**A1 SAMPLE AGREEMENT**

**MASTER CONTRACT FOR DESIGN AND CONSTRUCTION**

**OF**

**SOLAR POWER GENERATION 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 << >> (“Designer/Builder”) 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 contacts for the financing, construction, operation, or use of alternate energy type facilities and photovoltaic systems (“Solar PV System(s)”); and

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

|  |  |
| --- | --- |
| **School Site Name** | **Address** |
| << >> | << >> |

(“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 and upgraded energy Solar PV System related equipment and materials; 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 Designer/Builder, the type of technology employed by the Designer/Builder, the cost to the local agency, and any other relevant considerations; and

WHEREAS, Designer/Builder 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 and warranty services, and has provided one or more proposals relating to School Site(s); 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 Designer/Builder design and, install, and Designer/Builder desires to design and, install Solar PV Systems 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. **Defined Terms.**
   1. **Contract Schedule**: The practical plan to complete the work on the Project within the agreed-upon time as a part of the Notice to Proceed. The Contract Schedule shall be provided and maintained utilizing the most recent version of Primavera P6 scheduling software or other software approved by the District.
   2. **Criteria Architect**: The Criteria Architect is the person or entity retained by the District and identified as such in the Contract. References to the “Criteria Architect” in the Contract Documents shall mean the Criteria Architect or the Criteria Architect’s authorized representative.
   3. **Battery Energy Storage Systems (BESS):** 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 all applicable laws and the Contract Documents.
   4. **Guaranteed Maximum Price (GMP) for Construction:** Design/Builder’s maximum price for construction of the project in accord with the criteria and bridging documents provided by District as part of District’s Request for Proposals and Design/Builder’s investigation of the project site. The firm fixed-price for construction is to be quantified and proposed by Design/Builder upon completion of the Design phase in accord with the process outlined in the Terms and Conditions to Contract.
   5. **Notice To Proceed (NTP)**: The written notice issued by the District’s Facilities Planning and Construction (FPC) post-award contracts administration department to the Designer/Builder authorizing the Designer/Builder 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 Designer/Builder’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 this Contract. The notice will include the agreement 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. Designer/Builder and subcontractors may not begin work prior to receiving an NTP and shall not exceed the value of an existing NTP.
   6. **Permission To Operate (PTO)**: Written authorization from the Utility granting permission to the District to operate and interconnect the Solar PV System with the Utility’s distribution system.
   7. **COMPLETION DEFINITIONS:**
      1. **Substantial Completion**: The stage in the progress of the Work at any given Site when the Solar PV System(s) are mechanically complete, the Designer/Builder has received substantial completion documentation from DSA sufficient to request PTO, and has submitted a request for PTO from the Utility at the Solar PV System’s full nameplate capacity sufficient to meet the contracted production, and has met all other requirements of Substantial Completion as outlined in Specification Section 01 33 01 Design-Build Process & Submittals.
      2. **Commercial Operation Date (COD)**: The date the Solar PV System 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.
      3. **Final Completion**: The point at which the Work on the Project has been fully completed in accordance with the Contract Documents, per Specification Section 01 33 01 Design-Build Process & Submittals, and as determined in good faith by the District’s Representative.
      4. **Notice Of Completion (NOC)**: The notice filed by the District, in the County Recorder’s Office, stating that construction has been finally completed. NOCs will be filed upon Final Completion of all Work performed under a Construction NTP.
   8. **Price Request**:A written request prepared by the District requesting the Designer/Builder to submit to the District an estimate of the effect of a proposed change in the Work on the NTP value and the Contract Time.
   9. **Proposal for Additional Services**: A written request prepared by the Designer/Builder requesting that the District issue a revised, amended or additional NTP based upon a proposed change to the Work or Services.
   10. **Solar PV System**: The solar panels, racking system, mounting hardware, foundations, structure, wiring, inverters, conduits, the monitoring equipment, metering equipment and any and all materials and equipment required to construct a turnkey, operational solar photovoltaic system, interconnected to the grid on a net-metering basis which meets any and all applicable laws and the Contract Documents.
   11. **Utility**: The local utility (San Diego Gas & Electric or other) to whose electrical distribution Solar PV System the Project shall be interconnected.
2. **Scope of Contract.**
   1. 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.
   2. Designer/Builder’s total compensation to perform the following services shall be based on issuance of one or more written NTPs, for design, construction, and commissioning respectively, identifying the specific School Site(s), the scope of work, and the cost, (“Services” or “Work”). Designer/Builder’s performance of all of the services as 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:
      1. The assessment, engineering, design, procurement, construction management, installation, construction, and training for, monitoring, verification, and commissioning of Solar PV Systems with Expected Energy Production of approximately << >> kilowatt-hours (kWh) of energy in Year One of Solar PV System operation, at the following sites:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **School Site** | **Approximate Solar PV System**  **Size**  **(kWdc)** | **Solar PV System Type** | **Expected 1st year PV Output (kWh) (“Expected Energy”)** | **Estimated Cost** |
| << >> | << >> | Ground Mount (Fixed Tilt) | << >> | << >> |
| **TOTAL** | << >> |  | << >> | << >> |

1. Work shall be completed within the time specified in the Contract Schedule. Designer/Builder agrees that if the Work is not completed within the Contract Schedule, it is understood, acknowledged, and agreed that the District will suffer damage which is not capable of being calculated. Pursuant to Government Code section 53069.85, Designer/Builder shall forfeit to the District, as fixed and liquidated damages for these incalculable damages, the sum of One Thousand Dollars ($1,000.00) per MWdc per day for each and every calendar day of delay beyond the following Completion Milestones:

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| --- | --- | --- |
| **School Site** | **Substantial Completion Date** | **Final Completion Date** |
| << >> | << >> | << >> |

These liquidated damages apply only to the Construction portion of this Contract and not to the Contract for Performance Guarantee, as described in Exhibit “B.” ***Delays by local utility or the District directly impacting the Project will relieve Designer/Builder of its obligations to pay liquidated damages for the period of such delay.***

1. Designer/Builder shall prepare a detailed schedule of values for all of the Work that must include quantities and prices of items aggregating the proposed firm fixed-fee to be incorporated as an attachment to the NTP and must subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. This schedule of values shall be provided prior to issuance of an NTP for Construction and must be approved by the District prior to incorporating it as an attachment to the NTP.
2. The Designer/Builder shall not commence the Work under the Contract until the Designer/Builder 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 Designer/Builder shall not commence the procurement, installation, and construction portions of the Work under this Contract until the Designer/Builder has submitted and the District has approved the performance bond and the payment (labor and material) bonds.
3. 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.
4. Designer/Builder 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 Designer/Builder’s Work does not comply with the requirements of the Contract, Title 24 of the California Code of Regulations, and all applicable laws. The Designer/Builder shall be liable for any delay caused and extra work required by its non-compliant Work. Designer/Builder shall not be liable for delay caused solely by the District, or by any request from the Inspector not included in the DSA Plans.
5. Inspection and acceptance of the Work shall be performed by the following, respectively:
   1. The District’s representative with whom the District will contract at or prior to the District issuing a NTP(s) to Designer/Builder;
   2. 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.
6. The Designer/Builder 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 Designer/Builder under the Contract Documents or under applicable law. The obligations of the Designer/Builder 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 Designer/Builder 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 “D,” which is incorporated herein by reference.
7. Designer/Builder 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 Designer/Builders performing similar work for California school districts in or around the same geographic area of the District.
8. This Contract incorporates by this reference the Terms and Conditions attached hereto, as further indicated by Paragraph 13 below. The Designer/Builder, by executing this Contract, agrees to comply with all the Terms and Conditions.
9. By signing this Contract, Designer/Builder certifies, under penalty of perjury, that all the factual information provided in the Contract by the Designer/Builder 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.
10. 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.
11. **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.

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| ***If to the District:*** | ***If to Designer/Builder:*** |
| Strategic Sourcing & Contracts Dept.  2352 Cardinal Lane, Building M  San Diego, California 92123-3743  Attention: << >>  Telephone: << >> | << >>  Attention: << >>  Telephone: << >> |
| 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 |

1. The Contract includes only the following documents (“Contract Documents”), as indicated:

|  |  |
| --- | --- |
| X Terms and Conditions to Contract  X Noncollusion Declaration  X Prevailing Wage Certification  X Workers’ Compensation Certification  X Criminal Background Investigation Certification  X Drug-Free Workplace / Tobacco-Free Environment Certification  X Asbestos & Other Hazardous Materials Certification  X Lead-Product(s) Certification  X Roofing Contract Financial Interest Certification  X Iran Contracting Act Certification  X Insurance Certificates and Endorsements  X Performance Bond (District’s Form)  X Payment Bond (District’s Form) | X Exhibit “A” (Scope of Work)  X Exhibit “B” (Performance Guarantee)  X Exhibit “C” (Project Stabilization Agreement Letter of Assent)  X Exhibit “D” (Warranties)  X Exhibit “E” (Commissioning Services)  X District Technical Specifications and Standards (Upon execution of this contract, a link will be provided for access) |

1. **Electronic Signature.** Designer/Builder consents to conducting transactions for this Agreement 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**).**

* 1. Under the Uniform Electronic Transactions Act (California Civil Code sections 1633.1- 1633.17), Designer/Builder agrees to conduct transactions relating to the Agreement 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. Designer/Builder 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. Designer/Builder agrees that the transactions conducted electronically relating to this Agreement shall be binding upon me.
  2. Designer/Builder agrees that the electronic signature will be valid from date of issuance until the end of the Agreement term or earlier if it is revoked or terminated under this Agreement. Designer/Builder understands that the District may suspend, terminate, or revoke the electronic signature in its reasonable discretion.
  3. Designer/Builder will use the electronic signature to establish identity and sign electronic documents and forms relating to the Agreement and Amendments. Designer/Builder is solely responsible for protecting the electronic signature. If Designer/Builder suspects or discovers that the electronic signature has been stolen, lost, used by an unauthorized party, or otherwise compromised, then Designer/Builder will immediately notify the Strategic Sourcing and Contracts Officer or his/her designee and request that the electronic signature be revoked. Designer/Builder will then immediately cease all use of the electronic signature. Designer/Builder 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.

Information regarding Designer/Builder:

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| --- | --- |
| 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.** |

ACCEPTED AND AGREED on the date indicated below:

|  |  |
| --- | --- |
| **DESIGNER/BUILDER** | **SAN DIEGO UNIFIED SCHOOL DISTRICT** |
| By: | By: |
| Name:  Title: | ANDREA R. O’HARA, M.A.  Strategic Sourcing and Contracts Officer |
| 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:    Sydney Hawkins  Project Management Supervisor  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.:

Department of Justice – Originating Agency Identifier (ORI) No.:

#### TERMS AND CONDITIONS TO CONTRACT

1. NOTICE(S) TO PROCEED PROCESS: District shall provide written Notice(s) to Proceed (NTPs) to Designer/Builder pursuant to the Contract at which time, Designer/Builder 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 Designer/Builder 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. **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 Designer/Builder’s firm fixed-price cost proposals for Design Services provided as part of its response to the District RFP.
   2. C**onstruction NTPs** will be issued subsequent to DSA and District approval of Designer/Builder’s completed construction documents, prior to commencement of any construction activities. Individual Construction NTP values will utilize Designer/Builder’s firm fixed-price cost proposals developed as part of the work authorized by the Design NTP and as subsequently negotiated with the District. Design/Builder’s firm fixed-price cost proposals shall not exceed Design/Builder’s Guaranteed Maximum Price for construction and shall be modified based on scope changes approved by District during the design phase.
   3. **Commissioning NTPs** will be issued at Substantial Completion and will authorize initiation of all commissioning related activities and the Performance Guarantee, which is attached hereto as Exhibit “B” and incorporated herein by reference. Individual Commissioning NTP values will utilize Designer/Builder’s firm fixed-price cost proposals for Commissioning Services provided as part of its response to the District RFP.
2. CHANGE IN SCOPE OF WORK:
   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. 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.
   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.
   4. Designer/Builder shall perform all Work that has been authorized by a fully executed NTP in the timeframe set forth therein.
   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 Designer/Builder proceeds with any change in Work without a revised or amended NTP, Designer/Builder waives any claim of additional compensation or time for that additional work.
   6. Designer/Builder 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.
   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:
      1. A description of a change in the Work or Services;
      2. The amount of the adjustment to the NTP value, if any; and
      3. The extent of the adjustment to the NTP value, if any.
   8. **Price Request.** Each Price Request shall contain adequate information, including any requested Additional Work or Services, to enable Designer/Builder to provide the cost breakdowns required herein.
   9. **Proposal for Additional Work**. All proposals shall include breakdowns pursuant to the revisions herein to validate any change in NTP values.
      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 Designer/Builder fails to request a time extension in a proposal, then the Designer/Builder is thereafter precluded from requesting additional time and/or claiming a delay, except as otherwise provided in this Contract.
      2. Unknown and/or Unforeseen Conditions. If Designer/Builder submits a Proposal for Additional Services requesting an increase in NTP value and/or Contract Schedule that is based at least partially on Designer/Builder’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 Designer/Builder 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 Designer/Builder shall complete the Project without any increase in NTP value and/or Contract Schedule.
      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 A3 GENERAL CONDITIONS, Exhibit A***
      4. **Designer/Builder 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 Designer/Builder: *Subject to adjustment for the reasons specified in the Contract, such as unforeseen site conditions or events of Force Majeure, the undersigned Designer/Builder 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 Designer/Builder knows or reasonably should know are false are at the sole risk of Designer/Builder 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 Designer/Builder’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.*
   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:
       1. District acceptance of a Proposal for Additional Work;
       2. By amounts contained in Designer/Builder’s schedule of values, if applicable;
       3. By agreement between District and Designer/Builder.
   11. **Unilateral Changes.**  In the absence of a written agreement between the District and Designer/Builder 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 Designer/Builder 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 Designer/Builder 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 Designer/Builder fails to provide written notification within seven (7) calendar days, it waives its rights to all additional claims. The Design/Builder shall track its time and material costs for the dispute or claim as follows:
       1. Design/Builder shall maintain detailed records on a daily basis. Such records shall include without limitation hourly records for labor and Construction Equipment and itemized records of materials and equipment used that day in connection with the performance of any Change to the Work. In the event that the Design/Builder performs more than one Change to the Work in a calendar day, Designer/Builder shall maintain separate records for each such Change.
       2. Design/Builder 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.
       3. In the event that any subcontractor, of any tier, provides or performs any portion of any Change to the Work, Design/Builder 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 Design/Builder or Design/Builder’s authorized representative; such signature shall be deemed Design/Builder's representation and warranty that all information contained therein is true, accurate, 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.
       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 Design/Builder 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 Design/Builder.
3. PAYMENT:
   1. On a monthly basis, Designer/Builder 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.
   2. Within seven (7) days after receipt of Designer/Builder’s Application for Payment, District shall notify Designer/Builder 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 Designer/Builder’s obligations under the Contract which Designer/Builder 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 Designer/Builder 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 Designer/Builder 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 Designer/Builder is liable under the Contract; and (9) any other sums which the District is entitled to recover from Designer/Builder 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. 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 Designer/Builder 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 Designer/Builder up to the last day of the previous month.
   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 Designer/Builder 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 one hundred percent (100%) of the actual value of the item being considered, less retention as indicated above.  The Designer/Builder 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.
   5. For its invoice to be due, owing and payable, the Designer/Builder must submit an updated Project Schedule with its Application for Payment.
   6. Designer/Builder shall submit invoices as directed in the NTP and the District’s FPC post-award contracts administration department.
   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, Designer/Builder may also be directed to provide additional details on the invoice and/or backup documentation.
4. SITE EXAMINATION:
   1. The District shall provide to the Designer/Builder all information available to it to the extent the information relates to Designer/Builder’s scope of work. This information shall include:
      1. Physical characteristics;
      2. Legal limitations and utility locations for the Project site(s);
      3. Written legal description(s) of the Project site(s);
      4. Grades and lines of streets, alleys, pavements, and adjoining property and structures;
      5. Adjacent drainage;
      6. Rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, and boundaries and contours of the Project site(s);
      7. Locations, dimensions and necessary data with respect to existing buildings, other improvements and trees;
      8. Information concerning available utility services and lines, mechanical and other services, both public and private, above and below grade, including inverts and depths;
      9. Surveys, reports, as-built drawings;
      10. Available subsoil data, chemical data, and other data logs of borings;
      11. DSA Numbers for all buildings, as necessary to obtain DSA approval of plans to be submitted by Designer/Builder under the contracted scope of work.
      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.
   2. Designer/Builder 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”). Designer/Builder shall rely on its Site Examination in defining its scope of Work or Services.
   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. If there are any variations to the scope of Work or Services resulting from conditions not determinable from such Visually Verified information, the Designer/Builder shall submit to the District a Proposal for Additional Services based on those conditions.
   5. 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 Designer/Builder discover any latent or unknown conditions, which will materially affect the performance of the Work hereunder, Designer/Builder 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 DESIGNER/BUILDER:
   1. Designer/Builder certifies that the Designer/Builder 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. Designer/builder staff:
   1. The Designer/Builder has been selected to perform the Work herein because of the skills and expertise of key individuals.
   2. The Designer/Builder shall not change any of the key personnel without prior written notice to District, unless said personnel cease to be employed by Designer/Builder.
   3. If any designated lead or key person fails to perform to the reasonable satisfaction of the District, then upon written notice the Designer/Builder shall have ten (10) days to remove that person from the Project and replace that person with one reasonably acceptable to the District.
   4. Designer/Builder 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: Designer/Builder 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 Designer/Builder 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 Designer/Builder or any of its subcontractors fail to perform in accordance with this Contract, the District reserves the right to require Designer/Builder 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 Designer/Builder 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 Designer/Builder for any Work under this Contract shall be subject to the approval of the District, which shall not be unreasonably withheld. Designer/Builder agrees to bind every subcontractor by the terms of the Contract as far as such terms are applicable to subcontractor’s work, including, without limitation, all indemnification, insurance, bond, and warranty requirements. If Designer/Builder shall subcontract any part of the Work under this Contract, Designer/Builder 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:
    1. If Designer/Builder fails to perform Designer/Builder’s material duties as required by this Contract, or if Designer/Builder fails to fulfill in a timely and professional manner Designer/Builder’s material obligations under this Contract, or if Designer/Builder 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:
       1. Such failures and violations are caused by the District; or
       2. Such failures and violations are cured by Designer/Builder to the District’s reasonable satisfaction within fourteen (14) days after Designer/Builder’s receipt of written notice thereof from the District; provided, that if a cure cannot be effected within such fourteen (14) days and Designer/Builder has commenced a cure within such period of time and continues diligent pursuit of such cure, the Designer/Builder 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, Designer/Builder 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 Designer/Builder’s actions, errors, or omissions that caused the District to terminate the Contract.

* 1. 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, Designer/Builder 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 Designer/Builder 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 Designer/Builder’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 Designer/Builder’s Work performed until the date of termination.
  2. 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.
  3. 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, Designer/Builder 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 Designer/Builder 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 Designer/Builder’s compensation shall be equitably adjusted to provide for expenses incurred associated with the suspension and in the resumption of the Designer/Builder’s Services.

1. DELIVERABLES AT TERMINATION
   1. Following the termination of this Contract, for any reason whatsoever, the Designer/Builder 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 Designer/Builder as required by the termination provisions in this Contract.
      1. One set of the Contract, including the bidding requirements, specifications, and all existing cost estimates for the Project, in hard copy, reproducible format.
      2. One set of fixed image CADD files in DXF format of the drawings that are part of the Contract.
      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.
   2. All finished or unfinished documents, studies, reports, calculations, drawings, maps, models, photographs, technology data and reports prepared by the Designer/Builder under this Contract.
2. SAFETY AND SECURITY: Designer/Builder is responsible for maintaining safety in the performance of this Contract. Designer/Builder 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.
3. CORRECTION OF ERRORS: Designer/Builder 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 Designer/Builder’s failure to comply with the Contract requirements and the standard of care required herein.
4. 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.
5. DESIGNER/BUILDER SUPERVISION: Designer/Builder shall provide competent supervision of its personnel on the School Site, its use of equipment, and the quality of its workmanship.
6. ACCESS TO WORK: District shall provide to Designer/Builder 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. Designer/Builder 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.
7. PROTECTION OF WORK AND PROPERTY: The Designer/Builder shall erect and properly maintain at all times, as required by conditions and progress of the Work, all necessary safeguards, signs, barriers, lights, and security persons for protection of workers and the public, and shall post danger signs warning against hazards created by the Work. In an emergency affecting life and safety of life or of Work or of adjoining property, Designer/Builder, without special instruction or authorization from District, is permitted to act at its discretion to prevent such threatened loss or injury.
8. 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. Designer/Builder shall afford other contractor reasonable opportunity for introduction and storage of their materials and execution of their work and shall properly coordinate and connect Designer/Builder’s Work with the work of other contractors. In addition to Designer/Builder’s obligation to protect its own Work, Designer/Builder shall protect the work of any other contractor that Designer/Builder encounters while working on the Project. Nothing herein contained shall be interpreted as granting to Designer/Builder exclusive occupancy of the Site, the Premises, or of the Project. Designer/Builder 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 Designer/Builder’s Contract, Designer/Builder 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.
9. ASSIGNMENT OF CONTRACT: The Designer/Builder 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 Designer/Builder’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 Designer/Builder; (ii) to an entity that is controlled by, controls, or is under common control with Designer/Builder; 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.
10. COMPLETION:
    1. **Walk-Through as Prerequisite to Determination of Substantial Completion**. When the Designer/Builder believes that the Work is complete except for minor corrective items, it shall so notify the District and shall provide written documentation (Designer/Builder’s “pre-punch list”) which demonstrates substantial completion. Promptly thereafter, the District shall schedule a walk-through of the Project by the Designer/Builder, 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 Designer/Builder resulting in a premature walk-through shall be at the Designer/Builder’s sole cost and expense, and the District shall be entitled to reduce its payments to the Designer/Builder under the Contract by an amount equal to any costs incurred by the District due to the erroneous claims by the Designer/Builder 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.
    2. **Notice of Substantial Completion.** Upon completion of all conditions precedent to Substantial Completion for any School Site, Designer/Builder 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 Designer/Builder with a description of any deficiencies or other basis by which it has rejected the Notice of Substantial Completion. Designer/Builder will then address any deficiencies and resubmit its Notice of Substantial Completion.
    3. **Completion**. Upon completion of all punch-list items and other closeout items for a School Site, Designer/Builder 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.
    4. **Designer/Builder’s Failure to Correct Punch-List Items**. If the Designer/Builder fails to complete the minor corrective items prior to the expiration of the thirty (30) day period immediately following Substantial 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 Designer/Builder 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.
    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.
    6. **Final Payment Requirement**. A final list of subcontractors is required per labor code section 1773.3 (d) prior to final payment. The District shall withhold final payment due to the Designer/Builder until at least 30-days after all of the required information has been submitted, including but not limited to, providing a complete list of all subcontractors ***with DIR registration numbers***.
11. 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.
12. FORCE MAJEURE CLAUSE:
    1. The term “Force Majeure” shall mean those events caused beyond the control of the affected Party and which by the exercise of due diligence such Party could not reasonably avoid and which it has been unable to overcome, including acts of God and public enemy; fire; epidemics, landslides, volcanic activity, terrorism, strike; loss or shortage of transportation facilities; lock‑out; commandeering of materials, product, plant, or facilities by the government; relocation or construction of transmission facilities or the shutdown of such facilities for the purpose of necessary repairs; work by local utility directly impacting the Project; flood; earthquake; tornado; severe storm; civil disobedience; sabotage; restraint by court order or public authority (whether valid or invalid); which is beyond the control of the affected Party and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which it has been unable to overcome.
    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.
    3. Designer/Builder 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 Designer/Builder prepared drawings or approve a proposed installation. Designer/Builder 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. Designer/Builder is entitled to additional time in the Project Schedule for review of Designer/Builder’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:
       1. The time for this review is in excess of the time expressly allocated for this review in the Project Schedule;
       2. If Designer/Builder has diligently pursued approval from the Review Agencies; Designer/Builder’s drawings and proposed installation are consistent with DSA Interpretation of Regulations (IR) 16-8 as of the date of this Contract, as well as other applicable solar photovoltaic and thermal systems review and approval requirements; and
       3. Designer/Builder’s drawings and proposed installation are consistent with Designer/Builder’s pre-check(ed) (“PC”) design as of the date of this Contract, where applicable, except as modified at the District’s request.
13. INDEMNIFICATION / HOLD HARMLESS CLAUSE:To the furthest extent permitted by California law, Designer/Builder 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 Designer/Builder or its officers, employees, agents, consultants, sub-consultants, contractors, subcontractors, or licensees. However, Design/Builder 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 Designer/Builder 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 Designer/Builder 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.
14. PERMITS, APPROVALS, AND LICENSES:
    1. The Designer/Builder and all of its employees, agents, and subcontractors shall secure and maintain in force, at Designer/Builder’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.
    2. Designer/Builder 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.
    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.
    4. District will cooperate fully with and assist Designer/Builder’s obtaining all permits and approvals required under this Contract.
15. INDEPENDENT CONTRACTOR STATUS: While engaged in carrying out the Work of this Contract, the Designer/Builder is an independent contractor, and not an officer, employee, agent, partner, or joint venturer of the District. Designer/Builder shall be solely responsible for its own Worker’s Compensation insurance, taxes, and other similar charges or obligations. Designer/Builder shall be liable for its own actions and shall be liable for the acts, omissions, or errors of its agents or employees.
16. 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 Designer/Builder 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 Designer/Builder agrees to require like compliance by all its subcontractor(s).
17. 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). Designer/Builder shall make reasonable efforts to solicit and utilize DVBEs during the performance of its Work, subject to the availability of DVBEs which meet Designer/Builder’s professional standards to perform the Work and Work within the Contract Time at a competitive price.
18. PAYMENT BOND AND PERFORMANCE BOND:The Designer/Builder 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. Notwithstanding anything to the contrary in the Contract, the Payment (Labor and Material) Bond and the Performance Bond are not applicable to the Performance Guarantee in Exhibit “B,” nor to any equipment and/or material manufacturer’s warranty or other third-party warranty being assigned to District.
19. DESIGNER/BUILDER’S INSURANCE: Designer/Builder 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 Designer/Builder, its agents, representatives, employees or subcontractors.  The following sets forth the minimum scope and limits of the required insurance coverage. If the Designer/Builder 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 Designer/Builder. 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 Designer/Builder’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.

* 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
  1. **Automobile Liability.** Coverage for any auto, including all owned, hired and non-owned vehicles: combined single limit of $1,000,000 per accident.
  2. **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
  1. **Professional Liability Insurance**. Insurance appropriate to the Designer/Builder with limits no less than:
* $2,000,000 per occurrence or claim
* $4,000,000 aggregate
  1. **Workers Compensation**: As required by the State of California with Statutory limits;
  2. **Employers’ Liability**: $1,000,000 per accident or bodily injury or disease.
* A waiver of subrogation endorsement is required on the Workers’ Compensation policy.
  1. **Designer/Builder’s Pollution Liability Insurance** with limits of at least:
* $1,000,000 per occurrence/$2,000,000 aggregate.
  1. **Builder’s Risk**:Replacement value of the Project with no coinsurance penalty provisions.
  2. **Property Installation Floater**: in lieu of Builder’s Risk, 100% of replacement value.

1. Designer/Builder 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.
2. 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.
3. 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.
4. Such insurance shall include the interests of the District, any other person with an insurable interest designated by the District, the Designer/Builder 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 Designer/Builder 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, Designer/Builder’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 Designer/Builder’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 Designer/Builder shall not allow any subcontractor, employee, or agent to commence Work on this Contract or any subcontract until the insurance required by the Designer/Builder of the subcontractor or agent has been obtained.

1. WARRANTY/QUALITY**:** Pursuant to the requirements of the Public Utility Code section 2854 (formerly cited as section 387.5(d)(4)), for each Generating Facility, Designer/Builder warrants to District, for a period of ten (10) years from the Substantial Completion Date for such Generating Facility, (i) that such Generating Facility 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 output of more than fifteen percent (15%) from its originally rated electrical output as a result of faulty installation (the “10 Year Designer/Builder Warranty”).  This 10 Year Designer/Builder Warranty covers solely the solar generating system, including PV modules (panels) and inverters (including meters that are integrated into any inverter), solar collectors, tracking mechanisms, heat exchangers, pumps, and heat driven cooling systems associated with the solar generating systems for each Generating Facility, and provides for the no-cost repair or replacement of solar generating system components to the extent not otherwise covered by a manufacturer’s warranty.

Designer/Builder warrants to District that material and equipment furnished under this Contract will be of good quality and new, unless otherwise specifically required or permitted by this Contract. Designer/Builder further warrants to District, for a period of one (1) year from the Substantial Completion Date for such Generating Facility, that any additional equipment and materials that are not part of the solar generating systems, as described above, including meters (other than meters that are integrated into any inverter, which are covered under the 10 Year Designer/Builder Warranty), shall be free from degradation in electrical output of more than fifteen per cent (15%) from their originally rated electrical output as a result of faulty installation during such one (1) year warranty period.

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 Designer/Builder or its subcontractors, corrosion, erosion, deterioration, abuse, modifications or repairs not performed by an authorized Designer/Builder subcontractor, or improper use or operation.

EXCEPT FOR THE WARRANTIES PROVIDED IN THIS ARTICLE, DESIGNER/BUILDER 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) Designer/Builder’s indemnity obligations as STATED in the Contract Documents; and (b) Designer/Builder’s warranty obligation as STATED in the Contract Documents, DISTRICT SHALL HAVE NO REMEDIES AGAINST EITHER DESIGNER/BUILDER 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) Designer/Builder’s indemnity obligations as STATED in the Contract Documents; (b) Designer/Builder’s warranty obligation as STATED in the Contract Documents; and (C) Designer/Builder’s liability to pay Liquidated Damages as sTATED IN the Contract Documents, NEITHER DESIGNER/BUILDER, NOR DESIGNER/BUILDER'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.

1. 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.
2. CONFLICT OF INTEREST: Designer/Builder may serve other clients, but none whose activities or whose business, regardless of location, would place8 Designer/Builder in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code sections 81000 *et seq.* Designer/Builder shall not employ any district official in the Work performed pursuant to this Contract. Designer/Builder 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 Designer/Builder was an employee, agent, appointee, or official of the District in the previous twelve months, Designer/Builder warrants that it did not participate in any manner in the forming of this Contract. Designer/Builder understands that if this Contract is or was made in violation of Government Code sections 1090 *et seq.* the entire Contract is void and Designer/Builder will not be entitled to any compensation for services performed pursuant to this Contract, including reimbursement of expenses, and Designer/Builder will be required to reimburse the District for any sums paid to the Designer/Builder. Designer/Builder 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. Designer/Builder 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.*
3. COMPLIANCE WITH LAWS: Designer/Builder 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 Designer/Builder observes that any of the Work required by this Contract is at variance with any such laws, ordinances, rules or regulations, Designer/Builder 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 Designer/Builder’s receipt of a written termination notice from the District. If Designer/Builder performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the District of the violation, Designer/Builder shall bear all costs and liabilities arising therefrom.
4. DISTRICT’S RIGHT TO AUDIT: District retains the right to review and audit, and the reasonable right of access to Designer/Builder’s and any subcontractor’s or sub-consultant’s premises to review and audit the Designer/Builder’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 Designer/Builder’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.
   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 Designer/Builder is in compliance with all requirements of this Contract.
   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.
   3. The Designer/Builder shall maintain complete and accurate records in accordance with generally accepted accounting practices in the solar contractor industry. Upon the reasonable request of the District, the Designer/Builder 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 Designer/Builder shall submit exact duplicates of originals of all requested records to the District.
   4. The Designer/Builder shall use reasonable efforts to include audit provisions in its subcontracts for the Project, and to ensure that these sections are binding upon subconsultants.
   5. The Designer/Builder 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.
   6. Designer/Builder shall comply with these provisions within fifteen (15) days of the District’s written request to review and audit any or all of Designer/Builder’s Project-related records and information.
5. 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, Designer/Builder agrees it will neither rescind the Contract nor stop the progress of the undisputed portion of the Work.
   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.
   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.
6. LABOR CODE AND OTHER LABOR/WORKFORCE REQUIREMENTS: The Designer/Builder shall comply with all applicable provisions of the California Labor Code, Division 2, Part 7, Chapter 1, Articles 1‑5, including, without limitation, the payment of the general prevailing per diem wage rates for public work projects of more than one thousand dollars ($1,000). Copies of the prevailing rate of per diem wages are on file with the District. In addition, the Designer/Builder and each subcontractor shall comply with Chapter 1 of Division 2, Part 7 of the California Labor Code, beginning with Section 1720, and including Section 1735, 1777.5 and 1777.6, forbidding discrimination, and Sections 1776, 1777.5 and 1777.6 concerning the employment of apprentices by Designer/Builder or subcontractor. Willful failure to comply may result in penalties, including loss of the right to bid on or receive public works contracts.
   1. **Certified Payroll Records**:
      1. If requested by the District, Designer/Builder shall provide to the District and shall cause each subcontractor performing any portion of the Work under this Contract to provide to the District an accurate and certified payroll record (“CPR(s)”), showing the name, address, social security number, work classification, straight time, and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Designer/Builder and/or each subcontractor in connection with the Work. In addition to any other requirements under Labor Code section 1770, *et seq.,* the CPRs enumerated hereunder shall be certified.
   2. **Contractor & Subcontractor Registration**:
      1. Designer/Builder shall comply with the registration and compliance monitoring provisions of Labor Code section 1771.4, including furnishing its CPRs to the Labor Commissioner of California and complying with any applicable enforcement by the Department of Industrial Relations. Labor Code section 1771.1(a) states the following:

“A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.”

* + 1. Designer/Builder acknowledges that, for purposes of Labor Code section 1725.5, all or some of the Work is a public work to which Labor Code section 1771 applies. Designer/Builder shall comply with Labor Code section 1725.5, including without limitation the registration requirements. Additionally, all Designer/Builder’s subcontractors shall comply with Labor Code section 1725.5 to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of the Contract. Designer/Builder represents that all of its subcontractors are registered pursuant to Labor Code section 1725.5.
    2. The Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Designer/Builder shall post job site notices, as prescribed by regulation. Designer/Builder shall comply with all requirements of Labor Code section 1771.4, except the requirements that are exempted by the Labor Commissioner for the Project.
  1. **Wage Rates, Travel and Subsistence**:
     1. Pursuant to the provisions of article 2 (commencing at section 1770), chapter 1, part 7, division 2, of the Labor Code of California, the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this public work is to be performed for each craft, classification, or type of worker needed to execute this Contract are on file at the District’s principal office and copies will be made available to any interested party on request. Designer/Builder shall obtain and post a copy of these wage rates at the job site.
     2. Holiday and overtime work, when permitted by law, shall be paid for at a rate of at least one and one-half times the above specified rate of per diem wages, unless otherwise specified. The holidays upon which those rates shall be paid need not be specified by the District, but shall be all holidays recognized in the applicable collective bargaining agreement. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code.
     3. Designer/Builder shall pay and shall cause to be paid each worker engaged in Work on the Project not less than the general prevailing rate of per diem wages determined by the Director (“Director”) of the Department of Industrial Relations (“DIR”), regardless of any contractual relationship which may be alleged to exist between Designer/Builder or any subcontractor and such workers.
     4. If during the term of this Contract, the Director determines that there has been a change in any prevailing rate of per diem wages in the locality in which the Work under the Contract is to be performed, such change shall not alter the wage rates in the Contract.
     5. Pursuant to Labor Code section 1775, Designer/Builder shall, as a penalty to District, forfeit the statutory amount, (currently not to exceed two hundred dollars ($200) for each calendar day, or portion thereof), for each worker paid less than the prevailing rates, as determined by the District and/or the Director, for the work or craft in which that worker is employed for any public work done under Contract by Designer/Builder or by any subcontractor under it.
     6. Any worker employed to perform Work on the Project, which Work is not covered by any classification listed in the general prevailing wage rate of per diem wages determined by the Director, shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to Work to be performed by him, and such minimum wage rate shall be retroactive to time of initial employment of such person in such classification.
     7. Pursuant to Labor Code section 1773.1, per diem wages are deemed to include employer payments for health and welfare, pension, vacation, travel time, subsistence pay, and apprenticeship or other training programs authorized by Labor Code section 3093, and similar purposes.
     8. Designer/Builder shall post at appropriate conspicuous points on the School Site, a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned. In addition, Designer/Builder shall post a sign-in log for all workers and visitors to the School Site, a list of all subcontractors of any tier on the School Site, and the required Equal Employment Opportunity poster(s).
  2. **Hours of Work**:
     1. As provided in article 3 (commencing at section 1810), chapter 1, part 7, division 2, of the Labor Code, eight (8) hours of labor shall constitute a legal day’s work. The time of service of any worker employed at any time by Designer/Builder or by any subcontractor on any subcontract under this Contract upon the Work or upon any part of the Work contemplated by this Contract shall be limited and restricted by Designer/Builder to eight (8) hours per day, and forty (40) hours during any one week, except as hereinafter provided. Notwithstanding the provisions hereinabove set forth, Work performed by employees of Designer/Builder in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.
     2. Designer/Builder shall keep and shall cause each subcontractor to keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by Designer/Builder in connection with the Work or any part of the Work contemplated by this Contract. The record shall be kept open at all reasonable hours to the inspection of District and to the Division of Labor Standards Enforcement of the DIR.
     3. Pursuant to Labor Code section 1813, Designer/Builder shall as a penalty to the District forfeit the statutory amount (believed by the District to be currently twenty-five dollars ($25)) for each worker employed in the execution of this Contract by Designer/Builder or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of article 3 (commencing at section 1810), chapter 1, part 7, division 2, of the Labor Code.
     4. Any Work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed without additional expense to the District.
  3. **Apprentices**:
     1. It shall be the responsibility of Designer/Builder to ensure compliance with this Article and with Labor Code section 1777.5, if applicable, for all apprenticeship occupations.
     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.
     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.
     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.
     5. Pursuant to Labor Code section 1777.5, if that section applies to this Contract as indicated above, Designer/Builder 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 Designer/Builder or subcontractor under the applicable apprenticeship standards and fixing the ratio of apprentices to journeymen employed in performing the Work.
     6. Pursuant to Labor Code section 1777.5, if that section applies to this Contract as indicated above, Designer/Builder and any subcontractor may be required to make contributions to the apprenticeship program.
     7. If Designer/Builder 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:
        1. e denied the right to bid on any subsequent project for one (1) year from the date of such determination;
        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.
     8. Designer/Builder and all subcontractors shall comply with Labor Code section 1777.6, which section forbids certain discriminatory practices in the employment of apprentices.
     9. Designer/Builder 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.
     10. Designer/Builder 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*.
  4. **Labor First Aid**:
     1. Designer/Builder shall maintain emergency first aid treatment for Designer/Builder’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.
  5. **Project Stabilization Agreement**:On July 28, 2009, and as subsequently amended, the San Diego Unified School District’s Board of Education approved a Project Stabilization Agreement (“PSA”), under which the Work of this Contract falls. The PSA includes, among other provisions: prohibitions on work stoppages or disruptive activity, a dispute resolution procedure, and goals for local hiring. The Designer/Builder, 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 [www.sandi.net](http://www.sandi.net/).

1. Designer/Builder Assent

A representative of the Designer/Builder with the authority to bind the Designer/Builder is required to sign the Letter of Assent (“LOA”) attached hereto as **Exhibit “C,”** which evidences the Designer/Builder’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 Designer/Builder cannot commence any Work prior to signing the LOA.

1. 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 Designer/Builder 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.

1. Jurisdiction Coordination Meeting

A Jurisdiction Coordination meeting shall be scheduled by the District to permit the Designer/Builder, subcontractors, and applicable unions to determine all workforce coordination and jurisdictional issues prior to the start of work contained in this Contract. The Designer/Builder 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.

1. PSA Designer/Builder Administration Costs

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

1. ANTI-TRUST CLAIM: Designer/Builder 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 Designer/Builder without further acknowledgment by the Parties.
2. 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.
3. 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.
4. 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.
5. 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.
6. 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.
7. 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.
8. 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. Designer/Builder shall grant to District a perpetual, irrevocable, royalty-free license for any and all of Designer/Builder’s software or other intellectual property rights owned by Designer/Builder necessary for District to continue to operate, maintain, and repair the equipment in accordance with design specifications.
9. OWNERSHIP OF INSTRUMENTS OF SERVICE
   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 Designer/Builder or its consultants, prepares or causes to be prepared pursuant to this Contract, limited to this Work.
   2. The Designer/Builder retains all rights to all copyrights, designs and other intellectual property embodied in the plans, record drawings, specifications, estimates, and other documents that the Designer/Builder or its consultants prepares or causes to be prepared pursuant to this Contract.
   3. In the event the District changes or uses any fully or partially completed documents without the Designer/Builder’s knowledge and participation, the District agrees to release Designer/Builder of responsibility for such changes, and shall indemnify, defend and hold the Designer/Builder 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 Designer/Builder is found to be liable in a forum of competent jurisdiction. In the event District uses any fully or partially completed documents without the Designer/Builder’s full involvement, the District shall remove all title blocks and other information that might identify the Designer/Builder and the Designer/Builder’s consultants.
10. 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 Designer/Builder pursuant to this Contract. If applicable, Designer/Builder 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 Designer/Builder’s notice, designate in writing to Designer/Builder which replaced equipment and materials that should not be disposed of off-site by Designer/Builder (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. Designer/Builder shall be responsible for the disposal of replaced equipment and materials, except for the Retained Items. Designer/Builder 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.
11. UTILITY WORK: District expressly understands and agrees that Interconnection Facilities work may need to be performed by the local Utility ("Utility") in order for Designer/Builder 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. Designer/Builder 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. Designer/Builder shall also cooperate and assist the District in facilitating the Interconnection Facilities work.
12. ENERGY CREDITS AND REBATE PROGRAMS: Other thanits right to payment pursuant to this Contract, Designer/Builder 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:
    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 forgoing, “Environmental Incentives” includes green tags, renewable energy credits, tradable renewable certificates, portfolio energy credits, the right to apply for (and entitlement to receive) incentives under 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.
    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.
    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.
    4. Entitlement to all credits, certificates, registrations, etc., evidencing or representing any of the foregoing.
    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 Designer/Builder shall take such steps as District shall reasonably request to confirm District’s ownership of such renewable energy credits.
    6. Designer/Builder is not responsible for compliance, certification, reporting, or other requirements associated with the sale, ownership, rights, or certifications for these energy credits, but Designer/Builder will provide advice and consultation to the District as requested, to the extent it is commercially reasonable for Designer/Builder to do so.
    7. **Rebate Programs**. On behalf of the District, Designer/Builder 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 Designer/Builder has extensive experience in assisting Districts with procuring Incentive Funds for school districts, Designer/Builder cannot guarantee that these Incentive Funds will be received by the District. 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.
13. RESPONSIBILITIES OF THE DISTRICT:
    1. The District shall examine the documents submitted by the Designer/Builder and shall render decisions so as to avoid unreasonable delay in the progress of the Designer/Builder’s Work.
    2. The District shall advise Designer/Builder 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 Designer/Builder’s documents. Failure to timely provide such notice shall not relieve Designer/Builder of its responsibility therefore, if any.
    3. Unless the District and the Designer/Builder agree that a hazardous materials consultant shall be a consultant of the Designer/Builder, 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 Designer/Builder 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 Designer/Builder. If the hazardous materials consultant is furnished by the District and not a consultant of the Designer/Builder, the specifications shall include a note to the effect that they are included in the Designer/Builder’s bid documents for the District’s convenience and have not been prepared or reviewed by the Designer/Builder. The note shall also direct questions about the specifications to its preparer.
    4. District personnel and/or its designated representatives shall coordinate with Designer/Builder as may be requested and desirable for the coordination or management of work related to the Project.
    5. The District shall promptly provide to the Designer/Builder all relevant information it knows it possesses regarding the Project that the Designer/Builder 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.
14. LIABILITY:
    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) Designer/Builder’s indemnity obligations as stated in the Contract Documents; (b) Designer/Builder’s warranty obligation as stated in the Contract Documents, and (c) Designer/Builder’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.
    2. District shall not be responsible for any damage to persons or property as a result of the Designer/Builder’s use, misuse or failure of any equipment used by Designer/Builder, or by its employees, even though such equipment be furnished or loaned to Designer/Builder by District.

#### PERFORMANCE GUARANTEE: Designer/Builder shall guarantee to District guaranteed energy output from each Solar PV System as indicated in the final approved design documents and associated Commissioning NTP. Guarantee shall be provided in the format depicted in Exhibit “B,” Performance Guarantee and its Attachment “A”: Avoided Energy Price, which is attached hereto and incorporated herein by this reference. The Performance Guarantee is only valid for the duration of the Commissioning services as indicated in Exhibit “A,” Scope of Work Article 7.

#### REFERENCE STANDARDS:

#### Designer/Builder must adhere to the general requirements contained in the Solar PV Design Guide, as well as the general and design requirements of the Solar Power Generation Systems Technical Specifications, which are located on the District’s website that will be available for you upon execution of this contract and incorporated by reference into this Contract.

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**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 Designer/Builder has not directly or indirectly induced or solicited any other entity to put in a false or sham proposal. The Designer/Builder has not directly or indirectly colluded, conspired, connived, or agreed with any other designer/builder or anyone else to put in a sham proposal, or to refrain from proposing. The Designer/Builder 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 Designer/Builder 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 Designer/Builder 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 Designer/Builder 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 Designer/Builder.

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 Designer/Builder:

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 Designer/Builder:

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:

* 1. By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.
  2. 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 Designer/Builder:

Signature:

Print Name:

Title:

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

(2) He/she is familiar with the facts herein certified,

(3) He/she is authorized and qualified to execute this certificate on behalf of Designer/Builder; and

(4) That the information in this Criminal Background Investigation / Fingerprinting Certification is true and correct.

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

\_\_\_\_\_ The Designer/Builder has complied with the fingerprinting requirements of Education Code section 45125.1 with respect to all Designer/Builder’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 Designer/Builder’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, Designer/Builder has installed or will install, prior to commencement of work, a physical barrier at the Project site, that will limit contact between Designer/Builder’s employees and District pupils at all times; and/or

\_\_\_\_\_ Pursuant to Education Code section 45125.2, Designer/Builder certifies that all employees will be under the continual supervision of, and monitored by, an employee of the Designer/Builder 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 Designer/Builder’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 Designer/Builder 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 Designer/Builder:

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. Designer/Builder 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:
   1. The dangers of drug abuse in the workplace.
   2. The person’s or organization’s policy of maintaining a drug-free workplace.
   3. The availability of drug counseling, rehabilitation, and employee-assistance programs.
   4. 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 Designer/Builder:

Signature:

Print Name:

Title:

#### ASBESTOS & OTHER HAZARDOUS MATERIALS CERTIFICATION

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

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

Asbestos and/or asbestos-containing material shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite. Any or all material containing greater than one-tenth of one percent (.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 Designer/Builder if the material is found to be New Hazardous Material.

All Work or materials found to be New Hazardous Material, or Work or material installed with “New Hazardous Material” containing equipment, will be immediately rejected and this Work will be removed at Designer/Builder’s expense at no additional cost to the District.

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

Date:

Proper Name of Designer/Builder:

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 Designer/Builder and its employees will be providing services for the District, and because the Designer/Builder’s work may disturb lead-containing building materials, **DESIGNER/BUILDER 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 Designer/Builder, 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 Designer/Builder 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 Designer/Builder. If failure to comply with these laws, rules, and regulations results in a site or worker contamination, the Designer/Builder 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 Designer/Builder 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 Designer/Builder 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 DESIGNER/BUILDER.

Date:

Proper Name of Designer/Builder:

Signature:

Print Name:

Title:

**ROOFING CONTRACT FINANCIAL INTEREST CERTIFICATION**

**(Public Contract Code § 3006)**

I, ,

Name Name of Designer/Builder

certify that I have not offered, given, or agreed to give, received, accepted, or agreed to accept, any gift, contribution, or any financial incentive whatsoever to or from any person in connection with the roof project contract or subcontract on the Project. As used in this certification, “person” means any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

Furthermore, I ,

Name Name of Designer/Builder

certify that I do not have, and throughout the duration of the Contract, I will not have, any financial relationship in connection with the performance of the Contract with any architect, engineer, roofing consultant, materials manufacturer, distributor, or vendor that is not disclosed below.

I, ,

Name Name of Designer/Builder

have the following financial relationships with an architect, engineer, roofing consultant, materials manufacturer, distributor, or vendor, or other person in connection with the following roof project contract:

Name of firm (“Firm”):

Mailing address:

Address of branch office used for this Project:

If subsidiary, name and address of parent company:

I certify that to the best of my knowledge, the contents of this disclosure are true, or are believed to be true.

Date:

Proper Name of Designer/Builder:

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.

Designer/Builder shall complete **ONLY ONE** of the following two paragraphs.

🞏 1. Designer/Builder’s Proposal is less than one million dollars ($1,000,000).

**OR**

🞏 2. Designer/Builder’s Proposal is one million dollars ($1,000,000) or more, but Designer/Builder 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 Designer/Builder 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. Designer/Builder’s Proposal is one million dollars ($1,000,000) or more, but the District has given prior written permission to Designer/Builder 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 Designer/Builder 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 Designer/Builder:

Signature:

Print Name:

Title:

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#### PERFORMANCE BOND

#### (100% of Total Value of Contract)

**(Note: Designer/Builder 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 Suretydoes 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:

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 withrespect 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.

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 Designer/Builder’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 Designer/Builder’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

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

#### PAYMENT BOND

**(100% of Total Value of Contract)**

**(Note: Designer/Builder 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.

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

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

### Exhibit “A”

**SCOPE OF WORK**

1. WORK DESCRIPTION:Designer/Builder shall design, permit, procure, construct, install, test, commission and start up a complete, interconnected and operational solar Solar PV System for the District*. Scope of Work items below are typical items that may be included in the individual Site-specific NTPs. Not all items below may be applicable at certain Sites. Final design, construction and commissioning scope and cost will be identified in Site-specific Designer/Builder proposals and subsequent NTPs.*
   1. Ground-mounted and canopy shade structures.
   2. Solar photovoltaic (PV modules) panel design and Inverters.
   3. Energy Storage System (if selected by District).
   4. All electrical switch gear interconnection to accept Solar PV System.
   5. All electrical connectors, cabling & components necessary for complete Solar PV Systems.
   6. All mounting systems, including roof, ground or solar PV canopy structure.
   7. All monitoring equipment necessary to remotely observe real-time and historical performance, and to provide reporting sufficient for Western Renewable Energy General Information System (“WREGIS”) Renewable Energy Certificates (RECs) registration.
   8. Any balance of Solar PV System items for a complete, interconnected and operational Solar PV System.
   9. Permanent fencing, gates and hardware for all ground mounted equipment.
   10. All lighting, security or other ancillary equipment described in the proposal and NTP documents.
   11. Access to water for maintenance (module cleaning) purposes described in the NTP documents.
   12. All equipment related to irrigation, drainage, wet utilities, and other equipment indicated in the NTP documents.
   13. Install a data acquisition system, which provides access by unlimited individuals to data via the internet, which shall include options for display of daily energy generation by site, and system-check features. This will include a system that will monitor and log the entire Solar PV System performance on a daily basis by School Site. This information can be reviewed on a daily basis demand by District personnel. This information can be used to establish an operational baseline operation. Following is a detailed description of the monitoring requirements:
       1. Electricity generation monitoring reports,
       2. Communication with a third party monitoring company to be provided via internet connection,
       3. Access to database-level, “unprocessed” data.
   14. Spare parts
2. WORK EXCLUSIONS
   1. As part of the basic Work pursuant to this Contract, Designer/Builder 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:
      1. Ground contamination or hazardous material analysis.
      2. Any asbestos and/or lead testing, design or abatement.
      3. Historical significance report.
      4. Re-zoning: it is assumed that the proposed locations are zoned for solar electric installations and no delays will occur due to zoning issues.
      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 solar installation and no delays will occur due to easement issues.
3. SITES
   1. At << >>, provide Solar PV Systems capable of first year energy production of approximately << >> kilowatt hours.
4. CEQA REQUIREMENTS
   1. CEQA compliance will be required at all sites.
   2. During the Design Phase, the Designer/Builder 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:
      1. Designer/Builder shall not remove any mature native tree.
      2. Compliance with the City of San Diego Noise Ordinance is required.
      3. Compliance with the Federal Migratory Bird Treaty Act is required.
      4. Compliance with UXO requirements as outlined in NOE’s/MND’s for particular sites is required.
   3. Prior to commencement of any Work at the School Site, Designer/Builder 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. Prior to commencement of any Work at the School Site, Designer/Builder 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 Designer/Builder’s Project Manager directly with any concerns.
5. DESIGN SERVICES
   1. Designer/Builder 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 solar PV system.
      1. Identification of all ADA compliance issues that are directly associated with the PV project. Designer/Builder shall be responsible for design of parking lot restriping, covered parking space ratios, signage, path of travel upgrades, and any other compliance issues to `the satisfaction of DSA.
      2. Designer/Builder shall identify the regulatory agencies that have jurisdiction over essential building and design elements and coordinate with and implement the requirements of the regulatory agencies or their authorized agents, including, without limitation, California Department of Education (CDE), the Office of Public School Construction (OPSC), the Department of General Services (DGS), DSA Fire/Life Safety, DSA Access Compliance Section, DSA Structural Safety, State and City Fire Marshals, County and City Health Inspectors and any regulatory office or agency that has authority for review and supervision of school district construction projects.
      3. Designer/Builder shall ensure that all Work shall comply with all requirements of the Utility.
   2. Areas identified for PV panel arrays and electrical interconnections shall be limited to the areas generally indicated on the site plans provided in the District’s Request for Proposal unless changes to locations are mutually agreed upon by the District andDesigner/Builder during the Schematic Design phase.
   3. The Designer/Builder shall perform Design Work and prepare all documents under this Contract with the assistance of Computer Aided Design Drafting (CADD) (e.g., AutoCAD) or Building Information Modeling (e.g. Revit) computer software. The Designer/Builder shall deliver to the District, for each design deliverable, by uploading documents to District’s website AERO containing Portable Document Format (PDF) copies of all deliverables, as well as all native-format files utilized in production of design documents. AutoCAD files shall be complete with all cross references and support files and compatible with AutoCAD 2010; BIM files shall be compatible with Revit 2013.
   4. For DSA approved documents, deliverables shall include (1) full size, three (3) half-size sets of all drawings, and two (2) sets of specifications and electronic copies as noted above.
   5. The Designer/Builder shall submit a complete specification packet as part of the 90% CD Pre- DSA Design submittal. The District’s website at [https://aero.sandi.net/StaffResources/standards/ SitePages/District%20Standards.aspx](https://aero.sandi.net/StaffResources/standards/%20SitePages/District%20Standards.aspx) provides guidelines in developing specification content, which must be followed by Designer/Builder. Specific to this Project are the Reference Standards identified in the following documents: Solar PV Design Guide and Solar Power Generation Systems Technical Specifications, which are located on the District’s website that will be available for you upon execution of this contract.
   6. The Designer/Builder shall submit a deliverable package for each Design Stage including, but not limited to:

| Submittal Requirement | 30% Schematic Design (SD) | 60% Design Development (DD) | 90% CD Pre-AHJ & Final CD Set |
| --- | --- | --- | --- |
| 1. Cover Sheet (TOC, project details, designers of record, Equip. Summary Table1, etc.) | X | X | X |
| 1. PV/BESS System Sizes & Production Estimates | X | X | X |
| 1. Site Plan (including array names, any BESS, interconnection details, conduit routes) | X | X | X |
| 1. Interconnection Equipment Assessment | X | X | X |
| 1. Electrical Site Plan Drawings, incl. Balance of System and any BESS | X | X | X |
| 1. Electrical Single Line Diagrams w/ Utility Meter #s (including any BESS & ex. PV) | X | X | X |
| 1. Design Memo | X | X | X |
| 1. Site Plan (including topographic survey, GPR/UG utilities, easements) |  | X | X |
| 1. Demolition Plans (tree/lights first submittal, comprehensive for final submittal) |  | X | X |
| 1. Trench/Conduit Routes, Vault Locations, UG/Vault Details |  | X | X |
| 1. DC String Wiring Plans (with corresponding inverter locations & IDs) |  | X | X |
| 1. Electrical Grounding Details |  | X | X |
| 1. Signage Details |  | X | X |
| 1. Monitoring System & Metering Details (Including for any BESS) |  | X | X |
| 1. Lighting Plan, As-Builts, Details and Photometric Plans |  | X | X |
| 1. Equipment Pads, Mounting Details and Elevations (Including for any BESS) |  | X | X |
| 1. All specifications related to the Scope of Work, including edits to District Spec Book |  | X | X |
| 1. For BESS/microgrid sites, control plans for the energy systems |  | Prelim | Detailed |
| 1. Construction Schedule |  | Prelim | Detailed |
| 1. Interconnection Plan |  |  | X |
| 1. Interconnection Application Revision & Any Utility Coordination/Correspondence |  |  | X |
| 1. Array Elevation Plan View |  |  | X |
| 1. Structural Drawings and Calculations |  |  | X |
| 1. Equipment Manufacturer’s Cut Sheets and Details (Including any BESS/Microgrid) |  |  | X |
| 1. Complete list of all Subcontractors, incl. specialty |  |  | X |
| 1. Site Specific Construction Management Plan |  |  | X |
| 1. Contractor’s Commissioning Protocol (Including any BESS, see Section III) |  |  | X |
| 1. For BESS Sites, BESS operating protocol to ensure SGIP PBI compliance |  |  | X |
| 1. Complete Design Package Sufficient for AHJ Review |  |  | X |

* 1. **Construction Management Plans**: Concurrent with the submittal of the 100% Pre-DSA Design, Designer/Builder shall provide individual Construction Management Plans for each project site for the construction of the Project in accordance with all applicable laws and policies. Construction Management Plans for each site should include, at a minimum:
     1. General project information: project directory, information on subcontractors, and communication protocols.
     2. Construction Site Plan which identifies construction fencing, laydown/staging areas, site access and gates, pedestrian and vehicular paths of travel, and building egress.
     3. Safety Plan, including provisions for trenching, shoring, and barricading.
     4. Work plan describing overall approach for materials deliveries, crane activities, major systems installations strategy, and coordination with District staff during specific construction tasks.
     5. Quality Assurance / Quality Control Plan.
     6. Plan outlining approach to comply with CEQA requirements.
     7. Final SWPPP / WPCP.
  2. Designer/Builder shall submit the design stage deliverable to the District for review no less than five (5) days prior to the design review meeting. Designer/Builder shall address all District comments in writing no more than five (5) days from the date of issuance, and shall incorporate additional detail as requested by the District at each successive stage of the design review.
  3. The District will formally approve, in writing, each phase of the design upon the District determination that the design is progressing at or beyond the percentage completion expected at stage. The Designer/Builder shall not enter a subsequent design phase without the approval of the District. Designer/Builder is solely responsible for obtaining approvals from DSA and All Other Authorities Having Jurisdiction (“AHJs”).
     1. Designer/Builder shall be held solely responsible for obtaining approvals from the District, including revising designs as necessary until they are given approval by the District and all other required entities and organizations. Solar PV System design shall comply with all applicable laws, statutes, ordinances, codes, rules, and regulations for construction projects of jurisdictions with authority over the District. Designer/Builder is responsible for providing designs approved by professionals of all necessary disciplines, each duly licensed in the State of California. Designer/Builder’s designs shall conform to the District’s determination of aesthetics, and the designs must not conflict with any current District operations or design guidelines.
  4. Designer/Builder shall be responsible for the professional quality and technical accuracy of all studies, reports, projections, master plans, designs, drawings, specifications and other services furnished by Designer/Builder under the Contract as well as coordination with all Master plans, studies, reports and other information provided by District. Designer/Builder shall, without additional compensation, correct or revise any errors or omissions in its studies, reports, projections, master plans, design, drawings, specifications and other services.
  5. Designer/Builder shall be responsible for Utility interconnection applications, including tariff change requests, processing costs and coordination necessary to achieve interconnect and permission to operate. Permitting fees are at District expense, per Contract Article 24.2.
  6. **DSA Approvals & Permits**
     1. Designer/Builder, its designers and sub-contractors shall provide documentation required for all approvals by DSA.
     2. Designer/Builder shall notify the District and the District’s Project Inspector(s) of required inspections and shall provide reasonable access and accommodations for inspections.
     3. Designer/Builder shall be responsible for obtaining all DSA and other regulatory permits and approvals prior to issuance of a Construction NTP, in coordination with the District and at the District’s expense, and shall make copies available to the District of all permit applications and approvals. Designer/Builder shall utilize the San Diego DSA office for this project. District representative will attend the DSA Over-The-Counter “(OTC”) submittal appointment. Designer/Builder shall coordinate with District and District’s representative regarding date of the OTC submittal and ensure District representative can attend. If it is determined that a full DSA submittal and review will be required in lieu of an OTC review, the Designer/Builder will be responsible for all coordination and costs associated with this permit approval process.

1. CONSTRUCTION SERVICES
   1. **Description**
      1. Designer/Builder 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 and operational finished product. Any reduction in scope shall first be approved by the District and a corresponding credit shall be provided.
      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 Designer/Builder at no additional cost to the District. Errors and omissions do not include the following items:
         1. Unforeseeable Conditions
         2. District-requested changes to the project outside original NTP, District Standards, and code requirements
         3. Additional requirements mandated by Authorities Having Jurisdiction or Utilities agencies after issuance of the Construction NTP which could not have been anticipated.
   2. **General Criteria**: Designer/Builder must comply with the following requirements, which are considered a high priority by the District:
      1. All Project construction shall be completed by the dates specified in the schedule to be provided in the NTP.
      2. The Designer/Builder shall coordinate closely with the District to ensure all construction activities minimize impact on operations and events at the sites.
      3. Access during regular weekday working hours: On all days when school is in session, the District may, at its sole discretion and at no additional cost to the District, require a regular work day from 2:00 pm to 10:00 pm. Work hours during session breaks including weekends and holidays are between 7:00 am and 7:00 pm.
      4. All active work areas must be fenced off from start of work at that area until substantial completion or until area is safe for entry, whichever is longer.
      5. The Designer/Builder shall be responsible for specifying and conducting tree removal and/or trimming according to approved Construction Documents as referenced in the construction NTP.
      6. Designer/Builder is responsible for identification and removal of light poles according to approved Construction Documents as referenced in the construction NTP.
      7. Designer/Builder is responsible for ensuring ADA compliance for all work, including covered parking spaces.
      8. Storm Water Pollution Prevention Plan (“SWPPP”). Designer/Builder is responsible for implementation and monitoring of SWPPP or WPCP on all sites. Designer/Builder is responsible for all liabilities and penalties related to SWPPP and WPCP on all sites.
      9. Designer/Builder is to meet applicable codes with regard to dust during construction and seek to minimize dust migration from the construction site.
      10. Noise, Drugs Tobacco, and Alcohol - Designer/Builder shall take all steps necessary to insure that employees of Designer/Builder or any of its subcontractors’ employees do not use, consume, or work under the influence of any alcohol, tobacco or illegal drugs while on the Project. Designer/Builder shall further prevent any of its employees or its subcontractor employees from playing any recorded music devices or radios or wearing any radio headphone devices for entertainment while working on the project. Likewise, Designer/Builder shall prevent its employees or subcontractor’s employees from bringing any animal onto the Project. Designer/Builders shall not violate any written school policies.
      11. Designer/Builder is responsible for repairing and/or replacing all landscape and irrigation according to approved Construction Documents as referenced in the construction NTP.
   3. **Protection of Existing Structures and Utilities**
      * 1. The School Sites have above-grade and below-grade structures, utility lines, and other installations that are known or believed to exist in the area of the Work. Designer/Builder shall locate these existing installations before proceeding with excavation and other operations that could damage same; maintain them in service, where appropriate; and repair damage to them caused by the performance of the Work. Should damage occur to these existing installations, the costs of repair shall be at the Designer/Builder’s expense and made to the District’s reasonable satisfaction.
        2. Designer/Builder shall be alert to the possibility of the existence of additional structures and utilities. If Designer/Builder encounters additional structures and utilities, Designer/Builder will immediately report to the District for disposition of same as indicated in the Contract Documents.
   4. **Site Access**
      1. No new access roads are planned; however, should the need arise, District and Designer/Builder shall agree upon reasonable accommodations and compensation. Designer/Builder shall return existing surfaces to a preconstruction condition.
      2. District and Designer/Builder shall provide 24/7 unrestricted access to existing electric utility meter and the utility lockable disconnect location.
      3. District to permit using on site water and power as available for construction at no charge to Designer/Builder, with the exception of fire hydrants.
      4. District to permit use of a temporary diesel generator onsite during construction activities, subject to local ordinances.
      5. The Designer/Builder is responsible for maintaining fire lane access, building egress and clearances at all easements at all times.
      6. The Designer/Builder shall coordinate with and provide access and support to all inspectors, District staff or consultants during testing and inspections of all systems.
   5. **Trench Shoring**: If this Contract is in excess of Twenty-Five Thousand Dollars ($25,000) and is for the excavation of any trench deeper than five (5) feet, Designer/Builder must submit and obtain District acceptance, in advance of excavation, of a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If the plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer.
      1. Excavations Over Four Feet: If this Contract includes excavations over four (4) feet, Designer/Builder shall promptly, and before the following conditions are disturbed, notify the District, in writing, of any: (1) Material that the Designer/Builder believes may be hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; (2) Subsurface or latent physical conditions at the site differing from those indicated; or (3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract. The District shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Designer/Builder’s cost of, and/or the time required for, performance of any part of the Work shall issue a change order under the procedures described in the Contract. In the event that a dispute arises between the District and the Designer/Builder whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Designer/Builder’s cost of, or time required for, performance of any part of the Work, the Designer/Builder shall not be excused from any scheduled completion date provided for by the contract, but shall proceed with all Work to be performed under the Contract. The Designer/Builder shall retain any and all rights provided either by Contract or by law which pertain to the resolution of disputes and protests between the Parties.
         1. Designer/Builder is responsible for patching and repairing all building penetrations performed by the Designer/Builder during installation. Conduit installed on the exterior of District structures shall be painted to match.
         2. Designer/Builder is responsible for all generated trash. District owned dumpsters and trash bins may not be used for storage or disposal.
   6. **Lead-Based Paint**: Pursuant to the Lead-Safe Schools Protection Act (Education Code Section 32240, et seq.) and other applicable law, no lead-based paint, lead plumbing and solders, or other potential sources of lead contamination shall be utilized on this Project, and only trained and state-certified contractors, inspectors and workers shall undertake any action to abate existing risk factors for lead. Designer/Builder must execute the Lead-Based Paint Certification, if applicable.
   7. **Clean Up**: Debris shall be removed from the School Sites by the Designer/Builder. The School Site shall be in order at all times when work is not actually being performed and shall be maintained in a reasonably clean condition.
   8. Secure storage facility at School Site for all Solar PV System equipment and supplies, including any required security.
   9. Legal toilet facilities at School Sites and other temporary facilities.
   10. Return disturbed areas to pre-construction conditions including repair of all pavement/concrete,

restriping, landscape restoration, irrigation restoration, and removal of USA markings.

* 1. Installation of District approved project information signage and removal at completion of project.

1. CLOSEOUT SERVICES
   1. Designer/Builder shall provide all of the following Closeout Work and Deliverables to complete the Work for each School Site. In addition, Designer/Builder must adhere to the requirements identified in the Solar Power Generation Systems Technical Specifications, which are located on the District’s website that will be available for you upon execution of this contract and incorporated by reference into this Contract.
      1. Final PV Solar PV System “as-built” Construction Documents according to approved Construction Documents as referenced in the Construction NTP, clearly conformed with all changes during construction.
      2. Provision of comprehensive Operations & Maintenance Manuals for each installed Solar PV System, including all applicable warranties and Performance Guarantees.
      3. Conduct a comprehensive onsite training for District staff, with orientation to the Operations & Maintenance Manuals, systems and safety procedures. Training will address Solar PV System operations, safety and maintenance consistent with the Solar PV System Warranty, Performance Guarantee and all operating and maintenance requirements.
      4. Project closeout, inclusive of obtaining DSA closed and certified status for all project associated DSA applications.
   2. Project Commissioning
      1. One or more commissioning agents will be retained by the District to monitor commissioning activities.
      2. Commissioning term shall be two (2) years commencing with COD date and shall run concurrently with the Performance Guarantee contract. The schedule for commissioning activities shall be determined at a commissioning planning and coordination meeting with Designer/Builder, District staff and District’s designated commissioning agent(s) prior to the commencement of construction.
      3. Designer/Builder shall include all associated tasks and documentation related to successfully commissioning of the Solar PV System, including, but not limited to, the following:
      4. Assisting any District staff, commissioning agents, or inspectors with their process and providing documentation as requested.
      5. Verify that the installation is complete, and done according to the contract documents, manufacturer’s recommendations and industry accepted minimum standards
      6. Verify that the installation is safe.
      7. Verify that all components of the installation are robust and permanent.
      8. Document as-built conditions.
      9. Verify and document performance of equipment and Solar PV System.
      10. Verify and document proper Solar PV System operation and maintenance.
      11. Establish and document performance benchmarks.
      12. Train the Solar PV System owner on Solar PV System operation and maintenance.
      13. Subsequent to COD, Designer/Builder shall be responsible for all activities required to successfully monitor, report, inspect, maintain, repair, wash, and adjust Solar PV System as required to demonstrate Solar PV System’s capability to meet Performance Guarantee output levels for the duration of the two (2) year commissioning term as described herein.

### Exhibit “B”

**PERFORMANCE GUARANTEE**

On the terms and conditions set forth in this Agreement, Customer elects to receive, and Provider agrees to provide, Performance Guarantee and Parameters and Energy Output Data for School Sites (“PeGu”) at the following level:

1. Defined Terms.
   1. **Actual Generation** means, for each Guarantee Year during the Term, the Solar PV System’s alternating current or “AC” electricity production in kilowatt-hours (“kWh”) as measured pursuant to the provisions and formulas herein under “Guaranteed Payment.”
   2. **Avoided Energy Price per kWh** means the amount that the Customer will be paid for each kilowatt-hour as set out in **Attachment A**: Avoided Energy Price as incorporated into the Commissioning NTP for each site.
   3. **Commercial Operations Date (COD):**COD milestone has been achieved and according to Table 3 in Specification Section 01 33 01, Design-Build Process and Submittals
   4. **Customer Responsibilities** shall have the meaning set forth herein.
   5. **Data Acquisition System or DAS** means a web-based system that displays historical meteorological and production data over an Internet connection and consists of hardware located on-site and software housed on a dedicated DAS server. The DAS measures and logs, at a minimum, the following parameters on a 15-minute average basis at the Sites: actual AC electricity production of the Solar PV System (in kWh) and solar irradiance (in W/m2).
   6. **Expected Energy** means, for the Solar PV System in any specified Guarantee Year, the number of kilowatt-hours to be produced as documented in the Construction NTP for that site.
   7. **Force Majeure** means the same as that term is defined in the Contract.
   8. **Guaranteed Level** means ninety-five percent (95%) of the Expected Energy for a Guarantee Year for specified Solar PV System(s).
   9. **Guarantee Year** means each successive 12-month period during the Term commencing on the first day of the Term.
   10. **Kilowatt-hour or kWh** means electrical energy expressed in kilowatt-hours and recorded from the kWh interval records of the Revenue Meter.
   11. **Approved Performance Modeling Software** means the software program in the version utilized by Provider to predict the amount of energy that a Solar PV System will produce in an average year which currently has the following characteristics: (1) all photovoltaic characteristics are modeled, (2) all ancillary array losses are taken into account and (3)  simulations use either measured data or typical meteorological year files.

|  |  |
| --- | --- |
| Approved Performance Modeling Software: | PVSyst  PVSim  Helioscope |

* 1. **Revenue Meter** means the principal meter of a given Solar PV System from which energy output is read and documented.
  2. **SEMMY** or Simulated Energy in a Measured Meteorological Year, means, with respect to any Guarantee Year, Year 1 AC Energy output of the Solar PV System simulated by the Approved Performance Modeling Software using measured average hourly irradiance, wind speed, and air temperature as recorded by the Data Acquisition System, holding all other inputs equal to those used in calculating SETMY.
  3. **SETMY** or Simulated Energy for a Typical Meteorological Year, means the Year 1 AC Energy output of the Solar PV System simulated by Approved Performance Modeling Software using average hourly irradiance, wind speed, and air temperature data contained within the Weather File.
  4. **Site** means the real estate where the Solar PV System and any support structure are located including any building and building roof that touch or support the Solar PV System.
  5. **Solar PV System** means the same as that term is defined in the Contract.
  6. **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 Solar PV System.
  7. **Term**: The Performance Guarantee Term is two years, commencing with the COD date for the specific Site.
  8. **True-up Period** means the two (2) year period of the Term commencing on the first day of the Term.
  9. **Weather Adjustment** means the method for reconciling expected kWh during a typical weather year with the actual meteorological conditions measured on-site, pursuant to the provisions and formulas herein under “Guaranteed Output Calculations.”
  10. **Weather File** means the following typical meteorological year data set, which contains average hourly values of measured solar radiation, temperature, and wind speed: NREL TMY3.

1. Guaranteed Output Calculations.
   1. For each Guarantee Year during the Term, within 30 Business Days after the end of such Guarantee Year, Provider shall perform the following calculation, and shall deliver to Customer a copy of the data and information supporting Provider’s calculation:

**Annual Deficit = (Expected Energy x Guarantee Level) x Weather Adjustment) - Actual Generation**

* 1. Where “Weather Adjustment” means the following ratio:
  2. For each Guarantee Year, Provider shall calculate the Annual Deficit.

1. Guarantee Payment.
   1. For each Site, at the end of the True-up Period:
      1. If the ∑ Annual Deficits > 0, then Provider shall pay to Customer an amount equal to the product of (i) the Annual Deficit and (ii) the Avoided Energy Price per kWh for each Guarantee Year, with each product then aggregated for the Guarantee Years comprising such True-Up Period (a “Guarantee Payment”);
      2. Provider shall provide Customer with a report detailing the calculations set forth in the “Guaranteed Output Calculations” and the “Guarantee Payment” sections incorporated into the NTP for each Site. This report shall contain sufficient information for the Customer to be able to determine the accuracy of Provider’s conclusion as the amount, if any, of Guarantee Payment.
      3. All Guarantee Payments, if due, shall be paid to Customer within ninety (90) days of the end of the True-Up Period for each Site.
2. Actual Generation Measurement. The process for measuring Actual Generation for each Guarantee Year shall be:
   1. **Initial Output Data Collection**. During the Term, Provider will collect energy output data using the Data Acquisition System. For each Guarantee Year, Provider will sum the daily kWh output provided by the DAS to calculate the Actual Generation for such Guarantee Year.
   2. **Equipment Calibration and Replacement**. Provider may request to have the meteorological equipment independently calibrated or replaced at its own expense every twelve (12) to twenty-four (24) months. Provider shall notify the other Party of the scheduled calibration date and time no less than 30 days prior, and shall provide the Customer written proof of calibration or replacement.
   3. **Contingency for Equipment Failure**. In the event of hardware, communication, or other failure affecting the DAS, Provider will make commercially reasonable efforts to resolve the failure in a timely manner. In the event that data is lost, Actual Generation shall be adjusted to compensate for such lost data, which shall be Provider’s sole liability, and Customer’s exclusive remedy, for any Guaranteed Output arising from any equipment failure or lost data relating to the DAS:
      1. In lieu of lost meteorological data, Provider will utilize such data obtained from a nearby meteorological station that Provider monitors and selects for such purpose.
      2. In lieu of lost electricity data, Provider will utilize the cumulative data from Solar PV System meter readings to calculate the electricity generated during the missing interval. In the event that data from the Solar PV System meter is inaccurate or missing, Provider will simulate electricity production during the missing interval utilizing measured meteorological data and Approved Performance Modeling Software. The simulated electricity production during the missing interval will be added to the Actual Generation for the subject Guarantee Year.
3. Guarantee
   1. Provider guarantees to Customer that the Actual Generation of the Solar PV System during the True-Up Period, subject to the limitations, terms and conditions stated in the Master Contract, into which this Performance Guarantee Standard Terms (“PeGu”) is incorporated, shall be not less than the product of the Guaranteed Level and the Expected Energy, as adjusted for measured metrological conditions set forth in the “Guaranteed Output Calculations” as incorporated into the NTP for each Site.
4. Customer Responsibilities.
   1. Throughout the Term, and as conditions to the obligations of Provider hereunder, Customer shall:
      1. Upon receiving a minimum of 24 hours’ advance notice from Provider, Customer shall allow Provider to perform repairs in a timely fashion as may be required from time to time;
      2. Not be in breach of any Customer obligations under the Solar Contract;
      3. Grant reasonable access to the Solar PV System by Provider personnel and representatives;
      4. Insure that Primary and Secondary Contacts have the capability to resolve any failures of DAS communications, and
      5. Not modify, alter, damage, service, shade, or repair, without Provider’s prior written approval, any part of the Solar PV System, the supporting structure for the Solar PV System (including building roof, if applicable), or the associated wiring.
5. Customer’s Failure to Uphold Responsibilities.
   1. Provider’s obligations under this PeGu shall be suspended for the duration of Customer’s failure to satisfy one or more of Customer Responsibilities as indicated herein. Provider shall promptly notify Customer of any such failures (“Out of Compliance Letter”), but in no case later than seventy-two (72) hours after notice of any alleged failure of Customer to satisfy one or more of Customer Responsibilities. Upon Customer’s cure of all failures described in an Out of Compliance Letter, Provider will notify Customer (“In Compliance Letter”) that Customer is complying with Customer Responsibilities. For any period between the issuance of an Out of Compliance Letter and of an In Compliance Letter (a “Noncompliance Period”), Provider shall have no liability under this PeGu. Each month in which there is a Noncompliance Period and any Actual Generation in such month(s) shall be disregarded in the calculation of Annual Deficits or Annual Surpluses as indicated herein and the Expected kWh for any Guarantee Year in which there is a Noncompliance Period shall be reduced by an amount proportionate to the period so disregarded and to the actual or reasonably estimated meteorological data during such period.
   2. Any dispute as to whether Customer in fact has failed to satisfy one or more of Customer Responsibilities shall be resolved in accordance with the resolution procedures set forth in the Master Contract.
6. Adjustment of Expected Energy.
   1. If, and to the extent, any of the following events results in a change in the production of electricity by the Solar PV System, Expected Energy shall be adjusted correlatively for the period of such change:
      1. There is structural failure in a building supporting the Solar PV System;
      2. There is any failure of the Solar PV System to perform caused by legislative, administrative or executive action, regulation, order or requisition of any federal, state or local government, local utility or public utilities commission;
      3. There is an event of Force Majeure; or
      4. There is any change in usage of or structures on any of the Sites, or buildings at or near any of the Sites, which causes additional shading, soiling, or otherwise reduced performance of the Solar PV System, unless Provider provides prior written consent to the change.
7. Notification of Changes to Expected Energy.

9.1 If either Party determines that any changes to Expected Energy are required based on an event or events described herein, then that Party shall notify the other Party in writing of the basis for its determination and shall either provide revised definitions of Expected Energy in Attachments. The Parties shall negotiate in good faith whether to revise the Expected Energy and, if mutually agreed to by the Parties, the Parties shall revise this PeGu pursuant to the terms and conditions set forth in this Contract.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

***Attachment A***

***AVOIDED ENERGY PRICE***

Site: << >>

TMY Station used for Performance Model: << >>

|  |  |  |
| --- | --- | --- |
| **Guarantee Year** | **Utility Avoided**  **Cost** | **Avoided Energy Price**  **($/kWh)** |
| 1 | << >> | << >> |
| 2 | << >> | << >> |

Site: << >>

TMY Station used for Performance Model: << >>

|  |  |  |
| --- | --- | --- |
| **Guarantee Year** | **Utility Avoided**  **Cost** | **Avoided Energy Price**  **($/kWh)** |
| 1 | << >> | << >> |
| 2 | << >> | << >> |

Site: << >>

TMY Station used for Performance Model: << >>

|  |  |  |
| --- | --- | --- |
| **Guarantee Year** | **Utility Avoided**  **Cost** | **Avoided Energy Price**  **($/kWh)** |
| 1 | << >> | << >> |
| 2 | << >> | << >> |

Site: << >>

TMY Station used for Performance Model: << >>

|  |  |  |
| --- | --- | --- |
| **Guarantee Year** | **Utility Avoided**  **Cost** | **Avoided Energy Price**  **($/kWh)** |
| 1 | << >> | << >> |
| 2 | << >> | << >> |

Site: << >>

TMY Station used for Performance Model: << >>

|  |  |  |
| --- | --- | --- |
| **Guarantee Year** | **Utility Avoided**  **Cost** | **Avoided Energy Price**  **($/kWh)** |
| 1 | << >> | << >> |
| 2 | << >> | << >> |

[add more tables as needed]

**Exhibit “C”**

**PROJECT STABILIZATION AGREEMENT**

**DESIGNER/BUILDER 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 Designer/Builder)

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

(Address)

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

(City, State, Zip Code)

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

(Telephone/Fax)

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

(Email Address)

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

(Name(s) of Designer/Builder’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 Solar Power Generation 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 “D”**

**WARRANTIES**

**The following warranties are the standard warranties from the manufacturers of components of the Solar PV System. Designer/Builder is assigning these warranties to the District and these warranties shall not, in any way, reduce or limit the Performance Guarantee and/or any additional warranty terms or durations indicated in the Contract.**

**Photovoltaic Module Warranty**

**25-year**

## **Inverter Warranty**

## **10-year**

**Monitoring and Data Acquisition System (DAS)**

**5-year**

**Canopy and Racking System Warranties**

**25-Years**

**ALL WARRANTIES ATTACHED FOLLOWING EXHIBIT “E” HEREIN**.

**Exhibit “E”**

**Commissioning Services**

On the terms and conditions set forth in this Agreement, Customer elects to receive, and Provider agrees to provide, Commissioning Services at the level indicated below:

Initial Commissioning, Performance Testing and Start-up Services identified in the Specifications.

Extended Commissioning Services as follows:

1. Customer Service Support:
   1. Technical support -- response by next business day
   2. Support technicians specialize in remote troubleshooting and providing step-by-step diagnosis instructions
2. Performance Monitoring Website:
   1. Customer web site updated every 15 minutes for monitoring operational and environmental performance of the Solar PV System
   2. All site data can be downloaded to Customer’s computer in Microsoft Excel format
   3. Customer will be provided with login credentials for use during the term of this Agreement
3. Monthly Performance Reports:
   1. Actual vs. expected performance of the Solar PV System for the period with a comparison of performance to a typical weather year
   2. Environmental benefits will be estimated and included
   3. Commissioning records will be provided to Customer upon request
4. Daily Performance Monitoring and Notification:
   1. Continuous monitoring of Customer’s Solar PV System via experienced solar monitoring technicians
   2. Operational status (inverter and system on/off) and performance alerts (actual vs. expected performance) are continuously monitored by Provider’s system computers and monitoring technicians automatically receive alerts of system anomalies
   3. Monitoring technicians identify and respond to system alerts including contacting Customer’s system administrator by the next business day.
5. Preventative Maintenance, Inspections & Testing (performed annually):
   1. Array
      1. Inspect PV modules for damage, discoloration or de-lamination
      2. Solar PV System testing including string-level open-circuit voltage and DC operating amperage tests
      3. Inspect mounting system for damage or corrosion
   2. Minimum one Module Cleaning between May and September. If performing multiple washings, provide at least 1.5 months between washings,
      1. Surface washing of all modules; water to be provided by Customer
      2. Pressure washer settings not to exceed 1,500 PSI
      3. Before and after photographs will be provided
   3. IV-Curve Tracing
      1. IV-curve tracing of all strings
      2. Comparison to commissioning baseline and prior year results
      3. Recommendations for further module analysis or power warranty claims
   4. Module Thermography
      1. IR camera analysis of all PV modules
      2. Identification of potential hot spots
      3. Recommendations for warranty claims and other corrective actions
   5. Data Acquisition System (DAS)
      1. Visual inspection for damage or corrosion
      2. Maintenance of DAS hardware as required
   6. Sensor Calibration
      1. Field comparison of pyranometers and reference cells to calibrated sensor
      2. Adjust field sensor to within ±3% of calibrated sensor and record changed parameters
      3. Provider may replace pyranometers in lieu of field calibration
   7. Transformer Preventive Maintenance (provided for all systems installed under Design/Build Contract)
      1. Maintain records of load current and voltage
      2. Record liquid level and temperature
      3. Test ground connections
      4. Inspect surge arresters (if present)
      5. External Inspection
      6. Cabinet Interior Inspection
   8. Switchgear Preventive Maintenance (provided for all systems installed under Design/Build Contract)
      1. Electrical terminal thermography
      2. Visual inspection
      3. Vacuum cleaning of cabinet interior
   9. Trackers
      1. Inspect tracker components for damage or corrosion
      2. Inspect tracker controllers for damage
      3. Lubricate tracker motors and jackscrews
      4. Verify proper operation and alignment
   10. Inverter
       1. Torque checks on critical electrical terminations
       2. Clean all heat sinks, filters and fans
       3. Inspect and inverter pad and container
       4. All other preventive maintenance required by OEM warranty
       5. Inverter repair or replacement
   11. Electrical BOS
       1. Inspect ground braids, electrodes and conductors for damage
       2. Perform thermo-graphic analysis of combiner boxes, inverters, transformers, and conductor connections to buses, breakers or disconnects
   12. Meteorological Station
       1. Inspect weather measurement equipment for damage
       2. Clean pyranometers and reference cells
   13. Site Conditions
       1. Inspect drainage conditions
       2. Inspect vegetation for array shading or fire hazards
       3. Inspect roofs with solar PV for array shading or fire hazards
       4. Inspect safety conditions and proper signage
   14. Commissioning Reporting
       1. Record results of all inspections
       2. Take photographs of any damage or defects identified
       3. Inform Owner and warranty providers of all deficiencies identified
6. Annual Performance Review and Report:
   1. Review of the following Solar PV System performance data with Provider’s performance engineer and proposal of a recommended action plan where applicable:
      1. Expected vs. Actual Solar PV System production (kWh)
      2. Solar PV System Availability
      3. Recoverable Degradation
      4. Performance Index
      5. Commissioning Records
      6. Safety, Accidents and Environmental Reporting
      7. Proposal of Recommended Actions
   2. Provider shall submit Annual Performance Review and Report to Owner within sixty (60) days of the anniversary of each Commercial Operation Date
7. Corrective Maintenance includes:
   1. On-site troubleshooting & diagnostics of all Solar PV System components
   2. Inverter and Data Acquisition System resets:
      1. Unlimited remote resets (if capability enabled and connection available)
      2. Unlimited on-site resets for systems under warranty
      3. Up to two on-site resets per year for systems out of warranty
   3. Processing of warranty claims on behalf of Customer and verification of replaced equipment
   4. Ongoing warranty support and representation of Customer’s interest with Solar PV System equipment manufacturers

The following non-exhaustive list of services is not included in the Extended Commissioning Services:

1. Spare parts and materials
2. Maintenance of medium voltage equipment such as transformers, switchgear and utility metering not installed under Provider’s Design Build Contract not installed as part of the project
3. Engineering service
4. Security services
5. Fencing (except repairs to fencing installed as part of the Project)
6. Lighting fixtures and bulb replacement except as covered under warranty
7. Third-party asset management tools and licenses outside of the five-year DAS subscription required by the Contract