

**CONTRACT FOR DESIGN AND CONSTRUCTION OF
ENERGY CONSERVATION MEASURES– LUMP SUM (GOV. CODE, § 4217, ET. SEQ.)
(MULTI-SITE ENERGY IMPROVEMENT PROJECT)**

This CONTRACT FOR DESIGN AND CONSTRUCTION (“**Contract**”) is entered into and effective on _____, 2023 (“**Effective Date**”), by and between **City of Coachella**, a California municipal corporation (“**City**”), and **Alliance Building Solutions, Inc.**, a corporation organized under the laws of the State of California (“**Designer/Builder**”). City and Designer/Builder may be referred to herein individually as a “**Party**” or collectively as the “**Parties**”.

RECITALS

WHEREAS, City owns and/or operates certain public facilities specifically described in **Exhibit A** attached hereto and incorporated herein by reference (each may be referred to individually as a “**Site**” or collectively as the “**Sites**”), and City wants to reduce the Sites’ energy costs and improve the Sites’ energy quality/reliability by installing energy conservation measures and/or energy facilities at the Sites as further defined and described in **Exhibit A** (collectively, “**Energy Improvements(s)**”); and

WHEREAS, the scope of the Project is to design, engineer, procure, install, construct, interconnect, commission, and operate and maintain the Energy Improvements at multiple City Sites titled “**Multi-Site Energy Improvement Project**,” as more particularly described in the Contract Documents (as defined below) (“**Project**”); and

WHEREAS, Government Code section 4217.12, subdivision (a) provides, in relevant part, that City may enter into an energy service contract on terms that the City Council (“**Council**”) determines are in the best interests of City, if at a regularly scheduled public hearing, notice of which is given at least two (2) weeks in advance, and that the Council determines that the anticipated cost to City for electrical energy or conservation services provided by the energy conservation facility under the proposed contract will be less than the anticipated marginal cost to City for electrical energy that would have been consumed by City in the absence of those purchases under the proposed contract; and

WHEREAS, following a duly noticed public hearing required by Government Code section 4217.12, subdivision (a) the Council found that the anticipated cost to City for electrical energy or conservation services provided by the Energy Improvements under this Contract will be less than the anticipated marginal cost to City for electrical energy that would have been consumed by City in the absence of those Energy Improvements; and

WHEREAS, Designer/Builder represents that it is able to provide appropriately licensed contracting and engineering services to design and construct the Project based on detailed design and construction documents prepared by Designer/Builder, as approved by authorities having jurisdiction over the Project (“**AHJ(s)**”) and City; and

WHEREAS, the Council authorized City to enter into a design-build contract for the Energy Improvements and City desires that Designer/Builder design and construct, and Designer/Builder desires to design and construct, the Project consistent with the requirements of the Contract Documents (“**Services**”) for the Contract Price (as defined below) and Contract Time (as defined below), and authorized City to finance the Project under a separate agreement with Alliance Funding Solutions, Inc. (“**AFS**”), which is attached hereto as **Exhibit H** and incorporated herein by reference (“**Financing Agreement**”) in order to fund the progress payments on the terms set forth in this Contract; and

WHEREAS, Designer/Builder certifies and warrants that it has the experience, expertise, capability, training, and any certification(s) and/or license(s) necessary to design and construct the Project for the Contract Price (as defined below) and within the Contract Time (as defined below), and that, if it is not sufficiently licensed to design any portion of the Services as required by applicable law, Designer/Builder shall directly hire a consultant with sufficient licensure to design that portion of the Services.

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

AGREEMENT

1. **Incorporation of Recitals and Exhibits.** The above recitals and all exhibits attached to the Contract are incorporated herein by reference as though fully set forth herein.

2. **Defined Terms.** This Contract shall be read in conjunction with all provisions of the Contract Documents (as defined below). Any capitalized term, title or phrase used in this Contract shall have the meaning provided in the Contract Documents, unless a specific meaning is contained in this Contract.
3. **Contract Documents**
 - 3.1. **Intent.** The Contract Documents (as defined below) are complementary, intended to be read cooperatively, and what is required by one shall be as binding as if required by all. Designer/Builder shall be required to perform any work to the extent consistent with, and reasonably inferable from, the Contract Documents.
 - 3.2. **Contract Documents and Interpretation (Order of Precedence).** The Contract includes only the documents listed below, which are incorporated herein by this reference (“**Contract Documents**”). By signing this Contract, Designer/Builder agrees to comply with all Contract Documents. The Contract Documents are listed below in order of precedence and if there is a conflict between terms of the Contract Documents, that order of precedence shall apply:
 - 3.2.1. Authorized changes to the Contract, the most recent taking priority, including, without limitation, amendments and Change Orders (as defined in the Terms and Conditions);
 - 3.2.2. Approved Construction Documents for each Energy Improvement as indicated in an executed Notice of Approval in form attached hereto as **Exhibit F** (“NOA”), in the following order:
 - 3.2.2.1. Division 1 Specifications
 - 3.2.2.2. Technical Specifications
 - 3.2.2.3. Drawings
 - 3.2.3. Contract
 - 3.2.4. **Exhibit H** (Financing Agreement)
 - 3.2.5. Terms and Conditions to Contract (“**Terms and Conditions**”)
 - 3.2.6. **Exhibit B** (Design Services), except for the exclusions, which shall prevail over all other Contract Documents, except authorized changes, as set forth in **Exhibit B**
 - 3.2.7. **Exhibit A** (Description of Project & Scope of Work)
 - 3.2.8. **Exhibit G** (Measurement & Verification Services Provisions)
 - 3.2.9. **Exhibit K** (EV Charging Support Services Provisions)
 - 3.2.10. All remaining Contract Documents (in no particular order)
 - 3.2.10.1. **Exhibit C** (Project Schedule)
 - 3.2.10.2. **Exhibit D** (Schedule of Values)
 - 3.2.10.3. **Exhibit E** (City’s Rules and Regulations)
 - 3.2.10.4. Noncollusion Declaration
 - 3.2.10.5. Prevailing Wage Certification
 - 3.2.10.6. Workers’ Compensation Certification
 - 3.2.10.7. Criminal Background Investigation Certification
 - 3.2.10.8. Drug-Free Workplace / Tobacco-Free Environment Certification
 - 3.2.10.9. Asbestos & Other Hazardous Materials Certification
 - 3.2.10.10. Lead-Product(s) Certification
 - 3.2.10.11. Conflict of Interest Certification
 - 3.2.10.12. Iran Contracting Act Certification
 - 3.2.10.13. Performance Bond (City’s Form)

3.2.10.14. Payment Bond (City's Form)

3.2.10.15. Insurance Certificates and Endorsements

3.3. **Technical Specifications and Drawings.** With respect to the Technical Specifications and Drawings, the most recent, City-accepted shall take priority; provided, however, that the Construction Documents shall take priority over all other Drawings and Specifications.

3.4. **No Order Indicated / Conflict.** Where no order of precedence is stated, or in cases of conflict, the greater quantity and/or higher standard of workmanship shall apply unless City expressly accepts in writing a lesser quantity or lower quality of workmanship and the Contract Price is adjusted accordingly. The decision of City in the matter shall be final subject to Contractor's right to pursue a claim pursuant to Section 40 of the Terms and Conditions to Contract.

3.5. **Interpretive Provisions.**

3.5.1. Unless otherwise stated in the Contract Documents, technical words and abbreviations are used in accordance with commonly understood design/engineering and construction industry meanings. Non-technical words and abbreviations are used in accordance with their commonly understood meanings.

3.5.2. The Contract Documents may omit modifying words such as "all" and "any" and articles such as "the" and "an" but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. The use of the word "including" when following any general statement, shall not be construed to limit such statement to specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as "without limitation", "but not limited to", or words of similar import) is used, but shall instead be read as including non-limiting language and be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of that general statement.

3.5.3. The terms "shall", "will", or "must" are mandatory and "may" is permissive.

3.5.4. Whenever the context so requires, the use of the singular number shall be deemed to include the plural and vice versa. The captions and headings of the various subdivisions of the Contract Documents are intended only for reference and convenience and in no way define, limit, or prescribe the scope or intent of the Contract Documents or any subdivision thereof.

3.6. **Integration/ Modification.** The Contract Documents and any documents specifically incorporated by reference are completely integrated as the complete and exclusive statement of the terms of this Contract. This Contract supersedes all previous contracts, agreements, and/or communications, both oral and written, and constitutes the entire understanding of City and Designer/Builder. No extrinsic evidence whatsoever shall be admissible or used to explain or supplement the terms of this Contract, Contract Documents, or any items incorporated by reference. No changes, amendments or alterations shall be effective unless in writing, signed by both Parties, and unless provided otherwise by the Contract Documents.

4. **Contract Price.** Designer/Builder shall furnish the Services as further described in the Contract Documents to City for a total price of **Fifteen Million Four Hundred Twenty-Nine Thousand Four Hundred Fifty-Eight Dollars (\$15,429,458.00)**. Designer/Builder acknowledges and agrees that this is a fixed-fee Contract and Designer/Builder shall not be entitled to any additional compensation unless expressly authorized by the Contract Documents. The Contract Price **does not** include fees for Additional Services (as defined below). The ongoing fees for Additional Services are set forth in the applicable exhibit. The Contract Price shall be paid to Contractor in accordance with Terms and Conditions and the Schedule of Values (**Exhibit D**).

Stage	Description	Total of Stage
Initial Invoicing	As provided in Section 4.2.1	\$2,469,185.00
Design Stage	This amount is a set fee for all Design Stage Services set forth in Exhibit B	\$1,587,594.83

Construction Stage	This is a not-to-exceed amount that Designer/Builder is not entitled to unless and until City issues a NTP for Construction Stage Services.	\$11,372,678.17
	Total Contract Price	\$15,429,458.00

4.1. **Financing.** The Designer/Builder is aware that the City will be financing the Services under this Project through the Financing Agreement with a third party in the form attached hereto as **Exhibit H**. Designer/Builder is not in anyway bound by the Financing Agreement. Notwithstanding, Designer/Builder warrants that by entering into this Contract, Designer/Builder has had a full opportunity to review and become acquainted with the financing arrangement secured by the City. Designer/Builder is aware that the funding from the financing agreement will be placed in an escrow account and that City will not have full custody and control over the funds. As a result, being fully aware of this structure, Designer/Builder waives any claim for damages against the City caused not by the City but rather by the financing structure in the Financing Agreement, including, without limitation, untimely or delayed payment.

4.2. **Payment.**

4.2.1. **Initial Invoicing.**

4.2.1.1. As of the Effective Date (which date shall be no later than the day after the Council has authorized the City to enter into this Contract, as referenced in the Recitals above), Designer/Builder shall be entitled to invoice City for the following line items in the Schedule of Values (**Exhibit D**) (as defined in the Terms and Conditions to Contract):

4.2.1.1.1. Week 1: Line items 34, 35 and 36 (\$332,898.00);

4.2.1.1.2. Week 2: Line items 37 and 38 (\$802,789.00);

4.2.1.1.3. Week 3: Line item 39, 40, 41 and 42 (\$536,660.00); and

4.2.1.1.4. Week 4: Line item 43 (\$796,838.00).

4.2.1.2. The amount invoiced for each line item shall not exceed the amount indicated in the Schedule of Values.

4.2.1.3. Each invoice shall comply with all provisions in the Contract Documents for submittal of invoices and shall include adequate substantiation to support the costs actually incurred by Designer/Builder. The City shall pay each invoice submitted by Designer/Builder based on the provisions of the Terms and Conditions of Contract.

4.2.2. **Remaining Payments.** The City shall make payment to Designer/Builder for the remainder of the Contract Price based on Services satisfactorily performed as set forth the in the Terms and Conditions.

5. **The Services.** Payment of the above Contract Price shall be Designer/Builder's total compensation to perform all Services for the Project pursuant to the requirements of the Contract Documents, which are part of the Project to engineer, design, procure, demolish, construct, install, program, field test and commission the Energy Improvements at the Sites, and to train City staff, generally described as follows:

5.1. **Energy Improvements.** This Project includes Services related to Energy Improvements at the Sites as indicated in **Exhibit A**.

5.2. **Design.**

5.2.1. **Definitions.**

5.2.1.1. The term "**Drawings**" shall mean the graphic and pictorial portions of the Energy Improvements showing the design, location, and dimensions of the Work, generally including, without limitation, plans, elevations, sections, details, schedules, and diagrams. The Drawings

are included in the Construction Documents and prepared by Designer/Builder and approved by City.

5.2.1.2. The term “**Specifications**” shall mean the written requirements that complement the Drawings for materials, equipment, systems, standards, execution, and workmanship for the Construction Stage Services and performance of related services. The Specifications include both the “**Technical Specifications**” (Divisions 2-49) and the “**Division 1 Specifications**” (General Requirements). The Specifications are included in the Construction Documents and prepared by Designer/Builder and approved by City.

5.2.1.3. The term “**Construction Documents**” (or “**Plans and Specifications**” or “**CD(s)**”) shall mean the final, permitted Drawings and Specifications, as well as shop drawings, reports, schedules, diagrams, and samples, fully completed by Designer/Builder that Designer/Builder shall utilize to perform Construction Stage Services, and that: (i) comply with all requirements of the Contract Documents; (ii) are approved by Designer/Builder’s engineer(s) and/or architect of record and other applicable subconsultants (as applicable); (iii) are accepted by City (as applicable); and (iv) have received all required approvals and permits from authorities having jurisdiction over the Project (as applicable). The applicable Construction Documents shall be the Drawings and Specifications approved by City through its issuance of a notice of acceptance of Drawings and Specifications in the form attached hereto as **Exhibit F**, and upon issuance shall incorporate the approved Construction Documents into this Contract.

5.2.2. **General Description of Services.** Designer/Builder shall prepare comprehensive plan to install and field test, if applicable, the Energy Improvements at the Sites identified in **Exhibit A**, consistent with the requirements of the Contract Documents, including, without limitation, **Exhibit B** and the Terms and Conditions. The Design Development Stage, 50% Construction Documents Stage and 100% Construction Documents Stage as further described in **Exhibit B** shall be referred to collectively as “**Design Stage Services**” or the “**Design Stage**”.

5.2.3. **Approval of Design.**

5.2.3.1. **Generally.** Prior to the performance of Construction Stage Services at any of the Site(s), Designer/Builder shall submit final Construction Documents for the City’s review and approval, which the the City may approve or reject in its sole and absolute discretion. The approval shall be given in the form of **Exhibit F**. If the City does not approve the Construction Documents, the City may either (i) direct Designer/Builder to perform additional Design Services such that the design is consistent with the Contract Documents; or (ii) delete the Services from the Contract. If the City deletes such Work, Designer//Builder shall be entitled to payment for Services actually and satisfactorily performed based on the termination for convenience provisions of the Terms and Conditions.

5.2.3.2. **Limited Design.** The design of the following types of Energy Improvements at the Sites shall **ONLY** be subject to final Construction Document approval as indicated above, and not intermittent approvals specified in **Exhibit B**:

5.2.3.2.1. Lighting, Pumping, Controls, Mechanical and Street Lights.

5.3. **Construction.** Designer Builder shall be responsible for the construction, programming, field testing and commissioning of the Energy Improvements at the Sites, including incorporating and ensuring compatibility of all appurtenant and necessary components for a complete and fully operational system(s), and training City staff on components of the Energy Improvements. All the work of the Project shall be based on the Construction Documents that are to be reviewed by City and, if required, approved by AHJs. This portion of the Services may be referred to as the “**Construction Stage**” and/or “**Construction Stage Services**”.

5.4. **Additional Services.** After Completion (as defined below) of Construction Stage Services, Designer/Builder shall provide the following additional Services to City (“**Additional Services**”):

5.4.1. **Measurement & Verification Services.** Measurement and verification as set forth in **Exhibit G**.

6. **Contract Time (Project Schedule) & Liquidated Damages.**

- 6.1. **Contract Time. Services** for the Project shall be completed within the time specified in **Exhibit C** attached hereto (“**Project Schedule**”) from the date specified in City’s Notice(s) to Proceed (as defined below), as applicable to the Project. The time for the performance of the Services shall be the “**Contract Time,**” which shall only be adjusted consistent with the terms of the Contract Documents.
- 6.2. **Liquidated Damages.** Time is of the essence for all Services to be performed. It is hereby understood and agreed that it is and will be difficult and/or impossible to ascertain and determine the actual damage that City will sustain in the event of and by reason of Designer/Builder’s delay; therefore, pursuant to Government Code section 53069.85 and Public Contract Code section 7203, Designer/Builder shall forfeit and pay to City the following sum(s) as liquidated damages (“**Liquidated Damages**”):
- 6.2.1. **Two Hundred Fifty Dollars (\$250)** per day as Liquidated Damages for each and every day of delay beyond the Contract Time, as adjusted in accordance with the terms of the Contract Documents, for Completion (as defined in Section 22.4 of the Terms and Conditions to Contract) of all the Services at **EACH** Site, as applicable. The time for Completion of Services for each Site and for the entire Project shall be as indicated in **Exhibit C**, as may be adjusted as set forth in the Contract Documents.
- 6.2.2. If there are different deadlines for Completion of Work at the various Sites as set forth in the Project Schedule, City may assess liquidated damages cumulatively as set forth below, as applicable per Site, if Designer/Builder fails to complete the Services at the Site(s) consistent with the Project Schedule.
- 6.2.3. Each portion of the Liquidated Damages shall be calculated cumulatively. For example, if Designer/Builder is late in completing two Sites and the entire Project, Designer/Builder will forfeit and pay three separate Liquidated Damages amounts.
- 6.2.4. It is hereby understood and agreed that neither the total cumulative Liquidated Damages amount nor any portion of the Liquidated Damage amount are penalties. Liquidated Damages are City’s sole remedy for a delay in the Completion of the Project; provided, however, the assessment of Liquidated Damages shall not curtail City’s right to recover any other damages unrelated to delay under the Contract.
- 6.2.5. City may deduct Liquidated Damages from money due or that may become due Designer/Builder under this Contract. Designer/Builder’s forfeiture of Liquidated Damages to City, and City’s right to retain Liquidated Damages, are as indicated in Government Code section 53069.85 and as indicated herein and in the General Conditions.
- 6.2.6. Liquidated Damages are automatically and without notice of any kind forfeited and payable by Designer/Builder upon the accrual of each day of delay. Neither City’s failure nor delay in deducting Liquidated Damages from payments otherwise due Designer/Builder, nor City’s failure or delay in notifying Designer/Builder of the forfeiture and payment of Liquidated Damages, shall be deemed a waiver of City’s right to Liquidated Damages and/or City’s right to withhold Liquidated Damages from any amounts that would otherwise be payable to Designer/Builder.
- 6.2.7. Designer/Builder and its surety shall be liable for and pay to City the entire amount of Liquidated Damages including any portion that exceeds the amount of the Contract Price then held, retained or controlled by City.
- 6.2.8. Liquidated Damages shall be in addition, and not in lieu of, City’s right to charge Designer/Builder for City’s cost of completing or correcting items of the Services.

Initials: City _____ Designer/Builder _____

7. **Notice(s) to Proceed (NTP(s)).** City will issue one notice to proceed (“**Notice to Proceed**” or “**NTP**”) with the Work, at which time Designer/Builder shall proceed with the Services. The NTP shall not be limited to an individual Site, but rather shall authorize Designer/Builder to proceed with the Services at any or all Sites; provided, however, that no construction activity shall commence at a Site until the City has given its approval of the Construction Drawings (in the form of **Exhibit F**) and a permit, if required, has issued for the construction activity at the Site.
8. **Insurance/Bonds.** Designer/Builder shall not commence any Services under this Contract until Designer/Builder has submitted and City has approved the endorsement(s) of insurance required under the Terms and Conditions to this Contract and City has issued a Notice to Proceed. Designer/Builder shall not

perform any Construction Stage Services until Designer/Builder has submitted and City has approved the performance and payment (labor and material) bonds.

9. **CEQA.** City and Designer/Builder recognize that the Project activities contemplated by this Contract are subject to environmental review under the California Environmental Quality Act (“**CEQA**”), and that City, as a lead agency for the Project and its future use, must comply with the CEQA requirements as set forth in CEQA and in 14 California Code of Regulations sections 15000, et seq. (“**CEQA Guidelines**”). Pursuant to CEQA Guidelines Section 15004(b)(2)(A), the Parties acknowledge that (i) approval and execution of this Contract by the Parties does not constitute City authorizing, approving, or awarding a “project” as defined by CEQA, and (ii) the Designer/Builder shall not proceed with construction activity at a designated Site until it has received a NTP approval of the Construction Drawings, if applicable, from the City for that Site. In the event City does not issue such a Notice to Proceed authorizing construction activity and instead issues a notice of suspension or notice of termination, City will pay for Designer/Builder’s undisputed and documented design and/or planning services rendered to the date of that notice.
10. **Other City Representatives.** Designer/Builder hereby acknowledges that City reserves the right to retain the services of a Project inspector (“**Inspector**” or “**IOR**”) and/or a construction manager (“**Construction Manager**”).
- 10.1. **Inspector.** To the extent applicable to the scope of work, the Project Inspector, if any, shall have authority to approve and/or stop Services if Designer/Builder’s Services does not comply with the requirements of the Contract, Title 24 of the California Code of Regulations, or all applicable laws. Designer/Builder shall be liable for any delay caused and extra work required by its noncompliant Services. Designer/Builder shall not be liable for delay to the extent caused by City or its agents or separate contractors. City reserves the right to designate a different Inspector at any time. City shall provide forty-eight (48) hours’ notice to Designer/Builder if City designates a different Inspector.
- 10.2. **Construction Manager.** The Construction Manager, if any, shall be authorized to give Designer/Builder authorizations, issue written approvals, and issue the Notice to Proceed on behalf of City. Any task, including, but not limited to, reviews or approvals that City may perform pursuant to this Contract may be performed by the Construction Manager, unless that task indicates it shall be performed by the Council. City reserves the right to designate a different Construction Manager at any time. City shall provide forty-eight (48) hours’ notice to Designer/Builder if City designates a different Construction Manager.
11. **Inspection of Services.** Inspection and acceptance of the Services shall be performed by:
- 11.1. The director of construction for City and/or designee (“**City Representative**”);
- 11.2. To the extent applicable, the Inspector and/or Construction Manager; and/or
- 11.3. To the extent applicable, City’s program architect (“**Architect**”).
12. **Key Personnel.** The following individuals are Designer/Builder’s key personnel, none of whom can be replaced unless approved by City as provided herein (such approval not to be unreasonably withheld or delayed):

Tim Gray	CFO/COO
Robby Bloss	Project Manager
Chase White	Project Manager
Jerry Gallego	Project Manager
Scott Noh	Solar Division
Nida Abuan	Controller
ManizhaNejati	Director of Accounting

13. **Guarantee.** Unless otherwise indicated herein for a longer period of time, Designer/Builder shall guarantee all labor and material used in the performance of this Contract for a period of one (1) year from the date of Completion of the Services (as defined in Section 22.4 of the Terms and Conditions to Contract).
14. **Savings Guarantee.** Designer/Builder shall provide the energy savings guarantee to City as further described in **Exhibit G (“Saving Guarantee”)**.

15. **Classification of Designer/Builder's License.** Designer/Builder hereby acknowledges that it currently holds a valid Type B General Contractor's license issued by the State of California, Contractor's State License Board, in accordance with Division 3, Chapter 9, of the Business and Professions Code and in the classification called for in the Contract Documents.
16. **Authority of Designer/Builder's Representative.** Designer/Builder hereby certifies that its legal representative(s) on the Project and the person(s) it employs on the Project at or above the level of project superintendent, each have the authority to act on behalf of and bind Designer/Builder; provided, however, that such employees have no authority whatsoever to bind Designer/Builder by way of oral agreement.
17. **Certification.** By signing the Contract, the Parties certify, under penalty of perjury, that all the information provided in the Contract is true, complete, and correct, to the best of its knowledge at the time it signs the Contract. If, at any time after signing the Contract, it becomes known that the information provided in the Contract is no longer true, complete, and correct, each Party shall have a duty to provide the updated or differing information.
18. **Contractor's Claim Notice.** CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSE BOARD WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT REGARDING A PATENT ACT OR OMISSION IS FILED WITHIN FOUR (4) YEARS OF THE DATE OF THE ALLEGED VIOLATION. A COMPLAINT REGARDING A LATENT ACT OR OMISSION PERTAINING TO STRUCTURAL DEFECTS MUST BE FILED WITHIN TEN (10) YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS' STATE LICENSE BOARD, P.O. BOX 26000, SACRAMENTO, CALIFORNIA 95826.
19. **Notice.** Any notice required or permitted to be given under this Contract shall be deemed to have been given, served, and received if given in writing and either personally delivered or sent by overnight delivery service addressed as follows:

CITY

City of Coachella

[Insert Address]

[City, State, ZIP]

ATTN: [Insert Name], [Insert Title]

DESIGNER/BUILDER

Alliance Building Solutions, Inc.

12520 High Bluff Drive, Suite 345

San Diego, CA 92130

ATTN: Brad Chapman, President

Any notice personally given shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service.

20. **Information regarding Designer/Builder.**

Type of Business Entity:

Individual

Sole Proprietorship

Partnership

Limited Partnership

Corporation

Limited Liability Company

Other: _____

<p>Employer Identification and/or Social Security Number</p> <p>NOTE: United States Code, title 26, sections 6041 and 6109 require non-corporate recipients of \$600.00 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, City requires your federal tax identification number or Social Security number, whichever is applicable.</p>
--

[SIGNATURES ON THE FOLLOWING PAGE]

ACCEPTED AND AGREED on the date indicated below:

Dated: _____, 2023

Dated: _____, 2023

City of Coachella

Alliance Building Solutions, Inc.

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

Address: _____

Contractor License No.: 1008135

DIR Registration No.: 1000032275_

Telephone: _____

Designer/Builder Local Representative:

E-Mail: _____

Name: _____

Address: _____

Telephone: _____

E-Mail: _____

Subcontractor/Subconsultant License Information

Information & Energy Services, Inc.

Engineer

License: M 30454

CSLB 867847

PO Box 500278

San Diego, CA 92120

Mike Rogers, PE, CEM O: 858.592.8688

M: 760.908.6321

E: mrogers@iesenergy.com

TKJ Structural Engineering

Structural Engineer

License: S-4845

9820 Willow Creek Rd Suite 490

San Diego CA 92131

Gilbert Garcia O: 858.649.1172

M: 562.396.1438

E: gilbert@tkjse.com

Dudek

Engineer Process Optimization

License: C87516

1630 San Pablo Avenue, Suite 300

Oakland, CA 94612

Phil Giori, PE O: 510.601.2528

M: 442.325.4645

TERMS AND CONDITIONS TO CONTRACT

1. **SITE EXAMINATION:** Designer/Builder has examined the Sites by diligent physical inspection without any destructive or invasive action and certifies that it accepts all measurements, specifications and conditions affecting the Services to be performed at the Site that are reasonably discoverable through such examination. Designer/Builder warrants that it has made all non-invasive Site examination(s) that it deems necessary as to the condition of the Sites, their accessibility for materials, workers and utilities, and Designer/Builder's ability to protect existing surface and subsurface improvements. No claim for allowance of time or money will be allowed as to any other undiscovered condition on the Sites that could and should have been discovered through reasonable non-invasive investigation. If there are any variations to the scope of Services resulting from conditions not determinable from such investigations, Designer/Builder shall submit to City a PCO based on those conditions. Notwithstanding the aforementioned, should Designer/Builder discover any latent or unknown conditions or hazardous conditions (including asbestos-containing materials), which will materially affect the performance of the Work, Designer/Builder shall immediately inform City of such fact in writing and shall not proceed until written instructions are received from City.
2. **OVERALL PROGRESSION OF THE WORK:**
 - 2.1. **Design Stage:**
 - 2.1.1. Prior to the commencement of Construction Stage Services, Designer/Builder shall prepare Drawings and Specifications, as needed per Energy Improvement, consistent with the requirements of the Contract Documents, including, without limitation **Exhibit A** and **Exhibit B**.
 - 2.1.2. Designer/Builder, its designers, contractors, and inspectors shall determine if any of the Services requires AHJ approval and, if applicable, provide documentation for all approvals required by AHJs.
 - 2.2. **Construction Stage:**
 - 2.2.1. Designer/Builder shall install and construct the Services at the Site(s). The Services shall be installed and constructed to conform with the Construction Documents, applicable law and, where applicable, and all applicable building codes. Designer/Builder's Services shall include meetings and discussions as needed with all AHJs and others as needed to achieve Project approval.
 - 2.2.2. Construction Stage Services shall commence only upon City's issuance of a Notice to Proceed for Construction Stage Services. City may issue more than one Notice to Proceed for Construction Stage Services depending on the phasing of those Services.
 - 2.2.3. Designer/Builder's performance of Services for Construction Stage Services shall comply with all requirements of the Contract Documents and all laws applicable to the Project.
 - 2.2.4. In addition to all other requirements herein, Designer/Builder shall comply with all requirements of the Plans and Specifications incorporated into this Contract through City's issuance of a NOA.
 - 2.2.5. Designer/Builder shall notify City and City's Project Inspector(s) of required inspections and shall provide reasonable access and accommodations for inspections.
 - 2.3. **Additional Services:** After Completion of the above Work, Designer/Builder shall perform the Additional Services consistent with the requirements of the Contract Documents.
3. **EQUIPMENT AND LABOR:** Designer/Builder shall furnish all tools, equipment, apparatus, facilities, transportation, labor, and material necessary to furnish the Services herein described, the Services to be performed at such times and places as directed by and subject to the approval of the authorized City representative.
4. **SUBCONTRACTORS:**
 - 4.1. All subcontractors will be afforded the protections of State law, and all Services is subject to applicable prevailing wage laws.

- 4.2. Subcontractors, if any, engaged by Designer/Builder for any Service or Services under this Contract shall be subject to the approval of City, which shall not be unreasonably withheld.
- 4.3. 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.
- 4.4. Designer/Builder shall be responsible for all Services performed under this Contract. All persons engaged in the Services of the Project are the responsibility and under the control of Designer/Builder. Designer/Builder shall give personal attention to fulfillment of this Contract and shall keep the Services under Designer/Builder's control. In no event shall Designer/Builder refer City to any subcontractor or consultant of Designer/Builder for response or resolution of any matters related to this Contract, the Services or any obligations of Designer/Builder hereunder. If Designer/Builder shall subcontract any part of this Contract, Designer/Builder shall be fully responsible to City for acts and omissions of subcontractors and of persons either directly or indirectly employed by Designer/Builder.
- 4.5. Nothing contained in the Contract shall create any contractual relations between any subcontractor and City. Designer/Builder expressly acknowledges that its subcontractors are not third-party beneficiaries of this Contract.

5. TERMINATION:

- 5.1. If Designer/Builder fails to perform Designer/Builder's 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 or violation is not excused by the terms of this Contract, City shall have the right to terminate this Contract, in whole or in part, unless such failures and violations are caused by City, effective immediately upon City giving fifteen (15) business days prior written notice thereof to Designer/Builder, during which time Designer/Builder may attempt to correct such failures and violations to City's reasonable satisfaction. In the event of a termination pursuant to this subdivision, Designer/Builder may invoice City for all Services performed until the date of termination, but City shall have the right to withhold payment and deduct any amounts equal to City's costs because of Designer/Builder's negligent actions, errors, or omissions that caused City to terminate Designer/Builder. City may, at its discretion, provide Designer/Builder additional time to cure its default or breach.
- 5.2. City shall have the right in its sole discretion to terminate the Contract for its own convenience with fourteen (14) days prior written notice. In the event of a termination for convenience, Designer/Builder may invoice City and City shall pay all undisputed invoice(s) for Services performed and all costs actually incurred before the date of termination and actually and necessarily caused by the termination, as reasonably substantiated by the Designer/Builder including but not limited to the actual cost of demobilization, actual charges incurred for specially fabricated materials and equipment, and such charges actually incurred by Designer/Builder's subcontractors/suppliers that Designer/Builder is contractually bound to compensate the subcontractor/supplier for, from City's Notice to Proceed until the date of termination.
- 5.3. Except as indicated in this Article, termination shall have no effect upon any of the rights and obligations of the Parties arising out of any transaction occurring prior to the effective date of termination.
- 5.4. Designer/Builder has the right to terminate this Contract if City does not fulfill its material obligations under this Contract. Termination shall be effective upon fourteen (14) days prior written notice to City. Designer/Builder may invoice City and City shall pay all undisputed invoice(s) for Services performed and costs incurred, as set forth in the section concerning termination for convenience, until the date of termination.
- 5.5. If City suspends the Project for more than ninety (90) consecutive days, Designer/Builder shall be compensated for Services performed prior to the notice of suspension plus the reasonable costs of demobilization. When the Project is resumed, the Project Schedule and Contract Time shall be adjusted and Designer/Builder's compensation shall be equitably adjusted to provide for expenses incurred

resuming Work, including any material price escalations if Designer/Builder establishes: (i) the materials were scheduled to be procured during the suspension; (ii) Designer/Builder was unable with reasonable diligence to procure materials prior to the suspension; **and** (iii) Designer/Builder was not a cause of its own failure to procure any materials prior to suspension. If City suspends the Project for more than one (1) year, Designer/Builder may terminate this Contract by giving written notice and shall receive compensation as if City terminated the Contract for its own convenience as described above. If City suspends this Contract because City does not have sufficient funds to pay for the Services resulting from City's budget for the succeeding fiscal year being reduced, and/or the State reducing funding to City, then Designer/Builder may elect to either: (i) after ninety (90) consecutive days of suspension, terminate the Contract; or (ii) after one hundred twenty (120) consecutive days of suspension, elect to maintain the Contract and demobilize from the Site(s) until City gives written notice to Designer/Builder to recommence the Services. In either event, Designer/Builder may invoice City for all costs actually incurred by Designer/Builder directly caused by the suspension. Designer/Builder shall provide documentation, to City's reasonable satisfaction, substantiating that all claimed costs were incurred during and caused by the suspension. Designer/Builder shall make all reasonable efforts to mitigate any costs before invoicing City for such costs. If Designer/Builder elects to terminate the Contract, Designer/Builder may only invoice City from the date of suspension up to and until the date of termination; provided, however, Designer/Builder shall not be entitled to invoice City for costs incurred after one hundred twenty (120) consecutive days. If Designer/Builder elects to maintain the Contract, Designer/Builder shall be entitled to invoice City for costs caused by the suspension from the date of the notice of suspension up to and until the date City provides written notice to Designer/Builder to recommence the Services. In either event, Designer/Builder shall not be entitled to any delay costs, but may invoice City for the reasonable costs of demobilization and mobilization actually incurred by Designer/Builder exclusive of any consequential or economic damages. Any adjustment to the Contract Price hereunder shall be adjusted pursuant to a written Change Order. If the Parties disagree as to the cost owed to Designer/Builder, if any, City reserves the right to issue a Unilateral Change Order, and Designer/Builder may proceed as if any unpaid sums constitute a Claim. Notwithstanding the foregoing, Designer/Builder shall be entitled to compensation for Services actually performed to City's reasonable satisfaction prior to the date of any suspension and to an adjustment of the Contract Time.

6. SAFETY AND SECURITY:

- 6.1. Designer/Builder is responsible for maintaining safety in its performance of this Contract. Designer/Builder shall be responsible to ascertain from City the rules and regulations pertaining to safety, security, and driving on City grounds, as per the requirements of **Exhibit E ("City's Rules and Regulations")** to the extent applicable. Designer/Builder shall coordinate with City regarding the applicability of City's Rules and Regulations. In the event City's Rules and Regulations conflict with any other terms of this Contract, the terms of this Contract shall prevail.
- 6.2. The 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 Services. Designer/Builder shall locate these existing installations before proceeding with demolition and other operations that could damage same; maintain them in service, where appropriate; and repair damage to them caused by the performance of the Services. Should Designer/Builder cause damage to these existing installations, then the costs of repair shall be at Designer/Builder's expense and made to City's satisfaction.
- 6.3. 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 City for disposition of same as indicated in the Terms and Conditions to Contract.
- 6.4. To the extent that Designer/Builder's work involves undergrounding power lines, Designer/Builder shall conduct an engineering evaluation to determine whether any undergrounding power lines will create the potential for electrolytic corrosion of any other underground utilities near such power lines. Where the potential for electrolytic corrosion exists, Designer/Builder shall also design and install a cathodic protection system to protect such utilities.
- 6.5. Specific measures include:

- 6.5.1. Written Designer/Builder Safety Plans, signs and temporary fencing as needed.
- 6.5.2. Written Designer/Builder Quality Management Plan.
- 6.5.3. Engineering and stamped drawings for City, and AHJ approval (to the extent applicable).
- 6.5.4. To the extent applicable, Layout drawings for Fire Department review.
- 6.5.5. To the extent applicable, Single line and electrical drawings for applicable utility companies.
- 6.5.6. Layout drawings for City Technology Department review.

7. INFECTIOUS DISEASE

- 7.1. **Compliance with Orders.** Designer/Builder and its Subcontractors, agents and employees thereof, are responsible for complying with all applicable and existing federal, State, and/or local statutes, orders, rules, regulations, ordinances, and/or directives in any way relating to construction site safety, the Work, the Project, and Site(s), in connection with any infectious and communicable disease in any form, whether bacterial or viral, including, without limitation, MSRA, influenza, COVID-19, and/or any similar virus or derivative strain (“**Infectious Disease**”). Designer/Builder’s obligations hereunder shall include, without limitation providing personal protective equipment (“**PPE**”) to its employees and to ensure that its Subcontractors provide PPE to its employees to prevent the spread of an Infectious Disease at the Site(s).
- 7.2. **Infectious Disease and Increases to the Contract Price and Contract Time.**
 - 7.2.1. Designer/Builder agrees that the Contract Price and the Contract Time are based on Designer/Builder’s full compliance with all applicable and existing federal, state, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction site safety, the Work, the Project, and the Site(s) in relating to construction site safety, the Work, the Project, and the Site(s) in connection with an Infectious Disease. Therefore, any additional costs to Designer/Builder associated with an Infectious Disease, or any federal, state, or local order relating thereto, shall not be considered compensable unless:
 - 7.2.1.1. It occurred after the date of the award of the Project to Designer/Builder;
 - 7.2.1.2. It materially increases the Contract Price or the Contract Time by imposing different, additional or more stringent requirements; and
 - 7.2.1.3. Designer/Builder notifies City within fourteen (14) Days of notice of any new public health order(s), including the anticipated increase to the Contract Price or Contract Time due to the new public health order(s), and Designer/Builder substantiates those costs with detailed supporting documentation as required in these General Conditions, including, without limitation, comply with the Proposed Change Orders and, to the extent applicable, Claims provisions.
 - 7.2.2. Any dispute concerning the Contract Time in connection with any delay associated with an Infectious Disease shall be resolved pursuant to the Claims procedures in these Terms and Conditions.
 - 7.2.3. If, during the Work, the applicable and existing federal, state, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction site safety, the Work, the Project, and/or the Site(s) in connection with an Infectious Disease, are changed or rescinded (e.g., by the reduction of potential exposure or risk due to vaccinations), the parties agree to reduce the Contract Price and the Contract Time due to the removal, if any, of the required efforts. If the parties cannot mutually agree on the appropriate reduction, City may issue a Unilateral Change Order for an amount of time and money it determines to be both reasonable and appropriate. Any dispute concerning the application of this procedure shall be resolved pursuant to the Claims procedures in these Terms and Conditions.
- 7.3. **Infectious Disease Release.** Designer/Builder acknowledges that it is voluntarily and freely entering into the Contract for this Project and deciding to perform the Services which will require Designer/Builder to enter upon and into the Site and that Designer/Builder use of the Site includes the

possible exposure to and illness from an Infectious Disease. Designer/Builder further acknowledges the dangers involved and with full knowledge of these dangers, voluntarily agrees to assume all risks of bodily injury, death, or property damage, whether those risks are known or unknown. Designer/Builder hereby releases City, its agents, representatives, officers, consultants, employees, trustees, and volunteers from any and all liabilities, causes of action, lawsuits, claims, demands, or damages of any kind whatsoever that Designer/Builder, its staff, participants, relatives, children, spouse, partner, household members, family members, employees, guests, invitees, volunteers, agents, consultants, Subcontractors, and any other person tracing exposure or illness to Designer/Builder, now have, or may have in the future, for injury, trauma, illness, loss, unwanted contact, harassment, disability, death or property damages related to being exposed to or contracting an Infectious Disease while using the Site for the performance of the Services. Designer/Builder shall include this paragraph in all subcontracts with Subcontractors.

- 7.4. Designer/Builder shall ensure it has supervisor employees onsite that are trained and knowledgeable of all of these requirements to ensure full compliance on Site(s).
- 7.5. Any cost to comply with these “**Infectious Disease**” provisions shall be at Designer/Builder’s sole expense, but may be included in the Contract Price.

8. **PROJECT SCHEDULE:**

- 8.1. **General Requirements:** In addition to the Project Schedule in **Exhibit C** that sets forth the schedule for Completion of the Project, Designer/Builder shall prepare a detailed Project Schedule setting forth the critical path of the Project from the Notice to Proceed to Completion of the Project.
- 8.2. **Time for Detailed Project Schedule:** Designer/Builder shall provide the detailed Project Schedule to City within thirty (30) days of the execution of the Contract for review and approval.
- 8.3. **Minimum Requirements for Detailed Project Schedule:** At a minimum, the detailed Project Schedule shall:
 - 8.3.1. Include all applicable milestones in **Exhibit C**;
 - 8.3.2. Be in a format accessible by City;
 - 8.3.3. Include all applicable review times by Review Agencies;
 - 8.3.4. Include the then current date for Completion of the Project; and
 - 8.3.5. For the Construction Stage **ONLY**, logical ties and “fragnets” of activities setting forth the critical path of the Project.
- 8.4. **Updated detailed Project Schedule:** No later than the fifth (5th) day of each month, Designer/Builder shall submit an updated detailed Project Schedule that complies with the requirements herein.

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

- 9.1. Any change in the scope of the Work, method of performance, nature of materials or price thereof, or any other matter materially affecting the performance or nature of the Services shall not be paid for or accepted unless such change, addition, or deletion is approved in advance and in writing by a valid, City authorized Change Order or amendment executed by the Parties.
- 9.2. **Proposed Change Order:**
 - 9.2.1. **Definition of Proposed Change Order:** A “**Proposed Change Order**” or “**PCO**” is a written request prepared by Designer/Builder requesting that City issue a Change Order based upon a proposed change to the Services.
 - 9.2.2. **Definition of Change Order:** A “**Change Order**” or “**CO**” shall be a written authorization agreed to by City approving a PCO that indicates an increase to the Contract Price and/or Contract Time. No Change Order is valid unless approved by City. City reserves a right to issue a unilateral Change Order if the Parties do not agree to an increase or decrease in the Contract Price or Contract Time indicated in a PCO.

- 9.2.3. **Time to Submit PCO:** Designer/Builder shall submit its PCO within twenty (20) days of the date Designer/Builder discovers, or reasonably should discover, the circumstances giving rise to the PCO, unless additional time to submit a PCO order is granted in writing by City. If additional time is necessary to estimate and prepare a PCO, then Designer/Builder shall submit to City within ten (10) days a written explanation of the reasons with a request for a specified extension to submit the PCO; provided, however, that any such request may be granted or denied in City's reasonable discretion. If the extension does not provide enough time for Designer/Builder to adequately price or determine the precise scope for any PCO, Designer/Builder shall submit a placeholder PCO which sets forth a description of the Services and the price based on information available to Designer/Builder at that time. Within five (5) days that Designer/Builder knows the scope and price of the PCO, Designer/Builder shall submit a final PCO fully compliant with the Contract Documents. Time is of the essence in Designer/Builder's written notice pursuant to the preceding sentence so that City can promptly investigate and consider alternative measures to address the basis for the PCO. Accordingly, Designer/Builder acknowledges that its failure, for any reason, to give written notice (with Supporting Documentation to permit City's review and evaluation) within this time frame shall be deemed Designer/Builder's waiver, release, discharge and relinquishment of any right to assert or claim any entitlement to an adjustment of the Contract Time or the Contract Price on account of the circumstances giving rise to the PCO.
- 9.2.4. **Changes in Contract Price:** A PCO shall include breakdowns pursuant to the revisions herein to validate any change in Contract Price.
- 9.2.5. **Changes in Contract Time:** A PCO shall also include any changes in time required to complete the Project. Any additional time requested shall not be the number of days to make the proposed change, but must be based upon the impact to the Project Schedule as defined in the Contract Documents. If Designer/Builder fails to request a time extension in a PCO, then Designer/Builder is thereafter precluded from requesting time and/or claiming a delay.
- 9.2.6. **Conditions Precedent for a Change Order:** As used herein, "**Additional Work**" means new or unforeseen Services or additional cost that City determines is not covered by the Contract Documents. Designer/Builder may only request changes to the Contract Price or Contract Time for Additional Services or delays to completion of the Project that (i) are not in any way caused by Designer/Builder; (ii) was not Services that either Party could have reasonably anticipated performing as of the effective date, including, without limitation, caused by the acts, errors, or omissions of City, or its agents or employees, or caused by Unforeseen Site Conditions, or Force Majeure if, and only if, Designer/Builder follows the procedures specified in this section.
- 9.2.7. **Unknown and/or Unforeseen Conditions:** If Designer/Builder encounters conditions at the Project Sites that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents ("**Unforeseen Site Conditions**"), Designer/Builder shall promptly provide notice to City before conditions are disturbed and in no event later than five (5) working days after first observance of the conditions. City will promptly investigate the conditions and, if City reasonably determines that they differ materially and cause an increase or decrease in Designer/Builder's cost of, or time required for, performance of any part of the Work, Designer/Builder shall be entitled to an equitable adjustment in the Contract Price or Contract Time, or both. If City reasonably determines that the conditions at the Project Sites are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, City shall promptly notify Designer/Builder in writing, stating the reasons. If Designer/Builder disputes City's determination, Designer/Builder shall perform the Services without any increase in Contract Price and/or Contract Time and may proceed under a reservation of rights and may seek compensation pursuant to the Claims Resolution provisions in the Contract.

- 9.2.8. **Utility Work:** City expressly understands and agrees that Excusable Delays may occur due to Interconnection Facilities Services that may need to be performed by the local electric utility (“**Utility(ies)**”) under and interconnection agreement (“**Utility Work**”) in order for Designer/Builder to fully complete and commission the Project. “**Interconnection Facilities**” means any distribution or transmission lines and other facilities and associated approvals and permits that may be required to connect equipment supplied under this Contract to an electrical distribution/transmission system owned and maintained by the utility. If Designer/Builder seeks Excusable Delay in a Change Order for delay caused by Utility Work, Designer/Builder must establish such an entitlement consistent with the Contract Documents.
- 9.2.9. **Format for Proposed Change Order:** The following format shall be used as applicable by City and Designer/Builder (e.g. Change Orders, PCO’s) to communicate proposed additions and deductions to the Contract, attaching documentation substantiating the change.

	<u>SUBCONTRACTOR PERFORMED WORK</u>	ADD	DEDUCT
(a)	<u>Material</u> (attach itemized quantity and unit cost plus sales tax)		
(b)	<u>Add Labor</u> (attach itemized hours and rates, fully encumbered)		
(c)	<u>Add Equipment</u> (attach suppliers’ invoice)		
(d)	<u>SUBTOTAL</u>		
(e)	<u>Add Subcontractor’s overhead and profit</u> , fifteen percent (15%) of item (d)		
(f)	<u>SUBTOTAL</u>		
(g)	<u>Add Designer/Builder’s fee, overhead, profit & general conditions</u> , twenty percent (20%) of the sum of item (f)		
(h)	<u>SUBTOTAL</u>		
(i)	<u>Add Bond and Insurance</u> , two percent (2.0%) of Item (h)		
(j)	<u>TOTAL</u>		
(k)	<u>Time</u>		<u>Days</u>

	<u>DESIGNER/BUILDER PERFORMED WORK</u>	ADD	DEDUCT
(a)	<u>Material</u> (attach itemized quantity and unit cost plus sales tax)		
(b)	<u>Add Labor</u> (attach itemized hours and rates, fully encumbered)		
(c)	<u>Add Equipment</u> (attach suppliers’ invoice)		
(d)	<u>SUBTOTAL</u>		
(e)	<u>Add Designer/Builder’s fee, overhead, profit & general conditions</u> , shall be twenty percent (20%) multiplied against the sum of item (d)		
(f)	<u>SUBTOTAL</u>		
(i)	<u>Add Bond and Insurance, two percent (2.0%) of item (f)</u>		
(j)	<u>TOTAL</u>		
(k)	<u>Time</u>		<u>Days</u>

- 9.2.10. **Requirement to Substantiate:** PCOs must include documentation reasonably necessary to substantiate all material, labor, and equipment included in Designer/Builder’s request for an increase or decrease to the Contract Price. If City believes that Designer/Builder failed to adequately substantiate the PCO, City may require Designer/Builder to provide additional reasonable substantiation for the PCO. Designer/Builder’s failure to respond to City’s request for additional substantiation within a reasonable time shall constitute a waiver of Designer/Builder’s claim for additional compensation for the work included in the PCO.
- 9.2.11. **Deleted Work:** All deductive COs must be prepared pursuant to the provisions herein. Where a portion of the Services is deleted from the Contract, the reasonable value of the deleted work shall be considered the appropriate deduction. The value submitted on the Schedule of

Values shall be used to calculate the credit. If the deleted work was to be performed by Designer/Builder, the deduction shall include a minimum of ten (10) percent for the total profit and overhead to be deducted with the value of the work. If the deleted work was to be performed by Designer/Builder's subcontractors, the deduction shall include a minimum of five (5) percent for the total profit and overhead to be deducted with the value of the work.

9.2.12. **Delay:** Any request for an extension to the Contract Price or Contract Time relating to any alleged delay shall be included in a PCO and conform to the following requirements:

9.2.12.1. **Designer/Builder's Notice of Delay:**

9.2.12.1.1. In addition to the requirements indicated in this subsection, Designer/Builder shall submit any request for an adjustment of the Contract Price or the Contract Time through the Change Order provisions.

9.2.12.1.2. Designer/Builder shall, within **FOURTEEN (14)** calendar days of any delay impacting the critical path in completing the Work, notify City in writing of the causes of the delay including documentation and facts explaining the delay.

9.2.12.1.3. Any request by Designer/Builder for an adjustment of the Contract Price or the Contract Time for a delay shall be submitted in a PCO. When requesting time, requests must be submitted with full justification and documentation. Such justification must be based on the official approved Project Schedule and any applicable Site Schedule of Services as updated and approved by City at the time of occurrence of the delay or execution of Services related to any changes to the Services.

9.2.12.1.4. Any claim for delay must include the following information as support, without limitation:

9.2.12.1.4.1. **Duration:** The duration of the activity relating to the changes in the Services and the resources (manpower, equipment, material, etc.) required to perform the activities within the stated duration.

9.2.12.1.4.2. **Logical Ties / Fragnets:** Specific logical ties to the Project Schedule for the proposed changes and/or delay showing the activity/activities in the Project Schedule that are affected by the change and/or delay (A portion of any delay of seven (7) days or more must be provided). Include a "fragnet" analysis for the portion of the schedule and the activities Designer/Builder contends are impacted by the delay.

9.2.12.1.4.3. **Updated Project Schedule:** A recovery or updated Project Schedule for all affected Site(s).

9.2.12.1.5. City shall review the facts and extent of any noticed delay and may grant Contract Time extension(s) of time for completing Services when, in City's reasonable judgment, the findings of fact justify an extension.

9.2.12.1.6. Extension(s) of time shall apply only to that portion of Services affected by delay, and shall not apply to other portions of Services not so affected.

9.2.12.1.7. An extension of time may only be granted if Designer/Builder has timely submitted the updated Project Schedule and applicable Site Schedule(s) of Services as required herein.

9.2.12.1.8. Following submission of a notice of delay, City may determine whether the delay is to be considered:

9.2.12.1.8.1. Excusable and Compensable, Excusable and Non-Compensable, or Unexcused;

9.2.12.1.8.2. How long the delay continues; and

9.2.12.1.8.3. To what extent the prosecution and Completion of the Services might be delayed thereby.

9.2.12.2. **Strict Compliance.** Designer/Builder's failure to request adjustment(s) of the Contract Time in strict conformance with applicable provisions herein shall be deemed Designer/Builder's waiver of its right to assert a claim for a delay.

9.2.12.3. **Limitations Upon Adjustment of Contract Time on Account of Delays:** Any adjustment of the Contract Time on account of an Excusable Delay or a Compensable Delay shall be limited as set forth herein. No adjustment of the Contract Time shall be made on account of any Excusable Delays or Compensable Delays unless those delay(s) actually and directly impact Services or Services activities on the critical path of the then current and updated approved Project Schedule as of the date on which a delay first occurs. City shall not be deemed in breach of, or otherwise in default of any obligation hereunder, if City shall deny a request by Designer/Builder for an adjustment of the Contract Time for any delay that does not actually and directly impact Services on the then current and updated approved Project Schedule. In submitting a request for an adjustment of Contract Time, and as a condition precedent to City's review of that request, Designer/Builder shall insert into the then current and updated approved Project Schedule and a "fragnet" analysis representing the event that Designer/Builder claims to result in delay to the critical path as depicted in the updated approved Project Schedule. If an Excusable Delay and a Compensable Delay occur concurrently, the maximum extension of the Contract Time shall be the number of days from the commencement of the first delay to the cessation of the delay that ends last. If an Unexcused Delay occurs concurrently with either an Excusable Delay or a Compensable Delay, the maximum extension of the Contract Time shall be the number of days, if any, which the Excusable Delay or the Compensable Delay exceeds the period of time of the Unexcused Delay.

9.2.13. **Excusable and Compensable Delay(s):**

9.2.13.1. Designer/Builder is **not** entitled to additional compensation for any delay, even a delay caused by an Excusable Delay, unless **all** of the following conditions are met ("**Compensable Delay**"):

9.2.13.1.1. City, the utility, an authority having jurisdiction, or the agents, employees or contractors of any of them acting within the scope of their authority is responsible for the delay;

9.2.13.1.2. The delay is unreasonable under the circumstances involved, impacts the critical path of the Work, and extends the most current date for Completion of the Project and/or Services at a Site(s);

9.2.13.1.3. The delay was not within the contemplation of the Parties, determined based on the events that were included in the Project Schedule or should have reasonably been included therein;

- 9.2.13.1.4. Designer/Builder complies with the Change Order procedures, and if necessary, the Claims procedures of the Contract;
- 9.2.13.1.5. The delay could not have been avoided or reasonably mitigated by Designer/Builder's care, prudence, foresight, and diligence;
- 9.2.13.1.6. The delay extends the most current Completion date (for the Project or any Site of the Project); and
- 9.2.13.1.7. The delay is not concurrent with a Designer/Builder-caused delay or other type of Excusable and Non-Compensable Delay.

9.2.13.2. In accordance with California Public Contract Code section 7102, if Designer/Builder's progress is delayed by the events described in the preceding subsection, Designer/Builder shall not be precluded from the recovery of damages directly and proximately resulting therefrom. In that event, Designer/Builder's damages, if any, shall be limited to direct, actual and unavoidable additional costs of labor, materials or construction equipment directly resulting from that delay, and shall exclude special, indirect or consequential damages. In no event shall Designer/Builder seek costs or damages for delays, interruptions, hindrances or disruptions to the Services for on-Site or off-Site costs or damages based upon formulas, e.g., Eichleay or other formula. Except as expressly provided for herein, Designer/Builder shall not have any other claim, demand or right to adjustment of the Contract Price arising out of delay, interruption, hindrance or disruption to the progress of the Services. Designer/Builder shall only be entitled to the actual costs to Designer/Builder for any Compensable Delay, and Designer/Builder shall not be entitled to calculate those costs by any other formula including, without limitation, jury verdict method, total cost method, or modified total cost method.

9.2.14. Excusable and Non-Compensable Delay(s):

- 9.2.14.1. An "Excusable Delay(s)" shall mean an interruption of the Services beyond the reasonable control of Designer/Builder and that:
 - 9.2.14.1.1. Could have not been avoided by Designer/Builder exercising reasonable care, prudence, foresight, and diligence, and
 - 9.2.14.1.2. Actually extends the most current date for Completion of the Project and/or Services at a Site(s).
- 9.2.14.2. Designer/Builder may be entitled to an extension of the Project Completion date if there is an Excusable Delay, but Designer/Builder shall not be entitled to additional compensation for an Excusable Delay.
- 9.2.14.3. Excusable Delays are limited to interruptions that satisfy the above requirements, or that are acts of God; acts of a public enemy; fires; floods; windstorms; tornadoes; earthquakes; wars; riots; insurrections; epidemics or pandemics; quarantine restrictions; strikes; lockouts; fuel shortages; freight embargoes; supply chain disruptions beyond the contemplation of the Parties as of the Effective Date; unavailability of materials or equipment; and Adverse Weather that satisfies the requirements herein.
 - 9.2.14.3.1. Supply chain disruptions may constitute an interruption that may support Excusable Delay for an Impacted Item **only**, if Designer/Builder demonstrates **all** the following conditions are satisfied:

- 9.2.14.3.1.1. The supply chain disruption causes the procurement of an Impacted Item to exceed the amount of days for the delivery for the Impacted Item as indicated in the **initial** detailed Project Schedule;
 - 9.2.14.3.1.2. Designer/Builder has exhausted any Supply Float for that Impacted Item;
 - 9.2.14.3.1.3. Delay in the procurement of the Impacted Item materially impacts the progress of the Services by impacting the critical path of the Project; and
 - 9.2.14.3.1.4. Designer/Builder in no way causes the delay in the procurement of the Impacted Item. Without in any way limiting the generality of the foregoing, Designer/Builder shall be deemed to “cause” a delay in the procurement of an Impacted Item if: (i) Designer/Builder unreasonably delays ordering the Impacted Item; and/or (ii) Designer/Builder fails to request permission from City to purchase the Impacted Item sufficiently in advance given then-current information regarding lead times for an Impacted Item and to store the Impacted Item on the Site(s) or off-Site(s), with such storage complying with the requirements of the Contract Documents.
- 9.2.14.4. Designer/Builder is aware that AHJs, including, without limitation, 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 has included in the Contract Price and Contract Time for possible review of its drawings and for reasonable delays and damages that may be caused by such agencies. Designer/Builder is only entitled to an extension to the Contract Time or adjustment to the Contract Price arising from delays caused by review of Designer/Builder’s drawings or other approvals of Review Agencies if any such event materially exceeds the time included in the Project Schedule for such activities, if the time provided in the Project Schedule was reasonable based on the facts known of the Parties pertaining to the Services as of the Effective Date, or if any such event satisfies the conditions applicable to Review Agencies in the “**Force Majeure**” section below.
- 9.2.14.5. Neither the financial resources of Designer/Builder or any person or entity directly or indirectly engaged by Designer/Builder in performance of any portion of the Services shall be deemed conditions beyond the control of Designer/Builder. If an event of Excusable Delay occurs, the Contract Time shall be subject to adjustment hereunder only if Designer/Builder establishes: (i) full compliance with all applicable provisions of the Terms and Conditions relative to the method, manner and time for Designer/Builder’s notice and request for adjustment of the Contract Time; (ii) that the event(s) forming the basis for Designer/Builder’s request to adjust the Contract Time are outside the reasonable control and without any fault or neglect of Designer/Builder or any person or entity directly or indirectly engaged by

Designer/Builder in performance of any portion of the Work; and (iii) that the event(s) forming the basis for Designer/Builder’s request to adjust the Contract Time directly and adversely impacted the critical path of the Services as indicated in the approved Project Schedule or the most recent updated approved Project Schedule relative to the date(s) of the claimed event(s) of Excusable Delay.

9.2.15. Unexcused Delay(s) – Liquidated Damages:

9.2.15.1. Unexcused Delays refer to any delay to the progress of the Services caused by events or factors other than those specifically identified in the “**Excusable and Compensable Delay(s)**” or the “**Excusable and Non-Compensable Delay(s)**” sections above. Neither the Contract Price nor the Contract Time shall be adjusted on account of Unexcused Delays.

9.2.15.2. Designer/Builder and City hereby agree that the exact amount of damages for failure to complete the Services within the time specified is extremely difficult or impossible to determine. If the Services is not completed within the time specified in the Contract Documents, it is understood that City will suffer damage. It being impractical and unfeasible to determine the amount of actual damage, it is agreed Designer/Builder shall forfeit and pay to City as fixed and liquidated damages, and not as a penalty, the amount set forth in the Contract for each calendar day of delay in Completion. Designer/Builder and its Surety shall be liable for the amount thereof pursuant to Government Code section 53069.85.

9.2.15.3. Designer/Builder shall not forfeit or pay liquidated damages for an Excusable Delay or an Excusable and Compensable Delay but instead shall be entitled to an extension of the Contract Time for such delay.

9.2.16. Adverse Weather: Designer/Builder may obtain an extension of time in the event of Adverse Weather.

9.2.16.1. “**Adverse Weather**” shall mean only weather that satisfies all of the following conditions:

9.2.16.1.1. Unusually severe precipitation, sleet, snow, hail, heat, wind, or cold conditions in excess of the norm for the location and time of year it occurred;

9.2.16.1.2. Unanticipated; and

9.2.16.1.3. At a Project Site.

9.2.16.2. Designer/Builder will only be allowed a time extension for Excusable Delay caused by Adverse Weather if requested by Designer/Builder and only if all the following conditions are met:

9.2.16.2.1. The weather conditions constitute Adverse Weather, as defined herein;

9.2.16.2.2. Designer/Builder can verify that the Adverse Weather caused delays in excess of five hours of the indicated labor required to complete the scheduled tasks of Services on the day affected by the Adverse Weather;

9.2.16.2.3. Designer/Builder’s crew is dismissed as a result of the Adverse Weather; and

9.2.16.2.4. The number of days of delay for the month exceed those indicated in this table:

January	11	July	0
---------	----	------	---

February	10	August	0
March	10	September	1
April	6	October	4
May	3	November	7
June	1	December	10

A day-for-day extension will only be allowed for those days in excess of those indicated in this table.

- 9.2.16.3. The Contract Time has been determined with consideration given to the average climate weather conditions prevailing in the County in which the Project is located.

10. **TRENCH SHORING:** If this Contract is in excess of \$25,000 and is for the excavation of any trench deeper than five (5) feet, Designer/Builder must submit and obtain City 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.

11. **EXCAVATIONS OVER FOUR FEET:**

- 11.1. If this Contract includes excavations over four (4) feet, Designer/Builder shall in compliance with Public Contract Code section 7104, promptly, and before the following conditions are disturbed, notify City, in writing, of any: (1) Material that Designer/Builder suspects 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 Sites that differ from those indicated in the Construction Documents; or (3) Unknown physical conditions at the Sites of any unusual nature, or materially different from conditions ordinarily encountered and generally recognized as inherent in the character of the Services. City shall promptly investigate the conditions, and if it finds that the conditions do materially differ, or involve hazardous waste, and cause a decrease or increase in Designer/Builder's cost of, or the time required for, performance of any part of the Work, City shall issue a CO or amendment as provided herein.
- 11.2. In the event that a dispute arises between City and Designer/Builder regarding whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in Designer/Builder's cost of, or time required for, performance of any part of the Work, if possible, Designer/Builder shall proceed with other Services to be performed under the Contract which is not subject to the dispute. 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.
- 11.3. Notwithstanding the above, the Services does not include directly or indirectly performing or arranging for the detection, monitoring, handling, storage, removal, transportation, disposal or treatment of Hazardous Materials, as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the regulations promulgated thereunder, and other applicable federal, state or local law ("**Hazardous Materials**"). The Services has been contemplated and priced based on the absence of Hazardous Materials at the Sites. Designer/Builder will notify City immediately if it discovers or suspects the presence of any Hazardous Materials, and such discovery shall entitle Designer/Builder to suspend the Services until City can arrange proper remediation and the Parties can negotiate mutually-agreeable terms to complete the rest of the Work, if feasible.

12. **WORKERS:**

- 12.1. 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 work assigned to him or her. Any person in the employ of Designer/Builder or a subcontractor whom City may deem incompetent or unfit shall be dismissed from the Sites and shall not again be employed at the Sites without written consent from City.

- 12.2. **COVID-19:** Designer/Builder shall ensure that all its employees and employees of its subcontractors shall comply with all applicable and existing federal, state, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction site safety in connection with COVID-19, and/or any similar virus or derivative strain.
13. **CORRECTION OF ERRORS:** Designer/Builder shall perform, at its own cost and expense and without reimbursement from City, any work necessary to correct errors or omissions which are caused by Designer/Builder's failure to comply with the Contract.
14. **SUBSTITUTIONS:** No substitutions of material from those specified in the approved final design shall be made without the prior written approval of City, which shall not be unreasonably withheld.
15. **DESIGNER/BUILDER SUPERVISION:** Designer/Builder shall provide competent, full-time on-site supervision of personnel employed on the Sites, use of equipment, and quality of workmanship.
16. **CLEAN UP:** Debris from the Services shall be removed from the Sites by Designer/Builder. The Sites shall be in order at all times when Services is not being performed and shall at all times be maintained in a reasonably clean condition.
17. **ACCESS TO WORK:** City shall provide Designer/Builder with the required Site access. City representatives shall at all times have access to the Services. Designer/Builder shall provide safe and proper facilities for City's access. City representatives shall wear appropriate PPE and follow all safety rules and regulations while at Sites where construction is being performed.
18. **PROTECTION OF WORK AND PROPERTY:** Designer/Builder shall erect and properly maintain all necessary safeguards, signs, barriers, lights, and security persons for protection of workers, the public and the Services and shall post clear and conspicuous notice warning of any hazards created by the Services. In an emergency affecting life, safety, Work, or adjoining property, Designer/Builder, without special instruction or authorization from City, is permitted to take any action Designer/Builder thinks necessary to prevent such threatened loss or injury.
19. **OTHER CONTRACTS/CONTRACTORS:** Designer/Builder acknowledges that it shall not have exclusive occupancy of the Sites or of the Project. City reserves the right to let other contracts, and/or to perform other work with its own forces at the Sites. Designer/Builder shall afford City's contractors reasonable opportunity for introduction and storage of materials and execution of contractor's work at the Sites. If applicable, Designer/Builder shall properly coordinate and connect the Services with the work of City's contractors. In addition to Designer/Builder's obligation to protect its own Work, Designer/Builder shall use its best efforts to protect the work of any other contractor that Designer/Builder encounters while working on the Project. Designer/Builder shall not cause any unnecessary hindrance or delay to the use and/or operation(s) of the Sites and/or to City or any other contractor working on the Project. If simultaneous execution of any contract or operation is likely to cause interference with performance of Designer/Builder's Contract, Designer/Builder shall coordinate with those contractor(s), person(s), and/or entity(s) and shall notify City of the resolution.
20. **ASSIGNMENT OF CONTRACT:** 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 City. This provision shall not limit Designer/Builder's right to subcontract portions of its Services to other entities and assign this Contract and all related contracts without the consent of City (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.
21. **COMMISSIONING:**
- 21.1. **Summary**
- 21.1.1. Commissioning is a process for validating and documenting that the facility and its systems are constructed and perform in conformity with the Contract.
- 21.1.2. The objective of the commissioning process is to verify that the performance of the facility and its systems meet or exceed the design intent.

- 21.1.3. Commissioning includes special facility start-up processes used to bring the facility to a fully operational state, free of deficiencies in an efficient and timely manner.
- 21.1.4. Training on related systems and equipment operation and maintenance shall be scheduled to commence only after start-up is complete and systems are verified to be 100% complete and functional.

21.2. Description

- 21.2.1. Designer/Builder Startup: prior to City's acceptance of Work, Designer/Builder shall perform a program of activities including starting, testing, inspecting, adjusting balancing, correcting deficiencies and other similar activities.
- 21.2.2. City and if applicable the Project Inspector (IOR) shall be present to observe, inspect, and identify deficiencies in Building Systems Operations.
- 21.2.3. The completion of startup means the entire Project including startup and fine tuning has been performed to the requirements of the Contract and is verified in writing by City and the IOR.
- 21.2.4. Fine Tuning: Fine tuning is the responsibility of Designer/Builder after City occupancy and ending one year after City occupancy. During this time, Designer/Builder is responsible for optimizing systems and correcting deficiencies arising under normal operating conditions.
- 21.2.5. Includes a period after occupancy where systems are optimized under "live" operating conditions and any outstanding construction deficiencies are corrected.
- 21.2.6. Fine Tuning shall extend from date of City occupancy to one year after occupancy.
- 21.2.7. Designer/Builder is to include in its Building Life Cycle Cost Analysis the Commissioning scope of work.

21.3. Definition of Terms

- 21.3.1. Designer/Builder's Pre-Commissioning Checklists: Includes installation and start-up items as specified to be completed by the appropriate contractors prior to operational verification through the functional testing process.
- 21.3.2. Installation Verification Process: Includes the on-site inspection and review of related system components for conformance to the Contract. Designer/Builder shall verify systems readiness for functional testing procedures prior to the start of functional testing. Deficiencies will be documented by City and the IOR for future resolution.
- 21.3.3. Functional Performance Testing Process: Includes the documented testing of system parameters, under actual or simulated operating conditions. Final performance commissioning of systems will begin only after the appropriate Designer/Builder certifies that systems are 100% complete and ready for functional testing. The contractors will be required to schedule, coordinate and perform device tests, calibration and functional performance test procedures.
- 21.3.4. Deficiencies and Resolutions List: Includes a list of noted deficiencies discovered as a result of the commissioning process. This list also includes the current disposition of issues, and the date of final resolution as confirmed by City and the IOR Deficiencies are defined as those issues where products execution or performance does not satisfy the Contract and/or the design intent.

21.4. Commissioning Duties and Responsibilities

- 21.4.1. Designer/Builder Duties and Responsibilities:
 - 21.4.1.1. Assure the participation and cooperation of subcontractors and suppliers under their jurisdictions as required to complete the commissioning process.
 - 21.4.1.2. Complete Commissioning Report Forms. Reports are to be completed in a neat easily readable condition.

- 21.4.1.3. Complete the respective start-up and check out procedures and insure readiness of equipment and systems prior to the start of the functional performance testing. Written confirmation of system readiness for performance testing is required.
- 21.4.1.4. Provide qualified representatives for the functional performance commissioning process.
- 21.4.2. Assure that all subcontractors and suppliers include in their respective contracts cost necessary to participate in and complete the commissioning process.
- 21.4.3. Duties and responsibilities of others for Commissioning: The commissioning process requires the active participation of City and the IOR, and any other related Consultants on the project.

22. COMPLETION:

- 22.1. **Design Development Documents:** Designer/Builder shall be complete with this stage upon City's acceptance of final Design Development Documents, as applicable to each Site(s), including, without limitation, the approval of any deliverables required to be provided by Designer/Builder to City.
- 22.2. **50% Construction Documents:** Designer/Builder shall be complete with this stage, as applicable to each Site(s), upon City's acceptance of Construction Documents at 50% of completion, including, without limitation, the approval of any deliverables required to be provided by Designer/Builder to City.
- 22.3. **100% Construction Documents:** Designer/Builder shall be complete with this stage, as applicable to each Site(s), upon City's acceptance of final Construction Documents and Designer/Builder's submittal of those documents to all AHJs, where applicable; and
- 22.4. **Construction:**
 - 22.4.1. Designer/Builder acknowledges that the requirements for "**Completion**" hereunder apply to Construction Stage Services for each Site of the Project.
 - 22.4.2. **Walk-Through as Prerequisite to Determination of Completion:**
 - 22.4.2.1. Designer/Builder shall notify City when it thinks that the Services is complete except for minor corrective items. Designer/Builder shall provide to City a preliminary list of all minor corrective items that must be corrected. City and Designer/Builder shall then schedule a final walk-through of the Project to be attended by Designer/Builder, City, and the Inspector to determine whether and to what extent the Services is complete. City will schedule the walkthrough within five (5) business days after City's receipt of Design/Builder's preliminary list, except in the event that all parties necessary for the walkthrough are reasonably not available (including, without limitation, the Construction Manager or IOR). Any erroneous claims of completion by Designer/Builder resulting in a premature walk-through shall be at Designer/Builder's sole cost and expense, and City shall be entitled to reduce its payments to Designer/Builder under the Contract by an amount equal to any costs incurred by City due to the erroneous claims by Designer/Builder that the Project is complete.
 - 22.4.2.2. Designer/Builder's preliminary list of all minor corrective items will be used by Designer/Builder to prepare a corrective items list ("**Punch-List**") that shall be identified in the final walk-through of the Project. City shall approve the Punch-List and may add omitted or missing items and provide a copy of an updated Punch-List to Designer/Builder at the conclusion of the walk-through or within a reasonable time thereafter, not to exceed five (5) days.
 - 22.4.2.3. City may, at its sole discretion, accept as complete partial scopes or phases of Services as each is completed prior to completion of the entire Services or Project.

- 22.4.2.4. No later than five (5) business days after the walk through, City shall determine whether the Services is eligible for Completion.
- 22.4.2.5. If Designer/Builder and City (through its City Representative) determine that the Services is eligible for Completion, then the date of that determination shall constitute the final day of the Construction Stage of the Project, or any Site of the Project, when calculating Liquidated Damages (“**Staff Determination**”). Staff Determination of eligibility for Completion shall not be unreasonably withheld, delayed or conditioned; provided, however, that City’s determination, in its sole and reasonable discretion, that any Services is not complete in conformance with all Contract Documents shall not be considered “unreasonable”. Additionally, City shall promptly include the approval and acceptance of the Project and Notice of Completion on the Council’s next available agenda.
- 22.4.2.6. Designer/Builder shall attend a post-construction interview with City and provide a narrative of lessons learned for the Project.
- 22.4.3. **City’s Acceptance of Work:** City may either:
- 22.4.3.1. Accept the Services as complete notwithstanding Punch List items (as distinguished from incomplete Work), if the Services has otherwise been completed to the satisfaction of City and the Inspector; or
- 22.4.3.2. Refrain from accepting the Services as complete until the entire Services and all portions thereof, including all Punch-List items, have been completed to the satisfaction of City and the Inspector; provided however, that completion of Punch List items is not required for City to deem the Services at a Site Complete and cease the accrual or assessment of Liquidated Damages, if **all** other Services is complete.
- 22.4.4. **Completion:** The Services shall be accepted as complete by an action of City’s Council (“**Final Completion**” or “**Complete**”); provided, however, that delay by the City Council in taking such action shall not entitle the City to assess Liquidated Damages if the other conditions of of the “City’ Acceptance of Work” section are satisfied.
- 22.4.5. **Notice of Completion:** Once City accepts the Work, City may thereafter cause a Notice of Completion to be recorded in the County Recorder’s Office.
- 22.4.6. **Designer/Builder’s Failure to Correct Punch-List Items:** If City elects to accept Services with incomplete Punch List items, and Designer/Builder fails to complete the Punch List items within forty-five (45) days of days of Completion of the Project, City shall withhold from the final payment due Designer/Builder an amount equal to one hundred and fifty percent (150%) of the estimated cost, as reasonably determined by City, of each Punch List item and all portions related thereto, until the item is complete.
- 22.4.7. **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.
23. **PARTIAL OCCUPANCY / BENEFICIAL USE:** City may occupy or use any completed or partially completed portion of the Services at any time provided that doing so does not unreasonably interfere with Designer/Builder’s ability to complete any Services at a Site. Neither City’s final acceptance, final payment, any provision in Contract Documents, nor the use or occupancy of the Work, in whole or in part, by City shall constitute acceptance of Services not in accordance with the Contract Documents nor relieve Designer/Builder or Designer/Builder’s Performance Bond Surety from liability with respect to any warranties or responsibility for faulty or defective Services or materials, equipment and workmanship incorporated therein. City and Designer/Builder shall agree in writing to the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Work, insurance, the period for correction of the Work, and the commencement of warranties required by the Contract Documents. Any dispute as to responsibilities or the determination of Completion shall be resolved pursuant to the Claims and Disputes provisions herein, with the

added provision that during the dispute process, City shall have the right to occupy or use any portion of the Services that it needs or desires to use.

24. FORCE MAJEURE CLAUSE:

- 24.1. The term “**Force Majeure**” shall mean those events caused beyond the control of the affected Party and which by the exercise of due diligence the Party could not reasonably avoid and which it has been unable to overcome, including acts of God and public enemy; fire; disease, 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; insurrections; epidemics; pandemics; quarantine restrictions; strikes; civil disobedience; sabotage; supply chain disruptions; general unavailability of materials in the region in which the Services is to be performed beyond the contemplation of the Parties as of the Effective Date; 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 the Party could not reasonably have been expected to avoid and which it has been unable to overcome.
- 24.2. Neither Party shall be considered to be in default in the performance of any material obligation of the Contract during the time and to the extent that the Party is prevented from obtaining delivery or performing by a Force Majeure event. Neither Party shall be relieved of its obligation to perform if its failure is due to causes arising out of the Party’s negligence or due to removable or remediable causes which the Party fails to remove or remedy with the exercise of all best efforts within a reasonable time period. Either Party rendered unable to fulfill its obligations under the Contract by reason of an event of Force Majeure shall give prompt written notice of the fact to the other Party. Notwithstanding a Force Majeure event, the Party claiming a Force Majeure event shall provide the other Party 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.
- 24.3. Designer/Builder is aware that Review Agencies may have to approve Designer/Builder-prepared drawings, plans or approve a proposed installation. Designer/Builder shall include in the Project Schedule time for possible review of its drawings, plans, and proposed installation and for reasonable delays or damages that may be caused by the Review Agencies. Designer/Builder shall be entitled to additional time in the Project Schedule for review of Designer/Builder’s drawings, plans or proposed installation or other approvals from the Review Agencies, if all of the following conditions have been satisfied:
- 24.3.1. The time for this review is in excess of the time expressly allocated for this review in the Project Schedule; and
- 24.3.2. Designer/Builder has diligently pursued approval from the Review Agencies; and
- 24.3.3. The delay in Review Agencies’ approval is not related to an uncured defect, error, or omission in Designer/Builder’s drawings, plans, or proposed installation.

25. INDEMNIFICATION / HOLD HARMLESS CLAUSE:

- 25.1. To the furthest extent permitted by California law, Designer/Builder shall defend, indemnify, and hold harmless City, its trustees, members, agents, representatives, officers, consultants, employees, and volunteers (the “**Indemnified Parties**”) from any and all third party demands, losses, liabilities, claims, suits, and actions (the “**Indemnity Claim(s)**”) 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, property damage, or otherwise arising out of, connected with, or resulting from the performance of this Contract to the extent the Indemnity Claims are caused by the negligence, recklessness, or willful misconduct of Designer/Builder. City shall have the right to accept or reject any legal representation that Designer/Builder proposes to defend City. However, such acceptance shall not be unreasonably withheld. This indemnification, defense, and hold harmless obligation includes any failure or alleged failure by Designer/Builder to: (1) comply with any provision of law, and (2) timely and properly fulfill all of its obligations under the Contract, including, without

limitation, any stop payment notice actions or liens, including liens by the California Department of Labor Standards Enforcement.

- 25.2. Further, Designer/Builder shall be directly liable to the Indemnified Parties for and, to the furthest extent permitted by California law, shall defend, indemnify, and hold harmless the Indemnified Parties from any Indemnity Claims of any kind, nature, and description arising out of, connected with, or resulting from the design component of the Project.
- 25.3. Designer/Builder's duty to defend under either of the above provisions shall begin upon City's notification to Designer/Builder of an Indemnity Claim. At that time, Designer/Builder shall pay for that defense at its sole cost. Designer/Builder's duty to indemnify and defend under this Contract shall apply during the term of this Contract and shall survive any expiration or termination of this Contract until any such Indemnity Claim(s) is barred by the applicable statute of limitations and is in addition to any other rights or remedies that City may have under the law or under this Contract.

26. PAYMENT:

26.1. Design Stage Services:

- 26.1.1. Invoices shall be on a form approved by City and are to be submitted to City via City's authorized representative.
- 26.1.2. Designer/Builder shall submit to City on a monthly basis documentation showing proof that payments were made to its consultant(s).
- 26.1.3. Designer/Builder shall submit to City for approval a copy of Designer/Builder's monthly pay request format.
- 26.1.4. Upon receipt and approval of Designer/Builder's invoices, City agrees to make payments within thirty (30) days of receipt of the invoice.

26.2. Construction Stage Services:

- 26.2.1. During Construction Stage Services for any Site(s) of the Project, Designer/Builder shall prepare and submit a separate Schedule of Values and separate Application for Payment consistent with the requirements below, as applicable.
- 26.2.2. On a monthly basis, Designer/Builder shall submit an application for payment based upon the estimated value for materials delivered or Services and Services performed under the Contract as of the date of submission ("**Application for Payment**") and consistent with the Project Cost Values set forth in **Exhibit C**, attached hereto. Designer/Builder shall certify each Application for Payment and the Inspector shall verify that the materials, Services, or Services were delivered or performed.
- 26.2.3. **Schedule of Values:** Designer/Builder shall provide an initial Schedule of Values for all of the Work, which must include quantities and prices of items aggregating the Contract Price and must subdivide the Services into component parts in sufficient detail to serve as the basis for determining the cost of construction for the purposes of withholdings as applicable in these Terms and Conditions ("**Schedule of Values**"). Not later than the fifth (5th) day of each month, Designer/Builder shall submit an updated Schedule of Values to City, reflecting the percentage complete of each component of the Services. The initial Schedule of Values is attached as **Exhibit D**. The Schedule of Values shall not be modified or amended by the Designer/Builder without the prior consent and approval of the City, which shall not be unreasonably withheld.
- 26.2.4. Within thirty (30) days after City's receipt of the Application for Payment, Designer/Builder shall be paid a sum equal to **Ninety-Five Percent (95%)** of the value of the Services performed (assuming the value of the Services performed is verified by Inspector and certified by Designer/Builder) up to the last day of the previous month, less the aggregate of previous payments and amounts to be withheld. City shall retain **Five Percent (5%)** from all amounts owing Designer/Builder as retention. Retention shall be paid pursuant to Public Contract Code sections 7107 and 7200.
- 26.2.5. To the extent applicable, with respect to any tax deduction and/or credit the Designer/Builder receives based on the Project per Internal Revenue Code section 179(d), the Designer/Builder

shall issue a credit to the City as an offset to the Designer/Builder's fee equal to the amount of the credit minus any costs incurred by the Designer/Builder in establishing that the Project qualifies for the credit.

26.2.6. **Deduction / Offset.** After prior written notice and thirty (30) days opportunity to cure, City may deduct any amount from the Contract Price reasonably necessary to protect City from loss due to:

26.2.6.1. Liquidated Damages;

26.2.6.2. Any sums expended by City in performing any of Designer/Builder's obligations under the Contract which Designer/Builder has failed to perform or has performed inadequately;

26.2.6.3. Defective Services not remedied;

26.2.6.4. Stop payment notices as allowed by state law;

26.2.6.5. Reasonable doubt that the Services can be completed for the unpaid balance of the Contract Price or by the scheduled Project completion date;

26.2.6.6. Unsatisfactory prosecution of the Services by Designer/Builder;

26.2.6.7. Unauthorized material deviations from the Contract;

26.2.6.8. Failure of Designer/Builder to maintain or submit on a timely basis proper and sufficient documentation as required by the Contract during the performance of the Work;

26.2.6.9. Knowingly false estimates submitted by Designer/Builder of the value of the Services performed;

26.2.6.10. Any sums representing expenses, losses, or damages reasonably incurred by City for which Designer/Builder is liable under the Contract; and

26.2.6.11. Any other sums which City is entitled to recover from Designer/Builder under the terms of the Contract or pursuant to state law, including section 1727 of the California Labor Code. The failure by City to deduct any of these sums from Designer/Builder's progress payment shall not constitute a waiver of City's right to the sums.

26.3. **Payment for Off-Site Stored Materials.** Payment for deposits needed for long-lead material items and for materials stored on or off the Sites shall be allowed at the sole discretion of the City, which will not be unreasonably withheld, upon the submission of proof of that the deposits or material purchases (invoices and checks and/or bills of lading) and appropriate insurance coverage. Designer/Builder shall furnish to City written consent from Designer/Builder's Surety approving the advanced payment for materials stored off Site. The maximum prepayment allowed by City shall be **One Hundred Percent (100%)** of the actual value of the material being considered, less retention. Designer/Builder shall protect stored materials from damage and shall be liable for any damage thereto. Damaged materials, even though paid for, shall not be incorporated into the Services. Designer/Builder shall be responsible to replace any damaged stored materials at its sole cost and expense.

27. **LOGISTIC PLAN:** Designer/Builder shall provide a staging and logistics plan identifying laydown areas, loading and unloading areas, crane locations, fence locations, temporary utility connections, trailer locations, and emergency evacuation meeting area. This Logistics Plan must be approved by City prior to Designer/Builder mobilizing on the Site(s). Designer/Builder's Logistics Plan must be updated and provided to City at each Site and as required by the applicable Notice to Proceed.

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

- 28.1. Designer/Builder and 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 Services.
- 28.2. Designer/Builder is responsible for obtaining on behalf of City and at Designer/Builder's expense, local, county and state permits and approvals, required for the building, installation, and start-up of the Services which are required to complete the Project. Notwithstanding the foregoing, City is solely responsible for payment for the Inspector and any special inspections required.
- 28.3. City will cooperate and assist Designer/Builder in obtaining all permits required by the Contract or to perform the Services.
- 28.4. City shall be responsible for obtaining any other permits or approvals that may be required, including annual operating permits as applicable, inspections and any special inspections required.
29. **INDEPENDENT CONTRACTOR STATUS:** While performing the Services, Designer/Builder is an independent contractor, and not an officer, employee, agent, partner, or joint venture of City. Designer/Builder shall be solely responsible for its Worker's Compensation insurance, taxes, and other similar charges or obligations. Designer/Builder shall be liable for its actions, including Designer/Builder's negligence or gross negligence, and shall be liable for the acts, omissions, or errors of Designer/Builder's agents or employees.
30. **ANTI-DISCRIMINATION:** It is the policy of City that in connection with any work performed under contract with City, there 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 persons. Designer/Builder shall comply, and require compliance by all Designer/Builder subcontractors, with applicable Federal and California laws including, but not limited to, the California Fair Employment and Housing Act, Government Code section 12900 et seq., and Labor Code section 1735.
31. **PAYMENT BOND AND PERFORMANCE BOND:** Designer/Builder shall not commence any Construction Stage Services at any Site until it provides City, in the form provided by City herein, a Payment (Labor and Material) Bond and a Performance Bond, each in an amount equivalent to **One Hundred Percent (100%)** of the Contract Price. The Payment and Performance Bonds must be issued by a surety admitted to issue bonds in the State of California and otherwise acceptable to City.
32. **DESIGNER/BUILDER'S INSURANCE:** During the entire term of the Contract, Designer/Builder shall have and maintain in force, the minimum policy limits indicated in this Article. Designer/Builder shall not commence Work, nor allow any subcontractor, employee, or agent to commence Services until the insurance required of Designer/Builder, subcontractor, or agent has been obtained. Designer/Builder's policy(ies) shall be primary and any insurance carried by City shall be secondary and supplemental. All policies shall contain waivers of subrogation against City. Excess/Umbrella policies can be used to satisfy the insurance required of Designer/Builder.
- 32.1. All of Designer/Builder's insurance shall be placed with insurers **ADMITTED** in California with a current A.M. Best's rating of no less than A- or **A:VII**. Designer/Builder shall provide documentation to City demonstrating this rating.
- 32.2. The limits of insurance shall not be less than the following amounts:

Commercial Liability	General	Includes: Personal & Advertising Injury, Product Liability and Completed Operations and Third Party Property	\$2,000,000 each occurrence; \$4,000,000 general aggregate Third Party Property: Issued for the value and scope of Services stored off-site.
Automobile Liability – Any Auto		Combined Single Limit	\$2,000,000 per occurrence
Excess Liability (Umbrella)			\$5,000,000 per occurrence; \$5,000,000 aggregate
Workers Compensation			Statutory limits pursuant to

		State law
Employers' Liability		\$2,000,000 each accident, each disease; \$2,000,000 policy limit
Builder's Risk (Course of Construction)		Issued for the value and scope of Services indicated herein.
Professional Liability		\$2,000,000 each occurrence; \$4,000,000 general aggregate

- 32.3. **Commercial General Liability Insurance:** Coverage to be written on an occurrence form. Coverage to be at least as broad as ISO form CG 0001 (04/13). City shall be named as an additional insured on Designer/Builder's Commercial General Liability policy for any liability arising out of the Services.
- 32.4. **Automobile Liability:** Coverage to be written on an occurrence form. City shall be named as an additional insured on Designer/Builder's Automobile Liability policy for any liability arising out of the Services.
- 32.5. **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. Coverage terms and limits to also apply in excess of those required for Employers Liability. City, by way of policy language, shall be an additional insured on Designer/Builder's Excess Liability Insurance which follows the underlying insurance policy.
- 32.6. **Workers Compensation:** Statutory limits.
- 32.7. **Employers' Liability:** As indicated above.
- 32.8. **Builder's Risk Insurance:** Designer/Builder shall procure and maintain a Builder's Risk Insurance Policy in relation to the Project that shall be effective when City issues the Notice to Proceed with the Services which shall: (i) be written on a full replacement cost, "all risk" form, subject to customary sublimit and commercial availability (except that any insurer must be a California Admitted Insurer), (ii) cover the entire Work, including all equipment, materials, machinery, supplies, structures and other items intended to become a permanent part of the Project, and (iii) be maintained until the Commercial Operation Date. This Builder's Risk Insurance Policy shall include the interests of City, Designer/Builder, subcontractors, sub-subcontractors, vendors, and suppliers in the Work, naming each as loss payees.
- 32.9. **Professional Liability Insurance:**
- 32.9.1. Coverage to be written on a claims-made form and shall cover all non-construction Services including, all programming, design, engineering, and architectural Services performed by Designer/Builder.
- 32.9.2. **Subcontractors / Subconsultants:** Subcontractors who perform non-construction services for the Project shall carry professional liability insurance at the same limits required of Designer/Builder to cover that subcontractor's work.
- 32.10. **Waiver of Subrogation:**
- 32.10.1. Designer/Builder waives (to the extent permitted by law) any right to recover against City for damages to the Work, any part thereof, or any and all claims arising by reason of any of the foregoing, but only to the extent that such damages and/or claims are covered by Builder's Risk insurance and only to the extent of such coverage (which shall exclude deductible amounts) by insurance actually carried by City.
- 32.10.2. The provisions of this section are intended to restrict each Party to recovery against insurance carriers only to the extent of such coverage and waive fully and for the benefit of each, any rights and/or claims which might give rise to a right of subrogation in any insurance carrier. City and Designer/Builder shall each obtain in all policies of insurance carried by either of

them, a waiver by the insurance companies thereunder of all rights of recovery by way of subrogation for any damages or claims covered by the insurance.

- 32.11. **Additional Insured Endorsement Requirements:** On those policies described in this section where an additional insured requirement is included, Designer/Builder shall name City, its trustees, members, officers, and employees as additional insureds. Subcontractors shall name Designer/Builder, City, its trustees, members, officers, and employees as additional insureds. The Additional Insured Endorsement included on all such insurance policies shall be an ISO CG 20 10 (04/13), or an ISO CG 20 38 (04/13), or their equivalent as determined by City in its sole discretion, and must state that coverage is afforded the additional insured with respect to claims arising out of operations performed by or on behalf of the insured. If the additional insureds have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis. The insurance provided by Designer/Builder pursuant to this section must be designated in the policy as primary to any insurance obtained by City. The amount of the insurer's liability shall not be reduced by the existence of such other insurance.
33. **SUBCONTRACTOR INSURANCE REQUIREMENTS:** Designer/Builder shall require its Subcontractor(s) to procure and maintain Commercial General Liability Insurance, Automobile Liability Insurance, and Umbrella Liability Insurance with limits equal to the amounts required of Designer/Builder, unless City and Designer/Builder agree otherwise. Designer/Builder shall require its Subcontractor(s) to procure and maintain Commercial General Liability Insurance, Automobile Liability Insurance and Umbrella Liability Insurance.
34. **CERTIFICATES OF INSURANCE AND ENDORSEMENTS:** Designer/Builder shall provide to City certificate(s) of insurance and endorsements satisfactory to City. Designer/Builder shall provide City at least thirty (30) days' prior written notice of the cancellation, or non-renewal of the insurance. Furthermore, Designer/Builder shall indemnify City for any loss suffered by City to the extent that the loss is attributable to Designer/Builder's failure to provide City with thirty (30) days' prior written notice. Excess/Umbrella policies can be used to satisfy the insurance required of Designer/Builder.
35. **WARRANTY/QUALITY:** Except for any longer warranty called for elsewhere in the Contract Designer/Builder, manufacturer, or assigned agents shall guarantee the Services or Services performed against defective workmanship, defects or failures of materials for a period of **ONE (1)** year from date that all components of the Project commissioned and verified by Designer/Builder as being fully functional and operative, or upon Beneficial Use, whichever occurs first. All workmanship and merchandise must be warranted to be in compliance with applicable California energy, conservation, environmental, and educational standards. This warranty shall not apply to (a) equipment that has been repaired or altered by other than Designer/Builder so as to affect the same adversely, or (b) equipment that has been subject to negligence, accident, or damage by circumstances beyond Designer/Builder's control, or improper operation, maintenance or storage, or other than normal use and service. Designer/Builder shall not be responsible for the cost of correcting a **manufacturer's** breach of a warranty or defect otherwise covered by the manufacturer if the **manufacturer** fails to honor or otherwise comply with the manufacturer's warranty because the manufacture: (i) ceases to operate, or (ii) because of insolvency, liquidation, bankruptcy or similar occurrence. Designer/Builder makes no warranties of merchantability or fitness for a particular purpose.
- 35.1. At City's sole option, Designer/Builder shall repair or replace any and all of that Work, together with any other Services that may be displaced in so doing, that may prove defective in workmanship and/or materials within the warranty period described above, without expense whatsoever to City. In the event of failure of Designer/Builder and/or Surety to commence and pursue with diligence said replacements or repairs within **TEN (10)** days after being notified in writing; provided, however, that if Designer/Builder and/or Surety provide a reasonable reason for its inability to commence the replacement or repair within that time, City shall grant a reasonable extension of time, not to exceed **THIRTY (30)** days, Designer/Builder and Surety hereby acknowledge and agree that City is authorized to proceed to have defects repaired and made good at expense of Designer/Builder and/or Surety who hereby agree to pay costs and charges therefore immediately on demand.
- 35.2. If, in the opinion of City, defective work creates a dangerous condition or requires immediate correction or attention to prevent further loss to City or to prevent interruption of operations of City, City will attempt to give the notice required above. If Designer/Builder or Surety cannot be contacted or neither complies with City's request for correction within a reasonable time as determined by City,

City may, notwithstanding the above provision, proceed to make all corrections and/or provide attentions City believes are necessary. The costs of correction or attention shall be charged against Designer/Builder and Surety of the guarantees provided in this Section or elsewhere in the Contract Documents.

- 35.3. The above provisions do not in any way limit the guarantees on any items for which a longer guarantee is specified or on any items for which a manufacturer gives a guarantee for a longer period, but after the expiration of the **one (1)** year Designer/Builder warranty period, City shall look solely to such manufacturer to resolve any warranty issues. Designer/Builder shall furnish to City all appropriate guarantee or warranty certificates as indicated in the Specifications or upon request by City.
- 35.4. Nothing herein shall limit any other rights or remedies available to City.
36. **CONFLICT OF INTEREST:** Designer/Builder understands that its professional responsibility is solely to City. Designer/Builder warrants that it and its employees and/or subcontractors presently have no interest and will not acquire any direct or indirect interest that would conflict with its performance under the Contract, including, without limitation, any direct and/or indirect interest with: (a) entity(ies) performing construction in the same discipline and in competition with any contractor on a City project; (b) entity(ies) connected or related to a trade union or joint labor management committee; or (c) City.
37. **COMPLIANCE WITH LAWS:** Designer/Builder shall give all notices and comply with all laws, ordinance, rules and regulations bearing on conduct of the Services as indicated or specified. If Designer/Builder observes that any of the Services is at variance with any laws, ordinance, rules or regulations, Designer/Builder shall notify City, in writing, and, at City's option, any necessary changes to the scope of the Services shall be made and the Contract shall be appropriately amended in writing, or the Contract shall be terminated effective upon Designer/Builder's receipt of a written notice of termination. If Designer/Builder performs any Services that is in violation of any laws, ordinances, rules or regulations, without first notifying City of the violation, Designer/Builder shall bear all costs or expenses arising therefrom.
38. **STANDARD OF CARE:** Designer/Builder shall perform the Services and Services to the standard of care of an entity performing similar work for California cities in or around the same geographic area of City, as follows:
- 38.1. For all design services, the standard of care of architects or professional engineers; and
- 38.2. For all construction services, the standard of care of licensed contractors.
- 38.3. If Designer/Builder has not met this standard of care, Designer/Builder shall be held liable consistent with the "**Indemnification/Hold Harmless**" section herein.
39. **CITY'S RIGHT TO AUDIT:** City retains the right to review and audit, at City's sole cost and expense, and the reasonable right of access to Designer/Builder's and any sub-consultant's non-confidential and non-proprietary records to review and audit Designer/Builder's compliance with the provisions of the Contract ("**City's Right**"). City's Right includes the right to inspect, photocopy, and to retain copies of any and all non-confidential and non-proprietary Project-related records with appropriate safeguards. City shall keep this information confidential, as allowed by applicable law. City acknowledges and agrees that this is a fixed-fee Contract as provided in Section 4 and that City's Right shall not be interpreted to limit Designer/Builder's compensation to costs it has incurred or to require Designer/Builder to establish or demonstrate its costs of performance as a condition to its right to receive payment for the Services.
- 39.1. City's Right includes the right to examine any and all non-confidential and non-proprietary Project books, records, documents and any other evidence of Project-related procedures and practices that are reasonably necessary to discover and verify that Designer/Builder is in compliance with all requirements of the Contract.
- 39.2. If there is a claim for additional compensation or for extra services or work, City's Right includes the right to examine non-confidential and non-proprietary Project-related books, records, documents, and accounting procedures and practices that are reasonably necessary to discover and verify all Project-related direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred.

- 39.3. Designer/Builder shall maintain complete and accurate Project-related records in accordance with generally accepted accounting practices in the industry, and in no event for less than five (5) years after Final Completion. Designer/Builder shall make available to City for review and audit all Project-related accounting records and documents, and any other financial data. Upon City's request and at City's sole expense, Designer/Builder shall submit exact duplicates of originals of all requested records to City.
- 39.4. Designer/Builder shall include these audit provisions in any and all of its subcontracts, and shall ensure that these sections are binding upon all subcontractors.
- 39.5. Designer/Builder shall comply with these provisions within thirty (30) days of City's written request to review and audit any or all of Designer/Builder's Project-related records and information.
40. **CLAIMS RESOLUTION:**
- 40.1. **Exclusive Remedy:**
- 40.1.1. Compliance with the claim resolution process and timelines described in this Claims Resolution section as well as the notice provisions of the Contract are express conditions precedent to Designer/Builder's right to commence litigation or arbitration, file a claim under the California Government Code, or commence any other legal action related to the Project ("**Claims Resolution Process**").
- 40.1.2. Designer/Builder acknowledges that its failure, for any reason, to provide written notice and all required supporting documentation to permit City's review and evaluation within the time frame required by this Claims Resolution Process, shall be deemed Designer/Builder's waiver, release, discharge and relinquishment of any right to assert, request, or demand any entitlement to an adjustment of the Contract Time or the Contract Price on account of any instruction, request, Drawings, Specifications, action, condition, omission, default or other situation.
- 40.1.3. To the extent any provision(s) of this Claims Resolution Process conflict with or otherwise impair the timeframes and procedures of Public Contract Code section 9204, the provisions of Section 9204 shall control. If provisions of this Claims Resolution Process are supplementary and/or in addition to the requirements of Section 9204, but do not conflict with or otherwise impair the timeframes and procedures of Section 9204, the provisions of this Claims Resolution Process and the Contract shall control.
- 40.2. **Performance during Claim Resolution Process:** Designer/Builder shall diligently proceed with Services on the Project at the same time that Claims are addressed under the Claims Resolution Process. It is the intent of City to resolve Claims with Designer/Builder as close to the events giving rise to the Claims as possible, and to avoid stale or late Claims and the late documenting of Claims. Designer/Builder's failure to diligently proceed in accordance with City's instructions or the Contract terms will be considered a material breach of the Contract.
- 40.3. **Waiver:** If Designer/Builder fails to timely submit any written notices required under the terms of the Contract or in this Claims Resolution section, Designer/Builder waives and releases its rights regarding further review of its Claim, unless Designer/Builder and City mutually agree in writing to other time limits. Nothing herein shall modify or alter Designer/Builder's obligation to comply with statutory notice requirements, including but not limited to, Government Code section 910 *et seq.*
- 40.4. **Intention:** The Claims Resolution Process required herein is intended to provide a concise mechanism for resolving Claims as they arise during the Project, while requiring accurate documentation related to contested issues as to those Claims that are not contemporaneously resolved.
- 40.5. **Other Provisions:** If portions of the Contract, other than this Claims Resolution Process, establish a specific process regarding a specific subject, then that process shall govern and control the resolutions of any disagreements thereunder. Otherwise, the provisions in this Claims Resolution Process shall control the resolution of all Claims.
- 40.6. **Claim Presentation:**

- 40.6.1. **Claim:** A claim is a written demand by Designer/Builder (or by Designer/Builder on behalf of a Subcontractors) that Designer/Builder must submit by **registered mail or certified mail return receipt requested** for (“Claim”):
- 40.6.1.1. An extension to the Contract Time, including relief from damages or penalties assessed by City for delay;
 - 40.6.1.2. Payment of money or damages arising from work done by, or on behalf of, Designer/Builder pursuant to the Contract, or payment that is not otherwise expressly provided for in the Contract Documents or to which Designer/Builder is not otherwise entitled; or
 - 40.6.1.3. Payment that is disputed by City.
- 40.7. **Subcontractors:**
- 40.7.1. Public Contract Code section 9204(d)(5) states that Designer/Builder may present to City a Claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that Designer/Builder present a claim for Services which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the Claim be presented to City shall furnish reasonable documentation to support the Claim. Within 45 days of receipt of this written request, Designer/Builder shall notify the subcontractor in writing as to whether Designer/Builder presented the claim to City and, if Designer/Builder did not present the Claim, provide the subcontractor with a statement of the reasons for not having done so.
 - 40.7.2. Designer/Builder is responsible for providing this Claims Resolution Process to its subcontractors and for ensuring that all subcontractors or others who may assert Claims by and through subcontractors and/or Designer/Builder are informed of this Claims Resolution Process. No Claim submitted by any party that fails to follow the provisions of this Claims Resolution Process will be considered. Designer/Builder shall indemnify, keep and hold harmless City and its consultants, against all suits, claims, damages, losses, and expenses, including but not limited to attorney’s fees, caused by, arising out of, resulting from, or incidental to, the failure to provide this Claims Resolution Process to its subcontractors or others who may assert Claims by and through subcontractors and/or Designer/Builder.
- 40.8. **Designer/Builder Must Timely Identify, Present and Document Any Claim:**
- 40.8.1. Every Claim shall be stated with specificity in writing and signed by Designer/Builder under penalty of perjury and presented to City within thirty (30) calendar days from the date Designer/Builder discovers or reasonably should discover, that an act, error or omission of City, its agents or employees, or action, condition or other situation has occurred that may entitle Designer/Builder to make a Claim. This shall include Designer/Builder’s actual or constructive knowledge of any instruction, request, Drawings, Specifications, action, condition, omission, default or other situation for which Designer/Builder believes there should an adjustment of the Contract Price or Contract Time. Designer/Builder shall provide this writing even if Designer/Builder has not yet been damaged, delayed, or incurred extra cost when Designer/Builder discovers, or reasonably should discover, the act, error, omission, action, condition or situation giving rise to the incidents giving rise to the Claim. The writing shall:
 - 40.8.1.1. Identify all of the issues, events, conditions, circumstances and/or causes giving rise to the Claim;
 - 40.8.1.2. Identify all pertinent dates and/or durations and all actual and/or anticipated effects on the Contract Price, milestones and/or Contract Time adjustments to the extent that Designer/Builder knows or reasonably should know of such adjustments; and
 - 40.8.1.3. Identify in detail line-item costs if the Claim seeks money.

- 40.8.1.4. If the Claim involves extra work, a detailed cost breakdown of the amounts Designer/Builder is seeking, including actual cost records (including without limitation, payroll records, material and rental invoices and the like) demonstrating that those costs have actually been incurred. To the extent costs have not yet been incurred at the time the Claim is submitted, actual cost records must be submitted on a current basis not less than once every two (2) weeks during any periods costs are incurred. A cost record will be considered current if submitted within ten (10) days of the date the cost reflected in the record is incurred. At the request of City, extra costs may be subject to further verification procedures (such as having an inspector verify the performance of alleged extra work on a daily basis).
- 40.8.1.5. Include an affirmative representation under penalty of perjury by Designer/Builder and any affected Subcontractor and suppliers that the error or omission was not discovered prior to submitting a proposal for the Work, and
- 40.8.1.6. Include a detailed statement demonstrating that the error or omission reasonably should not have been discovered, by Designer/Builder, its Subcontractors and suppliers, prior to submitting a proposal for the Services.
- 40.8.2. Designer/Builder shall **only** be entitled to compensation for escalation of materials costs if Designer/Builder demonstrates to the City's reasonable satisfaction that such cost escalation is the result of unusual market conditions beyond the contemplation of the Parties as of the Effective Date (including, without limitation, COVID-19, scarcity and supply chain disruptions) not the fault of Designer/Builder, and if the full extent of the escalation was not reasonably foreseeable at the time of the award of the Contract. Designer/Builder shall provide evidence to City of the costs included in the Contract for those materials and that those costs were reasonable at the time and that Designer/Builder timely ordered the materials at issue. Any increase to the Contract Price for escalation in the cost of materials shall be documented in a Change Order executed in accordance with the Contract Documents.
- 40.8.3. The writing shall be accompanied by all documents substantiating Designer/Builder's position regarding the Claim.
- 40.8.4. A Claim that asserts an effect on any schedule milestones and/or Contract Time shall include all pertinent scheduling data demonstrating the impact(s) on the critical path(s), milestone(s) and/or Contract Time.
- 40.9. **Certification:** Each copy of the Claim Documentation shall be certified by a responsible officer of Designer/Builder in accordance with the requirements of the Contract Documents. This certification shall be under penalty of perjury and must include the following language immediately above or before Designer/Builder's signature: "***I declare under penalty of perjury under the laws of the State of California that the information provided and statements made in this Claim are true and correct, substantiated and of merit.***" Designer/Builder acknowledges that this requirement is not a mere formality but is intended to ensure that Designer/Builder only submits Claims that it believes are true and correct, substantiated and have merit. Should Designer/Builder fail to submit the foregoing written statement signed under penalty of perjury, Designer/Builder waives and releases its Claim, including all rights and remedies in connection therewith. This certification must include a certification of any portion of the Claim from Subcontractors(s) or others who are asserting Claims by and through Subcontractors and/or Designer/Builder.
- 40.10. **City's Written Statement/Decision on Claim:** City shall issue a written statement/decision regarding the Claim to Designer/Builder within forty-five (45) days of receipt of the written Claim from Designer/Builder, or three (3) days after City's first regular Council meeting after that 45-day period if City's Council does not meet within that first 45-day period. If City fails to timely provide a written statement/decision regarding the Claim, the Claim shall be deemed rejected in its entirety.
- 40.11. **Designer/Builder Must Demand an Informal Meet and Confer Conference if Designer/Builder Pursues Any Claim:**

- 40.11.1. **FAILURE OF A DESIGNER/BUILDER TO TIMELY DEMAND A MEET AND CONFER CONFERENCE IS A WAIVER OF ITS RIGHT TO PURSUE ALL OR A PORTION OF ITS CLAIM.**
- 40.11.2. **Where There Is No Agreement:** If there is no agreement between Designer/Builder and City on a Claim, then within ten (10) calendar days of the date of City's written statement/decision in response to a Claim or PCO, if Designer/Builder pursues that Claim, then Designer/Builder must demand, by **registered mail or certified mail return receipt requested**, a meet and confer conference with City staff. A meet and confer conference with City staff shall be a condition precedent to Designer/Builder seeking any further relief, including a mediation as indicated below.
- 40.11.3. **Where There Is Partial Agreement:** If Designer/Builder and City partially agree on a Claim but do not reach complete agreement, then the Parties shall complete a CO or amendment, if applicable, for the issues and/or amounts agreed to. For those issues not agreed to, if Designer/Builder pursues those issues from that Claim, then Designer/Builder must demand, by **registered mail or certified mail return receipt requested**, a meet and confer conference with City staff regarding those issues. A meet and confer conference with City staff shall be a condition precedent to Designer/Builder seeking any further relief, including a mediation as indicated below, in connection with City's rejection.
- 40.11.4. **Meet and Confer Conference:** City and Designer/Builder shall schedule the meet and confer conference as soon as reasonably possible after Designer/Builder's written demand for a meet and confer conference, but in no case later than thirty (30) days after Designer/Builder's demand.
- 40.11.5. **City's Written Decision:** Within ten (10) **business** days of the meet and confer conference, City shall issue a written decision. If City fails to timely provide a written statement/decision after the meet and confer conference, all Claim issues that were part of the meet and confer conference shall be deemed rejected in their entirety.
- 40.11.5.1. If City's decision completely resolves the Claim, then the Parties shall complete a CO or amendment, if applicable, for the issues and/or amounts agreed to.
- 40.11.5.2. If City rejects Designer/Builder's Claim in whole or in part or does not issue a timely written response, then the parties shall mediate the remaining issues of the Claim.
- 40.11.5.3. Designer/Builder's costs incurred in seeking relief for Claims are not recoverable from City.
- 40.12. **Mediation:**
- 40.12.1. At City's sole discretion, this mediation may be a multiple-party mediation with the Architect, the Construction Manager, the Inspector, and/or other City consultants.
- 40.12.2. City and Designer/Builder shall mutually agree to a mediator within ten (10) **business** days after the disputed portion of the Claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.
- 40.13. **Designer/Builder's Obligation to File a Government Code Claim:** Nothing in this Contract, including this Claims Resolution Process, waives, modifies or tolls Designer/Builder's obligation to present a timely claim under Government Code section 910, et seq. Therefore, in addition to complying with this Claims Resolution Process, Designer/Builder is required to present claims to City pursuant to Government Code section 910, et seq. If after the requirements of this Claims Resolution Process are satisfied, and all or a portion of the Claim remains unresolved, and if the Government Code claim is rejected by City, Designer/Builder may proceed under the post-mediation provisions of this Claims Resolution Process.

40.14. **Post Mediation Provisions:**

- 40.14.1. **Claims of \$375,000 or Less:** The provisions of Public Contract Code § 20104.4 shall apply. Pursuant to Public Contract Code § 20104.4(a), within sixty (60) days, but no earlier than thirty (30) days, following the filing of responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. Pursuant to Public Contract Code § 9204(d)(2)(D), a mediation conducted pursuant to this Claims Resolution Process shall excuse the obligation under Public Contract Code § 20104.4(a) to mediate after litigation has been commenced unless otherwise agreed to by the parties in writing.
- 40.14.2. **Litigation of Claims in Excess of \$375,000:** If, after a mediation as indicated above, the Parties have not resolved the Claim, either Party may commence an action in a court of competent jurisdiction to contest that decision within ninety (90) days following the conclusion of that mediation or one (1) year following the accrual of the cause of action, whichever is later. By mutual agreement, the Parties can agree to instead resolve the Claim through arbitration.
- 40.15. City shall be entitled to remedy any false claims, as defined in California Government Code section 12650 *et seq.*, made to City by Designer/Builder or any subcontractors under the standards set forth in Government Code section 12650 *et seq.* Any Designer/Builder or subcontractors who submits a false claim shall be liable to City for three times the amount of damages that City sustains because of the false claim. A Designer/Builder or subcontractor who submits a false claim shall also be liable to City for (a) the costs, including attorney fees, of a civil action brought to recover any of those penalties or damages, and (b) a civil penalty of up to \$11,000 for each false claim.
- 40.16. **Documentation of Resolution:** If a Claim is resolved, City shall determine if that resolution shall be documented in an Agreement and Release of Any and All Claims form or other document, as appropriate. If City determines that an Agreement and Release of Any and All Claims form or other document is appropriate, Designer/Builder shall cooperate and execute that form and/or other document.
- 40.17. **Claim Resolution Process – Non-Applicability:** The procedures and provisions in this Claims Resolution section shall **not** apply to:
- 40.17.1. City's determination of what Services is or will be constructed;
- 40.17.2. City's rights and obligations as a public entity, such as, but without limitation, the revocation of pre-qualified or qualified status, barring a Designer/Builder from City contracts, the imposition of penalties or forfeitures prescribed by statute or regulation; provided, however, that penalties imposed against a public entity by statutes such as Section 7107 of the Public Contract Code, shall be subject to the mandatory dispute resolution provisions of this Claims Resolution section and the Contract;
- 40.17.3. Personal injury, wrongful death or property damage claims;
- 40.17.4. Latent defect or breach of warranty or guarantee to repair;
- 40.17.5. Stop notices or stop payment notices; or
- 40.17.6. Any other City rights as set forth herein.
- 40.18. City's failure to respond to a Claim from Designer/Builder within the time periods described herein or to otherwise meet the time requirements of Public Contract Code section 9204 shall automatically result in the Claim being deemed rejected in its entirety, with no admission by City as to the merits of the Claim.
- 40.19. If City fails to timely issue payment for any Claim or portion of a Claim as required pursuant to these Claim Resolution Procedures, Designer/Builder is permitted to assess interest indicated in Public Contract Code section 9204. Notwithstanding this provision, and in accordance with California Public Contract Code §7107, City is entitled to withhold up to 150% of disputed amounts and City shall not be liable for payment of interest on such disputed amounts pending final adjudication of such disputes.

41. **LABOR CODE REQUIREMENTS:** Pursuant to sections 1770 et seq. of the California Labor Code, Designer/Builder and all subcontractors under Designer/Builder shall pay all workers on all Services performed pursuant to the Contract not less than the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work as determined by the Director of the State of California Department of Industrial Relations (DIR) for the type of Services performed and the locality in which the Services is to be performed within the boundaries of City. City, as awarding body, shall comply with its obligations under the Labor Code. Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by the DIR, are available from City or on the internet (<http://www.dir.ca.gov>). City shall make such copies available to any interested party upon request.
- 41.1. Designer/Builder shall comply with the registration and compliance monitoring provisions of Labor Code section 1771.4, including furnishing its Certified Payroll Records 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.”*
- 41.2. Designer/Builder acknowledges that, for purposes of Labor Code section 1725.5, this Services 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 “subcontractors” (as defined by Labor Code section 1722.1) 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 to City that all “subcontractors” (as defined by Labor Code section 1722.1) are registered pursuant to Labor Code section 1725.5.
- 41.3. 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.
42. **ANTI-TRUST CLAIM:** Designer/Builder and its subcontractor(s) agree to assign to City 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 City tenders final payment to Designer/Builder, without further acknowledgment by the Parties.
43. **GOVERNING LAW:** The Contract shall be governed by and construed in accordance with the laws of the State of California with venue of any action in a County in which City administration office is located.
44. **PROVISIONS REQUIRED BY LAW DEEMED INSERTED:** Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and this Contract shall be read and enforced as though it were included therein.
45. **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.
46. **WAIVER:** Waiver by either Party 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.
47. **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.

48. **ENTIRE CONTRACT:** The Contract sets forth the entire Contract between the Parties and fully supersedes any and all prior agreements, understanding, written or oral, between the Parties pertaining to the subject matter herein. The Contract may be modified only by a writing evidencing mutual consent of the Parties.
49. **OWNERSHIP OF CERTAIN PROPRIETARY PROPERTY RIGHTS:** City shall not, by virtue of the Contract, acquire any interest in any formulas, patterns, devices, secret inventions or processes, copyrights, patents, other intellectual or proprietary rights, or similar items of property which are or may be used in connection with the Project. Designer/Builder shall grant to City a perpetual, irrevocable-, non-exclusive royalty-free license for any and all software or other intellectual property rights necessary for City to continue to operate, maintain, and repair all equipment that is part of the Project in a manner consistent with its continued use.
50. **OWNERSHIP OF ANY EXISTING EQUIPMENT:** Ownership of any equipment and materials existing at the Sites at the time the Contract is executed, shall remain the property of City even if it is replaced or its operation made unnecessary by Services performed by Designer/Builder. If applicable, Designer/Builder shall advise City in writing of all equipment and materials that will be replaced at the Sites and City shall, within five (5) business days of Designer/Builder' notice, designate in writing to Designer/Builder which replaced equipment and materials should not be disposed of off-Site by Designer/Builder (the "**Retained Items**"). It is understood and agreed to by both Parties that City 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 any damage.
51. **RESPONSIBILITIES OF CITY:**
 - 51.1. City shall examine the documents submitted by Designer/Builder and shall render decisions so as to avoid unreasonable delay in the performance of Services.
 - 51.2. City shall verbally and in writing promptly advise Designer/Builder if City becomes aware of any fault or defect in the Project, including any errors, omissions, or inconsistencies in Designer/Builder's documents. Failure to provide such notice shall not relieve Designer/Builder of its responsibility therefore, if any.
 - 51.3. In the event Hazardous Materials are present at the Site, and unless City and Designer/Builder agree in writing that a Hazardous Materials consultant shall be a consultant of Designer/Builder, City shall furnish the services of a Hazardous Materials consultant or other consultants when the services are requested in writing by Designer/Builder and deemed necessary by City or are requested by City. These services shall include: asbestos and lead paint survey; abatement documentation; and specifications related to said matters which are to be incorporated into documents prepared by Designer/Builder. If the hazardous materials consultant is furnished by City and not a consultant of Designer/Builder, the specifications shall include a note to the effect that they are included in Designer/Builder's documents for City's convenience and have not been prepared or reviewed by Designer/Builder. The note shall also direct questions about the specifications to its preparer. City shall be responsible for the abatement and certification of identified hazardous materials, as applicable.
 - 51.4. City 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.
 - 51.5. City shall provide Designer/Builder all relevant information in City's possession regarding the Project that Designer/Builder needs to perform its Services. City shall provide this information in a timely manner.
 - 51.6. Review Designer/Builder's proposed schedule throughout the project.
 - 51.7. Oversee Designer/Builder's quality assurance/control program.
 - 51.8. Select and pay for Project Inspector with approval by Designer/Builder.

- 51.9. Review and approve payment applications from Designer/Builder.
- 51.10. Review construction progress and adherence to the schedule (and any recovery schedules).
- 51.11. Assist with the resolution of any disagreements.
- 51.12. Facilitate Project Post-Construction Interview (Lessons Learned/Best Practices).

52. LIABILITY OF CITY:

- 52.1. Other than as provided in the Contract, City's financial obligations under the Contract shall be limited to the payment of the Contract Price, as adjusted pursuant to the provisions of the Contract Documents. In no event shall City 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 the Contract for the Services or Services.
- 52.2. City shall not be responsible for any damage to persons or property as a result of the 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 City.

EXHIBIT A

DESCRIPTION OF PROJECT & SCOPE OF WORK

1. Description of Sites. The Project includes work at the following Sites:

Site	Address	Energy Improvements
Bagdouma Park (“Site 1”)		Interior Lighting Exterior Lighting Pumps
Rancho Las Flores Park (“Site 2”)		Exterior Lighting
Public Works Building (“Site 3”)		Interior Lighting Exterior Lighting HVAC Controls
Wastewater Treatment Plant (“Site 4”)		Solar – 516.8 kW Process Optimization
Civic Center (“Site 5”)		HVAC HVAC Controls Solar – 72.2 kW 2x2 – Charging Stations (4 cars)
City-Wide (“Site 6”)		Street Lights 130 units of Protect 900 Decorative Lights
Bagdouma Park Community Center (“Site 7”)		Interior HVAC Controls

2. Description of Project & Energy Improvement Specific Scope of Work at the Sites

- 2.1. **General Description.** Designer/Builder shall perform all Services to design and construct all Energy Improvements at the Site’s pursuant to the Contract Documents and subject to this **Exhibit A**. This **Exhibit A** shall not be construed to curtail or limit Designer/Builder’s obligation to perform all the Services to design and construct the Project in accordance with the terms of this Contract, except as specifically provided otherwise and excluded by this **Exhibit A**. The terms related to Services exclusions specified in this **Exhibit A** shall take precedence over any conflicting term in any of the Contract Documents, except approved changes to the Contract Documents. All other provisions of this **Exhibit A** shall be interpreted consistent with the order of precedence in the Contract.
- 2.2. **Specific Description.** The description of the Services for the design and construction of Energy Improvements at each Site is as follows:

3. General Project Exclusions and Clarifications to all Scopes.

EXHIBIT B
DESIGN SERVICES

1. Design Services

- 1.1. This **Exhibit B** sets forth Designer/Builder's obligations for Design Services for the design of Energy Improvements at each Site, subject to any limitation on approvals for Energy Improvements as set forth in the Contract.
- 1.2. During the Design Stage and Construction Stage of the Project, Designer/Builder will meet with City to review Project specifications, the Project Schedule, conceptual documents, quality assurance plan and the basis of design.
- 1.3. Designer/Builder will meet with City to review equipment, scope of work, and installation plans that relate to the design and construction of the Project.
- 1.4. During the Work, and at least weekly, Designer/Builder will meet with the City so that Designer/Builder may provide reports to City of the general status and progress of the Work, and to review the general status and progress of the Services.
- 1.5. Although the Parties acknowledge that Designer/Builder's Work is not completely severable between design, procurement, installation, construction, commissioning, and training, the following obligations hereunder will be generally referred to as the Design Services that Designer/Builder shall perform during the Design Stage and, when the Design Stage is associated with construction, some of that Services during the Construction Stage of the Project, as applicable based on the Project as indicated in and consistent with the Construction Documents.
- 1.6. **Scope, Responsibilities, and Services of Designer/Builder**
 - 1.6.1. Designer/Builder shall provide Services that shall comply with professional engineering standards, recognized industry standards professional skill and judgment, and applicable requirements of federal, state, and local law. Designer/Builder shall, at its sole cost and expense, perform any Design Services to correct errors and/or omissions in any deliverable submitted to the City, or to perform revisions requested by the City as allowed by the Contract Documents.
 - 1.6.2. Designer/Builder agrees to design and construct the Project, consistent with the Contract Documents, in consideration for City's payment up to the Contract Price, which may only be adjusted pursuant to the provisions of the Contract Documents.
 - 1.6.3. To the extent not already performed by Designer/Builder, Designer/Builder shall utilize building components that provide City the best value based on initial cost, life expectancy, cost of operation and maintenance.
 - 1.6.4. Designer/Builder acknowledges that all California cities are now obligated to develop and implement storm water requirements.
 - 1.6.5. During the course of the Work, upon City's reasonable request, Designer/Builder shall provide reports to City of the general status and progress of the Services appropriate for dissemination to community and end-users. Reports shall cover, without limitation, budget, schedule, scope, quality and communication.
 - 1.6.6. Designer/Builder is responsible to include in its schedule City quality assurance reviews of deliverables prepared during Design Stage Services.
 - 1.6.7. Designer/Builder shall receive Notice to Proceed from City before proceeding with the Services.
 - 1.6.8. Designer/Builder shall contract for or employ at Designer/Builder's expense, design professionals and consultant(s) necessary for completion of its Services on the Project which may include architects, mechanical, electrical, and structural, as necessary, licensed as required by the State of California. Nothing in the foregoing procedure shall create any contractual relationship between City and any consultant employed by Designer/Builder under terms of the Contract.

- 1.6.9. Designer/Builder is responsible for all areas of contract administration, including but not limited to Document Controls, Project Cost Controls, Project Scope control, Schedules, Communication, quality assurance and Control. All documents shall be available to City in .pdf digital format. Designer/Builder shall review the design with City prior to commencement of any Construction Services. Submittals and documents submitted by Designer/Builder shall be in a format accessible by City.
- 1.6.10. City shall provide to Designer/Builder, upon its request, information and documentation that City currently has in its possession related to the Sites, including geotechnical reports, topographic surveys, and related items. If Designer/Builder believes that the information or documentation City provides is insufficient for purposes of design or if Designer/Builder believes it needs additional information, including a topographical survey; geotechnical report; structural, mechanical, and/or chemical tests; tests for air and/or water pollution; test borings; test pits; determinations of soil bearing values; determinations of the location of all subsurface utilities; percolation tests; ground corrosion tests; resistivity tests; tests for hazardous materials; tests for anticipating subsoil conditions; and/or other tests reasonably related to performance of the Project, Designer/Builder shall inform City of that fact and the Parties shall mutually agree on the items required and the process and responsibility to procure those items.
- 1.6.11. Designer/Builder shall coordinate with City personnel and/or its designated representatives as may be requested and desirable, including with other professionals employed by City for the design, coordination, or management of other work on the Sites.
- 1.6.12. Where applicable, Designer/Builder shall identify every AHJ over essential building and design elements and coordinate with and implement the requirements of AHJs or their authorized agents, including, without limitation, state and local fire marshal(s) or departments, county and City health inspectors, and any regulatory office or agency that has authority for review and supervision of the Project or Site(s).
- 1.6.13. As required, Designer/Builder shall provide Services required to obtain the approval of AHJs for off-Site work related to the Project, if applicable.
- 1.6.14. Designer/Builder shall coordinate with the Inspector(s) and/or Construction Manager(s).
- 1.6.15. Designer/Builder shall use reasonable efforts to provide pictures downloaded to computer files, updated as requested by City, that City may use on its website. Pictures shall be limited to Designer/Builder's Project scope.
- 1.6.16. Designer/Builder Deliverables shall include but are not limited to (for each applicable Site(s)):
- 1.6.16.1. **Design Stage Deliverables**
- 1.6.16.1.1. Design Development Documents (as defined below);
- 1.6.16.1.2. Construction Documents (50% and 100%) at time of submittal to the applicable AHJ;
- 1.6.16.1.3. Final, approved Construction Documents; and
- 1.6.16.1.4. Final Project Schedule and, if applicable, phasing plan for Construction Stage.
- 1.6.16.2. **Construction Stage Deliverables**
- 1.6.16.2.1. Project management plan (updated as required)
- 1.6.16.2.2. Safety Plan
- 1.6.16.2.2.1. Safety Site Inspections
- 1.6.16.2.2.2. Site Inspections
- 1.6.16.2.3. Monthly Project status report with progress photos, when reasonably requested by City.

1.6.17. As part of the Services, Designer/Builder is **NOT** responsible for the following, however, it shall coordinate and integrate its Services with any of the following information and/or services provided by City:

1.6.17.1. Ground contamination or hazardous material analysis.

1.6.17.2. Any asbestos and/or lead testing, design or abatement.

1.6.17.3. Compliance with the CEQA.

1.6.17.4. Inspector Fees.

1.6.17.5. Surveys of existing conditions or of portions of the Site on which the Services is not being performed.

1.7. Designer/Builder Staff

1.7.1. Designer/Builder has been selected to perform the Services herein because of its skills and expertise.

1.7.2. Designer/Builder shall not change any of the key personnel without prior written approval by City, unless said personnel cease to be employed by Designer/Builder. In either case, City shall be allowed to interview and approve replacement personnel. Such approval shall not be unreasonably withheld or delayed.

1.7.3. If any designated lead or key person fails to perform to the reasonable satisfaction of City, then upon written notice Designer/Builder shall have five (5) days to remove that person from the Project and replace that person with one reasonably acceptable to City.

1.7.4. Designer/Builder agrees that any Drawings and/or Specifications included in the Services shall be prepared under the supervision of licensed personnel, and that licensed personnel shall be in “responsible charge” of persons who observe the construction.

1.8. Ownership of Data

1.8.1. The Contract creates a non-exclusive and perpetual license for City to use, at its discretion, all plans, including, but not limited to, record drawings, specifications, and estimates that Designer/Builder or its consultants, prepares or causes to be prepared pursuant to this Contract, limited to this Services.

1.8.2. 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 Designer/Builder or its consultants prepares or causes to be prepared pursuant to this Contract.

1.8.3. Designer/Builder shall perform the Services and prepare design documents under the Contract with the assistance of Computer Aided Design Drafting (“CADD”) (e.g., AutoCAD) Technology. Designer/Builder shall deliver the design documents to City, on request, in a “thumb” drive, and/or compact disc format, and compatible with AutoCAD 2020 (not .pdf), or a more recent version if available. As to any drawings that Designer/Builder provides in a CADD file format, City acknowledges that anomalies and errors may be introduced into data when it is transferred or used in a computer environment, and that City should rely on hard copies of all documents.

1.8.4. In order to document exactly what CADD information was given to City, Designer/Builder and City shall each sign a “hard” copy of reproducible documents that depict the information at the time Designer/Builder produces the CADD information. City agrees to release Designer/Builder from all liability, damages, and/or claims that arise due to any changes made to this information by anyone other than Designer/Builder or Consultant(s) subsequent to it being given to City.

1.8.5. Following the termination of the Contract, for any reason whatsoever, Designer/Builder shall promptly deliver to City upon written request the following items (“**Instruments of Service**”) in electronic format (Microsoft Word), assuming City has made all payments to Designer/Builder as required by the termination provisions in this Contract.

1.8.5.1. One set of the Contract, including the bidding requirements, Specifications, and all existing cost estimates for the Project, in hard copy, reproducible format.

- 1.8.5.2. Where applicable, one set of fixed image CADD files in DXF format of the Drawings that are part of the Contract.
- 1.8.5.3. All finished or unfinished documents, studies, reports, calculations, Drawings, maps, models, photographs, and reports prepared by Designer/Builder under the Contract.
- 1.8.6. In the event City changes or uses any fully or partially completed documents without Designer/Builder's knowledge and participation, City agrees to release Designer/Builder of responsibility for such changes, and shall indemnify, defend and hold 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 Designer/Builder is found to be liable in a forum of competent jurisdiction. In the event City uses any fully or partially completed documents without Designer/Builder's full involvement, City shall remove all title blocks and other information that might identify Designer/Builder and Designer/Builder's consultants.
- 1.9. **Certificate of Designer/Builder.** Designer/Builder certifies that Designer/Builder is properly licensed under the laws and regulations of the State of California as a general building contractor (Classification "B"), and that the professional design services it has herein agreed to provide shall be performed by design professionals duly licensed by the State of California in their respective discipline(s).
2. **Scope of Design Stage Services**
- 2.1. **THE FOLLOWING SHALL APPLY WHEN DESIGNER/BUILDER PERFORMS DESIGN STAGE SERVICES.**
- 2.2. **Design Development Stage.** Designer/Builder shall prepare Design Development documents (the "Design Development Stage") consisting of the following for each proposed Site within Designer/Builder's scope of Services:
- 2.2.1. **Architectural**
- 2.2.1.1. Identification of all fixed equipment to be installed in contract.
- 2.2.1.2. Site plan completely drawing with beginning notes and dimensions.
- 2.2.1.3. Preliminary development of details.
- 2.2.1.4. Elevation Drawings of exterior and interior where equipment, material or fixtures are wall mounted.
- 2.2.1.5. Abbreviations that are specific to the Project.
- 2.2.1.6. Plans that are consistently formatted, including title block, for all disciplines.
- 2.2.1.7. Legend showing all symbols used on Drawings.
- 2.2.1.8. Floor plans identifying new equipment and systems.
- 2.2.1.9. Further refinement of outline Specification for architectural, structural, mechanical, electrical, low voltage, controls, civil and landscape manuals, systems and equipment.
- 2.2.1.10. If applicable and required by City, typical reflected ceiling development including ceiling grid and heights for affected ceilings, showing:
- 2.2.1.10.1. Light fixtures.
- 2.2.1.10.2. Ceiling registers or diffusers.
- 2.2.1.10.3. Access Panels.
- 2.2.2. **Structural**
- 2.2.2.1. Structural drawing with all affected members located and sized.
- 2.2.2.2. Preliminary Specifications.

2.2.3. Mechanical (if applicable to the Work)

- 2.2.3.1. Heating and cooling load calculations as required and major duct or pipe runs sized to interface with structural.
- 2.2.3.2. New mechanical equipment should be scheduled indicating size and capacity.
- 2.2.3.3. New Ductwork and piping should be substantially located and sized.
- 2.2.3.4. New Devices in ceiling should be located.
- 2.2.3.5. Legend showing all symbols used on Drawings.
- 2.2.3.6. More developed Outline Specifications indicating quality level and manufacture.
- 2.2.3.7. Riser diagram should be substantially complete.
- 2.2.3.8. New Control Systems or point of contacts to be identified.
- 2.2.3.9. Confirmation of the load requirements of new equipment and systems.

2.2.4. Electrical

- 2.2.4.1. New electrical equipment should be scheduled indicating size and capacity.
- 2.2.4.2. A single line diagram for new equipment being installed or replaced.
- 2.2.4.3. Legend showing all symbols used on Drawings.
- 2.2.4.4. More developed and detailed Outline Specifications indicating quality level and manufacture.
- 2.2.4.5. Confirmation of the load requirements of all new equipment and systems.

2.2.5. **Equipment and Fixture List.** Designer/Builder shall prepare a detailed list of all fixtures and equipment that it will install for each Energy Improvement (“**Equipment List**”)

2.2.6. Deliverables and Numbers of Copies (“**Design Development Documents**”)

- 2.2.6.1. Two (2) copies of Design Development drawing set from all professional disciplines necessary to deliver the Project;
- 2.2.6.2. Electronic copies of continued proposed revision to Specifications;
- 2.2.6.3. Electronic copies of documents from AHJ that provided any approvals;
- 2.2.6.4. Electronic copies of the Equipment List;
- 2.2.6.5. Electronic copies of Project Schedule;
- 2.2.6.6. The Design Development documents will be reviewed and approved after quality assurance review by City. Designer/Builder to include quality assurance review in its schedule.
- 2.2.6.7. Designer/Builder to maintain both a Risk Management Plan and Issues Log. All risks shall be reviewed by City. Both perceived risks and issues shall be reviewed and approved by City before proceeding to the Construction Documents portion of the Design Stage.

2.2.7. **Meetings.** During the Design Development Stage, Designer/Builder shall attend, take part in, and, when indicated, conduct meetings, site visits, and workshops as indicated below.

2.3. Construction Documents Stage (50% and 100%)

2.3.1. **Construction Documents (50%).** Upon City’s acceptance of Designer/Builder’s Services in the Design Development Stage and assuming City has not delayed or terminated the Contract, Designer/Builder shall prepare a set of 50% Construction Documents for review by City (“**50% Construction Documents Stage**”). Upon approval by City, those Construction Documents shall be completed and then submitted to, as required, local planning or inspection office, or other AHJs over the Project (if applicable). Designer/Builder shall then incorporate any comments or requested revisions (if applicable), or other AHJs, and prepare a set of 100% Construction Documents for the

Project. Designer/Builder shall prepare from the accepted deliverables from the Design Development Stage the Construction Documents for each proposed system within Designer/Builder's scope of Work:

2.3.1.1. **General.** Verify lead times and availability of all Project equipment, materials, supplies, and furnishings and ensure that all of these will be available to the contractor(s) in a timely fashion so as to not delay the Project and/or delay City's Beneficial Use of the Project. Designer/Builder shall also provide other options to City regarding other possible and more available equipment, materials, supplies, or furnishings.

2.3.1.2. **Architectural**

2.3.1.2.1. Completed site plan.

2.3.1.2.2. Completed floor plans, elevations, and sections.

2.3.1.2.3. Architectural details

2.3.1.2.4. To the extent applicable, finish, door, and hardware schedules completed, including details.

2.3.1.2.5. Fixed equipment details and identification completed.

2.3.1.2.6. Completed inter and intra disciplinary coordination between structural, mechanical, electrical and specialties.

2.3.1.3. **Structural**

2.3.1.3.1. Structural plans and sections with detailing completed.

2.3.1.3.2. Structural calculations completed.

2.3.1.3.3. Completed cover sheet with general notes, symbols and legends.

2.3.1.4. **Mechanical (if applicable to the Work)**

2.3.1.4.1. Large scale mechanical details complete.

2.3.1.4.2. Mechanical schedules for equipment completed.

2.3.1.4.3. To the extent applicable, Completed electrical schematic for new environmental cooling and exhaust equipment.

2.3.1.4.4. Complete design of any new Energy Management System ("EMS").

2.3.1.5. **Electrical**

2.3.1.5.1. To the extent applicable, lighting and power plan showing all switching and controls. To the extent applicable, fixture schedule and lighting details complete.

2.3.1.5.2. New electrical equipment schedules completed.

2.3.1.5.3. Applicable system components plans completed.

2.3.1.5.4. To the extent applicable, Electrical load calculations completed.

2.3.1.5.5. Complete design of low voltage system as necessary.

2.3.1.6. **Demolition Plan.** Completed demolition plan, if applicable.

2.3.1.7. **Updated Equipment List.** Designer/Builder shall update and submit a final Equipment List to set forth all fixtures and equipment that Designer/Builder will install for each Energy Improvement ("**Final Equipment List**").

2.3.1.8. **Specifications**

2.3.1.8.1. Complete proposed revisions to the Specifications describing materials, systems and equipment, workmanship, quality and performance criteria required for the construction of the Project.

- 2.3.1.8.2. No part of the Specifications shall call for a designated material, product, thing, or service by specific brand or trade name unless City has given prior approval.
- 2.3.1.9. **Quality Assurance Review.** City and/or its designee shall conduct a construction review of the Construction Documents (“**Quality Assurance Review**”). The Quality Assurance Review will include program scope and materials and product verification of sole source materials/equipment. A report shall be given to Designer/Builder who shall make necessary changes along with providing written comments for each item listed in the report. Designer/Builder is responsible to conduct its own quality assurance prior to submission to City.
- 2.3.1.10. **Deliverables and Numbers of Copies.** Designer/Builder shall provide to City an electronic copy of the following items produced in this stage:
- 2.3.1.10.1. Two (2) hard copies of final, reproducible working Drawings;
 - 2.3.1.10.2. Electronic copies of proposed revisions to Specifications;
 - 2.3.1.10.3. Electronic copy of Final Equipment List;
 - 2.3.1.10.4. Electronic copies of engineering calculations;
 - 2.3.1.10.5. Electronic copies of statement of requirements for testing and inspection of service for compliance with Contract Documents and applicable codes;
 - 2.3.1.10.6. Electronic copies of Project Schedule; and
 - 2.3.1.10.7. Narrative resolving any/all outstanding quality issues from the Design Development quality assurance review.
- 2.3.1.11. The deliverable submitted during this portion of the Construction Documents Stage will be reviewed and approved after quality assurance Review by City. Designer/Builder is responsible for code compliance quality assurance review;
- 2.3.1.12. Designer/Builder shall maintain both a Risk Management Plan and Issues Log. All risks shall be reviewed by City. Both perceived risks and issues shall be reviewed and approved by City.
- 2.3.2. **Construction Documents (CD) Final Back-Check / 100% Construction Documents (where applicable)**
- 2.3.2.1. The Construction Documents final back-check phase (“**100% Construction Documents Stage**”) shall be for the purpose of Designer/Builder incorporating all AHJ comments into the Drawings, Specifications, and other documents, including the Construction Documents. All changes made by Designer/Builder during this stage shall be at no additional cost to City.
 - 2.3.2.2. The final Construction Documents delivered to City upon completion of Designer/Builder’s Services shall be the final set and shall consist of the original Drawings with designers’ and engineers’ State license stamp. Upon City approval of Construction Documents for each Energy Improvement for all applicable Sites, it shall issue a NOA in the form included in **Exhibit F**, which shall incorporate the attached Drawings and Specifications into the Contract Documents.
 - 2.3.2.3. Designer/Builder shall attend, take part in, and, conduct meetings and Site visits as required for the Services and Services at no additional cost to City.
 - 2.3.2.4. Designer/Builder shall **NOT** commence applicable Construction Stage Services until City has issued a Notice(s) to Proceed for Construction Stage Services, or those services for any Site, and Designer/Builder has provided all required bonds and insurance to City as required by this Contract.
- 2.4. **Record Drawings.** During the Construction Stage, Designer/Builder shall incorporate all information on As-Builts, sketches, details, and clarifications, and prepare one set of final Record Drawings for City. The Record Drawings shall incorporate onto one set of electronic Drawings, changes from As-Builts, sketches,

details, and clarifications. Designer/Builder shall deliver the Record Drawings to City at completion of the construction and it shall be a condition precedent to City's approval of Designer/Builder's final payment.

2.5. **O&M Manuals/Warranties.** Designer/Builder shall review equipment, operation and maintenance manuals, and a complete set of warranty documents for all equipment and installed systems, to ensure that they meet the requirements of the Construction Documents. Designer/Builder shall deliver one hard copy sets and electronic .pdf set of the Operations & Maintenance Manuals/Warranties (collectively, "**O&M Documents**") to City at completion of the Services and it shall be a condition precedent to City's approval of Designer/Builder's final payment for the Project.

2.5.1. Training shall be provided for all major equipment installation. Training sessions shall be provided to City in a form, format, and quality that permits City and City staff to adequately understand the training.

2.5.2. All products and equipment will include manufacturer's warranty and labor installation guarantee.

2.5.3. O&M Documents will be in .pdf digital format packaged for the Project with an outline of information included in the package and a schedule of warranty periods for each product or equipment determined at beneficial occupancy or filing of Notice of Completion.

2.6. **Design Errors.** Designer/Builder shall be solely responsible for all design errors and for the correction of same at no additional cost to City, including, but not limited to, errors, inconsistencies or omissions in the Construction Documents, and errors, omissions and inconsistencies that do not conform to the standards established Contract Documents.

EXHIBIT C

PROJECT SCHEDULE

The days indicated below will begin once City issues a Notice to Proceed for the Project. City intends to issue a Notice to Proceed for the Project as set forth below. If the City fails to issue a Notice to Proceed within sixty (60) days of the Effective Date through no fault of Designer/Builder, Designer/Builder shall be entitled to an for the costs actually and necessarily incurred as a result of the delayed issuance and an extension of the Contract Time for the resulting delay, both as demonstrated by Designer/Builder consistent with the terms of the Contract Documents.

Any milestone hereunder shall only be extended consistent with the requirements of the Contract Documents.

Designer/Builder shall have no right to request additional time to perform the Services unless authorized by the Contract Documents.

Milestone	Number of Calendar Days to Complete from Notice to Proceed	Liquidated Damages per Calendar Day
City Issues a Notice to Proceed	With sixty (60) days of the Effective Date	N/A
Completion of Project and Services at <u>EACH</u> Site	750 days	\$250 per Site
As set forth in the Contract, Liquidated Damages shall apply separately and in the aggregate to each Site that the Designer/Builder fails to complete within 750 days of the Notice to Proceed.		

Although Designer/Builder shall control its means and methods of Work, including staffing, Designer/Builder is solely responsible to ensure that the Project achieves Completion as set forth in the Project Schedule; provided, however, that if City directs Designer/Builder to accelerate the Services as a result of Excusable Delay or Compensable Delay to ensure Completion within the Contract Time, Designer/Builder may be entitled to compensation for acceleration if Designer/Builder complies with requirements of the Contract Time for a Change Order and, if necessary, a Claim. Designer/Builder shall prepare a detailed Project Schedule compliant with the Contract Documents that includes the date for planned completion of all Services. The planned completion dates shown in the Project Schedule for each Site may be earlier than the 750 day duration that shall be used for the assessment of Liquidated Damages for each Site.

EXHIBIT D
SCHEDULE OF VALUES

[DOCUMENT BEGINS ON THE FOLLOWING PAGE]

DRAFT - SUBJECT TO REVISIONS

EXHIBIT E

CITY'S RULES AND REGULATIONS

These Rules and Regulations supplement the City's existing ordinances, regulations, rules, and policies adopted and approved by the City Council, and to the extent of any conflict, the City's existing ordinances, regulations, rules, and policies shall prevail.

1. **Access.** Access to City buildings and entry to buildings, restrooms, mechanical rooms, electrical rooms, or other rooms, for construction purposes, must be coordinated with City and onsite City personnel before Services is to start. Unless agreed to otherwise in writing, only a City custodian will be allowed to unlock and lock doors in existing building(s). The custodian will be available only while during normal business hours. If a custodian is required to arrive before 7:00 a.m. or leave after 3:30 p.m. to accommodate Designer/Builder's Work, the overtime wages for the custodian will be paid by Designer/Builder, unless, at the discretion of City, other arrangements are made in advance.
2. **Maintaining Services.** Designer/Builder is advised that Services is to be performed in spaces regularly scheduled for use by the public and City staff. Interruption and/or periods of shutdown of public access, electrical service, water service, lighting, or other utilities may be required in connection with the Project. These shall be only as arranged in advance with City. Designer/Builder shall provide temporary services to all facilities interrupted by Designer/Builder's Services.
3. **Maintaining Utilities.** Designer/Builder shall maintain in operation during duration of Contract, drainage lines, storm drains, sewers, water, gas, electrical, steam, and other utility service lines within working area.
4. **Alcohol & Firearms.** Designer/Builder shall ensure that no alcohol, firearms, weapons, or controlled substances enter or are used at the Site. Designer/Builder shall immediately remove from the Sites and terminate the employment of any employee(s) found in violation of this provision.
5. **Badge Policy For Designer/Builders.** All Designer/Builders doing Services for City will provide their workers with identification badges. These badges will be worn by all members of Designer/Builder's staff who are working in a City facility.
 - 5.1. Badges must be filled out in full and contain the following information:
 - 5.1.1. Name of Designer/Builder
 - 5.1.2. Name of Employee
 - 5.1.3. Designer/Builder's address and phone number
 - 5.2. Badges are to be worn when Designer/Builder or his/her employees are on site and must be visible at all times. Designer/Builders must inform their employees that they are required to allow City employees or the Project Inspector to review the information on the badges upon request.
 - 5.3. Failure to display identification badges as required by this policy may result in the assessment of fines against Designer/Builder.
6. **Language.** Unacceptable and/or loud language will not be tolerated, "cat calls" or other derogatory language toward members of the public or City staff will not be allowed.
7. **Disturbing the Peace (Noise and Lighting).**
 - 7.1. Designer/Builder shall observe the noise ordinance of the Sites at all times including, without limitation, all applicable local, city, and/or state laws, ordinances, and/or regulations regarding noise and allowable noise levels.
 - 7.2. The use of radios, etc., shall be controlled to keep all sound at a level that cannot be heard beyond the immediate area of use. City reserves the right to prohibit the use of radios at the Site, except for handheld communication radios (e.g., Nextel phones or radios).
 - 7.3. If portable lights are used after dark, all light must be located so as not to direct light into neighboring property.

- 7.4. Equipment and impact tools shall have intake and exhaust mufflers.
- 7.5. Designer/Builder shall cooperate with City to minimize and/or seize the use of noisy and vibratory equipment if that equipment becomes objectionable by its longevity.
- 7.6. Designer/Builder acknowledges that adjacent facilities may remain in operation during all or a portion of the Services period, and it shall take all reasonable precautions to minimize noise as required by applicable laws and the Contract Documents.
- 7.7. Notice of proposed noisy operations, including without limitation, operation of pneumatic demolition tools, concrete saws, and other equipment, shall be submitted to City a minimum of forty-eight (48) hours in advance of their performance.
- 7.8. **Utility Shutdowns And Interruptions.**
Designer/Builder shall give City a minimum of three (3) days written notice in advance of any need to shut off existing utility services or to effect equipment interruptions. City will set exact time and duration for shutdown, and will assist Designer/Builder with shutdown. Services required to re-establish utility services shall be performed by Designer/Builder.

8. Traffic.

- 8.1. Driving on the Premises shall be limited to periods when members of the public are not present. If driving or deliveries must be made during the business hours, two (2) or more ground guides shall lead the vehicle across the area of travel. The speed limit on-the Premises shall be five (5) miles per hour (maximum) or less if conditions require.
- 8.2. All paths of travel for deliveries, including without limitation, material, equipment, and supply deliveries, shall be reviewed and approved by City in advance. Any damage will be repaired to the pre-damaged condition by Designer/Builder.
- 8.3. City shall designate a construction entry to the Site. If Designer/Builder requests, City determines it is required, and to the extent possible, City shall designate a staging area so as not to interfere with the normal functioning of City facilities. Location of gates and fencing shall be approved in advance with City and at Designer/Builder's expense.
- 8.4. Parking areas shall be reviewed and approved by City in advance. No parking is to occur under the drip line of trees or in areas that could otherwise be damaged.

9. Barriers and Enclosures.

- 9.1. Designer/Builder shall obtain City's written permission for locations and types of temporary barriers and enclosures, including fire-rated materials proposed for use, prior to their installation.
- 9.2. Designer/Builder shall provide and maintain temporary enclosures to prevent public entry and to protect persons using other buildings and portions of the Sites and/or Premises, the public, and workers. Designer/Builder shall also protect the Services and existing facilities from the elements, and adjacent construction and improvements, persons, and trees and plants from damage and injury from demolition and construction operations.
- 9.3. Designer/Builder shall provide site access to existing facilities for persons using other buildings and portions of the Site, the public, and for deliveries and other services and activities.

10. Tree and Plant Protection.

- 10.1. Designer/Builder shall preserve and protect existing trees and plants on the Premises that are not designated or required to be removed, and those adjacent to the Premises.
- 10.2. Designer/Builder shall provide barriers to a minimum height of 4'-0" around drip line of each tree and plant, around each group of trees and plants, as applicable, in the proximity of demolition and construction operations.
- 10.3. Designer/Builder shall not park trucks, store materials, perform Services or cross over landscaped areas. Designer/Builder shall not dispose of paint thinners, water from cleaning, plastering or concrete operations, or other deleterious materials in landscaped areas, storm drain systems, or sewers. Plant

materials damaged as a result of the performance of the Services shall, at the option of City and at Designer/Builder's expense, either be replaced with new plant materials equal in size to those damaged or by payment of an amount representing the value of the damaged materials as determined by City.

- 10.4. Designer/Builder shall remove soil that has been contaminated during the performance of the Services by oil, solvents, and other materials which could be harmful to trees and plants, and replace with good soil, at Designer/Builder's expense.

11. Excavation around Trees.

- 11.1. Excavation within drip lines of trees shall be done only where absolutely necessary and with written permission from City.
- 11.2. Where trenching for utilities is required within drip lines, tunneling under and around roots shall be by hand digging and shall be approved by City. Main lateral roots and taproots shall not be cut. All roots 2 inches in diameter and larger shall be tunneled under and heavily wrapped with wet burlap so as to prevent scarring or excessive drying. Smaller roots that interfere with installation of new work may be cut with prior approval by City. Roots must first be cut with a Vermeer, or equivalent, root cutter prior to any trenching.
- 11.3. Where excavation for new construction is required within drip line of trees, hand excavation shall be employed to minimize damage to root system. Roots shall be relocated in backfill areas wherever possible. If encountered immediately adjacent to location of new construction, roots shall be cut approximately 6 inches back from new construction.
- 11.4. Approved excavations shall be carefully backfilled with the excavated materials approved for backfilling. Backfill shall conform to adjacent grades without dips, sunken areas, humps, or other surface irregularities. Do not use mechanical equipment to compact backfill. Tamp carefully using hand tools, refilling and tamping until Final Acceptance as necessary to offset settlement.
- 11.5. Exposed roots shall not be allowed to dry out before permanent backfill is placed. Temporary earth cover shall be provided, or roots shall be wrapped with four layers of wet, untreated burlap and temporarily supported and protected from damage until permanently relocated and covered with backfill.
- 11.6. Accidentally broken roots should be sawed cleanly 3 inches behind ragged end.

12. Security.

- 12.1. Designer/Builder shall be responsible for Project security for materials, tools, equipment, supplies, and completed and partially completed Services.

13. Dust and Dirt.

- 13.1. Designer/Builder shall conduct demolition and construction operations to minimize the generation of dust and dirt, and prevent dust and dirt from interfering with the progress of the Services and from accumulating in the Services and adjacent areas including, without limitation, occupied facilities.
- 13.2. Designer/Builder shall periodically water exterior demolition and construction areas to minimize the generation of dust and dirt.
- 13.3. Designer/Builder shall ensure that all hauling equipment and trucks carrying loads of soil and debris shall have their loads sprayed with water or covered with tarpaulins, and as otherwise required by local and state ordinance.
- 13.4. Designer/Builder shall prevent dust and dirt from accumulating on walks, roadways, parking areas, and planting, and from washing into sewer and storm drain lines.

14. **Job Sign(s):** Signs other than a City-approved Project sign and/or signs required by law, for safety, or for egress, shall not be permitted, unless otherwise approved in advance by City.

15. **Publicity Releases.** Designer/Builder shall not release any information, story, photograph, plan, or drawing relating information about the Project to anyone, including press and other public communications medium, including, without limitation, on website(s) without City's prior consent.

16. Infectious Disease. Designer/Builder shall comply with all of the “**Infectious Disease**” provisions in the Contract Documents related to Designer/Builder’s staffing requirements and its compliance with all applicable and existing federal, state, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction site safety in connection with any Infectious Disease.

DRAFT - SUBJECT TO REVISIONS

EXHIBIT F

FORM OF NOTICE OF APPROVAL OF DRAWINGS AND SPECIFICATIONS (CONSTRUCTION DOCUMENTS)

[DOCUMENT BEGINS ON THE FOLLOWING PAGE]

DRAFT - SUBJECT TO REVISIONS

**NOTICE OF APPROVAL OF
DRAWINGS AND SPECIFICATIONS (CONSTRUCTION DOCUMENTS)**

Dated: _____, 20_____

To: Alliance Building Solutions, Inc. (“Designer/Builder”)

From: City of Coachella (“City”)

Re: Multi-Site Energy Improvement Project (“Project”)

1. **Defined Terms from Contract.** This Notice of Approval of Drawings and Specifications (“NOA”) is part of the Contract for Design and Construction of Energy Conservation Measures-Lump Sum (Gov. Code, § 4217, et seq.) between City and Designer/Builder dated _____ for the Project (“Contract”). All capitalized terms not herein defined shall have the same meaning given in the Contract.
2. **Approval of Construction Documents.** Designer/Builder has completed 100% Construction Documents Stage Services related to each Energy Improvement at _____ [Insert Name of Site] (“Final Design Services”) and has submitted the final Construction Documents related to Final Design Services, which are attached hereto as **Schedule 1** and incorporated herein by reference (“Final Construction Documents”). City approves the Final Construction Documents for use during Construction Stage Services and the Final Construction Documents are incorporated by reference into the Contract as “Construction Documents” for the Services depicted therein.
3. **No Waiver.** This NOA shall in no way constitute: (i) approval of the quality of the Final Construction Documents; (ii) a representation that the Final Construction Documents are free of any ambiguity or error; (iii) that Designer/Builder complied with the applicable standard of care; and/or (iv) that Designer/Builder complied with any performance requirements or scope of work in the design, including, without limitation, complying with **Exhibit A** of the Contract. City reserves all rights under the Contract.

DESIGNER/BUILDER SHALL NOT PROCEED WITH CONSTRUCTION STAGE SERVICES FOR WORK DEPICTED IN THE FINAL CONSTRUCTION DOCUMENTS UNTIL CITY ISSUES A NOTICE TO PROCEED FOR CONSTRUCTION STAGE SERVICES FOR THAT WORK.

City of Coachella

SIGNATURE: _____

NAME: _____

TITLE: _____

EXHIBIT G

MEASUREMENT & VERIFICATION SERVICES PROVISIONS

[DOCUMENT BEGINS ON THE FOLLOWING PAGE]

DRAFT - SUBJECT TO REVISIONS

MEASUREMENT AND VERIFICATION AGREEMENT FOR CITY OF COACHELLA

SCOPE OF SERVICES

TERMS AND CONDITIONS

ATTACHMENTS:

Attachment 1 – Guaranteed Savings Measurement & Verification

- Savings Guarantee
- Measurement and Verification Methods
- Selected Measurement and Verification Options
- IPMVP Option A M&V Plan
- IPMVP Option C M&V Plan

Attachment 2 – Utility Baseline Summary

Attachment 3 – Energy Efficiency and Renewable Project Cashflow

MEASUREMENT & VERIFICATION AGREEMENT

This Measurement and Verification (“M&V”) Agreement (“Agreement”) dated ___/___/___ (“Effective Date”) is made by and between:

City of Coachella

(“Purchaser”) with its principal place of business at
1515 6th Street, Coachella, CA 92236]

and

Alliance Building Solutions, Inc.

(“ABS”) with its principal place of business at
12520 High Bluff Drive, Ste 345, San Diego, CA 92130

SCOPE OF SERVICES

Energy Savings Measurement & Verification Service:

“ABS” will provide measurement and verification services of the energy savings associated with “Purchaser” Energy Retrofit and Renewable Installation, as described in “Scope of Work” attached to the Installation Agreement. Energy Savings M&V reports will be provided to the “Purchaser” on an annual basis for the term specified below.

Term:

This Service Agreement shall commence upon the completion and acceptance of the Purchaser energy retrofit installation project and receipt of final payment for the Contract and shall continue for an initial term of (1) year. The “Purchaser” may elect to enter into further extended terms upon written notice provided to ABS not less than thirty (30) days prior to termination of the initial term. If the “Purchaser” fails to provide ABS with a written notice of extension prior to the end of the initial term or any subsequent extensions, the M&V Agreement shall be considered terminated. Once terminated, the M&V Agreement cannot be renewed. The “Purchaser” may terminate this service agreement at any time with a (30) day written notice. However, termination of this agreement will void any savings guarantee associated with this project.

Charges:

This Agreement shall be billed once per year is due and payable 30-days after “Purchaser’s” receipt of invoice. The annual Service Agreement charge is \$0 for the first year, \$15,000 for the second year, \$20,000 for the third year, \$25,000 for the fourth year and escalated at 4% annually for every subsequent year thereafter. This rate does not include taxes.

TERMS AND CONDITIONS

I. General Provisions:

- I.1 Unless stated otherwise, the services provided under this Agreement shall be provided during “ABS” normal business hours. Normal business hours are Monday through Friday, 7:00AM to 4:00PM, excluding holidays. “ABS” will coordinate with the “Purchaser” so that any variations in these normal business hours necessitated by “Purchaser” Schedules can be accommodated.
- I.2 The “Purchaser” shall provide reasonable means of access to the equipment being measured or verified. “ABS” shall not be responsible for any removal, replacement, or refinishing of the building structure, if required to gain access to the equipment. “ABS” shall be permitted to start and stop all equipment necessary to perform the services herein described as arranged with the “Purchaser’s” representative. “ABS” will obtain agreement from the “Purchaser’s” representative prior to any starting or stopping of equipment.
- I.3 This Agreement shall supersede any previous Measurement and Verification Agreements accepted and approved by the “Purchaser” and “ABS.”
- I.4 This Agreement, when accepted in writing by the “Purchaser” and approved by an authorized “ABS” representative, shall constitute the entire Agreement between the two (2) parties.

II. Charges:

- II.1 For services not covered by this Agreement but performed by “ABS” upon the “Purchaser’s” prior written authorization, the “Purchaser” agrees to pay “ABS”’s invoice(s) 30 days after receipt of invoice. Failure to pay the invoice within 30 days after receipt will result in a 10% late payment penalty and failure to pay within 60 days will result in forfeiture of the entire agreement.
- II.2 If emergency service is requested by the “Purchaser” and inspection does not reveal any defect for which “ABS” is liable under this Agreement, the “Purchaser” will be charged at “ABS”’s current emergency charge rates.

III. Limitations of Liability:

- III.1 Neither party shall be liable for any loss, delay, injury, or damage that may be caused by circumstances beyond its control including, but not restricted to; acts of God, war, civil commotion, acts of government, fire, theft, corrosion, floods, lightning strikes, freezes, strikes, lockouts, differences with workmen, riots, explosions, quarantine restrictions, delays in transportation, shortage of vehicles, fuel, labor or materials, or malicious mischief. IN NO EVENT, SHALL EITHER PARTY BE LIABLE FOR BUSINESS INTERRUPTION, LOSSES, CONSEQUENTIAL, INDIRECT, SPECIAL OR SPECULATIVE DAMAGES.
- III.2 “ABS” shall not be required to make safety tests, install new devices, or make modifications to any equipment to comply with recommendations or directives of insurance companies, governmental bodies, or for other reasons.
- III.3 Section removed
- III.4 “ABS” warrants that for equipment furnished and/or installed but NOT manufactured by “ABS”, “ABS” will extend the same warranty and terms and conditions, which “ABS” received from the manufacturer of said equipment.
- III.5 This agreement pre-supposes that all equipment is in satisfactory working order. Should any equipment be in need of repair, “ABS” will have ninety (90) days to make such repair. If the “Purchaser” does not authorize “ABS” to make the repairs or if the “Purchaser” does not have the work performed, the equipment will be eliminated from coverage and the Agreement saving will be adjusted. Maintenance of existing equipment and systems is the responsibility of the “Purchaser”. Failure to properly maintain equipment and systems can result in reduced energy efficiency and may necessitate a baseline energy adjustment
- III.6 The amount of any present or future sales, use, occupancy excise, or other tax (federal, state or local) which “ABS” hereafter shall be obligated to pay, either on its own behalf or on the behalf of the “Purchaser” (shall reasonably assist “ABS” in determining the applicable requirements, it shall be “ABS”’s sole responsibility for determining and complying with all applicable laws, regulations and standards.) or otherwise, with respect to the services covered by this Agreement, shall be paid by the “Purchaser”.
- III.7 If the equipment or software included under this Agreement is altered, modified, or changed by a party other than “ABS”, this Agreement shall be modified to incorporate such changes the Agreement price and/or Savings shall be adjusted accordingly.
- III.8 Following twelve (12) months of service or any time thereafter, if individual item(s) cannot, in “ABS”’s opinion, be properly repaired on-site because of excessive wear, deterioration or an Act of God that is out of “ABS” control. “ABS” may withdraw the item(s) from coverage upon ninety (90) days prior written notice. Energy savings may be adjusted accordingly.
- III.9 This agreement shall be governed by, construed, and enforced in accordance with the laws of the State of California.

IV. **Miscellaneous Provisions:**

IV.1 The services provided hereunder may occur on active “Purchaser” sites. As such, “ABS” shall ensure that its services on and around the “Purchaser” site comply with all applicable laws, regulations and standards including but not limited to, the fingerprinting requirements and any other legal requirements which maybe applicable to “ABS”’s activities on or about the “Purchaser” sites. The “Purchaser” shall reasonably assist “ABS” in determining the applicable laws, regulations and stands. If, at any time prior to completion of the Scope of Services, the “Purchaser” determines that there possibly might be more than limited contact between “ABS” and any minor-aged Purchaser student, the “Purchaser” may, in its sole discretion, require that “ABS” complies with the requirements of Education Code Section 45125.1, regardless of whether such requirements are otherwise applicable. In such event, “ABS” at its sole cost and expense, and without additional compensation from “Purchaser”, shall comply with all California Department of Justice guidelines and requirements with respect to fingerprinting of “ABS” officers, employees, agents, or other representatives who will or might be present on or at the “Purchaser” facility.

IV.2 **Dispute Resolution:**

IV.2.1 **Disputes:** This section shall apply to any disputes arising under our related to this Agreement (whether arising in contract, tort or otherwise, and whether arising at law or in equity including (a) any dispute regarding the performance, validity or enforceability of any provision of this Agreement or whether any party is in compliance with, or breach or, any provisions of this Agreement and (b) the applicability of this Section to a particular dispute. Any dispute to which this section applies is referred to herein as a “Dispute”

IV.2.2 **Negotiation to Resolve Disputes:** If a dispute arises, the Parties shall attempt to resolve such dispute through the following procedure.

IV.2.2.1 First, the representatives of each of the Parties shall promptly meet (whether by phone or in person) in a good faith attempt to resolve the Dispute;

IV.2.2.2 Second, if the Dispute is still unresolved after 20 days following the commencement of the negotiations described in Section 4.2.2.1 then a designated executive officer to each party shall meet (whether by phone or in person) in a good faith attempt to resolve the Dispute;

IV.2.2.3 Third, if the Dispute is still unresolved after 10 days following the commencement of the negotiations described in Section 4.2.2.2, then either Party may submit such Dispute to litigation;

IV.2.2.4 The venue for any Dispute arising from or relating to this Agreement that is adjudicated pursuant to this Section 4.2.2.4 shall be arbitrated in Los Angeles, California. Any Dispute arising from or relating to this Agreement that is adjudicated pursuant to this Section 4.2.2.4 shall be arbitrated in Los Angeles, California. The arbitration shall be administered by JAMS in accordance with its Comprehensive Arbitration Rules and Procedures, and judgment on any award maybe entered in any court of competent jurisdiction. If the Parties agree, a mediator may be consulted prior to arbitration;

IV.2.2.5 Pending a final resolution of a Dispute, the Parties shall each proceed diligently and faithfully with performance of their respective obligations under this Agreement.

IV.3 **Indemnification:**

The Parties hereto agree to defend, indemnify, and hold harmless the other Party, it’s employees, agents, officials, officers and directors from any and all liabilities, claims, expenses, losses or damages, including attorney’s fees which may arise in connection with the work herein specified and which are caused in whole or in part by the negligent act or omission of the indemnifying Party. To the extent it may lawfully do so, the Parties hereby indemnify, defend (with counsel of it choosing), and holds harmless the other party and its affiliates, directors, representatives, agents, officers, employees and volunteers from and against any and all liability or claim of liability, loss or expense, including defense costs and legal fees and claims for damages of whatsoever character, nature and kind, whether directly or indirectly arising from any third party actions from injury to or death of persons, and damage to or loss of property to the extent caused by or arising out the connected with an act or omission of the indemnifying party, or an agent, invitee, guest, employee, or anyone in, on or about he “Purchaser” sites, including, but not limited to, liability, expense, and claims for: bodily injury, death, personal injury, or property damage caused by negligence, creation or maintenance of a dangerous condition of property, breach of express or implied warranty of product, defectiveness of product, or intentional infliction of harm, including any workers’ compensation suites, liability, or expense, arising from or connected with services performed by, or on behalf of the indemnifying party, by any person pursuant to this Agreement; nonpayment for labor materials, appliances, teams or power, performed on, or furnished or contributed to the “Purchaser” sites. Notwithstanding

the above, neither party shall be required to defend, indemnify and hold harmless the other for its own negligent acts and omissions’ or willful misconduct. It is the intent of the Parties that were negligence is determined to have been joint or contributory, principles of comparative negligence will be followed, and each Party shall bear the proportionate cost of any loss damage, expense or liability attributable to that Party’s negligence.

- V. **Occupational Safety and Health:** The Parties hereto agree to notify each other immediately upon becoming aware of any alleged violations of, the Occupational Safety and Health Act (OSHA) relating in any way to the project or project site.
- VI. **Audits:** In accordance with Government Code Section 8546.7, the State has the right to examine, review, audit and/or copy the Records of the work during the three (3) year period following final payment to the Contractor pursuant to the Contract. In addition, the “Purchaser” hereby has the right to examine, review, audit and/or copy the Records of the work during the three (3) year period following final payment to the Contractor pursuant to the Contract. Therefore, the Contractor shall make the Project Records available at its offices at all reasonable time during the performance of the Work and for three (3) years from the date of final completion or filing of a Notice of Completion for the Project, whichever is later. However, if any audit is commenced within such three (3) year period, the Contractor shall make the Project Records available at all reasonable times until proceedings related to such audit are complete and all statutes of limitations related thereto have expired. In the event the “Purchaser” notifies the Contractor that federal funds have been used in connection with Project, the Contractor shall retain and make available the Project Records for such longer period as may be required by federal law.
- VII. **Entire Agreement:** This Agreement, upon acceptance, shall constitute the entire agreement between the parties and supersedes any prior representations or understandings.
- VIII. **Changes:** No change or modification of any of the terms and conditions stated herein shall be binding upon either Party unless accepted by both Parties in writing.
- IX. **Severability:** if one or more of the provisions of this Agreement are held to be unenforceable under laws, such provisions(s) shall be excluded from these terms and conditions and the remaining terms and conditions shall be interpreted as if such provision were so excluded and shall be enforced in accordance to their terms and conditions.
- X. **Counterparts:** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. A signature on a copy of this agreement received by either party by facsimile or portable document format (PDF) is binding upon the other party as an original. The parties shall treat a photocopy of such facsimile as a duplicate original.
- XI. **Assignment:** “ABS” retains the right to assign its rights and obligations of the Agreement with written consent of “Purchaser”.
- XII. **Acknowledgement:** Both “ABS” and the “Purchaser” acknowledge having read this Agreement and all contract documents incorporated herein and have executed this agreement on the date written above.
- XIII. **Approval:** Each Party represents that the person that has executed this Agreement on its’ behalf is authorized to do so.

City of Coachella

Alliance Building Solutions, Inc.

Signature

Title

Date

Signature

Title

Date

Attachment 1

Guaranteed Savings Measurement & Verification

Guaranteed Savings Measurement & Verification

This document contains the Measurement and Verification (M&V) plan for the energy savings related to the Energy Efficiency Measures (EEMs) contained in the Installation Agreement. The following table summarizes the EEMs implemented in these Phases of work.

Site	Lighting Upgrades	Mechanical Upgrades	Controls Upgrades	Pumping Upgrades	Process Improvements	Renewable Energy Systems
Bagdouma Park	X			X		
Bagdouma Park Comm. Center	X		X			
Civic Center	X	X	X			X
Public Works Building	X		X			
Rancho Las Flores Park	X					
Wastewater Treatment Plant					X	X
City-Wide Street Lights	X					

For each EEM, a specific M&V plan is submitted to provide a comprehensive overall plan for the City of Coachella. Energy savings shall be compared to the Utility Baseline Summary, as shown in Attachment 2. Each EEM’s M&V Plan provides:

- A description of how the savings shall be verified.
- The selection of the specific protocol of verification of savings.
- The requirements for measurement or other means to establish savings.

ABS is responsible for pre-retrofit measurements, energy savings calculations, equipment installation, and required post retrofit verification as outlined herein. Purchaser agrees to operate and maintain all equipment installed. Proper operation and maintenance of equipment and systems is critical to long-term achievement of energy savings.

Savings Guarantee

As of the date hereof, ABS expects that Purchaser shall realize total annual project savings (utility savings, operational savings, capital cost avoidance and Solar ITC) in excess of the annual lease payments. Notwithstanding the foregoing or anything to the Contrary contained herein, Purchaser hereby agrees that (i) ABS's expectation regarding the annual project savings is an estimate, (ii) ABS's expectation regarding the project savings are based on IRS rules and regulations as of the date hereof, and (iii) ABS shall not be liable for any changes or amendments to the IRS rules and regulations after the date hereof. Additionally, Purchaser hereby agrees that Purchaser shall be solely responsible for the application required for Purchaser to claim any tax credits related to the Solar ITC. The effective date will begin on the date of final acceptance of the Installation project and receipt of final payment for the associated Installation Contract. The total project savings will exceed the installation contract amount and M&V payments associated with this agreement during the course of the useful life of the installed equipment. ABS agrees to complete the M&V Report on an annual basis and deliver to the Purchaser within one hundred and twenty (120) days of the anniversary date of final acceptance and annually thereafter. Project savings that are verified during the course of construction will be applied to the 1st year guaranteed project savings.

If the annual M&V Report demonstrates that the project will achieve one hundred percent (100%) or more of the Guaranteed Project Annual Savings, then ABS shall have satisfied its energy performance guarantee obligation and the Purchaser shall accept the Annual M&V Report.

In the event that an annual M&V Report savings value (including any excess savings from previous years) does not meet the Guaranteed Project Savings in accordance with the M&V Plan, then ABS shall repair, replace, or substitute the EEM that is not performing at the required level, as identified in the M&V Report. Following corrective action, ABS shall re-perform the relevant M&V work for the affected EEM(s) and amend or supplement the M&V Report. If the sum of the EEMs indicates that the Guaranteed Project Savings are met or exceeded, then no further remedy shall be required.

If, after the opportunity to make corrections, the M&V Report, as amended, indicates that verified savings are less than the Guaranteed Project Savings as shown in the Savings Summary, then ABS shall pay the Purchaser the shortfall amount. However, under no circumstances will the amount(s) paid for the total of the energy savings shortfalls exceed the total lease payments associated with this contract.

The Purchaser agrees that project savings, which exceed the guaranteed amount in any one (1) year, may be applied to previous or future year's savings to offset an energy savings shortfall. The savings guarantee will remain in effect for the term of this agreement. Cancellation of this agreement will result in the termination of the savings guarantee.

The Utility Baseline Summary, as shown in Attachment 2, may be modified over the course of the Guarantee Period to adjust for changes in utility rates, number of days in utility billing cycle, square footage, energy using equipment, building occupancy and weather. This Guarantee is subject to the Purchaser's adherence to the Control Parameters for Lighting and HVAC systems, as documented in the Installation Agreement Attachments. This guarantee assumes the annual utility rate escalator of 5% and the annual solar production at 100% of the estimated solar production in kWh.

Measurement and Verification Methods

Measurement and Verification (M&V) of energy savings is a methodology based on standard industry protocol intended to provide reasonable assurance that energy savings calculated are realized over the term of the contract.

The development of the M&V plan is based on the International Performance Measurement and Verification Protocol (IPMVP): Concepts and Options for Determining Energy and Water Savings, Volume 1. This plan contains methodology that shall provide verification of the estimated program savings through direct utility billing comparisons, engineering calculations and/or field measurements.

M&V methods can differ based on the type, size and complexity of the project, as well as the availability of data, level of assurance of saving, financing constraints, and energy costs. The M&V methods used for this project are detailed herein and were selected to be the most cost effective while still providing a reasonable assurance of the savings calculations.

IPMVP 2012 Volume 1 provides an overview of the IPMVP Options, as illustrated below:

M&V Option	M&V Methodology Description	How Savings Are Calculated
Option A Retrofit Isolation: Key Parameter Measurement	Savings are determined by field measurement of the key performance parameter(s) which define the energy use of the EEM's affected system(s) and/or the success of the project. Measurement frequency ranges from short-term to continuous, depending on the expected variations in the measured parameter, and the length of the reporting period. Parameters not selected for field measurement are estimated. Estimates can be based on historical data, manufacturer's specifications, or engineering judgment. Documentation of the source or justification of the estimated parameter is required. The plausible savings error arising from estimation rather than measurement is evaluated.	Engineering calculation of baseline and reporting period energy from short-term or continuous measurements of key operating parameter(s) and estimated values. Routine and non-routine adjustments as required.
Option B Retrofit Isolation: All Parameter Measurement	Savings are determined by field measurement of the energy use of the EEM-affected system. Measurement frequency ranges from short-term to continuous, depending on the expected variations in the savings and the length of the reporting period.	Short-term or Continuous measurements of baseline and reporting period energy, and/or engineering computations using measurements of proxies of energy use. Routine and non-routine adjustments as required.
Option C Whole Facility	Savings are determined by measuring energy use at the whole facility or sub-facility level. Continuous measurements of the entire facility's energy use are taken throughout the reporting period.	Analysis of whole facility baseline and reporting period (utility) meter data. Routine adjustments as required, using techniques such as simple comparison or regression analysis. Non-routine adjustments as required.
Option D Calibrated Simulation	Savings are determined through simulation of the energy use of the whole facility, or of a sub-facility. Simulation routines are demonstrated to adequately model actual energy performance measured in the facility. This Option usually requires considerable skill in calibrated simulation.	Energy use simulation, calibrated with hourly or monthly utility billing data. (Energy end use metering may be used to help refine input data.)

Selected Measurement and Verification Options

The below table illustrates the selected IPMVP Options for the EEMs covered under this M&V plan:

Site	Lighting Upgrades	Mechanical Upgrades	Controls Upgrades	Pumping Upgrades	Process Improvements	Renewable Energy Systems
Bagdouma Park	A, C			A, C		
Bagdouma Park Comm. Center	A, C		A, C			
Civic Center	A, C	A, C	A, C			A, C
Public Works Building	A, C		A, C			
Rancho Las Flores Park	A, C					
Wastewater Treatment Plant					A, C	A, C
City-Wide Street Lights	A, C					

The particular options selected for each EEM was based on a number of related issues including: EEM complexity, EEM cost, EEM savings, cost of M&V and the ability to accurately determine holistic building operations. If more than one option is selected, either option will be considered valid by ABS and the Purchaser.

The baseline and the post-installation energy use depend on various system and external factors, such as utilized setpoints, energy demand, operating hours, occupancy, weather conditions, and energy rates. Development of the baseline, post installation consumption, cost avoidances and simple payback for each EEM covered by this M&V plan includes:

- Stipulated Values – These agreed upon values are important in the overall calculations for energy consumption, financial calculations, and operating conditions.
- Developed/Measured Values – These are the values determined by spot or short-term measurement. Values are determined based on a sound engineering approach to variable determination. Both values used for baseline consumption and values to be measured/determined as parts of the post installation are detailed.
- Assumptions – Some values that are assumed in order to calculate energy use are necessary in certain circumstances.
- Calculations – The necessary calculations for baseline energy usage, costing, and annual savings for evaluating the estimated and actual savings of EEMs.
- Pre-Retrofit Measurements – EEMs may have a section detailing the measurements required prior to the retrofit. These measurements are used to establish the baseline or adjustments required to establish an accurate baseline.
- Post Retrofit Measurements – EEMs may have a section that details the measurements required if any after the retrofit is completed. This section is utilized to detail the type of measurements required for verification of the energy savings calculations.
- Adjustments – EEMs may have a section for adjustments. This section includes possible adjustments to the actual Energy Audit Report and energy information, appropriate adjustments to the M&V plan, and adjustments to any savings guarantee. This section is utilized to anticipate changes necessary due to field conditions and provide an appropriate response in the verification of actual energy and cost avoidances.
- Commissioning – EEMs may have a section regarding the commissioning process. This provides the detail for how the savings will be verified upon project completion, and the type of inspection that will be completed, and the billing method for verified savings. This section is utilized to provide a standard approach for each EEM upon project completion.
- ABS will follow the agreed-upon M&V protocols for the measurement period and will prepare post installation reports with supporting documentation for the Purchaser.

Measurement and Verification Plan

IPMVP Option A: Retrofit Isolation, Key Parameter Measurement For Lighting System Upgrades

M&V Procedure

This option provides for the measurement of at least one variable pre and post retrofit with other variables allowed for stipulation. For this retrofit, a representative sample of each of the fixture types will be measured. The same sample will be used for both pre and post retrofit calculations. Wattage shall be measured with an appropriate instrument that is properly calibrated.

Stipulated Values

Operating Hours are stipulated for purposes of M&V. Please refer to the Lighting Systems Attachment in the Installation Agreement for a complete list of lighting hours of operation. Stipulated values are agreed to by the Purchaser.

Adjustments

For this EEM, the following adjustments are allowed for purposes of Measurement and Verification:

- Light level requirements may be modified as detailed in this plan.
- Changes in actual construction including the number and/or type of lighting fixtures.
- Utility rates, billing days or degree days.

Savings Calculations

The calculations for the baseline energy consumption and post retrofit savings shall be completed in accordance with the industry guidelines set forth by IPMVP and methods indicated below.

$$kWh\ Savings = [(Existing\ Watts / Fixture) \times (Existing\ Quantity) \times (Existing\ Hours\ of\ Operation) / 1000] - [(Proposed\ Watts / Fixture) \times (Proposed\ Quantity) \times (Proposed\ Hours\ of\ Operation) / 1000]$$

$$Dollar\ Savings = (kWh\ Savings) \times (Current\ Utility\ \$/kWh\ Rate)$$

Operational Savings

The Purchaser will realize maintenance and operational savings resulting from the new system installations, extended warranties, and/or service agreements provided by ABS. The operational savings are based on CEC guidelines and are stipulated and met upon the completed installation of the energy retrofit contract.

Commissioning

Commissioning shall consist of inspections and a final verification report. Inspections shall consist of:

- During construction, ABS shall maintain a detailed record of the types and quantities of fixtures retrofitted and fixtures installed in each facility. A post construction inspection is required by the responsible M&V party.
- After lighting modifications have been completed, the installations shall be inspected to verify counts by fixture code.
- Post-retrofit lighting levels shall be measured to verify compliance with the contract standards.

Measurement and Verification Plan

IPMVP Option A: Retrofit Isolation, Key Parameter Measurement For Mechanical System Upgrades

M&V Procedure

This option shall provide for the measurement of at least one variable pre- and post-retrofit with other variables allowed for stipulation. For this retrofit, field data shall be collected which includes, unit counts, unit capacity, nameplate electrical data and efficiency rating for each existing HVAC system.

Stipulated Values

Hours of operation, heating/cooling loads and runtime hours of the existing HVAC systems are stipulated for purposes of M&V. Please refer to The Mechanical Systems and Controls Systems Attachment(s) in the Installation Agreement for specific operating hours and runtime hours for each HVAC unit or area. Stipulated values are agreed to by Purchaser.

Adjustments

None required for this EEM.

Savings Calculations

The calculations for the baseline energy consumption and post retrofit savings shall be completed in accordance with the industry guidelines set forth by IPMVP and methods indicated below.

$$kWh \text{ Savings} = [(Capacity \text{ of Existing HVAC Unit}) \times (Existing \text{ Unit Efficiency}) \times (Stipulated \text{ Load Factor})] - [(Capacity \text{ of New HVAC Unit}) \times (New \text{ Unit Efficiency}) \times (Stipulated \text{ Load Factor})] \times (Annual \text{ Hours of Operation})$$

$$Dollar \text{ Savings} = (kWh \text{ Savings}) \times (Current \text{ Utility } \$/kWh \text{ Rate})$$

Operational Savings

The Purchaser will realize maintenance and operational savings resulting from the new system installations, extended warranties, and/or service agreements provided by ABS. The operational savings are based on CEC guidelines and are stipulated and met upon the completed installation of the energy retrofit contract.

Commissioning

Commissioning shall consist of inspections and a final verification report. Inspections shall consist of:

- ABS shall include verification that each new unit is operating as specified in all modes (heat/cool).

Measurement and Verification Plan

IPMVP Option A: Retrofit Isolation, Key Parameter Measurement For Control System Upgrades

M&V Procedure

This option shall provide for the measurement of at least one variable pre- and post-retrofit with other variables allowed for stipulation. The cooling and heating setpoints during occupied and unoccupied modes of the HVAC equipment will be verified and documented. For this retrofit, field data shall be collected which includes, unit counts, unit capacity, nameplate electrical data, efficiency rating, operating schedules, cooling and heating temperature setpoints for each HVAC system.

Stipulated Values

Hours of operation, heating/cooling loads and runtime hours of the existing HVAC systems are stipulated for purposes of M&V. Please refer to The Mechanical Systems and Controls Systems Attachment(s) in the Installation Agreement for specific operating hours and temperature setpoints. Stipulated values are agreed to by Purchaser.

Adjustments

For this EEM, the following adjustments are allowed for the purposes of Measurement and Verification:

- Addition or subtraction to the conditioned square footage of facilities.
- Utility rates, billing days or degree days.
- Equipment changes or modifications.
- Changes in facility usage associated with daily occupancy times, occupancy levels and special events.

Savings Calculations

The calculations for the baseline energy consumption and post retrofit savings shall be completed in accordance with the industry guidelines set forth by IPMVP and methods indicated below.

kWh Savings = (Capacity of HVAC Unit) x (Unit Efficiency) x (Stipulated Load Factor) x (Existing Annual Operating Hours – Proposed Annual Operating Hours)

Therm Savings = (Heating Capacity of HVAC Unit) x (Unit Efficiency) x (Stipulated Load Factor) x (Existing Annual Operating Hours – Proposed Annual Operating Hours)

Dollar Savings = [(kWh Savings) x (Current Utility \$/kWh Rate)] + [(Therm Savings) x (Current Utility \$/therm Rate)]

Operational Savings

The Purchaser will realize maintenance and operational savings resulting from the new system installations, extended warranties, and/or service agreements provided by ABS. The operational savings are based on CEC guidelines and are stipulated and met upon the completed installation of the energy retrofit contract.

Pre-Retrofit Measurements

Existing operating hours and cooling/heating temperature setpoints for each HVAC unit or area will be obtained from current thermostats and/or Energy Management System.

Post-Retrofit Measurements

Post-retrofit operating schedules, cooling and heating temperature setpoints in both occupied and unoccupied modes for the HVAC equipment will be obtained using the new control systems.

Commissioning

Commissioning shall consist of inspections and a final verification report. Inspections shall consist of:

- ABS shall include verification that the operating schedules, cooling and heating setpoints and controls sequences for the HVAC equipment connected to the new thermostats and/or energy management system are programmed as specified.

City of Coachella HVAC Controls Operating Parameters										
Bldg	Location	Equipment	M-F Start	M-F Stop	Wk End Start	Wk End Stop	Wk/Yr	Notes	Heating Set-Pt	Cooling Set-Pt
WWTP	Main Bldg	HVAC	6:00	17:00	n/a	n/a	51		68	74
WWTP	Main Bldg	HVAC	6:00	17:00	n/a	n/a	51		68	74
WWTP	Main Bldg	HVAC	6:00	17:00	n/a	n/a	51		68	74
Bagdouma Park	Comm. Center	HVAC	8:00	17:00	n/a	n/a	51		68	74
Bagdouma Park	Comm. Center	HVAC	8:00	17:00	n/a	n/a	51		68	74
Bagdouma Park	Comm. Center	HVAC	8:00	17:00	n/a	n/a	51		68	74
Senior Center	Main Bldg	HVAC	8:00	17:00	n/a	n/a	51		68	74
Senior Center	Main Bldg	HVAC	8:00	17:00	n/a	n/a	51		68	74
Senior Center	Main Bldg	HVAC	8:00	17:00	n/a	n/a	51		68	74
Senior Center	Main Bldg	HVAC	8:00	17:00	n/a	n/a	51		68	74
Senior Center	Main Bldg	HVAC	8:00	17:00	n/a	n/a	51		68	74
Senior Center	Main Bldg	HVAC	8:00	17:00	n/a	n/a	51		68	74
Senior Center	Main Bldg	HVAC	8:00	17:00	n/a	n/a	51		68	74
Senior Center	Main Bldg	HVAC	8:00	17:00	n/a	n/a	51		68	74
Public Works	Main Bldg	HVAC	6:00	17:00	8:00	17:00	51	6 days/wk	68	74
Public Works	Main Bldg	HVAC	6:00	17:00	8:00	17:00	51	6 days/wk	68	74
Public Works	Main Bldg	HVAC	6:00	17:00	8:00	17:00	51	6 days/wk	68	74
Public Works	Main Bldg	HVAC	6:00	17:00	8:00	17:00	51	6 days/wk	68	74
Public Works	Main Bldg	HVAC	6:00	17:00	8:00	17:00	51	6 days/wk	68	74
Public Works	Main Bldg	HVAC	6:00	17:00	8:00	17:00	51	6 days/wk	68	74
Public Works	Main Bldg	HVAC	6:00	17:00	8:00	17:00	51	6 days/wk	68	74
Public Works	Main Bldg	HVAC	6:00	17:00	8:00	17:00	51	6 days/wk	68	74
Public Works	Main Bldg	HVAC	6:00	17:00	8:00	17:00	51	6 days/wk	68	74
Public Works	Main Bldg	HVAC	6:00	17:00	8:00	17:00	51	6 days/wk	68	74
Public Works	Main Bldg	HVAC	6:00	17:00	8:00	17:00	51	6 days/wk	68	74
Public Works	Main Bldg	HVAC	6:00	17:00	8:00	17:00	51	6 days/wk	68	74
Public Works	Main Bldg	HVAC	6:00	17:00	8:00	17:00	51	6 days/wk	68	74
Public Works	Main Bldg	HVAC	6:00	17:00	8:00	17:00	51	6 days/wk	68	74
Public Works	Main Bldg	HVAC	6:00	17:00	8:00	17:00	51	6 days/wk	68	74
Public Works	Main Bldg	HVAC	6:00	17:00	8:00	17:00	51	6 days/wk	68	74
Public Works	Main Bldg	HVAC	6:00	17:00	8:00	17:00	51	6 days/wk	68	74

City of Coachella HVAC Controls Operating Parameters										
Bldg	Location	Equipment	M-F Start	M-F Stop	Wk End Start	Wk End Stop	Wk/Yr	Notes	Heating Set-Pt	Cooling Set-Pt
Civic Center	Main Bldg	HVAC	7:00	18:00	8:00	13:00	51	6 days/wk	68	74
Civic Center	Main Bldg	HVAC	7:00	18:00	8:00	13:00	51	6 days/wk	68	74
Civic Center	Main Bldg	HVAC	7:00	18:00	8:00	13:00	51	6 days/wk	68	74
Civic Center	Main Bldg	HVAC	7:00	18:00	8:00	13:00	51	6 days/wk	68	74
Civic Center	Main Bldg	HVAC	7:00	18:00	8:00	13:00	51	6 days/wk	68	74
Civic Center	Main Bldg	HVAC	7:00	18:00	8:00	13:00	51	6 days/wk	68	74
Civic Center	Main Bldg	HVAC	7:00	18:00	8:00	13:00	51	6 days/wk	68	74
Civic Center	Main Bldg	HVAC	7:00	18:00	8:00	13:00	51	6 days/wk	68	74
Civic Center	Main Bldg	HVAC	7:00	18:00	8:00	13:00	51	6 days/wk	68	74
Civic Center	Main Bldg	HVAC	7:00	18:00	8:00	13:00	51	6 days/wk	68	74
Civic Center	Main Bldg	HVAC	7:00	18:00	8:00	13:00	51	6 days/wk	68	74
Civic Center	Main Bldg	HVAC	7:00	18:00	8:00	13:00	51	6 days/wk	68	74
City Hall	Main Bldg	HVAC	7:00	17:00	n/a	n/a	51		68	74
City Hall	Main Bldg	HVAC	7:00	17:00	n/a	n/a	51		68	74
City Hall	Main Bldg	HVAC	7:00	17:00	n/a	n/a	51		68	74
City Hall	Main Bldg	HVAC	7:00	17:00	n/a	n/a	51		68	74
City Hall	Main Bldg	HVAC	7:00	17:00	n/a	n/a	51		68	74
City Hall	Main Bldg	HVAC	7:00	17:00	n/a	n/a	51		68	74
City Hall	Main Bldg	HVAC	7:00	17:00	n/a	n/a	51		68	74
City Hall	Main Bldg	HVAC	7:00	17:00	n/a	n/a	51		68	74
City Hall	Main Bldg	HVAC	7:00	17:00	n/a	n/a	51		68	74
City Hall	Main Bldg	HVAC	7:00	17:00	n/a	n/a	51		68	74
City Hall	Main Bldg	HVAC	7:00	17:00	n/a	n/a	51		68	74
City Hall	Main Bldg	HVAC	7:00	17:00	n/a	n/a	51		68	74
City Hall	Main Bldg	HVAC	7:00	17:00	n/a	n/a	51		68	74

Measurement and Verification Plan

IPMVP Option A: Retrofit Isolation, Key Parameter Measurement For Pumping Upgrades - Pool

M&V Procedure

This option provides for the measurement of the pre-electrical load (kW) and the post-electrical load (kW) at the different post operating speeds. The electrical load (kW) will be measured with a Fluke kWh meter that was factory calibrated.

Stipulated Values

Operating Hours are stipulated for purposes of M&V. Baseline annual equipment operation is 8,760 hours at full speed. Post-retrofit operation will be at full speed or the required flow to meet the 6-hour turnover as required by health codes when occupied. The pump speed will be reduced outside of occupied hours resulting in a reduced electrical load. At the time of project development the pool was closed for occupancy. The occupied hours for the pool for the purpose of this M&V is taken to be on the average 6 hours per day, 6 days per week 51 weeks per year or 1,836 hours per year.

Adjustments

For this EEM, the following adjustments are allowed for purposes of Measurement and Verification:

- Utility rates, billing days or hours of occupation.

Savings Calculations

The calculations for the baseline energy consumption and post retrofit savings shall be completed in accordance with the industry guidelines set forth by IPMVP and methods indicated below.

$$kWh\ Savings = [(Existing\ kW) \times (Existing\ Hours\ of\ Operation) - [(Reduced\ kW) \times (Reduced\ Load\ Hours) + (Occupied\ kW) \times (Occupied\ Hours)]]$$

where based upon the affinity law:

$$Reduced\ kW = (Existing\ kW) \times (0.5^{2.7})$$

$$Occupied\ kW = (Existing\ kW) \times (0.9^{2.7})$$

$$Dollar\ Savings = (kWh\ Savings) \times (Current\ Utility\ \$/kWh\ Rate)$$

Operational Savings

The Purchaser will realize maintenance and operational savings resulting from the new system installations, extended warranties, and/or service agreements provided by ABS. The operational savings are based on CEC guidelines and are stipulated and met upon the completed installation of the energy retrofit contract.

Commissioning

Commissioning shall consist of inspections and a final verification report. Inspections shall consist of:

- During construction, ABS shall maintain a detailed record of the equipment installed in each facility in addition to the programmed sequence of operation. A post construction inspection is required by the responsible M&V party.

Measurement and Verification Plan

IPMVP Option A: Retrofit Isolation, Key Parameter Measurement For WWTP Improvements

M&V Procedure

This option provides for the measurement of the pre-electrical load (kW) and the post-electrical load (kW) at the different post operating speeds. The electrical load (kW) will be measured with a Fluke kWh meter that was factory calibrated. Operation of the plant parameters over time will be collected from logged data from the control system.

Stipulated Values

Operating Hours are stipulated for purposes of M&V. The plant is operational 24/7 with the load varying with wastewater flows. The packaged plant consists of three (3) 125-hp multistage centrifugal blowers that cannot be turned down below 85% of full speed with associated ancillary equipment consisting of three (3) 25-hp pumps that run 24/7. Post-retrofit equipment will have the above equipment eliminated from operation with new equipment for the oxidation ditch and the belt press operating at the plant. The oxidation ditch will consist of a single 75-hp motor running 50% of the time and a single 15-hp motor for the belt press operating 8 hours per day, 5 days per week.

Adjustments

For this EEM, the following adjustments are allowed for purposes of Measurement and Verification:

- Utility rates, billing days or hours of operation.

Savings Calculations

The calculations for the baseline energy consumption and post retrofit savings shall be completed in accordance with the industry guidelines set forth by IPMVP and methods indicated below.

$$kWh\ Savings = [(Existing\ average\ kW) \times (Existing\ Hours\ of\ Operation) - (Reduced\ average\ kW) \times (Post-Retrofit\ Hours)]$$

where:

Existing Average kWh = Average kW over the window of time or the existing hours of operation

Reduced Average kWh = Average kW of the newly installed equipment over the window of time or post-retrofit hours

Dollar Savings = (kWh Savings) x (Current Utility \$/kWh Rate)

Operational Savings

The Purchaser will realize maintenance and operational savings resulting from the new system installations, extended warranties, and/or service agreements provided by ABS. The operational savings are based on the elimination of the packaged plant and optimization of the sludge handling. The operational savings are stipulated and met upon the completed installation of the energy retrofit contract.

Commissioning

Commissioning shall consist of inspections and a final verification report. Inspections shall consist of:

- During construction, ABS shall maintain a detailed record of the equipment installed in each facility in addition to the programmed sequence of operation. A post construction inspection is required by the responsible M&V party.

Measurement and Verification Plan

IPMVP Option A: Retrofit Isolation, Key Parameter Measurement For Solar Photovoltaic System

M&V Procedure

This option shall provide for the measurement of at least one variable pre- and post-retrofit with other variables allowed for stipulation. For this installation, the kilowatt-hour (kWh) production from the solar PV systems shall be measured and recorded.

Stipulated Values

The solar system savings are stipulated for the purposes of M&V. Values are obtained from the expected solar kWh production outlined in the Solar Systems Attachment. The solar kWh annual production is guaranteed at 80% of the expected value. The solar panel degradation factor (0.5%/year), avoided energy cost (\$/kWh, based on the City of Coachella rate schedule) and utility escalation rate (5%/year) are stipulated for the solar photovoltaic systems. Stipulated values are agreed to by Purchaser.

Savings Calculations

The calculations for the baseline energy consumption and post installation savings provided the basis for the overall financial viability of these EEMs. The following equations summarize the calculation of savings:

Electricity Production: Electricity production of the PV system is determined by recording the kilowatt hours (kWh) off the net electric meter and recording the results.

Dollar Savings: After recording kWh production, each site's avoided energy cost (\$/kWh), as shown in Utility Baseline, shall be used to determine dollar savings. Dollar Savings = (Annual kWh production) x (Avoided \$/kWh) = Annual \$ kWh Saved

Maintenance of System

Calculation of energy cost savings from the solar PV systems are contingent upon the Purchaser maintaining an active operations and maintenance (O&M) contract with a solar service provider for the term of the solar lease agreement.

Pre-Retrofit Measurements

Existing utility electrical energy (kWh) consumption as shown in the Utility Baseline Summary, as shown in Attachment 2.

Post-Retrofit Measurements

Electrical energy (kWh) produced from the solar PV systems recorded from the net electrical meter.

Adjustments

For this EEM, the following adjustments are allowed for the purposes of Measurement and Verification:

- Addition or subtraction to the square footage of facilities.
- Utility rates, billing days or degree days.
- Addition or subtraction of electrical load at the facilities.
- Changes in the solar PV system sizing, location and layout.
- Changes in the conditions at or near any of the sites, which causes additional shading, soiling, or otherwise reduced performance of the solar PV systems.
- Adjustment to the Guaranteed Production values for weather shall use local weather data as recorded during the corresponding period.
- To the extent that the System output is negatively impacted by casualty, government regulation and or restriction that is beyond the Contractor's control to remedy within a reasonable time period, the Parties shall negotiate in good faith a modification of the Guaranteed Production.

Excused Production Losses

For this EEM, the following events are excused from production losses and any necessary adjustments are allowed for the purposes of Measurement and Verification:

- Force Majeure Events: Lost production from the beginning of a Force Majeure Event until production limiting factors caused by the Force Majeure Event have been remedied.

- Grid Event: Lost production when a fluctuation in the Grid frequency or voltage causes the inverters or the System to disconnect from the Grid. The “Grid” is defined to be the system receiving power exported from the System.
- Grid Outage: Lost production when a failure in the grid or Interconnection Infrastructure prevented energy from being exported from the solar facility. “Interconnection Infrastructure” means that utility-owned and maintained interconnection equipment (the substation including but not limited to transformers, switches, and protective relays) that is used to connect the Facility to the utility grid. Grid operator/owner ordered curtailments for any reason, other than an issue in the System, is a Grid Outage.
- Weather Events: Lost production from weather that limits or prevents safe operation of the solar facility including floods, snow, hurricanes, tornadoes, insolation-limiting wild fires and volcanic activity.
- Purchaser Caused: Lost production when System dc capacity is off-line due to outages attributable to Purchaser’s decision to perform or cause to be performed, any investigations, studies, operations, construction, installation and maintenance work or other activities deemed appropriate by ABS at its sole discretion.

Commissioning

Commissioning shall consist of inspections and a final Commissioning report. Commissioning of the new solar PV system shall include securing the Utility Interconnect agreement, proper alignment of the solar panels and functional testing.

Measurement and Verification Plan

IPMVP Option C: Whole Facility

M&V Procedure

The Measurement and Verification (M&V) Plan following IPMVP Option C protocol is designed to evaluate the energy performance of the whole facility, not just individual EEMs. The energy performance is assessed through utility meters, whole-facility meters, or sub-meters. The measurement boundary encompasses either the whole facility or a major section of the facility where EEMs were installed. Option C determines the combined savings of all the EEMs installed at the facility and is monitored by the associated energy meter. Savings reported under this Option will include the positive or negative effects of any non-EEM changes made in the facility because whole-facility meters are used.

Adjustments

Adjustments will be computed from identifiable physical facts about the energy governing characteristics of equipment within the measurement boundary. Adjustments are used to express both pieces of measured energy data under the same set of conditions. Two types of adjustments are possible:

- *Routine Adjustments* are used to account for any energy-governing factors, expected to change routinely during the reporting period. Routine Adjustments are completed by developing a mathematical model of each meter's energy-use pattern. Typically, the baseline model includes factors derived from regression analysis, which correlates energy to one or more independent variables such as occupancy, weather, and metering period length. Values of independent variables over the reporting period can be inputted into the baseline model to predict what the baseline energy consumption would have been had if no EEM's were installed.
- *Non-Routine Adjustments* are used to account for those energy-governing factors which are not usually expected to change, such as: the facility size, the design and operation of installed equipment, or the type of occupants. ABS will monitor these static factors for change throughout the reporting period. Adjustments will be based on industry standards and sound engineering principles as they pertain to the specific affected system.

Metering

Whole-facility energy measurements can use the utility's meters. Utility meter data is considered 100% accurate for determining savings because this data defines the payment for energy. The energy supplier's meter(s) may be equipped or modified to provide output that can be recorded by the facility's monitoring equipment. Meter data can be hourly, daily or monthly whole-facility data.

Savings Calculations

The calculations for the baseline energy consumption and post retrofit savings shall be completed in accordance with the industry guidelines set forth by IPMVP and ASHRAE. The baseline period and reporting period should use complete years of continuous data (12, 24, or 36 months). The electrical consumption reduction of the facility (measured in kWh and/or kW) shall be reported as Savings, or Avoided Energy Use, in which the savings are stated under the conditions of the reporting period and determined by the following equation:

$$\text{Energy Savings (Avoided Energy Use)} = (\text{Baseline Energy} \pm \text{Routine Adjustments to reporting-period conditions} \\ \pm \text{Non-Routine Adjustments to reporting-period conditions}) - \text{Reporting-Period Energy}$$

The price schedule of the reporting period will be used to compute the "avoided cost" on a meter-by-meter basis. The price schedule will be obtained from the utility and will include all elements that are affected by metered amounts, such as consumption charges, demand charges, power factor, and demand ratchets. In the event of a significant decrease in energy prices, the price schedule used for savings reporting will be that which prevailed at the time of commitment to the investment. Cost savings are determined by applying the appropriate rate / price schedule in the following equation:

$$\text{Cost Savings (Avoided Cost)} = \text{Cost of Baseline Energy} - \text{Cost of Reporting-Period Energy}$$

Attachment 2

Utility Baseline Summaries

Utility Release request for City of Coachella						
<u>Site Name</u>	<u>Service Address</u>	<u>City</u>	<u>Account Number</u>	<u>2019 kWh Usage (Jan-Dec)</u>	<u>2019 Electric Cost (Jan-Dec)</u>	<u>2019 Electric Rate (\$/kWh)</u>
Bagdouma Park - Rec Center	51251 Douma St, Coachella, CA	Coachella, CA	50035696	25,840	\$ 3,120	0.12074
Bagdouma Park - Rec Center	51251 Douma St, Coachella, CA	Coachella, CA	50035709	10,850	\$ 1,400	0.12906
Bagdouma Park	84599 Avenue 52, Coachella, CA	Coachella, CA	50035799	133,880	\$ 15,551	0.11616
Bagdouma Park	Douma & Avenue 52, Coachella, CA	Coachella, CA	50035855	91,600	\$ 10,719	0.11702
Bagdouma Park	84591 Bagdad St 1/2, Coachella, CA	Coachella, CA	50310138	84,000	\$ 9,788	0.11652
Bagdouma Park - Boxing	51297 Douma St Park LTS, Coachella, CA	Coachella, CA	50444900	39,120	\$ 4,662	0.11917
Bagdouma Park	84637 Avenue 51 Park Lts, Coachella, CA	Coachella, CA	50589103	50,700	\$ 6,341	0.12506
Ranch Las Flores Park	48400 Van Buren St Park Lt, Coachella, CA	Coachella, CA	50575175	152,400	\$ 17,711	0.11622
Veterans Park	1500 4th St, Coachella, CA	Coachella, CA	50707301	48,800	\$ 6,117	0.12536
City Hall	1515 6th St, Coachella, CA	Coachella, CA	50035605	18,127	\$ 2,235	0.12332
City Hall	1515 6th St, Coachella, CA	Coachella, CA	50035648	102,680	\$ 11,972	0.11660
Community Center	51251 Douma St, Coachella, CA	Coachella, CA	50382019	38,920	\$ 4,640	0.11921
Community Center	51297 Douma St Temp Serv, Coachella, CA	Coachella, CA	50432096	-	\$ 160	#DIV/0!
Senior Center	1540 7th St, Coachella, CA	Coachella, CA	50035818	72,440	\$ 8,508	0.11745
Coachella Library	1500 6th St Library, Coachella, CA	Coachella, CA	50751552	160,150	\$ 20,735	0.12947
Well 12	Ave 51 & Frederick, Thermal, CA	Thermal, CA	50035790	1,027,200	\$ 118,740	0.11560
Well 19	48189 El Greco Ave, Coachella, CA	Coachella, CA	50351368	1,255,600	\$ 144,790	0.11532
Well 17	48463 Van Buren St Well #17, Coachella, CA	Coachella, CA	50709902	792,600	\$ 91,775	0.11579
Lift Station	525 P SS/Avenue 52 (And 1/2 Mile E/Tyler St) Pump, Coachella, CA	Coachella, CA	50051620	2,720	\$ 460	0.16920
Lift Station	87101 Avenue 52, Coachella, CA	Coachella, CA	50371785	69,500	\$ 8,150	0.11727
Public Work Bldg	53462 ENTERPRISE WAY	Coachella, CA	50509172	52,400	\$ 10,045	0.19169
Well #11	Corner SE Ave 48/RRS, Coachella, CA	Coachella, CA	50035755	198,720	\$ 23,780	0.11967
Well 18	86275 Avenue 48, Coachella, CA	Coachella, CA	50408460	669,000	\$ 79,348	0.11861
Wastewater Treatment Plant	87075 Avenue 54 SWER Plant, Coachella, CA	Coachella, CA	50387122	2,662,000	\$ 306,711	0.11522
CIVIC CENTER	53990 Enterprise Way, Coachella, CA	Coachella, CA	50705542	120,000	\$ 14,400	0.12000
CIVIC CENTER	53990 Enterprise Way, Coachella, CA	Coachella, CA	50705544	10,800	\$ 1,296	0.12000

Attachment 3

Energy Efficiency and Renewable Project Cashflow

EXHIBIT H
FINANCING TERMS

[DOCUMENT BEGINS ON THE FOLLOWING PAGE]

DRAFT - SUBJECT TO REVISIONS

NON-COLLUSION DECLARATION
PUBLIC CONTRACT CODE SECTION 7106

TO BE EXECUTED BY DESIGNER/BUILDER

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. Designer/Builder has not directly or indirectly induced or solicited any other Design-Build Entity (“**Designer/Builder**”) to put in a false or sham Contract. Designer/Builder has not directly or indirectly colluded, conspired, connived, or agreed with any proposer or anyone else to put in a sham Contract, or to refrain from proposing. Designer/Builder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the Contract price of Designer/Builder or any other proposer, or to fix any overhead, profit, or cost element of the Contract price, or of that of any other proposer. All statements contained in the Contract are true. Designer/Builder has not, directly or indirectly, submitted his or her Contract price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, Contract depository, or to any member or agent thereof, to effectuate a collusive or sham Contract, 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 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)

END OF DOCUMENT

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 Services on the 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:

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

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

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 Services under this Contract.)

END OF DOCUMENT

DRUG-FREE WORKPLACE / TOBACCO-FREE ENVIRONMENT CERTIFICATION

Government Code section 8350 et seq., the Drug-Free Workplace Act of 1990 (herein only, the “Act”), 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 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 Designer/Builder or grantee may be subject to debarment from future contracting, if the contracting agency determines that specified acts have occurred. City is not a “state agency” as defined in the applicable section(s) of the Government Code, but City is a municipal corporation under California law and requires all Designer/Builders on City projects to comply with the provisions and requirements of the Act. 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:
 - a. The dangers of drug abuse in the workplace.
 - b. The person’s or organization’s policy of maintaining a drug-free workplace.
 - c. The availability of drug counseling, rehabilitation, and employee-assistance programs.
 - d. The penalties that may be imposed upon employees for drug abuse violations.
- 3 Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required above, and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

I understand that if City 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 City policies, rules, or ordinances, all City sites, including the Project Site, are tobacco-free environments. Smoking and the use of tobacco products by all persons is prohibited on or in City property. City property includes buildings, grounds, City owned vehicles and vehicles owned by others while on City property. I acknowledge that I am aware of City’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 Project site.

Date: _____
Proper Name of Designer/Builder: _____
Signature: _____
Print Name: _____
Title: _____

END OF DOCUMENT

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 Hazardous Material**”) shall be furnished, installed, or incorporated in any way into the Project or in any tools, devices, clothing, or equipment used to affect any portion of Designer/Builder’s Services on the Project for City.

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. The costs of any such tests shall be paid by Designer/Builder if the material is found to be New Hazardous Material.

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

Date: _____
Proper Name of Designer/Builder: _____
Signature: _____
Print Name: _____
Title: _____

END OF DOCUMENT

CONFLICT OF INTEREST CERTIFICATION

I, _____, _____
Name Name of Designer/Builder

am the authorized representative of _____ (“**Designer/Builder**”), which hereby certifies that no employee, officer, agent, consultant, or subcontractor of Designer/Builder has any financial interest or business relationship with City, City’s staff or any individual member of City Council; nor does Designer/Builder have any actual knowledge or reason to know that any such City Council member(s) or staff will obtain a financial interest or present or anticipated benefit from the agreement contemplated by this Project that would constitute a conflict of interest under California Public Contract Code section 10365.5; Government Code sections 1090 et seq. or 87100 et seq., pertaining to conflicts of interest in public contracting.

Date: _____
Proper Name of Designer/Builder: _____
Signature: _____
Print Name: _____
Title: _____

END OF DOCUMENT

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 City 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 City is included with this Contract.**

I certify that I am duly authorized to legally bind 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: _____

END OF DOCUMENT

PERFORMANCE BOND (100% of Contract Price)

(Note: Designer/Builder must use this form, NOT a surety company form.)

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the governing board (“**Council**”) of City of Coachella (“**City**”) and **Alliance Building Solutions, Inc.** (“**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:

Multi-Site Energy Improvement Project
 (“**Project**” or “**Contract**”)

which Contract dated _____, 202_, 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 bond for the faithful performance of the Contract;

NOW, THEREFORE, the Principal and _____ (“**Surety**”) are held and firmly bound unto the Council of City 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:

1. Perform all the work required to complete the Project with persons, firms, and or entities acceptable to City; and
2. Pay to City all damages City incurs as a result of the Principal’s failure to perform all the Services required to complete the Project.

The condition of the obligation is such that, if the above bounden Principal, his or its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and agreements in the Contract and any alteration thereof made as therein provided, on his or its part to be kept and performed at the time and in the intent and meaning, including all contractual guarantees and warranties of materials and workmanship, and shall indemnify and save harmless City, its trustees, officers and agents, as therein stipulated, then this obligation shall become null and void, otherwise it shall be and remain in full force and virtue.

As a condition precedent to the satisfactory completion of the Contract, the above obligation shall hold good for a period equal to the warranty period of the Contract, during which time Surety’s obligation shall continue if Designer/Builder shall fail to make full, complete, and satisfactory repair, replace, and totally protect City from loss or damage resulting from or caused by defective materials or faulty workmanship. The obligations of Surety hereunder shall continue so long as any obligation of Designer/Builder remains. Nothing herein shall limit City’s rights or 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.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract or to the work or to the specifications.

While Surety’s undertaking under this bond includes the obligation of the Principal to complete the work in accordance with the Contract, Surety does not guarantee or warrant that the system will produce any particular level of energy savings.

Any claims under this bond may be addressed to the Surety at the following address. This cannot be 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 _____, 202_).

(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

Contractor's Labor & Material Bond (100% of Contract Price)

(Note: Designer/Builder must use this form, NOT a surety company form.)

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the governing board (“**Council**”) of City of Coachella (“**City**”) and **Alliance Building Solutions, Inc.** (“**Principal**”) have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to

Multi-Site Energy Improvement Project
 (“**Project**” or “**Contract**”)

which Contract dated _____, 202_, 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 in an amount equal to 100 percent (100%) of the Contract price, to secure the claims to which reference is made in sections 3179 through 3214 and 3247 through 3252 of the Civil Code of California, and division 2, part 7, of the 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 of _____ Dollars (\$ _____), lawful money of the United States, being a sum not less than the total amount payable by the terms of Contract, 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 a reasonable attorney's fee 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 3179 through 3214 and 3247 through 3252 of the 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.

Any suit on this bond must be brought within the period of one (1) year after Completion, as defined in the Contract; provided, however, that if this suit limitation period is void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

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 _____, 202_.

(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.