Documents and all other Contract Documents. The Construction Phase requires, in part, Inspector's written notice of substantial completion and submission of a written request to schedule the Utility Permission to Operate inspection.

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

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

### **7.3. HOURS OF WORK.**

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

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

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

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

#### **7.4. PROGRESS AND COMPLETION.**

Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, Contractor confirms that the Contract Time is a reasonable period for performing the Work. Contractor shall not knowingly, except by agreement or instruction of Owner, in writing, commence operations on the Site or elsewhere prior to the effective date of insurance required by Article 10 to be furnished by Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance. Contractor shall proceed expeditiously with adequate forces and shall achieve Completion within the Contract Time. A delay by Owner in meeting the time period for the review and approval of any document, change request, RFI or other deliverable will not be a breach of the Contract Documents, but will be grounds for an extension of time pursuant to Section 7.5.

#### **7.5. EXTENSIONS OF TIME - LIQUIDATED DAMAGES.**

**7.5.1. Excusable Delay.** Contractor shall not be charged for Delay Liquidated Damages, as set forth in the Agreement, because of any excusable delays in completion of the Work including delays due to acts of God, acts of public enemy, acts or omissions of Government, including any permitting, utility or interconnection-related delays that are beyond the reasonable control of Contractor, acts or omissions of Owner or anyone employed by it, including failure by Owner or Owner-related parties to review or respond to Contractor RFIs or deliverables within any applicable time periods contemplated hereunder, or inaccuracy or incorrectness of any Owner-provided information, acts of another contractor in performance of a contract (other than this Agreement) with Owner, fires, floods, lightning strikes, hurricane, tornado, earthquake, epidemics, quarantine restrictions, strikes, unusually severe weather, emergency work performed in accordance with Section 9.4 of Exhibit A, any unforeseen site conditions, labor disputes, unusual delay in deliveries, unavoidable casualties, change in law, or delays of subcontractors due to such causes (collectively “**Excusable Delay**”). Contractor has the burden of proving that any delay is excusable. In the event that an Excusable Delay extends for a period in excess of one hundred eighty (180) days, then either Party, at its option, may terminate this Agreement and Contractor will be entitled to compensation for all Work completed through the date of termination. If Owner terminates due to an Excusable Delay in excess of one hundred eighty (180) days, then Owner shall be responsible for paying for all Work completed and costs incurred before and after the date of commencement of the Excusable Delay.

**7.5.2. Notice by Contractor Required.** Contractor shall within ten (10) calendar days of beginning of any such Excusable Delay (unless Owner grants in writing a further period of time to file such notice prior to the date of final payment under this Agreement) notify Owner in writing of the Excusable Delay. The Parties will then reasonably and in good faith ascertain the facts and extent and nature of the delay and shall execute a CO for an extension of time, and/or increase in Contract Sum, as applicable for completing the Work when, in Owner’s reasonable judgment, the findings of fact justify such an extension or increase in the Contract Sum. Extensions of time and increases in Contract Sum, shall apply only to that portion of the Work affected by the delay and shall not apply to other portions of the Work not so affected.

**7.5.3. Conditions for Extension of Time and Increases in Price.** If Contractor is delayed or affected at any time in progress of the Work by an Excusable Delay, then the Contract Time shall be extended and/or the Contract Sum shall be increased, as applicable, by CO for such reasonable time and/or reasonable amount, as applicable, as the Parties may determine. Claims relating to time extensions and price increases shall be made in accordance with applicable provisions of Article 6.

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

**7.5.5. Liquidated Damages.** Failure to Substantially Complete the Project within the time and in the manner provided for by the Contract Documents shall subject Contractor to Delay Liquidated Damages, as described in the Agreement.

## **8. ARTICLE 8 - PAYMENTS AND COMPLETION**

### **8.1. CONTRACT SUM.**

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by Owner to Contractor for performance of the Work under the Contract Documents subject to change by approved CO per Article 6 of Exhibit A.

### **8.2. RESERVED.**

### **8.3. APPLICATIONS FOR PAYMENT.**

When the Progress Payment Milestones defined in Subsection 8.6.1 have been met, Contractor shall submit to Owner an itemized Application for Payment for Work using Document G702 and G703 by The American Institute of Architects or similar document, completed in accordance with the Payment Schedule in Subsection 8.6.1. As Contractor is required to order, obtain, and store materials and equipment sufficiently in advance of its Work at no additional cost or advance payment from Owner, to assure that there will be no delays, payment by Owner for stored material shall be made only in unusual circumstances where Owner specifically approves the payment in writing. Contractor warrants that title to all Work covered by an Application for Payment will pass to Owner no later than the time of payment. If payments are to be made for materials and equipment that are not incorporated in the Work on the Project but delivered and suitably stored at a Project Site or at some other location agreed upon in writing by Owner, the payments shall be conditioned upon submission by Contractor, Subcontractor, or vendor of bills of sale and such other documents satisfactory to Owner to establish Owner's title to such materials or equipment free of all liens and encumbrances, and otherwise protect Owner's interest, including, without limitation, provision of applicable insurance and transportation to the Project Site. All stored items shall be inventoried, specified by identification numbers (if applicable), released to Owner by the sureties and Subcontractors, and, if stored off the Project Site, stored only in a bonded warehouse.

### **8.4. REVIEW OF PROGRESS PAYMENT.**

Owner will, within thirty (30) days after receipt of Contractor's Application for Payment, either approve and pay such payment or notify Contractor in writing of Owner's reasons for, in good faith, reasonably withholding approval in whole or in part. If Owner fails to respond within such thirty (30) day period, such sums owed to Contractor under the applicable Application for Payment shall bear interest until Owner's response in accordance with this Subsection at the rate per annum equal to the lesser of (i) an annual rate equal to two percent (2%) per annum above the "prime rate" specified under "Money Rates" in *The Wall Street Journal* (New York Edition) on the date such payment was to have been made, or (ii) the maximum rate of interest permitted under applicable laws.] The review of Contractor's Application for Payment by Owner is based on Owner's observations at the Site and the data comprising the Application for Payment whether the Work has progressed to the point indicated and whether, to the best of Owner's knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents.

### **8.5. RESERVED.**

### **8.6. PROGRESS PAYMENTS.**

**8.6.1. Payment Schedule.** Progress payments shall be made in accordance with Public Contract Code section 20104.50. Owner shall pay the Contract Sum to Contractor on a per Project Site basis in accordance with the

following schedule and after Contractor has complied with the requirements of Section 8.3 and the Contract Documents:

Payment 1 (“**Site Investigation Payment**”): Five (5) percent of the Contract Sum upon Contractor’s completion of all Work required to assess the Project Site as described in Section 2.7 of Exhibit B.

Payment 2 (“**90% Engineering Design Approval Payment**”): Fifteen (15) percent of the Contract Sum upon Agency approval of the 90% Engineering Design Package as defined in Section 3.3.2 of Exhibit B.

Payment 3 (“**Governmental Approval Payment**”): Five (5) percent of the Contract Sum upon Contractor’s completion of all Work required in the Governmental Approval Phase (see Subsection 7.2.2 of this Exhibit A and all provisions related thereto).

Payment 4 (“**Mobilization Payment**”): Five (5) percent of the Contract Sum upon Contractor’s mobilization on the Project Site, as described in the approved Project Execution Plan as described in Section 3.3.3 of Exhibit B.

Payment 5 (“**Site Preparation Payment**”): Fifteen (15) percent of the Contract Sum upon Contractor’s completion of all Work required to prepare the site to accept the BESS. This portion of the Work shall be defined as completion of BESS equipment pad, installation of the utility AC disconnect, installation of the Facility Load Meter, installation of the Solar Production Meter, and installation of all conduits necessary for the aforementioned equipment to be connected per approved 100% Engineering Design Package.

Payment 6 (“**BESS Procurement Payment**”): Forty (40) percent of the Contract Sum during the Construction Phase (see Subsection 7.2.3 of this Exhibit A and all provisions related thereto) upon delivery on the Project Site of the BESS, and upon Contractor providing Owner with all documents required of Contractor pursuant to Section 8.3.

Payment 7 (“**Commissioning Payment**”): Five (5) percent of the Contract Sum upon Contractor’s completion of all Work in the Commissioning Phase (see Section 7.2.4 of this Exhibit A and all provisions related thereto).

Payment 8 (“**Inspection Payment**”): Five (5) percent of the Contract Sum upon submission to Inspector by Contractor of all forms necessary for Inspector’s approval / certification of the Project. Notwithstanding the release of such funds upon Contractor’s submission of documentation to Inspector, Contractor shall continue to be obligated to respond to all inquiries and requests of Owner, Owner’s agents or Inspector made in connection with Inspector’s approval / certification of the Project.

Payment 9 (“**Final Completion Payment**”): Five (5) percent of the Contract Sum upon Owner’s execution of the Certificate of Acceptance on the Project, less any amount or amounts properly withheld by Owner in accordance with the Contract Documents, until such time, if any, that such amount or amounts may be or are required to be released in accordance with the Contract Documents.

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

8.6.3. **Waivers and Releases.** Within 15 days after receipt of each progress payment and the Final Payment, Contractor shall provide (and shall cause its suppliers and Subcontractors, and their subcontractors to provide) to

Owner an unconditional lien waiver and release (related to progress payment or Final Payment as applicable) in a form substantially similar to the form attached hereto as Exhibit I.

#### **8.7. COMPLETION OF THE WORK.**

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

#### **8.8. PARTIAL OCCUPANCY OR USE.**

Owner and Contractor shall agree in writing to the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Work, insurance, the period for correction of the Work, and the commencement of warranties required by the Contract Documents.

#### **8.9. ACCEPTANCE, NOTICE OF COMPLETION, AND FINAL PAYMENT.**

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

#### **8.10. SUBSTITUTION OF SECURITIES.**

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

### **9. ARTICLE 9 - PROTECTION OF PERSONS AND PROPERTY**

#### **9.1. SAFETY PRECAUTIONS AND PROGRAMS.**

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

#### **9.2. SAFETY OF PERSONS AND PROPERTY.**



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

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

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

### **9.3. PROTECTION OF WORK AND PROPERTY.**

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

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

### **9.4. EMERGENCIES.**

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

### **9.5. HAZARDOUS MATERIALS.**

In the event Contractor encounters or suspects the presence on the Site material reasonably believed to be asbestos, polychlorinated biphenyl (PCB), or any other material defined as being hazardous by section 25249.5 of the California Health and Safety Code, which has not been rendered harmless, Contractor shall immediately stop Work in the area affected and report the condition to Owner in writing, whether or not such material was generated by Contractor or Owner. Contractor shall only be responsible for hazardous materials brought onto the Site by Contractor or any Subcontractor. Owner shall be responsible for all pre-existing hazardous materials at the Site, and to the extent Contractor discovers any unforeseen or unknown hazardous materials or Owner requests Contractor to handle and/or remove such unforeseen or unknown hazardous materials or any pre-existing hazardous materials, Contractor shall be entitled to a CO in accordance with Article 6 of Exhibit A.

## **10. ARTICLE 10 - INSURANCE AND BONDS**

## 10.1. CONTRACTOR'S LIABILITY INSURANCE

10.1.1. **Liability Insurance Requirements.** Contractor (and its Subcontractors to the extent set forth below) shall provide and maintain at all times during the performance of the Work under this Agreement, the following commercial general liability, errors and omissions insurance and automobile liability insurance:

10.1.2. **Coverage.** Coverage shall be at least as broad as the following:

10.1.2.1. Coverage for errors and omissions appropriate to the Contractor's profession covering Contractor's wrongful acts, negligent actions, errors or omissions. The retroactive date (if any) is to be no later than the effective date of this Agreement.

10.1.2.2. Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 0001).

10.1.2.3. Insurance Services Office (ISO) Business Auto Coverage (Form CA 0001), covering Symbol 1 (non-owned and hired automobiles).

10.1.3. **Limits.** Contractor shall maintain limits no less than the following:

10.1.3.1. **Errors and Omissions Insurance** – One million dollars (\$1,000,000) per claim and annual aggregate (if the design of the Work is provided by a Subcontractor, then the Subcontractor may provide this coverage).

10.1.3.2. **General Liability** – Two million dollars (\$2,000,000) per occurrence or the full per occurrence limits of the policies available, whichever is greater for bodily injury, personal injury and property damage and products & completed operations liability. If Commercial General Liability Insurance or other form with a general aggregate limit or products-completed operations aggregate limit is used, either the general aggregate limit shall apply separately to the project/location (with the ISO CG 2503, or ISO CG 2504, or insurer's equivalent endorsement provided to the SCV Water) or the general aggregate limit and products-completed operations aggregate limit shall be twice the required occurrence limit.

10.1.3.3. **Automobile Liability** – One million dollars (\$1,000,000) for bodily injury and property damage each accident limit.

10.1.3.4. **Excess Liability** – The limits of Insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the Owner (if agreed to in a written contract or agreement) before the Owner's own primary or self-Insurance shall be called upon to protect it as a named insured.

10.1.4. **Required Provisions.** The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

10.1.4.1. The SCV Water, its directors, officers, employees, and authorized volunteers are to be given insured status at least as broad as ISO endorsement CG 20 10 11 85; or both CG 20 10 and CG 20 37 04 13 (or the 20 10 04 13 (or earlier edition date) specifically naming all of the Owner parties required in this agreement, or using language that states "as required by contract"). All Sub-contractors hired by Contractor must also have the same forms or coverage at least as broad; as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; and automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the SCV Water, its directors, officers, employees, or authorized volunteers.

10.1.4.2. For any claims related to this project, the Contractor's insurance shall be primary insurance as respects the SCV Water, its directors, officers, employees, or authorized volunteers using the ISO CG 20 01 04 13 or coverage at

least as broad. Any insurance, self-insurance, or other coverage maintained by the SCV Water, its directors, officers, employees, or authorized volunteers shall not contribute to it.

10.1.4.3. Any failure to comply with the reporting or other provisions of the policies including breaches and warranties shall not affect coverage provided to the SCV Water, its directors, officers, employees, or authorized volunteers.

10.1.4.4. The Contractor'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.

10.1.4.5. Such liability insurance shall indemnify the Contractor and his/her Sub-contractors against loss from liability imposed by law upon, or assumed under contract by, the Contractor or his/her Sub-contractors for damages on account of such bodily injury (including death), property damage, personal injury, completed operations, and products liability.

10.1.4.6. The general liability policy shall cover bodily injury and property damage liability, owned and non-owned equipment, blanket contractual liability, completed operations liability, explosion, collapse, underground excavation and removal of lateral support.

10.1.4.7. Each insurance policy required by this Agreement shall state, or be endorsed to state, that coverage shall not be canceled by the insurance carrier or the Contractor, except after thirty (30) days (10 days for non-payment of premium) prior written notice by U.S. mail has been given to the SCV Water.

10.1.4.8. All of the insurance shall be provided on policy forms and through companies satisfactory to the SCV Water.

10.1.5. **Workers' Compensation and Employer's Liability Insurance** - The Contractor and all Sub-contractors shall cover or insure under the applicable laws relating to workers' compensation insurance, all of their employees employed directly by them or through Sub-contractors in carrying out the work contemplated under this Agreement, all in accordance with the "Workers' Compensation and Insurance Act", Division IV of the Labor Code of the State of California and any Acts amendatory thereof. The Contractor shall provide employer's liability insurance with limits of no less than \$1,000,000 each accident, \$1,000,000 disease policy limit, and \$1,000,000 disease each employee.

10.1.6. **Deductibles and Self-Insured Retentions** - Any deductible or self-insured retention must be declared to and approved by the SCV Water. At the option of the SCV Water, the insurer shall either reduce or eliminate such deductibles or self-insured retentions. Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provided that the SIR may be satisfied by either the named or additional insureds, co-insurers, and/or insureds other than the First Named Insured.

10.1.7. **Acceptability of Insurers** - Insurance is to be placed with insurers having a current A.M. Best rating of no less than A-:VII or equivalent or as otherwise approved by the SCV Water.

10.1.8. **Evidences of Insurance** - Prior to execution of the Agreement, the Contractor shall file with the SCV Water a certificate of insurance (Acord Form 25 or equivalent) signed by the insurer's representative evidencing the coverage required by this Agreement. Such evidence shall include (1) attached additional insured endorsements with primary & non-contributory wording, (2) Workers' Compensation waiver of subrogation, and (3) a copy of the CGL declarations or endorsement page listing all policy endorsements, and confirmation that coverage includes or has been modified to include Required Provisions 10.1.4.1 through 10.1.4.8. The Owner reserves the right to obtain complete, certified copies of all required insurance policies, at any time. Contractor shall maintain the Insurance required by this Agreement for a period of not less than 2 years following the termination of completion of this Agreement. Contractor further waives all rights of subrogation under this Agreement. Failure to continually satisfy the Insurance requirements is a material breach of contract.

The Contractor shall, upon demand of the SCV Water, deliver to the SCV Water such policy or policies of insurance and the receipts for payment of premiums thereon.

**10.1.9. Continuation of Coverage** - If any of the required coverages expire during the term of this Agreement, the Contractor shall deliver the renewal certificate(s) including the general liability additional insured endorsement to the SCV Water at least ten (10) days prior to the expiration date. Failure to comply with any of the Insurance requirements shall constitute material breach of contract. The insurance requirements in this Agreement do not in any way represent or imply that such coverage is sufficient to adequately cover the Contractor's obligations under this agreement. All Insurance or self-insurance coverage and limits applicable to a given loss or available to the named insured shall be available and applicable to the additional insured. The insurance obligations under this Agreement are independent of and in addition to the defense and indemnity obligations contained elsewhere in this Agreement and shall not in any way act to limit or restrict the defense or indemnity or additional insure obligations of the Contractor or the Contractor's insurance carrier, and shall be for (1) the full extent of the insurance or self-insurance overages and limits carried by or available to the Contractor, or (2) the minimum insurance coverage and amounts shown in this Agreement; whichever is greater. Owner reserves the right to add such other parties as may be required in the future to the indemnity and additional insured requirements of this Agreement.

**10.1.10. Sub-Consultants** - In the event that the Contractor employs other contractors ("Sub-Contractors") as part of the services covered by this Agreement, it shall be the Contractor's responsibility to require and confirm that each Sub-contractor meets the minimum insurance requirements specified above.

## **10.2. PERFORMANCE AND PAYMENT BONDS.**

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

## **11. ARTICLE 11 - UNCOVERING AND CORRECTION OF WORK**

### **11.1. UNCOVERING OF WORK.**

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

### **11.2. CORRECTION OF WORK; WORKMANSHIP WARRANTY.**

**11.2.1. Warranty and System Warranty Period.** Contractor warrants and guarantees to Owner that, for the duration of the period commencing on the acceptance by Owner's governing body of the Work (see Section 8.9 of this Exhibit A) or a designated portion thereof and continuing thereafter for 2 years ("**System Warranty Period**"), all Work on the Project will be substantially free from defects in [design], workmanship, materials and equipment, and shall be in accordance with the requirements of the Contract Documents. Notwithstanding the preceding sentence, Contractor will not be responsible for defects in equipment or materials that are subject to a manufacturer's warranty pursuant to Section 11.3, but will reasonably cooperate with Owner to obtain warranty service with respect to such manufacturer's warranty during the System Warranty Period. Work on the Project not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective by Owner.

Owner shall provide written notice of any warranty item to Contractor before expiration of the System Warranty Period, and if written notice is provided within the System Warranty Period, Contractor's obligation to correct the warranty item to conform to the requirements of the Contract Documents will continue until the correction is made and completed. Contractor shall ensure that no act or omission of Contractor limits or voids any existing warranty on existing Owner equipment or system, and shall take reasonable steps to ensure any such existing warranties are preserved in full.

#### **11.2.2. Notice and Corrective Work.**

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

11.2.2.2. Within two business days of Contractor's receipt of Owner's notice, Contractor shall provide Owner with a written response, acknowledging receipt of the notice and providing Owner with an action plan to remedy the defect through repair or replacement or stating the grounds for denial of the warranty Work request. Within two business days of Owner's receipt of Contractor's written response, Owner shall provide Contractor with any objections or responses thereto. If the Parties are unable to agree regarding Owner's warranty Work request or a plan of action for the corrective Work, the Parties shall proceed in accordance with their dispute resolution options under the Contract Documents and at law. The System Warranty Period shall be extended with respect to Contractor's corrective Work performed pursuant to this provision by one year, starting on the date that the corrective Work is completed in accordance with the plan of action and approved by Owner, not to exceed a total of three (3) years.

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

11.2.2.4. These corrective requirements on Contractor shall apply regardless of whether the nonconforming work was observed before or after Completion and whether or not fabricated, installed, or completed. Contractor shall bear costs of correcting the rejected Work, including additional testing, inspections, and compensation for Inspector or the costs and expenses for professional services borne by Owner made necessary thereby.

11.2.2.5. Contractor shall remove from the Project Site portions of the Work which are not in accordance with the requirements of the Contract Documents and are not corrected by Contractor or accepted by Owner. If Contractor fails to commence correction of nonconforming Work within fifteen (15) days of notice of such claim by Owner, and thereafter fail to complete correction thereof within a reasonable time, Owner may correct it in accordance with Section 2.4 of this Exhibit A. Contractor shall bear the cost of correcting destroyed or damaged construction of Owner or Owner's contractors, whether completed or partially completed, caused by Contractor's correction or removal of the nonconforming Work except to the extent of Owner's or Owner's contractors' negligence or willful misconduct. Nothing in this Section shall be construed to establish a period of limitation with respect to other obligations which Contractor might have under the Contract Documents.

#### **11.3. MANUFACTURER WARRANTIES.**

Contractor shall, for the protection of Owner, use commercially reasonable efforts to obtain from all vendors and Subcontractors from which Contractor procures machinery, equipment or materials or services, warranties and guarantees with respect to such machinery, equipment, materials or services, which shall be made assignable to Owner to the full extent of the terms thereof, and Contractor shall assign such warranties and guarantees upon Owner's execution of a Certificate of Acceptance. At all times during performance of Work under the Contract Documents, Contractor shall perform the Work in a manner consistent with all such warranties and shall not perform any actions that may violate or void such warranties. All applicable manufacturers' warranties that can be extended should be

extended to a minimum of fifteen (15) years if the standard warranty set forth on Exhibit D is not fifteen (15) years in length. A list of all applicable manufacturers' warranties is attached to this Agreement as Exhibit D.

#### **11.4. No Implied Warranties.**

**EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, CONTRACTOR MAKES NO OTHER WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PURPOSE. IN THAT REGARD, THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT ARE THE EXCLUSIVE WARRANTIES OF CONTRACTOR WITH RESPECT TO THE MATERIALS AND THE WORK AND ARE IN LIEU OF ALL OTHER WARRANTIES BY CONTRACTOR, WHETHER ORAL OR IMPLIED BY LAW. FROM THE COMMENCEMENT OF THE SYSTEM WARRANTY PERIOD, THE LIABILITIES SET FORTH IN THIS SECTION 11 SHALL CONSTITUTE THE ENTIRE LIABILITY OF CONTRACTOR WITH RESPECT TO DEFECTS IN THE WORK, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), WARRANTY, STRICT LIABILITY, OR ANY OTHER LEGAL THEORY.**

### **12. ARTICLE 12 - MISCELLANEOUS PROVISIONS**

#### **12.1. GOVERNING LAW.**

The Agreement shall be governed by the law of the place where the Project is located.

#### **12.2. SUCCESSORS AND ASSIGNS.**

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

#### **12.3. RIGHTS AND REMEDIES; NO WAIVER.**

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

#### **12.4. TESTS AND INSPECTIONS.**

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

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

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

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

#### 12.4.4. **Additional Testing or Inspection, and Costs Related Thereto.**

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

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

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

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

### 12.5. **TRENCH EXCAVATION.**

Pursuant to Labor Code section 6705, if the Contract Sum exceeds \$25,000 and involves the excavation of any trench or trenches five (5) feet or more in depth, Contractor shall, in advance of excavation, submit to Owner or a registered civil or structural engineer employed by Owner a detailed plan showing the design of shoring for protection from the hazard of caving ground during the excavation of such trench or trenches. If such plan varies from the Shoring System Standards established by the Construction Safety Orders, the plan shall be prepared by a registered civil or structural engineer, but in no case shall such plan be less effective than that required by the Construction Safety Orders. Pursuant to Labor Code section 6705, nothing in this Article shall impose tort liability upon Owner or any of its employees.

### 12.6. **DEBARMENT.**

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

### 12.7. **ASSIGNMENT OF ANTITRUST CLAIMS.**

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

## **12.8. AUDIT.**

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

## **12.9. STORM WATER DISCHARGE PERMIT.**

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

## **12.10. CONSEQUENTIAL DAMAGES.**

Neither Owner nor Contractor nor any of their affiliates, successors or assigns, or the respective shareholders, partners, assigns, directors, officers, agents or employees or representatives of either of them, shall be liable to the other for consequential, special, exemplary, indirect or incidental losses or damages, or loss of use, cost of capital, loss of goodwill, lost revenues or loss of profit, and Owner and Contractor each hereby waives such damages and releases the other and each of such persons from any such liability. For the purposes of this provision, liquidated damages set forth in this Agreement shall not be considered consequential damages.

## **12.11. Limitation of Liability.**

In no event shall the aggregate damages payable by each of Contractor or Owner hereunder exceed the Contract Sum (as the same may increase or decrease from time to time in accordance with the terms of the Contract Documents); provided, however, that the preceding limitation of liability shall not apply to (i) a Party's indemnification obligations arising from third-party claims for personal injury, wrongful death or property damages that are the result of the negligent acts or willful misconduct of such Party or its agents, employees and subcontractors; (ii) liabilities resulting from such Party's fraud, willful misconduct or illegal or unlawful acts; or (iii) any claim to the extent that the applicable insurance proceeds received is in excess of the limitation contained herein.

# **13. ARTICLE 13 - TERMINATION OR SUSPENSION OF THE AGREEMENT**

## **13.1. TERMINATION BY OWNER FOR CAUSE.**

Subject to the following paragraph, Owner may terminate the Agreement if Contractor: (A) fails to make payment to Subcontractors for materials or labor in accordance with Public Contract Code section 10262 or Business and Professions Code section 7108.5, as applicable; (B) violates applicable laws, ordinances, rules, regulations, or orders of a public authority having jurisdiction; or (C) otherwise is in material breach of a provision of the Contract Documents. [With respect to a breach of clause (A) or (C) above, if the Contractor cures the failure or breach within the notice period set forth in the next paragraph, this Agreement will not terminate, provided, however, that Contractor will not have the right to cure the same breach more than twice during the term of this Agreement.]

When any of the above reasons exist, Owner may, without prejudice to any other rights or remedies of Owner and after giving Contractor and Contractor's surety, if any, written notice and an opportunity to cure of thirty (30) days, terminate this Agreement and may, subject to any prior rights of the surety, (A) take possession of the Project Site and of all material and equipment procured by Contractor for completion of the Work, (B) accept assignment of subcontracts, and (C) complete the Work by whatever reasonable method Owner may deem expedient.

If the unpaid balance of the Contract Sum exceeds the actual and documented costs of completing the Work, including compensation for professional services and expenses made necessary thereby, such excess shall be paid to Contractor. If such actual and documented costs exceed the unpaid balance, Contractor shall pay the difference to Owner. This payment obligation shall survive completion of the Agreement. Contractor will be entitled to payment for the actual cost of labor, materials and equipment necessary for the completion of the Work that is actually delivered to the Project Site, subject to offset for amounts due from Contractor to Owner.

## **13.2. SUSPENSION OR TERMINATION BY OWNER FOR CONVENIENCE.**



Owner may, without cause, order Contractor in writing to suspend, delay, or interrupt the Work in whole or in part for such period of time as Owner may determine. In accordance with Article 6 of Exhibit A, an adjustment shall be made for increases in time and in the cost of performance of this Agreement, including profit on the increased cost of performance caused by suspension, delay, or interruption. No adjustment shall be made to the extent (A) that performance is, was, or would have been so suspended, delayed, or interrupted by another cause for which Contractor is responsible; or (B) that an equitable adjustment is made or denied under another provision of this Agreement. Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee.

Owner may, at any time upon thirty (30) days' prior written notice to Contractor, terminate the Agreement for Owner's convenience and without cause. Upon receipt of written notice from Owner of such termination for Owner's convenience, Contractor shall (1) cease operations as directed by Owner in the notice; (2) take actions necessary, or that Owner may direct, for the protection and preservation of the Work; and (3) except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders. In case of such termination for Owner's convenience, Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with overhead and profit on the Work not executed in accordance with the "OVERHEAD & PROFIT (O&P) PERCENTAGE SCHEDULE" table in Article 6 of Exhibit A.

### **13.3. TERMINATION BY CONTRACTOR.**

Contractor may not terminate for convenience. Contractor may only terminate for cause if (i) Owner is in material breach of its obligations under this Agreement and such breach is not cured within thirty (30) days of written notice thereof; or (ii) the Work is stopped by others for a period of one hundred eighty (180) consecutive days through no act or fault of Contractor, a Subcontractor of any tier, their agents or employees, or any other persons performing portions of the Work for whom Contractor is contractually responsible, **and** the Work was stopped by others for one of the following reasons: (A) Issuance of an order of a court or other public authority having jurisdiction which requires Owner to stop all Work; or (B) an act of government, such as a declaration of national emergency, making material unavailable which requires Owner to stop all Work. If a stoppage pursuant to clause (ii) occurs, Contractor may serve written notice of such belief on Owner and demand a meet-and-confer conference to negotiate a resolution in good faith within twenty (20) days of receipt of such notice. If such conference does not lead to resolution and Contractor believes the grounds for termination still exist, Contractor may terminate this Agreement. In the event of a termination by Contractor pursuant to this Section 13.3, Contractor may recover from Owner payment for Work executed and for reasonable verified costs with respect to materials, equipment, tools, construction equipment, and machinery, including reasonable overhead, profit, and damages for the Work executed, but excluding overhead (field and home office) and profit for Work not performed.

### **13.4. NOT A WAIVER**

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

### **13.5. EARLY TERMINATION**

Notwithstanding any provision herein to the contrary, if for any fiscal year of this Agreement the governing body of Owner fails to appropriate or allocate funds for future periodic payments under this Agreement after exercising reasonable efforts to do so, Owner may upon thirty (30) days' notice, order Work on the Project to cease. Owner will remain obligated to pay for the Work already performed but shall not be obligated to pay the balance remaining unpaid beyond the fiscal period for which funds have been appropriated or allocated and for which the Work has not been done.

**EXHIBIT B  
TO ENERGY SERVICES AGREEMENT**

**EXHIBIT B - SCOPE OF WORK AND TECHNICAL SPECIFICATIONS**

**1. PROJECT OVERVIEW**

As set forth in detail below, Contractor shall be responsible for supplying, at Contractor's sole cost, all expertise, labor and materials necessary to construct, install, commission and operate the System, including but not limited to: planning, permitting, designing, engineering, procuring, delivering, installing, constructing, interconnecting, commissioning and operating as well as providing warranties and maintenance. Access to the Project Site of the System shall be subject to approval of Agency; provided that if reasonable and timely access to the Project Site is not provided to Contractor, Contractor shall be entitled to a CO for cost and schedule relief.

Contractor shall be solely responsible for all Work required to complete the Project including but not limited to: (a) project management including design, engineering, submittals, construction, interconnection, commissioning and Distribution Utility sign off; (b) procurement of all materials and equipment; (c) design and engineering including civil, structural, electrical, seismic and wind loading requirements and fire protection requirements; (d) permitting and environmental compliance with the current version of all applicable codes and standards; (e) Distribution Utility interconnection requirements compliance; (f) site preparations including but not limited to grubbing, clearing, grading, roads, dust control, drainage requirements, construction wastewater and storm water disposal, removing excess debris, all final site preparation, and all other requirements set forth in the Agreement; (g) meters, monitoring, and Data Acquisition System ("**DAS**"); (h) assignment of performance analysis and performance guarantee for the BESS; (i) conformance to manufacturers' installation requirements and warranty terms; (j) acceptance testing, commissioning, interconnection signoff and Permission to Operate ("**PTO**") by the Distribution Utility; (k) construction closeout including punch list, as-built drawings and documents package; (l) arranging for operation and maintenance of the System under the terms of the O&M Agreement set forth in Exhibit K and the assignment of such O&M Agreement set forth in Exhibit K to Owner within thirty (30) days after the Final Project Completion Date; (m) site security requirements; (n) safety plans and measures per Agency approval. In addition to these general responsibilities, Contractor shall be responsible for all additional requirements as set forth in this Agreement and all Exhibits and Attachments, including but not limited to this Exhibit B – Scope of Work and Technical Specifications.

Contractor shall also be responsible for providing Agency with copies of Contractor's Operations and Maintenance ("**O&M**") manuals, testing reports, start-up procedures, warranties, guarantees, and commissioning reports corresponding to the Work. Contractor shall execute all of its obligations in a manner which reasonably minimizes interference and inconvenience to Agency. Contractor shall regularly report status of Contractor's execution of its obligations under this Agreement to Agency.

**2. GENERAL REQUIREMENTS**

**2.1 Project Management**

Contractor shall act as the general contractor and is responsible for overall safety on the Project Site. Contractor shall conduct all project management activities required to complete the Project, including coordination efforts with Agency's representative, the Distribution Utility, inspectors, permitting agencies, suppliers, subcontractors, Contractor's office, field Project staff and any other third parties that are involved in or impacted by the Project. The installation must be "turn-key," requiring a minimum level of supervision and project management by Agency, including all materials, equipment and labor, completed and commissioned per the specifications and general conditions contained herein.

**2.2 Agency Project Objectives**

Agency requires that Contractor perform each of the following in accordance with the Agreement:

- A. Ensure that construction activities and Project installation and operation are performed safely, comply with all applicable laws, and do not result in any adverse effect on Agency staff, surrounding persons and property, existing facilities, local power quality, local data systems or daily operations at any Project Site throughout the life cycle of the installation. Manage construction and operation activities so that they minimally disrupt the calendar of operations at the Project Site.
- B. Create a definitive Scope of Work and project schedule for the Project and manage the entire Project, including but not limited to contracts, design, engineering, permitting, approvals, procurement, pre-construction, Distribution Utility interconnection, installation, testing, commissioning, performance validation, and on-going maintenance and operation in accordance with this Agreement. Ensure Work is completed when needed to meet the Substantial Completion Date.
- C. Design and implement BESS to provide backup power to meet Agency's needs over the life of the project and to maximize projected net savings and cash flow using proven technology that complies with all relevant codes and regulations. BESS shall be configured in Import Only mode and will not export energy to the grid.
- D. Design and implement the System sized in compliance with the Utility's applicable rate structure, energy consumption, and load profiles, and in compliance with all applicable Distribution Utility requirements. Ensure that the System is designed and installed to avoid and/or minimize Distribution Utility upgrades and facilitate ensuring that such costs are minimized throughout the entire Project.
- E. Ensure that the Work is carried out in such a manner that it complies with the incentives described in Section 2.6.
- F. Ensure that all Project design and construction activities are coordinated with Agency facility operations and/or construction activities and are in compliance with Agency provided written work rules, safety requirements, and specifications at all times.

### **2.3 Communication Protocol**

Throughout the entire Project timeline, the representative selected by Agency will be Contractor's source of contact regarding any and all Project related issues. At all times between the release date of the Request for Proposals and Final Project Completion Date, Contractor shall include Agency's representative in all communications with Agency. Agency's representative will act as a liaison, facilitator and intermediary between Contractor and Agency.

Unless otherwise stated in the Contract Documents and subject to change by Agency, the Parties shall meet bi-weekly during the design phase of the Project and weekly during the construction phase of the Project to, among other things, review Work performed to date and to be performed. Contractor shall organize the meeting, prepare, and distribute meeting notes. Meeting minutes shall include a three-week look-ahead schedule, RFI log, CO log and Submittal Log with two week look-ahead priority list(s). Meeting minutes shall be updated during the meeting and distributed at the end of the meeting. Agency shall have five business days after Agency's receipt of such minutes to object to them in writing and provide corrections in writing. A quorum of meeting attendees will be named at the first meeting but may be modified as necessary by Agency. The named quorum shall be in attendance in all Project meetings. A pre-construction meeting shall be held prior to any Work being performed on the site with all required parties.

### **2.4 BESS Sizing**

It is the sole responsibility of the Contractor to ensure that the sizing of the total installed BESS capacity (kW and kWh) maximizes electricity bill savings for the Agency and provides the Estimated Critical Load Support and Duration.

“Estimated Critical Load Support and Duration” shall mean Contractor’s estimated number of kW that the BESS shall provide continuously for a minimum duration to be coordinated with the Agency, based on the Contractor’s modeling of system performance. Estimated Critical Load and Duration required for the BESS has not been determined yet and is to be determined during the design. The Agency has an existing 1,050kVA back-up diesel generator at Rio Vista Water Treatment Plant which currently provides back-up power for the entire site.

## **2.5 Microgrid Configuration**

All BESS equipment installed as part of this Project shall provide backup power, shall be fully compatible with a Microgrid, and easily integrated into a Microgrid following Final Project Completion.

## **2.6 Incentives**

Unless specifically stated otherwise in other Contract Documents, Contractor shall prepare and submit to all applicable agencies, on behalf of Agency, or assist Agency in doing so directly, all applications, proof of progress submittals, and claim forms and documentation necessary for any environmental or financial incentives and rebates, including but not limited to, the Self Generation Incentive Program (“*SGIP*”); provided that Agency shall have the opportunity to review, comment on, and approve all such applications and documentation prior to submission by Contractor. If Agency shall decide to prepare and submit such documents, Contractor will coordinate and provide Agency promptly upon Agency’s written request all documents reasonably necessary for Agency to do so. Contractor shall not charge any additional fee for its services. Unless stated otherwise in other Contract Documents, Agency shall pay for all fees required to file the applications. All rebates or incentives available in connection with the BESS(s) are owned by Agency. Contractor shall not be responsible for any failure to receive such SGIP incentives and/or rebates by Agency to the extent that such failure is not attributable to a delay or other failure of Contractor to fulfill its obligations in accordance with the terms of this Agreement.

## **2.7 Physical Site Investigation & Project Feasibility Assessment**

Contractor shall read and become knowledgeable with all documentation available concerning the Project Site and visit the Project Site to assess its conditions and logistics, including but not limited to all Distribution Utility interconnection related requirements. Contractor shall conduct feasibility and configuration assessments, environmental assessments, and all other inspections of the Project Site to determine that the Project Site can support the installation and interconnection of the System. Contractor must visit the Project Site to ascertain site conditions, accuracy of provided drawings and feasibility of design. Contractor shall be solely responsible to ensure that the Project Site’s soil conditions and terrains are favorable for Project construction.

Contractor shall be solely responsible for ensuring the existing Project Site’s electrical distribution equipment, including but not limited to the main service switchgear and Distribution Utility transformer, will support the interconnection of the System. Contractor is responsible for all scope, costs and designs relating to upgrades to the existing electrical system required to accommodate the System installation and interconnection, and has included these upgrades in its scope, costs and design drawings. The Parties acknowledge and agree that the Contract Sum includes an allowance of \$6,000 for interconnection upgrades required by the utility pursuant to Section 2.13 of this Exhibit B, and if the cost to perform such interconnection upgrades exceeds \$6,000, Contractor shall be entitled to a CO that extends the Project Schedule and/increases the Contract Sum, as applicable, in accordance with Article 6 of Exhibit A.

Contractor shall confirm that the System will be interconnected to the correct meter at the Project Site by validating the meter and service account identification numbers (SAID) with the Distribution Utility.

Agency operates under several environmental permits issued by various agencies. To the extent that Agency has provided such a permit to Contractor in advance of the Contract Effective Date, and due to an action, inaction, or negligence by Contractor, Agency becomes subject to non-compliance penalties, the cost of such penalties shall be borne by Contractor. If such permit provided has impact or limitation in regards to construction or construction schedule, Contractor shall be entitled to a CO to address such impact.

Except as set forth in Article 6 of the General Conditions, Contractor shall assume any and all costs and risks associated with physical Project Site conditions, real estate constraints and environmental site assessment. The following reports shall be obtained by Contractor at the Contractor’s sole cost.

- Structural Report
- Underground Utility Assessment
- Arc Flash Study / Coordination Study from the System back to the existing electrical service board, not the full site (must be completed)
- Site Electrical Service Assessments

These reports must be obtained when requested by Agency or any other Governmental Authority having jurisdiction.

For any additional third party reports required by the Owner or any Governmental Authority having jurisdiction to be obtained by Contractor to complete the Work, Contractor shall be entitled to a Change Order for the costs of obtaining such reports.

**2.8 Permitting, Codes, Regulatory Compliance**

Contractor and Owner shall, respectively, obtain the permits and approvals listed in the table below. The Parties acknowledge and agree that the Contract Sum includes an allowance of \$15,000 for the fees incurred in obtaining Contractor-responsible permits, and (i) if the cost to obtain such Contractor-responsible permits exceeds \$15,000, Contractor shall be entitled to a CO that increases the Contract Sum by the amount of such costs that exceeds \$15,000 and (ii) if the cost to obtain such Contractor-responsible permits is less than \$15,000, Owner shall be entitled to a CO that decreases the Contract Sum by an amount equal to \$15,000 less the actual costs to obtain the Contractor-responsible permits.

<u>Permit/Approval</u>	<u>Contractor-Responsible</u>	<u>Owner-Responsible</u>
CEQA Exemption		X
Building Permit	X	
Fire Department Sign Off	X	
Electrical Permit	X	

**2.9 Compliance with The California Environmental Quality Act (“CEQA”)**

Contractor agrees to coordinate its Work with that of any CEQA consultant(s) retained by Agency, to provide any reasonably available information such as current elevations and schematic drawings for use in CEQA compliance documents. Contractor will further work with Agency and to incorporate any mitigation measures adopted by Agency into the Project design, subject to a mutually agreed CO with respect to the cost and delay associated with such measures.

**2.10 Procurement**

Contractor shall procure all equipment and services required for Project design, construction, commissioning, system monitoring, warranties, operation and maintenance, as described in this Agreement and as shown in Agency-approved final design engineering drawings, specifications and data sheets. Any proposed changes or substitutions must be presented to Agency in standard submittal format with detailed explanations and instructions for review, comment and approval, which review, comment and/or approval must be provided by

Agency within ten (10) business days. Agency approval of any of the submittals provided by Contractor, including drawings, does not excuse Contractor from their responsibility to meet all safety requirements, applicable codes and standards requirements, requirements of all Governmental Authorities and the requirements of the Agreement including this Exhibit B.

### **2.11 Construction**

Contractor shall conduct all construction and construction management Work per the Project scope, schedule and per the requirements of this Agreement. Any proposed changes that represent a deviation from scope or schedule must immediately be brought to Agency's attention for review. All Work must be performed and supervised by skilled workers trained and experienced in the installation of battery energy storage systems in accordance with equipment manufacturers' installation requirements. Contractor shall effectively manage the schedule and coordinate construction activities around Agency's maintenance activities and other construction projects where applicable.

### **2.12 Commissioning**

Contractor shall conduct all activities required for proper testing and commissioning of the System and any related installations/systems. Commissioning will include testing of all systems to ensure proper operations per the design standards and testing parameters. Contractor is required to verify that the system is functioning as expected within acceptable parameters and as designed at a nameplate capacity, and meets expected performance requirements described within the Agreement. Contractor shall manage all necessary final inspections with all Governmental Authorities having jurisdiction over the Project, the Distribution Utility, Agency representatives, and any other required inspectors. Contractor shall also be responsible for completing the Commissioning Schedule included as Attachment D and submitting it to Agency for review and approval. Contractor will notify Agency no less than five (5) days prior to the commencement of any testing and/or inspections and Agency and/or its representative will have the right to observe all such tests and/or inspections. As part of the commissioning activities, Contractor must confirm that no negative impacts are experienced by existing facilities that connect or interface with the new installations and systems. During commissioning and the System Warranty Period, Contractor shall be solely responsible for resolving any failure of the System to operate in accordance with the specifications for the Work contained in the Scope of Work, including working with any manufacturer to resolve equipment deficiencies or failures.

### **2.13 Distribution Utility Interconnection**

Contractor is responsible for coordinating and implementing all requirements related to the interconnection of the System with the Distribution Utility, which shall include Distribution Utility provided and installed facilities and Agency Site facilities, at Contractor's sole cost and expense. Contractor will coordinate with the Distribution Utility and Agency to meet all milestones for the Project required by any Interconnection Agreement. Contractor is responsible for compliance with all milestones, including payment milestones to the Distribution Utility for design and installation services provided by the Distribution Utility. Contractor shall be responsible for obtaining written Permission to Operate for the System from the Distribution Utility and activate the system to begin operating in compliance with this Agreement, and any other necessary permit signoffs from any Governmental Authorities having jurisdiction over the Project, to operate the System in parallel with the Distribution Utility grid. Ongoing compliance with the Interconnection Agreement and any other permit necessary for operation following commissioning will not be the responsibility of Contractor.

For the purposes hereof, "**Interconnection Agreement**" shall mean an agreement entered into, by and between Agency and the Distribution Utility which agreement shall provide for (i) each System to be interconnected with the Distribution Utility's electricity distribution system, (ii) for energy to flow from each System to such system and (iii) for energy to flow from such system to the Delivery Point, as applicable, under the provisions of the Distribution Utility's tariff.

Contractor shall also be responsible for coordinating the desired rate tariff changes with the Distribution Utility for the System. Desired rate tariffs for each Distribution Utility meter are defined in the Site Assessment Table.

Contractor will be responsible for ensuring that the System meets the requirements for inclusion in the desired rate tariffs and will promptly inform Agency if there is any discrepancy between such requirements and the specifications for each System set forth in this Agreement. Rate changes shall occur as soon as possible following Permission to Operate. Contractor shall be responsible for ensuring that the rate tariff change has taken place for each Distribution Utility meter and providing confirmation of the rate tariff change to Agency.

### **3. ENGINEERING AND DESIGN REQUIREMENTS**

Contractor shall, at its own cost and expense, (i) design, prepare and cause to be sealed all drawings and Engineering Design Packages, perform engineering studies and estimates and attend meetings as may be required (or arrange for design and engineering pursuant to a subcontract executed in accordance with this Agreement), for the construction of the Project and interfaces required by the Distribution Utility including, without limitation, sizing of equipment, communication systems and components, preparing specifications and calculations for equipment and material to be included in the Project, completing the Work in accordance with this Agreement, providing administration and other services and items required to complete and deliver to Agency and Distribution Utility the design and Engineering Design Packages, calculations, studies, and drawings necessary to construct a fully integrated and operational Project, and (ii) provide services, attend meetings and prepare all necessary documents and permit applications required to obtain all Governmental Approvals, including, without limitation, coordinating with the Governmental Authorities, the Distribution Utility and other agencies regarding Governmental Approvals necessary for the completion of the Project, completing the permitting process beginning from the permit application through to final approval and receipt of all Applicable Permits, all in accordance with this Agreement and its Exhibits, applicable law, Governmental Approvals, Agency requirements, Distribution Utility requirements, Engineering Design Packages, industry standards, the actual condition of the Site and all requirements to be sufficient, complete and adequate in all aspects to enable the BESS to maximize electricity bill savings, provide Estimated Critical Load Support and Duration and a minimum fifteen (15) year design life.

#### **3.1 Design Codes**

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

- ACI – American Concrete Institute
- AISC – American Institute of Steel Construction
- ANSI – American National Standards Institute.
- ASCE – American Society of Civil Engineers
- ASME – American Society of Mechanical Engineers
- ASTM – American Society for Testing and Materials
- CAL OSHA – California Occupational Safety and Health Administration
- CBC – California Building Code
- CEC – California Electrical Code
- CFC – California Fire Code
- Distribution Utility Manuals and Standards
- ETL – Electrical Testing Laboratories
- IAEI – International Association of Electrical Inspectors
- ICEA – Insulated Cable Engineer’s Association
- IEEE – Institute of Electrical and Electronic Engineers
- IPMVP – International Performance Measurements and Verification Protocol
- NEC – National Electrical Code
- NEMA – National Electrical Manufacturers Association
- NESC – National Electrical Safety Code
- NETA – National Electrical Testing Association
- NFPA – National Fire Protection Association codes, including but not limited to
  - NFPA 101 – Life Safety Code

- NFPA 855 – Standard for the Installation of Stationary Energy Storage Systems
- UL – Underwriters Laboratories

## 3.2 General Requirements

### 3.2.1 Licensing

- (a) In all cases, engineers are to be properly licensed by the State of California.
- (b) Agency requires a minimum of a Class B and Class C-10 license be held by Contractor and/or their subcontractors.
- (c) Electrical, geotechnical, civil, structural and other engineering designs and reports are to be stamped and signed by a licensed engineer.

### 3.2.2 Site and General System Requirements

- (a) Inverters and batteries shall not be placed in locations subject to exposure to direct sunlight between the hours of 10:00AM and 4:00PM. Where inverters must be placed in locations that would be subject to direct exposure to sunlight during this window of time, they shall be provided with shade coverings or otherwise protected from continuous exposure to the sun.
- (b) Equipment pads shall be protected by bollards. Bollards shall be permanent unless removable bollards are required to facilitate access to equipment.
- (c) If necessary, Contractor shall be responsible for creating and performing all requirements of a Storm Water Pollution Prevention Plan (“**SWPPP**”), dust control plan, pollution mitigation plan, and all other plans required by all Governmental Authorities. At a minimum, any earthwork-related or fine grading activities are to be conducted at such times that minimize construction-related fugitive dust. SWPPP compliance will be subject to additional compensation pursuant to a change order.
- (d) If adequate site fencing or equivalent is not in place, inverter pads, BESS equipment pads, disconnect switches and all other equipment determined by Agency to require limited access shall be fenced. Fencing shall be eight feet (8’) high with two inch (2”) galvanized steel chain link fabric where in accordance with all local requirements. Fenced equipment pads shall have slats placed in the chain links of a color determined by Agency.
- (e) Locks for all gates and electrical enclosures to be provided by Contractor but must be approved by Agency prior to procurement. All gates shall include provision for both Agency and Contractor locks to allow for access by each entity.
- (f) Equipment pads shall be provided with two (2) 120VAC, 20A GFCI receptacles where alternative outlets are not readily available.
- (g) Contractor will evaluate whether the Site is in a floodplain and take appropriate precautions to prevent water damage to the Project, including determining and installing the batteries, inverters, electrical enclosures and all other materials to be used in the Project at the appropriate height above grade to be above the 1-percent-annual-chance flood elevation.
- (h) An arc flash study shall be performed by Contractor, from the Systems back to the existing electrical service board (not the entire Site). All required equipment labeling, fault current and coordination analysis, and recommendations for proper personal protective equipment (PPE) shall be followed in accordance with the results of the arc flash study.
- (i) Geotechnical studies, where required, must include soil corrosivity and thermal resistivity testing and evaluation. All work must include consideration for the results of the testing and evaluation.

### 3.2.3 Conduit and Wiring



- (a) All conductors shall be in conduit. Contractor shall not direct bury conductors unless explicitly approved by Agency in writing. All conduits shall be installed according to the requirement of the NEC and all Governmental Authorities.
- (b) Buried conduit shall be PVC encased in concrete and shall be covered per NEC requirements.
- (c) All below grade horizontal and vertical bends of PVC conduit shall use long radius elbows. Bending of straight PVC conduit tighter than that of long radius elbows will not be allowed.
- (d) Exposed vertical risers of buried and encased PVC conduit shall transition while below grade to Galvanized Rigid Conduit (GRC) wrapped in 10mil tape in non-corrosive environments, and to PVC coated GRC in corrosive environments. .
- (e) Where exiting from the ground, all conduits shall enter enclosures from below and be made watertight. Finish with a silicone sealing compound.
- (f) All above ground conduit shall be GRC in a non-corrosive environment. All above ground conduit shall be PVC coated GRC in a corrosive environment.
- (g) All conduits located on rooftops will be supported using UV resistant polyethylene foam or synthetic rubber unless explicitly approved by Agency in writing. Wood supports are not permitted.
- (h) All conductors 8 AWG or smaller shall be copper. Code compliant aluminum conductors may be used for conductors larger than 8 AWG. All wiring that interfaces with any of Agency's equipment must be copper.
- (i) All wiring used for grounding shall be copper.
- (j) Ground lugs shall be mechanical or irreversible crimp, rated for direct burial, listed to UL 467 and/or UL 2703 and suitable for use with copper conductors.
- (k) All wiring shall be minimally rated to handle the voltage and current of the designed system.
- (l) All wiring shall be listed and labeled by a Nationally Recognized Testing Laboratory ("**NRTL**") in accordance with Underwriters Laboratories standards for its purpose and location.
- (m) All termination equipment shall be rated for the conductor type, temperature, current and voltage of the conductor being terminated.
- (n) All conductors used for communication will be shielded cable with a drain.
- (o) Communications wiring shall be in separate conduits from the high voltage DC and AC wiring with sufficient separation to prevent interference.
- (p) Worst-case AC voltage drop for an individual inverter shall be limited to 2.0% for the BESS at maximum power unless otherwise explicitly approved by Agency in writing. The circuit shall be defined as all wiring from the inverter output to the Delivery Point. Contractor shall account for all horizontal and vertical distances and all wire gauge transitions.

### 3.2.4 Electrical Tie-In

BESS Meter shall be identified on the preliminary and final drawings and shall be located within ten (10') feet of the Delivery Point unless an alternative location is approved in writing by Agency.

- (a) In lieu of providing and installing a Net Generation Output Meter ("**NGOM**") on the existing Solar Facility, Contractor may provide, install and program a UL 1741 CRD listed Power Control System ("**PCS**") that is capable of demonstrating to the Distribution Utility that the BESS is 100% charged by the Solar Facility, thereby ensuring that the existing Solar Facility will continue to receive full Generation Credits from the Distribution Utility in accordance with the Agency's Renewable Energy Self-Generation Bill Credit Transfer ("**RES-BCT**") tariff. Contractor is responsible for all scope, costs and designs relating to the PCS.
- (b) Should relocation of any circuit breakers be required to meet requirements of this Agreement, all scope, costs and designs are the responsibility of Contractor.
- (c) Motorized circuit breakers or similar equipment is required to isolate the electrical loads from the Distribution Utility for islanded Microgrid operation, and all scope, costs, and designs are the responsibility of Contractor.

### **3.2.5 Structural**

- (a) Structural engineers shall determine all code requirements and the Project shall be designed and installed in accordance with the latest edition of all applicable codes and standards.
- (b) Equipment pads shall be a minimum of six inches (6”) of concrete reinforced at twelve-inch (12”) intervals with #5 rebar unless otherwise directed by the structural engineer. Equipment pad layouts shall include adequate spacing to accommodate maintenance activities for all equipment. A housekeeping pad elevated three inches (3”) above the remaining pad surface will also be required.

### **3.3 Engineering Design Packages and Project Execution Plan**

Contractor and its subcontractors (as applicable) shall prepare and submit to Agency for their review and approval, which review and/or approval must be provided by Agency within ten (10) business days, all drawings, assessments, reports, specifications, and all other necessary documents setting forth in detail all requirements for the construction of the Project. Contractor shall prepare Preliminary, 50%, 90% and 100% Engineering Design Packages as described herein. All engineering and installation drawings shall comply with current construction standards, codes and regulations, and adhere to all requirements of this Agreement. The system design will comply with all applicable laws and regulations. Agency approval of any of the submittals provided by Contractor, including drawings, does not excuse Contractor from their responsibility to meet all safety requirements, applicable codes and standards requirements, requirements of all Governmental Authorities and the requirements of the Agreement including this Exhibit B.

Engineering Design Packages shall at a minimum contain the information as outlined below for each milestone.

#### **3.3.1 Preliminary and 50% Engineering Design Packages**

- (a) Design Drawings depicting and identifying at a minimum:
  - (1) The proposed locations of all major BESS equipment including but not limited to electrical point of connection, disconnects, transformers, panelboards, inverters, batteries, meters, controllers and dataloggers.
  - (2) The locations of all major existing equipment, including but not limited to Distribution Utility transformer and meter, main electrical service switchgear, System electrical point of connection, disconnects, panelboards, inverters, arrays, meters and dataloggers.
- (b) Product data sheets and copies of manufacturers’ warranties for all major pieces of equipment.
- (c) Completed System Site Assessment Table in native and PDF formats.
- (d) System performance report detailing the Critical Loads and Estimated Microgrid Operation Duration.
- (e) BESS system performance modeling report in 4x8760 output file in MS Excel format.

#### **3.3.2 90% and 100% Engineering Design Packages**

- (a) All information required above for the Preliminary and 50% Engineering Design Packages, updated at each milestone.
- (b) A full set of Design Drawings as described in a subsequent section.
- (c) All required drawings, assessments and reports stamped and signed by an engineer licensed in the appropriate discipline – structural details shall not be stamped by an electrical engineer.
- (d) Full structural details of the BESS pad and anchorage, equipment support racks and anchorage, fencing design and associated calculations.

- (e) Microsoft Project or equivalent construction schedule (providing Gantt chart output) showing milestones, equipment order and delivery dates, and staffing requirements. Specific milestones such as conduit installation completion, material arrival dates, interconnection date, and commissioning timeline, shall be highlighted.
- (f) A list of those changes made from the original proposal with the reasons therefor.

The Engineering Design Packages will be reviewed by Agency. Comments shall be delivered to Contractor within ten (10) business days of submission for review. Ensuring that the Project complies with all requirements and will be installed to meet all requirements of this Agreement remains the sole responsibility of Contractor, subject to any Excusable Delays.

### **3.3.3 Project Execution Plan**

A complete Project Execution Plan for the Site shall be provided for review, which shall at a minimum address the following:

- (a) Material storage location
- (b) Lay-down and layout yard location
- (c) Site office location
- (d) Access and mobilization
- (e) Crane locations and traffic control
- (f) Method of installation
- (g) Human resources and staffing
- (h) Communications
- (i) Anticipated Project risks

The Project Execution Plan shall be reviewed and approved prior to any Work being performed on the Site. The Project Execution Plan shall be submitted as soon as reasonably possible, and no later than two (2) days after the 90% Engineering Design Package due date.

## **3.4 Design Drawings**

A drawing summary list shall be maintained by the Engineer of Record for tracking drawings and revisions thereof over the design and construction period, and the list shall be provided to Agency on a bi-weekly basis or as requested. All Design Drawing submittals shall be according to the following:

### **3.4.1 Format**

- (a) All drawings shall include a title block which at a minimum contains the Project name, Site address, Agency logo, Contractor's name, engineer's stamp, engineer's name and drawing revision table.
- (b) Any changes in the Engineering Design Packages from one Agency submittal to the next shall be clouded.
- (c) Redlines shall be maintained on a not more-than-weekly basis. As-built drawings shall be completed in a reasonable amount of time following the Governmental Authority final inspection and sign off.

### **3.4.2 Content**

The descriptions of the sheets and sheet contents below shall be considered the minimum requirement. Additional sheets and details shall be included as needed to describe the project in adequate detail for construction and permitting needs.

#### **(a) Title Page**

Information on the title page shall include, but not be limited to the following:

1. Location of the Site
2. Amount of land area to be occupied by the Project, expressed in square feet or acres as appropriate
3. Project directory including contact information for all engineers, designers and consultants
4. Index of drawings
5. Applicable codes and standards list including most recent CEC/NEC
6. A scope of work narrative description
7. System size, which shall include kWAC and kWh for any BESS
8. Existing Solar Facility size (kWDC and kWAC)
9. Interconnection type (NEM-PS, NEM-A, Rule 21)
10. PV module manufacturer, part number and quantities (existing Solar Facility)
11. PV inverter manufacturer, part numbers and quantities (existing Solar Facility)
12. Battery manufacturer, part numbers and quantities
13. BESS inverter manufacturer, part numbers and quantities
14. Benchmarking / survey control data as applicable

**(b) Architectural Site Plan**

Information on the site plan shall include, but not be limited to the following:

1. Property lines
2. Required setbacks and/or yards
3. Easements
4. Existing buildings and structures
5. Proposed locations of major equipment
6. Building code analysis justifying proposed equipment placement
7. Separation distances
8. Fire access requirements
9. Modifications for ADA compliance

**(c) Single Line Diagrams**

The single line diagrams shall accurately depict the physical electrical connections (i.e. quantity, type, and size of conductors, quantity, size, and type of conduit) between all electrical equipment used in the system. Information on the single line diagrams shall include, but not be limited to the following items:

1. System size, which shall include kWAC and kWh for any BESS
2. Interconnection type (NEM-PS, NEM-A, Rule 21)
3. PV module manufacturer, part number and quantities (existing Solar Facility)
4. PV inverter manufacturer, part numbers and quantities (existing Solar Facility)
5. Battery manufacturer, part numbers and quantities
6. BESS inverter manufacturer, part numbers and quantities
7. Distribution utility transformer, including size
8. Distribution utility meter, including meter number and SAID
9. Main electrical service switchgear, including bus amperage, main service disconnect amperage, voltage rating and interrupt rating
10. Solar Facilities electrical point of connection, disconnects, panelboards, inverters, arrays, meters and dataloggers, if applicable
11. System interconnection tie-in scheme
12. All BESS AC and DC disconnects including wiring and fusing within disconnects
13. All overcurrent protection device sizing
14. Switchgear, including bus amperage, main over current protection device (“OCPD”) amperage, voltage rating and interrupt rating

15. Transformers, including kVA, primary and secondary voltages
16. Net Generation Output Meter, Solar Production Meter, BESS meter, Facility Load meter and any other meters
17. Wire type, conductor material, size and quantity used for each run
18. Conduit type, size and quantity of wires in each conduit for each run
19. Total wire length for each run
20. Complete electrical calculations, including voltage drop, OCPD and wiring ampacity
21. Monitoring data communications and power wiring
22. Controls diagram including low voltage, low current and power wiring
23. Make and model of all major equipment

**(d) Electrical Site Plan and Electrical Details**

Information on the electrical layouts and details shall include, but not be limited to the following:

1. Plan view of locations of all electrical equipment shown on the Single Line Diagrams described above
2. Location of the point of interconnection
3. Enlarged views of the BESS area, any other electrical equipment pads, and main electrical service area
4. Elevation views of all electrical equipment
5. Locations of conduit runs
6. Locations and sizing of spare conduits
7. Safety label details (including, but not limited to, arc flash)

**(e) Structural and Civil Sheets**

Information on structural and civil sheets shall include, but not be limited to the following:

1. Equipment pad(s) structural details
2. Equipment mounting rack structural details
3. Equipment anchorage design
4. Fence design and structural details
5. All civil work details

**4. EQUIPMENT**

The BESS are intended to be in operation for a minimum of fifteen (15) years, therefore, the life cycle costs (capital expenditures and operating and maintenance expenses) for all installations and systems must be considered in selection criteria for all materials and equipment. Contractor shall purchase and cause to be delivered to the Project Site all equipment and materials required for the Project and as described in Agency-approved final Engineering Design Package, specifications and data sheets and as required to construct a fully functioning Project. Any proposed changes or substitutions must be presented to Agency in standard submittal format with detailed explanations and instructions for review, comment and approval, which review, comment and/or approval must be provided by Agency within ten (10) business days. Minimum requirements for equipment are described below. Agency approval of any of the submittals provided by Contractor, including drawings, does not excuse Contractor from their responsibility to meet all safety requirements, applicable codes and standards requirements, requirements of all Governmental Authorities and the requirements of the Agreement including this Exhibit B.

**4.1 Standards**

All components shall be designed, manufactured, tested and listed in accordance with the latest applicable standards of NEMA, ANSI, NEC, IEC and UL. Contractor shall verify listing and labeling of equipment by a NRTL prior to installation. In all cases NEC and Governmental Authority rules shall apply.

**4.2 Factory Testing**

Any equipment that is required to be factory tested to an applicable standard shall be accompanied by the results of those factory tests, and further those results will be submitted to Agency as part of the Final Binder.

### 4.3 Acceptance and Care

Equipment shall be stored, handled and installed in accordance with manufacturer's requirements. Material received shall be identified by serial number. A report recording make, model and serial numbers of the material and equipment received shall be prepared and shall be forwarded to Agency within ten (10) days of the material and equipment being received.

### 4.4 NEMA Rating

Enclosures mounted outdoors shall be rated a minimum of NEMA 3R.

### 4.5 Nameplates and Labeling

All major equipment, panels, boxes, and associated equipment shall be clearly labeled. Reference ANSI Z535.4-2011 for guidelines describing suitable font sizes, words, colors and symbols for labels. Nameplates and map placards shall be engraved phenolic placards made of red stock with white lettering sized appropriately for the size and purpose of the label. Contractor shall submit the proposed labels for approval prior to installation. The following minimum labeling shall be installed:

- A. Install engraved signs for instruction and warning identifying that a System is operational on the premises at appropriate locations and that there are potentially multiple power sources on the premises – submit wording and location to Agency for approval. In all cases NEC and Distribution Utility requirements shall dictate.
- B. Install all required signage per NEC (including arc flash requirements per NEC Article 110).
- C. Install engraved phenolic placards identifying emergency disconnecting means.

### 4.6 Products – Approved Manufacturers and General Product Requirements

Only products that meet the requirements below shall be used in the construction of the Project, unless otherwise explicitly approved in writing by Agency.

#### 4.6.1 Approved BESS Inverter Manufacturer

Tesla

##### Agency's General Guidelines for BESS Inverters

All BESS inverters must be included on any required incentive-related approved inverter list. Inverters must meet all Distribution Utility requirements. All inverters must have a minimum fifteen (15) year warranty.

##### Inverter Manufacturer Preventative Maintenance and Support Services

Agency requires preventative maintenance support services which may be provided by Contractor or the inverter manufacturer, as well as comprehensive and highly responsive repair service offerings. In addition, Agency will be monitoring the inverters' performance remotely, and require that the inverters utilize an open interface and documented protocols for third party monitoring software.

#### 4.6.2 Approved Battery Manufacturer

Tesla

##### Agency's General Guidelines for Batteries

Lithium-ion battery chemistry is preferred. Lead acid battery chemistries are not acceptable. All batteries must have a minimum fifteen (15) year warranty.

#### Battery Manufacturer Preventative Maintenance and Support Services

Agency requires preventative maintenance support services which may be provided by Contractor or the battery manufacturer, as well as comprehensive and highly responsive repair service offerings.

#### **4.6.3** Approved Data Acquisition System (“DAS”)

Tesla Site Controller, Stem Athena Controller

#### **4.6.4** Performance Monitoring and Reporting Service Contractor

Tesla Site Controller, Stem Athena Controller

#### **4.6.5** Approved Facility Load Meters

SEL 735,

#### **4.6.6** Approved BESS Meter

SEL 735

#### **4.6.7** Solar Production Meter

Not Applicable

#### **4.6.8** Approved Safety Switches

TBD

#### **4.6.9** Approved Grounding Devices

TBD

## **5. COMMUNICATIONS AND MONITORING SYSTEMS**

Contractor is responsible for the complete and fully functional installation and operation of the Supervisory Control and Data Acquisition (“*SCADA*”) System. Any labor, communications devices, wiring and or other materials shall be included in Contractor’s cost and scope. The SCADA system shall meet all the requirements outlined in this Agreement.

### **5.1 Performance Monitoring & Reporting Service**

Contractor shall provide a Performance Monitoring and Reporting Service (“*PMRS*”) as part of the SCADA system to monitor and collect data from the Facility Load Meter, Critical Load Meter, BESS Meter, Solar Production Meter, inverters, batteries, and all other data points applicable to the System’s operation. Contractor shall be responsible for procuring, installing, and commissioning all SCADA equipment, and for entering into a contract with a third-party Performance Data Provider (“*PDP*”) that is qualified to meet all requirements for all anticipated incentive programs relative to the Project. Contractor shall confirm experience working with the PDP with the Agency. The monitoring service requirements are as follows:

- A. Contractor shall provide operator and administrator level training to Agency for using the PMRS software interface as part of commissioning activities.
- B. The PMRS software interface must allow for access via a link from Agency's website and must allow the users to view and download real-time and historical electricity usage, solar production, and BESS power flow data at the Project Site over a variety of timescales including but not limited to a minimum of a year of fifteen (15) minute interval data. Contractor shall coordinate and obtain approval of all data points to be displayed on the public webpage with Agency prior to implementation.
- C. The PMRS software interface must allow Agency to programmatically download via an Application Program Interface ("**API**") the real-time and historical electricity usage, solar production, and BESS power flow data at the Project Site over a variety of timescales including a minimum of one (1) year of fifteen (15) minute interval data. The API must include the ability to reference most recent inverter, meter and alarm status readings.

## **5.2 Equipment and Components**

Below is a list of the minimum equipment and components that must be included as part of the PMRS. All equipment shall be installed to equipment manufacturer's recommendations and best practices for System.

### A. Facility Load Meter(s)

Revenue grade meters shall be installed to measure the total (not net) energy usage, instantaneous demand, power factor, etc. at each main switchboard where the System is interconnected. The load side revenue grade energy meters shall be included as part of the PMRS system, send data through the PDP and be displayed on the PMRS software interface.

### B. BESS Meter

Revenue grade energy meters shall be installed to monitor power and energy flows of the BESS at the Site. The BESS Meter shall be located within ten feet (10') of the Delivery Point unless an alternative location is agreed to in writing by Agency. The BESS Meter shall be included as part of the PMRS system, send data through the PDP and be displayed on the PMRS software interface.

### C. Solar Production Meter

Revenue grade energy meters shall be installed to monitor power and energy production of any Solar Facility present at the Site. The Solar Production Meter shall be located within ten feet (10') of the Delivery Point unless an alternative location is agreed to in writing by Agency. The Solar Production Meter shall be installed as part of the PMRS system, send data through the PDP and be displayed on the PMRS software interface.

### D. Datalogger/Internet Gateway

### E. Protective Relays, Medium Voltage Circuit Breakers and Transformers

All available data points shall be provided through the PMRS system.

### F. External Device Communication

Contractor must arrange for and provide Agency a secure and reliable internet connection adequate to allow for uploads of all data points from the PMRS every fifteen (15) minutes at their sole cost. Contractor shall provide this internet connection via a cellular modem with data service for a fifteen (15) year term. Contractor shall make this information available to Agency through the PMRS system.

## **5.3 Remote Access Monitoring Portal**

### **5.3.1 Power and Energy Data**



The Project Site's PMRS web portal should display the following minimum information over a variety of timescales:

- (a) BESS inverter instantaneous power (kW)
- (b) BESS battery state of charge (%)
- (c) BESS battery instantaneous energy remaining (kWh) (desirable not required)
- (d) Solar instantaneous power output (kW)
- (e) Solar energy production (kWh)
- (f) Facility entire instantaneous load without solar & BESS (kW)
- (g) Facility instantaneous load net solar (kW)
- (h) Facility instantaneous load net solar & BESS (kW)
- (i) Facility entire energy consumption (kWh)
- (j) Critical loads instantaneous load (kW)
- (k) Critical loads energy consumption (kWh)
- (l) Billing cycle peak demand without solar & BESS (kW)
- (m) Billing cycle peak demand reduction due to BESS (kW)
- (n) Billing cycle peak demand reduction due to solar & BESS (kW)
- (o) Billing cycle peak demand savings (\$) (desirable not required)

### **5.3.2 BESS Alarms**

The Site should have at least the following custom alarms:

- (a) Whenever the billing cycle peak demand exceeds the programmed demand threshold set at the beginning of the billing cycle.
- (b) The battery state of charge remains below a programmed value for five (5) consecutive days. An example is to set the value to 66% of the battery system kWh rating in an attempt to identify if/when the battery system is malfunctioning.
- (c) Any meter reports a magnitude of less than 0.1 kW for one day.

### **5.3.3 Settings**

All System information should be filled out completely and correctly on the monitoring platform to match the As-Built drawings and allow for easy identification of equipment and other System information.

## **6. CONSTRUCTION**

Contractor is required to conduct all construction and construction management Work for completion of the Project. Contractor shall perform all Work in accordance with generally accepted industry practices, all applicable laws, regulations, codes, rules, ordinances, Government Approvals and permitting requirements, equipment manufacturer's requirements, and quality control inspection protocols so that the System meets or exceeds (i) all requirements of applicable laws, Government Approvals and licenses; (ii) equipment manufacturer's installation specifications, and compliance with the terms and conditions of all applicable warranties and guarantees; (iii) complies with all requirements of the Interconnection Agreement; (iv) all established safety protocols for operation and maintenance, and labeling / marking requirements; (v) all requirements of the commissioning procedures and performance validation herein; (vii) all requirements for any applicable federal, state or other environmental or financial rebates and incentives. All Work must be performed and supervised by skilled workers trained and experienced in the installation of battery energy storage systems in accordance with equipment manufacturers' installation requirements. Contractor is encouraged to utilize local subcontractors and source materials and resources locally should they provide requisite qualifications and competitive advantages.

### **6.1 Site Safety and Security**

Contractor shall be solely responsible for compliance with all applicable occupational safety and health standards, rules, regulations and orders established by local agencies, the State of California, and California Division of Occupational Safety and Health Construction Safety Regulations (Cal OSHA), including obtaining permits required by California Code of Regulations, Title 8, Section 341 and 341(a). In addition, Contractor and all subcontractors shall comply with applicable provisions of Federal, State, and municipal safety, health, and sanitation statutes and codes. In the event there is a conflict between the provisions of the Safety and Health Regulations for Construction promulgated by the U.S. Department of Labor in Title 29 CFR Part 1926, OSHA, or Cal OSHA, the more stringent provision shall prevail.

Contractor will develop a site-specific OSHA approved Site Safety and Security Plan for the Project Site and submit it to Agency for review and approval prior to the start of construction. The Site Safety and Security Plan shall include an evaluation and appropriate documentation of the safety record for all subcontractors that will be performing Work on the Project, a traffic control plan, and an Injury and Illness Prevention Program plan. The Site Safety and Security Plan shall also include the location of emergency utility shutoffs and an evacuation plan. No Work shall be performed on the Project prior to written confirmation that Agency has accepted the Site Safety and Security Plan.

A safety conference shall be scheduled prior to the start of construction to review the experience modification rating, the respective safety requirements, and to discuss implementation of all health and safety provisions related to this project. Representatives from Agency, Contractor and every subcontractor shall be present at the safety conference.

Following the commencement of Work on the Project, safety meetings will be held once a week with all Contractor and subcontractors' employees attending. Printed names will be taken of those attending the meeting. No individual will start Work at any Project Site without having attended a safety briefing on the dangers and protocols of the Project Site. Records of this training will be kept and provided to Agency for review. No individual will operate a piece of equipment on which they have not had certification training. Certification shall be carried on the operator at all times.

Security of the Project Site(s) is the sole responsibility of Contractor, including any security monitoring equipment, fencing or other precautions that Contractor may deem reasonably necessary. Agency will not be liable for theft or damage of equipment or materials stored at the Project Site.

## **6.2 Access to and Use of Project Site**

Agency shall provide access and area at the Project Site for the performance of the Work on the Project, including lay-down area and storage area. Agency will grant Contractor access to the Project Site to perform all Work associated with the Project and on-going Operation & Maintenance during regular business hours, or such other reasonable hours requested by Contractor and approved by Agency in accordance with this Agreement. Access points to the Site must be closely coordinated with Agency and approved in advance before construction begins. All pre-existing roadways and access points must be maintained. Agency will issue necessary keys to Contractor to access Project Site once all related requirements have been met. Contractor shall return keys to Agency at any time upon request by Agency. Contractor shall reimburse Agency for the cost of re-keying all of Agency's locks if keys are not returned to Agency.

A minimum of half of the parking lot spots at the Project Site shall remain open for non-construction activities use at all times. Agency may allow Contractor to close an entire parking lot with support from Contractor to direct traffic to temporary parking lots. Contractor shall provide three weeks' notice in advance of each parking lot closure. Contractor shall prepare a communication memo with a site logistics plan for distribution to Project Site stakeholders.

Contractor agrees not to bring, keep, or permit to be brought to, or kept at or near any Project Site, any hazardous materials, or materials which are prohibited by Agency or prohibited by the standard form of Agency's insurance policy. Contractor agrees not to commit or suffer to be committed any waste upon the Project Site.

Contractor shall install signage at each front gate / Site entrance to identify the Project and Contractor's name and contact information upon Agency approval of all proposed signage. Contractor shall submit a prototype of the construction signs to Agency for review and approval before posting the signs at the construction sites. After approval, actual sign placement and location shall be coordinated with Agency.

### **6.3 Drawings**

Contractor shall maintain one complete Engineering Design Package at the Site including one full set of full-size plans marked to show any deviations that have been made from the approved plans, including but not limited to buried or concealed construction features or utilities which are revealed during the course of construction. Current as-built record drawings shall be accessible to Agency at all times during the construction period. They shall be reviewed with Agency at regular intervals. Upon completion and prior to final inspection of the Project, Contractor shall submit the complete As-Built Engineering Design Package to Agency for review and shall make such revisions or corrections as may be necessary for them to be a true, complete, and accurate record of the Project in the opinion of Agency.

### **6.4 Work-Time Constraints**

Great care shall be taken to avoid interruptions to business activities and neighboring properties. Construction activities shall take place between typical working hours of 7:00AM to 5:00PM, Monday through Friday, excluding recognized holidays. In summer months, earlier working hour start times can be accommodated upon request and coordination with the Agency. Reasonable efforts must be taken to minimize disturbance to persons living or working nearby, and to the general public. All local ordinances shall be adhered to regarding noise limits, otherwise a maximum of 65dB shall not be exceeded when measured at the property line. Deliveries shall take place outside high traffic times and must be coordinated with Agency's personnel. Preferred hours for deliveries are 7:00AM to 3:00PM, Monday through Friday. Any deliveries outside of prescribed hours must be coordinated with Agency. Contractor shall manage construction activities around and with consideration to the other projects occurring at the same time where applicable. Contractor will be required to provide necessary weekly updates of scheduled activities at the Site to Agency.

A shutdown plan must be provided to Agency at least fourteen days in advance to allow for electrical shutdowns to be carefully coordinated with Agency's personnel. All interruptions in power shall be subject to Agency approval and must be coordinated to take place during a time period that will minimize disruptions to Site activities. This requirement will typically mean, and Agency reserves the right to request, that shutdowns shall occur on weekends or after working hours during winter months. All efforts must be taken to minimize the amount of time required to complete interconnections. If required, backup power will be provided by Contractor's generators during shutdowns, at Contractor's expense. Notice of all pending shutdowns shall be provided two (2) weeks in advance, followed by forty-eight (48) hours in advance.

### **6.5 General Requirements**

#### **6.5.1 Conduit and Wiring**

- (a) Locations of all pull boxes shall be reviewed with Agency prior to start of construction.
- (b) No wire splicing shall be allowed.
- (c) All exposed wire shall be secured every three and a half feet (3.5') minimum.
- (d) When terminating aluminum conductors, all terminations shall be brushed and coated with an oxide inhibitor.
- (e) Underground cabling shall have electrical warning tape installed approximately twelve (12") inches below finished grade in the backfill.
- (f) Contractor shall use GPRS and potholing to survey for underground utilities and use best practices when boring or trenching, including hand digging near buried lines. Trenching or boring in potentially high-risk areas (gas lines) shall be coordinated with Agency.
- (g) Contractor shall carefully preserve all benchmarks, monuments, survey markers, and stakes and shall be solely responsible for resetting if required.

- (h) Contractor shall ensure parasitic loads (lights, security cameras, etc.) are not installed on the same circuit as the Solar Production Meter and/or BESS Meter and are installed so that their load shall be included with the overall site's Facility Load Meter measurement.
- (i) Contractor shall confirm that the System is interconnected to the correct Distribution Utility meter at the Project Site by validating the meter and service account identification numbers (SAID) with the Distribution Utility.
- (j) All exposed wiring shall be properly rated for direct sun exposure.
- (k) Conduit entry locations shall be made in manufacturer provided/specified locations only.
- (l) All ground conductors shall be protected from physical damage as specified in the NEC.
- (m) Grounding wire connections must be made at closest point possible between concrete and steel, sharp edges removed, and painted to match.
- (n) Power and data lines shall be located in separate conduits with appropriate separation to avoid interference.
- (o) All junction boxes, condolets, etc., are to be sealed with a silicone sealing compound and made watertight.
- (p) H-20 rated concrete handholes with cast iron or galvanized steel lids shall be used for all underground junction box locations unless Agency approves an alternative approach. Lids shall be bolted or welded in place with an appropriate permanent marking such as "ELEC" or "COMM" on the lid depending on the contents of the junction box.
- (q) Aboveground junction boxes shall not be placed in areas where water ponding is anticipated.

#### **6.5.2 Equipment**

- (a) Equipment shall be stored and handled in accordance with manufacturer's requirements.
- (b) Inverters and battery enclosures shall be placed away from all buildings where the operational noise would disturb the occupants.
- (c) Inverters and battery enclosures shall not be placed in locations where fences or other barriers would obstruct replaceable air filters or prevent access for regular service and cleaning.
- (d) All high voltage and high amperage equipment must be installed in secure, tamper-proof, and locked enclosures to prevent unauthorized tampering for safety and theft prevention.
- (e) Locks for all gates and enclosures to be provided by Contractor but must be approved by Agency prior to procurement.
- (f) Safety labels are required for high voltage and high amperage equipment.
- (g) All enclosures shall be detailed as part of the punch list work to ensure that any scratches, etc. are properly covered with paint as appropriate.

#### **6.5.3 Site Work**

- (a) It is Contractor's sole responsibility to ensure that all work on the Project complies with all federal, state, and local code requirements, all applicable industry codes and standards, and all other requirements in the Agreement including the requirements in this Exhibit B.
- (b) Temporary security fencing around construction areas shall be provided throughout construction, to be removed at end of construction, and permanent fencing and bollards added as required.
- (c) Prior to the start of any work on Site, Contractor shall take pre-construction videos and photographs of any and all areas that may be impacted as part of the Project construction and shall provide the pre-construction videos and photographs to Agency for review and reference.
- (d) Following the finish of construction, Contractor shall take post-construction videos and photographs of all areas that were impacted as part of the Project construction and shall provide the post-construction videos and photographs to Agency for review and reference.
- (e) Subject to Section 2.2 of Exhibit A, Contractor is responsible for protecting all existing underground utilities, including irrigation lines, and shall ensure the existing underground

utilities and installations are not impacted by Project construction. In the event Contractor damages or makes inoperable any underground or above ground utilities, it will be Contractor's full responsibility to notify Agency immediately and make damaged/inoperable utilities whole and fully operational to Agency's standards and to Agency's satisfaction, at Contractor's sole cost and expense.

- (f) Contractor is responsible for the repair of any damage to the Site that is caused by Contractor at their sole cost and expense. Contractor shall assess the condition of all areas to be used in the construction of the System prior to construction and shall alert Agency if any such area cannot accommodate wear and tear caused by ordinary construction activities. In such event, Contractor shall propose a reasonable remedy or remedies to such conditions for Agency's consideration.
- (g) Damage to Agency's facilities and/or the System shall be reported to Agency within twenty-four (24) hours with photographs.
- (h) All parking lot wheel stops that are damaged during construction shall be replaced at Contractor's sole expense.
- (i) All areas within the limits of construction or otherwise impacted by construction of the Project shall be restored to pre-Project conditions at Contractor's sole cost and expense including but not limited to: fine grading, rock and concrete spoils removal and vegetation remediation.
- (j) Contractor will coordinate with Agency when boring or trenching is performed, when laydown areas are determined, when major shipments are planned, or any other activities that might impact Agency's business operations.
- (k) Contractor shall correctly torque all such equipment or assemblies requiring torque and mark torqued bolts to designate status of having been torqued. Agency or Agency's representative may at any time request a test of marked bolts. Failure of a bolt designated as torqued to show that torque may require all assemblies to be re-torqued in the presence of a third-party inspector – such inspector to be paid for by Contractor.
- (l) Contractor shall maintain a clean and workmanlike construction site. Loose debris and unsafe conditions shall not be tolerated at any time.
- (m) Contractor is responsible to obtain all necessary Site data, perform all required investigations, and determine all Site data required for the design and construction of the System at their sole cost.
- (n) Contractor shall be responsible for the removal and disposal of all excess soil and construction related debris generated by Contractor or subcontractors in accordance with applicable laws.
- (o) Appropriate safety signs are required to caution drivers for speed or path restrictions near equipment pads.
- (p) Safety bollards or traffic pylons with reflective strips shall be installed where any part of the Project is adjacent to a road.
- (q) Safety bollards or traffic pylons with reflective strips shall be installed around all electrical equipment pads.
- (r) Signs and barricades shall be provided and maintained by Contractor and shall be in accordance with jurisdictional regulations for accident prevention and in accordance with the Site Safety and Security Plan.
- (s) Contractor shall identify and remove trees that are in direct path of construction. Contractor shall mark each tree and review with Agency and Arborist prior to removal. Contractor shall remove the tree stump, grind to twelve inches (12") below grade and provide a surface flush with surrounding grounds using the same material as the surrounding area. All tree removal must be coordinated with the Agency prior.
- (t) Where light post removal is required, Contractor shall mark each light post and fixture and review with Agency prior to removal. After removal of the light post, Contractor shall electrically secure the termination point at ground level in an H-20 rated concrete handhole with cast iron or galvanized steel lid. Lids shall be bolted or welded in place with a permanent marking such as "ELEC" or "LIGHTING" on the lid. Contractor shall use best efforts to

remove the light posts and deliver to Agency at the Project Site in existing condition so Agency can re-install in other areas.

- (u) Contractor shall verify all required clearances in the field prior to construction and is solely responsible therefor.
- (v) Driveways in parking lots must stay open during construction. Any parking lot driveway closure must be temporary (i.e. a few hours for heavy material delivery) and shall be coordinated with Agency.
- (w) Contractor is responsible for providing drinking water and sanitation facilities for all workers.
- (x) Temporary power for construction shall be arranged and paid for by Contractor.
- (y) Contractor must apply for fire hydrant meter permit and cover all expenses for construction water use where applicable.
- (z) Agency will supply a fire hydrant meter providing recycled water for use by Contractor for construction water use where applicable. Contractor shall be responsible to provide means of pumping, piping, transport, etc. for such water from Agency supplied fire hydrant meter to the construction area.
- (aa) All cut edges of galvanized strut or other support structure materials shall be cold galvanized.
- (bb) Saw cut concrete shall be replaced joint to joint and match nearby area.
- (cc) Contractor shall backfill all trenches with engineered fill and compact to 95 percent minimum.
- (dd) All asphalt cuts shall be made in square or rectangular cuts to avoid inconsistent repair work. Contractor shall cover asphalt trenches with hot mix asphalt, roll for compaction, and cover the width of the trench with a slurry seal after the cure period. All repairs shall be made to match existing. Any repainting of striping required to return the site to original or better conditions shall be the sole responsibility of Contractor.
- (ee) Contractor shall conduct harmonic testing and install necessary line filters if Agency or the Distribution Utility detects electromagnetic interference (EMI) following the installation of the System. Detection of EMI includes noticeable power interruptions in previously functional electrical equipment.

## **7. FINAL PROJECT CLOSEOUT**

### **7.1 Closeout Activities**

Prior to Final Project Completion Date, Contractor will perform the following tasks:

- Complete all unfinished work described on a punch list approved by Agency in a timely manner.
- Complete final clean-up of the Project Site.
- Confirm minimum seven (7) day continuous operation for the entire system, all sub-systems, and ancillary equipment without downtime following the final commissioning.
- Assemble and provide Agency with the Final Binder containing all documents outlined below and all other required submittals.
- Provide trainings for Agency personnel on emergency shut-down procedures as well as standard inverter restart procedures.
- Demonstrate the successful operation of the BESS while disconnected from the Distribution Utility grid.

### **7.2 Final Binder**

A complete set of Project documentation in digital format, unless otherwise noted below, shall be provided to Agency at the finish of construction for record keeping purposes (the "***Final Binder***"). The Project documentation shall include, at a minimum, the following documents:

- Copy of Executed Agreement(s) and all amendments
- Copy of the Notice to Proceed

- Copies of all reports and studies completed, including but not limited to:
  - Underground Utility Surveys
- Final design drawings as approved by any Governmental Authorities having jurisdiction over the Project in PDF and AutoCAD
- Copy of all Governmental Approvals required for the Project to be constructed
- Copy of all Governmental Approvals required for the Project to be operational
- Letter to the Distribution Utility requesting final inspection in advance of Permission to Operate
- Completed Commissioning Report - Attachment G
- Permission to Operate Notice from the Distribution Utility
- All incentive related documents
- All final executed Distribution Utility Agreement(s) – Interconnection, special facilities, etc.
- As-built drawings in PDF and AutoCAD
- Equipment data sheets, installation & user manuals, and warranties for all major equipment including but not limited to inverters, batteries, transformers, controllers and monitoring systems
- Final BESS system performance modeling report in 4x8760 output file in MS Excel format
- Final system performance report detailing the Estimated Microgrid Operation Duration
- Final punch list showing proof of completion of all items
- Letter stating Commercial Operation Date achievement and date
- Contact Information for all key Contractor personnel including:
  - Contractor’s name
  - Contractor’s main office mailing address, phone and email
  - Employer Identification Number (“*EIN*”)
  - Contractor’s main contact person’s name, job title, mailing address, phone number and email
  - Operations and Maintenance contact person’s name, job title, mailing address, phone number and email
- Two (2) sets of keys to all locks, equipment, enclosures, fence gates and boxes
- Operations and Maintenance Manual
- Agency training completion date, including list of personnel trained in inverter shutdown
- Monitoring System Information including:
  - Monitoring System hardware and internet portal specification sheets
  - Meter calibration records with serial numbers for all meters
  - Website access and operation instructions
  - List of public monitoring websites
  - IP addresses and login information of Acquisuite or equivalent
  - Network configuration documentation
  - Performance Data Contractor contracts
- Site photographs of all items listed below (electronic version only):
  - Batteries
  - Inverters
  - Transformers
  - Disconnects
  - Panelboards/Switchgear
  - Motorized circuit breakers
  - Electrical point of connection to existing distribution equipment
  - Distribution Utility Meter
  - BESS Meter, Facility Load Meter, Critical Load Meter, Solar Production Meter and any other meters
  - BESS controller
  - Microgrid controller
  - Monitoring equipment including weather sensors if applicable

**ATTACHMENT A**  
**TO EXHIBIT B – SCOPE OF WORK AND TECHNICAL SPECIFICATIONS**

**ATTACHMENT A – PRELIMINARY ENGINEERING DESIGN**

**[TO BE PROVIDED BY CONTRACTOR]**



**ATTACHMENT B**  
**TO EXHIBIT B – SCOPE OF WORK AND TECHNICAL SPECIFICATIONS**

**ATTACHMENT B – SYSTEM SITE ASSESSMENT TABLE**

**[TO BE PROVIDED BY CONTRACTOR]**

**ATTACHMENT C**  
**TO EXHIBIT B – SCOPE OF WORK AND TECHNICAL SPECIFICATIONS**

**ATTACHMENT C – PROJECT SCHEDULE**

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

The Work on the Project and the Project shall be completed in accordance with the requirements set forth in Exhibit M on or before the Substantial Completion Date in accordance with the Project Schedule set forth below and as may be amended from time to time during the Contract Term but in no case extending beyond the Substantial Completion Date unless in accordance with Article 6 of the General Conditions. The Project Schedule shall only be modified upon the written approval of Owner. Any modified schedule approved by Owner shall replace the existing Project Schedule set forth below.

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

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

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

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

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

start dates and finish dates.

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

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

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

**ATTACHMENT D**  
**TO EXHIBIT B – SCOPE OF WORK AND TECHNICAL SPECIFICATIONS**

**ATTACHMENT D – COMMISSIONING SCHEDULE(S)**

<b>What</b>	<b>Who</b>	<b>Estimated Date</b>	<b>Time Frame (business Days)</b>
<b>1. Begin Construction</b>	<b>Construction Manager - Contractor</b>	<b>3/8/2024</b>	<b>1</b>
<b>2. Provide desired onsite commissioning date. Placeholder for steps 6 only.</b>	<b>Project Manager - Contractor</b>	<b>4/15/2024</b>	<b>1</b>
<b>3. Send completed Construction checklist and other deliverables.</b>	<b>Construction Manager - Contractor</b>	<b>5/8/2024</b>	<b>3</b>
<b>4. Confirm receipt of Construction Checklist. Provide list of items to be rectified.</b>	<b>Project Engineer / Megapack Support</b>	<b>5/6/2024</b>	<b>3</b>
<b>4. (response). Rectify identified problems, send updated Construction Checklist for review.</b>	<b>Construction Manager - Contractor</b>	<b>5/8/2024</b>	
<b>5. Confirm construction manager has fully completed Construction Checklist with no issues remaining</b>	<b>Project Engineer / Megapack Support</b>	<b>5/10/2024</b>	<b>4</b>
<b>6a. Schedule Onsite Commissioning (if applicable)</b>	<b>Tesla Field Service Manager</b>	<b>5/10/2024</b>	<b>10</b>
<b>6b. Perform Onsite Commissioning (If applicable)</b>	<b>Tesla Technician</b>	<b>5/10/2024</b>	<b>10</b>
<b>7. Review and deliver Commissioning Completion Form for Sign off</b>	<b>Project Engineer / Megapack Support</b>	<b>5/21/2024</b>	<b>3</b>
<b>8. Sign and return Commissioning Completion Form to Megapack Support</b>	<b>Project Manager - Contractor</b>	<b>5/24/2024</b>	

**EXHIBIT C  
TO ENERGY SERVICES AGREEMENT**

**PROGRESS PAYMENT SCHEDULE**

Total	\$2,557,968
Payment 1 (“ <b>Site Investigation Payment</b> ”): Five (5) percent of the Contract Sum upon Contractor’s completion of all Work required to assess the Project Site as described in Section 2.7 of Exhibit B.	\$127,898
Payment 2 (“ <b>90% Engineering Design Approval Payment</b> ”): Fifteen (15) percent of the Contract Sum upon Agency approval of the 90% Engineering Design Package as defined in Section 3.3.2 of Exhibit B.	\$383,695
Payment 3 (“ <b>Governmental Approval Payment</b> ”): Five (5) percent of the Contract Sum upon Contractor’s completion of all Work required in the Governmental Approval Phase (see Subsection 7.2.2 of this Exhibit A and all provisions related thereto).	\$127,898
Payment 4 (“ <b>Mobilization Payment</b> ”): Five (5) percent of the Contract Sum upon Contractor’s mobilization on the Project Site, as described in the approved Project Execution Plan as described in Section 3.3.3 of Exhibit B.	\$127,898
Payment 5 (“ <b>Site Preparation Payment</b> ”): Fifteen (15) percent of the Contract Sum upon Contractor’s completion of all Work required to prepare the site to accept the BESS. This portion of the Work shall be defined as completion of BESS equipment pad, installation of the utility AC disconnect, installation of the Facility Load Meter, installation of the Solar Production Meter, and installation of all conduits necessary for the aforementioned equipment to be connected per approved 100% Engineering Design Package.	\$383,695
Payment 6 (“ <b>BESS Procurement Payment</b> ”): Forty (40) percent of the Contract Sum during the Construction Phase (see Subsection 7.2.3 of this Exhibit A and all provisions related thereto) upon delivery on the Project Site of the BESS, and upon Contractor providing Owner with all documents required of Contractor pursuant to Section 8.3.	\$1,023,187
Payment 7 (“ <b>Commissioning Payment</b> ”): Five (5) percent of the Contract Sum upon Contractor’s completion of all Work in the Commissioning Phase (see Section 7.2.4 of this Exhibit A and all provisions related thereto).	\$127,898
Payment 8 (“ <b>Inspection Payment</b> ”): Five (5) percent of the Contract Sum upon submission to Inspector by Contractor of all forms necessary for Inspector’s approval / certification of the Project. Notwithstanding the release of such funds upon Contractor’s submission of documentation to Inspector, Contractor shall continue to be obligated to respond to all inquiries and requests of Owner, Owner’s agents or Inspector made in connection with Inspector’s approval / certification of the Project.	\$127,898
Payment 9 (“ <b>Final Completion Payment</b> ”): Five (5) percent of the Contract Sum upon Owner’s execution of the Certificate of Acceptance on the Project, less any amount or amounts properly withheld by Owner in accordance with the Contract Documents, until such time, if any, that such amount or amounts may be or are required to be released in accordance with the Contract Documents.	\$127,898

**EXHIBIT D  
TO ENERGY SERVICES AGREEMENT**

**MANUFACTURERS' WARRANTIES**

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

**BESS Battery System Warranty**

**BESS Power Conversion System Warranty**

**BESS Power Control System Warranty**

**Transformer Manufacturer Warranty**

**Other Equipment Manufacturer Warranties**

**EXHIBIT E  
TO ENERGY SERVICES AGREEMENT**

**PAYMENT BOND**

**KNOW ALL MEN BY THESE PRESENTS:**

THAT WHEREAS, Santa Clarita Valley Water Agency, a public California Water Agency (sometimes referred to hereinafter as "Owner" or "Obligee") has awarded to \_\_\_\_\_ (hereinafter designated as the "Principal" or "Contractor"), an agreement ("Contract") for the work described as follows: \_\_\_\_\_ (hereinafter referred to as the "Public Work"); and

WHEREAS, said Contractor is required to furnish a bond in connection with said Contract, and pursuant to California Civil Code Section 9550;

NOW, THEREFORE, We, \_\_\_\_\_, the undersigned Contractor, as Principal; and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the Obligee, and to any and all persons, companies, or corporations entitled by law to file stop notices under California Civil Code Section 9100, or any person, company, or corporation entitled to make a claim on this bond, in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), such sum being not less than one hundred percent (100%) of the total amount payable by said Owner under the terms of said Contract, for which payment will 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 said Principal, its heirs, executors, administrators, successors, or assigns, or subcontractor, shall fail to pay any person or persons named in Civil Code Section 9100; or 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 for amounts due under the Unemployment Insurance Code, with respect to work or labor thereon of any kind; or shall fail to deduct, withhold, and pay over to the Employment Development Department, any amounts required to be deducted, withheld, and paid over by Unemployment Insurance Code Section 13020 with respect to work and labor thereon of any kind, then said Surety will pay for the same, in an amount not exceeding the amount herein above set forth, and in the event suit is brought upon this bond, also will pay such reasonable attorneys' fees as shall be fixed by the court, awarded and taxed as provided in California Civil Code Section 9550 et seq.

This bond shall inure to the benefit of any person named in Civil Code Section 9100 giving such person or his/her assigns a right of action in any suit brought upon this bond.

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

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

PRINCIPAL/PROVIDER:

\_\_\_\_\_

By: \_\_\_\_\_

SURETY:

\_\_\_\_\_

By: \_\_\_\_\_

Attorney-in-Fact



**IMPORTANT: THIS IS A REQUIRED FORM.**

Surety companies executing bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in California Insurance Code Section 105, and if the work or project is financed, in whole or in part, with federal, grant or loan funds, Surety's name must also appear on the Treasury Department's most current list (Circular 570 as amended).

Any claims under this bond may be addressed to:

(Name and Address of Surety)

(Name and Address of agent or representative for service for service of process in California)

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

Telephone: \_\_\_\_\_

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

STATE OF CALIFORNIA )

) ss.

COUNTY OF )

On \_\_\_\_\_, before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, who proved on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) as the Attorney-in-Fact of \_\_\_\_\_ (Surety) and acknowledged to me that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) executed the instrument.

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

WITNESS my hand and official seal.

(SEAL)

\_\_\_\_\_  
Notary Public in and for said State

Commission expires: \_\_\_\_\_

NOTE: A copy of the power-of-attorney to local representatives of the bonding company must be attached hereto.

**EXHIBIT F  
TO ENERGY SERVICES AGREEMENT**

**PERFORMANCE BOND**

**KNOW ALL MEN BY THESE PRESENTS:**

THAT WHEREAS, Santa Clarita Valley Water Agency, a public California Water Agency (sometimes referred to hereinafter as "Owner" or "Obligee") has awarded to \_\_\_\_\_ (hereinafter designated as the "Principal" or "Contractor"), an agreement for the work described as follows: \_\_\_\_\_ (hereinafter referred to as the "Public Work"); and

WHEREAS, the work to be performed by the Contractor is more particularly set forth in that certain contract for said Public Work dated \_\_\_\_\_, (hereinafter referred to as the "Contract"), which Contract is incorporated herein by this reference; and

WHEREAS, the Contractor is required by said Contract to perform the terms thereof and to provide a bond both for the performance and guaranty thereof.

NOW, THEREFORE, we, \_\_\_\_\_, the undersigned Contractor, as Principal, and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the Obligee, in the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), said sum being not less than one hundred percent (100%) of the total amount payable by said Owner under the terms of said Contract, for which amount 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 the bounded Contractor, his or her 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 said Contract and any alteration thereof made as therein provided, on his or her 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 guarantees of all materials and workmanship; and indemnify, defend and save harmless the Owner, its officers and agents, as stipulated in said Contract, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

The Surety, for value received, hereby stipulates and agrees that it shall not be exonerated or released from the obligation of this bond (either by total exoneration or pro tanto) by any change, extension of time, alteration in or addition to the terms of the contract or to the work to be performed there under or the specifications accompanying the same, nor by any change or modification to any terms of payment or extension of time for any payment pertaining or relating to any scheme of work of improvement under the contract. Surety also stipulates and agrees that it shall not be exonerated or released from the obligation of this bond (either by total exoneration or pro tanto) by any overpayment or underpayment by the Owner that is based upon estimates approved by the Architect. The Surety stipulates and agrees that none of the aforementioned changes, modifications, alterations, additions, extension of time or actions shall in any way affect its obligation on this bond, and it does hereby waive notice of any such changes, modifications, alterations, additions or extension of time to the terms of the contract, or to the work, or the specifications as well notice of any other actions that result in the foregoing.

Whenever Principal shall be, and is declared by any Obligee to be, in default under the Contract, the Surety shall promptly either remedy the default, or shall promptly take over and complete the Contract through its agents or independent contractors, subject to acceptance and approval of such agents or independent contractors by Obligee, as hereinafter set forth, in accordance with its terms and conditions and to pay and perform all obligations of Principal under the Contract, including, without limitation, all obligations with respect to warranties, guarantees and the payment of liquidated damages; or, at Obligee's sole discretion and election, Surety shall obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Obligee, of the lowest responsible bidder, arrange for a contract between such bidder and the Obligee, and make available as Work progresses (even though there should be a default or succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the "balance of the Contract Price" (as hereinafter defined), and to pay and perform all obligations of Principal under the Contract, including,

without limitation, all obligations with respect to warranties, guarantees and the payment of liquidated damages. The term "balance of the Contract price," as used in this paragraph, shall mean the total amount payable to Principal by the Owner under the Contract and any modifications thereto, less the amount previously paid by the Owner to the Principal, less any withholdings by the Owner allowed under the Contract or at law. Oblige shall not be required or obligated to accept a tender of a completion contractor from the Surety.

Surety expressly agrees that the Oblige may reject any agent or contractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Principal. Unless otherwise agreed by Oblige, in its sole discretion, Surety shall not utilize Principal in completing the Contract nor shall Surety accept a bid from Principal for completion of the work in the event of default by the Principal.

No final settlement between the Oblige, and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

The Surety shall remain responsible and liable for all patent and latent defects that arise out of or relate to the Contractor's failure and/or inability to properly complete the Public Work as required by the Contract and the Contract Documents. The obligation of the Surety hereunder shall continue so long as any obligation of the Contractor remains.

Contractor and Surety agree that if the Oblige is required to engage the services of an attorney in connection with enforcement of the bond, Contractor and Surety shall pay Oblige's reasonable attorneys' fees incurred, with or without suit, in addition to the above sum.

In the event suit is brought upon this bond by the any Oblige and judgment is recovered thereby, the Surety shall pay all costs incurred by the Oblige in such suit, including reasonable attorneys' fees to be fixed by the Court.

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

PRINCIPAL/PROVIDER:

\_\_\_\_\_

By: \_\_\_\_\_

SURETY:

\_\_\_\_\_

By: \_\_\_\_\_  
Attorney-in-Fact

The rate of premium on this bond is \_\_\_\_\_ per thousand.

The total amount of premium charged: \$ \_\_\_\_\_ (This must be filled in by a corporate surety).

**IMPORTANT: THIS IS A REQUIRED FORM.**

Surety companies executing bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in California Insurance Code Section 105, and if the work or project is financed, in whole or in part, with federal, grant or loan funds, Surety's name must also appear on the Treasury Department's most current list (Circular 570 as amended).

Any claims under this bond may be addressed to:

(Name and Address of Surety)

(Name and Address of agent or representative for service for service of process in California)

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

Telephone: \_\_\_\_\_

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

STATE OF CALIFORNIA )

) ss.

COUNTY OF )

On \_\_\_\_\_, before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, who proved on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) as the Attorney-in-Fact of \_\_\_\_\_ (Surety) and acknowledged to me that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) executed the instrument.

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

WITNESS my hand and official seal.

(SEAL)

\_\_\_\_\_  
Notary Public in and for said State

Commission expires: \_\_\_\_\_

NOTE: A copy of the power-of-attorney to local representatives of the bonding company must be attached hereto.

**EXHIBIT G  
TO ENERGY SERVICES AGREEMENT**

**RELEVANT CONTACT LIST**

A. Owner

Construction	Matthew S. Dickens 27234 Bouquet Canyon Road Santa Clarita, CA 91350 Phone: (661) 705-7913 ext. 113 Mdickens@scvwa.org
Legal:	Glen Price (951) 826-8314 Glen.Price@bbklaw.com
Asset Management:	
Accounting	

B. Contractor

Construction	Jon Hirt 30900 Rancho Viejo Rd., Ste. 230, San Juan Capistrano, CA 92675 Phone: 949-436-2482 jonhirt@pacifico-power.com
Legal:	Kevin Pratt Phone: 469.475.5965 kevinp@pacifico-power.com
Asset Management:	Chanvibol Sok vibols@pacificopower.com
Accounting	<a href="mailto:Accounting@pacificopower.com">Accounting@pacificopower.com</a> Phone: 949-481-8200

**EXHIBIT H  
TO ENERGY SERVICES AGREEMENT**

**ESCROW AGREEMENT FOR SECURITY DEPOSIT IN LIEU OF RETENTION**

This Escrow Agreement For Security Deposit in Lieu of Retention (“Agreement”) is made and entered into on \_\_\_\_\_ by and between Santa Clarita Valley Water Agency (“Owner”) whose address is 27234 Bouquet Canyon Road, Santa Clarita, CA 91350, and \_\_\_\_\_ (“Contractor”) whose address is \_\_\_\_\_, and \_\_\_\_\_ (“Escrow Agent”), whose address is \_\_\_\_\_.

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

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

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

OWNER	CONTRACTOR
Signature	Signature
Print Name	Print Name
Title	Title
Address	Address

ESCROW AGENT

Signature

Print Name

Title

Address

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

[SIGNATURES ON SEPARATE PAGE]

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

OWNER

CONTRACTOR

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

ESCROW AGENT

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title



**EXHIBIT I  
TO ENERGY SERVICES AGREEMENT**

**WAIVER AND RELEASE FORM**

**UNCONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT**

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

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

Dated: \_\_\_\_\_

\_\_\_\_\_  
Contractor  
By \_\_\_\_\_  
(Title)

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

**UNCONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT**

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

Dated: \_\_\_\_\_

\_\_\_\_\_ Contractor

By \_\_\_\_\_

(Title)

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

**EXHIBIT J  
TO ENERGY SERVICES AGREEMENT  
CERTIFICATION REGARDING CLAIM**

Name of Contractor: \_\_\_\_\_

Name of Owner: \_\_\_\_\_

Name of Project: \_\_\_\_\_

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

Time \_\_\_\_\_

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

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

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

By: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT K**  
**TO ENERGY SERVICES AGREEMENT**  
**OPERATIONS AND MAINTENANCE AGREEMENT**

See Attached

**EXHIBIT L**  
**TO ENERGY SERVICES AGREEMENT**  
**CONDITIONAL RESERVATION LETTERS**

See Attached

**EXHIBIT M  
TO ENERGY SERVICES AGREEMENT**

**REQUIREMENTS FOR SUBSTANTIAL COMPLETION**

- The Project has been inspected by Owner or its designated engineer;
- The Project has achieved commercial operation;
- All conduits are installed according to specifications;
- All wiring is according to code and installed properly;
- Interconnection point is properly connected to the Owner's system;
- Battery is commissioned and operational;
- The battery system installed is the specified model in Exhibit B and Interconnection Agreement;
- Interconnection Agreement is executed;
- The Project is installed according to the Interconnection Agreement;
- All utility upgrades are complete;
- Battery foundation is constructed according to code;
- Site has been cleaned from all debris and construction materials;
- Battery system is operating according to deployment parameters intended for savings targets;
- Metering systems are in place to monitor battery and solar output; and
- Communications systems are reading battery output and Owner has access to battery operational data.

The Parties agree that the completion of Punch List items is not a requirement to achievement of Substantial Completion.