

ATTACHMENT A1
SAMPLE DESIGN-BUILD CONTRACT

Board Item No: _____
Board Date: _____
Contract No: <<TBD>>

**MASTER CONTRACT FOR DESIGN AND CONSTRUCTION
OF
BATTERY ENERGY STORAGE SYSTEMS
(GOVERNMENT CODE § 4217.10, *et seq.*)**

THIS CONTRACT ("Contract") is entered into and effective << >> ("Effective Date"), by and between << >>, with its principal office located at << >> ("Contractor") and San Diego Unified School District ("District" or "Customer") (collectively "Parties").

RECITALS

WHEREAS, Government Code sections 4217.10, *et seq.* allows public agencies to construct energy conservation projects or to enter into contracts for the financing, construction, operation, or use of alternate energy type facilities (Battery Energy Storage Systems (BESS) and photovoltaic systems); and

WHEREAS, District owns and/or operates certain public school facilities specifically described in this Contract:

School Site Name	Address	SGIP Reservation Number
Porter North Elementary School	445 S 47th St, San Diego, CA 92113	SD-SGIP-2020-5597
Porter South Elementary School	4800 T St, San Diego, CA 92113	SD-SGIP-2020-5596
Ibarra Elementary School	4877 Orange Ave, San Diego, CA 92115	SD-SGIP-2020-5598
Sherman Elementary School	301 22nd St, San Diego, CA 92102	SD-SGIP-2020-5600
Hamilton Elementary School	2807 Fairmount Ave, San Diego, CA 92105	SD-SGIP-2020-5582
Language Academy	4961 64th St, San Diego, CA 92115	SD-SGIP-2020-5599

("Facilities" or "School Site(s)" or "Premises") and District wants to reduce its Facilities' energy costs and improve the Facilities' energy quality/reliability by contracting to procure and to implement certain new BESS related equipment and materials; and

WHEREAS, in light of California's Self-Generation Incentive Program ("SGIP") the District performed evaluations of the School Sites and identified energy savings that the District could realize by installing advanced energy storage ("Battery") systems at the Premises; and

WHEREAS, the SGIP Program issued conditional reservation letters with the reservation numbers in the table above (each a "Reservation Letter") confirming that the District had a reserved incentive amount for each School Site ("SGIP Incentive") for the installation of a battery energy storage system at each School Site; and

WHEREAS, Government Code sections 4217.10, *et seq.* states that public agencies may request proposals from qualified persons, and after evaluating the proposals, may award a contract on the basis of the experience of the Contractor, the type of technology employed by the Contractor, the cost to the local agency, and any other relevant considerations; and

WHEREAS, Contractor is a full-service energy services company with the technical capabilities to provide services to the District including, but not limited to, energy and energy system auditing, engineering, design, procurement, construction management, installation, construction, training, monitoring and verification, commissioning, SGIP operational requirements,

utility incentive optimization, and warranty services, and has provided one or more proposals relating to School Site(s) in response to the District’s RFQ/P No. PS23-0338-11; and

WHEREAS, Government Code sections 4217.10, *et seq.* provides the greatest possible flexibility to public agencies in structuring agreements entered into hereunder so that economic benefits may be maximized and financing and other costs associated with the design and construction of alternate energy projects may be minimized; and

WHEREAS, District desires that Contractor design, install, meet SGIP requirements, and optimize current and future utility incentives; and Contractor desires to design and, install BESS (that meet SGIP requirements, and optimize current and future utility incentives) to be located on the School Sites based on the District’s issuance of one or more written Notice(s) to Proceed (“NTP”), for design and construction respectively, identifying the specific School Site(s), the estimated scope of work, and the estimated cost, and said NTPs are incorporated by reference into the Contract and may be amended or ratified from time to time, as Amendments to this Contract;

WITNESSETH, that for and in consideration of the mutual covenants herein contained, the Parties hereto agree as follows:

1. **Definition of Terms.**

ACSE	American Society of Civil Engineers
ADA	Americans with Disabilities Act
AISC	American Institute of Steel Construction
ANSI	American National Standards Institute
API	Application Program Interface
ASTM	American Society for Testing and Materials
AWS	American Welding Society
Battery Energy Storage System (BESS)	All parts of an integrated system connected to the power grid to enable the controlled storage and release of electrical energy. The BESS includes batteries, wiring and other electrical devices, conduit, housings, hardware, equipment pad, fencing, remote monitoring equipment, connectors, meters, disconnects and other related devices required to construct a turnkey, operational BESS, interconnected to the grid, which meets the requirements of SGIP, all applicable laws and the Contract Documents.
CAD	Computer Aided Design
CAL-OSHA	Occupational Safety and Health Administration
CBC	California Building Code
CEC	California Energy Commission
CEQA	California Environmental Quality Act
CPUC	California Public Utilities Commission
CGS	California Geological Survey
CREBs	Clean Renewable Energy Bonds
Contract	The Design Build BESS Contract (including all attachments and exhibits) between the District and successful Proposer for the Project.
Contract Schedule	The practical plan to complete the design & construction work on the Project within the completion milestones in the Contract. The Contract Schedule shall be included in Contractor’s proposal for Design services and represented, at minimum, as a milestone schedule identifying milestone dates, including those identified in Section 3 of the contract, showing all deliverables, approvals, and critical path tasks impacting the start and completion of construction.
DAS	Data Acquisition System
DIR	Department of Industrial Relations
DSA	California Division of State Architect
EPA	Environmental Protection Agency
EPC	Engineering, Procurement, and Construction
Estimate of Cost	A complete and comprehensive list, using a District approved estimate format, of all cost elements including materials, transportation, storage, labor, equipment, burdens, contingencies, fees, profit, overhead, and other anticipated costs needed to complete a defined scope of work. Cost elements are to be listed by the District approved work classification (e.g. CSI) and subtotaled by classification. Descriptions and costing of all cost elements are to be in sufficient detail to allow independent review and validation of each factor making up the cost of each element, including, but not limited

	to quantity, quality, and unit pricing. Any cost elements that cannot be accurately quantified or adequately specified for purposes of estimating likely costs, and that are represented as an allowance amount to be more precisely estimated in the future, shall be clearly identified and the basis for the allowance estimate fully explained.
EV	Electric Vehicle
FAA	Federal Aviation Administration
FCC	Federal Communications Commission
FMV	Fair Market Value
Firm	An individual proprietorship, partnership, limited liability company, corporation or joint venture that is part of a team responding to this RFQ/P.
Guaranteed Maximum Price (GMP) for Construction	Contractor's maximum price for construction of the project provided by the Contractor in response to the District's Request for Proposals and Contractor's evaluation of the project criteria, bridging documents, and project sites during the RFP process. A subsequent firm fixed-price for construction is to be quantified and proposed by Contractor upon completion of the Design phase in accord with the process outlined in the Terms and Conditions to Contract and shall not exceed the GMP for Construction unless material changes to the scope identified in the RFP documents are identified by Contractor and detailed pricing is provided to the District for evaluation, and the District directs the inclusion of the material scope change.
GPR	Ground Penetrating Radar
ICC	International Code Council
IDF	Intermediate Distribution Frame
IEC	International Electrotechnical Commission
IEEE	Institute of Electrical and Electronics Engineers
IESNA	Illuminating Engineering Society of North America
IOR	DSA Inspector of Record (Project Inspector)
IOU	Investor-Owned Utility (California: PG&E, SCE or SDG&E)
LESLI List	State of California Department of Insurance List of Eligible Surplus Lines
Local Utility	The local utility (San Diego Gas & Electric or other) whose electrical distribution BESS the Project shall be interconnected.
Manufacturers' Warranties	<i>A separate 10-year manufacturer's warranty in addition to the 10-year service warranty, then the obligation for dual warranties must be met by the project to meet the qualification of the SGIP program. See Exhibit B, Manufactures' Warranties.</i>
MDF	Main Distribution Frame
NEC	National Electric Code
NEM	Net Energy Metering
NEMA	Net Energy Metering Aggregation or National Electrical Manufacturers Association
NFPA	National Fire Protection Association
NRTL	Nationally Recognized Testing Laboratory
Notice to Proceed (NTP)	The written notice issued by the District's Facilities Planning and Construction (FPC) post-award contracts administration department to the Contractor authorizing the Contractor to proceed with commencement of the Work or portions of the Work. The scope, value and schedule of such NTP shall be defined by the Contractor's signed proposal which shall be incorporated into the NTP, except in the case of a Unilateral Change as described in Article 2.11 of the Terms and Conditions of the Contract. The notice will include the Contract number, an NTP number, project number, site location name, established fee, invoicing directions and signature of the contracts supervisor. The contracts supervisor may authorize a representative to sign in his/her place when absent or otherwise unavailable. The issuance of an NTP shall indicate that the specified work has been approved by District authorized representatives, a funding source has been identified and budget has been confirmed. Contractor and subcontractors may not begin work prior to receiving an NTP and shall not exceed the value of an existing NTP.
O&M	Operations and Maintenance
OCPD	Over-Current Protection Devices
Operator	Entity responsible for system operation and management and the financial capability
OPR	Owner's Project Requirements
OTC	Over the counter design review with DSA
PBI	Performance Based Incentive
Premises	Location of the System(s)
Pre-Qualified	Proposers who were selected through the District's pre-qualification process as part of this solicitation.
Price Request	A written request prepared by the District requesting the Contractor to submit to the District an estimate of cost for a defined scope of work as needed to allow the District to determine and fully justify an equitable adjustment to the NTP

	value and the Contract Time
Project	All parts of a BESS, including batteries, wiring and other electrical devices, conduit, housings, hardware, equipment pad, fencing, remote monitoring equipment, connectors, meters, disconnects and other related devices required to construct a turnkey, operational BESS, interconnected to the grid, which meets the requirements of SGIP, all applicable laws and the Contract Documents.
Project Term	The duration of the relevant Contract between the successful Proposers and District
Proposal for Additional Services	A written request prepared by the Contractor requesting that the District issue a revised, amended or additional NTP based upon a proposed change to the Work or Services.
Proposer	An individual proprietorship, partnership, Limited Liability Company, corporation or joint venture that is responding to this RFQ/P. Proposer may also be referred to as "Firm", "Vendor" and "Contractor" in the RFQ/P and attachments.
Permission to Operate (PTO)	Written authorization from the Utility granting permission to the District to operate and interconnect the BESS with the Utility's distribution system.
REC	Renewable Energy Certificate. Renewable Energy Credit, one REC is equivalent to 1 MWh of energy produced from a renewable energy source.
Service Warranty	A warranty covering the storage systems for a period of 10 years. The service warranty ensures proper maintenance and continued project performance. The service warranty covers the system maintenance to include (but not limited to) system support, problem diagnosis, on-site repair and preventative maintenance. The warranty guarantees the continued performance of the system over the warranty period. Record keeping includes proof of warranty and maintenance contract, and specifies the warranty and maintenance contract start and end dates. Full Service Warranty requirements are included in Exhibit C of the Contract.
SGIP	California's Self-Generation Incentive Program
SWPPP	Storm Water Pollution Prevention Plan
TOU	Time of Use
WREGIS	Western Renewable Energy Generation Information System
Completion Definitions	
Substantial Completion	The date in which all parts of an integrated system connected to the power grid to enable the controlled storage and release of electrical energy. The BESS includes batteries, wiring and other electrical devices, conduit, housings, hardware, equipment pad, fencing, remote monitoring equipment, connectors, meters, disconnects and other related devices required to construct a turnkey, operational BESS, interconnected to the grid, which meets the requirements of SGIP, all applicable laws and the Contract Documents.
Commercial Operation Date (COD)	The date the BESS is (1) capable of commercial deliveries of energy to the full extent of its designed capacity, (2) accepted as substantially complete by the District, (3) has received Permission to Operate from the Utility, (4) commences delivery of energy for sale or use and (5) has met all other requirements of COD as outlined in Specification Section 01 33 01 Design-Build Process & Submittals .
Final Completion	The date at which the Work on the Project has been fully completed in accordance with the Contract Documents, per Specification 01 33 01 Design Build Process & Submittals , and as determined by the District's Representative. This Completion step is preceded by an approved COD.
Notice Of Completion (NOC)	The notice filed by the District, in the County Recorder's Office, stating that construction has been finally completed and the District has accepted the Work. NOCs will be filed upon Final Completion of all Work performed under a Construction NTP.

2. **Scope of Contract.**

- a. The total value of this Contract shall not exceed the amount of \$ << >> (<< >> dollars) for an initial term << >> through << >>, with one or more options to extend a total of three more years, either as a one-year term and a two-year term or a two-year term and a one-year term.
- b. Contractor's total compensation shall be based on issuance of one or more written NTPs, for design, construction, service warranty and operation of BESS in accordance with the SGIP incentive requirements and Owners Project Requirements (OPR) respectively, identifying the specific School Site(s), the scope of work, and the cost ("Services" or "Work").
- c. Contractor's performance of all of the services is further described in this Contract and **Exhibit A** and corresponding Exhibits, attached and incorporated by reference, is the "Project," and is generally described as follows:
 - i. The assessment, engineering, design, procurement, construction management, installation, construction, monitoring, verification, commissioning, and training for Battery Energy Storage Systems with Expected

Minimum Energy Capacity of << >> kilowatt-hours (kWh) of energy in Year One of BESS operation at the following << >> sites:

School Site	BESS System Size (kWdc)	Expected Minimum 1 st year BESS Capacity (kWh)
Porter North Elementary School		
Porter South Elementary School		
Ibarra Elementary School		
Sherman Elementary School		
Hamilton Elementary School		
Language Academy		
TOTAL	<< >>	<< >>

- ii. A ten-year service warranty which meets requirements of District and SGIP as detailed in *Exhibit C* of this Contract.
- d. The total Not To Exceed value of this contract is broken down per site as follows:

SITE	Design Services	Guaranteed Maximum Price for Construction	10-year Service Warranty (costs to meet annual SGIP and Owner Requirements)	Total Contractor Maximum Cost
Porter North ES				
Porter South ES				
Hamilton ES				
Ibarra ES				
Sherman ES				
Language Academy				
TOTAL CONTRACTOR MAXIMUM COST				
District owned and controlled contingency				
TOTAL CONTRACT NOT-TO-EXCEED (NTE) VALUE				

3. Work shall be completed within the time specified in the Contract Schedule. Contractor agrees, understands, and acknowledges that the District will suffer damage which is not capable of being calculated if the Work is not completed within the Contract Schedule. Pursuant to Government Code section 53069.85, Contractor shall forfeit to the District, as fixed and liquidated damages for these incalculable damages, the sum of One Dollar (\$1.00) per kWh capacity per day for each and every calendar day of delay beyond the following Commercial Operation Date Milestones for each site:

COMPLETION MILESTONES		
School or Facility Site	Commercial Operation Date	Final Completion Date
Porter North ES	<< >>	<< >>
Porter South ES		
Hamilton ES		
Ibarra ES		
Sherman ES		
Language Academy		

These liquidated damages apply only to the Design & Construction portions of this Contract and not the Service Warranty, as described in **Exhibit C**.

4. Contractor shall utilize the District’s estimating template to prepare Cost Estimates including quantities and prices of all items aggregating the estimated total cost of construction in the level of detail shown in the attached sample estimate template. Such estimates will be provided as part of each design stage deliverable.
5. Prior to issuance of NTP for construction, Contractor shall prepare and deliver a detailed schedule of values for all of the Work. The schedule of values must include quantities and unit prices of items and must subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. The proposed schedule of values must be approved by the District and will be incorporated as an attachment to the NTP.
6. The Contractor shall not commence the Work under the Contract until the Contractor has submitted and the District has approved the endorsement(s) of insurance required under the Terms and Conditions and the District has issued a Notice(s) to Proceed. The Contractor shall not commence the procurement, installation, and construction portions of the Work under this Contract until the Contractor has submitted and the District has approved the performance bond and the payment (labor and material) bonds.
7. The District is funding the Project with bond funds and is performing its compliance with the California Environmental Quality Act (“CEQA”). The Parties acknowledge that construction of the Project shall not commence until the District’s Board of Education has approved the Project as satisfying the requirements under CEQA. Therefore, the District reserves its right to suspend and/or terminate the Project as allowable herein if funds do not equal or exceed the amounts that the District expects and/or the District’s Board of Education does not approve the Project under CEQA. The District’s issuance of NTP(s) for construction shall be conditioned upon satisfaction of this aforementioned condition precedent, and the District reserves the right not to issue any NTP for construction until after the statute of limitations for CEQA litigation has expired.
8. Contractor hereby acknowledges that the Division of the State Architect (“DSA”) and the District’s DSA Project Inspector(s) (“Inspector” or “IOR”) have authority to approve and/or stop Work if the Contractor’s Work does not comply with the requirements of the Contract, Title 24 of the California Code of Regulations, and all applicable laws. The Contractor shall be liable for any delay caused and extra work required by its non-compliant Work. Contractor shall not be liable for delay caused solely by the District, or by any request from the Inspector not included in the DSA Plans.
9. Inspection and acceptance of the Work shall be performed by the following, respectively:
 - a. The District’s representative with whom the District will contract at or prior to the District issuing a NTP(s) to Contractor;

- b. The District's Chief Facilities Planning and Construction, or his designee, on behalf of the Board of Education via the filing of a Notice of Completion, which may be done for each Project at each School Site, in the San Diego County Recorder's Office.
10. The Contractor shall guarantee all labor and material used in the performance of this Contract in accordance with the provisions of Section 30 of the Terms and Conditions. Nothing contained herein shall be construed to establish a period of limitation with respect to any obligation of the Contractor under the Contract Documents or under applicable law. The obligations of the Contractor hereunder shall be in addition to, and not in lieu of, any other obligations imposed by any special guarantee or warranty required by the Contract Documents, warranties required by NEM Interconnection with the Utility, guarantees or warranties provided by any Manufacturer of any item or equipment forming a part of, or incorporated into the Work, or otherwise recognized, prescribed or imposed by law. Neither the District's Acceptance, the making of Final Payment, any provision in Contract Documents, nor the use or operation of the Work, in whole or in part, by District shall constitute acceptance of Work not in accordance with the Contract Documents nor relieve the Contractor nor the Performance Bond Surety from liability with respect to any warranties or responsibility for faulty or defective Work or materials, equipment and workmanship incorporated therein. Specific Warranty information is contained in **Exhibit C and Exhibit D**, which is incorporated herein by reference.
11. Contractor shall perform all Work related to its design to the standard of care of design professionals performing similar work for California school districts in or around the same geographic area of the District, and all Work related to its installation and construction to the standard of care of Contractors performing similar work for California school districts in or around the same geographic area of the District.
12. This Contract incorporates by this reference the Terms and Conditions attached hereto, as further indicated by Paragraph 16 below. The Contractor, by executing this Contract, agrees to comply with all the Terms and Conditions.
13. By signing this Contract, Contractor certifies, under penalty of perjury, that all the factual information provided in the Contract by the Contractor is true, complete, and correct, to the best of its knowledge. By signing this Contract, District certifies, under penalty of perjury, that all the factual information about the District and the School Sites provided in the Contract is true, complete, and correct, to the best of its knowledge.
14. Whenever a Party's consent, approval, satisfaction, or determination will be required or permitted under this Contract, and this Contract does not expressly state that the Party may act in its sole discretion, such consent, approval, satisfaction, or determination will not be unreasonably withheld, qualified, conditioned, or delayed, whether or not such a "reasonableness" standard is expressly stated in this Contract. Whenever a Party's cooperation is required for the other Party to carry out its obligations hereunder, each Party agrees that it will act in good faith and reasonably in so cooperating with the other Party or its designated representatives or assignees or subcontractors. Each Party will furnish decisions, information, and approvals required by this Contract in a timely manner so as not to delay the other Party's performance under this Contract.
15. **Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received as indicated below and to the persons indicated below. If notice is given by personal delivery thereof, it shall be considered delivered on the day of delivery. If notice is given by overnight delivery service, it shall be considered delivered one (1) day after date deposited, as indicated by the delivery service. If notice is given by depositing same in United States mail, enclosed in a sealed envelope, it shall be considered delivered three (3) days after date deposited, as indicated by the postmarked date. If notice is given by registered or certified mail with postage prepaid, return receipt requested, it shall be considered delivered on the day the notice is signed for.

<i>If to the District:</i>	<i>If to Contractor:</i>
Director, Purchasing and Contracts Strategic Sourcing & Contracts Dept. 2352 Cardinal Lane, Building M San Diego, California 92123-3743 Attention: << >> Tel: (858) 522-5808 Email: executedcontracts@sandi.net	<< >> Attention: << >> Telephone: << >> Email: << >>
With a copy by U.S. mail to: San Diego Unified School District 4100 Normal Street, Room 2148 San Diego, CA 92103 Attention: Sandra Chong, Esq.	With a copy by US Mail to: << >> Attention: Legal Department
With a copy by Email to: San Diego Unified School District Project Management Supervisor Attn: << >> Tel: << >> Email: << >>	

16. The Contract includes only the following documents ("Contract Documents"), as indicated below. In case of a conflict between any of the contract documents, the following order of precedence shall apply:

- Amendment(s) to this Contract
- This Contract, inclusive of Terms and Conditions
- Revised Notices to Proceed
- Notices to Proceed
- General Conditions (RFQ/P No. PS23-0338-11, Attachment. A.3)
- Exhibits to Contract/Amendment(s)
 - Exhibit A: Scope of Work
 - **Exhibit B:** Manufacturers' Warranties
 - **Exhibit C:** Service Warranty
 - **Exhibit D:** Project Stabilization Agreement Letter of Assent
 - Exhibit E: Subcontractors List as Required by Labor Code Section §1773.3(d)
 - Exhibit F: BESS Testing Protocols
 - Exhibit G: Health and Safety Requirements
- BESS Technical Specifications (RFQ/P No. PS23-0338-11, Attachment A.2)
- The most recent edition of the District Design Guide and District Guide Specifications, which may be amended from time to time.
- RFQ/P PS23-0338-11
- Self-Generation Incentive Program Handbook (most recent edition)
- Contractor's Proposal
 - Main Proposal
 - Cost Proposal Form(s) (RFQ/P No. PS23-0338-11, Attachment B.1)
 - Design Services Proposal(s) (RFQ/P No. PS23-0338-11, Attachment B.10)
- Additional forms and Certifications
 - Prevailing Wage Certification
 - Workers' Compensation Certification
 - Criminal Background Investigation Certification
 - Drug-Free Workplace / Tobacco-Free Environment Certification
 - Asbestos & Other Hazardous Materials Certification

- Lead-Product(s) Certification
- Iran Contracting Act Certification
- Insurance Certificates and Endorsements
- Performance Bond (District's Form)
- Payment Bond (District's Form)
- District Cost Estimate Template

17. **Electronic Signature.** Contractor consents to conducting transactions for this Contract via electronic signature, which will have the same validity and effect as a signature affixed by hand, through an electronic system established and maintained by the District. _____ (Initials).

- c. Under the Uniform Electronic Transactions Act (California Civil Code sections 1633.1- 1633.17), Contractor agrees to conduct transactions relating to the Contract by use of an electronic signature, which is an electronic mark that is held to the same standard as a legally binding equivalent of my handwritten signature. Contractor further agrees that, for the purposes of authorizing, approving, and authenticating records, information, and transactions relating to the Contract, the electronic signature has the full force and effect of a signature affixed by hand to a paper document. Contractor agrees that the transactions conducted electronically relating to this Contract shall be binding upon me.
- d. Contractor agrees that the electronic signature will be valid from date of issuance until the end of the Contract term or earlier if it is revoked or terminated under this Contract. Contractor understands that the District may suspend, terminate, or revoke the electronic signature in its reasonable discretion.
- e. Contractor will use the electronic signature to establish identity and sign electronic documents and forms relating to the Contract and Amendments. Contractor is solely responsible for protecting the electronic signature. If Contractor suspects or discovers that the electronic signature has been stolen, lost, used by an unauthorized party, or otherwise compromised, then Contractor will immediately notify the Strategic Sourcing and Contracts Officer or his/her designee and request that the electronic signature be revoked. Contractor will then immediately cease all use of the electronic signature. Contractor agrees to keep the electronic signature secret and secure by taking reasonable security measures to prevent it from being lost, modified, or otherwise compromised, and to prevent unauthorized disclosure of, access to, or use of it or of any media on which information about it is stored.

ACCEPTED AND AGREED on the date indicated below:

<<CONTRACTOR>>

SAN DIEGO UNIFIED SCHOOL DISTRICT

By: _____

By: _____

Name: << >>

Director, Purchasing and Contracts

Title: << >>

Strategic Sourcing & Contracts Dept.

Address: << >>

2352 Cardinal Lane, Building M

Tel: << >>

San Diego, California 92123-3743

Email: << >>

Tel: (858) 522-5808

Email: executedcontracts@sandi.net

Date: _____

Date: _____

APPROVED AS TO CONTENT	Approved in a public meeting of the Board of Education of the San Diego Unified School District on
Date: _____ _____ << >> Director San Diego Unified School District	Date: _____ _____ Marty Stultz Board Action Officer San Diego Unified School District Board of Education
APPROVED AS TO FORM AND LEGALITY	
Date: _____ _____ Sandra Chong, Assistant General Counsel II San Diego Unified School District	

Federal Tax ID: _____

Cal. Contractor License No.: _____

DIR No.: _____

Information regarding Contractor:

- Type of Business Entity:
- Individual
 - Sole Proprietorship
 - Partnership
 - Limited Partnership
 - Corporation
 - Limited Liability Company
 - Other: _____

Fed. ID (FEIN) #: << >>

NOTE: United States Code, title 26, sections 6041 and 6109 require non-corporate recipients of \$600 or more to furnish their taxpayer identification number to the payer. The United States Code also provides that a penalty may be imposed for failure to furnish the taxpayer identification number. In order to comply with these rules, the District requires your federal tax identification number or Social Security number, whichever is applicable.

TERMS AND CONDITIONS TO CONTRACT

1. **NOTICE(S) TO PROCEED PROCESS:** District shall provide written Notice(s) to Proceed (NTPs) to Contractor pursuant to the Contract at which time, Contractor shall proceed with the portion of the Work described in the individual NTP. The District reserves the right to issue multiple NTPs related to the Project, either by scope and/or by School Site. No Work shall commence prior to issuance of an NTP for that portion of the Work. When the Work is completed at an individual School Site, all construction NTPs which were issued for that School Site will be submitted to the Board of Education for ratification, amending the Contract to reflect the total capital costs for that School Site and the final Scope of Work; *provided* that Contractor shall be entitled to receive payment in full, in accordance with this Contract, for all Work performed in good faith pursuant to an NTP.
 - 1.1. **Design NTPs** will be issued prior to commencement of any design work and will include, at a minimum, authorization to develop DSA-approved construction documents, a site-specific work and safety plan, and a firm fixed-price cost proposal for the construction of improvements at the individual School Site. Individual Design NTP values will utilize Contractor's firm fixed-price cost proposals for Design Services provided as part of its response to the District RFP.
 - 1.2. **Construction NTPs** will be issued subsequent to DSA and District approval of Contractor's completed construction documents, prior to commencement of any construction activities. Individual Construction NTP

values will utilize Contractor's firm fixed-price cost proposals developed as part of the work authorized by the Design NTP and as subsequently negotiated with the District. Contractor's firm fixed-price cost proposals shall not exceed Contractor's Guaranteed Maximum Price for construction and shall be modified based on scope changes approved by District during the design phase.

- 1.3. **Service Warranty NTPs** will be issued after Substantial Completion and will authorize initiation of all service warranty related items, which is attached hereto as **Exhibit C** and incorporated herein by reference. Individual Service Warranty NTP values will utilize Contractor's firm fixed-price cost proposals for Warranty Services provided as part of its response to the District RFP.

2. **CHANGE IN SCOPE OF WORK:**

- 2.1. There shall be no change whatsoever in the NTP Value, Services, or Work, or any architectural enhancements, without an issuance of a revised or amended written NTP. Except as provided elsewhere in this Contract, no extension of time for performance of the Work shall be allowed hereunder unless duly adjusted in writing in a revised or amended NTP.
- 2.2. The provisions of the Contract Documents shall apply to all such changes, additions, and omissions with the same effect as if originally embodied in the Work or Services.
- 2.3. District shall not be liable for the cost of any extra work or any substitutions, changes, additions, omissions, or deviations from the Work except pursuant to a revised or amended written NTP.
- 2.4. Contractor shall perform all Work that has been authorized by a fully executed NTP in the timeframe set forth therein.
- 2.5. Should any change result in an increase to the NTP value, the agreed-upon cost of that change shall be included in a revised or amended NTP. Except as provided elsewhere in this Contract, if Contractor proceeds with any change in Work without a revised or amended NTP, Contractor waives any claim of additional compensation or time for that additional work.
- 2.6. Contractor understands, acknowledges, and agrees that the reason for District authorization is so that District may have an opportunity to analyze the Work and decide whether the District shall proceed with the Additional Work or alter the Project so that a change in Work becomes unnecessary.
- 2.7. NTPs for Additional Services shall be prepared, issued, and signed by the District (as authorized by the District's governing board or its designee), and approved by the Project Inspector (if necessary) and DSA (if necessary), and shall include, at a minimum, the following:
 - 2.7.1. A description of a change in the Work or Services;
 - 2.7.2. The amount of the adjustment to the NTP value, if any; and
 - 2.7.3. The extent of the adjustment to the NTP value, if any.
- 2.8. **Price Request.** Each Price Request shall contain adequate information, including any requested Additional Work or Services, to enable Contractor to provide the cost breakdowns required herein.
- 2.9. **Proposal for Additional Work.** All proposals shall include breakdowns pursuant to the revisions herein to validate any change in NTP values.
 - 2.9.1. **Request for Changes in Time.** Proposals shall include a request for any additional time required to complete the Project. The request for additional time must demonstrate impact to the critical path of the Project Schedule as defined in the original NTP. If Contractor fails to request a time extension in a proposal, then the Contractor is thereafter precluded from requesting additional time and/or claiming a delay, except as otherwise provided in this Contract.
 - 2.9.2. **Unknown and/or Unforeseen Conditions.** If Contractor submits a Proposal for Additional Services requesting an increase in NTP value and/or Contract Schedule that is based at least partially on Contractor's assertion that it has encountered condition(s) on the Project that it could not reasonably have been expected to discover in performing its "Site Examination" duties herein, then Contractor shall base the proposal on provable information that demonstrates that the hitherto unknown and/or unforeseen condition(s) actually exist. If not, the District may elect not to issue an additional NTP and the Contractor shall complete the Project without any increase in NTP value and/or Contract Schedule.
 - 2.9.3. **Proposal Format.** A cost proposal format shall be included in all Proposal(s) for Additional Services to communicate proposed additions and deductions to the NTP value, supported by attached documentation. Proposals shall include a complete breakdown of pricing, including individual quantities, units, and totals for materials, equipment, and labor. The cost proposal format for additional services can be found in **ATTACHMENT A.3 GENERAL CONDITIONS, Exhibit A.**

- 2.9.4. **Contractor Certification.** Notwithstanding that any Change shall be reflected in a revised or amended written NTP, all Proposals for Additional Work must include the following certification by the Contractor: Subject to adjustment for the reasons specified in the Contract, such as unforeseen site conditions or events of Force Majeure, the undersigned Contractor approves the foregoing as to the changes, if any, and the value specified for each item and as to the extension of time allowed, if any, for Project Completion, and agrees to furnish all labor, materials, and service, and perform all work necessary to complete any additional work specified for the consideration stated herein. Submission of sums which have no basis in fact or which Contractor knows or reasonably should know are false are at the sole risk of Contractor and may be a violation of the False Claims Act set forth under Government Code section 12650, et seq. It is understood that the changes herein to the Contract shall only be effective upon issuance of a Notice to Proceed by the District. It is expressly understood that the value of the extra Work or changes expressly includes any and all of the 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, expenses, damages or time extensions not included in this Proposal are deemed waived.
- 2.10. **Determination of Change in NTP Value.** The amount of the allowable increase or decrease in the NTP value arising from a Change, if any, shall be determined in one or more of the following ways as applicable to a specific situation and at the District's discretion, and any Change shall be reflected in a revised or amended written NTP:
- 2.10.1. District acceptance of a Proposal for Additional Work;
 - 2.10.2. By amounts contained in Contractor's schedule of values, if applicable;
 - 2.10.3. By Contract between District and Contractor.
- 2.11. **Unilateral Changes.** In the absence of a written agreement between the District and Contractor on the terms of a Change, the District may, as provided by law, by issuing a written Notice to Proceed and without invalidating the Contract, order changes in the Work consisting of additions, deletions, or other revisions directly related to the Scope of Work. The Contractor shall, within seven (7) calendar days of issuance of the Notice to Proceed, notify the District in writing if the terms of the change are disputed. In the case of a disputed Notice to Proceed, the Contractor shall track its time and material costs that it may use as the basis for a future dispute or claim pursuant to the "Disputes" provisions herein. If the Contractor fails to provide written notification within seven (7) calendar days, it waives its rights to all additional claims. The Contractor shall track its time and material costs for the dispute or claim as follows:
- 2.11.1. Contractor shall maintain detailed records on a daily basis. Such records shall include without limitation hourly records for labor and Construction Equipment and itemized records of materials and equipment used that day in connection with the performance of any Change to the Work. In the event that the Contractor performs more than one Change to the Work in a calendar day, Contractor shall maintain separate records for each such Change.
 - 2.11.2. Contractor shall maintain detailed records on a time and material basis of Work required by Unilateral Changes. Project Inspector review and signature is required for each daily time and material document.
 - 2.11.3. In the event that any subcontractor, of any tier, provides or performs any portion of any Change to the Work, Contractor shall require that each such subcontractor maintain records in accordance with the requirements set forth herein. Each daily record maintained hereunder shall be signed by Contractor or Contractor's authorized representative; such signature shall be deemed Contractor's representation and warranty that all information contained therein is true, accurate, and complete and relate only to the Change referenced therein. All records maintained by a subcontractor, of any tier, relating to the costs of a Change to the Work shall be signed by such subcontractor's authorized representative.
 - 2.11.4. All records maintained hereunder shall be subject to on-site or online inspection, review and/or reproduction by the Architect, Construction Manager, or the Project Inspector upon request. If the Contractor fails or refuses, for any reason, to maintain or make available for inspection, review and/or reproduction such records and the adjustment to the NTP value on account of any Change to the Work is determined by the District, the District's reasonable good faith determination of the extent of adjustment to the NTP value on account of such Change shall be final, conclusive, dispositive, and binding upon Contractor.

2.12. **District-Owned and –Controlled Contingency.** The District, at its sole discretion, may direct that contingency (“Contingency”) funds, as referenced in Section 2.c of this contract, be used for additions or modifications to the approved scope of work as defined in this Contract, as well as unforeseen costs that are not due to the Contractor’s or subcontractors’ negligence or wrongdoing. Contingency shall not be used to expand the Guaranteed Maximum Price for any reason not specifically mentioned in Section 2 of the Terms and Conditions of this Contract. Contingency funds will be utilized only by issuance of new or revised NTPs per Sections 1 and 2 of the Terms and Conditions of this Contract. At completion of all work authorized by Construction NTPs, any remaining balance in the Contingency remains the property of the District.

3. **PAYMENT:**

- 3.1. On a monthly basis, Contractor shall submit an invoice based upon the schedule of payment milestones as identified in the individual NTP under the Contract as of the date of submission (“Application for Payment”) and invoiced separately for each NTP.
- 3.2. Within seven (7) days after receipt of Contractor’s Application for Payment, District shall notify Contractor in writing, if the District disputes any portion of the Application for Payment. The District may deduct from any payment an amount reasonably determined by the District to be necessary to protect the District from loss because of: (1) liquidated damages which have accrued as of the date of the application for payment; (2) any sums expended by the District in performing any of Contractor’s obligations under the Contract which Contractor has failed to perform or has performed inadequately; (3) defective Work not remedied; (4) stop payment notices as allowed by state law; (5) unauthorized deviations from the Contract and/or Notice to Proceed that causes adverse effects to the Work; (6) failure of the Contractor to maintain or submit on a timely basis proper and sufficient documentation as required by the Contract or by District during the prosecution of the Work that causes adverse effects to the Work; (7) erroneous or false estimates by the Contractor of the value of the Work performed; (8) any sums representing expenses, losses, or damages, as determined by the District, incurred by the District for which Contractor is liable under the Contract; and (9) any other sums which the District is entitled to recover from Contractor under the terms of the Contract or pursuant to applicable federal, state, or local law, including, but not limited to, section 1727 of the California Labor Code. The failure by the District to deduct any of these sums from a progress payment shall not constitute a waiver of the District’s right to such sums. The District shall retain 5% from all amounts owing as retention relating to the construction of any public work of improvement per Public Contract Code sections 7107 and 7200. Retention shall be paid pursuant to Public Contract Code sections 7107 and 7200.
- 3.3. The District shall verify that all required services have been performed prior to approving any payment. If deemed unreasonable, incomplete or inaccurate, the invoice may be rejected, and Contractor shall resubmit its invoice(s) with corrections. Alternatively, the District may choose to pay the undisputed value of the work performed. Payment terms shall be Net Thirty (30) Days starting from the date of District’s approval of invoice for services and materials. Payment amount shall be less the 5% withheld for retention as applicable. District will not pay for any invoices for work performed that are submitted more than one (1) year from date of services rendered. Work performed must be verified by Inspector, have the required approvals by designated District representatives, and certified by Contractor up to the last day of the previous month.
- 3.4. Payment for material stored on or off the School Sites is allowed at the sole discretion of the District. If allowed, proof of off-site material purchases (invoices and checks and/or bills of lading) and appropriate insurance coverage will be required. The Contractor shall furnish to the District written consent from the Surety approving the advanced payment for materials stored off site. The maximum prepayment allowed by the District shall be eighty percent (80%) of the actual value of the item being considered, less retention as indicated above. The Contractor shall protect stored materials from damage. Damaged materials, even though paid for, shall not be incorporated into the Work. Off-site materials are to be stored in bonded warehouse.
- 3.5. For its invoice to be due, owing and payable, the Contractor must submit an updated Project Schedule with its Application for Payment.
- 3.6. Contractor shall submit invoices as directed in the NTP and the District’s FPC post-award contracts administration department.
- 3.7. All invoices must include the contract number, NTP number and a unique invoice number. At the discretion of the District’s contract administration department, Contractor may also be directed to provide additional details on the invoice and/or backup documentation.

4. **SITE EXAMINATION:**

- 4.1. The District shall provide to the Contractor all information available to it to the extent the information relates to Contractor's scope of work. This information shall include:
 - 4.1.1. Physical characteristics;
 - 4.1.2. Legal limitations and utility locations for the Project site(s);
 - 4.1.3. Written legal description(s) of the Project site(s);
 - 4.1.4. Grades and lines of streets, alleys, pavements, and adjoining property and structures;
 - 4.1.5. Adjacent drainage;
 - 4.1.6. Rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, and boundaries and contours of the Project site(s);
 - 4.1.7. Locations, dimensions and necessary data with respect to existing buildings, other improvements and trees;
 - 4.1.8. Information concerning available utility services and lines, mechanical and other services, both public and private, above and below grade, including inverts and depths;
 - 4.1.9. Surveys, reports, as-built drawings;
 - 4.1.10. Available subsoil data, chemical data, and other data logs of borings;
 - 4.1.11. DSA Numbers for all buildings, as necessary to obtain DSA approval of plans to be submitted by Contractor under the contracted scope of work.
 - 4.1.12. The approximate location and physical characteristics of existing utility lines, telephone, water, sewage, storm drains and other lines on or around or relating to the Project.
- 4.2. Contractor shall visually verify the existence of the conditions identified by this information to the extent determinable by the documents provided by the District ("Site Examination"). Contractor shall rely on its Site Examination in defining its scope of Work or Services.
- 4.3. "Visually Verified" means confirmed by diligent physical inspection without any destructive or invasive action. Removal of panel covers or other materials that can be replaced is not deemed destructive or invasive.
- 4.4. Contractor shall perform all due diligence work as outlined in Specification Section 011000, Summary of Work.
- 4.5. If there are any variations to the scope of Work or Services resulting from conditions not determinable from such Visually Verified information, the Contractor shall submit to the District a Proposal for Additional Services based on those conditions.
- 4.6. No claim for allowance of time or money will be allowed as to any other undiscovered condition on the School Site that could reasonably have been discovered through these Site Examination activities. Notwithstanding the aforementioned, should the Contractor discover any latent or unknown conditions, which will materially affect the performance of the Work hereunder, Contractor shall immediately inform the District of such fact in writing and shall not proceed until written instructions are received from the District. This written notice may take the form of a Proposal for Additional Services.

5. **CERTIFICATE OF CONTRACTOR:**

- 5.1. Contractor certifies that the Contractor is properly certified and licensed under the laws and regulations of the State of California to perform the Work that it has herein agreed to perform.

6. **CONTRACTOR STAFF:**

- 6.1. The Contractor has been selected to perform the Work herein because of the skills and expertise of key individuals.
- 6.2. The Contractor shall not change any of the key personnel without prior written notice to District, unless said personnel cease to be employed by Contractor.
- 6.3. If any designated lead or key person fails to perform to the reasonable satisfaction of the District, then upon written notice the Contractor shall have ten (10) days to remove that person from the Project and replace that person with one reasonably acceptable to the District.
- 6.4. Contractor shall comply with Education Code section 17302(a) and agrees that any plans and/or specifications included in the Work shall be prepared under the supervision of licensed personnel, and that licensed personnel shall be in "responsible charge" of persons who observe the construction.

7. **WORKERS:** Contractor shall at all times enforce strict discipline and good order among its employees and the employees of its subcontractors and shall not employ or work any unfit person or anyone not skilled in the work assigned to him or her. Any person in the employ of the Contractor or a subcontractor whom the District may reasonably deem incompetent or unfit shall be dismissed from the School Site and shall not again be employed at the School Site without written consent from the District. Additionally, if any person in the employ of the Contractor or any of its subcontractors fail to perform in accordance with this Contract, the District reserves the right to require Contractor to remove and replace such employee or subcontractor with a satisfactory replacement within a reasonable period of time upon written notice from District.
8. **EQUIPMENT AND LABOR:** The Contractor shall furnish all tools, equipment, apparatus, facilities, transportation, labor, and material necessary to complete the Work herein described, the Work to be performed at such times and places as reasonably directed by and subject to the reasonable approval of the authorized District representative indicated in the Work specifications attached hereto.
9. **SUBCONTRACTOR:** Sub contractor, if any, engaged by the Contractor for any Work under this Contract shall be subject to the approval of the District, which shall not be unreasonably withheld. Contractor agrees to bind every subcontractor by the terms of the Contract as far as such terms are applicable to subcontractor's work, including, without limitation, all indemnification, insurance, bond, and SGIP warranty requirements. If Contractor shall subcontract any part of the Work under this Contract, Contractor shall be fully responsible to the District for acts and omissions of its subcontractor and of persons either directly or indirectly employed by itself. Nothing contained in the Contract shall create any contractual relations between any subcontractor and the District.
10. **TERMINATION / SUSPENSION:**
 - 10.1. If Contractor fails to perform Contractor's material duties as required by this Contract, or if Contractor fails to fulfill in a timely and professional manner Contractor's material obligations under this Contract, or if Contractor shall violate any of the material terms or provisions of this Contract, and any such failure is not excused by the terms of this Contract, the District shall have the right to terminate this Contract, in whole or in part, unless either:
 - 10.1.1. Such failures and violations are caused by the District; or
 - 10.1.2. Such failures and violations are cured by Contractor to the District's reasonable satisfaction within fourteen (14) days after Contractor's receipt of written notice thereof from the District; provided, that if a cure cannot be effected within such fourteen (14) days and Contractor has commenced a cure within such period of time and continues diligent pursuit of such cure, the Contractor shall have a reasonable period to complete such cure to the District's reasonable satisfaction.In the event of a termination pursuant to this subdivision, Contractor may invoice District for all Work performed until the notice of termination, but District shall have the right to withhold payment and deduct any amounts equal to the District's costs because of Contractor's actions, errors, or omissions that caused the District to terminate the Contract.
 - 10.2. District shall have the right in its sole discretion to terminate the Contract, in whole or in part, for its own convenience. In the event of a termination for convenience, Contractor may invoice District and District shall pay for all undisputed invoice(s) for recoverable costs for Work performed up to the effective date of termination, custom fabricated materials, reasonable demobilization costs, and rental costs for equipment that Contractor cannot mitigate with diligent efforts. In the event that District terminates this Contract as provided in this subsection and there are no known potential claims related to Contractor's Work, District shall, within fourteen (14) days after the date of termination, release the Performance and Payment Bonds, although the Surety on Performance and Payment Bonds shall remain liable as indicated herein for all Contractor's Work performed until the date of termination.
 - 10.3. Except as indicated in this Article, termination shall have no effect upon any of the rights and obligations of the Parties arising out of any transaction occurring prior to the effective date of such termination.
 - 10.4. The District has the right to suspend or terminate, in whole or in part, individual Notices to Proceed issued for the Project. During the period of suspension, Contractor shall continue to submit Applications for Payment in accordance with Section 3.1 hereof, and District shall make payment in accordance with Section 3.2 hereof. If the District suspends an NTP for more than one hundred twenty (120) consecutive days, the Contractor shall be compensated for Services performed prior to notice of that suspension. When the Project is resumed, the Project Schedule shall be adjusted and the Contractor's compensation shall be equitably adjusted to provide for expenses incurred associated with the suspension and in the resumption of the Contractor's Services.

11. **DELIVERABLES AT TERMINATION:**

- 11.1. Following the termination of this Contract, for any reason whatsoever, the Contractor shall promptly deliver to the District upon written request the following items (hereinafter "Instruments of Service") in electronic format (Microsoft Word), unless otherwise indicated, assuming the District has made all payments to Contractor as required by the termination provisions in this Contract.
- 11.1.1. One set of the Contract, including the bidding requirements, specifications, and all existing cost estimates for the Project, in hard copy, reproducible format.
- 11.1.2. One set of fixed image CADD files in DXF format of the drawings that are part of the Contract.
- 11.1.3. One set of non-fixed image CADD drawing files in DXF and/or DWG format of the site plan, floor plans (architectural, plumbing, structural mechanical and electrical), roof plan, sections and exterior elevations of the Project.
- 11.2. All finished or unfinished documents, studies, reports, calculations, drawings, maps, models, photographs, technology data and reports prepared by the Contractor under this Contract.

12. **SAFETY AND SECURITY:** Contractor is responsible for maintaining safety in the performance of this Contract. Contractor shall be responsible to ascertain from the District the rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present. In the event that the aforementioned rules conflict with the terms of this Contract, the terms of this Contract shall prevail.

13. **CORRECTION OF ERRORS:** Contractor shall perform, at its own cost and expense and without reimbursement from the District, any work necessary to correct errors or omissions which are caused by the Contractor's failure to comply with the Contract requirements and the standard of care required herein.

14. **SUBSTITUTIONS:** No substitutions of material from those specified in the approved final design (defined as the design documents approved by DSA and subsequently accepted by the District) shall be made without the prior written approval of the District, which the District shall complete as diligently as possible and which the District shall not unreasonably withhold.

15. **CONTRACTOR SUPERVISION:** Contractor shall provide competent supervision of its personnel on the School Site, its use of equipment, and the quality of its workmanship.

16. **ACCESS TO WORK:** District shall provide to Contractor uninterrupted access to the School Sites and to a reasonably sufficient staging area, to be detailed in the NTP. District representatives shall at all times have access to the Work wherever it is in preparation or in progress. Contractor shall provide safe and proper facilities for such access. All persons entering any Site shall comply with the approved Site-specific work and safety plan.

17. **PROTECTION OF WORK AND PROPERTY:** The Contractor shall erect and properly maintain at all times, as required by conditions and progress of the Work, all necessary safeguards, signs, barriers, lights, and security persons for protection of workers and the public, and shall post danger signs warning against hazards created by the Work. In an emergency affecting life and safety of life or of Work or of adjoining property, Contractor, without special instruction or authorization from District, is permitted to act at its discretion to prevent such threatened loss or injury.

18. **OTHER CONTRACTS/CONTRACTORS:** District reserves the right to let other contracts, and/or to perform work with its own forces, in connection with other work at the School Sites. Contractor shall afford other contractor reasonable opportunity for introduction and storage of their materials and execution of their work and shall properly coordinate and connect Contractor's Work with the work of other contractors. In addition to Contractor's obligation to protect its own Work, Contractor shall protect the work of any other contractor that Contractor encounters while working on the Project. Nothing herein contained shall be interpreted as granting to Contractor exclusive occupancy of the Site, the Premises, or of the Project. Contractor shall not cause any unnecessary hindrance or delay to the use and/or school operation(s) of the Premises and/or to District or any other contractor working on the Project. If simultaneous execution of any contract or school operation is likely to cause interference with performance of Contractor's Contract, Contractor shall coordinate with those contractors, person(s), and/or entity(ies) and shall submit to the District a Proposal for Additional Services based on such coordination if that coordination is different than as indicated in the documents provided in the NTP.

19. **ASSIGNMENT OF CONTRACT:** The Contractor shall not assign or transfer in any way any or all of its rights, burdens, duties, or obligations under this Contract without the prior written consent of the District. This provision shall not limit the Contractor's right to subcontract portions of its Work to other entities and assign this Contract and all related contracts without the consent of the District (i) to direct affiliate of Contractor; (ii) to an entity that is controlled by, controls, or is under common control with Contractor; or (iii) pursuant to a merger, consolidation, transfer of substantially all its assets, or by operation of law. This Contract will be binding on, enforceable by, and inure to the benefit of, the Parties and their respective successors and permitted assigns. Any assignment made in contravention of this clause shall be void and unenforceable.
20. **COMPLETION:**
- 20.1. **Walk-Through as Prerequisite to Determination of Substantial Completion.** When the Contractor believes that the Work is complete except for minor corrective items, it shall so notify the District and shall provide written documentation (Contractor's "pre-punch list") which demonstrates substantial completion. Promptly thereafter, the District shall schedule a walk-through of the Project by the Contractor, the District, the Criteria Architect, and the Inspector to determine whether and to what extent the Work is substantially complete. Any erroneous claims of completion by the Contractor resulting in a premature walk-through shall be at the Contractor's sole cost and expense, and the District shall be entitled to reduce its payments to the Contractor under the Contract by an amount equal to any costs incurred by the District due to the erroneous claims by the Contractor that the Project is substantially complete. Minor corrective (or "punch-list") items shall be identified in the final walk-through of the Project. Notwithstanding the provisions listed prior, the District shall accept as complete the individual scope of work for each NTP as each is completed, at different dates, as opposed to waiting for the entire Work to be completed prior to issuance of its Acceptance of Work.
- 20.2. **Notice of Substantial Completion.** Upon completion of all conditions precedent to Substantial Completion for any School Site, Contractor shall submit a Notice of Substantial Completion to the District. Within ten (10) business days from the District's receipt of the Notice of Substantial Completion, the District will either (a) accept the Work (except for the Punch List) as meeting Substantial Completion for each Site; or (b) reject the Work as meeting Substantial Completion and provide Contractor with a description of any deficiencies or other basis by which it has rejected the Notice of Substantial Completion. Contractor will then address any deficiencies and resubmit its Notice of Substantial Completion.
- 20.3. **Final Completion.** Upon completion of all punch-list items, Commercial Operation requirements and other Final Completion closeout items for a School Site, Contractor shall notify District that it believes Final Completion has been achieved. The District may either (a) accept the Work as complete, or (b) refrain from accepting the Work as complete until the entire Work and all portions thereof, including all punch-list items and closeout documentation have been completed to the satisfaction of the District and the Inspector. Upon District's acknowledgement of Final Completion for the individual Site, the District shall thereafter cause a Notice of Completion to be recorded in the County Recorder's Office for each Site.
- 20.4. **Contractor's Failure to Correct Punch-List Items.** If the Contractor fails to complete the minor corrective items prior to the expiration of the thirty (30) day period immediately following the District's refusal to accept the Contractor's claim of Final Completion, or such longer time as may be reasonably necessary to complete such corrective items, the District shall withhold from the final payment owing to the Contractor under the Contract an amount equal to 150% the estimated cost, as determined by the District, of each item until such time as the item is completed.
- 20.5. **Time Is Of The Essence.** Time is of the essence in the performance of and compliance with each of the provisions and conditions of this Contract.
21. **BENEFICIAL USE:** District reserves the right to receive beneficial use of the Work before formal Contract completion and upon Substantial Completion and COD, *provided* that District assumes responsibility for the security of, insurance coverage for, maintenance, utilities for, and damage to or destruction of such portion of the Work. Beneficial use shall not constitute final acceptance or approval of any part of the Work covered by this Contract, nor shall beneficial use extend the date specified for Final Completion of the Work.

22. **FORCE MAJEURE CLAUSE:**

- 22.1. The term "Force Majeure" shall mean an event that was not reasonably foreseeable at the time of the execution of the Contract and occurs after the parties entered into the Contract that is beyond their control and prevents, hinders, or delays one or both parties from performing and fulfilling their obligations, in whole or in part, under the contract as a result of war; terrorism; third party strike; riot; epidemic/pandemic, government directives/orders such as mandatory quarantine, travel restrictions, and decree to shutdown; violent forces of nature such as hurricane, flood, earthquake; and other acts of God.
- 22.2. Neither party shall be considered to be in default in the performance of any material obligation hereunder during the time and to the extent that it is prevented from obtaining delivery or performing by a Force Majeure event. Neither Party shall be relieved of its obligation to perform if such failure is due to causes arising out of its own negligence or due to removable or remediable causes which it fails to remove or remedy with the exercise of commercially reasonable efforts within a reasonable time period. Either Party rendered unable to fulfill any of its obligations under this Contract by reason of an event of Force Majeure shall give prompt written notice of such fact to the other Party. Notwithstanding a Force Majeure event, the Party claiming such an event must provide satisfactory evidence that the event caused the delay or lack of performance and was not due to the fault or neglect of the Party claiming a Force Majeure event.
- 22.3. Contractor is aware that in addition to the District, governmental agencies and utilities, including, without limitation, the Division of the State Architect, the Department of General Services, gas companies, electrical utility companies, water districts, and other agencies ("Review Agencies") may have to approve Contractor prepared drawings or approve a proposed installation. Contractor shall include in the Project Schedules, time for possible review of its drawings and for reasonable delays and damages that may be caused by such agencies. Contractor is entitled to additional time in the Project Schedule for review of Contractor's drawings or other approvals from the Division of the State Architect, the Department of General Services, gas companies, electrical utility companies, water districts, and other agencies, if all of the following conditions have been satisfied:
- 22.3.1. Reasonable durations for review by all Authorities Having Jurisdiction (AHJ) have been identified in the Project Schedule
- 22.3.2. The time for this review is in excess of the time expressly allocated for this review in the Project Schedule;
- 22.3.3. If Contractor has diligently pursued approval from the Review Agencies; Contractor's drawings and proposed installation are consistent with all applicable state, local, and federal codes, DSA Interpretations of Regulations as of the date of this Contract, as well as other applicable battery energy storage systems review and approval requirements; and
- 22.3.4. Contractor's drawings and proposed installation are consistent with Contractor's pre-check(ed) ("PC") design as of the date of this Contract, where applicable, except as modified at the District's request.

23. **INDEMNIFICATION / HOLD HARMLESS CLAUSE:** To the furthest extent permitted by California law, Contractor shall indemnify, defend, and hold harmless the District, its trustees, members, agents, representatives, officers, consultants, employees, and volunteers (the "indemnified parties") from any and all demands, losses, liabilities, claims, suits, and actions (the "claims") of any kind, nature, and description, including, but not limited to, reasonable attorneys' fees and costs, directly or indirectly arising from personal or bodily injuries, death, or property damage, to the extent (i) arising out of, connected with, relating to, in whole or in part, the Work, the Services, the Project/Facilities/School Sites or (ii) resulting from any act, omission, error, negligence, or performance of this Contract by Contractor or its officers, employees, agents, consultants, sub-consultants, contractors, subcontractors, or licensees. However, Contractor shall have no obligation to indemnify or defend indemnified parties from a claim to the extent caused by the negligence or willful misconduct of indemnified parties. The District shall have the right to accept or reject any legal representation that Contractor proposes to defend the District. However, such acceptance shall not be unreasonably withheld. This indemnification, defense, and hold harmless obligation includes, but is not limited to, any failure or alleged failure by Contractor to comply with any provision of law, any failure or alleged failure to timely and properly fulfill all of its obligations under the Contract in strict accordance with their terms, and without limitation, any stop payment notice actions or liens, including liens by the California Department of Labor Standards Enforcement.

24. **PERMITS, APPROVALS, AND LICENSES:**

- 24.1. The Contractor and all of its employees, agents, and subcontractors shall secure and maintain in force, at Contractor's sole cost and expense, all licenses and permits as are required by law, in connection with the furnishing of materials, supplies, or Work herein listed.
- 24.2. Contractor is responsible for obtaining on behalf of the District and at District's expense, permits and approvals (including DSA approval), required for the building, installation, and start-up of the Work hereunder which are required to complete the Project.
- 24.3. All other permitting and permitting fees required to complete the project, including but not limited to, permits from the City of San Diego and the Local Utility, annual operating permits and any approvals or exemptions required by CEQA, are the responsibility of the District.
- 24.4. District will cooperate fully with and assist Contractor's obtaining all permits and approvals required under this Contract.

25. **INDEPENDENT CONTRACTOR STATUS:** While engaged in carrying out the Work of this Contract, the Contractor is an independent contractor, and not an officer, employee, agent, partner, or joint venturer of the District. Contractor shall be solely responsible for its own Worker's Compensation insurance, taxes, and other similar charges or obligations. Contractor shall be liable for its own actions and shall be liable for the acts, omissions, or errors of its agents or employees.

26. **ANTI-DISCRIMINATION:** It is the policy of the District that in connection with all work performed under Contract, there shall be no discrimination against any employee engaged in the work because of race, national origin, ancestry, religion, age, physical or mental disability, sex, or sexual orientation of such person, and, therefore, the Contractor agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment Practice Act beginning with Government Code Section 12900 and Labor Code Section 1735. In addition, the Contractor agrees to require like compliance by all its subcontractor(s).

27. **DISABLED VETERAN BUSINESS ENTERPRISES:** Section 17076.11 of the Education Code requires school districts using funds allocated pursuant to the State of California School Facility Program for the construction or modernization of a school building (SFP Funds) to have a participation goal of at least 3 percent, per year, of the overall dollar amount expended each year by the school district, for disabled veteran business enterprises (DVBE). Contractor shall make reasonable efforts to solicit and utilize DVBEs during the performance of its Work, subject to the availability of DVBEs which meet Contractor's professional standards to perform the Work and Work within the Contract Time at a competitive price.

28. **PAYMENT BOND AND PERFORMANCE BOND:** The Contractor shall not commence the Work until it has provided to the District, on District forms a Payment (Labor and Material) Bond and a Performance Bond, each in an amount equivalent to 100 percent of the Contract Value issued by a surety admitted to issue bonds in the State of California and otherwise reasonably acceptable to the District. All performance bond and payment bond liability will cease in accordance with the law.

29. **CONTRACTOR'S INSURANCE:** Contractor shall procure and maintain, for the duration of the construction portion of this Contract, the following insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work hereunder and the results of that Work by the Contractor, its agents, representatives, employees or subcontractors. The following sets forth the minimum scope and limits of the required insurance coverage. If the Contractor maintains broader coverage and/or higher limits than the minimums set forth below, District requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to District.

All policies shall contain waiver of subrogation endorsement against the District. All of Contractor's insurance shall be with admitted insurance companies with a current A.M. Best rating of no less than A-: VII. If any coverage is written by a non-admitted surplus lines carrier, the insurer must be included in the current CA List of Accepted Surplus Lines Insurers (LASLI), be approved by District's Risk Manager and otherwise meet all rating requirements.

29.1. **Commercial General Liability Insurance.** Coverage to be written on an occurrence form. Coverage to be at least as broad as ISO form CG 002 (07/98), without endorsements that limit the policy terms with respect to: (1)

the definition of an Insured Contract, (2) provisions for severability of interest, (3) explosion, collapse, underground hazard:

- \$2,000,000 per occurrence for Bodily Injury and Property Damage
 - \$4,000,000 General Aggregate - other than Products/Completed Operations
 - \$2,000,000 Products/Completed Operations Aggregate
 - \$1,000,000 Personal & Advertising Injury
 - \$500,000 Fire Damage
- 29.2. **Automobile Liability.** Coverage for any auto, including all owned, hired and non-owned vehicles: combined single limit of \$1,000,000 per accident.
- 29.3. **Excess Liability Insurance.** Coverage to be written on an occurrence form. Coverage terms and limits to apply excess of the per occurrence and/or aggregate limits provided for Commercial General Liability, Auto Liability and Professional Liability, e.g. "following form."
- \$10,000,000 each occurrence
 - \$10,000,000 aggregate
- 29.4. **Professional Liability Insurance.** Insurance appropriate to the Contractor with limits no less than:
- \$2,000,000 per occurrence or claim
 - \$4,000,000 aggregate
- 29.5. **Workers Compensation.** As required by the State of California with Statutory limits;
- 29.6. **Employers' Liability.** \$1,000,000 per accident or bodily injury or disease.
- A waiver of subrogation endorsement is required on the Workers' Compensation policy.
- 29.7. **Contractor's Pollution Liability Insurance** with limits of at least:
- \$1,000,000 per occurrence/\$2,000,000 aggregate.
- 29.8. **Builder's Risk.** Replacement value of the Project with no coinsurance penalty provisions.
- 29.9. **Property Installation Floater** in lieu of Builder's Risk, 100% of replacement value.
- a. Contractor may submit evidence of Builder's Risk insurance in the form of "Course of Construction" coverage. In either case, the District shall be listed as an insured under the policy.
 - b. If the scope of work does not involve new, or major reconstruction, (as defined by the District), at the option of the District, an "Installation Floater" will be acceptable to meet this requirement. For such projects, a Property Installation Floater shall be obtained that provide for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken or destroyed during the performance of the Work, including during transit, installation and testing at the District's site.
 - c. Builder's Risk insurance shall be maintained on all insurable Work included under the Contract Documents and Work in Progress, and shall include false-work (which includes but is not limited to temporary structures such as scaffolding, bridge centering, metal work, in which a temporary construction work of which a main work is wholly or partly built until the main work is self-supporting) temporary buildings, transit, debris removal, including demolition, increased cost of construction, architect fees and expenses and flood, including water damage, windstorm, earthquake (if required) and, if applicable, all below and above ground structures, piping, foundations, including underground water and sewer mains, piling, including the ground on which the structure rests, and excavation, backfilling, filling and grading. Insured property shall include portions of the Work located away from the site but intended for use at the site and shall also cover portions of the Work in transit.
 - d. Such insurance shall include the interests of the District, any other person with an insurable interest designated by the District, the Contractor and sub-contractors as insureds on the policy. Required insurance limits for Commercial General Liability, Automobile Liability, and Employer's Liability may be reached through a combination of primary and umbrella/excess policies. The Contractor shall provide to the District certificate(s) of insurance and endorsements reasonably satisfactory to the District. The policy(ies) shall not be amended or modified and the coverage amounts shall not be reduced without thirty (30) days written notice to the District prior to cancellation. Coverage for Commercial General Liability, Contractor's Pollution Liability and Professional Liability shall be maintained for a minimum of five (5) years after contract completion. Except for Worker's Compensation insurance and Professional Liability insurance, the District shall be named as an additional insured on all policies. The Contractor's policy(ies)

shall be primary; any insurance carried by the District shall only be secondary and non-contributing. All SIRs or deductibles in excess of \$25,000 must be disclosed to and approved by District. The Contractor shall not allow any subcontractor, employee, or agent to commence Work on this Contract or any subcontract until the insurance required by the Contractor of the subcontractor or agent has been obtained.

30. **WARRANTY/QUALITY:**

30.1. Contractor warrants to District that material and equipment furnished under this Contract will be of good quality and new.

The warranties in this Article expressly exclude any remedy for damage or defect caused by improper or inadequate maintenance of the installed equipment by service providers other than Contractor or its subcontractors, corrosion, erosion, deterioration, abuse, modifications or repairs not performed by an authorized Contractor subcontractor, or improper use or operation.

30.2. **SERVICE AND EQUIPMENT MANUFACTURES WARRANTIES:** Contractor shall include a 10-year service contract as part of this award, and shall guarantee to the District an output from each BESS System that shall meet the SGIP requirements, and as indicated in the final approved design documents and associated Warranty NTPs. *Warranty Guarantee shall be provided in the format depicted in Exhibit C, Service Warranty.*

Contractor warrants to District, in accordance with all SGIP warranty requirements, for a period of ten (10) years from the Substantial Completion Date for such BESS, (i) that such BESS shall be free from defects in workmanship provided hereunder; and (ii) that the equipment shall be free of defective system or component breakdown, or degradation in electrical input or output capacity of more than fifteen percent (15%) from its originally rated electrical output as a result of faulty installation (the "10 Year Service Warranty"). This 10 Year Service Warranty covers solely the BESS, including battery modules and inverters (including meters that are integrated into any inverter), software systems required to optimize the BESS performance requirements, heat exchangers, pumps, and any heat driven cooling systems associated with the BESS for each Generating Facility, and provides for the no-cost repair or replacement of BESS components to the extent not otherwise covered by a manufacturer's warranty.

A separate 10-year manufacturer's warranty in addition to the 10-year service warranty, then the obligation for dual warranties must be met by the project to meet the qualification of the SGIP program Manufactures Equipment Warranties shall be included with Exhibit B, Manufactures' Warranties.

30.3. EXCEPT FOR THE WARRANTIES PROVIDED IN THIS ARTICLE AND AS ADDITIONALLY DEFINED IN **EXHIBIT C AND EXHIBIT D**, CONTRACTOR MAKES NO OTHER WARRANTIES IN CONNECTION WITH THE WORK PROVIDED UNDER THIS CONTRACT, WHETHER EXPRESS OR IMPLIED IN LAW, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY IMPLIED WARRANTIES AGAINST INTELLECTUAL PROPERTY INFRINGEMENT. EXCEPT FOR ANY CLAIM OR OBLIGATION ARISING OUT OF: (A) CONTRACTOR'S INDEMNITY OBLIGATIONS AS STATED IN THE CONTRACT DOCUMENTS; AND (B) CONTRACTOR'S WARRANTY OBLIGATION AS STATED IN THE CONTRACT DOCUMENTS, DISTRICT SHALL HAVE NO REMEDIES AGAINST EITHER CONTRACTOR OR ANY SUBCONTRACTOR OR VENDOR FOR ANY DEFECTIVE WORK INSTALLED EXCEPT FOR THE REPAIR OR REPLACEMENT OF SUCH EQUIPMENT IN ACCORDANCE WITH THE WARRANTIES INDICATED ABOVE. SPECIFICALLY, EXCEPT FOR ANY CLAIM OR OBLIGATION ARISING OUT OF: (A) CONTRACTOR'S INDEMNITY OBLIGATIONS AS STATED IN THE CONTRACT DOCUMENTS; (B) CONTRACTOR'S WARRANTY OBLIGATION AS STATED IN THE CONTRACT DOCUMENTS; AND (C) CONTRACTOR'S LIABILITY TO PAY LIQUIDATED DAMAGES AS STATED IN THE CONTRACT DOCUMENTS, NEITHER CONTRACTOR, NOR CONTRACTOR'S SUBCONTRACTORS OR VENDORS, SHALL BE LIABLE TO DISTRICT FOR LOSS OF PROFITS OR FOR ANY CONSEQUENTIAL OR PUNITIVE DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY.

31. **CONFIDENTIALITY:** To the extent permitted by applicable law, the Parties shall maintain the confidentiality of all non-public information, documents, programs, procedures, and all other items that the Parties encounter during the Project and/or pursuant to the Contract. This requirement shall be ongoing and shall survive the expiration or termination of this Contract.

32. **CONFLICT OF INTEREST:** Contractor may serve other clients, but none whose activities or whose business,

regardless of location, would place Contractor in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code sections 81000 *et seq.* Contractor shall not employ any district official in the Work performed pursuant to this Contract. Contractor hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the District. If Contractor was an employee, agent, appointee, or official of the District in the previous twelve months, Contractor warrants that it did not participate in any manner in the forming of this Contract. Contractor understands that if this Contract is or was made in violation of Government Code sections 1090 *et seq.* the entire Contract is void and Contractor will not be entitled to any compensation for services performed pursuant to this Contract, including reimbursement of expenses, and Contractor will be required to reimburse the District for any sums paid to the Contractor. Contractor understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code sections 1090 *et se.* and, if applicable, will be disqualified from holding public office in the State of California. Contractor warrants that it does not have any financial interest in this Contract that would violate California Government Code sections 1090 *et seq.* and 81000 *et seq.*

33. **COMPLIANCE WITH LAWS:** Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on conduct of the Work as indicated or specified, including all "Interpretation(s) of Regulations" issued by DSA on or before the date of this Contract. If Contractor observes that any of the Work required by this Contract is at variance with any such laws, ordinances, rules or regulations, Contractor shall notify the District, in writing, and, at the sole option of the District, any necessary changes shall be made and this Contract shall be appropriately amended in writing, or this Contract shall be terminated effective upon Contractor's receipt of a written termination notice from the District. If Contractor performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Contractor shall bear all costs and liabilities arising therefrom.
34. **DISTRICT'S RIGHT TO AUDIT:** District retains the right to review and audit, and the reasonable right of access to Contractor's and any subcontractor's or sub-consultant's premises to review and audit the Contractor's compliance with the provisions of this Contract ("District's Right"). The District's Right includes the right, at District's sole cost and expense and with appropriate safeguards, to inspect, photocopy, and to retain copies, outside of the Contractor's premises, of any and all Project-related records and other information to the extent (but only to the extent) District is allowed by applicable law to keep such records and information confidential, if such retention is deemed necessary by the District in its reasonable, good faith discretion. The District shall keep this information confidential.
- 34.1. The District's Right includes the right to examine any and all books, accounting records and documents and any other evidence of procedures and practices that the District, acting reasonably and in good faith, determines are necessary to verify that the Contractor is in compliance with all requirements of this Contract.
- 34.2. If there is a claim for additional compensation or for extra Work, the District's Right includes the right to examine books, records, documents, and any and all other evidence and accounting procedures and practices that the District, acting reasonably and in good faith, determines are necessary to verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred.
- 34.3. The Contractor shall maintain complete and accurate records in accordance with generally accepted accounting practices in the battery storage/microgrid contractor industry. Upon the reasonable request of the District, the Contractor shall make available to the District for review and audit, all Work-related accounting records and documents, and any other Work-related financial data. Upon District's request and at District's sole cost and expense, the Contractor shall submit exact duplicates of originals of all requested records to the District.
- 34.4. The Contractor shall use reasonable efforts to include audit provisions in its subcontracts for the Project, and to ensure that these sections are binding upon subconsultants.
- 34.5. The Contractor shall retain all Project-related records and other information with appropriate safeguards during the Term of this Contract and for a minimum of three (3) years after recording all Notice(s) of Completion.
- 34.6. Contractor shall comply with these provisions within fifteen (15) days of the District's written request to review and audit any or all of Contractor's Project-related records and information.
35. **DISPUTES:** In the event of a dispute between the Parties as to performance of the Work, the interpretation of this Contract, or payment or nonpayment for Work performed or not performed, the Parties shall attempt to resolve the dispute by those procedures set forth in Public Contract Code section 20104 *et seq.*, if applicable. Pending resolution of the dispute, Contractor agrees it will neither rescind the Contract nor stop the progress of the undisputed portion of the Work.
- 35.1. **Judicial Reference Proceedings.** Upon the written request of any Party, a Dispute, including any and all questions of law or fact relating thereto, shall be resolved exclusively pursuant to the provisions for reference

and trial by referee (without jury) set forth in California Code of Civil Procedure §638 et seq., as expressly modified by the provisions hereof ("Reference Proceeding"). The referee ("Referee") shall be a retired or former Superior Court judge residing in San Diego County, California, who is either (1) agreed to by the parties within fifteen (15) days of the notice by any party to the other of the intention to initiate a Reference Proceeding pursuant to this Section to resolve the Dispute, or (2) failing such agreement, is appointed pursuant to California Code of Civil Procedure §640 in an action filed in the Superior Court of San Diego County, California (the "Court"). The Parties agree that any Party may file with the Clerk of the Court, and/or with the appropriate judge of such Court, any and all petitions, motions, applications or other documents necessary to obtain the appointment of such a Referee immediately upon the commencement of any Reference Proceeding, and to conduct all necessary discovery and to proceed to a trial as expeditiously as possible.

- 35.2. It is the Parties' intention, and the Parties and the Referee shall use their best efforts to be certain, that (a) discovery be conducted for a period no longer than six (6) months from the date ("Referee Date") the Referee is appointed (whether by stipulation or by the Court), excluding motions regarding discovery, and (b) trial be set on a date that is within nine (9) months of the Referee Date. All discovery motions shall be filed with the Referee and served upon the opposing Party no later than one week after the end of the six-month discovery period. All proceedings, including trial, before the Referee, shall be conducted at a neutral location (unless otherwise stipulated by the Parties). The Parties agree that said Referee shall be a judge for all purposes (including (i) ruling on any and all discovery matters and motions and any and all pretrial or trial motions, (ii) setting a schedule of pretrial proceedings, and (iii) making any other orders or rulings a sitting judge of the Court would be empowered to make in any action or proceeding in the Court. Any matter before the Referee shall be governed by the substantive law of California, its Code of Civil Procedure, Rules of Court, and Evidence Code, except as otherwise specifically agreed by the Parties and approved by the Referee. The Parties intend this general reference agreement to be specifically enforceable in accordance with the California Code of Civil Procedure. Any appeal of the decisions of the Referee shall be appealable to the same extent and in the same manner that such decision would be appealable if rendered by a judge of the Court. The Referee shall in his/her statement of decisions set forth his/her findings of fact and conclusions of law. During the pendency of any such Reference Proceeding and before the entry of any judgment therein, each of the Parties to such Reference Proceeding shall bear equal shares of the fees charged and costs incurred by the Referee in connection with performing the services provided in this Section. The compensation of the Referee shall not exceed the prevailing rate for like services.

36. LABOR CODE AND OTHER LABOR/WORKFORCE REQUIREMENTS:

- 36.1 Prevailing wage and labor compliance requirements currently apply to work performed on or around future or current District public works sites and generally do not apply to professionals working away from the public works site. Work performed during the design, site assessment, feasibility study, and other preconstruction phases of construction, including but not limited to, inspection, land surveying work, regardless of whether any further construction work is conducted, and work performed during the post construction phases of construction, and soils and materials testing are generally considered public works subject to prevailing wage requirements. Applicability of this section is controlled by law. (See, e.g., California Labor Code section 1720, *et seq.*) Contractor shall comply with this section to the extent it applies to the work it performs either directly or through its subcontractors. As of January 1, 2012, the District no longer administers the in-house Labor Compliance Program for all new construction projects. However, prevailing wage requirements still apply. Program for all new construction projects. However, prevailing wage requirements still apply. For the Labor Compliance section, the terms "Contractor" and "subcontractor" will be used in lieu of "Contractor."

36.1.1 Pursuant to the provisions of Articles 1 and 2 of Chapter 1, Part 7, Division II, of the Labor Code of the State of California (Labor Code section 1720 *et seq.* and implementing regulations of the Department of Industrial Relations (DIR)), Title 8, California Code of Regulations, Chapter 8, Subchapter 3, commencing with section 16000, for any "public works" (as that term is defined in the statutes), there shall be paid to each work of Contractor, of any tier, engaged in the work, not less than the general prevailing wage rate, and not less than the general prevailing rate of per diem wages for holidays and overtime work, for each craft, classification or type of worker needed to execute the work contemplated under this Contract regardless of any contractual relationship which may be alleged to exist between the Contractor, of any tier, and such worker. For the purpose of compliance with prevailing wage law, Contractor shall comply with provisions applicable to an awarding body. Compliance with state

- prevailing wage law includes without limitation: payment of at least prevailing wage as applicable; overtime and working hour requirements; apprenticeship obligations; payroll recordkeeping requirements; and other obligations as required by law. However, District will only authorize Notice to Proceed(s), and issue payment to Contractor for no more than the applicable prevailing wage rate.
- 36.1.2 The applicable wage determination for this Contract is **2022-2** and will be **2022-2** for the duration of the Contract. This includes change orders and warranty work relating to this Contract. Copies of the prevailing rate of per diem wages applicable to this Contract may be found on the internet: <http://www.dir.ca.gov/DLSR/PWD>. Rate information and any applicable predetermined increases may be found at www.dir.ca.gov/opri/dprevagedetermination.htm. Contractor shall post at appropriate conspicuous weatherproof points on the site(s) of the Contract a schedule showing the Prevailing Wage Determinations published by the Director of DIR, which are applicable to the Contract.
- 36.1.3 Contractor is responsible for ascertaining and complying with all current general prevailing wage rates for crafts and any rate changes that occur during the life of the contract; and shall ensure that the above requirements are included in all its contracts for activities for the Contract.
- 36.1.4 Contractor shall certify to the District on each Payment Request Form, that prevailing wages were paid to eligible workers who provided labor for work covered by the payment request and that the Contractor complied with prevailing wage laws. Prior to release of any retained funds under this Contract, the Contractor shall submit to the District a certificate signed by Contractor performing public works activities stating that prevailing wages were paid as required by law.
- 36.1.5 Failure to comply with prevailing wage laws and/or failure to employ apprentices as required by law shall subject the Contractor to penalties, including forfeitures and debarment under Labor Code sections 1775; 1776, 1777.1; 1777.7 and 1813.
- 36.1.6 Nothing contained herein shall be deemed to supersede any applicable laws, orders or regulations issued by competent authority governing wages, hours of Work of the employment of labor, nor to condone any violation of such laws, orders, or regulations.
- 36.1.7 Upon the request of the Division of Labor Standards Enforcement, the District will withhold contract payments in amounts equal to identified worker under-payments and/or penalties.
- 36.2 Effective July 1, 2014, Contractors and subcontractors performing public works subject to prevailing wage are required to pay a registration fee to DIR. On or after April 1, 2015, Contractors and subcontractors must be registered with DIR for any new projects awarded on or after this date. DIR requires registration of Contractors and subcontractors for all projects above \$15,000. Public works projects awarded pursuant to this Contract are subject to compliance monitoring and enforcement by DIR, and the District will withhold contract payments in amounts equal to identified work under-payments and/or penalties upon the request of DIR. For additional information, see California Labor Code sections 1725.5, 1771.1, *et seq.*; <https://efiling.dir.ca.gov/PWCR/Search>; and <http://www.dir.ca.gov/Public-Works/PublicWorks.html>
- 36.2.1** Contractor shall submit an electronic version of the "Section 1773.3 subcontractors list" form to the District under Labor Code Section 1773.3 within 48 hours of award of Contract. A copy of the form is included as **Exhibit E and is mandatory. The District will not accept any other form or format from Contractor.**
- 1. The District will use Contractor's completed electronic form to submit the required information (DIR number, CSLB number, email, and work classification of all subcontractors on the Project) under Labor Code section 1773.3 on the DIR website. Upon contract award, the District will create and upload the PWC-100 on the DIR website and provide the contract registration number to Contractor for electronic certified payroll report (eCPR) submittals with DIR for the project.**
 2. This list shall contain all subcontractors of any tier that will be performing any labor on the project. All subcontractors must be registered with DIR and hold a current CSLB license. Both the registration and license must be active and current for the time period that the work will be performed on site.
 3. If additional subcontractors are to be used, they shall be added to the "Section 1773.3 subcontractors list" within 48 hours prior to their commencement of any work on site, excluding weekends and District holidays. The District will update the PWC-100 on the DIR website and notify Contractor if a subcontractor does not have a current DIR registration number or active CSLB license number. No subcontractor will be allowed to work on site until its status has been corrected

- by Contractor on the Section 1773.3 subcontractors list form, which shall be electronically submitted to the District, who will upload the subcontractor, along with the required information (DIR number, CSLB number, email, and work classification) on the PWC-100 on the DIR website.
4. At project completion, the District will notify Contractor by email to review, update and certify that all subcontractors that performed work during the contract, have been correctly and properly listed on the "Section 1773.3 subcontractors list." Once the District receives the certification from Contractor, and the District has added any additional subcontractors to the PWC-100 on the DIR website, the District may issue final payment, provided that other required contract closeout items have been submitted. However, the final payment from District to Contractor shall only be made 30 days after the date the final subcontractors have been added to the PWC-100, or the certification by Contractor, whichever occurs later. Thus, the District shall continue to withhold final payment until Contractor satisfies the foregoing requirements under Labor Code section 1773.3.

36.3 **Apprentices.**

- 36.1.1. It shall be the responsibility of Contractor to ensure compliance with this Article and with Labor Code section 1777.5, if applicable, for all apprenticeship occupations.
- 36.1.2. Apprentices of any crafts or trades may be employed and, when required by Labor Code section 1777.5, shall be employed provided they are properly registered in full compliance with the provisions of the Labor Code.
- 36.1.3. Every such apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he/she is employed, and shall be employed only at the work of the craft or trade to which she/he is registered.
- 36.1.4. Only apprentices, as defined in section 3077 of the Labor Code, who are in training under apprenticeship standards and written apprentice agreements under chapter 4 (commencing at section 3070), division 3, of the Labor Code, are eligible to be employed. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which he/she is training.
- 36.1.5. Pursuant to Labor Code section 1777.5, if that section applies to this Contract as indicated above, Contractor and any subcontractors employing workers in any apprenticeable craft or trade in performing any Work under this Contract shall apply to the applicable joint apprenticeship committee for a certificate approving the Contractor or subcontractor under the applicable apprenticeship standards and fixing the ratio of apprentices to journeymen employed in performing the Work.
- 36.1.6. Pursuant to Labor Code section 1777.5, if that section applies to this Contract as indicated above, Contractor and any subcontractor may be required to make contributions to the apprenticeship program.
- 36.1.7. If Contractor or subcontractor willfully fails to comply with Labor Code section 1777.5, then, upon a determination of noncompliance by the Administrator of Apprenticeship, it shall:
 - 36.1.7.1.1. denied the right to bid on any subsequent project for one (1) year from the date of such determination;
 - 36.1.7.1.2. Forfeit as a penalty to District the full amount as stated in Labor Code section 1777.7. Interpretation and enforcement of these provisions shall be in accordance with the rules and procedures of the California Apprenticeship Council and under the authority of the Chief of the Division of Apprenticeship Standards.
- 36.1.8. Contractor and all subcontractors shall comply with Labor Code section 1777.6, which section forbids certain discriminatory practices in the employment of apprentices.
- 36.1.9. Contractor shall become fully acquainted with the law regarding apprentices prior to commencement of the Work. Special attention is directed to sections 1777.5, 1777.6, and 1777.7 of the Labor Code, and title 8, California Code of Regulations, section 200 et seq. Questions may be directed to the State Division of Apprenticeship Standards, 455 Golden Gate Avenue, San Francisco, California 94102.
- 36.1.10. Contractor shall ensure compliance with all certification requirements for all workers on the Project including, without limitation, the requirements for electrician certification in Labor Code section 108, et seq.

36.4 **Labor First Aid.**

- 36.4.1. Contractor shall maintain emergency first aid treatment for Contractor's workers on the Project which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.), the

California Occupational Safety and Health Act of 1973, and all related regulations, including without limitation sections 330 et seq. of Title 8 of the California Code of Regulations.

36.5 **Project Stabilization Agreement.** Contractor performing Work on District projects must comply with the District's Project Stabilization Agreement (PSA) which, among other provisions, alleviates Contractor's statutory requirement to provide a "skilled and trained workforce" as defined in Public Contract Code section 2601, and required by Education Code section 17250.25. Section 17250.25(c)(2)B) states that the requirement for Contractors to use a skilled and trained work shall **not** apply if "The project or contract is being performed under the extension or renewal of a project labor agreement that was entered into by the school district prior to January 1, 2017." The District's PSA is dated July 28, 2009. The Contractor, subcontractors and all others covered by the PSA, regardless of tier, are required to follow the terms and conditions of the PSA. Failure to follow the terms of the PSA shall be considered a breach of contract. A copy of the Project Stabilization Agreement may be viewed and downloaded at <https://sandiegounified.org/>.

a. **Contractor Assent.**

A representative of the Contractor with the authority to bind the Contractor is required to sign the Letter of Assent ("LOA") attached hereto as **Exhibit D**, which evidences the Contractor's agreement to be bound by the terms and conditions of the Project Stabilization Agreement for the duration of the Work contained in this Contract, and submit it to the District at the time of commencing the Work herein. The Contractor cannot commence any Work prior to signing the LOA.

b. **Subcontractor Assent and Initiation of Work.**

No covered subcontractor will be authorized to access the job site for the work contained in this Contract until a representative with authority to bind the subcontractor has signed a Letter of Assent which evidences the subcontractor's agreement to be bound by the terms and conditions of the PSA for the duration of the work contained in this Contract.

A subcontractor shall submit its signed LOA at the earlier of the following: 1) within 48 hours after entering into an agreement with the Contractor to perform Work on the Project, or 2) no later than 48 hours prior to the time the subcontractor desires to gain site access and commence Work at the School Site. This access to the School Site includes initial mobilization of equipment and materials.

c. **Jurisdiction Coordination Meeting.**

A Jurisdiction Coordination meeting shall be scheduled by the District to permit the Contractor, subcontractors, and applicable unions to determine all workforce coordination and jurisdictional issues prior to the start of work contained in this Contract. The Contractor may cancel this meeting by providing written consent to cancellation by the San Diego Building and Construction Trades Council and the Southwestern Regional Council of Carpenters.

d. **PSA Contractor Administration Costs.**

All costs associated with the administration of PSA requirements are included in the GMP.

37. **ANTI-TRUST CLAIM:** Contractor and its subcontractor(s) agree to assign to the District all rights, title, and interest in and to all causes of action they may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Contract or a subcontract. This assignment shall be made and become effective at the time the District tenders final payment to the Contractor without further acknowledgment by the Parties.

38. **GOVERNING LAW:** This Contract shall be governed by and construed in accordance with the laws of the State of California with venue of any action in San Diego County, California.

39. **PROVISIONS REQUIRED BY LAW DEEMED INSERTED:** Each and every applicable provision of law expressly required by its terms to be inserted in this Contract shall be deemed to be inserted herein and this Contract shall be read and enforced as though such provisions were included therein.

40. **BINDING CONTRACT:** This Contract shall be binding upon the Parties and upon their successors and assigns, and shall inure to the benefit of said parties and their successors and assigns.

41. **WAIVER**: A Party's waiver of any term, condition, covenant or waiver of a breach of any term, condition or covenant shall not constitute the waiver of any other term, condition or covenant or the waiver of a breach of any other term, condition or covenant.
42. **INVALID TERM**: If any provision of this Contract is declared or determined by any court of competent jurisdiction to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining parts, terms and provisions shall not be affected thereby, and said illegal, unenforceable or invalid part, term or provision will be deemed not to be a part of this Contract.
43. **ENTIRE CONTRACT**: This Contract sets forth the entire agreement between the Parties and fully supersedes any and all prior agreements and understandings, written or oral, between the Parties pertaining to the subject matter thereof. This Contract may be modified only by a writing upon mutual consent.
44. **OWNERSHIP OF CERTAIN INTELLECTUAL PROPERTY RIGHTS**: District shall not, by virtue of this Contract, acquire any interest in any formulas, patterns, devices, software, secret inventions or processes, copyrights, patents, trade secrets and other intellectual or proprietary rights, or similar items of property which are or may be used in connection with the equipment. Contractor shall grant to District a perpetual, irrevocable, royalty-free license for any and all of Contractor's software or other intellectual property rights owned by Contractor necessary for District to continue to operate, maintain, and repair the equipment in accordance with design specifications.
45. **OWNERSHIP OF INSTRUMENTS OF SERVICE**:
 - 45.1. Pursuant to Education Code section 17316, this Contract creates a non-exclusive, limited, non-transferable and perpetual license for District to use, at its discretion, all plans, including, but not limited to, record drawings, specifications, and estimates that the Contractor or its consultants, prepares or causes to be prepared pursuant to this Contract, limited to this Work.
 - 45.2. The Contractor retains all rights to all copyrights, designs and other intellectual property embodied in the plans, record drawings, specifications, estimates, and other documents that the Contractor or its consultants prepares or causes to be prepared pursuant to this Contract.
 - 45.3. In the event the District changes or uses any fully or partially completed documents without the Contractor's knowledge and participation, the District agrees to release Contractor of responsibility for such changes, and shall indemnify, defend and hold the Contractor harmless from and against any and all claims, liabilities, suits, demands, losses, costs and expenses, including, but not limited to, reasonable attorneys' fees, on account of any damages or losses to property or persons, including injuries or death, or economic losses, arising out of that change or use except to the extent the Contractor is found to be liable in a forum of competent jurisdiction. In the event District uses any fully or partially completed documents without the Contractor's full involvement, the District shall remove all title blocks and other information that might identify the Contractor and the Contractor's consultants.
46. **OWNERSHIP OF ANY EXISTING EQUIPMENT**: Ownership of any equipment and materials presently existing at the School Sites at the time of execution of this Contract shall remain the property of the District even if it is replaced or its operation made unnecessary by work performed by Contractor pursuant to this Contract. If applicable, Contractor shall advise District in writing of all equipment and materials that will be replaced at the School Sites and District shall, within five (5) business days of Contractor's notice, designate in writing to Contractor which replaced equipment and materials that should not be disposed of off-site by Contractor (the "Retained Items"). It is understood and agreed to by both Parties that District shall be responsible for and designate the location and storage for the Retained Items. Contractor shall be responsible for the disposal of replaced equipment and materials, except for the Retained Items. Contractor shall use commercially reasonable efforts to remove the Retained Items in such a manner as to avoid damage thereto, or if it is unreasonable to avoid damage altogether, to minimize the damage done.
47. **UTILITY WORK**: District expressly understands and agrees that Interconnection Facilities work may need to be performed by the local Utility ("Utility") in order for Contractor to fully implement the Project. "Interconnection Facilities" shall mean any distribution or transmission lines and other facilities that may be required to connect equipment supplied under this Contract to an electrical distribution/transmission system owned and maintained by the Utility. Any Interconnection Facilities work that may be required will be performed by the Utility under a separate contract between District and the

Utility. Contractor shall prepare all Interconnection Facilities documentation, and collect all Interconnection Facilities information in a time frame to ensure maximum benefit to the District and to comply with all requirements of law. Contractor shall also cooperate and assist the District in facilitating the Interconnection Facilities work.

48. **ENERGY CREDITS AND REBATE PROGRAMS:** Other than its right to payment pursuant to this Contract, Contractor shall have no right, title, or interest associated with or resulting from the development, construction, installation and ownership of the facilities installed on the Project ("Generating Facilities"). This ownership includes the production, sale, purchase or use of the energy output including, and includes without limitation:

- 48.1. All Environmental Incentives associated in any way with the Generating Facilities. "Environmental Incentives" means all rights, credits (including tax credits), rebates, benefits, reductions, offsets and allowances and entitlements of any kind, howsoever entitled or named (including carbon credits and allowances), whether arising under federal, state or local law, international treaty, trade association membership or the like arising from the Generating Facilities or the energy produced or otherwise from the development, construction, installation or ownership of the Generating Facilities or the production, sale, purchase, consumption or use of the energy produced from the Generating Facilities. Without limiting the foregoing, "Environmental Incentives" includes SGIP incentives, utility incentive programs, green tags, renewable energy credits, tradable renewable certificates, portfolio energy credits, the right to apply for (and entitlement to receive) incentives under incentive programs offered by the State of California and the right to claim federal income tax credits as such credits are available arising from the Environmental Attributes of the Generating Facilities or the energy produced from the Generating Facilities or the production, sale, purchase, consumption or use of the energy produced from the Generating Facilities.
- 48.2. All reporting rights and the exclusive rights to claim that the District is responsible for the delivery of the energy from the Generating Facilities.
- 48.3. Responsibility for the reductions in emissions of pollution and greenhouse gases resulting from the generation of the energy and the delivery thereof to each Energy Delivery Point.
- 48.4. Entitlement to all credits, certificates, registrations, etc., evidencing or representing any of the foregoing.
- 48.5. Ownership of and entitlement to all: (i) carbon reduction tonnes as defined under the California Action Reserve or such similar definition as enacted by the State of California or the U.S. Federal Government; and (ii) "renewable energy credits," as such term is defined in Section 399.12(h)(2) of the California Public Utilities Code, associated with the Generating Facilities, and Contractor shall take such steps as District shall reasonably request to confirm District's ownership of such renewable energy credits.
- 48.6. Contractor is not responsible for compliance, certification, reporting, or other requirements associated with the sale, ownership, rights, or certifications for these energy credits, but Contractor will provide advice and consultation to the District as requested, to the extent it is commercially reasonable for Contractor to do so.
- 48.7. **Rebate Programs.** On behalf of the District, Contractor shall prepare and submit to the applicable agencies all applications and documentation necessary for the energy production and/or energy efficiency rebate(s), incentive(s), and/or loan program(s) identified in the Design NTP ("Incentive Funds"). This shall include actions necessary to ensure compliance with the Utility's net metering program and all interconnection agreements and related documents for the District's participation and utilization of the benefits of that program. While Contractor has extensive experience in assisting District's with procuring Incentive Funds for school districts, Contractor cannot guarantee that these Incentive Funds will be received by the District (this does not apply to ***Exhibit C*** and the SGIP requirements). Procurement, or lack thereof, of these Incentive Funds will not alter the GMP, or the payment timeline associated with standard progress invoicing and payments. The District will pay for all fees associated with any rebate programs for programs the District wishes to participate in.

49. **RESPONSIBILITIES OF THE DISTRICT:**

- 49.1. The District shall examine the documents submitted by the Contractor and shall render decisions so as to avoid unreasonable delay in the progress of the Contractor's Work.
- 49.2. The District shall advise Contractor in writing (or verbally if confirmed in writing within ten (10) business days) if the District becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Contractor's documents. Failure to timely provide such notice shall not relieve Contractor of its responsibility therefore, if any.
- 49.3. Unless the District and the Contractor agree that a hazardous materials consultant shall be a consultant of the Contractor, the District shall furnish, at its sole cost and expense, the services of a hazardous material consultant

or other consultants when such services are requested in writing by Contractor and reasonably deemed necessary by the District or are requested by the District. These services shall include: asbestos and lead paint survey; abatement documentation; and specifications related to such matters which are to be incorporated into bid documents prepared by Contractor. If the hazardous materials consultant is furnished by the District and not a consultant of the Contractor, the specifications shall include a note to the effect that they are included in the Contractor's bid documents for the District's convenience and have not been prepared or reviewed by the Contractor. The note shall also direct questions about the specifications to its preparer.

- 49.4. District personnel and/or its designated representatives shall coordinate with Contractor as may be requested and desirable for the coordination or management of work related to the Project.
- 49.5. The District shall promptly provide to the Contractor all relevant information it knows it possesses regarding the Project that the Contractor needs to perform the Work. The District shall promptly provide this information and its decisions required under this Contract in a timely manner and to avoid unreasonable delay in the Project.

50. **LIABILITY:**

- 50.1. Other than as provided in this Contract, District's financial obligations under this Contract shall be limited to the payment of the compensation provided in this Contract. Except for any claim or obligation arising out of: (a) Contractor's indemnity obligations as stated in the Contract Documents; (b) Contractor's warranty obligation as stated in the Contract Documents, and (c) Contractor's liability to pay Liquidated Damages as stated in the Contract Documents, in no event shall either Party be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Contract for the Services performed in connection with this Contract.
- 50.2. District shall not be responsible for any damage to persons or property as a result of the Contractor's use, misuse or failure of any equipment used by Contractor, or by its employees, even though such equipment be furnished or loaned to Contractor by District.

SAMPLE

NON-COLLUSION DECLARATION
(Public Contract Code § 7106)

The undersigned declares:

I am the _____ **[PRINT YOUR TITLE]**

of _____ **[PRINT FIRM NAME]**

the Party making the foregoing Contract.

The Contract is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The Contract is genuine and not collusive or sham. The Contractor has not directly or indirectly induced or solicited any other entity to put in a false or sham proposal. The Contractor has not directly or indirectly colluded, conspired, connived, or agreed with any other Contractor or anyone else to put in a sham proposal, or to refrain from proposing. The Contractor has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the Guaranteed Maximum Price ("GMP") of the Contractor or any other entity, or to fix any overhead, profit, or cost element of the Contract Price, or of that of any other entity. All statements contained in the Contract are true. The Contractor has not, directly or indirectly, submitted his or her GMP or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham proposal, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a Contractor that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the Contractor.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on the following date:

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

(ATTACH NOTARIAL ACKNOWLEDGMENT FOR THE ABOVE SIGNATURE)

PREVAILING WAGE CERTIFICATION

I hereby certify that I will conform to the State of California Public Works Contract requirements regarding prevailing wages, benefits, on-site audits with 48-hours' notice, payroll records, and apprentice and trainee employment requirements, for all Work on the above Project.

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

WORKERS' COMPENSATION CERTIFICATION

Labor Code section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- a. By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.
- b. By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

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

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

(In accordance with Article 5 - commencing at section 1860, chapter 1, part 7, division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any Work under this Contract.)

FINGERPRINTING/CRIMINAL BACKGROUND INVESTIGATION CERTIFICATION

The undersigned does hereby certify to the governing board of the District that:

- (1) He/she is a representative of the Contractor,
- (2) He/she is familiar with the facts herein certified,
- (3) He/she is authorized and qualified to execute this certificate on behalf of Contractor; and
- (4) That the information in this Criminal Background Investigation / Fingerprinting Certification is true and correct.

1. **Education Code.** Contractor has taken at least one of the following actions with respect to the Project (check all that apply):

_____ The Contractor has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Contractor's employees and all of its subcontractors' employees who may have contact with District pupils in the course of providing services pursuant to the Contract, and the California Department of Justice ("DOJ") has determined (per the DOJ process for Applicant Agencies described more fully on its website, located at: <http://oag.ca.gov/fingerprints/agencies>) that none of those employees have been convicted of a felony, as that term is defined in Education Code section 45122.1. A complete and accurate list of Contractor's employees and of all of its subcontractors' employees who may come in contact with District pupils during the course and scope of the Contract is attached hereto; and/or

_____ Pursuant to Education Code section 45125.2, Contractor has installed or will install, prior to commencement of work, a physical barrier at the Project site, that will limit contact between Contractor's employees and District pupils at all times; and/or

_____ Pursuant to Education Code section 45125.2, Contractor certifies that all employees will be under the continual supervision of, and monitored by, an employee of the Contractor who the California Department of Justice has ascertained has not been convicted of a violent or serious felony. The name and title of the employee who will be supervising Contractor's employees and its subcontractors' employees is:

Name: _____

Title: _____

2. **Megan's Law (Sex Offenders).** I have verified and will continue to verify that the employees of Contractor that will be on the Project site and the employees of the subcontractor(s) that will be on the Project site are **not** listed on California's "Megan's Law" Website (<http://www.meganslaw.ca.gov/>).

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

DRUG-FREE WORKPLACE / TOBACCO-FREE ENVIRONMENT CERTIFICATION

Government Code section 8350, *et seq.*, the Drug-Free Workplace Act of 1990, requires that every person or organization awarded a contract or grant for the procurement of any property or service from any state agency must certify that it will provide a drug-free workplace by doing certain specified acts. In addition, the Drug-Free Workplace Act provides that each contract or grant awarded by a state agency may be subject to suspension of payments or termination of the contract or grant, and the contractor or grantee may be subject to debarment from future contracting, if the contracting agency determines that specified acts have occurred. The District is not a "state agency" as defined in the applicable section(s) of the Government Code, but the District is a local agency and public school district under California law and requires all contractors on District projects to comply with the provisions and requirements of Government Code section 8350, *et seq.*, the Drug-Free Workplace Act of 1990. Contractor shall certify that it will provide a drug-free workplace by doing all of the following:

1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace and specifying actions which will be taken against employees for violations of the prohibition;
2. Establishing a drug-free awareness program to inform employees about all of the following:
 - a. The dangers of drug abuse in the workplace.
 - b. The person's or organization's policy of maintaining a drug-free workplace.
 - c. The availability of drug counseling, rehabilitation, and employee-assistance programs.
 - d. The penalties that may be imposed upon employees for drug abuse violations.
3. Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required above, and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

I understand that if the District determines that I have either (a) made a false certification herein, or (b) violated this certification by failing to carry out the requirements of section 8355, that the Contract awarded herein is subject to termination, suspension of payments, or both. I further understand that, should I violate the terms of the Drug-Free Workplace Act of 1990, I may be subject to debarment in accordance with the requirements of section 8350, *et seq.*

I acknowledge that I am aware of the provisions of Government Code section 8350, *et seq.* and hereby certify that I will adhere to the requirements of the Drug-Free Workplace Act of 1990.

In addition, and pursuant to, without limitation, 20 U.S.C section 6083, Labor Code section 6400 *et seq.*, Health & Safety Code section 104350 *et seq.* and District Board Policies, all District sites, including the School Site, are tobacco-free environments. Smoking and the use of tobacco products by all persons is prohibited on or in District property. District property includes school buildings, school grounds, school owned vehicles and vehicles owned by others while on District property. I acknowledge that I am aware of the District's policy regarding tobacco-free environments and hereby certify that I will adhere to the requirements of that policy and not permit any of my firm's employees, agents, subcontractors, or my firm's subcontractors' employees or agents to use tobacco and/or smoke on the School Site.

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

ASBESTOS & OTHER HAZARDOUS MATERIALS CERTIFICATION

Contractor hereby certifies that no Asbestos, or Asbestos-Containing Materials, polychlorinated biphenyl (PCB), or any material listed by the federal or state Environmental Protection Agency or federal or state health agencies as a hazardous material, or any other material defined as being hazardous under federal or state laws, rules, or regulations "New Material Hazardous", shall be furnished, installed, or incorporated in any way into the Project or in any tools, devices, clothing, or equipment used to affect any portion of Contractor's work on the Project for District.

Contractor further certifies that it has instructed its employees with respect to the above-mentioned standards, hazards, risks, and liabilities.

Asbestos and/or asbestos-containing material shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite. Any or all material containing greater than one-tenth of one percent (.1%) asbestos shall be defined as asbestos-containing material.

Any disputes involving the question of whether or not material is New Hazardous Material shall be settled by electron microscopy or other appropriate and recognized testing procedure, at the District's determination. The costs of any such tests shall be paid by Contractor if the material is found to be New Hazardous Material.

All Work or materials found to be New Hazardous Material, or Work or material installed with "New Hazardous Material" containing equipment, will be immediately rejected and this Work will be removed at Contractor's expense at no additional cost to the District.

Contractor has read and understood the document Hazardous Materials Procedures & Requirements, and shall comply with all the provisions outlined therein.

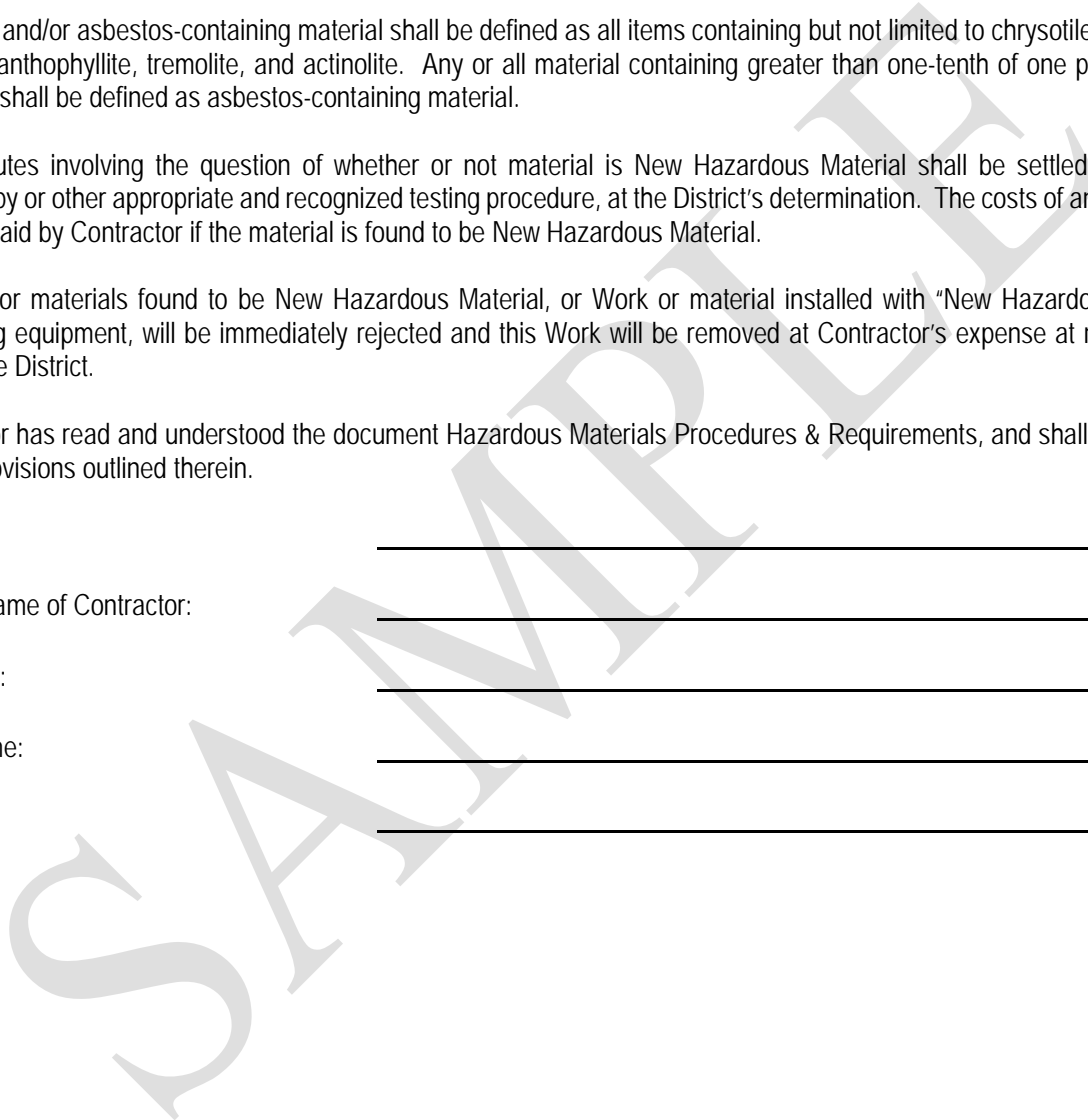
Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____



LEAD-PRODUCT(S) CERTIFICATION

California Occupational Safety and Health Administration (CalOSHA), Environmental Protection Agency (EPA), California Department of Health Services (DHS), California Department of Education (CDE), and the Consumer Product Safety Commission (CPSC) regulate lead-containing paint and lead products.

Because the Contractor and its employees will be providing services for the District, and because the Contractor's work may disturb lead-containing building materials, **CONTRACTOR IS HEREBY NOTIFIED** of the potential presence of lead-containing materials located within certain buildings utilized by the District. All school buildings built prior to 1993 are presumed to contain some lead-based paint until sampling proves otherwise.

The CDE mandates that school districts utilize DHS lead-certified personnel when a lead-based hazard is identified. Examples of lead-certified personnel include: project designers, inspectors, and abatement workers. Furthermore, since it is assumed by the district that all painted surfaces (interior as well as exterior) within the District contain some level of lead, it is imperative that the Contractor, its workers and subcontractors fully and adequately comply with all applicable laws, rules and regulations governing lead-based materials (Including Title 8, California Code of Regulations, Section 1532.1). Any and all Work which may result in the disturbance of lead-containing building materials must be coordinated through the District.

The California Education Code also prohibits the use or import of lead-containing paint, lead plumbing and solders, or other potential sources of lead contamination in the construction of any new school facility or in the modernization or renovation of any existing school facility. The Contractor shall provide the District with any sample results prior to beginning Work, during the Work, and after the completion of the Work. The District may request to examine, prior to the commencement of the Work, the lead training records of each employee of the Contractor. If failure to comply with these laws, rules, and regulations results in a site or worker contamination, the Contractor will be held solely responsible for all costs involved in any required corrective actions, and shall defend, indemnify and hold harmless the District, pursuant to the indemnification provisions of the Contract, for all damages and other claims arising therefrom. If lead disturbance is anticipated in the Work, only persons with appropriate accreditation, registrations, licenses and training shall conduct this Work.

It shall be the responsibility of the Contractor to properly dispose of any and all waste products, including but not limited to, paint chips, any collected residue, or any other visual material that may occur from the prepping of any painted surface. It will be the responsibility of the Contractor to provide the proper disposal of any hazardous waste by a certified hazardous waste hauler. This company shall be registered with the Department of Transportation (DOT) and shall be able to issue a current manifest number upon transporting any hazardous material from any school site within the District.

THE UNDERSIGNED HEREBY ACKNOWLEDGES, UNDER PENALTY OF PERJURY, THAT HE OR SHE HAS RECEIVED NOTIFICATION OF POTENTIAL LEAD-BASED MATERIALS ON THE DISTRICT'S PROPERTY, AS WELL AS THE EXISTENCE OF APPLICABLE LAWS, RULES AND REGULATIONS GOVERNING WORK WITH, AND DISPOSAL OF, SUCH MATERIALS WITH WHICH IT MUST COMPLY. THE UNDERSIGNED ALSO WARRANTS THAT HE OR SHE HAS THE AUTHORITY TO SIGN ON BEHALF OF AND BIND THE CONTRACTOR.

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

IRAN CONTRACTING ACT CERTIFICATION
(Public Contract Code § 2204)

Pursuant to Public Contract Code (PCC) section 2204, an Iran Contracting Act certification is required for solicitations of goods or services of one million dollars (\$1,000,000) or more.

Contractor shall complete **ONLY ONE** of the following two paragraphs.

- 1. Contractor's Proposal is less than one million dollars (\$1,000,000).
OR
- 2. Contractor's Proposal is one million dollars (\$1,000,000) or more, but Contractor is **not** on the current list of persons engaged in investment activities in Iran created by the California Department of General Services ("DGS") pursuant to Public Contract Code § 2203(b), and Contractor is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS.
OR
- 3. Contractor's Proposal is one million dollars (\$1,000,000) or more, but the District has given prior written permission to Contractor to submit a proposal pursuant to PCC 2203(c) or (d). **A copy of the written permission from the District is included with this Contract.**

I certify that I am duly authorized to legally bind the Contractor to this certification, that the contents of this certification are true, and that this certification is made under the laws of the State of California.

Date: _____

Proper Name of Contractor: _____

Signature: _____

Print Name: _____

Title: _____

PERFORMANCE BOND
(100% of Total Value of Contract)

(Note: Contractor must use this form, NOT a surety company form.)

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the governing board ("Board") of the **San Diego Unified School District**, ("District") and << >> ("Principal") have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to perform the following project:

_____ (Project Name)

which Contract dated _____, and all of the Contract Documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof, and

WHEREAS, said Principal is required under the terms of the Contract to furnish a performance bond for the faithful performance of the Contract;

NOW, THEREFORE, the Principal and _____ ("Surety") are held and firmly bound unto the Board of the District in the penal sum of _____ DOLLARS (\$ _____), lawful money of the United States, for the payment of which sum well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally, firmly by these presents, to:

- Perform all the work required to complete the Project; and
- Pay to the District all damages the District incurs as a result of the Principal's failure to perform all the Work required to complete the Project.

THE CONDITION OF THIS OBLIGATION IS SUCH that if Principal, or its heirs, executors, administrators, successors, or assigns approved by the District, shall promptly and faithfully perform the covenants, conditions, and agreements of the Contract during the original term and any extensions thereof as may be granted by the District, with or without notice to Surety, and during the period of any guarantees or warranties required under the Contract, and shall also promptly and faithfully perform all the covenants, conditions, and agreements of any alteration of the Contract made as therein provided, notice of which alterations to Surety being hereby waived, on Principal's part to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify, defend, protect, and hold harmless the District as stipulated, in the Contract, then this obligation shall become and be null and void; otherwise, it shall be and remain in full force and effect.

No extension of time, change, alteration, modification, or addition to the Contract, or of the work required there under, shall release or exonerate Surety on this bond or in any way affect the obligation of this bond; and Surety does hereby waive notice of any such extension of time, change, alteration, modification, or addition.

Whenever Principal shall be and declared by the District to be in default under the Contract, Surety shall promptly remedy the default, or shall promptly:

1. Undertake through its agents or independent contractors, reasonably acceptable to the District, to complete the Contract 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 Surety's election, or, if required by the District, to pay the penal sum.
2. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and, upon determination by the District of an acceptable responsible bidder, arrange for a contract between such bidder and the District and make available as work progresses (even though there should be a default or a 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 Sum, 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; but, in any event, Surety's total obligations hereunder shall not exceed the amount set forth above as the Penal Sum. The term "balance of the Contract Sum" as used in this paragraph, shall mean the total amount payable by the District to the Principal under the Contract and any amendments thereto, less the amount paid by the District to Principal.

Surety's obligations hereunder are independent of the obligations of any other surety for the performance of the Contract, and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing the District's rights against the others.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the District or its successors or assigns.

Surety may join in any arbitration proceedings brought under the Contract and shall be bound by any arbitration award.

Nothing herein shall limit the District's rights or the Contractor's or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15 during the term of the bond.

In the event suit is brought upon this bond by the District, Surety shall pay reasonable attorney's fees and costs incurred by the District in such suit.

Correspondence or claims relating to this bond shall be sent to Surety at the address set forth below.

Any claims under this bond may be addressed to the Surety at the following address. This cannot be the Contractor's broker for this bond, but must be an employee of the Surety or the Surety's legal counsel:

Attention: _____

Telephone No.: (____) _____ - _____

Fax No.: (____) _____ - _____

E-mail Address: _____

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the _____ day of _____.

(Affix Corporate Seal)

<< >>

Principal

By

Surety

By

Name of California Agent of Surety

Address of California Agent of Surety

Telephone Number of California Agent of Surety

Contractor must attach a Notarial Acknowledgment for all Surety's signatures and a Power of Attorney and Certificate of Authority for Surety. The California Department of Insurance must authorize the Surety to be an admitted surety insurer.

PAYMENT BOND
(100% of Total Value of Contract)

(Note: Contractor must use this form, NOT a surety company form.)

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the governing board ("Board") of the **San Diego Unified School District**, (or "District") and << >> ("Principal") have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to

_____ (Project Name)

which Contract dated _____, and all of the Contract Documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof, and

WHEREAS, pursuant to law and the Contract, the Principal is required, before entering upon the performance of the work, to file a good and sufficient bond with the body by which the Contract is awarded for the prompt, full, and faithful payment to any claimant as defined herein, for all labor, materials or services used or reasonably required for use in the performance of the Project without regard for whether such labor, materials, or services were sold, leased, or rented, and to secure the claims to which reference is made in sections 8000, *et seq.* and 9000, *et seq.* of the Civil Code of California and of relevant sections of Labor Code of California.

NOW, THEREFORE, the Principal and _____, ("Surety") are held and firmly bound unto all laborers, material men, and other persons referred to in said statutes in the sum _____ DOLLARS (\$ _____), lawful money of the United States for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, or assigns, jointly and severally, by these presents.

The condition of this obligation is that if the Principal or any of his or its subcontractors, of the heirs, executors, administrators, successors, or assigns of any, all, or either of them shall fail to pay for any labor, materials, provisions, provender, 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 Act with respect to such work or labor, that the Surety will pay the same in an amount not exceeding the amount herein above set forth, and also in case suit is brought upon this bond, will pay reasonable attorney's fees to be awarded and fixed by the Court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under sections 8000, *et seq.* and 9000, *et seq.* of Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void; otherwise it shall be and remain in full force and affect.

(continued on next page)

And the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of Contract or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the _____ day of _____.

(Affix Corporate Seal)

<< >>

Principal

By

Surety

By

Name of California Agent of Surety

Address of California Agent of Surety

Telephone Number of California Agent of Surety

Contractor must attach a Notarial Acknowledgment for all Surety's signatures and a Power of Attorney and Certificate of Authority for Surety. The California Department of Insurance must authorize the Surety to be an admitted surety insurer.

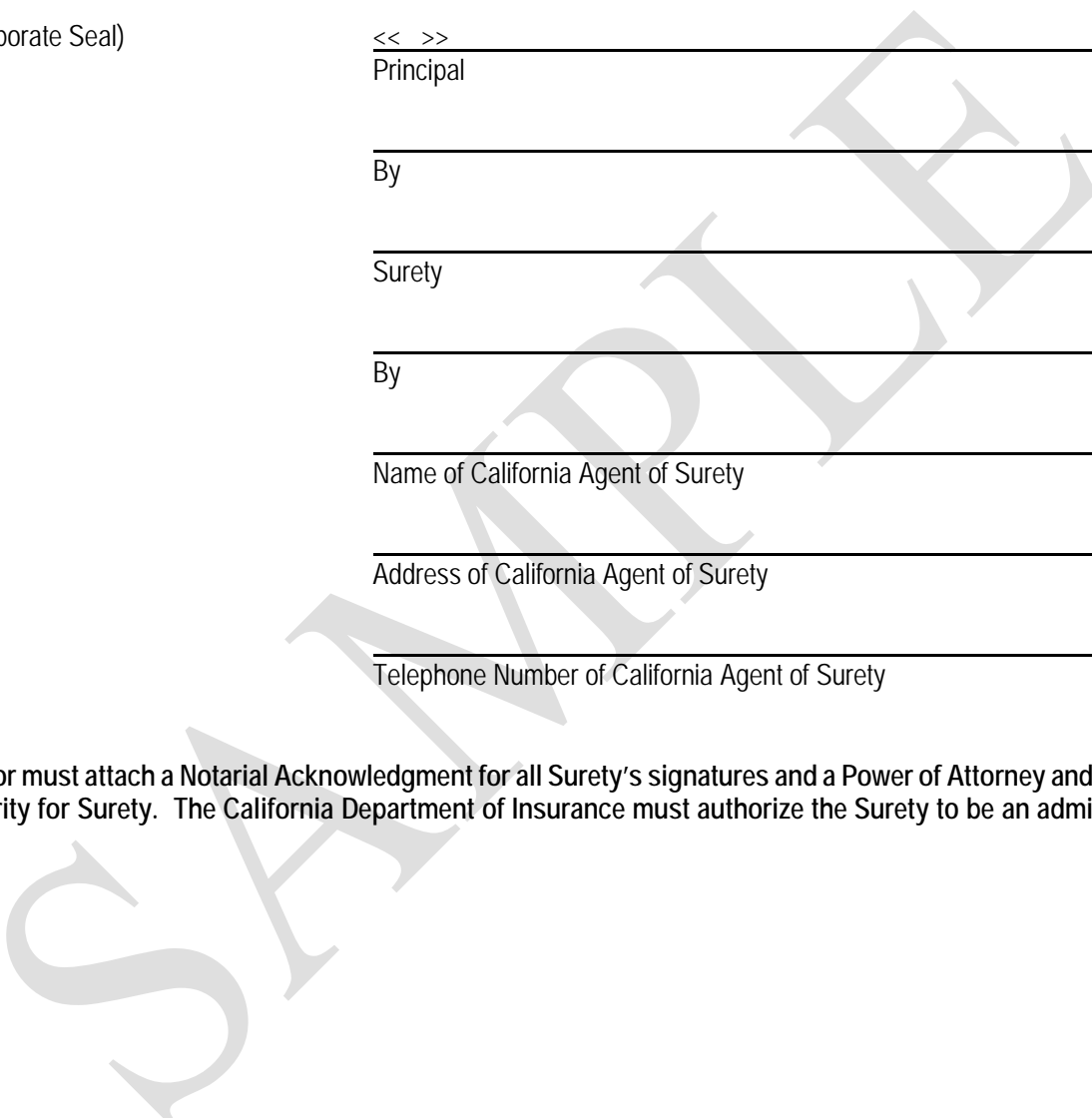


EXHIBIT A

SCOPE OF WORK

Article 1. WORK DESCRIPTION: Contractor shall design, permit, procure, construct, install, test, commission, start-up and provide commissioning for a complete, interconnected and operational BESS for the District. All Work shall be provided per Specification Sections: 011000, Summary of Work, 011300 Supplementary Conditions and 013301, Design-Build Process and Submittals and the Battery Energy Storage Systems Technical Specifications 481713, incorporated by reference into this Contract.

Article 2. WORK EXCLUSIONS:

- 2.1. As part of the basic Work pursuant to this Contract, Contractor is **NOT** responsible for the following, however, it shall coordinate and integrate its work with any of the following information and/or services provided by District:
- 2.1.1. Ground contamination or hazardous material analysis.
 - 2.1.2. Any asbestos and/or lead testing, design or abatement.
 - 2.1.3. Historical significance report.
 - 2.1.4. Re-zoning; it is assumed that the proposed locations are zoned for BESS installations and no delays will occur due to zoning issues.
 - 2.1.5. Easement adjustments: it is assumed that no roads, bridges, utility power lines, local CC&R's, etc., will be of such a nature as to disrupt the BESS installation and no delays will occur due to easement issues.

Article 3. SITES:

- 3.1. At the following sites, provide BESS capable of:
- 3.1.1. First-year Maximum energy capacity as listed below or up to the SGIP reservation maximum per school;
 - 3.1.2. Meeting the SGIP Incentive Requirements (Ref SGIP Handbook) for the install of BESS and ongoing battery capacity requirements for a 10-year period;
 - 3.1.3. Meeting the Battery capacity requirements as defined by the Contractor in *Exhibit C*, "Service Warranty" and,
 - 3.1.4. Meeting the OPRs defined by the District in Specification 48 17 13.
 - 3.1.5. Providing islanding/microgrid services requested as an add alternate per the RFP as included in individual site NTPs.

<u>Site</u>	<u>BESS maximum Capacity, Year-1 (kWh)</u>	<u>SGIP Project ID</u>
Porter South Elementary School	620	SD-SGIP-2022-5596
Porter North Elementary School	481.536	SD-SGIP-2020-5597
Ibarra Elementary School	1046.4	SD-SGIP-2020-5598
Sherman Elementary School	1000	SD-SGIP-2020-5600
Hamilton Elementary School	880	SD-SGIP-2020-5582
Language Academy	1100	SD-SGIP-2020-5599

Article 4. CEQA REQUIREMENTS:

- 4.1. CEQA compliance will be required at all sites.
- 4.2. During the Design Phase, the Contractor shall provide a detailed plan for compliance with all CEQA measures as outlined in the final Notice of Exemption (NOE) or Mitigated Negative Declaration (MND) for each site. In particular, attention is called to the following items which are considered a high priority by the District:
- 4.2.1. Contractor shall not remove any mature native tree, except where identified.
 - 4.2.2. Compliance with the City of San Diego Noise Ordinance is required.
 - 4.2.3. Compliance with the Federal Migratory Bird Treaty Act is required.

- 4.2.4. Compliance with UXO requirements as outlined in NOE's/MND's for identified sites.
- 4.3. Prior to commencement of any Work at the School Site, Contractor shall coordinate with School Site staff to minimize any negative impacts to the operations of the School Site, including but not limited to, onsite parking, etc.
- 4.4. Prior to commencement of any Work at the School Site, Contractor must, after coordinating with District and School Site staff, post seven (7) days in advance at certain locations about construction occurring and possible impacts and to contact the Contractor's Project Manager directly with any concerns.

Article 5. DESIGN SERVICES:

- 5.1. Contractor shall provide complete architectural, civil, electrical, structural, and mechanical design; also landscape architectural services and engineering services. Including calculations, diagrams, and stamped drawings, as required for regulatory approval and installation and construction of all equipment and structures necessary for a complete, interconnected and operational Battery Energy Storage System (BESS).

Article 6. CONSTRUCTION SERVICES:

- 6.1. Contractor shall procure, install and construct the entirety of the work as defined in the approved Construction Documents as referenced in the approved Construction NTP to provide a fully functional, fully complete, utility interconnected and operational finished product. Any reduction in scope shall first be approved by the District and a corresponding credit shall be provided.
- 6.2. Any Work required to resolve errors and/or omissions in the approved Construction Documents in order to complete the Project shall be performed by the Contractor at no additional cost to the District. Errors and omissions do not include the following items:
 - 6.2.1. Unforeseeable Conditions
 - 6.2.2. District-requested changes to the project outside original NTP, District Standards, and code requirements
 - 6.2.3. Additional requirements mandated by Authorities Having Jurisdiction or Utilities agencies after issuance of the Construction NTP which could not have been anticipated.

Article 7. CLOSEOUT SERVICES:

- 7.1. Contractor shall provide all Closeout services for each School Site, including commissioning, obtaining PTO from the Utility, providing "as-built" Construction Documents, obtaining closed and certified status for all project associated DSA applications, providing all closeout documentation inclusive of an Operations and Maintenance Manual, and providing training for District staff.
- 7.2. COMMISSIONING AND SERVICE WARRANTY
 - 7.2.1. Contractor shall include all associated tasks and documentation related to successfully commissioning of the BESS System according to project specifications.
 - 7.2.2. The schedule for commissioning activities shall be determined at a commissioning planning and coordination meeting with Contractor, District staff and District's designated commissioning agent(s) prior to the commencement of construction.
 - 7.2.3. One or more commissioning agents will be retained by the District to monitor commissioning activities and perform independent testing. Contractor shall provide all support and documentation to the District's agents.
 - 7.2.4. The Service Warranty term shall be consistent with the requirements in the SGIP Handbook, commencing with COD date.
 - 7.2.5. Subsequent to COD, Contractor shall be responsible for all activities required to successfully monitor, report, inspect, maintain, repair, wash, maintain vegetation, and adjust BESS as required to demonstrate BESS's capability to meet the requirements defined in **Exhibit C** – "Service Warranty".

EXHIBIT B

MANUFACTURES' WARRANTIES

The following warranties are the standard warranties from the manufacturers of components of the BESS System. Contractor is assigning these warranties to the District and these warranties shall not, in any way, reduce or limit the Service Warranty contract, and/or any additional warranty terms or durations indicated in the Contract.

A separate 10-year manufacturer's warranty in addition to the 10-year service warranty, then the obligation for dual warranties must be met by the project to meet the qualification of the SGIP program.

Battery Module Warranty
10-year

Inverter Warranty
10-year

ALL WARRANTIES ATTACHED FOLLOWING EXHIBIT B HEREIN.

SAMPLE

EXHIBIT C

SERVICE WARRANTY

On the terms and conditions set forth in this Contract, District elects to receive, and Contractor agrees to provide a 10-year service warranty for the six school sites referenced in the scope of work (**Exhibit A**).

1. Defined Terms.

- 1.1. **Battery Energy Storage System** means the same as that term is defined in the Contract.
- 1.2. **BESS Capacity** means the total energy capacity of the BESS (expressed in MWdc), as confirmed in accordance with **Exhibit F – BESS Testing Protocols**.
- 1.3. **BESS Duration** means the duration in hours of the BESS, being four (4) hours.
- 1.4. **BESS Meter** means the revenue-grade DC kilowatt-hour meter, or meters, located between the PV and BESS inverter and the BESS DC/DC converter.
- 1.5. **Charging Energy** means the electric energy used to charge the BESS that is supplied by the output of the PV System as measured by the BESS Meter. Under no circumstances does Charging Energy include station power.
- 1.6. **Commercial Operations Date (COD)**: means the date the BESS System is (1) capable of commercial deliveries of energy to the full extent of its designed capacity, (2) COD milestone has been achieved and accepted by the District, and (3) has received Permission to Operate from the Utility.
- 1.7. **Customer Responsibilities** shall have the meaning set forth herein.
- 1.8. **Discharging Energy** means the metered Energy discharged by the BESS (after transformation, round trip efficiency, and transmission losses, if any) and delivered to the Delivery Point.
- 1.9. **Guaranteed BESS Energy Capacity %** means the percentage of the Design BESS Energy Capacity applicable to the corresponding year in accordance with the Guaranteed Energy Capacity Table below.
- 1.10. **Force Majeure** means the same as that term is defined in the Contract.
- 1.11. **Kilowatt-hour or kWh** means electrical energy expressed in kilowatt-hours and recorded from the kWh interval records of the Revenue Meter.
- 1.12. **Site** means the real estate where the BESS System and any support structure are located including any building and building roof that touch or support the BESS System.
- 1.13. **Subcontractor** means, any person or firm who contracts with Provider or with any contractor of any tier operating under a contract with Provider to provide or furnish any supplies, materials, equipment, or services of any kind, whether design, construction, service, or otherwise, for the Battery Energy Storage System.
- 1.14. **Term**: The Service Warranty Term represents the term required to meet the minimum requirements for incentive reimbursement of the SGIP program, and shall commence with the COD date for each specific Site.

2. Service Warranty.

- 2.1. *As part of the Contract, all storage systems are required to include a minimum 10 year service warranty to meet the requirement of the SGIP program. A service warranty ensures proper maintenance and continued project performance. The service warranty must cover the system maintenance to include (but not limited to) system support, problem diagnosis, on-site repair and preventative maintenance.*
- 2.2. During the term of the service warranty, the Contractor's annual service warranty payments shall be contingent on meeting the stipulated requirements within the SGIP Handbook. In order for the District to receive incentive payments through SGIP, the Contractor must meet the Performance Based Incentives and schedule requirements defined in the SGIP Handbook. Once the Contractor meets the SGIP requirements annually, it may invoice the District for the amount agreed for that year's annual service warranty. Annual NTPs for warranty services will be provided for administrative purposes. This process shall occur annually for the full terms of the service contract.
- 2.3. **Guaranteed Battery Energy Capacity**: In its design deliverables, Contractor will provide the District with a minimum capacity table (per BESS per site) that reflects the battery capacity and degradation over the contract term. BESS Energy Capacity shall be assessed annually using the methodology in **Exhibit F – BESS Testing Protocols** and the BESS Capacity shall meet or exceed the values listed in Guaranteed Energy Capacity table below. Guaranteed Energy Capacity is a ratio of the actual BESS Energy Capacity divided by the Design BESS Energy Capacity expressed as a percentage.

Guaranteed Energy Capacity Table

Year after COD	Guaranteed BESS Energy Capacity (% of original kWh)
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	

The BESS Energy Capacity Test in Exhibit F shall be used to determine the BESS Energy Capacity, as measured in kWh, for the purposes of this Service Warranty.

3. Operations.

- 3.1. Contractor, or sub-contractor working under the prime Contractor's contract, shall cause the BESS System to be operated, maintained, and repaired in a manner consistent within SGIP guidelines, Applicable Law and Prudent Industry Practices. Contractor represents and warrants the following: (a) Contractor's employees and its subcontractors are qualified to operate and maintain the System, (b) Contractor shall: (i) cause its employees and subcontractors to perform all work in alignment with Contractor's safety protocols; and (ii) furnish all labor, supervision, machinery, equipment, tools, and other materials and supplies necessary to operate and maintain the System, (c) Contractor shall be solely responsible for all machinery, software, equipment, tools, and other property owned, rented or leased by Contractor necessary to operate and maintain the System, (d) Contractor shall ensure compliance with all Occupational Safety and Health Act (OSHA) requirements and any applicable safety laws or codes.
- 3.2. During the Initial Term and continuing through any Additional Term(s), as applicable, Contractor shall operate and perform all routine and emergency repairs to, and maintenance of, the System at its sole cost and expense, subject to Section 4.10. The Service Warranty Agreement shall be adequate to maintain the SGIP required warranty period, Service Warranties, safe operating conditions of the System, and all balance of system and ancillary improvements installed under this Contract.
- 3.3. Contractor or its subcontractors shall (a) ensure that all personnel performing O&M work provide Notice to District of routine on-site work prior to commencing work and wear identifying clothing, (b) ensure work sites and adjacent areas are free of debris and left in an orderly fashion, (c) be responsible for vegetation maintenance sufficient to maintain the Service Warranty and safe operation of the System, including, at a minimum, vegetation must be kept at least six (6) inches below the lower edge of any module and (i) provide a Vegetation Management Plan which does not utilize any chemicals and (ii) not remove trees or parts of trees without prior authorization from District, and (d) install, repair or replace fencing when fencing fails or is damaged, within thirty (30) days of notification from District.
- 3.4. Contractor shall notify District within twenty-four (24) hours following Contractor's discovery of (a) any material malfunction in the operation of the System or (b) an interruption in the supply of electrical energy from the System. Contractor shall perform all work in such manner as to cause minimum interference with the operations of District and District's contractors on the Site, and shall take, and cause Contractor and Contractor's subcontractors, employees, agents, licensees, and permittees to take all necessary precautions (including those required by

District's safety protocols) to protect the Site and all persons and property thereon from damage or injury. Upon completion of the work, Contractor shall leave the Site clean and free of all equipment, waste materials and rubbish.

4. **Outages.** Contractor may suspend delivery of Energy to the Delivery Point for testing, maintaining, replacing, and repairing the System, because of insufficient stored Energy in the BESS (for reasons not attributable to Contractor), due to a Forced Outage, or in response to any Local Electric Utility directive or dispatch order (an "Outage").
5. **Warranty Services.** On the terms and conditions set forth in this Contract, Customer elects to receive, and Contractor agrees to provide Warranty Services at the level indicated below:
Initial Commissioning, Performance Testing and Start-up Services identified in the Specifications.
 - 5.1. Customer Service Support:
 - 5.1.1. Technical support -- response by next business day
 - 5.1.2. Support technicians specialize in remote troubleshooting and providing step-by-step diagnosis instructions
 - 5.2. Monthly Performance Reports:
 - 5.2.1. Actual vs. expected performance of the BESS System for the period with a comparison of performance to a typical year
 - 5.2.2. Environmental benefits will be estimated and included
 - 5.3. Daily Performance Monitoring and Notification:
 - 5.3.1. Operational status (inverter and system on/off) and performance alerts (actual vs. expected performance) are continuously monitored by Contractor's system computers and monitoring technicians automatically receive alerts of system anomalies
 - 5.3.2. Monitoring technicians identify and respond to system alerts including contacting Customer's system administrator by the next business day.
 - 5.4. Preventative Maintenance, Inspections & Testing (performed annually):
 - 5.4.1. The Seller shall perform Factory Acceptance Testing (FAT) on the following BESS enclosure equipment:
 - 5.4.1.1. Batteries
 - 5.4.1.2. Heating, Ventilation, and Air Conditioning (HVAC) or Thermal Management System
 - 5.4.1.3. Fire Protection System
 - 5.4.1.4. Controls
 - 5.4.2. Reporting
 - 5.4.2.1. Record results of all inspections
 - 5.4.2.2. Take photographs of any damage or defects identified
 - 5.4.2.3. Inform Owner and warranty Contractors of all deficiencies identified
 - 5.5. Annual Performance Review and Report:
 - 5.5.1. Review of BESS System performance data with Contractor's performance engineer and proposal of a recommended action plan where applicable
 - 5.5.2. Contractor shall submit Annual Performance Review and Report to District. within sixty (60) days of the anniversary of each Commercial Operation Date
 - 5.5.3. Contractor shall provide District with raw, unfiltered BESS performance data as requested by the District.
 - 5.6. Corrective Maintenance includes:
 - 5.6.1. On-site troubleshooting & diagnostics of all BESS System components
 - 5.6.2. Processing of warranty claims on behalf of Customer and verification of replaced equipment
 - 5.6.3. Ongoing warranty support and representation of Customer's interest with BESS System equipment manufacturers
 - 5.7. The following non-exhaustive list of services is not included in the Warranty Services:
 - 5.7.1. Spare parts and materials
 - 5.7.2. Maintenance of medium voltage equipment such as transformers, switchgear and utility metering not installed under Contractor's Design Build Contract
 - 5.7.3. Engineering service
 - 5.7.4. Security services
 - 5.7.5. Fencing (except repairs to fencing installed as part of the Project)
 - 5.7.6. Lighting fixtures and bulb replacement except as covered under warranty
 - 5.7.7. Third-party asset management tools and licenses outside of the ten-year software subscription required by the Contract

EXHIBIT D

PROJECT STABILIZATION AGREEMENT

CONTRACTOR LETTER OF ASSENT

TO: **SAN DIEGO UNIFIED SCHOOL DISTRICT**, a California Public School District, acting by and through its Board of Education ("the District").

FROM:

(Name of Contractor)

(Address)

(City, State, Zip Code)

(Telephone/Fax)

(Email Address)

(Name(s) of Contractor's Authorized Executive(s))

This is to confirm that my Company agrees to be a Party to and bound by the San Diego Unified School District Project Stabilization Agreement – School Construction Major Rehabilitation Funded by Propositions S and Z, effective July 28, 2009 and as subsequently amended, as such Contract may from time to time be amended by the negotiating parties or interpreted pursuant to its terms. Such obligation to be a Party and bound by this Contract shall extend to all work covered by the Contract undertaken by this Company on the Project pursuant to << >> Design-Build Battery Energy Storage System(s) at << >> Sites, and this Company shall require all of its subcontractors and others covered by the PSA of whatever tier to be similarly bound for all work within the scope of the Contract by signing and furnishing to the District's Contract Compliance Office an identical Letter of Assent prior to their commencement of work.

Executed By:

(Signature of Company Officer)

(Date)

(Typed or Printed Name)

EXHIBIT E

Final Subcontractors List as Required by Labor Code Section §1773.3(d)

General Contractor:	SDUSD Contract / PO No:
Project Name:	
Project Address:	

Subcontractor Name	Email Address	DIR Registration No.	CSLB No.	Work Classification(s) Used for Project



EXHIBIT F

BESS TESTING PROTOCOLS

This **Exhibit F** sets forth the Performance Criteria and protocols for any testing of the BESS under this Contract. The Commercial Operation Test, Periodic Test, and other discretionary testing identified in the Contract are sometimes referred to in this Exhibit individually as a "Test" and jointly as the "Tests."

PART I. GENERAL.

The Tests shall be conducted in accordance with Good Utility Practices and the provisions of this **Exhibit**.

PART II. REQUIREMENTS APPLICABLE TO THE TESTS.

A. Required Performance Criteria.

Tests conducted pursuant to this **Exhibit F** shall include the following elements (unless Contractor otherwise agrees in writing in its sole discretion):

- "Availability" is defined as the ability of the BESS to receive and respond to signals from the control system. This value is calculated as the ratio of time the system can function as described to total time within the annual measured period, calculated as a percentage. Availability is not negatively impacted by outages beyond the control of the Contractor, including:
 - i. any BESS Outage where Contractor failed to comply with a dispatch notice by District that was not in accordance with the BESS Operating Procedures;
 - ii. a Contractor Excused Event;
 - iii. a breach of this Contract by District that impedes the ability of the system to receive and respond to signals from the control system; or
 - iv. insufficient solar irradiance or insufficient stored energy not caused by any act or omission of Contractor.
- "Cloud based Enterprise Wide Information System" or "CEWIS" means the District supplied servers and software used by the BESS to record historical operations parameters or compatible replacement.
- "Battery Management System" or "BMS" is defined as the electronic control and communication system that manages and protects the BESS.
- "BESS Energy Capacity" is defined as the rated amount of energy that the BESS can hold, measured in MWh at Maximum Discharge Rate and measured at the Delivery Point.
- "Self-Discharge Rate" is defined as the loss of charge of the BESS while idle.
- "Minimum Charging Time" is defined as the amount of time between a measurement of 0% State of Charge (SOC) to reaching 100% SOC (expressed in units of time).
- "Minimum Discharging Time" is defined as the amount of time discharging from full 100% SOC to reaching a measurement of 0% SOC (expressed in units of time).
- "Maximum Charging Rate" is defined as the maximum rate of charging (expressed in MW).
- "Maximum Discharging Rate" is defined as the maximum rate of discharging (expressed in MW).
- "Performance Test" a test that verifies the BESS Maximum Charging Rate, Maximum Discharging Rate, Minimum Discharging Time, Minimum Charging Time, and BESS Capacity.
- "Response Time" is defined as the amount of time for the BESS to respond to dispatch instructions from District's SCADA.

B. Test Parameters.

During any Performance Test, at a minimum, the following parameters shall be measured and recorded simultaneously for the BESS at the level of granularity necessary to assess the measured criteria and at least every four (4) seconds:

- (i) Time;
- (ii) Net electrical energy output as measured by the BESS Meter (kWh dc);
- (iii) Net electrical energy input as measured by the BESS Meter (kWh dc);
- (iv) Reactive power (VARs);
- (v) State of Charge (%);

- C. Performance Criteria. Contractor must demonstrate to District's reasonable satisfaction, that the BESS:
- (i) is capable of storing and delivering the MW and MWh amount identified by Contractor as the maximum rated power and energy;
 - (ii) can deliver full rated power (MW) to the Point of Delivery for four (4) consecutive hours, totaling to the BESS Energy Capacity
 - (iii) All identified SGIP performance-based incentive levels are met.
- D. Performance Test Conditions.
- (i) At all times during a Test, the BESS, including all auxiliary equipment, shall be operated in compliance with the Test Plan, Good Utility Practices and all operating protocols and conditions recommended, required, or established by the manufacturer.
 - (ii) District in its sole discretion may elect to shorten the run periods or waive a particular portion of a Test at any time. Such election or waiver during one Test does not shorten any run period or waive any portion of any subsequent Test.
 - (iii) Expected Test Conditions.
 - a. When the BESS is charged exclusively with Renewable Energy, the Test should be conducted under sufficient sun and stable sky conditions
 - i. If such conditions are not available on the scheduled day of the Test, then the Test will be postponed until the earlier of the date on which such conditions exist or three (3) Business Days following the originally scheduled date of the Test.
 - ii. If such conditions are not available within three (3) Business Days of the originally scheduled date of the Test, then the Parties shall reasonably cooperate to schedule testing as soon as practicable under stable sky conditions with a minimum irradiance of 200W/m².
 - (iv) Abnormal Conditions. If abnormal operating conditions occur during a Test, District may postpone or reschedule all or part of such Test in its reasonable discretion..
 - (v) Applicable Laws. The BESS shall be operated in compliance with all Applicable Laws, including those governing safety, noise, air, and water emissions during any Test.
 - (vi) Instrumentation and Metering. Contractor shall provide all instrumentation, metering, and data collection equipment required to perform the Test.
- Permanently installed instruments shall include but not be limited to the metering devices and measurement equipment. Contractor shall provide all records associated with PART II.A. through PART II.D. with the Final Report described below in PART G. The records shall include copies of the raw data taken during the Test. Collectively, the records and data provided with the Final Report shall be "Test Records".
- E. Incomplete Test. If any Test is not completed in accordance herewith, District may in its sole discretion: (i) accept the Test results up to the time the Test stopped (other than in the case such Test is a Commercial Operation Test); (ii) require that the portion of the Test not completed, be completed within a reasonable specified time period; or (iii) require that the Test be entirely repeated. Notwithstanding the above, if Contractor is unable to complete a Test due to a Contractor's Force Majeure or the actions or inactions of District, Contractor shall be permitted to conduct such Test as a Contractor Initiated Test under Section 5.4(C) on dates and at times reasonably acceptable to District.
- F. Retest. After the successful completion of a Test, Contractor has the right, for any reason, to conduct a retest at Contractor's sole expense, including the cost of charging the BESS.
- If the Test Records provided by Contractor to District in accordance with PART II.E. are not in accord with the records and notes of the District representative who attended such Test on District's behalf, District may require the Test to be repeated or conducted by District or a testing firm of District's choice and attended by Contractor's representatives. If the retest determines that the Test Records provided by Contractor to District are correct, then such retest will be deemed to be a District Dispatched Test. If the retest determines that the Test Records provided by Contractor to District are incorrect, then such retest will be deemed to be a Contractor Initiated Test.
- The records from any retest shall be used to determine BESS performance as of the date of the original Test being repeated.
- G. Final Report. Within fifteen (15) Business Days after the completion of a Test (including a retest), Contractor shall prepare and submit to District a written report of the Test in a format reasonably acceptable to District. At a minimum, the report shall include:

- (i) a record of any unusual or abnormal conditions or events that occurred during the Test and any actions taken in response thereto;
- (ii) the Test Records;
- (iii) the system performance in relation to the guarantee identified in the SGIP Handbook, either by direct measurement or via agreed to calculation; and
- (iv) Contractor's statement of either Contractor's acceptance of the Test or Contractor's rejection of the Test results and reason(s) therefore.

Within ten (10) Business Days after receipt of such report, District shall notify Contractor in writing of either District's acceptance of the Test results or District's rejection of the Test and reason(s) therefore.

If District rejects the results of any Test or retest, or Contractor rejects the results of the initial Commercial Operation Test, such Test shall be repeated in accordance with PART II.F.

PART III. COMMERCIAL OPERATION TEST.

- A. Test Plan. The Test Plan is provided in PART VI of this Exhibit F.
- B. Test Dates. Contractor shall provide District with at least seven (7) Business Days' notice of Contractor's proposed dates for the Commercial Operation Test.

PART IV. PERIODIC TESTS.

- A. Test Plan. The Test Plan is provided in PART VI of this Exhibit E, unless specified below or the Parties agree otherwise in writing.
- B. Instrumentation and Metering. The Parties shall use the same instrumentation and metering as was used in the Commercial Operation Test, unless the Parties otherwise agree in writing.
- C. Test Dates. Contractor is responsible for scheduling each Periodic Test to be conducted at days and times which have the least negative financial impact to the District with respect to the District's utility tariff as communicated to Contractor by District. The date of any such Test shall be confirmed in writing by District to Contractor prior to the date of the Test. The Parties should attempt but are not required to schedule such Test on days that District will or is likely to dispatch the BESS unless agreed to by District in advance.

PART V. DISCRETIONARY TESTS.

- A. Test Plan. The Test Plan is provided in PART VI of this Exhibit E, unless specified below or the Parties agree otherwise in writing.
- B. Instrumentation and Metering. The Parties shall use the same instrumentation and metering as was used in the Commercial Operation Test, unless the Parties otherwise agree in writing.
- C. Test Dates. Contractor is responsible for scheduling such Test, which shall be conducted at days and times which have the least negative financial impact to the District with respect to the District's utility tariff as communicated to Contractor by District. The date of any such Test shall be confirmed in writing by District to Contractor prior to the date of the Test. The Parties should attempt but are not required to schedule such Test on days that District will or is likely to dispatch the BESS unless agreed to by District in advance. In addition to any Tests initiated by Contractor, District has the right to request that a Test be conducted no more than three (3) times in any 365 day-period.

PART VI. TEST PLAN.

Any Test shall be performed according to the provisions of this Exhibit F, and the Test Plan below.

A. GENERAL:

- (i) This document provides the procedure for Performance Test and evaluation of the BESS. This document shall be the template to develop the final Performance Test procedures as mutually agreed to between the Parties. The complete final Performance Test procedure shall be submitted sixty (60) Days prior to the test.
- (ii) The sole purpose of the Performance Test will be the determination of the BESS Maximum Charging Rate, Maximum Discharging Rate, Minimum Discharging Time, Minimum Charging Time, BESS Capacity, and BESS Energy Capacity for comparison to the service warranty provisions provided in Exhibit C. Uncertainties and test tolerance of 0.5% will be applied to any guarantee.
- (iii) Data shall be recorded by the SCADA system data logging functions. The use of alternative means

for data acquisition shall be used only with prior written consent of District. Contractor shall supply all raw data from the SCADA system, daily during pre-test activities and during testing phase.

- (iv) Prior to the start of testing the BESS, the control settings (tuning and constants) shall be verified.
- (vi) Any alteration or modifications to test measurement devices, or to the BESS, which could reasonably be expected to influence the outcome of the applicable Performance Test, shall not be permitted, without prior written consent of District, and if accepted by District, shall be fully documented by Contractor and District.

B. RESPONSIBILITIES:

- (i) Specific responsibilities for this Performance Test program are as follows:
 - a. Contractor:
 - i. Perform commissioning.
 - ii. Manage the application of proper commissioning procedures until the Performance Tests have been completed.
 - b. District:
 - i. Support Contractor with testing and interface with the Utility as required to schedule and perform testing.
 - ii. Witness energy testing and/or review test documentation.
 - iii. Provide energy for the Performance Test program.

C. EQUIPMENT DEFINITION:

The test configuration will consist of the BESS and its associated equipment.

D. MEASUREMENTS & INSTRUMENTATION:

- (i) Instrumentation for the Performance Test will consist of BESS instruments. Calibration certificates will be provided with the instruments.
- (ii) The State of Charge during all tests shall be read from the System's SCADA system
- (iii) The charge rate and discharge rates shall be measured using the BESS Electric Metering Devices.

E. DATA COLLECTION:

- (i) All measurements of charge rate, discharge rate, input current and voltage, output current and voltage system temperatures, ambient conditions, and other parameters that must be measured shall be collected simultaneously at a temporal resolution applicable to the function of the system application and system metrics to which they are being applied and in accordance with recognized standards applicable to the measurements being taken.
- (ii) Data scan rate shall be 4 seconds or faster for all tests.
- (iii) CANCELLATION OR CESSATION OF TESTING UNDER CERTAIN CIRCUMSTANCES
 - a. In connection with any of the acceptance and other testing pursuant to this Contract, including the Performance Tests, Contractor shall each have the unilateral right to cease such tests if Contractor determines that a matter or event is occurring that may damage or adversely affect the equipment or system. Contractor shall promptly remedy such condition and shall thereafter promptly reschedule the testing.

F. TESTS

Test to measure Maximum Charging Rate, Maximum Discharging Rate, Minimum Discharging Time, Minimum Charging Time, BESS Capacity, and BESS Energy Capacity:

- (i) A capacity test shall be performed to determine the BESS Maximum Charging Rate, Maximum Discharging Rate, Minimum Discharging Time, Minimum Charging Time, and BESS Capacity.
- (ii) The capacity test will be performed per the most up to date methodology defined by the battery OEM. This will typically involve the following steps:
 - 1) The system will be discharged to 0% SOC potentially with a rest state at a higher SOC in between.
 - 2) The system will be left at rest in an active standby state for a period of time as defined by the OEM.
 - 3) The system will be charged to 100% SOC at the Maximum Charging rate. The charging rate may be limited by the BMS at higher SOCs. The time required to reach the SOC where charging rate is limited will be noted. It may also be limited by available resources. The DC energy input for charging, WhI will be measured and recorded.
 - 4) The system will be left at rest in an active standby state for a period of time as defined by the OEM.
 - 5) The system will be discharged to 0% at the Maximum Discharging Rate. The discharging rate may be limited by the BMS at lower SOCs. The lesser of 4 hours multiplied by Guaranteed BESS Energy

Capacity % or the total discharging time required to reach the SOC at which the discharging rate is limited will be recorded (the "Maximum Discharging Rate Time"). The AC energy output until the Maximum Discharging Rate Time is reached, WhDi, will be measured and recorded. The AC energy output until 0% SOC is reached, WhD, will also be measured and recorded.

- (iii) The reference capacity test value (BESS Energy Capacity) shall be WhDi as measured in item (ii)5 and recorded in units of kWh. The reference capacity test value ("BESS Capacity") shall be WhDi divided by the Maximum Discharging Rate Time and recorded in units of kW.

The power and times (hours/minutes/seconds) recorded in steps (ii) 3 and (ii) 5 shall be the value used to verify conformance to the Guaranteed Maximum Charging Rate, Guaranteed Maximum Discharging Rate, Guaranteed Minimum Charging Time, and Guaranteed Minimum Discharging Time.

SAMPLE