

FIRST AMENDED AND RESTATED ENERGY SERVICES AGREEMENT

Between

CITY OF MILPITAS

(as "Owner")

and

ENGIE SERVICES U.S. INC.

(as "Contractor")

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- Exhibit C – Project Owner Requirements
- Exhibit D – Request for Information Form
- Exhibit E – Form of Change Order
- Exhibit F – Form of Application for Payment
- Exhibit G – Form of Final Completion Certificate
- Exhibit H – Escrow Agreement for Security Deposit In Lieu of Retention
- Exhibit I – Waiver and Release Forms
- Exhibit J – Certification Regarding Claim
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- Exhibit L – Standards of Occupancy and Control
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- Exhibit N – M&V Services
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- Exhibit P – Resiliency Services
- Exhibit Q – Water Fixture Retrofits Detailed Scope of Work
- Exhibit R – Facilities and Pumping Stations Lighting Detailed Scope of Work
- Exhibit S – Parks Lighting Detailed Scope of Work
- Exhibit T – Scope of Impact Services

ENERGY SERVICES AGREEMENT

COVER PAGE

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

ENGIE Services, U.S. Inc. (“Contractor”)
 Attn: Mariana de Brito
 4020 Moorpark Avenue, Suite 100
 San Jose, CA 95117
 Phone No.: 415-825-0149
 FAX No.: <fax>
 Email Address: mariana.debrito@engie.com

City of Milpitas (“Owner”)
 Attn: Tony Ndah
 1265 N. Milpitas Blvd.
 Milpitas, CA 95035
 Phone No.: 408-586-2602
 FAX No.: 408-586-2608
 Email Address: tndah@ci.milpitas.ca.gov

<p>A. The “Effective Date”:</p> <p>October 6, 2020</p>	<p>B. The “Completion Date”:</p> <p>ECMs 1 and 2: 635 calendar days from NTP ECM 3: 710 calendar days from NTP ECMs 4, 5, 6 and 7: 420 calendar days from NTP ECMs 8, 9, and 10: 690 calendar days from NTP</p>
<p>C. “Required License”: In accordance with Public Contract Code section 3300, Contractor shall have, throughout the Contract Term, the following license classification issued by the California Contractors State License Board (<i>state license classification(s)</i>):</p> <p>995037</p>	
<p>D. “Contract Price” to be paid to Contractor:</p> <p>The “Contract Price” is the full and complete amount to be paid to the Contractor for the performance of all obligations required by the Contract Documents for all Sites, and shall be broken down as follows:</p> <p>Phase 1 in the total amount of: \$150,000 Phase 2 in the total amount of: \$33,798,429</p>	<p>F. “LD Rate” (see Section 4.52(xxxx)):</p> <p>ECMs 1 and 2 combined: \$200/day aggregate for all sites ECM 3: \$100/day aggregate for all sites ECMs 4, 5, 6, 7 combined: \$200/day aggregate for all sites ECMs 8, 9, 10 combined: \$100/day aggregate for all sites</p> <p>G. “Utility”:</p> <p>Silicon Valley Clean Energy Pacific Gas & Electric Association of Bay Area Governments Power</p>
<p>G. Contractor Required Insurance:</p> <p>See Section 2.22(cccc)</p>	
<p>H. “Project Sites” or “Sites”:</p> <p>See Section 1.2</p>	

FIRST AMENDED AND RESTATED ENERGY SERVICES AGREEMENT

This First Amended and Restated Energy Services Agreement for an energy savings assessment and implementation of renewable energy generation and energy management systems (“Agreement”) is made by and between, City of Milpitas, a public agency organized and existing under the laws of the State of California (“Owner”), and ENGIE Services, U.S. Inc., a Delaware corporation and contractor licensed by the State of California (“Contractor”).

RECITALS:

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

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

WHEREAS, through this Agreement, the Owner intends to contract for project development (“Phase 1”) and implementation, including engineering, system design, fabrication and installation, of renewable energy generation and energy management systems (“Phase 2”) that will result in energy savings to the Owner and which shall be a supply of energy to the Owner (collectively, the “Project”) at various sites owned or controlled by Owner (the “Project Sites” or “Sites”, and each individually a “Site”), consistent with the terms of Government Code section 4217.10, *et seq.*;

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

WHEREAS, under Phase 1, Contractor shall perform project development by undertaking a comprehensive energy analysis and present the Owner with a detailed comprehensive energy analysis report (“CEA Report”) and recommended energy plan to implement certain energy conservation measures and services (“ECMs”) under Phase 2 of the Project. The CEA Report will identify potential energy generation and operational savings opportunities at the Project Sites and estimated program costs to implement the recommended ECMs and present an overall potential energy cost and consumption savings of implementing the ECMs under Phase 2 of the Project. The CEA Report will include data showing that the anticipated cost to the Owner for the recommended ECMs will be less than the anticipated cost to the Owner of electrical or other energy that would have been consumed by the Owner in the absence of the Project;

WHEREAS, contingent upon satisfactory completion of Phase 1 by Contractor, presentation of the CEA Report and recommended ECMs to the Owner’s governing body for review and ratification and completion of all applicable requirements under the California Environmental Quality Act, the Contractor shall engineer, design, and construct the ECMs pursuant to this Agreement;

NOW, THEREFORE, in consideration of the covenants hereinafter contained, including all recitals and Exhibits incorporated herein by this reference, the Owner and Contractor agree as follows:

GENERAL TERMS AND CONDITIONS

ARTICLE ONE

1. GENERAL DEFINITIONS

1.1 Interpretation As used in this Agreement, the terms “herein”, “herewith”, “hereof” are references to this Agreement, taken as a whole, the terms “includes” or “including” shall mean “including, without limitation”, and references to a “Section”, “Article” or “Exhibit” shall mean a Section, Article, or Exhibit of this Agreement, as the case may be, unless in any such case the context requires otherwise. All references to a given Exhibit, agreement, instrument or other document shall be a reference to that agreement, instrument or other document as modified, amended, supplemented and restated through the date as of which such reference is made. A reference to a Person includes its permitted successors and permitted assigns. The singular shall include the plural, the masculine shall include the feminine and neuter, and vice versa.

1.2 Defined Terms Capitalized terms used in this Agreement without other definition shall have the meanings specified in this Section 1.2 unless the context requires otherwise.

“Abnormally Severe Weather Conditions” means typhoons, hurricanes, tornadoes, lightning storms and other climatic and weather conditions that are abnormally severe for the period of time when, and the area where, such storms or conditions occur, in each case occurring at a property, the access roads to a property, or any other location where Work is then being performed. The term “Abnormally Severe Weather Conditions” specifically includes rain, snow or sleet in excess of one hundred fifty percent (150%) of the median level over the preceding ten (10) year period for the local geographic area and time of year in which such rain, snow or sleet accumulates.

“Additional Insured” has the meaning set forth in Section 2.23(hhhh).

“Affiliate” means, with respect to any Person, any other Person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

“Agreement” has the meaning set forth in the preamble and shall include the Cover Page and all Exhibits hereto. The Agreement represents the entire and integrated contract between the Parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Agreement shall not be construed to create any kind of contractual relationship other than between the Owner and Contractor.

“Applicable Law” shall mean, with respect to any Governmental Authority, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, injunction, registration, license, permit, authorization, guideline, governmental approval, act, code, ruling, proclamation, resolution, declaration, requirement or interpretive or advisory opinion

or letter of such Governmental Authority, as construed from time to time by any Governmental Authority, in each case, applicable to the Work, the Site, the Project, the Parties or any other matter in question (as applicable).

“Application for Payment” has the meaning set forth in Section 3.33.

“Assessment” shall mean all feasibility and configuration assessments conducted by the Contractor to fulfill its obligations under this Agreement.

“Beneficial Use” means when major new equipment and systems included in the Scope of Work are properly installed, inspected, operational, and are capable of being used for their intended purpose. Criteria for Beneficial Use of equipment / systems will be established as defined in Exhibit A.

“Builders All Risk Insurance” has the meaning set forth in Section 2.23(eeee)(xvii).

“Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday and shall be between the hours of 8:00 a.m. and 5:00 p.m. local time for the relevant Party’s principal place of business.

“Change in Law” means any of the following events or circumstances occurring after the Effective Date: (i) an amendment, modification, interpretation, construction, enforcement standard, supplement or other change in or repeal of an existing Applicable Law; or (ii) an enactment or making of a new Applicable Law (excluding a change in any income or franchise tax law, worker’s compensation, payroll or withholding tax law).

“Change Order” or “CO” A change order is a written instrument prepared by the Owner and the Contractor pursuant to Section 2.20 stating their agreement upon all of the following: (A) A change in the Work; (B) the amount of the adjustment in the Contract Price, if any; and (C) the extent of the adjustment in the Project Schedule.

“Claim” has the meaning set forth in Section 6.7.

“Completion Date” shall be the date set forth in the Cover Page by which Contractor is guaranteeing Substantial Completion will be achieved, as may be adjusted from time to time in accordance herewith.

Comprehensive Energy Analysis Report or “CEA Report” shall be the report providing for an assessment of energy generation and operational savings opportunities and curtailable load capabilities developed during Phase 1 of the Project. The CEA Report shall identify an energy plan to implement certain ECMs.

“Consultant” shall mean any Person performing or providing expert or professional advice.

“Contract Documents” means shall mean this Agreement and all final Drawings, Specifications, Change Orders, surveys, plans, models, reports and designs, addenda thereto (whether or not attached due to their size), Engineering Documents, Non-collusion Declaration, and other documents referred to in the Agreement, and written modifications issued after execution of the Agreement.

“Contract Price” shall mean the amount set forth in the Cover Page, which is the total payable by Owner for the Work under this Agreement, as the same may be modified from time to time in accordance with the terms hereof.

“Contractor” shall have the meaning set forth in the preamble and is referred to throughout the Contract Documents as if singular in number. The term “Contractor” means the Contractor or the Contractor’s authorized representatives.

“Contractor Event of Default” shall have the meaning set forth in Section 6.56.

“COVID-19” has the meaning set forth in Section 7.21.

“Day” shall mean a calendar day unless it is specified that it means a Business Day.

“Delay” means any circumstances involving delay, disruption, hindrance or interference affecting the time of performance of the Work.

“Design Life” means the period of time during which an item is expected by designers to work within its specified parameters and current technology. This is a theoretical calculation based upon the data and assumptions utilized in those engineering calculations as depicted in the Drawings. Design Life is an estimate of the constructed Project’s time in service and not a guarantee, nor is it tantamount to a manufacturer’s representation of product life. Ultimately, the statistical plot of the actual life cycle for a group of a particular product will result in a lognormal distribution curve with a heavy tail to the right where some products fail sooner than others; in fact, it is possible that certain items will fail prior to the target design life. The Design Life is not intended to extend the Warranty Period or increase the Contractor’s liability should a product prove to fail prior to attaining such theoretical Design Life, and Owner shall not have a reliance claim therefor.

“Dollar” and **“\$”** shall mean the lawful currency of the United States of America.

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

“Early Termination Payment” has the meaning set forth in Section 6.3.

“Effective Date” shall mean the date on which the Agreement shall become effective as set forth in the Cover Page.

“Equipment” shall mean all materials, supplies, apparatus, machinery, equipment, parts, tools, components, instruments, appliances, spare parts and appurtenances thereto that are required, by the terms of the Contract Documents and all Legal Requirements .

“Equipment Documentation” shall mean copies or originals of (i) all operating specifications, warranties and other similar information obtained by Contractor from equipment vendors or Subcontractors or prepared by Contractor or Subcontractors as part of the Work, (ii) a complete inventory list of all Equipment comprising the System, and (iii) all documentation and identification

information with respect to all Equipment comprising part of the Project, including reference or serial numbers for all photovoltaic panels, inverters and other equipment listed in the Scope of Work.

“Equipment Warranties” shall mean the product warranty from any Supplier for the Equipment incorporated into the Project.

“Energy Conservation Measures” or ECMs shall mean those renewable energy generation and energy efficiency improvements identified and recommended by Contractor during Phase 1 of the Project.

“Engineer” shall mean the licensed professional engineer experienced in the design and construction of projects comparable to the Project and responsible for the overall design of the System.

“Engineering Documents” shall mean all documents including Drawings, diagrams, plans, Equipment Documentation, Equipment Warranties, Shop Drawings, Assessments, addenda, reports calculations, performance models and other models, designs schedules, and other documents prepared or furnished by Contractor pursuant to this Agreement in respect of the design, engineering and construction of the System.

“Environmental Law” means all Laws related to health, safety, the protection of the environment or regulation or prohibition of the environmental pollution or contamination, including laws relating to land use, emission and pollution, discharges into or pollution of water, and Hazardous Materials.

“Escrow Agreement” has the meaning set forth in Section 0

“Excusable Event” means any reasonably unforeseeable act, event, occurrence, condition or cause beyond the control of Contractor and against which Contractor could not have reasonably mitigated. Subject to the foregoing, Excusable Events may include the following: (i) any act or failure to act of, or other Delay caused by any Owner Person; (ii) the failure to obtain, or delay in obtaining, any Interconnection Agreement or Governmental Approval; (iii) changes in the design, scope or schedule of the Work required by any Governmental Authority or Owner Person and any Delays caused thereby; (iv) undisclosed or unforeseen conditions encountered at the Project Location; (v) any Change in Law; (vi) Delay caused by pending arbitration; (vii) Force Majeure Events; (viii) work or requirement by Utility affecting the Work; (ix) labor, equipment or material shortages or delays; (x) Abnormally Severe Weather Conditions; (xi) an annual level of direct beam solar resource availability that is less than or equal to 90% of historical averages as measured by long-term weather data (minimum 5 years) collected at the applicable Site and/or other reliable calibrated and appropriate weather station representative of such Site; (xii) Owner fails to inform Contractor of scheduled or required activities prior to the execution of this Agreement pursuant to Section 4.10 and (xiii) Owner’s delay in issuing, or failure to issue the Notice to Proceed as set forth in Section 4.2(a).

“Exhibits” means the Exhibits comprising part of this Agreement referenced and listed in the Table of Contents.

“Final Completion” means “Final Completion” of the Project in accordance with Section 4.46(qqqq)(xxxv).

“Final Completion Certificate” has the meaning set forth in Section 4.46(qqqq)(xxxv).

“Final Completion Date” shall mean the actual date on which the Final Completion has occurred, as set forth in the Final Completion Certificate.

“Force Majeure Event” shall mean, when used in connection with the performance of a Party’s obligations under this Agreement, any act or event (to the extent not caused by the fault or negligence of such Party or its agents or employees) which is unforeseeable, or being foreseeable, reasonably unavoidable (including by taking prudent commercially reasonable protective and preventative measures) and outside the reasonable control of the Party which invokes it, and which renders said Party unable to comply totally or partially with its material obligations under this Agreement including natural disasters, acts of God, drought, flood, earthquake, storm, fire, explosion, lightening, epidemic, war, riot, civil disturbance, sabotage, terrorism or threat of terrorism, and strikes, lockouts or other labor disturbances or disputes of a national or regional scope. Notwithstanding the foregoing to the contrary, Force Majeure Events shall not include any of the following:

(a) mechanical or equipment failures (except to the extent any failure is itself caused by a Force Majeure Event);

(b) any condition of the Site for which the affected Party is responsible under this Agreement;

(c) increases in the cost of performance of a Party’s obligations under this Agreement (except to the extent any such increase is itself caused by a Force Majeure Event);

(d) any delay or other problems associated with the issuance of any Governmental Approval or for the application therefor, other than the failure of the Governmental Authority to issue its approval to start construction of the Project on or before the date specified therefor in the Project Schedule, through no fault of the Party claiming the Force Majeure Event and despite the Party’s best efforts which shall constitute a Force Majeure Event; and

(e) strikes, walkouts, lockouts or other labor disturbances or disputes specific to the Project or such Party claiming a Force Majeure Event.

Notwithstanding the foregoing, each of (x) economic hardship of either Party or (y) increases in the cost of performance of a Party’s obligations, shall not constitute Force Majeure Events under this Agreement.

“Governmental Approval” shall mean each and every national, autonomic, regional and local license, approval, authorization, certification, registration, exemption, filing, recording, permit or other approval with or of any Governmental Authority, including each and every construction or operating permit and any agreement, consent or approval from or with any other Person that is required by any Applicable Law or that is otherwise necessary for the performance of the Work.

“Governmental Authority” shall mean any national, autonomic, regional, provincial, town, city, local or municipal government, authority, body, agency, ministry, court, judicial or administrative body, taxing authority or other governmental organization having jurisdiction over the Work, the Site, the Project, the Parties or any other matter in question (as applicable).

“Hazardous Material” shall mean oil or petroleum and petroleum products, asbestos and any asbestos containing materials, radon, polychlorinated biphenyls (“PCBs”), urea formaldehyde insulation, lead paints and coatings, any chemicals, substances, materials, controlled substances, objects, conditions and waste or combinations thereof which are now or become in the future listed, defined or regulated in any manner by any federal, state or Applicable Law.

“Incentive Funds” has the meaning set forth in Section 2.10.

“Incentives” shall mean subsidies, rebates, credits, reductions, allowances or other financial incentives which the Contractor shall apply for on behalf of the Owner.

“Industry Standards” shall mean those standards of care and diligence generally practiced or accepted by reasonably prudent contractors of the energy services industry in engineering, designing, constructing, installing and operating energy efficiency and/or renewable energy generation projects of similar scope and with equipment similar to the Project in the United States and in accordance with good engineering and design practices, sound construction procedures, Governmental Approvals, the Contract Documents and other generally accepted standards established for such Work. Industry Standards are not intended to be limited to optimum practice, methods, equipment specifications or acts to the exclusion of all others, but rather to be a spectrum of reasonable and prudent practices and methods generally accepted within the energy services industry to accomplish the desired results and must take into consideration the conditions specific to any given facility, including to the extent such conditions would require a person to (a) perform its duties in good faith, (b) perform its duties in compliance with the Contract Documents, (c) use sufficient and properly trained and skilled personnel, and (d) use parts and supplies that meet the specifications set forth in the Contract Documents, in all cases with respect to (a) through (d) herein, taking into account all of the costs, expenses and benefits of operation of the System.

“Instruments of Service” has the meaning set forth in Section 7.3(c).

“Interconnection Agreement” means an agreement entered into by and between Owner and the Utility.

“Interconnection Point” shall mean the physical point where the renewable energy generation system and related improvements installed by Contractor as part of the System ties into the existing Site electrical facilities.

“LD Rate” shall have the meaning set forth in Section 4.52(XXXX).

“Legal Requirement” means the requirement of any Applicable Law, including any Environmental Law or any Governmental Approval.

“Liquidated Damages” shall have the meaning set forth in Section 4.52(XXXX).

“Notice to Proceed” shall have the meaning set forth in Section 4.46(pppp).

“Owner” shall have the meaning set forth in the preamble and is referred to throughout the Contract Documents as if singular in number. The term “Owner” means the Owner or the Owner’s authorized representative.

“Owner Persons” means Owner, its agents, employees, subcontractors, architects, general contractors, lease/leaseback contractors or other Persons acting on behalf of Owner or for whom Owner is responsible.

“Party” shall mean, individually, each of the parties to this Agreement.

“Performance Monitoring and Reporting Service” or “PMRS” has the meaning set forth in Exhibit A, Section 5.1.

“Person” shall mean any individual, corporation, partnership, company, joint venture, association, trust, unincorporated organization or Governmental Authority or other entity.

“Phase 1” shall mean the project development phase of the Project, which shall include development of a CEA Report and recommended energy plan to implement certain ECMs under Phase 2 of the Project.

“Phase 2” shall mean the implementation phase of the Project, under which the Contractor shall engineer, design, and construct the ECMs.

“Progress Payment” shall mean a payment made in accordance with the terms of each Progress Payment Milestone.

“Progress Payment Milestones” shall mean the schedule of separately identifiable major portions of the Work, together with the portion of the Contract Price allocable to each such portion of the Work, set forth in Section 3.36.

“Project” shall mean the project development (Phase 1) and engineering, design, and total construction of the System and completion of the Work (Phase 2) performed in accordance with the Contract Documents.

“Project Development Fee” shall mean the fee identified in Section 3.36(nnnn)(xxvi) for successful performance of Phase 1 of the Project.

“Project Phases” shall mean the schedule of separately identifiable major portions of the Work as set forth in Section 4.46.

“Project Manual” shall mean the volume assembled for the Work which shall include, without limitation, to the extent within Contractor’s possession, Contract Documents, Governmental Approvals, Equipment Documentation, Equipment Warranties, results of the Start Up and Operational Tests and other test conducted under the Testing and Commissioning Plan, Engineering Documents including As-Built Drawings, an O&M manual and all other documents that are reasonably applicable to the Work, as required, with reasonably specific instructions and in reasonably sufficient scope and detail to permit Owner to safely operate, monitor and maintain the System at its tested output level in the ordinary course of business. The Project Manual shall include a table of contents in a format agreed upon by the Contractor and Owner, which agreement will not be unreasonably withheld, conditioned or delayed.

“Project Owner Requirements” shall mean the specific requirements of the Work required by the Owner and that includes the Site Procedures and other elements set forth in Exhibit C, as may be altered from time to time by the Owner as a ministerial matter.

“Project Schedule” shall mean the schedule for prosecution of the Work, including all project development, engineering, permitting, mobilization, construction, Equipment procurement, testing and commissioning in connection with the Project, as set forth in Exhibit B.

“Punchlist” shall mean the list of Work uncompleted upon the achievement of the Commissioning Phase, the lack of which or the failure of which to complete (considered individually or in the aggregate) does not or will not, in the reasonable opinion of Owner or the Engineer, impair the ability of Owner to safely operate, monitor and maintain the System in the ordinary course of business. The Punchlist must be agreed upon by Owner, which agreement will not be unreasonably withheld, and by the Engineer.

“Recovery Plan” shall mean a plan prepared by Contractor, and submitted to the Owner, demonstrating to the Owner’s reasonable satisfaction, the measures that Contractor has taken or will take in order to (i) remedy a delay in completing a portion of the Work by the scheduled dates for such Work as provided in the Project Schedule including achievement of Substantial Completion by the Completion Date.

“Request for Information” A Request for Information is a written request prepared by the Contractor asking the Owner to provide additional information above and beyond that which is available in the Contract Documents and all reference standards, regarding fulfilling the obligations under the Agreement.

“Request for Proposal” A Request for Proposal is a written request prepared by the Owner asking the Contractor to submit to the Owner an estimate of the effect of a proposed change on the Contract Price and the Project Schedule.

“Safety Plan” shall mean a plan prepared by Contractor that includes the elements required by Owner and otherwise includes all matters relating to safety as required by Applicable Law and the Contract Documents. The Safety Plan shall not be completed until satisfactory completion of Phase 1 of the Project and shall thereafter be added by written amendment to this Agreement.

“Samples” shall mean physical examples furnished by Contractor to illustrate materials, equipment, or quality.

“Schedule of Values” has the meaning set forth in Section 3.9(a). The Schedule of Values shall not be determined until satisfactory completion of Phase 1 of the Project and shall thereafter be added by written amendment to this Agreement.

“Scope of Work” shall mean the scope of the Work set forth in Section 2.3 and Exhibit A.

“Shop Drawings” shall mean drawings, diagrams, schedules, and other data, which are prepared by Contractor, Subcontractors, manufacturers, Suppliers, or distributors illustrating some portion of

the Work. The Contractor shall obtain and submit with the Shop Drawings all seismic and other calculations and all product data from Equipment manufacturers. Shop Drawings shall: establish the actual detail of all manufactured or fabricated items, indicate proper relation to adjoining work, amplify design details of mechanical and electrical systems and equipment in proper relation to physical spaces in the structure, and incorporate minor changes of design or construction to suit actual conditions.

“Site” or **“Sites”** shall have the meaning set forth in the third recital. The Site or Sites shall not be determined until satisfactory completion of Phase 1 of the Project and shall thereafter be added by written amendment to this Agreement.

“Site Assessment Table” shall mean a table providing details regarding the Project, the Site(s) and the System at each Site attached hereto as Exhibit **A**. The Site Assessment Table shall not be completed until satisfactory completion of Phase 1 of the Project and shall thereafter be added by written amendment to this Agreement.

“Site Procedures” shall mean the duly authorized procedures developed and implemented by Contractor and approved by Owner as part of the Safety Plan including procedures addressing access, safety, working hours, security, compliance with legal requirements, environmental compliance, the permit to work system, lock-out procedures, tag-out/tag-in procedures and all other standing orders applicable to work carried out on the Site.

“Specifications” The Specifications are that portion of the Contract Documents consisting of the written requirements for material, equipment, construction systems, instructions, quality assurance standards, workmanship, and performance of related services.

“Start Up and Operational Tests” shall mean a test of the System. The Start Up and Operational Tests shall not be determined until satisfactory completion of Phase 1 of the Project and shall thereafter be added by written amendment to this Agreement.

“Subcontract” shall mean any contract, subcontract, purchase order, or other agreement whereby a Subcontractor undertakes (a) to perform or provide any portion of the Work or (b) to provide all or a portion of the Equipment required by any Person performing or providing any portion of the Work.

“Subcontractor” shall mean (a) any Person, other than Contractor, performing or providing any portion of the Work, whether retained by Contractor, any Affiliate of Contractor or any Person hired by Contractor or any of its Affiliates and including every tier of subcontractors, sub-subcontractors and so forth, and (b) any Supplier.

“Substantial Completion” shall mean satisfaction or waiver of all of the conditions set forth in Section 4.46(qqq)(xxxiii).

“Superintendent” shall have the meaning set forth in Section 2.6(g).

“Supplemental Instruction” or “SI” A Supplemental Instruction is a written instrument prepared by the Owner and submitted to the Contractor requesting a minor change to the Work that does not impact the Contract Price or Project Schedule.

“Suppliers” shall mean any Person providing or supplying all or a portion of the Equipment required by any Person performing or providing any portion of the Work to perform or provide the Work, whether or not incorporated into the System, including any materialman, vendor or supplier.

“System” shall mean the comprehensive energy management system, including all energy efficiency and renewable energy generation components of the ECMs, to be installed by Contractor in order to provide a fully integrated and operational Project, at each Site as applicable, in accordance with the Contract Documents and as more specifically described in the Scope of Work.

“Target Annual Energy Production” shall mean the target number of kWh that the renewable energy generation system installed as part of the System shall produce in the first year following the Final Completion Date. The Target Annual Energy Production shall not be determined until satisfactory completion of Phase 1 of the Project and shall thereafter be added by written amendment to this Agreement.

“Testing and Commissioning Plan” shall mean a plan prepared by Contractor that includes the elements required to implement the Start Up and Operational Tests and otherwise includes all matters relating to testing and commissioning as required by the Contract Documents.

“Utility” shall mean the utility providing electrical services to the Site(s) as set forth in the Cover Page.

“Warranties” shall mean, collectively, the warranties provided by Contractor to the Owner hereunder, as described in Section 2.22.

“Warranty Period” shall have the meaning set forth in Section 2.22(zzz).

“Work” shall mean (a) complete engineering and design of the System including As-Built Drawings (b) the procurement, installation, construction and erection, commissioning, start-up and testing, and all other services, including all labor, materials’ storage, services, demolition, Site preparation, equipping, verification, training, manuals and other things and actions in connection therewith, as necessary for the Contractor to fulfill all of its obligations pursuant to this Agreement, the Contract Documents, any Change Orders; and the requirements of the Utility and the Interconnection Agreement, the Governmental Approvals, and any other Legal Requirement, (c) the provision of Equipment (d) transportation and storage of the Equipment; and (e) all of the foregoing that Contractor performs through any Subcontractor or Consultant.

ARTICLE TWO

2. CONTRACTOR’S AND OWNER’S OBLIGATIONS

2.3 Scope of Work

2.3.1 Contractor agrees to (1) furnish all engineering, system designs, supervision, labor, equipment and materials, tools, utilities, communications, implements, appliances and transportation, to procure all Governmental Approvals, (2) assist Owner in Owner’s completion and execution of (i) Incentive related documents pursuant to Section 2.10 and (ii) the Interconnection Agreement and all related applications, (3) coordinate with Utility for any and all requirements

to allow the Project to be placed in operation, (4) erect, install, start-up, test and commission the Project, (5) perform all obligations set forth in the Contract Documents, (6) perform related activities for the successful completion of the Work and the delivery of the Project in compliance with the Contract Documents and (7) perform all the Work in a good and workmanlike manner, free from any and all liens and claims (other than liens and claims created by the non-payment by Owner of an invoice amount hereunder which is not the subject of a good faith dispute or any liens imposed by or through acts or omissions of Owner) from mechanics, material suppliers, Subcontractors, artisans, machinists, teamsters, freight carriers, and laborers required for the Project as defined by the Contract Documents, all in strict compliance with the Contract Documents, Industry Standards, Legal Requirements and quality control and inspections relating thereto and so that the Project (i) meets or exceeds all requirements of Legal Requirements and the Project is installed in accordance with manufacturer's specifications or by methods otherwise approved by the manufacturer; (ii) complies with all requirements of the Utility and the Interconnection Agreement; (iii) meets or exceeds the warranties and guarantees set forth in the Contract Documents; (iv) is safe and adequate for the purpose and conditions specified in the Scope Of Work; (v) is free from defects in materials and workmanship; and (vi) is comprised of equipment which is new (unless otherwise mutually agreed) and of the agreed quality when installed, designed and manufactured and of a grade in accordance with generally accepted national standards for the design, manufacture and quality of such equipment. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, procedures, and coordinating all portions of the Work under the Agreement, unless Contract Documents give other specific instructions concerning these matters. Notwithstanding anything herein to the contrary, the Scope of Work may not exceed that set forth in the Contract Documents, except pursuant to a Change Order.

2.3.2 The Scope of Work is more fully and specifically defined in Exhibit A-2 hereto. The Phase 1 portion of the Project shall be fully set forth in Exhibit A-1. The Phase 2 portion of the Scope of Work shall not be determined until satisfactory completion of Phase 1 of the Project and shall thereafter be added to Exhibit 2 by written amendment to this Agreement.

2.4 Performance of the Work Contractor shall perform the Work in accordance with requirements of the Contract Documents, the Scope of Work and the Specifications, the Project Owner Requirements, the Utility, Industry Standards, Legal Requirements and the Safety Plan. To the extent that any portion of the Work is provided with the Contractor's own forces, any reference to Subcontractors or Consultants shall be equally applicable to the Contractor. If any of the Work is performed by contractors retained directly by the Owner, Contractor shall be responsible for the coordination and sequencing of the Work of those other contractors so as to avoid any impact on the Project Schedule.

2.5 Construction of Agreement It is understood and agreed by Owner and Contractor that the terms of this Agreement, including all Exhibits, may be subject to amendment, replacement or deletion in their entirety based upon the Phase 2 portion of the Scope of Work approved by Owner.

Owner and Contractor agree to negotiate and amend this Agreement in good faith to amend, replace or delete the terms herein as necessary to accommodate the Phase 2 portion of the Scope of Work approved by Owner. Owner and Contractor agree that the terms of this Agreement exclusively applicable to Phase 2 shall not be operative until Owner and Contractor execute a written amendment to this Agreement following satisfactory completion of Phase 1 of the Project, as determined by the Owner in good faith. It is further understood and agreed by Owner and Contractor that this Agreement may be amended to incorporate and comply with any applicable funding requirements that may become known to the Parties following completion of Phase 1 of the Project. Nothing herein shall be interpreted to create any obligation for Owner to proceed with Phase 2 of the Project.

2.6 Contractor Personnel

(f) Competency Contractor agrees to use, and agrees that it shall require each Subcontractor to use, only personnel who are qualified and properly trained and who possess every license, permit, registration, certificate or other approval required by Applicable Law or any Governmental Authority to perform the Work. The Contractor and each Subcontractor shall: furnish a competent and adequate staff as necessary for the proper administration, coordination, supervision, and superintendence of its portion of the Work; organize the procurement of all materials and equipment so that the materials and equipment will be available at the time they are needed for the Work; and keep an adequate force of skilled workers on the job to complete the Work in accordance with all requirements of the Contract Documents. Owner shall have the right, but not the obligation, to require the removal from the Project of any Superintendent, staff member, agent, or employee of any Contractor, Subcontractor, material or equipment supplier, etc., for cause.

(g) Superintendent Contractor shall provide a competent superintendent and assistants as necessary based on final Scope of Work, all of whom shall be reasonably proficient in speaking, reading and writing English, and, who shall be in attendance at the Project Site(s) during performance of the Work (the "Superintendent"). The Superintendent shall represent the Contractor, and communications given to the Superintendent shall be as binding as if given to the Contractor.

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

(i) Penalties The Contractor and any Subcontractor under the Contractor as a penalty to the Owner shall forfeit not more than Two Hundred Dollars (\$200.00) for each Day or portion thereof for each worker paid less than the stipulated prevailing rates for such work or craft in which such worker is employed. The difference between such stipulated prevailing wage rates and the

amount paid to each worker for each Day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by the Contractor.

(j) Debarment A contractor or subcontractor shall not be qualified to enter into, or engage in the performance of, any contract of public work (as defined by Division 2, Part 7, Chapter 1 (§§1720 et seq.) of the Labor Code) unless currently registered and qualified under Labor Code section 1725.5 to perform public work. Contractor shall post all required job site notices pursuant to the Labor Code and related regulations.

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

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

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

(n) Payroll Records Pursuant to Labor Code section 1776, Contractor and all subcontractors shall maintain weekly certified payroll records, showing the names, addresses, Social Security numbers, work classifications, straight time and overtime hours worked each day and week,

and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by them in connection with the Work under this Agreement. Contractor shall certify under penalty of perjury that records maintained and submitted by Contractor are true and accurate. Contractor shall also require subcontractor(s) to certify weekly payroll records under penalty of perjury. In accordance with Labor Code section 1771.4, the Contractor and each subcontractor shall furnish the certified payroll records directly to the Department of Industrial Relations (“DIR”) on the specified interval and format prescribed by the DIR, which may include electronic submission. Contractor shall comply with all requirements and regulations from the DIR relating to labor compliance monitoring and enforcement. The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4. In the event of noncompliance with the requirements of this Section, the Contractor shall have ten (10) calendar days in which to comply subsequent to receipt of written notice specifying in what respects the Contractor must comply with this Section. Should noncompliance still be evident after such 10-day period, the Contractor shall pay a penalty of one hundred dollars (\$100.00) to the City for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payment then due.

(o) Compliance Monitoring; Stop Orders This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be the Contractor’s sole responsibility to evaluate and pay the cost of complying with all labor compliance requirements under the Contract Documents and applicable law. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor’s performance of Work, including any delay, shall be Contractor’s sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay subject to any applicable liquidated damages and shall not be compensable by the City. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor.

(p) Contractor and Subcontractor Registration Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. No bid will be accepted nor any contract entered into without proof of the contractor’s and subcontractors’ current registration with the Department of Industrial Relations to perform public work. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

2.7 Contractor Responsibility The Contractor shall be responsible to the Owner for acts and omissions of the Contractor’s employees, Subcontractors, material and Equipment suppliers, and their agents, employees, invitees, and other persons performing portions of the Work under contract with the Contractor or any of its Subcontractors. The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents by tests, inspections, or approvals required or performed by persons other than the Contractor. Contractor shall be responsible for inspection of Work already performed under the Contract Documents to determine that such portions are in proper condition to receive subsequent work.

2.8 Subcontractors and Other Contracts for Portions of the Work

(q) Subcontractors shall be selected by Contractor and presented to Owner pursuant to the Agreement. Subcontractor substitution shall be subject to mutual agreement. Any substitutions of Subcontractors required by Owner may result in an increase in the Contract Price (except to the extent Owner requires a substitution for reasonable safety or performance concerns) or the granting of an extension of time for the Project Schedule. Substitutions of Subcontractors made at the election of Contractor shall not result in any increase in the Contract Price. Contractor shall enter into written agreement with each Subcontractor performing any portion of the Work and shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to abide by the terms of the Contract Documents, and to assume toward the Contractor all obligations and responsibilities, which the Contractor, by the Contract Documents, assumes toward the Owner. Contractors or subcontractors may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Labor Code section 1777.1 or 1777.7. Any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid, or may have been paid to a debarred subcontractor by a contractor on the project shall be returned to the City. The Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to perform Work.

(r) Each Subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

- (i) Assignment is effective only after termination of the Agreement with the Contractor by the Owner for cause pursuant to Section 6.56 and only for those Subcontract agreements which the Owner accepts by notifying the Subcontractor in writing; and
- (ii) Assignment is subject to the prior rights of the surety, if any, obligated under any bond relating to the Agreement.

2.9 Supply and Procurement of Equipment

(s) Except as expressly provided to the contrary in the Scope of Work, Contractor, at its expense, shall purchase, transport and deliver all Equipment and shall inspect, unload, store, construct and install all Equipment required to complete the System. Contractor shall maintain all Equipment Warranties, obtain required extended warranties when available, and, upon the expiration of the Warranty Period, cause any such remaining Equipment Warranties to be assigned and passed-through to Owner (subject to Section 2.20). Contractor shall at all times perform the Work in a manner consistent with all such Equipment Warranties and will not perform any actions that may violate such warranties.

(t) Contractor agrees that all materials and Equipment to be supplied or used by Contractor or any Subcontractor in the performance of its obligations under this Agreement shall be new, unless otherwise specified or mutually agreed (if being incorporated into the System) or in good operating condition (if not being incorporated into the System). Such materials and Equipment shall at all times be maintained, inspected and operated by Contractor pursuant to Industry Standards and as required by Applicable Law until Final Completion. Contractor further agrees that all licenses,

permits, registrations and certificates or other approvals required by Applicable Law or any Governmental Authority will be procured and maintained for such materials and Equipment at all times during the use of the same by Contractor or any Subcontractor in the performance of any of Contractor's or such Subcontractor's obligations under this Agreement.

(u) Contractor shall maintain an active inventory list in respect of the System and, upon completion of any Work with respect to the Equipment (including in respect of any claim under the Warranties), Contractor shall update the active inventory list to reflect the serial numbers and all other information reasonably required by Owner with respect to any new Equipment installed as part of such Work.

2.10 Utilities Contractor shall supply temporary power (this shall not apply to any power required by Owner as a result of any temporary shutdown by Contractor required in connection with the performance of the Work), telecommunications, water, waste disposal, and other utilities and services required for performance of the Work. Contractor shall also be responsible for providing Equipment and facilities to enable Owner to interconnect with local telecommunications utilities and obtain permanent telecommunications services such as telephone, television cable and other communications utilities as required for the Project.

2.11 Utility Rate Changes If applicable, and subject to Owner's prior authorization, if required, Contractor shall be responsible for coordinating the desired rate schedule changes with the Utility for the Project. Desired rate schedules for each Project Utility meter are defined in the Site Assessment Table. Contractor will be responsible for ensuring that the System meets the requirements for inclusion in the desired rate schedules and will promptly inform Owner if there is any discrepancy between such requirements and the specifications for the System set forth in the Scope of Work. It is preferred that the switching to these rate schedules happen after the Project has been operational continuously for a thirty (30) day period as required for Final Completion. If the Utility only allows the rate schedule to be changed at the time of interconnection, then the rate schedule change should occur at the time of interconnection.

2.12 Incentives Contractor shall provide such assistance to the Owner as may be reasonably requested to secure any subsidies, rebates or other incentives that may be available to Owner from any Governmental Authority or the Utility in connection with or relating to the installation and operation of the Project or otherwise. Contractor acknowledges that it shall have no right or interest in any such subsidies, rebates or other incentives. Owner acknowledges that the Contractor has no control over final payment or availability of such incentives. Contractor makes no guarantee that Owner will receive funding from any energy efficiency rebate, incentive, and/or loan program(s), including those listed above (collectively, "Incentive Funds"), or any portion thereof; Contractor expressly disclaims any liability for Owner's failure to receive any portion of the Incentive Funds, and Owner acknowledges and agrees that Contractor will have no liability for any failure to receive all or any portion of the Incentive Funds. Procurement, or lack thereof, of the Incentive Funds will not alter the Contract Price or the payment timeline associated with payment of the Contract Price.

2.13 Permits and Approvals

(v) Contractor shall obtain, maintain and pay for all Governmental Approvals and licenses and utility interconnection application fees necessary for performance of the Work which are legally required by any Governmental Authority for the Project. In order to assist Contractor to obtain all required Governmental Approvals, Owner shall provide Contractor with such reasonable

assistance as Contractor may request and shall waive all fees for any permits issued by the City of Milpitas. Copies of all Governmental Approvals shall be provided to Owner within five (5) Business Days or less after they are obtained or completed. Owner will review and approve the documents prior to commencement of construction.

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

(x) Contractor is required to obtain all approvals from any Governmental Authority, including, but not limited to: Incentive program guidelines, fire safety, California Occupational Safety and Health Administration (“OSHA”), Utility interconnection, right-of-way permits, easement agreements and other codes and best practices.

2.14 Testing and Inspection The Contractor shall at its own expense conduct the Start Up and Operational Tests and such other tests described in the Scope of Work and shall be responsible for all testing and inspection fees for and coordination with any Governmental Authority for the approval of the Project. Contractor will notify Owner no less than five (5) days prior to the commencement of testing and Owner or its representative will have the right to observe all such tests. Tests, inspections, and approvals of portions of the Work required by the Contract Documents will comply with Title 24, and with all other Legal Requirements. The following shall apply to the testing and inspection of the Project:

(y) Rejection of Work The Owner’s selected representative may, acting reasonably, recommend to the Owner that the Owner reject Work which does not conform to the Contract Documents.

(z) Testing Off-Site If applicable, any material shipped by Contractor from the source of supply, prior to having satisfactorily passed testing and inspection requirements per Exhibit A, Applicable Law or the requirements of any Governmental Authority shall not be incorporated in the Project.

(aa) Responsibility for Errors and Omissions If at any time prior to the completion of the requirements under the Contract Documents, through no fault of its own, the Owner is required to provide or secure additional professional services (other than those professional services already within Owner’s scope) for any reason by any act or omission of the Contractor, the Contractor shall be invoiced by the Owner for any actual costs incurred for any such additional services, which costs may, among other remedies, be withheld from the progress payments and/or retention. If it is determined that there was no error or omission on the part of Contractor, Contractor shall not be liable for the cost of the additional professional services.

(bb) Additional Testing or Inspection, and Costs Related Thereto

(i) If the Owner or Governmental Authority determines that any portion of the Work on the Project require additional testing, inspection, or approval, the Contractor will, upon Owner’s written authorization, arrange for such additional testing, inspection, or approval. Owner shall bear such costs except in paragraph (ii), below.

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

(iii) Where Contractor installs renewable energy generation systems as part of the System under Phase 2, Contractor will provide flash test data for all renewable energy generation systems installed as part of the System to Owner in MS Excel format upon procurement of the renewable energy generation systems. Upon providing Contractor at least thirty (30) days prior notice (to allow for coordination and mitigation of schedule and cost impact), Owner, at its sole discretion, may randomly select up to twenty (20) percent of the renewable energy generation systems used in the Project for delivery to a third party for quality verification testing, which may only be requested by Owner prior to on-site installation. The costs of such verification testing and any associated shipping/delivery costs, as well as any additional costs in performing the Work resulting from delays due to Owner's failure to provide at least thirty (30) days' prior notice, shall be the responsibility of Owner. Contractor shall also be entitled to an adjustment of the schedule resulting from any such delays.

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

(dd) Covered Work If a portion of the Work is covered contrary to the request of any Governmental Authority, the Owner's request, or to requirements specifically expressed in the Contract Documents, it must, if required by the Governmental Authority or the Owner, be uncovered for the Governmental Authority, or the Owner's observation and be replaced at the Contractor's expense without change in the Contract Price or Project Schedule.

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

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

2.15 Local and General Conditions

(gg) Contractor has conducted a visual examination of the Site, and acknowledges and agrees that it has satisfied itself as to the general and local conditions and circumstances affecting the Work that could be reasonably ascertained from a visual inspection to ensure that the Project can be built according to all Applicable Laws and Industry Standards, is expected to achieve the Design Life target (provided that failure to achieve the Design Life target will not extend the Warranty Period or increase Contractor's liability in any respect), and, where renewable energy generation systems are installed as part of the System, will meet or exceed the Target Annual Energy Production. Provided that Contractor's (1) visual inspection and (2) interpretation of the following information disclosed by Owner: construction and record drawings, facilities maps, inventory of existing equipment, utility data, City reports and SCADA documents, in each instance met the "reasonably prudent contractor" standard, Contractor may rely on such Owner disclosed information and will be entitled to an equitable extension of time and/or an equitable adjustment in the Contract Price as a result of the discovery of subsurface or other site conditions that were not reasonably ascertainable from a visual inspection or interpretation of information disclosed by Owner, anticipated or disclosed to Contractor as of the Effective Date.

(hh) Contractor acknowledges and agrees that where Assessments were conducted, the results have been provided to the Owner within five (5) Business Days of having been received by the Contractor if requested and all costs associated with the results have been accounted for in the Contract Price.

(ii) Contractor acknowledges and agrees that it has taken into account all Assessments in any preliminary Engineering Documents that it has provided for use by the Parties in Project modeling and the development of the Agreement. All preliminary engineering and installation Drawings were completed to be consistent with Applicable Law, all prevailing construction standards and codes, and the ECMs that Contractor and Owner have agreed to be incorporated into the Project.

(jj) Reserved.

(kk) When required by the Scope of Work or otherwise required to satisfy Section (gg)2.15(gg), Contractor will furnish, at its expense, the services of geotechnical engineers or Consultants when reasonably required or as required by local or State codes. Such services with reports and appropriate professional recommendations shall include, if applicable, test boring, test pits, soil bearing values, percolation tests, air and water pollution tests, and ground corrosion and resistivity tests, including necessary operations for determining subsoil, air, and water conditions.

At the Owner's request, the Contractor shall make available to the Owner the results of any Site investigation, test borings, analyses, studies or other tests conducted by or in the possession of the Contractor or any of its agents. Nothing herein contained shall be deemed a waiver by the Contractor to pursue any available legal right or remedy it may have at any time against any third party who may have prepared any report and/or test relied upon by the Contractor.

(ll) Unless specifically stated in writing by Owners, the Contractor may not rely upon the accuracy of any utility services or site survey information that the Owner may provide.

(mm) Certain pre-existing conditions may be present within the Sites that (i) are non-compliant with applicable codes, (ii) may become non-compliant with applicable codes upon

completion of Contractor's Work, (iii) may cause Contractor's completed Work to be non-compliant with applicable codes, (iv) may prevent Owner from realizing the full benefits of Contractor's Work, (v) may present a safety or equipment hazard, or (vi) are otherwise outside the scope of Contractor's Work. Regardless of whether or not such conditions may have been readily identifiable prior to the commencement of Work, Contractor will not be responsible for repairing such pre-existing conditions unless such responsibility is expressly provided for in the Scope of Work or an approved Change Order. Contractor, in its sole discretion, may determine whether it will bring said pre-existing conditions into compliance by agreeing to execute a Change Order with Owner for additional compensation and, if appropriate, an extension of time.

2.16 Safety Precautions and Programs

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

(oo) Prior to beginning construction, Contractor shall provide Owner with a copy of Contractor's Safety Plan, as well as, if requested, an evaluation and appropriate documentation of the safety record of any licensed first-tier Subcontractor that will be performing Work on the Project. The Safety Plan shall include the location of emergency utility shutoffs (both manual and electronic shutoffs, if applicable). Contractor shall review the emergency shut off and evacuation plan with Owner prior to start of construction.

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

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

(rr) Contractor shall have mandatory pre-job safety briefing for all employees and Subcontractor employees on their first day of on site construction for their company. Hard hat stickers shall be issued as a proof of briefing attendance.

(ss) Safety meetings will be held once a week during construction with all Contractor employees and Subcontractors employees attending. Printed names will be taken of those attending the meeting. No individual will start work on the Site without having attended a safety briefing on the dangers and protocols of the Site. Records of this training will be kept and provided to Owner upon request. No individual will operate a piece of equipment on which they have not had certification training. Certification shall be carried on the operator at all times.

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

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

2.17 Protection of Work and Property During such times as Contractor or Subcontractors are performing any portion of the Work, they shall protect and secure such Work, materials and Equipment, the Owner's property, and the property of others located where the Work is being performed from damage or loss arising in connection with operations under the Contract Documents. The Contractor and Subcontractors shall repair damage or loss to Owner's property caused by them. Contractor will provide reasonable protection to prevent damage, injury, or loss to employees of Contractor and Subcontractors performing Work under this Agreement. Contractor will not be responsible for Owner's employees' safety unless Contractor's negligence in the performance of its Work is the proximate cause of the employee's injury. The following shall apply to the protection of Work and property:

(vv) Contractor shall at all times comply with the requirements of the Project Owner Requirements, Legal Requirements and the Safety Plan with respect to the use, occupancy and condition of the Site, including the location and maintenance of storage and laydown areas used by Contractor.

(ww) Contractor will be responsible for all storage and receiving of all freight at the Project Site(s) in a secure manner to be approved by Owner, such approval not to be unreasonably withheld or delayed.

(xx) If materials shall be stored on-site during construction, prior to the arrival of equipment and materials at the Project Site(s), Contractor shall, as needed, install a fenced secured area or provide locked storage containers to be approved by Owner, such approval not to be unreasonably withheld or delayed.

(yy) Contractor shall be solely responsible to timely notify all public and private utilities serving the affected Project Site before commencing work on the Project Site. Contractor shall notify and receive clearance from any cooperative agency, such as Underground Service Alert, in accordance with Government Code section 4216, et seq. Contractor shall promptly provide a copy of all such notifications to Owner or its designated representative, upon request.

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

(aaa) The Contractor shall keep the Site and surrounding area free from accumulation of waste material or rubbish caused by operations under the Agreement. The Site shall be maintained in a safe, reasonably neat (as may be expected during active construction or work), and orderly condition. If the Contractor fails to reasonably clean up as provided in the Contract Documents, upon providing prior written notice to Contractor and if Contractor fails to respond within five (5) Business Days, Owner may do so and the actual, direct and reasonable cost thereof shall be invoiced to the Contractor and withheld from Progress Payments and/or retention. Upon completion of the Project, Contractor and Subcontractor shall dismantle temporary structures, if any, and remove from the Site all construction and installation equipment, fences, scaffolding, surplus materials, rubbish, and supplies belonging to Contractor or Subcontractor.

2.18 Emergencies In an emergency affecting the safety of persons or property, the Contractor shall take any action necessary, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Section 4.52 and requested in accordance with Section 2.20. The Contractor shall promptly report in writing to the Owner all accidents arising out of or in connection with the Work, which caused death, personal injury, or property damage, giving full details, and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner.

2.19 Hazardous Materials In the event the Contractor encounters or suspects the presence on the Site of Hazardous Materials, which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner in writing, whether or not such material was generated by the Contractor or the Owner. Contractor will have no obligation to investigate the Sites for the presence of Hazardous Materials prior to commencement of the Work unless otherwise specified in the Scope of Work. Owner will be solely responsible for investigating Hazardous Materials and determining the appropriate removal and remediation measures with respect to the Hazardous Materials preexisting or discovered at the Sites. Owner will comply with all Applicable Laws with respect to the identification, removal and proper disposal of any Hazardous Materials known or discovered at or around the Sites, and in connection therewith will execute all generator manifests with respect thereto. Contractor will comply with all Applicable Laws in connection with the use, handling, and disposal of any Hazardous Substances in the performance of its Work. Contractor will be accountable for delays, costs or penalties associated with the presence of Hazardous Materials where the presence of such Hazardous Materials is attributable to Contractor's negligent acts or omissions. To the extent Owner is aware of the presence of any hazardous waste at any Site, Owner shall be responsible for informing Contractor in writing of the location of such

hazardous waste and shall bear responsibility for reasonable damages for personal injury or property damage caused by its failure to disclose the presence of such hazardous waste to Contractor. In connection with the foregoing, Owner represents and warrants, to its knowledge, that it is not aware of any (i) Hazardous Materials either on or within the walls, ceiling or other structural components, or otherwise located in or on the Sites, including, but not limited to, asbestos-containing materials; and (ii) unsafe working conditions at the Sites. Owner will indemnify, defend, and hold Contractor harmless from and against any and all actions, claims, demands, damages, disabilities, fines, penalties, losses, costs, expenses (including consultants' and attorneys' fees and other defense expenses) and liabilities of any nature that in any way result from, or arise under, such Owner owned or generated Hazardous Materials, except for liabilities to the extent arising from (1) the negligence or willful misconduct of Contractor, or its Subcontractors, agents or representatives, in the handling, disturbance or release of preexisting Hazardous Materials or (2) Hazardous Materials transported onto the Sites by Contractor, or its Subcontractors, agents or representatives. This indemnification will survive any termination of this Agreement.

2.20 Changes and Extra Work

(bbb) Based upon the services Contractor will have provided in preparing its response to Owner's request for proposals for the Work, and Contractor's duties and responsibilities regarding the engineering and design of the Project, Contractor and Owner intend and expect that Contractor will not submit any Change Order requests during the construction of the Project based upon alleged errors or omissions in the Engineering Documents for the Project – including those prepared and provided by Owner and/or Owner's Consultants. Rather, the parties intend and expect that Change Order requests will only be submitted for Owner-requested changes in the Scope of Work of the Project, errors and omissions in any Owner provided plans and specifications, or for changes in the work of the Project due to Excusable Events, all in accordance with this Agreement and the Contract Documents of the Project. When possible under the circumstances, Contractor will make reasonable efforts to mitigate any schedule or cost impact arising from an Excusable Event.

(ccc) Notwithstanding any other provision of this Agreement or the Contract Documents, in the event a Change Order is caused by, or necessitated as a result of wrongful acts or omissions on the part Contractor, or as a result of any errors or omissions in the Engineering Documents for the Project – excluding those prepared and provided by Owner and/or Owner's Consultants, or the Owner otherwise incurs costs or damages as a result of wrongful acts or omissions on the part Contractor, or as a result of any Contractor errors or omissions in the plans, specifications, Drawings, or designs for the Project, the Contractor shall be responsible for the cost of the following:

(iv) The direct costs of all engineering, design, labor, and materials necessary to fully correct the wrongful acts or omissions on the part of Contractor, or the error or omission in the Engineering Documents for the Project;

(v) Any other direct costs or damages which the Owner incurs as a result of wrongful acts or omissions on the part Contractor, or of errors or omissions in the Engineering Documents for the Project; and

(vi) The reasonable costs of any third-party engineer, contractor or consultant that the Owner, in the Owner's sole reasonable discretion, must retain or consult with to ensure the proper rectification of wrongful acts or omissions on the part of Contractor, or of errors or omissions in the Engineering Documents for the Project.

The Owner may backcharge, and withhold payment from, the Contractor for these costs and damages, and may seek reimbursement for any amount which exceeds any retention of the Agreement amount at the time of collection. When Owner so backcharges and withholds, upon Contractor's request Owner's and Contractor's senior project representatives shall meet and confer in good faith in an effort to reach agreement on (a) whether a wrongful act or omission occurred or whether there was an error or omission in the Engineering Documents for the Project, (b) whether it caused the Change Order expense, (c) what damages have been incurred by Owner, and (d) what portion of the damages are attributable to Contractor as described above. If Contractor's and Owner's project representatives fail to meet, or if they are unable to resolve the dispute, senior executives for Contractor and for Owner, neither of whom have had day-to-day management responsibilities for the Project, will meet, within thirty (30) calendar days after notice of the dispute, in an attempt to resolve the dispute and any other identified disputes or any unresolved issues. If Owner and Contractor do not reach agreement on all four of these items when meeting and conferring, then either Owner or Contractor can initiate a court action to resolve the dispute.

(ddd) Owner reserves the right to make such alterations, deviations, additions to, or deletions from the Engineering Documents, as may be deemed by the Owner to be necessary or advisable for the proper completion or construction of the Work contemplated, and the right to require Contractor to perform such work. There shall be no change whatsoever in the Engineering Documents, or in the Work without an executed Change Order or Supplemental Instruction by the Owner for a minor change in the Work as herein provided. Owner shall not be liable for the cost of any extra work or any substitutions, changes, additions, omissions, or deviations from the Engineering Documents, and Contractor shall not be required to perform such work, unless the same shall have been authorized by and the cost thereof approved in writing by Change Order. No extension of time for performance of the Work shall be allowed hereunder unless adjusted in writing in the Change Order.

(eee) Reserved.

(fff) All Requests for Information should be substantially in the form of Exhibit D and shall, to the extent reasonably necessary, reference all the applicable Contract Documents including specification section, detail, page numbers, drawing numbers, and sheet numbers, etc. The Contractor shall make suggestions and/or interpretations of the issue raised by the RFI. An RFI cannot modify the Contract Price, Project Schedule, or the Contract Documents. Prior to issuing an RFI the Contractor, Subcontractor, material suppliers and the like shall thoroughly review the Contract Documents and refer to all reference standards for the information sought. The Owner and Contractor agree that an adequate time period for the Owner to respond to an RFI is generally fourteen (14) Days after the Owner's receipt of a non-priority RFI, or seven (7) Days after Owner's receipt of a priority RFI, unless the Owner and Contractor agree otherwise in writing. However, in all cases, the Owner shall take such time, whether more or less than fourteen (14) or seven (7) Days, as applicable, as is necessary in the professional judgment of Owner and the Owner's representatives to permit adequate review and evaluation of the RFI. The Contractor shall make efforts to coordinate the work in a timely fashion, so as to alleviate priority RFI's. If the RFI is considered a priority, the Contractor shall state the word "Priority" on the document, and the Contractor shall provide weekly RFI Priority Schedules.

(ggg) The RFI Priority Schedule shall include a listing of pending requests, including the most current request, and rank the RFI's in order of priority. The Owner shall endeavor to respect the Contractor's requested order of priorities and requested response dates. If the RFI response alters

the Contract Price and/or Project Schedule, a Change Order may be issued for the changed condition(s).

(hhh) The Owner will have authority to order minor changes in the Work provided that there is: (i) no adjustment in the Contract Price, (ii) no extension of the Project Schedule, or (iii) any other change which is inconsistent with the intent of the Contract Documents. Such changes shall be effected by written Change Order and shall be binding on the Owner and the Contractor. The Contractor shall carry out such written orders promptly.

(iii) To request a Change Order, Owner or Contractor shall prepare and submit a draft Change Order in the form of Exhibit E for review by the other Party.

(jjj) Each Change Order request, whether proposed by Contractor or Owner, shall include: (i) a detailed statement of the reason for and a description of the change; (ii) the estimated price of the proposed change, including the proposed change in the Contract Price and any costs or savings for carrying out the change including a complete itemized cost breakdown of all labor and material showing actual quantities, hours, unit prices, wage rates, required for the change; (ii) the projected effect of such proposed change on the Project Schedule including the relevant scheduled completion dates and deadlines; (iii) the projected effect of such proposed change on Contractor's ability to comply with any of its obligations hereunder, including the Warranties, Target Annual Energy Production (iv) and shall be accompanied by supporting documentation necessary to evidence the costs or savings and schedule adjustments requested therein.

(kkk) When the Contractor is requesting a Change Order, notice thereof must be provided to the Owner within fourteen (14) Days after Contractor's knowledge of the occurrence of the event giving rise to the claim. This notice shall be given by the Contractor before proceeding to execute the Work, except in an emergency endangering life or property, in which case the Contractor shall proceed in accordance with Section 2.18 hereof. No notice shall be considered unless made in accordance with this Section; however, the mere presentation of such claim shall not establish the validity of the cause giving rise to such claim, or of the extension of the Project Schedule, and/or the increase in the Contract Price. Any change in the Contract Price or extension of the Project Schedule resulting from such claim shall be authorized by a Change Order.

(III) Within twenty-one (21) Days after receipt of a Change Order request from Contractor or Owner, the receiving Party shall either (i) accept such Change Order request by execution thereof and deliver an executed copy to the initiating Party or (ii) reject such Change Order request and provide appropriate written explanation of the reasons therefor (which may include a request for additional information, documentation or cost detail).

(mmm) The amount of the increase or decrease in the Contract Price resulting from a Change Order, if any, shall be determined in one or more of the following ways as applicable to a specific situation: (A) Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation; (B) unit prices stated in the Contractor's original bid, the Contract Documents, or subsequently agreed upon between the Owner and the Contractor; (C) cost to be determined in a manner agreed upon by the Parties and a mutually acceptable fixed or percentage fee; or (D) by Contractor's and its Subcontractor's actual cost of material and labor and markup, which markup shall not exceed the markup limit established below. Contractor may mark up the work by fourteen percent (14%) for aggregate overhead, bond and insurance premiums, and profit. It is expressly understood that the value of such extra work or changes, as determined by any of the

aforementioned methods, expressly includes any and all of Contractor's costs and expenses, both direct and indirect, resulting from additional time required on the Project or resulting from delay to the Project. Any costs or expenses not included are deemed waived. For purposes of determining the cost, if any, of any change, addition, or omission to the Project, all trade discounts, rebates, refunds, and all returns from the sale of surplus materials and equipment shall accrue and be credited to Contractor, and Contractor shall make provisions so that such discounts, rebates, refunds, and returns may be secured, and the amount thereof shall be allowed as a reduction of Contractor's cost in determining the actual cost of construction for purposes of any change, addition, or omissions in the Project as provided herein.

(nnn) The Owner may by means of a Construction Change Directive (CCD), without invalidating the Agreement, order changes in the Work within the general scope of the Agreement consisting of additions, deletions, or other revisions, with the Contract Price (including fourteen percent (14%) for Contractor's aggregate overhead and profit) and Project Schedule being adjusted accordingly. A CCD shall be used in the absence of agreement on the terms of a Change Order.

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

(ppp) A Request for Proposal issued by the Owner shall contain adequate information, including any necessary Drawings and specifications, to enable Contractor to provide the cost breakdowns required by Section 2.20(mmm). The Contractor shall not be required to provide a response to a Request for Proposal nor shall Contractor be entitled to any additional compensation for preparing a response to a Request for Proposal, whether ultimately accepted or not.

2.21 System Manuals and Drawings

(qqq) Submittal Contractor shall obtain and shall submit to Owner all required Engineering Documents and Samples in accordance with the Project Schedule and as required in the Contract Documents with such promptness as to cause no delay in the Work. Owner shall have the right, but not the obligation, to review all Engineering Documents and may direct Contractor to make such changes to the design and engineering of the Project as Owner reasonably believes are necessary and as are requested within a reasonable time after the Engineering Documents are submitted, so long as any such changes are within the Scope of Work (or, if not, a Change Order has been executed with respect to such changes), provided however, that no such review or requested changed shall impose any liability on Owner (other than to make payment in accordance with any applicable Change Order) or relieve Contractor of any of its responsibility for the design, engineering and performance of the Project as provided in this Agreement. Any submission, which in Owner's opinion is incomplete, contains numerous errors, or has been checked only superficially by Contractor, will be returned unviewed by the Owner for resubmission by the Contractor. Contractor shall not commence any portion of the Work requiring an Engineering Document or Sample submission until the Owner has approved the submission.

(rrr) Samples Where Samples are requested by the Owner, and Work is approved based on the Samples, all Work shall be in accordance with the approved Samples.

(sss) Extent of Review In reviewing Engineering Documents, the Owner will not verify dimensions and field conditions. The Owner will review and approve Engineering Documents, product data, and Samples for aesthetics and for conformance with the design concept of the Work and the information given in the Contract Documents. The Owner's review shall not relieve the Contractor from responsibility for any deviations from the requirements of the Contract Documents unless the Owner has given specific written approval. Contractor and Subcontractors shall be solely responsible for determining any quantities, whether or not shown on the Engineering Documents.

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

(uuu) Project Manual A Project Manual shall be assembled by Contractor and provided to Owner as a requirement for achieving Final Completion.

(vvv) Documents and Samples at the Site The Contractor shall maintain at the Project for the Owner one applicable copy of Titles 19 and 24 and a record copy of the Drawings, specifications, Addenda, Change Orders, and other modifications, in good order and marked currently to record changes and selections made during construction. In addition, the Contractor shall maintain at the Site approved Shop Drawings, Engineering Documents, Samples, and similar required submittals.

2.22 Warranties

(www) Contractor Warranties. Contractor warrants that, throughout and until the end of the Warranty Period:

(vii) The Project will be developed, designed, engineered and constructed to satisfy all applicable Legal Requirements, the requirements of the Utility, the requirements of the Contract Documents, and all descriptions set forth herein, applicable construction codes and standards and all other requirements of this Agreement, and to produce a fully functional Project that is capable of operating free of major defects for a Design Life target of at least 25 years (provided that failure to achieve the Design Life target will not extend the Warranty Period or increase Contractor's liability in any respect), assuming customary operation and maintenance.

(viii) All Equipment installed as part of the agreed upon ECMs shall conform in all respects to the requirements of the Contract Documents, Legal Requirements, the requirements of the Owner, the Utility and all other requirements of this Agreement and shall be new, unused (unless otherwise mutually agreed in writing) and undamaged at the time it is put into service upon, and will be installed in accordance with the Equipment Documentation (including all requirements necessary to preserve and maintain in effect any and all Equipment Warranties) and all Equipment Warranties are in effect.

(ix) The Work, including all workmanship and materials incorporated therein will be free from defects in design, engineering, materials, construction, and workmanship, and shall conform in all respects with all Legal Requirements, the requirements of the Utility, requirements of the Owner, the requirements of the Contract Documents, and

all descriptions set forth herein, applicable construction codes and standards and all other requirements of this Agreement;

(xxx) Subcontractor and Supplier Warranties. Contractor shall, for the protection of Owner, use commercially reasonable efforts to obtain from all Suppliers and Subcontractors from which Contractor procures machinery, equipment or materials or services, warranties and guarantees with respect to such machinery, equipment, materials or services, which shall be made available to Owner to the full extent of the terms thereof. At all times during performance of Work under the Contract Documents Contractor shall perform the Work in a manner consistent with all such warranties and shall not perform any actions that may violate or void such warranties. Contractor shall assign all remaining Equipment Warranties to the Owner upon expiration of the Warranty Period. Contractor shall deliver to Owner promptly following execution or receipt of the applicable agreement copies of all warranties and guarantees received from any Subcontractor or Suppliers, together with copies of such agreements (redacting confidential information as required thereunder).

(yyy) Independent Warranties. Contractor's Warranties under Section 2.22(www) are separate and independent of one another. Contractor's failure to meet any of the foregoing warranties shall be deemed a breach of the Warranties.

(zzz) Warranty Period. Contractor shall remedy any breach of the Warranties set forth in this Section 2.22(a) occurring during the period commencing on the Completion Date and ending on the date that is one (1) year after the Completion Date or Beneficial Use (the "Warranty Period").

(aaaa) Remedies

(x) If any Warranty set forth in Section 2.22(www) is breached or a defect or deficiency is discovered during the Warranty Period, Contractor shall, upon written notice from Owner of a Warranty claim prior to the expiration of the Warranty Period, at Contractor's sole option, re-perform, repair, replace and/or correct the applicable Work and resulting damage to the System caused by such defective Work on a reasonably expedited basis while making reasonable attempts to minimize any impact of the failure on the availability, output and functionality of the System. Contractor shall have reasonable access to the System as necessary to perform its Warranty obligations hereunder. All costs of or incidental to Contractor's performance of its Warranty obligations shall be borne by Contractor, including, where required, revising or re-engineering any deficient systems, the removal, replacement and reinstallation of all equipment necessary to gain access to defective Work, the repair of any and all damage to any part of the System or the Site, and the cost of conducting all tests to confirm that all necessary corrective action has occurred. If the Project Warranties failure has the effect of voiding any Equipment Warranty, then Contractor will at its own expense correct and condition as required in order to ensure that the Equipment Warranty is reinstated by the manufacturer on such item, or that a replacement item with full Equipment Warranty is provided and installed.

(xi) Should Contractor fail to begin to perform such necessary repairs, replacement, or correction within ten (10) Days of notice of a Warranty claim or such shorter period as necessary in the event of an emergency (but not less than twenty-four (24) hours) and thereafter diligently pursue such correction, Owner shall have the right to perform such repair, replacement or correction, and Contractor shall be liable for all reasonable, direct costs,

charges and expenses incurred by Owner in connection with such repair or replacement and shall forthwith pay to Owner an amount equal to such costs, charges and expenses upon receipt of invoices certified by Owner. Owner's action in correcting defects in accordance with this Section shall not void Contractor's Warranty obligations hereunder, except in the case of Owner's or its agent's (other than Contractor or any Subcontractor) negligence or willful misconduct.

(bbbb) Warranty Exclusions. Notwithstanding any provision herein to the contrary, the Warranty obligations of Contractor do not extend to (i) Work that is damaged by the active negligence or willful misconduct of Owner, (ii) the failure of Owner to maintain and operate the Equipment materially in accordance with all manufacturer's recommendations and any instructions, practices and procedures of which Owner has been advised in writing by Contractor (except if such failure is caused by Contractor or any Subcontractor), (iii) normal wear and tear, (iv) Force Majeure Events, (v) any alteration, repair or replacement made by a Person other than Contractor or any Subcontractor without the prior written approval of Contractor (excluding alterations, repairs or replacements made pursuant to Section 2.22(aaaa)), except in the case of Owner's or its agent's (other than Contractor or any Subcontractor) negligence or willful misconduct in the performance thereof or contrary to instructions from Contractor; provided that Contractor's Warranty obligations shall continue for all but the portion of the Work so altered, and (vi) corrosion, erosion, deterioration and abuse.

(cccc) Waivers. EXCEPT FOR THE WARRANTIES PROVIDED IN THIS SECTION 2.20, CONTRACTOR MAKES NO WARRANTIES IN CONNECTION WITH THE WORK PROVIDED UNDER THIS AGREEMENT, WHETHER EXPRESS OR IMPLIED IN LAW, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY IMPLIED WARRANTIES AGAINST INTELLECTUAL PROPERTY INFRINGEMENT. OWNER WILL HAVE NO REMEDIES AGAINST EITHER CONTRACTOR OR ANY CONTRACTOR'S SUBCONTRACTORS OR SUPPLIERS FOR ANY DEFECTIVE MATERIALS OR EQUIPMENT INSTALLED, EXCEPT FOR THE REPAIR OR REPLACEMENT OF SUCH MATERIALS OR EQUIPMENT IN ACCORDANCE WITH THE WARRANTY INDICATED ABOVE. SPECIFICALLY, NEITHER CONTRACTOR, NOR CONTRACTOR'S SUBCONTRACTORS OR SUPPLIERS, WILL BE LIABLE TO OWNER FOR LOSS OF PROFITS OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY.

(dddd) Limitation of Liability. Contractor shall not be liable to Owner for any special, indirect, incidental or consequential damages whatsoever, whether in contract, tort (including negligence) or strict liability, including, but not limited to, operational losses in the performance of business such as lost profits or revenues or any increase in operating expense.

2.23 Insurance

(eeee) Required Coverage At all times commencing no later than commencement of the Work and to remain in effect for the entire term of this Agreement including any extensions of time, Contractor shall, at its expense, obtain and maintain, and shall cause its Subcontractors to obtain and maintain, with insurers of recognized responsibility authorized to do business in the California as admitted carriers having a rating not lower than "A" as rated by A.M. Best Company, Inc. or other independent rating companies, the following insurance which shall include the minimum coverages and limits set forth below:

(xii) *Commercial General Liability Insurance* Commercial general liability insurance on an “occurrence” basis arising out of claims for bodily injury (including death) and property damage, as will protect the Contractor, which may arise out of or result from the Contractor’s operations under the Agreement and for which the Contractor is legally liable, whether such operations are by the Contractor, by a Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Such insurance shall protect the Contractor and Owner against loss from liability imposed for damages (1) on account of bodily or personal injuries, including death, disease and sickness, accidentally suffered or alleged to have been suffered by any person or persons that may be caused directly or indirectly by the performance of this Agreement, and (2) on account of injury to or destruction of property, including the resultant loss of use of the Project or other Owner facilities or equipment, resulting from acts of commission or omission by the Contractor, or otherwise resulting directly or indirectly from the Contractor’s operations in the performance of this Agreement. This insurance shall be subject to the approval of Owner, and Owner’s approval shall not be unreasonably withheld and shall be in amounts not less than ten Million Dollars (\$10,000,000) general aggregate, five Million Dollars (\$5,000,000) personal and advertising injury aggregate, with a per occurrence limit of five Million Dollars (\$5,000,000) (total limits required may be satisfied with an excess or umbrella policy). The comprehensive or commercial general liability policy shall also include a severability of interest clause and cross liability if the policy has multiple insureds. The aggregate limit shall apply on a “per project” basis. The policy shall stipulate that the insurance afforded the additional insureds shall apply as primary insurance and that any other insurance carried by Owner or other Persons identified in this Agreement will be excess only and will not contribute with this insurance;

(xiii) *Automobile Liability.* Automobile liability insurance, for Contractor’s liability arising out of claims for bodily injury and property damage covering all owned (if any), non-owned, leased, hired or borrowed automobiles of Contractor, including loading and unloading, with a minimum limit of not less than \$2,000,000 per accident for combined bodily injury and property damage and containing appropriate no-fault insurance provisions or other endorsements in accordance with Applicable Law;

(xiv) *Worker’s Compensation Insurance* All engineers, experts, Consultants and Subcontractors the Contractor intends to employ shall have taken out workers’ compensation insurance with an insurance carrier satisfactory to the Owner for all persons whom they may employ in carrying out the work contemplated under this Agreement in accordance with the Workers’ Compensation Laws of the State of California. If the Contractor employs any engineer, expert, Consultant or Subcontractor which it did not intend to employ prior to commencement of services, it must furnish such proof of workers’ compensation insurance to the Owner immediately upon employment. If the Contractor is self-insured, the Contractor shall furnish a Certificate of Permission to Self-Insure and a Certificate of Self-Insurance satisfactory to the Owner.

(xv) *Employer’s Liability Insurance* All engineers, experts, Consultants and Subcontractors the Contractor intends to employ shall have taken out employer’s liability insurance. with an insurance carrier reasonably satisfactory to the Owner. During the course of Contractor’s services, if Contractor ever intends to employ additional or different Engineers, experts, Consultants or Subcontractors, before so employing them Contractor shall furnish such reasonably satisfactory proof of insurance to the Owner. If the Contractor is self-

insured, the Contractor shall furnish a Certificate of Permission to Self-Insure and a Certificate of Self-Insurance reasonably satisfactory to the Owner.

(xvi) *Errors and Omissions Insurance* Errors and omissions insurance on a claims made basis with limits of at least Two Million Dollars (\$2,000,000) with a deductible or self-insured retention in an amount not to exceed the sum of One Hundred Thousand Dollars (\$100,000), and Contractor will maintain such coverage for a period of five (5) years following the Final Completion Date.

(xvii) *Builder's All-Risk* Following completion of Phase 1 and approval by Owner of the Phase 2 Scope of Work and prior to commencing Phase 2, Contractor agrees to obtain and maintain Builder's Risk/Course-of-Construction insurance, issued on a completed value basis on all insurable Work included under the Contract Documents. This insurance shall be subject to the approval of Owner, and Owner's approval shall not be unreasonably withheld. This insurance shall insure against all risks, including but not limited to the following perils: vandalism, theft, malicious mischief, fire, sprinkler leakage, civil authority, sonic boom, explosion, collapse, flood, wind, hail, lightning, smoke, riot or civil commotion, debris removal (including demolition) and reasonable compensation for the Owner's costs and expenses required as a result of such insured loss. This insurance shall provide coverage in an amount not less than the full cost to repair, replace, or reconstruct the Work. Such insurance shall include the Owner, the Owner's designated representative, and any other person or entity with an insurable interest in the Work as an additional named insured.

(xviii) *Other Insurance* Contractor shall provide all other insurance required to be maintained under Applicable Laws, ordinances, rules, and regulations. Such insurance shall be subject to the approval of Owner, and Owner's approval shall not be unreasonably withheld.

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

(gggg) Occupancy Owner may partially or fully occupy and/or use the Project before acceptance of the entire Project by the Owner. All of Contractor's required insurance must allow such occupancy and/or use without prior consent from insurer.

(hhhh) Additional Insured; Primary and Non-Contributory; Waiver of Subrogation The Contractor shall name the Owner and the Owner's designated representative as additional insureds on Contractor's commercial general liability (using ISO CG 20 10 and CG 20 37 or exact equivalents), automobile liability, and excess/umbrella policies. The additional insured endorsement(s) included on all such insurance policies shall state that coverage is afforded the additional insured with respect to claims arising out of operations performed by or on behalf of the insured. If the additional insureds have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the insurer's liability shall not be reduced by the existence of such other insurance. The coverage provided the additional insureds on

Contractor's commercial general liability, automobile liability, and excess/umbrella policies shall apply on a primary and non-contributory basis. The Contractor's commercial general liability, automobile liability, excess/umbrella, and workers' compensation/employer's liability policies shall be endorsed to include a waiver of subrogation in favor of Owner and the Owner's designated representatives. Any excess/umbrella policies provided by Contractor shall include a follow form endorsement or schedule of underlying coverage showing that such policies sit in excess of and shall follow the form of the underlying policies set forth herein, which Contractor intends the excess/umbrella policy to supplement.

(iii) Proof of Carriage of Insurance The Contractor shall not commence Work nor shall it allow any Subcontractor or Consultant to commence Work under this Agreement until all required insurance certificates, additional insured endorsements and declarations pages have been obtained for the period covered by this Agreement and delivered in duplicate to the Owner for approval, and such approval shall not be unreasonably withheld.

(jjj) Notice of Cancellation or Non-Renewal The Contractor shall provide or shall obligate its insurance carriers or brokers/representatives to provide for thirty (30) Days written notice to the Owner of cancellation.

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

(lll) Compliance If the Contractor fails to maintain such insurance or fails to cure any defects in coverage required herein within five (5) Days of receiving written notice of the defect(s), the Owner may, but shall not be required to, take out such insurance to cover any damages accrued for which the Owner might be held liable on account of the Contractor's failure to pay such damages, and deduct and retain the amount of the premiums from any sums due the Contractor under this Agreement.

(mmm) Subcontractors and Consultant Obligations Each of Contractor's Consultants and Subcontractors shall comply with all applicable (commensurate with their respective scope of work) insurance obligations under this Section, and Contractor shall include such provisions in its contracts with them.

2.24 Performance and Payment Bonds Unless otherwise specified in the Contract Documents, prior to commencing Phase 2, the Contractor shall apply for and furnish Owner a Payment Bond and Performance Bond on the forms attached hereto as Exhibit K, which shall cover 100% faithful performance of all obligations arising under the Contract Documents and guaranteeing the payment in full of all costs for labor performed and materials supplied for the Work. Only bonds executed by admitted Surety insurers as defined in Code of Civil Procedure section 995.120 shall be accepted. The surety insurers must, unless otherwise agreed to by Owner in writing, at the time of issuance of the bonds, have a rating not lower than "A" as rated by A.M. Best Company, Inc. or other independent rating companies. Owner reserves the right to approve or reject the surety insurers selected by Contractor and to require Contractor to obtain bonds from surety insurers satisfactory to the Owner. Notwithstanding anything to the contrary in the Contract Documents, the liability of the surety on the performance bond will cease two (2) years after the Final Completion Date. Any warranty or guarantee required of Contractor by the Contract Documents shall be the sole obligation of Contractor after termination of the surety's performance bond liability. The liability of the surety

on the payment bond shall continue only so long as required by law. Any guarantee of performance hereunder shall not be deemed to be covered by the terms of the Payment Bond or the Performance Bond.

2.25 Owner's Right to Stop the Work If the Contractor fails to correct Work, which is not in accordance with the requirements of the Contract Documents, or persistently fails to carry out Work in accordance with the Contract Documents, the Owner, by written order signed personally or by an agent specifically so empowered by the Owner in writing, may order the Contractor to stop the Work or any portion thereof, until the cause for such order has been eliminated.

2.26 Owner's Right to Carry Out The Work If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails (within a sixty (60) Business Day period after receipt of written notice or an alternative reasonable time period expressly stated in the written notice from the Owner) to commence and continue correction of such default or neglect with diligence and promptness, the Owner may correct such deficiencies by whatever reasonable method the Owner may deem expedient without prejudice to other remedies the Owner may have, and may withhold for the cost of such correction from any sums due the Contractor under this Agreement

2.27 Owner's Obligations.

(a) Registration, Permits and Approvals.

(xix) Prior to issuing the Notice to Proceed to, Owner must register the Project with the California Department of Industrial Relations, using Form PWC-100.

(xx) Owner will cooperate fully with and assist Contractor in obtaining all Governmental Approvals required under this Contract. Contractor is responsible for obtaining (but not paying for) Applicable Permits, except those Applicable Permits to be issued by Owner itself. Owner will be responsible for obtaining and paying for all other inspections, certifications, permits or approvals that may be required, including annual operating permits and any approvals or exemptions required by CEQA, as applicable.

(xxi) Owner is responsible for hiring and paying inspectors, and for fees associated with plan checks (including expedited plan checks), permits, inspections, certifications, and utility interconnection(s), including any additional work that may be required by the authority having jurisdiction or by the Utility in relation to the Interconnection Agreement.

(b) Coordination. The Parties will work together in good faith to coordinate the activities of Contractor and Contractor's Subcontractors and Suppliers with those of Owner Persons to allow Contractor to timely complete the Work.

(c) Access. Owner hereby grants to Contractor, without cost to Contractor, all rights of ingress and egress at the Sites, necessary for Contractor to timely perform the Work and provide all services contemplated by this Agreement, including without limitation and at no extra cost to Contractor, access to perform Work on Saturdays, Sundays, legal holidays, and non-regular working hours when reasonably required to minimize interruptions to Owner's normal activities at the Sites.

When applicable, Owner will issue necessary keys to Contractor to access Project Site(s). Contractor shall return keys to Owner upon Final Completion or at any time upon request by Owner. Contractor shall reimburse Owner for the cost of re-keying all of Owner's locks, if keys are not returned to Owner. The Contractor shall provide the Owner and the Owner's designees, access to the Work in preparation and progress wherever located.

(d) Consents; Cooperation. Whenever a Party's consent, approval, satisfaction, or determination will be required or permitted under this Agreement, and this Agreement does not expressly state that the Party may act in its sole discretion, such consent, approval, satisfaction, or determination will not be unreasonably withheld, qualified, conditioned, or delayed, whether or not such a "reasonableness" standard is expressly stated in this Agreement. Whenever a Party's cooperation is required for the other Party to carry out its obligations hereunder, each Party agrees that it will act in good faith and reasonably in so cooperating with the other Party or its designated representatives or assignees or subcontractors. Each Party will furnish decisions, information, and approvals required by this Agreement in a timely manner so as not to delay the other Party's performance under this Agreement.

(e) Owner's Obligations.

(i) Owner will coordinate with Contractor in good faith to endeavor to provide a temporary staging area for Contractor, or its subcontractors, to use during the construction phase to store and assemble equipment for completion of the Work, if needed. Owner will provide sufficient space at the Facilities for the performance of the Work and the storage, installation, and operation of any equipment and materials and will take reasonable steps to protect any such equipment and materials from harm, theft and misuse. Owner will provide access to the Sites, including parking permits and identification tags, for Contractor and subcontractors to perform the Work during regular business hours, or such other reasonable hours as may be requested by Contractor and acceptable to Owner. Owner will also either provide a set or sets of keys to Contractor and its subcontractors (signed out per Owner policy) or provide a readily available security escort to unlock and lock doors. Owner will not unreasonably restrict Contractor's access to Facilities to make emergency repairs or corrections as Contractor may determine are needed.

(ii) Owner will maintain the portion of each Site that is not directly affected by Contractor's Work. Owner will keep the designated Site and staging area for the Project free of obstructions, waste, and materials within the reasonable control of Owner.

(iii) Owner will obtain any required environmental clearance from, and any inspections, including special inspections, or permits required by, any federal, state, and local jurisdictions, including but not limited to any clearances required under CEQA, prior to scheduled construction start date.

(iv) Subject to Section 2.13(a), subsurface conditions and obstacles (buried pipe, utilities, etc.) that were not reasonably ascertainable by Contractor or are not otherwise previously and accurately documented by Owner and such documentation made available to and reasonably relied upon by Contractor are the responsibility of Owner.

(v) Subject to Section 2.17, Owner will remove any Hazardous Materials either known to Owner prior to the commencement of the Work or encountered by Contractor during the construction of the Project, if necessary in order for the Work to progress safely.

Contractor will respond to the discovery of Hazardous Materials at or around the Sites during the course of Contractor's construction in accordance with Section 2.17.

(vi) Owner will coordinate the Work to be performed by Contractor with its own operations and with any other construction project that is ongoing at or around the Sites, with the exception that Contractor will coordinate the interconnection facilities work, if any, which will be performed by the Utility.

ARTICLE THREE

3. PRICE AND PAYMENT

3.28 Contract Price As full and complete compensation for Contractor's obligations under the Contract Documents, Owner shall pay to Contractor in installments in accordance with the Progress Payment Milestones as specified in Section 3.36, and Contractor shall accept as payment in full by Owner for the delivery of the Project and its other obligations under the Contract Documents, the Contract Price and as may only be adjusted by Change Orders in accordance with the provisions of this Agreement. Except as otherwise provided in this Agreement, the Contractor shall assume the risk of all costs in excess of the Contract Price in the performance the Work and to provide a fully completed and successfully operational Project, complete in every detail according to the provisions of the Contract Documents and shall not be entitled to additional payments because of such excess costs. Should the Contractor believe that it is entitled to additional compensation, whether money or time, it must request such compensation pursuant to the Section 2.20 for Change Orders and Section 6.62 for Claims.

3.29 Allowances The Contractor shall include in the Contract Price all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities against whom the Contractor makes reasonable and timely objection.

3.30 Material Storage As the Contractor is required to order, obtain, and store materials and equipment sufficiently in advance of its Work at no additional cost or advance payment from Owner, to assure that there will be no delays, payment by the Owner for stored material shall be made only in unusual circumstances where the Owner specifically approves the payment in writing. If payments are to be made for materials and equipment that are not incorporated in the Work on the Project but delivered and suitably stored at a Project Site or at some other location agreed upon in writing by Owner, the payments shall be conditioned upon submission by Contractor, Subcontractor, or Supplier of bills of sale and such other documents reasonably satisfactory to Owner to establish Owner's title to such materials or equipment free of all liens and encumbrances, and otherwise protect Owner's interest, including, without limitation, provision of applicable insurance and transportation to the Project Site. All stored items shall be inventoried, specified by identification numbers (if applicable), released to Owner by the sureties and Subcontractors, and, if stored off the Project Site, stored only in a bonded warehouse. Notwithstanding any other provision herein to the contrary, title to all or a portion of the equipment, supplies and other components of the Work will pass to Owner upon the earlier of (i) the date payment for such equipment, supplies or components is made by Owner or (ii) the date any such items are incorporated into the Site. Contractor will retain care, custody and

control and risk of loss of such Project equipment, supplies and components until the earlier of Beneficial Use or Substantial Completion. Transfer of title to Owner will in no way affect Owner's and Contractor's rights and obligations as set forth in other provisions of this Agreement. Except as provided in this Section 3.3, after the date of Substantial Completion, Contractor will have no further obligations or liabilities to Owner arising out of or relating to this Agreement, except for the obligation to complete any items required to achieve Final Completion, the obligation to perform any warranty service under Section 2.20, and obligations which, pursuant to their terms, survive the termination of this Agreement.

3.31 Retention The Owner shall, at Contractor's discretion, either retain an amount equal to 5% of each Progress Payment made for Phase 2 of the Project, or, in lieu of said retention, offer to enter into an Escrow Agreement for Security Deposits in Lieu of Retention ("Escrow Agreement") with Contractor, in the form attached as Exhibit H, as set forth in California Public Contract Code section 22300. Release of the retention or funds deposited with Escrow Agent ("Escrow Funds") pursuant to an Escrow Agreement between the parties, and the final Progress Payment shall be made in the manner described in Section 3.36(oooo)(xxix).

3.32 Payment Schedule The Progress Payment Milestones defined in Section 3.36 shall be used as the basis for preparation of progress invoices. Subject to Section 3.36 and except as provided in the Agreement, Owner shall pay to Contractor the applicable Progress Payment set forth in the Progress Payment Milestones (on a per Site basis where applicable) when:

(xxii) Contractor has completed the Work associated with such payment in accordance with the Progress Payment Milestones;

(xxiii) Following submittal of the supporting documentation required by Section 3.36 for the respective Progress Payment Milestones to the satisfaction of the Owner;

(xxiv) Following submittal of an Application for Payment; and

(xxv) Subject to Retention as provided in Section 0.

Contractor shall be entitled to payment and in the amount specified for each Progress Payment Milestone.

3.33 Application for Payment Except as provided in Section 3.32, Contractor shall submit to Owner an invoice (an "Application for Payment"), substantially in the form of Exhibit F. Each monthly progress report shall be certified by Contractor as being true and correct as of the date of such Application for Payment. The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment.

3.34 Review of Progress Payment The Owner will, within seven (7) Days after receipt of the Contractor's Application for Payment, either approve such payment or notify the Contractor in writing of the Owner's reasons for withholding approval in whole or in part. The review of the Contractor's Application for Payment by the Owner is based on the Owner's observations at the Site and the data comprising the Application for Payment whether the Work has progressed to the point indicated and whether, to the best of the Owner's knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents. Owner will pay Contractor the amount

Owner approves pursuant to Section 3.35 within thirty (30) after the Application for Payment was properly submitted.

3.35 Decisions to Withhold Payment The Owner may withhold payment, in whole, or in part, to such extent as may be reasonably necessary to protect the Owner from loss because of any acts or omissions by Contractor, including any rights to withhold mentioned in the Contract Documents.

3.36 Progress Payment Milestones Progress Payments shall be made in accordance with Public Contract Code section 20104.50. Owner shall pay the Contract Price to Contractor on a per Project Site basis in accordance with the following schedule and after Contractor has complied with the requirements of this Section, Section 3.32 and the Contract Documents (each, a "Progress Payment Milestone"):

(nnnn) Phase 1 Payment

(xxvi) Project Development Fee. A fee of One Hundred Fifty Thousand and No/100 Dollars (\$150,000).upon Contractor's completion of all work required in the Phase 1 (the "Project Development Fee").

(oooo) Phase 2 Payments. Notwithstanding anything to the contrary, Owner shall not be obligated to pay any amounts hereunder for Phase 2 of the Project until Owner, in its sole and absolute discretion, agrees to implement certain ECMs identified under Phase 1 of the Project and makes all required findings under Government Code section 4217.10 *et seq.*

(xxvii) Mobilization Payment: Twenty (20) percent of the Contract Price upon Contractor's mobilization.

(xxviii)Progress Payments: as the Work progresses, Contractor will submit to Owner its Applications for Payment based on the progress made on the Project through the date on which Contractor submits such application for payment. Within twenty-one (21) calendar days from the Effective Date, Contractor will prepare and submit to Owner a schedule of values apportioned to the various divisions or phases of the Work ("Schedule of Values"). Each line item contained in the Schedule of Values will be assigned a value such that the total of all items equals the Contract Price. All Applications for Payment will be in accordance with the Schedule of Values.

(xxix) Final Payment: to be paid upon the Owner's delivery of the signed Final Completion Certificate to the Contractor, less any amounts properly withheld by Owner in accordance with the Contract Documents, until such time, if any, that such amount or amounts may be or are required to be released in accordance with the Contract Documents.

(c) Reserved

3.37 Payments and Information to Subcontractors No later than seven (7) Days after Contractor receives payment from Owner, pursuant to Business and Professions Code section 7108.5, Contractor shall pay to each Subcontractor, out of the amount paid to Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to Contractor on account of such Subcontractor's portion of the Work. Contractor shall, by appropriate Subcontract with each Subcontractor, require each

Subcontractor to make payments to sub-subcontractors in a similar manner. Owner has no obligation to pay, or to see to the payment of, money to a Subcontractor except as may otherwise be required by Applicable Law. Owner will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by Contractor, and action taken thereon by Owner, on account of portions of the work done by such Subcontractor.

3.38 Waivers and Releases Within thirty (30) Business Days after receipt of each progress payment and the Final Payment, Contractor shall provide (and shall cause its Suppliers and Subcontractors, and their Subcontractors to provide) to Owner an unconditional lien waiver and release (related to the Progress Payment as applicable) in a form substantially similar to the forms attached hereto as Exhibit I.

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

3.40 Completion of Work Subject to Section 4.2(b)(v), upon receipt of the Contractor's signed Final Completion Certificate, the Owner will make an inspection to determine whether the Work, or designated portion thereof, is complete. If the Owner's inspection discloses any item which is not completed in accordance with the requirements of the Contract Documents, the Contractor shall, before Owner's issuance of the signed Final Completion Certificate and the Final Payment, diligently complete or correct such item.

3.41 Partial Occupancy or Use To the extent reasonably practicable based on the particular portion of the scope of Work, Owner may occupy or use any completed or partially completed portion of the Work at any stage without accepting that Work and without waiving rights to claim damages as to that Work (to the extent expressly permitted herein). The Owner and the Contractor shall agree in writing to the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Work, insurance, the period for correction of the Work, and the commencement of warranties required by the Contract Documents.

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

3.43 Substitution of Securities In accordance with section 22300 of the Public Contract Code, the Owner will permit the substitution of securities for any monies withheld by the Owner to ensure performance under the Agreement. At the request and expense of the Contractor, securities

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

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

ARTICLE FOUR

4. COMMENCEMENT AND SCHEDULE

4.45 Project Schedule Time is of the essence in this Agreement (subject to any notice requirements and cure periods set forth in this Agreement), and, subject to the terms of the Contract Documents, the date for Substantial Completion of the Project shall be the Completion Date as set forth on the Cover Page, and Contractor shall develop, design, install and commission the Project and perform all Work hereunder in accordance with the Project Schedule, Exhibit B. The Project Schedule shall be in the form of a tabulation, chart, or graph (on a per Site basis where applicable) including but not limited to all anticipated dates for achievement of the Project Phases including the issuance of the Notice to Proceed, the anticipated dates for 60%, 90% and 100% Engineering Documents submittal (as applicable) including adequate time for Owner review where required by Section 4.46, the anticipated attainment of each Governmental Approval, the anticipated award and delivery dates of major pieces of Equipment, the start and completion dates for construction and testing and commissioning, and the Completion Date. The Project Schedule will separately identify those milestones or events that must be completed before other portions of the work can be accomplished.

4.46 Project Phases and Notice to Proceed The date of commencement of the Phase 1 is the Effective Date. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for which the Contractor is responsible). The Work on the Project shall be performed in accordance with the following phases as more fully set forth in the Scope of Work, Exhibit A:

(pppp) Phase 1

(xxx) Project Development Phase Upon the Effective Date, Contractor shall develop a CEA Report and recommended energy plan to implement certain ECMs under Phase 2 of the Project. The CEA Report will identify potential renewable energy generation and operational savings opportunities at the Project Sites and estimated program costs to implement the recommended ECMs and present an overall potential energy cost and consumption savings of implementing the ECMs under Phase 2 of the Project. In the event Contractor fails to provide a CEA Report demonstrating that the anticipated cost to the Owner of the Project under the Agreement will be less than the anticipated marginal cost to the Owner of thermal, electrical, or other energy that would have

been consumed by the Owner in the absence of the Project in accordance with Government Code section 4217.10 *et seq.*, the Owner may terminate this Agreement without further obligation and shall not be liable for any of Contractor's costs including the Project Development Fee. No work shall be performed until Owner's issuance of the Notice to Proceed to Project Development.

(qqqq) Phase 2. Within ten (10) days after Owner has closed the financing for the Project, Owner will issue to Contractor a written notice to proceed with Phase 2 (the "Notice to Proceed"). Contractor will begin Work within thirty (30) calendar days after receipt of the Notice to Proceed (the If Owner fails to issue the Notice to Proceed within twenty (20) Days after the financing has closed, Contractor will be entitled to an equitable extension of time and/or an equitable adjustment in the Contract Price as a result of such delay.

(xxxix) Design Phase Contractor shall prepare 60% Engineering Documents, and any inspections required by the date specified for each Site in the Project Schedule. Contractor shall deliver 60% Engineering Documents to Owner for review and approval, which approval shall not be unreasonably withheld. Owner shall diligently review and respond to each submission by Contractor by the date specified in the Project Schedule. Contractor shall incorporate Owner's comments and requested changes unless Contractor can demonstrate that such requested changes would materially impact the Contract Price, the Project Schedule, or any other material requirement of the Contract Documents in which case Contractor shall submit a Change Order in accordance with Section 2.20. Upon resolution of the provision hereinabove set forth, Contractor shall complete and submit the 90% Engineering Documents by the date specified in the Project Schedule. No work shall be performed until Owner's issuance of the Notice to Proceed.

(xxxix) Governmental Approval Phase Upon Owner's written approval of the 90% Engineering Documents, Contractor shall seek all such approvals of all required Engineering Documents and the Project as may be required by any Governmental Authority. Contractor shall exercise all reasonable diligence to ensure that all necessary Governmental Approvals are received by the date specified in the Project Schedule. Owner shall not unreasonably withhold its consent to any modifications to the Engineering Documents that may be requested by any Governmental Authority or quasi-governmental agency with jurisdiction over the Project or the Work, excepting any changes that materially affect the Contract Price or the Target Annual Energy Production, or that materially affect the sitting of the Project and its impact on Owner's operations. The Engineering Documents with all changes as necessitated by any Governmental Authority and as approved by Owner shall constitute the 100% Engineering Documents and serve as the basis for construction. The receipt and approval of the 100% Engineering Documents and copies of all Governmental Approvals by the Owner shall constitute the completion of the Governmental Approval Phase.

(xxxix) Construction Phase. Following approval of the 100% Engineering Documents and delivery of copies of all Governmental Approvals to Owner necessary to begin construction of the Project Owner, Contractor shall facilitate, or cooperate with Owner in its efforts to facilitate, a kick-off meeting with Owner, any Owner representatives, Contractor, and any other relevant Party to this Agreement. Following the kick-off meeting, Contractor shall commence the construction of the Project in accordance with the 100% Engineering Documents and all other Contract Documents.

When Contractor believes it has achieved Substantial Completion, Contractor shall notify Owner of the same certifying completion of the Construction Phase. Within ten (10) Business Days after Contractor's submission or Owner's independent receipt of all items required for Substantial Completion, Owner shall either (i) acknowledge and agree in a writing delivered to Contractor that the Construction Phase has been satisfactorily completed, or (ii) advise Contractor by written notice that Substantial Completion has not been achieved and identify any missing items or defects or deficiencies in the Work for which Contractor is responsible or any other reason why the requirements of Substantial Completion have not been met. Substantial Completion shall be achieved when, and completion of the Construction Phase requires that:

(1) The Project has been built in conformance with the terms and conditions of the Contract Documents and the requirements of the Utility;

(2) The Project complies with all applicable Legal Requirements and has passed all required inspections by any applicable Governmental Authority and all applicable Governmental Approvals have been received and copies thereof have been delivered to the Owner;

(3) Submission of a written request to schedule the Utility permission to operate inspection and a copy thereof provided to the Owner.

(4) Contractor shall have delivered a true, correct, and complete certification of Substantial Completion signed by Contractor and the Engineer.

(xxxiv)Commissioning Phase During the construction phase of the work on the Project and before the Completion Date, Contractor shall conduct all commissioning tests in accordance with the Contractor's Testing and Commissioning Plan which shall include but is not limited to the Start Up and Operational Tests. Contractor shall provide notice to Owner of any scheduled test(s) of installed equipment or the System, and Owner or its designees shall have the right to be present at any or all such tests conducted by Contractor, any Subcontractor, or manufacturers of the Equipment. Contractor shall be responsible for correcting or adjusting all deficiencies in the System, Work and Equipment operations that Contractor provided and installed that may be observed during Equipment commissioning procedures. Completion of the Commissioning Phase requires that:

(5) If applicable, all requirements of the Utility for testing and interconnection of the renewable energy generation systems installed as part of the System have been satisfied, the System is fully interconnected and operating normally to produce electricity and Contractor has obtained written permission to operate from the Utility for each Site;

(6) The Start Up and Operational Tests and all other related tests have been completed to the Owner's satisfaction and the results provided to the Owner;

(7) All Work has been completed other than the Work solely required for Final Completion (including the Work set forth in the Punchlist);

(8) Contractor has delivered to the Site the Spare Parts in accordance with Section Error! Reference source not found.; and

(9) Contractor has verified that the PMRS system is operational.

(xxxv) Final Completion When Contractor believes it has achieved Final Completion, Contractor shall deliver to Owner the written Final Completion Certificate, in substantially the form of Exhibit G, which certificate shall certify the Final Completion Date and the Contractors achievement of Final Completion. Within ten (10) Business Days after Contractor's submission or Owner's independent receipt of all items required for Final Completion, Owner shall either (i) deliver such certificate to Contractor, acknowledged and agreed by Owner, and confirming the Final Completion Date (the "Final Completion Certificate"). The Project may only be accepted as complete by action of the Owner's governing body. Completion of Final Completion requires that:

(10) Contractor has received all local, state and federal Governmental Approvals and other approvals as may be required by Law for the operation and maintenance of the Project, including approvals, if any, required under the California Environmental Quality Act for the Project;

(1) the Project has completed thirty (30) Days of continuous operation and is able to conserve, produce and deliver Energy to Owner pursuant to the terms of this Agreement;

(2) Owner has received from Contractor the final Project Manual (electronic and hardcopy format) including two (2) sets of full size as-built drawings approved and stamped by the Engineer of Record (as built drawings shall also be provided to Owner in PDF and native file format);

(3) Contractor has provided training to the Owner in the operation, emergency shut-down procedures, and recommended operation and maintenance of the Project and has provided Owner will two (2) sets of keys to all locks, equipment, and boxes that are part of the Project;

(4) All Contractor's materials and wastes have been removed from the Site and properly disposed of;

(5) All Punchlist Work with respect to the Project and the Site has been completed to the Owner's reasonable satisfaction;

(6) A final walkthrough of the Project and Site has been conducted with Contractor and Owner to determine completion of the terms of the Agreement. Any erroneous claims of completion by Contractor resulting in a premature walk through shall be at Contractor's sole cost and expense and Owner shall make adjustments to the Contract Price by reducing the amount thereof to pay for any costs incurred by the Owner due to the erroneous claims by the Contractor that the Project is complete; and

(7) Contractor shall have delivered a true, correct, and complete Final Completion Certificate signed by Contractor and the Engineer.

(c) Reserved

4.47 Hours of Work

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

(ssss) Performance During Work Hours Work shall be performed during regular working hours except that in the event of an emergency or when required to complete the Work in accordance with job progress, Work may be performed outside of regular working hours with the advance written consent of the Owner. Subject to Section 2.25(b) and (c), Work may also be performed outside of regular working hours to minimize disruption to Owner operations.

4.48 Progress and Completion Time limits stated in the Contract Documents are of the essence of the Agreement (subject to any notice requirements and cure periods set forth in this Agreement). By executing the Agreement the Contractor confirms that the Project Schedule is a reasonable period for performing the Work. The Contractor shall not knowingly, except by agreement or instruction of the Owner, in writing, commence operations on the Site or elsewhere prior to the effective date of insurance required by Section 2.22(cccc) to be furnished by the Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance. The Contractor shall proceed expeditiously with adequate forces and shall achieve Completion within the Project Schedule, subject to any extension rights set forth in this Agreement.

4.49 Reserved

Upon request, Contractor shall submit its daily logs for the monthly period with the updated schedule. Float is not for the exclusive use or benefit of either Party but it is a jointly owned expiring Project resource available to both Parties as needed to meet the Project Schedule.

4.50 Progress Meetings Unless otherwise stated in the Contract Documents and subject to change by Owner, the Parties shall meet at least biweekly during the performance of Contractor's work to, among other things, review work performed to date and to be performed. Contractor shall organize the meeting, prepare, and distribute meeting notes. Minute notes shall be taken in

satisfactory written form and include a three (3) week look-ahead schedule, RFI log, and Change Order log, as applicable. Meeting minutes shall be updated during the meeting and distributed at the end of the meeting and Owner shall have five (5) Business Days after Owner's receipt of such minutes to object to them in writing and provide corrections in writing. A quorum of meeting attendees will be named at the first meeting. The named quorum shall be in attendance in all Project meetings.

4.51 Conformity with Project Schedule Contractor shall prosecute the Work, and shall cause each Subcontractor to prosecute the Work, so that the portion of the Work completed at any point in time shall be not less than as is required by the Project Schedule (subject to any extension rights set forth in this Agreement). If the rate of progress is such that the total amount of Work and/or the degree of completion of the Work accomplished by Contractor within any time period required by the Project Schedule and/or the Contract Documents is less than the amount therein specified to be completed within such time, and it reasonably appears that Contractor will be unable to complete any portion of the Work by the corresponding scheduled date or deadline, Contractor shall so notify Owner within ten (10) Days of Contractor's knowledge of the delay, or Owner may notify Contractor of the same. Contractor shall, within ten (10) Business Days of Contractor's knowledge of such delay or receipt of any such notice from Owner, submit a Recovery Plan to Owner allowing for completion of the Work on the Project by the Completion Date. If Owner directs Contractor in writing to implement the Recovery Plan, then Contractor shall do so within ten (10) Business Days or such request. If Owner, acting reasonably, does not agree that Contractor has demonstrated in the proposed Recovery Plan its ability to recapture lost time, meet interim milestones and complete the relevant portion of the Work by the applicable scheduled date or deadline, and the reasons therefor are not an Excusable Delay as outlined in Section 4.52(tttt), Owner may, without prejudice to any other right or remedies it may have, take one or more of the following actions: (a) require Contractor to employ such extraordinary measures as are necessary to bring the Work into conformity with the Project Schedule, including, without limitation, requiring Contractor to increase its work force, work overtime, and/or extra shifts (at Contractor's sole cost and expense); and/or (b) withhold progress payments due under Section 3.36, or portions thereof, until such time as the Work is in conformity with the Project Schedule. If the cause for Contractor's inability to meet the Completion Date are as a result of an Excusable Delay as outlined in Section 4.52(tttt), then the terms of Section 4.52 shall dictate.

4.52 Extensions of Time – Liquidated Damages

(tttt) Excusable Delay The Contractor shall be entitled to an extension of time and shall not be charged for liquidated damages, as set forth in the Agreement, because of any delays in completion of the Work due to Excusable Events, acts of the Owner or anyone employed by it, acts of another contractor in performance of a contract (other than this Agreement) with the Owner (collectively "Excusable Delay"). Contractor has the burden of providing reasonable evidence that any delay is excusable.

(uuuu) Notice by Contractor Required The Contractor shall within ten (10) Days of its knowledge of the beginning of any Excusable Delay (unless Owner grants in writing a further period of time to file such notice prior to the date of final Progress Payment under the Agreement) notify the Owner in writing of causes of delay. The Parties will then ascertain the facts and extent of the delay and determine an extension of time for completing the Work when, in their reasonable judgment, the findings of fact justify such an extension. Extensions of time shall apply only to that portion of the Work affected by the delay and shall not apply to other portions of the Work not so

affected. Except as otherwise set forth in this Agreement, the sole remedy of Contractor for extensions of time under Section 4.52(tttt) shall be an extension of the Project Schedule at no cost to the Owner.

(vvvv) Conditions for Extension of Time If the Contractor is delayed at any time in progress of the Work by an Excusable Event, by changes in the Work pursuant to Section 2.20(d) or (m), unusual delay in deliveries, or unavoidable casualties, by delay pending arbitration, or by other causes which the Owner determines may justify delay, then the Project Schedule shall be extended by Change Order for such reasonable time as required under the circumstances. Claims relating to time extensions shall be made in accordance with applicable provisions of Section 2.20.

(www) Early Completion If Contractor submits a revised schedule showing an earlier completion date for the Project, Owner's acceptance of this revised schedule shall not entitle Contractor to any additional compensation or Claim due to any such revised schedule (nor shall it subject Contractor to Liquidated Damages based on such earlier completion date). Regardless of the cause therefore, the Contractor may not maintain any Claim or cause of action against the Owner for damages incurred as a result of its failure or inability to complete the Work or the Project in a shorter period than established in the Contract Documents.

(xxxx) Liquidated Damages Subject to the limitation of liability specified in Section 6 below, if Contractor fails to cause Substantial Completion to occur on or prior to the Completion Date, as may be extended in accordance with the terms of this Agreement, Contractor shall pay Owner as its sole and exclusive remedy therefore, as liquidated damages and not as a penalty, in an amount equal to the LD Rate (the "Liquidated Damages").

The actual occurrence of damages and the actual amount of the damages which the Owner would suffer if the Work were not completed within the specified times set forth are dependent upon many circumstances and conditions which could prevail in various combinations and it is impracticable and extremely difficult to fix the actual damages. Damages that the Owner would suffer in the event of delay include, but are not limited to, loss of the use of the Project and each individual Site, and the energy savings afforded by the Project and each individual Site, disruption of activities, costs of administration, supervision and the loss suffered by the public.

Accordingly, the Parties agree that the following Dollar figures shall be the amount of damages which the Owner shall directly incur upon failure of the Contractor to cause Substantial Completion to occur on or prior to the Completion Date shall be the Dollar amount specified in Section F of the Cover Page for each Day by which the Work, or portion thereof, is delayed beyond the Completion Date.

If the Contractor becomes liable under this Section, the Owner, in addition to all other remedies provided by law, shall have the right to withhold any and all retained percentages of payments, and to collect the interest thereon, which would otherwise be or become due the Contractor until the liability of the Contractor under this Section has been finally determined. If the retained percentage is not sufficient to discharge all liabilities of the Contractor incurred under this Section, the Contractor and its sureties shall continue to remain liable to the Owner for such liabilities until all such liabilities are satisfied in full.

If the Owner accepts any Work or makes any Progress Payment under this Agreement after a default by reason of delays, the payment or payments shall not constitute a waiver or modification of any Agreement provisions regarding time of completion and Liquidated Damages.

4.53 Government Approvals Owner shall not be liable for any delays or damages related to the time required to obtain Government Approvals (any such delay may be an Excusable Event).

4.54 Delays Due to Project Site Activities Owner shall not be liable for any damages or compensation to Contractor resulting from, arising out of, or related to any delays caused by scheduled activities at Project Sites where Contractor was notified in writing of such scheduled activities prior to signing this Agreement, including Owner's construction projects and other events which would require access to Project Site(s). Where Owner did not inform Contractor in writing of such scheduled activities, or required activities arise during the Project that were not scheduled prior to Agreement signing and that impact the Project Schedule, Contractor shall be entitled to reasonable additional time for the Project Schedule in accordance with Section 2.17.

If any part of Contractor's Work depends for proper execution or results upon work of any other contractor, the Contractor shall inspect and promptly report to Owner in writing any defects in such work that render it unsuitable for such proper execution and results. Contractor will be held liable for damages to Owner for that work which it failed to visually inspect or should have inspected. Contractor's failure to inspect and report shall constitute its acceptance of other contractor's work as fit and proper for reception of its work, except as to defects which may develop in other contractors' work after execution of Contractor's work.

To ensure proper execution of its subsequent work, Contractor shall measure and visually inspect work already in place and shall at once report to the Owner in writing any discrepancy between executed work and Contract Documents.

It is the obligation of Contractor to ascertain to its own satisfaction the scope of the Project and nature of any other contracts that have been or may be awarded by Owner in prosecution of the Project to the end that Contractor may perform its Agreement in the light of such other contracts, if any.

Nothing herein contained shall be interpreted as granting to Contractor exclusive occupancy of the Project. Contractor shall not cause any unnecessary hindrance or delay to any other contractor working on the Project. If simultaneous execution of any contract for the Project is likely to cause interference with performance of some other contract or contracts, Owner shall decide which contractor shall cease work temporarily and which contractor shall continue or whether work can be coordinated so that contractors may proceed simultaneously. If Owner directs Contractor to cease Work temporarily due to the work of another contractor, Contractor shall be entitled to a Change Order upon documentation of actual, reasonable costs, but such costs shall not include overhead, profit or general conditions for the period of time during which Work has ceased.

If the Project is split into phases and/or separate contracts, then Contractor has made allowances for any delays or damages which may arise from coordination with contractors for other phases or contracts. If any delays should arise from a contractor working on a different phase or contract, Contractor's sole remedy for damages, including delay damages, shall be against the contractor who caused such damage and not the Owner. Contractor shall provide access to contractors for other phases or contracts as necessary to prevent delays and damages to contractors working on other phases or contracts.

ARTICLE FIVE

5. REPRESENTATIONS AND WARRANTIES

5.55 Representations and Warranties The Parties represent and warrant (to the extent set forth below) that:

(yyyy) Contractor represents that it is duly organized, validly existing and in good standing as a contractor and licensed contractor under the laws of the State of California;

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

(aaaaa) Each Party represents that the execution, delivery, and performance of this Agreement does not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement, or instrument to which it is a party by which it or its property is bound;

(bbbbb) Each Party represents that there is no pending or, to its knowledge, threatened action, or proceeding before any court or administrative agency that will materially adversely affect its ability to perform its obligations under this Agreement.

ARTICLE SIX

6. BREACH AND TERMINATION

6.56 Termination by the Owner for Cause Contractor agrees that Owner shall be entitled to terminate this Agreement upon the occurrence of any of the following circumstances, each of which shall constitute an event of default hereunder (each, a “Contractor Event of Default”): (A) refuses or fails to supply personnel in accordance with Section 2.6 or materials in accordance with Section 2.9; (B) fails to make payment to Subcontractors for materials or labor in accordance with Public Contract Code section 10262 or Business and Professions Code section 7108.5, as applicable; (C) disregards Applicable laws, ordinances, rules, regulations, or orders of a Governmental Authority; or (D) otherwise is in substantial breach of a provision of the Contract Documents.

Owner’s authority to terminate this Agreement for cause shall be contingent upon providing written notice to Contractor of the Contractor Event of Default. Where the Contractor Event of Default can be cured, Contractor shall take action and cure the Contractor Event of Default within thirty (30) Days after the date of Owner’s written notice. In the event the Contractor Event of Default cannot be cured within thirty (30) Days, Contractor shall provide written notice to Owner of the requirement of a longer cure period with a timeline for cure and shall commence actions necessary to cure the Contractor Event of Default within thirty (30) Days and diligently and timely proceed to complete the cure.

When any Contractor Event of Default exists and Contractor fails to cure the same pursuant to the procedure set forth above, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor’s surety, if any, written notice of seven (7)

Days, terminate the Agreement and may, subject to any prior rights of the surety, (A) take possession of the Site and of all material, Equipment, tools, and construction equipment and machinery thereon owned by the Contractor, (B) accept assignment of Subcontracts, and (C) complete the Work by whatever reasonable method the Owner may deem expedient.

If the unpaid balance of the Contract Price exceeds the reasonable, actual and direct costs of completing the Work, including compensation for professional services and expenses made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This payment obligation shall survive completion of the Project and termination or expiration of this Agreement.

6.57 Suspension or Termination by the Owner for Convenience The Owner may, without cause, order the Contractor in writing to suspend, delay, or interrupt the Work in whole or in part for such period of time as the Owner may determine. Contractor shall be entitled to an extension of time and an adjustment shall be made for increases in the cost of performance of the Agreement, including profit and overhead in an aggregate amount equal to fourteen percent (14%) on the increased cost of performance caused by suspension, delay, or interruption. No adjustment shall be made to the extent (A) that performance is, was, or would have been so suspended, delayed, or interrupted by another cause for which the Contractor is responsible; or (B) that an equitable adjustment is made or denied under another provision of this Contract. Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee. If Owner suspends, delays or interrupts the Work for sixty (60) or more consecutive Days, Contractor may terminate this Agreement.

The Owner may, at any time, terminate the Agreement for the Owner's convenience and without cause upon thirty (30) Days written notice to Contractor. Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall (1) cease operations as directed by the Owner in the notice; (2) take reasonable actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and (3) except for Work directed to be performed prior to the effective date of termination stated in the notice, make commercially reasonable efforts to terminate all existing Subcontracts and purchase orders and enter into no further Subcontracts and purchase orders. In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for (i) Work wholly or partially executed, (ii) actual, direct out-of-pocket losses incurred by reason of such termination and any cost of funding; loss of anticipated payment obligations; and any payment or delivery required to have been made on or before the date of termination and not made, including interest on any sums due, and losses and costs incurred as a result of terminating this Agreement and all costs and expenses reasonably incurred in exercising the foregoing remedies, and (iii) fourteen percent (14%) aggregate overhead and profit on the Work not executed (collectively, the "Early Termination Payment"), and the license granted under Section 7.3(b) shall terminate.

6.58 Termination by the Contractor Contractor may not terminate for convenience. Contractor may only terminate for cause if (1) Owner fails to make payment when due and such failure is not made within thirty (30) days of Owner's receipt of written notice from Contractor specifying same, (2) the Work is stopped by others for a period of ninety (90) consecutive Days through no act or fault of the Contractor, a Subcontractor of any tier, their agents or employees, or any other persons performing portions of the Work for whom the Contractor is contractually responsible, and the Work was stopped by others for one of the following reasons: (A) issuance of an order of a court or other

public authority having jurisdiction which requires Owner to stop all Work; or (B) an act of government, such as a declaration of national emergency, making material unavailable which requires Owner to stop all Work, or (3) Owner is in material breach of a provision of the Contract Documents and such breach is not cured within thirty (30) days of Owner's receipt of written notice from Contractor specifying same (in the event such Owner event of default cannot be cured within thirty (30) Days, Owner shall provide written notice to Contractor of the requirement of a longer cure period with a timeline for cure and shall commence actions necessary to cure the Owner event of default within thirty (30) Days and diligently and timely proceed to complete the cure. If such grounds exist, the Contractor may serve written notice of such belief on Owner and demand a meet-and-confer conference to negotiate a resolution in good faith within seven (7) Days of receipt of such notice. If such conference does not lead to resolution and Contractor believes the grounds for termination still exist, Contractor may terminate the Agreement and recover from the Owner the Early Termination Payment and the license granted under Section 7.3 shall terminate.

6.59 Not a Waiver Any suspension or termination under this Section 6 shall not act as a waiver of any claims by Owner against Contractor (or vice versa) or others for damages based on breach of contract, negligence or other grounds.

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

6.61 Indemnification

(cccc) *Reserved.*

(dddd) Contractor represents and warrants that Contractor has the legal right to license any and all copyrights, designs and other intellectual property embodied in plans, specifications, studies, Drawings, estimates or other documents that Contractor or its Subcontractors or Consultants prepares or causes to be prepared pursuant to this Agreement. Contractor shall indemnify, defend and hold the Owner harmless against third-party claims brought by a party other than the Owner pursuant to this Section to the extent due to any breach of this representation due to Contractor's negligence, recklessness or willful misconduct.

The Contractor shall defend, indemnify, and hold harmless the Owner, and its officers, agents and employees against claims arising out of, pertaining to, or relating to negligence, recklessness or willful misconduct of the Contractor, the Contractor's officers, employees, or Consultants in performing or failing to perform any work, services, or functions provided for, referred to, or in any way connected with any work, services, or functions to be performed under this Agreement. Under no circumstances shall Contractor be liable for claims to the extent such claims are due to the active negligence or willful misconduct of the Owner or its officers, agents or employees. For purposes of this Section 6.6 only, "claims" means any and all claims, demands, actions and suits brought by a party other than the Owner for any and all losses, liabilities, costs, expenses, damages and obligations, and the defense

obligation shall include but not be limited to payment of the Owner's reasonable attorneys' fees, experts' fees, and litigation costs incurred in defense of a claim. This indemnification shall be in addition to the other indemnification provisions contained in the Contract Documents. Notwithstanding the foregoing, to the extent required by California Civil Code section 2782, Contractor's indemnity obligation shall not apply to liability for damages for death or bodily injury to persons, injury to property, or any other loss, damage or expense arising from the sole or active negligence or willful misconduct of Owner or Owner Persons. If Contractor's obligation to defend, indemnify, and/or hold harmless arises out of Contractor's performance of "design professional" services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by California Civil Code section 2782.8, which is fully incorporated herein, Contractor's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor, and, upon Contractor obtaining a final adjudication by a court of competent jurisdiction or via a settlement reasonably approved by Owner, Contractor's liability for such claim, including the cost to defend, shall not exceed the Contractor's proportionate percentage of fault.

(eeee)

6.62 Claims Generally A claim is a demand or assertion by Contractor seeking, as a matter of right, adjustment, or interpretation of Agreement terms, payment of money, extension of time, or other relief with respect to the terms of the Agreement (a "Claim"). Claims must be made by written notice. The responsibility to substantiate Claims shall rest with the Contractor. Contractor may only submit a Claim after having complied with the requirements in Section 2.20, as applicable, for the same matters.

Claims shall be submitted to the Owner and the Owner's designated representative. A timely decision by the Owner shall be provided. Claims must be made by written notice prior to the final Progress Payment. An additional Claim made after the initial Claim has been implemented by Change Order will not be considered. The failure of the Contractor to make a Claim within the specified time shall constitute an express waiver of any right to assert such Claim, whether affirmatively or defensively. Despite submission or rejection of a Claim, the Contractor shall proceed diligently with performance of the Agreement, and the Owner shall continue to make any undisputed payments in accordance with the Agreement. When any excavation or trenching extends greater than four feet below the surface, Public Contract Code section 7104 shall apply.

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

(c) Claims for Concealed or Unknown Conditions

(xxxvi) Trenches or Excavations Less Than Four Feet Below the Surface If Contractor encounters conditions at the Site which are subsurface or otherwise concealed physical conditions, which differ materially from those indicated in the Contract Documents, or unknown physical conditions of an unusual nature, which differ materially from those

ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the Contractor shall be given to the Owner promptly before conditions are disturbed and in no event later than ten (10) Days after first observance of the conditions. The Owner will promptly investigate such conditions, and if they differ materially and cause an increase or decrease in the Contractor's cost of, time required for, or performance of any part of the Work, will recommend an equitable adjustment in the Contract Price, Project Schedule, or both. If the Owner determines that the conditions at the Site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Agreement is justified, the Owner shall so notify the Contractor in writing, stating the reasons. In the event a dispute arises between the Owner and the Contractor regarding whether the conditions materially differ, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract Documents, but shall proceed with all the work to be performed under the Contract Documents. The Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

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

(11) The Contractor shall promptly, and before the following conditions are disturbed, notify the public entity, in writing, of any:

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

(B) Subsurface or latent physical conditions at the Site differing from those indicated by information about the Site made available to bidders prior to the deadline for submitting bids.

(C) Unknown physical conditions at the Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Agreement.

(12) The public entity shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the Work shall issue a Change Order under the procedures described in the Agreement.

(13) In the event that a dispute arises between the public entity and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by the Agreement, but shall proceed with all

work to be performed under the Agreement. The Contractor shall retain any and all rights provided either by Agreement or by law which pertain to the resolution of disputes and protests between the contracting parties.

6.63 Statutory Claim Procedures In addition to any other requirements set forth in the Agreement, all Claims shall be filed in accordance with the statutory claim resolution procedures set forth in Public Contract Code sections 9204 and 20104 *et seq.*, the implementation of which is set forth in this Section. The failure to timely submit a notice of delay or notice of change, or to timely request a change in price or time, or to timely provide any other notice or request required herein shall constitute a waiver of the right to further pursue the claim under the Agreement or at law.

(ffff) Intent Effective January 1, 1991, Section 20104 *et seq.*, of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial supervised mediation, and judicial arbitration to resolve disputes on construction claims of \$375,000 or less. Effective January 1, 2017, Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Section is to implement Sections 20104 *et seq.* and Section 9204 of the California Public Contract Code. This Section shall be construed to be consistent with said statutes.

(ggggg) Supporting Documentation The Contractor shall submit all claims in the following format:

(xxxviii) Summary of claim merit and price, reference Contract Document provisions pursuant to which the claim is made

(xxxix) List of documents relating to claim:

- (14) Specifications
- (15) Drawings
- (16) Clarifications (Requests for Information)
- (17) Schedules
- (18) Other

(xl) Chronology of events and correspondence

(xli) Analysis of claim merit

(xlii) Analysis of claim cost

(xliii) Time impact analysis in CPM format

(hhhhh) Owner's Response Upon receipt of a claim pursuant to this Section, Owner shall conduct a reasonable review of the claim and, within a period not to exceed 45 Days, shall provide the Contractor a written statement identifying what portion of the claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the claim will be processed and made within 60 Days after the Owner issues its written statement.

(xliv) If the Owner needs approval from its governing body to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of

the claim, and the Owner's governing body does not meet within the 45 Days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the Owner shall have up to three Days following the next duly publicly noticed meeting of the Owner's governing body after the 45-Day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.

(xlv) Within 30 Days of receipt of a claim, the Owner may request in writing additional documentation supporting the claim or relating to defenses or claims the Owner may have against the Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of Owner and the Contractor. The Owner's written response to the claim, as further documented, shall be submitted to the Contractor within 30 Days (if the claim is less than \$15,000, within 15 Days) after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.

(iiiiii) Meet and Confer If the Contractor disputes the Owner's written response, or the Owner fails to respond within the time prescribed, the Contractor may so notify the Owner, in writing, either within 15 Days of receipt of the Owner's response or within 15 Days of the Owner's failure to respond within the time prescribed, respectively, and demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, the Owner shall schedule a meet and confer conference within 30 Days for settlement of the dispute.

(jjjjj) Mediation Within 10 business Days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the Owner shall provide the Contractor a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 Days after the Owner issues its written statement. Any disputed portion of the claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with the Owner and the Contractor sharing the associated costs equally. The Owner and Contractor shall mutually agree to a mediator within 10 business Days after the disputed portion of the claim has been identified in writing, unless the parties agree to select a mediator at a later time.

(xlvi) 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.

(xlvii) For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

(xlviii) Unless otherwise agreed to by the Owner and the Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Public Contract Code Section 20104.4 to mediate after litigation has been commenced.

(xlix) The mediation shall be held no earlier than the date the Contractor completes the Work or the date that the Contractor last performs Work, whichever is earlier. All unresolved claims shall be considered jointly in a single mediation, unless a new unrelated claim arises after mediation is completed.

(kkkkk) Procedures After Mediation If following the mediation, the claim or any portion remains in dispute, the Contractor must file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code prior to initiating litigation. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the Contractor submits his or her written claim pursuant to subdivision (a) until the time the claim is denied, including any period of time utilized by the meet and confer conference.

(lllll) Civil Actions The following procedures are established for all civil actions filed to resolve claims of \$375,000 or less:

(l) Within 60 Days, but no earlier than 30 Days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code section 9204 and the terms of this Agreement. The mediation process shall provide for the selection within 15 Days by both parties of a disinterested third person as mediator, shall be commenced within 30 Days of the submittal, and shall be concluded within 15 Days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.

(li) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration. In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

(mmmmm) Government Code Claims In addition to any and all Agreement requirements pertaining to notices of and requests for compensation or payment for extra Work, disputed Work, construction claims and/or changed conditions, the Contractor must comply with the claim procedures set forth in Government Code Sections 900, et seq. prior to filing any lawsuit against the Owner. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra Work, disputed Work, construction claims, and/or changed conditions have been followed by Contractor. If no such Government Code claim is submitted, or if the prerequisite contractual requirements are not satisfied, no action against the Owner may be filed. **A Government Code claim must be filed no earlier than the date the Work is completed or the date the Contractor last**

performs Work on the Project, whichever occurs first. A Government Code claim shall be inclusive of all unresolved claims unless a new unrelated claim arises after the Government Code claim is submitted.

(nnnnn) Non-Waiver The Owner's failure to respond to a claim from the Contractor within the time periods described in this Section or to otherwise meet the time requirements of this Section shall result in the claim being deemed rejected in its entirety.

ARTICLE SEVEN

7. MISCELLANEOUS

7.64 Representatives The Owner may provide administration of the Agreement as described in the Contract Documents and may designate one or several agents, representatives, or Consultants to provide administration upon written notice of such to Contractor. When such written notice is provided, except as otherwise provided in the Contract Documents or when direct communications are warranted by special circumstances, the Owner and the Contractor shall communicate through the Owner's selected representative.

Relationship The Parties hereto agree that Contractor, and any agents and employees of Contractor, its subcontractors and/or consultants, is acting in an independent capacity in the performance of this Agreement, and not as a public official, officer, employee, consultant, or agent of Owner for purposes of conflict of interest laws or any other Applicable Laws.

7.66 Ownership and Use of Drawings, Data, Reports and Other Documents

(ooooo) Except as expressly provided in this Contract, Owner will not acquire, by virtue of this Agreement, any rights or interest in any formulas, patterns, devices, software, inventions or processes, copyrights, patents, trade secrets, other intellectual property rights, or similar items of property which are or may be used in connection with the Work. Contractor will own all inventions, improvements, technical data, models, processes, methods, and information and all other work products developed or used in connection with the Work, including all intellectual property rights therein.

(ppppp) Solely in connection with the Project, Contractor grants to Owner a limited, perpetual, royalty-free, non-transferrable license for any Contractor intellectual property rights necessary for Owner to operate, maintain, and repair any modifications or additions to Project, or equipment delivered, as a part of the Work.

(qqqqq) All data, reports, proposals, plans, specifications, flow sheets, drawings, and other products of the Work (the "Instruments of Service") furnished directly or indirectly, in writing or otherwise, to Owner by Contractor under this Agreement will remain Contractor's property and may be used by Owner only for the Work. Contractor will be deemed the author and owner of such Instruments of Service and will retain all common law, statutory and other reserved rights, including copyrights. The Instruments of Service may not be used by Owner or any Owner Person for future additions or alterations to the Project or for other projects, without the prior written agreement of Contractor Any unauthorized use of the Instruments of Service will be at Owner's sole risk and without liability to Contractor If Owner uses the Instruments of Service for

implementation purposes, including additions to or completion of the Project, without the written permission of Contractor, Owner agrees to waive and release, and indemnify and hold harmless, Contractor, its subcontractors, and their directors, employees, subcontractors, and agents from any and all Losses associated with or resulting from such use.

(rrrrr) If any materials or information provided by Contractor to Owner under this Contract are designated by Contractor as a “trade secret” or otherwise exempt from disclosure under the Public Records Act (California Government Code §6250 *et seq.*, the “Act”) and if a third party makes a request for disclosure of the materials under the Act, as soon as practical (but not later than ten (10) calendar days) after receipt of such request, Owner will notify Contractor of such request and advise Contractor whether Owner believes that there is a reasonable possibility that the materials may not be exempt from disclosure. Contractor may seek to enjoin Owner from disclosing the information requested through a court of competent of jurisdiction.

7.67 Royalties and Patents The Contractor shall pay all royalties and license fees incurred by Contractor in performing the Work of this Agreement. Subject to Section 7.3, the Contractor shall defend suits or claims of infringement of patent rights brought by a party other than Owner and shall hold the Owner harmless and indemnify them from loss on account thereof.

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

7.69 Audit Contractor’s Agreement books, records, and files shall be subject to audit and examination under Government Code section 8546.7 and any amendments thereto for a period of four (4) years following Final Completion and will exclude information that is proprietary and confidential unless required to be disclosed as a condition of funding, by law or by court order.

7.70 Construction In this Agreement, unless a clearly contrary intention appears (a) the singular number includes the plural number and vice versa; (b) reference to any Person includes such Person’s successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity; (c) reference to any gender includes each other gender; (d) reference to any contract (including this Agreement), document or instrument means such contract, document or instrument (together with all schedules, exhibits, appendices and attachments thereto) as amended or modified or restated and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof; (e) reference to any Article, Section, Schedule or Exhibit means such Article, Section, Schedule or Exhibit to this Agreement, and references in any Article, Section, Schedule, Exhibit or definition to any clause means such clause of such Article, Section, Schedule, Exhibit or definition, unless otherwise expressly set forth herein; (f) “hereunder,” “hereof,” “hereto,” “herein,” “herefrom” and words of similar import are references to this Agreement as a whole and not to any particular Section, Article or other provision hereof, unless otherwise expressly set forth herein; (g) relative to

the determination of any period of time, “from” means “from and including”, “to” means “to but excluding” and “through” means “through and including;” (h) “including” (and with correlative meaning “include”) means including without limiting the generality of any description preceding such term; and (i) reference to any law (including statutes and ordinances) means such law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder.

7.71 Severability/Governing Law If a court of competent jurisdiction shall hold any provision of the Contract Documents invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision hereof. The laws of the State of California shall govern the Contract Documents and venue shall be in the appropriate Superior Court in California.

7.72 Notices and Filings Any notices or filings required to be given or made under this Agreement shall be served, given, or made in writing upon the Owner or Contractor, as the case may be, by personal delivery or commercial overnight courier (with a copy sent via fax or regular mail) to the respective addresses given below, or at such address as such Party may provide in writing from time to time.

Owner: City of Milpitas

1265 N. Milpitas Blvd., Milpitas, CA 95035
Attention: Tony Ndah, Public Works Director
Telephone: 408-586-2602
Facsimile: 408-586-2608
Email: tndah@ci.milpitas.ca.gov

with a copy to: City of Milpitas

455 E. Calaveras Blvd., Milpitas, CA 95035
Attention: Steven McHarris, City Manager
Telephone: 408-586-3059
Facsimile:
Email: smcharris@ci.milpitas.ca.gov

Contractor: ENGIE Services, U.S., Inc

4020 Moorpark Avenue, Suite 100, San Jose, CA 95117
Attention: Mariana de Brito, Sr. Project Manager
Telephone: 415-825-0149
Facsimile:
Email: mariana.debrito@engie.com

with a copy to: ENGIE Services, U.S., Inc

500 12th St., Suite 300, Oakland, CA 96704
Attention: Legal Department, Chris McCormick
Telephone: 415-351-9956
Facsimile:
Email: chris.mccormick@engie.com

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

7.74 Amendments The terms of the Contract Documents shall not be waived, altered, modified, supplemented, or amended in any manner whatsoever except by written agreement signed by the parties and approved or ratified by the Owner's governing body.

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

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

7.77 Term and Termination The term of this Agreement begins on the Effective Date that is indicated on the Cover Page of this Agreement and, unless otherwise terminated in accordance with this Agreement, shall terminate upon the satisfaction of the conditions set forth in Section 4.46, including, but not limited to, the Owner's recordation of the Final Completion Certificate, all in accordance with the Contract Documents. All of the covenants, representations and warranties set forth in the Contract Documents, including indemnification obligations, that are intended to bind the Parties after the completion of the Project or termination of the Contract Documents will survive such completion or termination for the periods provided for in the Contract Documents or otherwise allowed by law. The Owner or Contractor may terminate the Contract Documents only as provided in the Contract Documents.

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

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

7.80 Execution, Correlation, and Intent The Contract Documents are complementary and are intended to include all items required for the proper execution and completion of the Work. Any item of Work mentioned in the Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Specifications, shall be provided by Contractor as if shown or mentioned in both. In the event of conflicting provisions between any of the Contract Documents, the provisions shall govern in the following priority: first, duly executed amendments to this Agreement (to the extent not superseded by a subsequent amendment), second, Change Orders, third, this Agreement and fourth, the other Contract Documents. Subject to the foregoing, the several instruments forming part of this Agreement are to be taken as mutually explanatory of one another. Each and every provision of law required by law to be inserted in this Agreement shall be deemed to be inserted herein, and the Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either Party the Agreement shall be amended in writing to make such insertion or correction.

7.81 Successors And Assigns The Owner and the Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the other Party hereto and to partners, successors, assigns, and legal representatives of such other Party in respect to covenants, agreements, and obligations contained in the Contract Documents. Neither Party to the Agreement shall assign the Agreement as a whole or in part without written consent of the other. If either Party attempts to make such an assignment without such consent, that Party shall nevertheless remain legally responsible for all obligations under the Agreement. Notwithstanding the foregoing, Contractor may, without Owner's consent, but with written notice to Owner, assign this Agreement to any affiliate of Contractor.

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

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

7.21 COVID-19 Owner acknowledges and agrees that, as of the Effective Date of this Agreement, the coronavirus COVID-19 ("COVID-19") is a global epidemic which may affect the production, supply and transportation of materials and equipment, as well as the ability for workers to perform the activities contemplated under this Agreement. To its actual knowledge as of the Effective Date, Contractor is not aware of any schedule or cost impact resulting from COVID-19 that may affect Contractor's performance of the Work. Contractor shall continue to monitor the impact of COVID-19 on the performance of the Work and will promptly notify Owner if it becomes aware of any impact to Contractor's performance of the Work. To the extent Contractor's performance of the Work is impacted by COVID-19 due to circumstances occurring after the Effective Date, Contractor will be entitled to (a) an equitable extension of time and (b) an equitable adjustment to the Contract Price to the extent caused by the following: (i) acts of a Governmental Authority that affect

Contractor's ability to timely perform the Work or require additional safety precautions with increased costs, (ii) supply chain disruptions that affect the availability or cost of materials and equipment forming part of the Work, (iii) delays or increases in the cost of transportation of materials and equipment, and (iv) labor shortages that increase the availability and cost of labor. Within ten (10) business days of identifying any potential cost changes, Contractor will coordinate with Owner to determine how to proceed. Once a course of action is mutually agreed upon, any resulting cost increases or credits will be equitably allocated between both parties.

7.22 MUNICIPAL ADVISOR. THE PARTIES ACKNOWLEDGE AND AGREE THAT CONTRACTOR IS NOT A MUNICIPAL ADVISOR AND CANNOT GIVE ADVICE TO OWNER WITH RESPECT TO MUNICIPAL SECURITIES OR MUNICIPAL FINANCIAL PRODUCTS ABSENT OWNER BEING REPRESENTED BY, AND RELYING UPON THE ADVICE OF, AN INDEPENDENT REGISTERED MUNICIPAL ADVISOR. CONTRACTOR IS NOT SUBJECT TO A FIDUCIARY DUTY WITH REGARD TO OWNER OR THE PROVISION OF INFORMATION TO OWNER. OWNER WILL CONSULT WITH AN INDEPENDENT REGISTERED MUNICIPAL ADVISOR ABOUT THE FINANCING OPTION APPROPRIATE FOR OWNER'S SITUATION.

7.23 FINANCE CONTINGENCY. It is acknowledged and agreed by the Parties that the continued existence of this Agreement is expressly contingent upon Owner securing financing that will allow it to make the payments to Contractor required by this Agreement. Owner will have thirty (30) calendar days after the Effective Date to secure such financing. If the financing is not secured within this time, for any reason, either Party may by written notice to the other Party declare this Agreement to be null and void; and the Agreement will be null and void as of the other Party's receipt of this notice; *provided* that Owner may not declare this Agreement to be null and void after it has issued the Notice to Proceed. It is acknowledged and agreed that Contractor will have no obligation to commence performance of the Work unless and until the financing has been closed.

7.24 PROOF OF FINANCIAL ARRANGEMENTS. Prior to the commencement of the work, Owner will provide Contractor proof that financial arrangements have been made to fulfill Owner's obligations under this Agreement. Owner's requirement to furnish such proof to Contractor is a condition precedent to commencement of the work. After commencement of the work, Contractor may request such proof if (i) Owner fails to make payments to Contractor as this Agreement requires; (ii) a Change in the work materially changes the Contract Price; or (iii) Contractor has other reasonable concerns regarding Owner's ability to fulfill its payment obligations under this Agreement when due. Owner will furnish such proof as a condition precedent to commencement or continuation of the work or the portion of the work affected by a material change. If after Owner furnishes such proof, Owner wishes to materially vary such financial arrangements, Gustine will notify Contractor prior to the change and will provide Contractor proof that the changed financial arrangements fulfill Owner's obligations under this Agreement. If Owner fails to provide Contractor with such proof within ten (10) calendar days of receiving a demand from Contractor, Contractor will be entitled to suspend its performance under this Agreement until such proof is received.

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

CONTRACTOR

By: _____
Print Name: []
Title: []

OWNER

By: _____
Print Name: []
Title: []

EXHIBIT A
SCOPE OF WORK

Phase 2:

Site Assessment Table

The table below summarizes the measures investigated and recommended for implementation. Phase 2 addresses and incorporates measures presented in Group 1. Group 2 measures may be selected to proceed, with a Change Order, at a later date.

Bundle	Group1							Group 2					
	A			B			C1	C2		D			
Description	ECM 1: Facilities Water Retrofits	ECM 2: Water Meters Upgrades	ECM 3: SCADA, Pumping and Water Treatment	ECM 4: LED Lighting Retrofits (interior / exterior at facilities)	ECM 5: LED Park Lighting	ECM 6: LED Streetlights	ECM 7: LED Sports Lighting	ECMs 8, 9 and 10: Solar PV, Battery Storage/ Resiliency	Solar PV + EV Chargers	Battery Storage/ Resiliency	High Efficiency Transformers	HVAC Upgrades	EMS Upgrades
City Hall				x					x		x	x	
Public Works													
Vehicle Shop / Corp yd.				x					x	x	x	x	x
Police Department													
Community Center				x				x				x	
Senior Center				x				x*				x	
Sports Center Complex				x					x		x	x	
Library Parking Garage				x									
Fire Station No.1 / Main Fire Admin				x								x	
Fire Training Center													
Fire Station No. 3				x								x	
Fire Station No. 4				x								x	
Pumping Stations			x	x									
Pressure Reducing Valves			o										
City-wide	x	x	x		x	x	x*						

Legend:

x = Included in base contract price

o = Not included in price, to be handled within contract allowance

* = EV chargers also included

+ = Sports lighting retrofits included for Cardoza Park (Baseball and Softball) and Hall Memorial Park (Soccer)

SCOPE OF WORK

California State Contractor's License Number 995037
California Public Works Contractor Registration Number 1000001498

Energy Conservation Measures to Be Implemented

ECM #	Description
1	Facilities Water Fixture Retrofits
2	Water Meter Upgrades
3	SCADA & Remote Communication, Pumping, and Automated Water Treatment
4	Facilities and Pumping Stations Lighting Upgrades
5	Parks Lighting Upgrades
6	Streetlighting Upgrades
7	Sports Lighting Upgrades
8	Solar Generating Facilities
9	Resiliency Microgrids
10	Electric Vehicle Charging Stations

ECM 1 – Facilities Water Fixture Retrofits

Scope of work includes retrofitting the water fixtures detailed in Exhibit Q, retrofitting existing fixtures with low-flow alternatives for water conservation purposes, and installing sensor/touchless technology for toilets, urinals and faucets where not yet present. Contractor to provide materials, labor, supervision, and coordination with Owner for the installation.

Exclusions:

- Sensors are excluded from locations where they are not practical, such as kitchen faucets used for full meal prep. Total counts per site included in this Scope of Work are detailed in Exhibit Q.
- A total of 31 existing fixtures (29 toilets and 2 urinals) are not being converted to sensor-flush in this Scope of Work. These are existing push-button hydraulic fixtures and the replacement/conversion to sensor-flush would be cost prohibitive.
- Broken toilet flanges.
- Broken carriers (for wall mount toilets and urinals).
- Failed angle stop valves or isolation valves. Contractor will require Owner's assistance in locating isolation valves prior to construction.
- Painting, tile work, and wall repair outside of footprint related patching. Pre-existing damage to walls or flooring will be brought to the attention of Owner. Contractor will repair any damages caused by installations and will attempt to match the existing conditions; but where unique tile or paint is present, Owner may be required to supply materials.
- Premium time or overtime labor. All work can be performed during normal working hours including evening shift from 3 PM to 12 AM.
- Hazardous material removal or abatement (including asbestos, lead paint, etc.).

- It is the Owner's responsibility to provide water pressure to all plumbing fixtures in the range of 25 to 85 psi. Deviations from this range will require installation of booster pumps or pressure reducing valves excluded from the Scope of Work.
- It is the Owner's responsibility to ensure that plumbing infrastructure flow capacity (i.e. the ability for the water supply to meet peak demands of water use) is adequate to support a high efficiency plumbing fixture retrofit. Additionally, liability for water hammer and other infrastructure related conditions are excluded from this Scope of Work. Should such conditions be identified or arise, Contractor will work with Owner to provide potential solutions that would require a Change Order to this Scope of Work.

ECM 2 – Water Meter Upgrades

The City of Milpitas has been deploying Badger Meters with ORION SE Fixed Network transmitters and currently uses Badger Meter's BEACON® Advanced Metering Analytics (AMA) software portfolio. Contractor shall convert remaining water meters (15,590 total) to the same Advanced Metering Infrastructure (AMI) system.

Detailed Scope of Work

- 1) For meters included in this Scope of Work, record existing water meter readings and other pertinent Meter/ Encoder Receiver Transmitters (ERT) readings (including meter serial number) prior to installation.
- 2) Remove each existing water meter identified in this Scope of Work and replace each with a new water meter and transmitter in the existing meter box.
- 3) Replace meter gaskets and bolts during installation.
- 4) For each location the new meter and register serial numbers will be recorded at the time of installation.
- 5) On a weekly basis, the new meter and register serial numbers will be submitted to the Owner.
- 6) The Owner will have two weeks to verify communication with the new registers. Any communication issues will be reported to Contractor on a weekly basis.
- 7) Deliver all removed water meters to the City of Milpitas Public Works Building.
- 8) The City of Milpitas has 36 existing active gateways installed throughout the City to collect data from the water meters. Given the estimated number of meters expected to connect to the footprint of the fixed network, it is expected that approximately 3,100 meters in more remote areas will require a cellular connection, which are included in Contractor's Scope of Work. The City of Milpitas also has 2 existing, inactive gateways, which are excluded from this Scope of Work. Scope of Work assumes that existing 36 active gateways and 3,100 new cellular connections will be sufficient to provide the required communications to Badger's Beacon AMA software, and no provisions are included for providing additional cellular connections, re-activating gateways, or installing new gateways.
- 9) Meters that have been recently upgraded and integrated into Badger's Beacon AMA portfolio are excluded from this Scope of Work.

Special Conditions

- 1) Owner will integrate new registers into existing City of Milpitas' billing data, as well as with the Badger Meter's BEACON® Advanced Metering Analytics (AMA) solution.
- 2) Report any field conditions to the Owner that warrant correction.
- 3) Owner to provide assistance in locating meters as required.
- 4) Owner to provide adequate personnel to assist in the shutting off of large meters, and/or where isolation valves are not functional. Any broken valves will be the responsibility of the Owner or billed separately within this ECM allowance.
- 5) Lines will be bled to remove air and debris through external building spigot. If there is no readily available spigot the line will not be bled and it will be the responsibility of the Owner to adequately bleed the system.
- 6) Owner will provide a clearly designated equipment and construction lay-down area at the Sports Center Complex for new and removed equipment and materials storage as well as for subcontractor trailers and supplies required to perform the Work.
- 7) Owner to advertise and notify their water customers of planned meter exchange. The Owner is to communicate overall timing of planned major water outages, to happen during standard working hours. Contractor will provide 3-day pre-installation notification to each resident, to be done with a door tag. At the time of installation, Contractor shall notify any residents on site or proceed if no one responds and meter is not in use, leaving a follow up door hanger to notify that work was completed.
- 8) Excess or removed soil from the meter boxes shall be spread evenly around the outside of the meter boxes.
- 9) Any water quality testing will be performed by the Owner.
- 10) Provision of access during normal working hours (7:00 am to 6:00 pm, Monday - Friday) to the Project sites, Public Works Building, and Sports Center Complex.
- 11) Owner will coordinate with any large-scale customers who require assistance with scheduled equipment shutdowns required for implementation of this Scope of Work, including stopping and restarting of existing equipment.
- 12) Owner will be responsible for any service-side line breaks during installation due to a deteriorating line or infrastructure.
- 13) Disposition of Hazardous Substances Laws will be the responsibility of the Owner regardless of such Hazardous Substances' acceptability for disposal at local area disposal/recycle facilities.

Exclusions

- 1) Yearly fees for fixed network, including receiver cell fees, internal and client website fees, and billing provider fees.
- 2) Any communication, paperwork, authorizations, and/or fees required by the California Department of Transportation (Cal Trans) will be the responsibility of the Owner.
- 3) Overtime or weekend work.
- 4) Removal of hazardous or contaminated materials or equipment, including removal and/or remediation of Hazardous Substances and contaminated soil required anywhere on Owner's property, including, but not limited to, removal, disposal, and backfill with clean soil, not caused by Contractor or any of its agents or subcontractors.
- 5) Removal of unknown interior and underground structures or debris.
- 6) Demolition and/or removal of existing structures.

- 7) Procurement of easements, zoning variances, encroachment permits, and legal authorizations regarding planning and site use, if any, required for the Project.
- 8) Installation of screening revisions, roof screens or additions, building enclosures, landscaping, visual, acoustic, or any other mitigation.
- 9) Production of an environmental impact report or acquisition of any environmental permits, other than those specifically identified in this Scope of Work.
- 10) Special inspections required by the Owner, other than those specifically identified above.
- 11) Provision and/or installation of water meters above and beyond the totals provided in the AMI System Equipment Quantities below. Water meter quantity and sizes will be verified prior to installation – if quantity or size of meters differ from table below, Contractor will provide price increase or reduction.
- 12) Scope of Work assumes that existing 36 active gateways and 3,100 new cellular connections will be sufficient to provide the required communications to Badger’s Beacon AMA software, and no provisions are included for providing additional cellular connections, re-activating gateways, or installing new gateways.
- 13) Repair of major leaks, existing piping deficiencies, and other work not specifically identified.
- 14) Repair of curb valve(s) if identified as inoperable.
- 15) Repair or replacement of old or damaged service pipe on either side of the meter that extends outside the meter boxes (for small meters) or more than 18” from the meter (for large meter installations).
- 16) Locking meter box covers have not been included in this Project. Any requirements for locking lids will be the responsibility of the Owner.
- 17) If new meter box covers do not fit correctly due to damaged box lip, the Owner will be responsible for repair of existing box.
- 18) Any (pre-cast or cast in place) concrete work (including lids and/or boxes).
- 19) It is assumed that any piping removed as part of the Work can be recycled without additional cleaning or flushing. Pipe/components requiring additional cleaning prior to recycling will be placed in on-site area designated by Owner.
- 20) Any lid replacements if broken, damaged, or needed for communication purposes, or any lid drilling to allow for antennas to communicate through lids.
- 21) Cleanout of meter boxes if required to perform work (e.g., when meters are buried in dirt and debris).
- 22) Dismantling and recycling of removed meters.

AMI System Equipment Quantities

Description	Specification	Register Specification	Quantity
5/8"	Badger Recordall Disc Series Meter	Orion SE Fixed Network Endpoint	12,295
3/4"	Badger Recordall Disc Series Meter	Orion SE Fixed Network Endpoint	544
1"	Badger Recordall Disc Series Meter	Orion SE Fixed Network Endpoint	1,281
1 1/2"	Badger Recordall Disc Series Meter	Orion SE Fixed Network Endpoint	535
2"	Badger Recordall Disc Series Meter	Orion SE Fixed Network Endpoint	738
3"	Badger Recordall Turbo Series Meter	Orion SE Fixed Network Endpoint	110
4"	Badger Recordall Turbo Series Meter	Orion SE Fixed Network Endpoint	60
6"	Badger Recordall Turbo Series Meter	Orion SE Fixed Network Endpoint	15
8"	Badger Recordall Turbo Series Meter	Orion SE Fixed Network Endpoint	12
Cellular Connection (Add-on)			3,100

Allowance

It is expected that unique situations will be encountered over the course of this retrofit, which will require additional work from the Contractor, including reconfiguration for new lay-lengths, adding bypass valves or strainers, replacing/modifying lids where needed, relocating transmitters, compound meter adjustments, repairs beyond 18" of meters, cleanout of buried meters, etc. To that extent, the contract includes a \$250,000 (two hundred and fifty thousand dollars) allowance to account for such costs. If Owner directs Contractor to proceed with work exceeding allowance amount available, a Change Order will be required. Depending on the additional scope identified, schedule adjustments may be required.

At the end of every two weeks, Contractor will provide a list of all additional work completed during the two-week period. Owner will have three days to challenge any additional charges, after which Contractor will assume the charges are accepted. Any work that individually exceeds \$2,000 will be requested and coordinated ahead of work commencing.

Some of these potential cost adders have been identified during the development phase, and are outlined below:

<u>Additional Services and Pricing</u>	<u>Unit of Measure</u>	<u>Unit Price</u>
Hourly Rate for additional work outside of standard scope of work (beyond fixed costs outlined below)	PER HOUR	\$ 95
3" and 4" Spools	EACH	\$ 250
6" and 8" Spools	EACH	\$ 450
3" Strainer and Install	EACH	\$ 750
4" Strainer and Install	EACH	\$ 1,000
6" Strainer and Install	EACH	\$ 1,200
Adder for Confined Space Entry Permits	EACH	\$ 100
Bushing adapter install for 1"-3/4" services	EACH	\$ 20
5/8"-3/4" Valve Replacement	EACH	\$ 150
1" Valve Replacement	EACH	\$ 200
Concrete Cutting and Restoration	PER SQFT	\$ 175
Small Meter Box Replacement	EACH	\$ 225
Large Meter Box Replacement	EACH	\$ 650
Raise Small Meter Box (Soft Dig)	EACH	\$ 50
Raise Large Meter Box (Soft Dig)	EACH	\$ 100
Register Retrofit (Add-on)	EACH	\$ 255
Cellular Connection (Add-on)	EACH	\$ 45
<u>Fibrelyte Meter Lid FL03</u>	EACH	\$ 35
<u>Fibrelyte Meter Lid FL09</u>	EACH	\$ 40
<u>Fibrelyte Meter Lid FL12</u>	EACH	\$ 70
<u>Fibrelyte Meter Lid FL30</u>	EACH	\$ 115
<u>Fibrelyte Meter Lid FL36</u>	EACH	\$ 200
Metal Lid Drilling	EACH	\$ 20

Concrete Lid Drilling	EACH	\$	20
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ECM 3 – SCADA & Remote Communication, Pumping, and Automated Water Treatment

Per Owner’s request, this ECM Scope of Work is preliminary and shall be finalized in close coordination with City staff, to determine the systems and strategies that will best suit the City in the long-term. This section details the work completed by Contractor to date, along with Contractor recommendations which are currently included in the contract price. Details shall be finalized with the Owner during final engineering, hence the allowance included as described below.

SCADA System Upgrade & Remote Site Communication Scope of Work

Scope of Work includes 450 MHz RF communication upgrades to the following sites:

Data Aggregation Sites		Address	Server Location
Gibraltar Turnout (2 adjacent) + G Reservoir		641 Gibraltar Court. Milpitas. CA	Yes
Milpitas Public Works		1265 N Milpitas Blvd. Milpitas. CA	Yes
Pumping Stations		Address	Water Treatment
	Type		
Jurgens Storm Pump Station	Storm	345 Jurgens Drive. Milpitas. CA	No
Spence Creek Storm Pump Station	Storm	11 Butler Street. Milpitas. CA	No
Penitencia Storm Pump Station	Storm	944 La Honda Drive. Milpitas. CA	No
Milpitas Materials Storm Pump Station	Storm	1125 N. Milpitas Blvd. Milpitas. CA	No
Abbott Storm Pump Station	Storm	1225 N. Abbott. Milpitas. CA	No
California Circle Storm Pump Station	Storm	1735 California Circle. Milpitas. CA	No
Berrvessa Storm Pump Station	Storm	731 Folsom Circle. Milpitas. CA	No
Murphy Ranch Storm Pump Station	Storm	801 Murphy Ranch Road. Milpitas. CA	No
Bellew Storm Pump Station	Storm	481 Murphy Ranch Road. Milpitas. CA	No
Oak Creek Storm Pump Station	Storm	1521 McCarthy Blvd. Milpitas. CA	No
PD Sump Storm Pump Station	Storm	1275 N. Milpitas Blvd. Milpitas. CA	No
Wrigley Ford Storm Pump Station	Storm	75 Marvlinn Drive. Milpitas. CA	No
Manor Storm Pump Station	Storm	349 Marvlinn Drive. Milpitas. CA	No
McCarthy Storm Pump Station	Storm	1001 N. McCarthy Blvd. Milpitas. CA	No
Main Sewer Pump Station	Sewer	1425 N. McCarthy Blvd. Milpitas. CA	No
Venus Way Sewer Pump Station	Sewer	1085 Venus Way. Milpitas. CA	No
Gibraltar Turnout (2 adjacent) + G Reservoir	Water	641 Gibraltar Court. Milpitas. CA	Yes

Ayer Reservoirs	Water	1429 E. Calaveras Blvd. Milpitas. CA	Yes
Tularcitos Pump Station	Water	1200 Tularcitos Drive. Milpitas. CA	Yes
Countrv Club Station	Water	1437 Countrv Club Drive. Milpitas. CA	Yes
Minnis Tank	Water	Launch Site Road. Milpitas. CA	Yes

During Phase 1, Contractor performed an analysis of current industry-leading SCADA software to determine the best fit for the Owner's needs. Based on the information discovered, Contractor is proposing the Ignition! software by Inductive Automation as a starting point for this design (included in this contract scope of work). Contractor will engage with Owner staff to verify that Ignition! is indeed the right fit for the City, or study the integration feasibility of any other preferred SCADA software as part of the additional work to be completed under this scope allowance. Project schedule includes 95 calendar days for Owner discussion and decision on software package. If any additional time is required for Owner to reach a final decision, Contractor will be granted an equivalent time extension.

Engineering & Design

- 1) Perform site follow-up survey
- 2) Review station pumping logic and develop pumping plan based on water quality:
 - a. Evaluate whether electrical changes are necessary
 - b. Evaluate whether mechanical piping changes are necessary
 - c. Evaluate whether additional valves are needed
- 3) Chlorine Injection System (Liquid Sodium Hypochlorite) for Gibraltar, Ayer, Tularcitos and Minnis stations:
 - a. Review Chlorine Injection design, checking for current code compliance
 - b. Review Mechanical Drawings
 - c. Review Electrical Drawings for any medium/high voltage electrical
- 4) Ammonia Injection System, Liquid Ammonium Sulfate (LAS) for Gibraltar, Ayer, Tularcitos and Minnis stations:
 - a. Review LAS injection design, checking for current code compliance
 - b. Review Mechanical Drawings
 - c. Review Electrical Drawings for any medium/high voltage electrical
- 5) Review new instruments to be furnished:
 - a. Perform engineering review and confirm proper wiring and power supplies:
 - i. Flow Meter & Totalizer
 - ii. New Monochloramine Meter
 - iii. New Chlorine Residual Meter
- 6) Design Project Management:

- a. Review of applicable codes and standards
- b. Meeting with Owner to create 60% Design, 90% Design, and 100%/Final Design for:
 - i. Overall SCADA Engineering Design (Level 1, SCADA Infrastructure)
 - ii. Overall Water & Treatment Engineering Design (Level 1, Water & Water Treatment)
 - iii. Overall Water & Treatment Engineering Design (Level 1, Stormwater)
 - iv. Overall Water & Treatment Engineering Design (Level 1, Wastewater)
- c. Develop Master Plan

SCADA Server Upgrades Products & Materials

For the Public Works Main Office and the Gibraltar Sites, the following items will be added between the two sites, with one of the workstations (item 3) being added to the Main Lift Station:

- 1) (1) Office Master Radio Repeater Remote Terminal Unit (RTU)
- 2) (2) Radio Towers
- 3) (1) SCADA Server
- 4) (3) SCADA Workstations
- 5) (1) SCADA Redundant Server
- 6) SCADA Software
- 7) Human Machine Interface (HMI) Development
- 8) System Redundancies
- 9) System Backup

Contractor will work with Owner to determine what the final design requirements are and where the various pieces of equipment should be located, as well as the best locations for each part of the SCADA infrastructure. If additional redundancy is needed, Contractor will work with the Owner to determine and price out the expanded scope as part of this scope allowance.

Water System Hardware Upgrades

- 1) Water Hillside System RTU upgrades at Country Club, Tularcitos, Minnis
- 2) Gibraltar Water Treatment PLC Hardware & Upgrades include:
 - a. New HMI Platform & Upgrades
 - b. Addition of HMI touch screen in pumping bay
 - c. HMI Updates to support water system changes & pumping strategy
 - d. Engine driven pump integration
- 3) Ayer Water Treatment New Programmable Logic Controller (PLC) Hardware & Upgrades include:
 - a. New Allen Bradley Control Logix PLC system, utilize existing cabinet and wiring
 - b. Remove old PLC, utilize existing terminations
 - i. Update drawings as needed
 - ii. Add any additional wiring needed
 - c. Install new HMI touch screen
 - d. New HMI & Programming

Stormwater System SCADA Hardware Upgrades

- 1) Provide for the fourteen (14) Stormwater Lift Stations:
 - a. New ScadaPak PLC Systems
 - b. New HMI Platform & Upgrades
 - c. Addition of HMI touch screen in each pumping site
 - d. RF Communication Hardware for Each Site
 - e. HMI Updates to support water system changes & pumping strategy
 - f. Engine driven pump integration
 - g. Process Narrative
 - h. Loop Diagrams
 - i. P&ID's
 - j. Electrical and Mechanical drawings
- 2) Provide control Upgrades for Wrigley Ford Generator, and Engine Driven Pumps at Berryessa (3), Penitencia (3), Bellew (1), Murphy Ranch (3), Oak Creek (3), McCarthy (3), Jurgens (4), and California Circle (3):
 - a. Control Hardware & Design Services
 - b. Installation & Startup
 - c. New Engine Sensors if required
 - d. SCADA Integration
 - e. New Actuators for Speed Control if required at Jurgens and California Circle

Automated Water Treatment, Pumping Changes, Tank Mixing & Chloramine Dosing Control

Scope of Work includes:

- 1) Creation of 60/90/100% drawings, and review of applicable codes and standards.
- 2) Providing and installing the equipment and instrumentation outlined below, per quantities and locations shown.

Equipment	Gibraltar	Ayer	Tularcitos	Minnis/Hillside Tank
Water Softener	1	1	1	1
Brine Tank	1	1	1	1
Hypochlorite Generation System	1	1	1	1
Hypochlorite Storage Tank	1	1	1	1
Hydrogen Dilution Blower	1	1	1	1
Hypochlorite Dosing Assembly	1	1	1	1
Liquid Ammonium Sulfate Storage Tank	1	1	1	1
Liquid Ammonium Sulfate Dosing Assembly	1	1	1	1
Sample Feed Pump	1	1	1	1
Sampling Cabinet	1	1	1	1
Dosing Local Control Panel	1	1	0	0
Mixer	1	1	1	1
Mixer Control Panel	1	1	1	1
Transformer Rectifier	1	1	1	1
Acid Cleaning System	1	1	1	1
Water Quality Station	1	1	1	1
Pressure Reducing Valve	2	2	2	2
Cartridge Filter	3	3	3	3

Pressure Indicator	2	2	2	2
Air Flow Switch	1	1	1	1
Hydrogen Detector	2	1	1	1

- 3) Required trenching, backfill, asphalt patch paving, concrete coring, interconnecting piping and valves, and SCADA system integration, in accordance with applicable codes and standards.
- 4) Manufacturers' services for installation inspection, system start-up, and operator training
- 5) Electronic submittal of operation and maintenance manuals

Submersible Pump Replacements

Scope of work includes, both at Country Club and Tularcitos sites:

- 1) Disconnect wiring from (1) existing submersible pump at each site.
- 2) Provide crane lift safety plan and rigging for pump equipment. Owner must make arrangements to have building unoccupied during any lift.
- 3) As required, provide traffic control plan, which will require Owner's assistance in closing streets as needed for scope installation.
- 4) Install (1) 25HP, 1770 RPM, 94.5% efficiency vertical turbine pump at each site.
- 5) Wire and connect new pumps.
- 6) Install new sole plates.
- 7) Check valve rebuild and inspection.

Work by Owner

- 1) Provide all drawings and as-builts of site conditions available.
- 2) Feedback for Cybersecurity needs.
- 3) Needed IT support as required for integration.
- 4) Arrangements to have stations unoccupied during crane lifts for submersible pump replacements.
- 5) Provision of parking spaces for Contractor and Contractor's Subcontractors' employees' vehicles.
- 6) Provision of a clearly designated equipment and construction lay-down area for Contractor trailers and supplies required to perform the work.
- 7) Owner will facilitate any needed support for fuel tank monitoring equipment integration into the SCADA system. Because the fuel tank codes are complex, Contractor assumes the Owner use their fuel system expert to assist in any needed integration.
- 8) Any ongoing cellular connection costs or contracts.
- 9) Removal and/or remediation of Hazardous Substances and contaminated soil required anywhere on Owner's property, including, but not limited to, removal, disposal, and backfill with clean soil, not caused by Contractor or any of its agents or subcontractors, unless specified otherwise in this Scope of Work.
- 10) Disposition of Hazardous Substances Laws will be the responsibility of the Owner regardless of such Hazardous Substances' acceptability for disposal at local area disposal/recycle facilities.

Exclusions

- Overtime or weekend work.

- Removal/demolition and storage/disposal of existing structures and old equipment.
- Removal of unknown interior and underground structures or debris.
- Removal of hazardous or contaminated materials or equipment.
- Leak detection for equipment.
- Salt supply, including first fill.
- 40% Liquid Ammonium Sulfate supply, including first fill.
- Supply and feed of chemical during construction.
- Upgrades to electrical infrastructure if needed to supply new equipment.
- Any network upgrades to connect to City’s internal network.
- Any changes to the fuel tank monitoring hardware other than pulling a set of contacts to the PLC to signal an alarm from the system.
- Painting of existing equipment or surfaces.
- Procurement of easements, zoning variances, and legal authorizations regarding planning and site use, if any, required for the Project.
- Installation of screening revisions, roof screens or additions, building enclosures, landscaping, visual, acoustic, or any other mitigation.
- Production of an environmental impact report or acquisition of any environmental permits, other than those specifically identified in this Scope of Work.
- Special inspections.
- Replacement of equipment not specifically listed here but required to meet updated codes.
- Ongoing SCADA software fees will be the responsibility of Owner.

Allowance

As mentioned above, per Owner’s request, this ECM Scope of Work is preliminary and shall be finalized in close coordination with City staff, to determine the systems and strategies that will best suit the City in the long-term. Therefore, this contract includes a \$1,800,000 (one million eight hundred thousand dollars) allowance to account for potential scope changes and additional scopes which are expected during final engineering, based on Owner’s input. If Owner selected scope exceeds allowance amount available, a Change Order will be required. Depending on the additional scope identified, schedule adjustments may be required.

Additionally, Owner is interested in potentially adding their Pressure Reducing Valves (PRVs) to the SCADA and automation scope, which would require further investigation and engineering beyond the scope completed in Phase 1. The audits, engineering and investigations will be billed on a T&M basis against this allowance, and Owner-approved scopes will also be funded through this allowance.

ECM 4 – Facilities and Pumping Stations Lighting Upgrades

The table below lists the locations of the interior and exterior lighting retrofits. For detailed descriptions of each interior and exterior lighting retrofit, refer to Exhibit R.

Facilities and Pumping Stations Lighting Summary

Site	Location	Lighting Yes/ No
Facilities		
City Hall	455 East Calaveras Blvd., Milpitas, CA	Yes
Public Works Corp Yard and Vehicle Shop	1265 North Milpitas Blvd., Milpitas, CA	Yes

Police Department		
Community Center	457 East Calaveras Blvd., Milpitas, CA	Yes
Senior Center	40 North Milpitas Blvd., Milpitas, CA	Yes
Sports Center Complex	1325 East Calaveras Blvd., Milpitas, CA	Yes
Library Parking Garage	160 N Main St., Milpitas, CA	Yes
Fire Station #1 Main Fire Admin Fire Training Center	777 South Main St., Milpitas, CA	Yes
Fire Station #3	45 Midwick Drive, Milpitas, CA	Yes
Fire Station #4	775 Barber Lane, Milpitas, CA	Yes
Pumping Stations		
Jurgens Storm Pump Station	345 Jurgens Drive, Milpitas, CA	Yes
Spence Creek Storm Pump Station	11 Butler Street, Milpitas, CA	Yes
Penitencia Storm Pump Station	944 La Honda Drive, Milpitas, CA	Yes
Milpitas Materials Storm Pump Station	1125 N. Milpitas Blvd, Milpitas, CA	Yes
Abbott Storm Pump Station	1225 N. Abbott, Milpitas, CA	Yes
California Circle Storm Pump Station	1735 California Circle, Milpitas, CA	Yes
Berryessa Storm Pump Station	731 Folsom Circle, Milpitas, CA	Yes
Murphy Ranch Storm Pump Station	801 Murphy Ranch Road, Milpitas, CA	Yes
Bellew Storm Pump Station	481 Murphy Ranch Road, Milpitas, CA	Yes
Oak Creek Storm Pump Station	1521 McCarthy Blvd, Milpitas, CA	Yes
PD Sump Storm Pump Station	1275 N. Milpitas Blvd, Milpitas, CA	Yes
Wrigley Ford Storm Pump Station	75 Marylinn Drive, Milpitas, CA	Yes
Manor Storm Pump Station	349 Marylinn Drive, Milpitas, CA	Yes
McCarthy Storm Pump Station	1001 N. McCarthy Blvd, Milpitas, CA	Yes
Main Sewer Pump Station	1425 N. McCarthy Blvd, Milpitas, CA	Yes
Venus Way Sewer Pump Station	1085 Venus Way, Milpitas, CA	Yes
Gibraltar Turnout (2 adjacent) + G Reservoir	641 Gibraltar Court, Milpitas, CA	Yes
Ayer Reservoirs	1429 E. Calaveras Blvd, Milpitas, CA	Yes
Tularcitos Pump Station	1200 Tularcitos Drive, Milpitas, CA	Yes
Country Club Station	1437 Country Club Drive, Milpitas, CA	Yes
Minnis Tank	Launch Site Road, Milpitas, CA	Yes
Pinewood Well	227 Lonetree Court, Milpitas, CA	Yes
Sunnyhills Turnout	405 Washington Dr, Milpitas, CA	No
Calaveras Turnout	584 E. Calaveras Dr, Milpitas, CA	No
Main Street Turnout	534 Hammond Way, Milpitas, CA	No

Inclusions:

Provide and install new lighting fixtures or retrofit kits as identified in Exhibit R.

1. Interior retrofit includes:

- a. **High Efficiency Linear Light Emitting Diode (LED) Upgrades:** Where indicated, replace T5, T8 and T12 lamps and ballasts with new LED lamps and drivers, new troffer kits or new LED fixtures per Exhibit R.
- b. **High Efficiency Compact Light Emitting Diode (LED) Upgrades:** Where indicated, replace compact fluorescent, incandescent, halogen and high intensity

discharge lamps with new compact LED lamps and recessed down-light kits per Exhibit R.

- c. **Emergency Ballasts:** Where indicated, replace existing 157 (one hundred and fifty-seven) emergency ballasts with LED emergency drivers per Exhibit R.
- d. **Lighting Controls:** Provide, install, and commission lighting controls per Exhibit R.

2) Exterior retrofit includes:

- a. **LED Lighting for Exterior Applications:** Where indicated, replace high pressure sodium, metal halide, compact fluorescent, incandescent or halogen fixtures with new LED fixtures as set forth in Exhibit R.
- b. **Exterior Lighting Controls:** Provide and install motion sensors, photocells and bi-level (step-dim) control per Exhibit R.

Exclusions:

- Assumes standard 120-277V for all fixtures.
- Replacement of existing LED fixtures, occupancy or dimming sensors, unless specifically included in Exhibit R.
- The scope of work assumes that there are no broken lenses or ceiling tiles. No provisions have been made for replacing any existing lenses or ceiling tiles.
- All lenses will be cleaned of dust and other particles, but no staining or deeper soiling will be removed.
- Any replacement for any seismic supports for new fixtures.
- Repair or replacement of any existing fixtures including tombstones or fixture lens frames.
- Any troubleshooting, repair or upgrade to emergency lighting or egress systems unless specified.
- Replacement or repair of ceiling tiles, ceiling track system, or other ceiling surfaces expect where damage was directly caused by Contractor.
- All existing wiring is assumed to meet local and state building codes, repairing existing wiring including grounding is excluded.
- The scope of work assumes proper power is present for all fixtures. No provisions have been made for power upgrades or repairs, simply a one-for-one fixture or lamp/driver replacement.
- The scope of work assumes that existing poles are structurally sound, that no internal wiring or fuse issues are present, that any pole arms are in working condition, and that adequate power is provided to all fixtures. No allowances have been made to bring existing poles, pole arms, wiring or fuses to proper working condition.
- Hazardous Substances testing or abatement are excluded. The lighting upgrades are not expected to disturb existing ceiling and wall surfaces.
- Emergency drivers beyond as identified above.
- Any patching or painting.
- Any existing or new water leaks for sub-surface or well type fixtures are excluded from the scope of work and are the Owner's responsibility, including any leaks that may be caused during the retrofit process.

ECM 5 – Parks Lighting Upgrades

The table below lists the locations of the interior and exterior lighting retrofits. For detailed descriptions of each interior and exterior lighting retrofit, refer to Exhibit S.

Parks Lighting Summary

Site	Location	Lighting Yes/ No
Augustine Memorial Park	Cortex and Coelho off Escuela, Milpitas, CA	Yes
Ben Rogers Park	Grand Teton at Sequoia, Milpitas, CA	Yes
Calle Oriente Mini-Park	Calle Oriente off North Park Victoria, Milpitas, CA	Yes
Cardoza Park	Kennedy Drive at North Park Victoria, Milpitas, CA	Yes
Cerano Park	SanDisk and Murphy Ranch, Milpitas, CA	Yes
Creighton Park	Olympic west of South park Victoria, Milpitas, CA	No
Dixon Landing Park	Dixon Landing and Milmont, Milpitas, CA	Yes
Foothill Park	Roswell Drive at Roswell Court, Milpitas, CA	Yes
Gill Memorial Park	Paseo Refugio and Santa Rita, Milpitas, CA	Yes
Hall Memorial Park	LaHonda and Coyote, Milpitas, CA	Yes
Hidden Lake Park	N. Milpitas Blvd between Escuela Pkwy and Jacklin Rd, Milpitas, CA	Yes
Higuera Adobe Park	Wessex off N Park Victoria, Milpitas, CA	Yes
Hillcrest Park	Fieldcrest off Crescent, Milpitas, CA	Yes
Murphy Park	Yellowstone east of S. Park Victoria, Milpitas, CA	Yes
Pinewood Park	Lonetree and Starlite Drive, Milpitas, CA	Yes
Sandalwood Park	Escuela Pkwy and Russell, Milpitas, CA	Yes
Selwyn Park	Selwyn Drive off Dempsey Rd, Milpitas, CA	Yes
Sinnott Park	Clear Lake and Tahoe, Milpitas, CA	Yes
Starlite Park	Rudyard and Abbott Ave., Milpitas, CA	Yes
Strickroth Park	Martil and Gemma off east Tramway, Milpitas, CA	Yes
Jones Memorial Park	Jacklin at Hillview, Milpitas, CA	Yes
Robert E. Browne Park	Yellowstone east of S. Park Victoria, Milpitas, CA	Yes
Dog Park at Ed Levin	3100 Calaveras Rd, Milpitas, CA	No
Pecot Park	Dixon Landing, west of Conway, Milpitas, CA	No
Parc Metro East Park	Parc Metro, Curtis, east of main St, Milpitas, CA	Yes
Parc Metro Central Park	Parc Metro, Curtis, east of main St, Milpitas, CA	Yes
Parc Metro West Park	Parc Metro, Curtis, east of main St, Milpitas, CA	Yes
Alviso Adobe	Calaveras, east of Piedmont, Milpitas, CA	Yes
Tom Evatt Park	Abel St and Machado St, Milpitas, CA	Yes
Hetch Hetchy Linear Park	Hetch Hetchy Trail, Milpitas, CA	Yes
John McDermott Park	Alvarez Court, off Abel St, Milpitas, CA	Yes
O'Toole Elms Park	Abel St, north of Curtis St, Milpitas, CA	Yes
Calaveras Ridge Park	Calaveras Ridge Drive, Milpitas, CA	No
Bob McGuire Park	Garden St, between S. Milpitas Blvd and Piper Drive, Milpitas, CA	No
Augustus Rathbone Park	Expedition Lane and Jubilee Drive, Milpitas, CA	No
McCandless Park	1700 block McCandless Drive, Milpitas, CA	No

Inclusions:

Provide and install new lighting fixtures or retrofit kits as identified in Exhibit S.

2. Interior retrofit includes:

- c. **High Efficiency Linear Light Emitting Diode (LED) Upgrades:** Where indicated, replace T5, T8 and T12 lamps and ballasts with new LED lamps and drivers, new troffer kits or new LED fixtures per Exhibit S.
- d. **High Efficiency Compact Light Emitting Diode (LED) Upgrades:** Where indicated, replace compact fluorescent, incandescent, halogen and high intensity

discharge lamps with new compact LED lamps and recessed down-light kits per Exhibit S.

- e. **Emergency Ballasts:** Where indicated, replace existing 1 (one) emergency ballast with an LED emergency driver per Exhibit S.
- f. **Lighting Controls:** Provide, install, and commission lighting controls per Exhibit S.

3) Exterior retrofit includes:

- a. **LED Lighting for Exterior Applications:** Where indicated, replace high pressure sodium, metal halide, compact fluorescent, incandescent or halogen fixtures with new LED fixtures as set forth in Exhibit S.
- b. **Exterior Lighting Controls:** Provide and install motion sensors, photocells and bi-level (step-dim) control per Exhibit S.

Exclusions:

- Assumes standard 120-277V for all fixtures.
- Replacement of existing LED fixtures, occupancy or dimming sensors, unless specifically included in Exhibit S.
- The scope of work assumes that there are no broken lenses or ceiling tiles. No provisions have been made for replacing any existing lenses or ceiling tiles.
- All lenses will be cleaned of dust and other particles, but no staining or deeper soiling will be removed.
- Any replacement for any seismic supports for new fixtures.
- Repair or replacement of any existing fixtures including tombstones or fixture lens frames.
- Any troubleshooting, repair or upgrade to emergency lighting or egress systems unless specified.
- Replacement or repair of ceiling tiles, ceiling track system, or other ceiling surfaces expect where damage was directly caused by Contractor.
- All existing wiring is assumed to meet local and state building codes, repairing existing wiring including grounding is excluded.
- The scope of work assumes proper power is present for all fixtures. No provisions have been made for power upgrades or repairs, simply a one-for-one fixture or lamp/driver replacement.
- The scope of work assumes that existing poles are structurally sound, that no internal wiring or fuse issues are present, that any pole arms are in working condition, and that adequate power is provided to all fixtures. No allowances have been made to bring existing poles, pole arms, wiring or fuses to proper working condition.
- Hazardous Substances testing or abatement are excluded. The lighting upgrades are not expected to disturb existing ceiling and wall surfaces.
- Emergency drivers beyond as identified above.
- Any patching or painting.
- Any existing or new water leaks for sub-surface or well type fixtures are excluded from the scope of work and are the Owner's responsibility, including any leaks that may be caused during the retrofit process.

ECM 6 – Streetlighting Upgrades

Scope of work includes:

I. Install retrofit lighting fixtures:

- Replace existing high-pressure sodium (HPS), low pressure sodium, mercury vapor, induction, incandescent, and metal halide (MH) lamps with LED lamp technology as set forth in the table below.

Streetlight Type	Fixture Quantity	Control Quantity
Cobra Head Replacement Subtotal	1,443	1,443
<i>Cobra Head Replacement, 40W</i>	76	76
<i>Cobra Head Replacement, 60W</i>	219	219
<i>Cobra Head Replacement, 80W</i>	202	202
<i>Cobra Head Replacement, 100W</i>	740	740
<i>Cobra Head Replacement, 125W</i>	166	166
<i>Cobra Head Replacement, 150W</i>	40	40
Antique/ Decorative Replacement Kits, 45W	257	257
Installation of LED Fixtures Provided by Owner, Labor Only	485	485
Existing LED Streetlights	0	2,268
Total	2,185	4,453

- Provide wattage labels for new fixtures as required by PG&E.
- Provide traffic control plan, which will require Owner’s assistance in closing streets as needed for scope installation.

II. Install and commission streetlighting controls:

- As shown in the table above, install and commission Philips CityTouch or equivalent cellular controls on all 4,453 new and existing streetlights, including photocells, by plugging connector nodes into NEMA sockets on top of fixtures. Controls shall connect to a web-based platform which will show any real-time outages.
- Provide traffic control plan, which will require Owner’s assistance in closing streets as needed for scope installation.

III. Update the City of Milpitas PG&E records and overall streetlighting inventory:

- Track and log all streetlight retrofits and update latest excel sheet provided by PG&E, making sure it is current at the end of the project.

Exclusions:

- Assumes standard 120-277V for all fixtures.
- No encroachment permits are included.
- No photometrics or illumination studies are included.
- No bird spikes are included.
- No pole badge number replacements are included.
- Any lenses will be cleaned of dust and other particles, but no staining or deeper soiling will be removed.
- Any replacement for any seismic supports for new fixtures.
- Repair or replacement of any existing fixtures including tombstones or fixture lens frames.
- Any troubleshooting, repair or upgrade to emergency lighting or egress systems unless specified.
- All existing wiring is assumed to meet local and state building codes, repairing existing wiring including grounding is excluded.

- The scope of work assumes that existing poles are structurally sound, that no internal wiring or fuse issues are present, that any pole arms are in working condition, and that adequate power is provided to all fixtures. No allowances have been made to bring existing poles, pole arms, wiring or fuses to proper working condition.
- Any vegetation management required to access streetlights is excluded from Scope of Work and shall be responsibility of Owner.
- Scope of Work assumes all poles are accessible with a standard bucket truck, no additional provisions included.
- Replacement fixtures do not include any protective shields for locations requiring partial blockage of light to prevent stray light into unwanted areas. If individual streetlights are identified that require a protective shield, Contractor can provide and install protective shields for \$115.00 each.
- Antique/Decorative Replacement Kits assume existing fixtures are in proper working condition. If existing fixture is not working, or are otherwise not suitable to be retrofitted, a replacement fixture will be provided at an additional cost.
- Existing cobra head streetlights are assumed to all have NEMA 3, 5 or 7 pin receptacles. Fixtures without NEMA sockets will either be excluded from the City Touch System or will require a new fixture at an additional cost.
- Ongoing annual fees for the streetlighting controls will be the responsibility of Owner.

ECM 7 – Sports Lighting Upgrades

Contractor shall be responsible for providing all design documents, materials and labor, on-site supervision, project management, tools, equipment, and obtaining permits required to complete the scope described below:

- a. Design services, including City of Milpitas submittal.
- b. Removal and installation of fixtures and poles as described in the table below:

Location	Remove	Install
Cardoza Park/ Milpitas Sports Complex Baseball Field (with Soccer Overlay)	60 fixtures (7 existing poles to remain in place)	8 TLC-BT-575 34 TLC-LED-1500 4 pathway fixtures
Cardoza Park/ Milpitas Sports Complex Softball Field	29 fixtures (6) 40' poles	8 TLC-BT-575 6 TLC-LED-1200 18 TLC-LED-1500 3 pathway fixtures (4) 60' poles (2) 70' poles
Hall Memorial Soccer Field	16 fixtures (8) 40' poles	24 TLC-LED-1500 4 bleacher/pathway fixtures (4) 80' poles

- c. Existing poles to remain are assumed to be in good condition.
- d. Installation of Musco’s Control Link system at all three locations. Start up and commission the Control Link system to connect with the Musco network. This system includes remote on and off control as well as performance monitoring with 24/7 customer support.
- e. Programming and tuning new lighting system.

The Owner will need to provide down time for the pole cell equipment as required by OSHA standards during the installation.

Exclusions:

- Assumes standard 480V, 3 phase system for all fixtures.
- Overtime or weekend work.
- Temporary power and lighting.
- Surveying, staking and utility locating.
- Removal and/or replacement of concrete and asphalt.
- Cost for Owner’s agent inspections.
- Structural upgrades to existing poles not being replaced.
- Any replacement for any seismic supports for new fixtures.
- Any troubleshooting, repair or upgrade to emergency lighting or egress systems unless specified.
- All existing wiring is assumed to meet local and state building codes, repairing existing wiring including grounding is excluded.
- The scope of work assumes that existing poles are structurally sound, that no internal wiring or fuse issues are present, that any pole arms are in working condition, and that adequate power is provided to all fixtures. No allowances have been made to bring existing poles, pole arms, wiring or fuses to proper working condition.
- Any required ADA upgrades.
- Hazardous material surveys, testing, and remediation.
- Full or Comprehensive EIR (Report), environmental surveys, studies (including traffic impact, bio-impact, and remediation). If any are necessary, time and cost adjustment will be required.
- Any changes to the primary electrical service to the fields.
- Any corrections to existing power issues, including but not limited to any shorted wires, defective breakers/grounding, etc. The Owner alone is responsible for fixing any existing power-related issues discovered, as well as any issues with existing equipment not replaced by this Scope of Work.
- New perimeter fencing.
- Landscaping, including irrigation or drainage. Retrofitting sports lighting can at times require heavy equipment on fields. Contractor will work diligently to minimize damage as much as possible, coordinating with Owner to turn off field sprinklers prior to installation to reduce the risk of damage to the fields, but minor damage to grass and fields may still occur – including tire or track damage to grass while moving equipment, or minor depressions in field where equipment is used.
- Any changes to the existing public announcement system.
- Egress lighting for power outages.

Deliverables:

1. Photometric layouts.
2. As-builts.
3. Owner’s manuals and maintenance guides.
4. Provide one manufacturer led web-based training to demonstrate the functionality of the Control Link System to City of Milpitas staff.

ECM 8 – Solar Generating Facilities

The table below lists the locations for the solar photovoltaic (PV) installations and the structure types:

Site	Type	Minimum Ground Clearance Height
Community Center	Canopy	13'6"
Senior Center	Canopy and Roof Mount	13'6"

Scope of work will include:

1. Prepare and submit design drawings to the City of Milpitas for approval. This includes evaluation of the existing roof structure for structural capacity.
2. Provide geotechnical evaluations necessary for design requirements.
3. Provide utility interconnection drawings and application management services.
4. Provide and coordinate installation of the NGOM and NEM metering.
5. Procure materials and equipment necessary for construction.
6. Provide project management and construction management necessary for a full and complete installation.
7. Provide labor, supervision, and coordination with the Owner for the installation of photovoltaic modules and supporting structures, electrical distribution and control systems.
8. Provide and install PV modules and necessary mounting hardware for each system.
9. Provide and install inverters and necessary electrical equipment and conduits to connect to the electrical switchgear or meter. Electrical shutdowns are anticipated at each site. Time of shutdown will be coordinated with Owner and Utility and may include weekends.
10. Provide and install solar canopy structures. The canopy structure design will include a canopy structure that has a 7 degree tilt and is 13'6" feet clear of grade level on the low side and a pier depth of eight feet deep and assumes no de-watering, benching, shoring, or casing. Canopies will be provided with decorative fascia and decorative radiused HSS tube steel gussets, both painted to match canopy steel.
11. Provide and install roof mounted system. Provide and install necessary commodity roofing products to flask racking standoffs and solar related penetrations to maintain waterproof integrity of the existing structure. Owner to provide contact information for roofer/roof warranty holder so Contractor can coordinate to ensure work maintains roof warranty.
12. DC wiring and AC wiring within the solar canopies and roof mount structure shall be copper wire. Aluminum wire shall be used from each system's AC combiner to the main point of connection at the site's electrical switchgear.
13. Provide and install a step-down transformer at each site, with new equipment pads. Step-down transformers shall be enclosed in 6' tall chain link fence.
14. Provide and install fourteen (14) new LED lighting fixtures (RAB PRT42N or equivalent) for canopies (one for each 27' bay).
15. Provide as-built drawings and Operations & Maintenance manuals in electronic format upon project completion.
16. Provide tree removal, as required. 29 trees are expected to be removed, and any tree removed shall be replanted on site at a 2:1 ratio. Trees identified for removal are shown on the Tree Removal Layout below. Location of on-site replanting will be coordinated with Owner.
17. Provide lighting fixture, pole, and bollard removal, as required.
18. Provide miscellaneous backfill and restoration of landscaping in areas of work.

19. Start-up, test, and commission the systems in accordance with design plan and applicable industry standards.
20. Secure the Project Location and provide traffic redirection during rigging operations, and during the move-in and move-out of large equipment. Owner will assist with the foregoing site logistics by coordinating access and scheduling with Contractor.

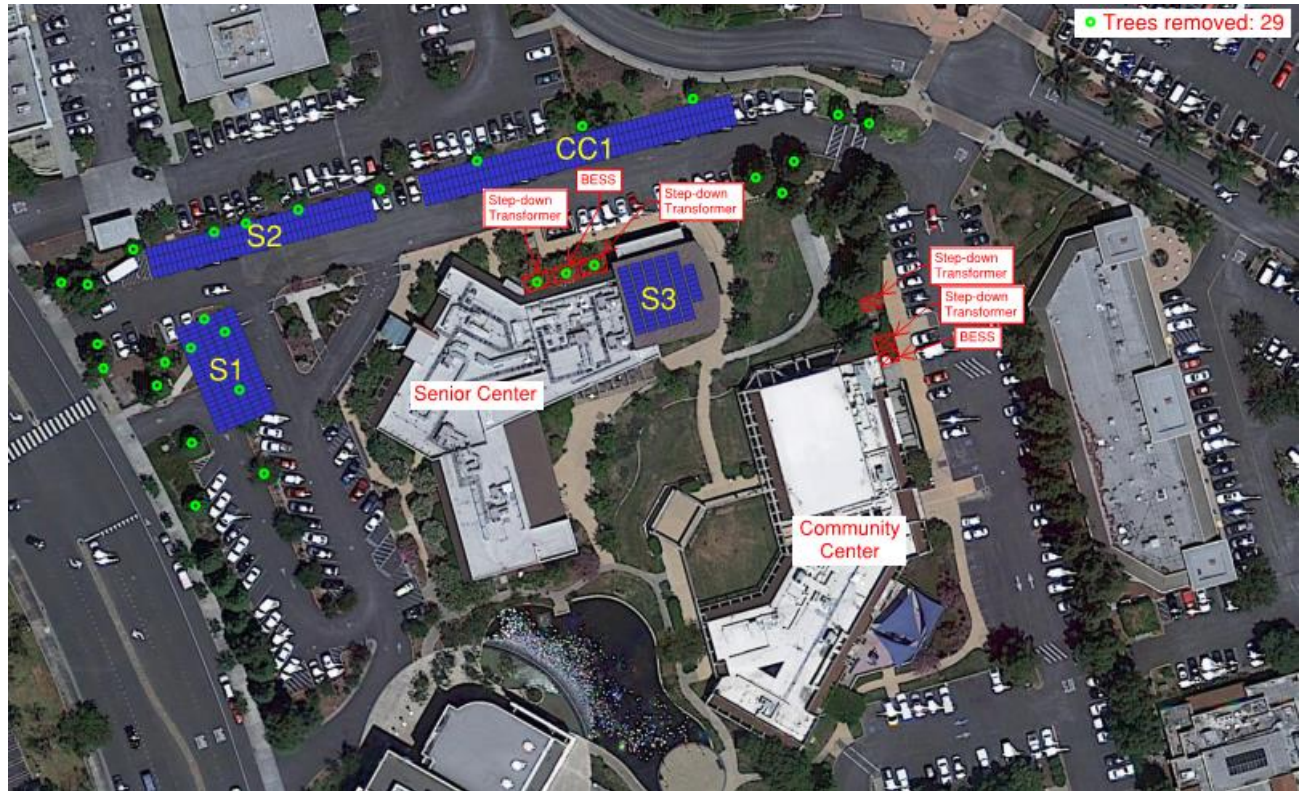
Preliminary Photovoltaic Layout

The following is a schematic engineering layout. The schematic engineering layout and the electrical routing proposed are subject to change due to field conditions and upon completion of final engineering.



Preliminary Tree Removal Layout

The following is a preliminary tree removal layout. It is subject to change due to field conditions and upon completion of final engineering.



Assumptions, Exceptions, Exclusions:

1. Scope of Work assumes that existing Senior Center roof structure can take on the added structural load of the PV system without requiring upgrades or repairs of any kind.
2. Cost for ADA accessibility upgrades to existing buildings or parking lots for path of travel, if required, are not included and will be calculated based upon final design.
3. Fencing slats are not included.
4. Remediation and/or removal of hazardous materials, hazardous wastes, or spoils are not included.
4. Access to areas of construction will be blocked to public during construction for safety.

ECM 9 – Resiliency Microgrids

Design, provide and install islanding microgrid at the Milpitas Senior Center and the Milpitas Community Center (roughly where shown in the Preliminary Photovoltaic Layout above).

Scope of Work at each site includes:

- Prepare and submit design drawings (to be included in solar PV design set) to City of Milpitas for approval
- Provide and install (1) Schneider Electric 125kW, approximately two-hour (or equivalent) Battery Energy Storage System (BESS) with new equipment pad.
- Provide and install (1) 100 kW natural gas reciprocating internal combustion engine (generator) with new equipment pad, to be connected to each site’s existing utility natural gas supply. No onsite fuel storage is provided.
- Provide and install (1) 1600A energy control center (1200A at Community Center) to consolidate BESS and natural gas generator.

- Replace main utility breaker with an automated, remotely controllable breaker with a synch check relay.
- Automated microgrid controls (with optional manual override) to integrate the solar systems described in ECM 8 with the BESS, generator and switchgear modifications to enable the system to island facilities from the grid so they remain operational in case of a planned or unplanned power outage. In general, goal is to primarily supply energy for each site's operation from the solar and battery systems, with the reciprocating engines complementing those as necessary.
- System installation includes detailed engineering, drawings, AHJ permitting as required, procurement services, installation, interconnection to the utility, system start-up and commissioning services.

Exclusions and clarifications:

- Microgrid controls and functionality can be accessed both on site (through local HMI on control center), as well as remotely through cloud-based platform.
- Microgrid is not designed to provide uninterrupted power supply in case of grid failure. The sites will experience a few seconds' delay between the system detecting a utility outage and powering back facility as the microgrid isolates itself from the grid and reconfigures assets to safely island the facility.
- Design assumes that facilities' load profile during an outage will be similar and within the parameters experienced in historical usage and baselines. If increased loads occur, Contractor cannot guarantee that microgrid will be able to power and sustain facility loads without Owner load curtailment.
- This ECM is subject to availability and lead time of BESS systems at the time of equipment ordering.
- Power shutdowns to the sites will be required to perform microgrid interconnection, initial commissioning and testing, as well as ongoing maintenance islanding tests as needed.
- Future availability of generators is subject to Bay Area Air Quality Management District and any other AHJ approvals as applicable.
- System design assumes existing electrical gear is adequately sized to support additional microgrid loads. No allowances other than those described above have been made for modifications to existing switchgear, Owner or utility electrical equipment.

ECM 10 – Electric Vehicle Charging Stations

Provide and install (2) bollard style Level 2 commercial dual-port electric vehicle (EV) charging stations to be located at the Senior Center parking lot as shown in the Preliminary Photovoltaic Layout above.

Scope of Work:

1. Prepare and submit design drawings (to be included in solar PV design set) to City of Milpitas for approval.
2. Procure materials (SemaConnect S6 or equivalent) and equipment necessary for construction.
 - a. Manufacturer's 5-year material and workmanship warranty included
 - b. Manufacturer's first 5 years of network service fees included
3. Provide project management and construction management necessary for a full and complete installation.
4. Wiring between charging stations shall be with copper wire. Aluminum wire will be used from AC combiner to the main point of connection at the site's electrical switchgear.
5. Provide as-built drawings and Operations & Maintenance manuals upon project completion.
6. Start-up, test, and commission the systems in accordance with design plan and applicable industry standards.
7. Coordinate billing parameters and website setup between vendor and Owner.

Exclusions:

1. Ongoing annual fees for the EV charging stations beyond the first five years will be the responsibility of Owner.
2. Any ADA upgrades will be the responsibility of Owner.

General Project Exclusions and Clarifications Applicable to All Scopes:

- Owner will be responsible for obtaining and paying for inspections and any required Building, Mechanical, and Electrical Permits.
- City of Milpitas permitting fees are excluded.
- ADA, Fire Life Safety, and other work required as a result of AHJ submission is excluded, except as noted above.
- Contractor has assumed Construction will be allowed to proceed smoothly and in a continuous flow. No allowance has been made to demobilize and remobilize resources due to schedule interruptions.
- Temporary utilities are to be provided by Owner at no cost to Contractor (including, without limitation, trailer power, phone lines, and construction power).
- Remediation and/or removal and disposal of Hazardous Substances, including asbestos containing materials, to be by Owner (except as noted above). If Contractor encounters material suspected to be hazardous, Contractor will notify Owner representative and stop further work in the area until the material is removed.
- CEQA or other environmental studies, if required, will be the responsibility of Owner.
- Public Hearings, if required, will be the responsibility of Owner.
- Contractor will require the assistance of Owner personnel to secure the Project Location and to provide traffic redirection during rigging operations, and during the move-in and move-out of large equipment.
- No allowance has been made for structural upgrades to existing structures, except as specifically set forth in this Scope of Work.
- No allowance has been made for screening of new or existing equipment, except as specifically set forth in this Scope of Work.
- Contractor standard construction means and methods will be used.

- Owner will provide access to the Facilities, laydown areas at the work sites, and a reasonable number of parking spaces for Contractor and Contractor's subcontractor vehicles in parking lots at the Facilities.
- Work will be performed during normal work hours; no overtime hours are included in the Contract Amount. The lighting and water fixture retrofit Work will be performed so as not to unreasonably interfere with the building schedule.
- The Scope of Work assumes that, unless specifically identified otherwise, all existing systems are functioning properly and are up to current codes. Contractor will not be responsible for repairs or upgrades to existing systems that are not functioning properly or compliant with current codes. No allowances have been made to bring existing systems up to code.
- No allowance has been made to repair or replace damaged or inoperable existing equipment that is not specifically being replaced under the Scope of Work. When such items are discovered, Owner will immediately notify Owner representative.
- No allowance has been made for underground obstructions or unsuitable soil conditions encountered during trenching or other excavation.
- The PV shade structure is not weather tight and will not provide shelter from rain.
- Installing water hose bibs for washing the panels are excluded.
- Parking lot repairs are excluded, except to the extent of damage caused by Contractor or its subcontractors.
- Repair or replacement of existing housekeeping pads, concrete pads, or base repair of existing walkway lighting are excluded, except as specifically set forth in this Scope of Work.
- Painting, unless specified, is excluded.
- With respect to lighting equipment maintenance and/or lamp and ballast retrofitting, Owner will properly ground lighting fixtures before Contractor commences Work in compliance with applicable codes.
- With respect to installation of new lighting fixture installations, prior to commencement of the lighting fixture installation, Owner will provide an existing or new grounding conductor or solidly grounded raceway with listed fittings at the lighting fixture junction box that is properly connected to the facility grounding electrode system in compliance with the latest NEC requirements adopted by the authority having jurisdiction. This Scope of Work includes, if applicable, properly terminating the lighting fixtures to the existing grounding conductor or to the existing solidly grounded raceway with listed fittings at the lighting fixture junction box.
- Where this Scope of Work includes pulling new wiring for lighting fixtures from an existing lighting panel, a grounding conductor must be included in the lighting circuits. Owner is responsible for providing an existing or new grounding conductor terminal bar at the lighting panel that is properly connected to the Facility grounding electrode system in compliance with the latest NEC adopted by the authority having jurisdiction.
- With respect to Projects with new equipment connecting to the Facility's existing electrical distribution system, Contractor will not be responsible for the electrical integrity of the existing electrical system, e.g., the condition and proper termination of current-carrying, grounded, and grounding conductors, bus taps, protective elements, the proper protection of existing wire through knockouts, or missing components. Owner is responsible for providing and maintaining the facility's electrical distribution system that meets the latest NEC and guidelines adopted by the authority having jurisdiction.

- Contractor will not be responsible for existing damaged pipes, valves, and related parts and components.
- Depth of piers for canopy and ground mount installations are assumed to be 8 ft. No allowances have been made should soils report indicate that depth of piers should be deeper due to soil quality and/or seismic concerns, or additional seismic concerns requires deeper footings.

Contractor Beneficial Use and Warranty criteria for specific pieces of equipment:

1. WATER METER RETROFITS – The Contractor Warranty commences immediately upon uninterrupted operation for a duration, as necessary, with a maximum of 2 weeks, to determine proper operation. Contractor will provide written notice to Owner of the date the Contractor Warranty commences.
2. PUMP - The Contractor Warranty commences immediately upon the occurrence of two weeks of uninterrupted supply of GPM flows within 10% of design values. “Uninterrupted operation” is defined as: no involuntary shutdowns due to mechanical difficulties. Flows will be established by a test and balance report created by Contractor. With respect to the Pump, Contractor will provide written notice to Owner of the date the Contractor Warranty commences.
3. LIGHTING RETROFITS – With respect to each site’s Scope of Work, the Contractor Warranty commences immediately upon uninterrupted operation for a duration, as necessary, with a maximum of 2 weeks, to determine proper operation. Contractor will provide written notice to Owner of the date the Contractor Warranty commences.
4. STADIUM LIGHTING RETROFITS - The Contractor Warranty commences immediately upon uninterrupted operation for a duration, as necessary, with a maximum of 2 weeks, to determine proper operation. Contractor will provide written notice to Owner of the date the Contractor Warranty commences.
 - a. Light Fixture and Controls Warranty – Musco light fixtures and controls will be provided with a minimum of 10-year material and 2-year labor warranty.
5. SOLAR GENERATING FACILITIES - The Contractor Warranty commences immediately when the Generating Facility is capable of generating expected energy and the Utility is ready to issue the permission-to-operate letter.
 - a. Solar Module Warranty – solar modules will be provided with a 25-year manufacturer production warranty.
 - b. Solar Inverter Warranty – inverters will be provided with a 10-year manufacturer parts and service warranty.
6. BATTERY ENERGY STORAGE SYSTEM – The Contractor Warranty commences immediately when the BESS is interconnected and operational, and the Utility is ready to issue the permission-to-operate letter.
 - a. BESS – equipment will be provided with a 10-year manufacturer warranty.
7. EV CHARGING STATIONS – The Contractor Warranty commences immediately upon the occurrence of uninterrupted operation for a duration, as necessary, with a maximum of 2 weeks,

to determine proper operation.

- a. EV CHARGING STATIONS – equipment will be provided with a 5-year manufacturer warranty.

Substantial & Final Completion Forms per Scope of Work:

The table below provides the number of substantial and final completion forms that will be used to document beneficial use and final completion of each scope of work.

ECM	Scope of Work	Location	Total Qty of Substantial Completions	Total Qty of Final Completions
1	Facilities Water Fixture Retrofits	Citywide	1, for entire ECM	1, for entire ECM
2	Water Meter Upgrades	Citywide	1, for entire ECM	1, for entire ECM
3	SCADA & Remote Communication, Pumping, and Automated Water Treatment	Citywide	1, for entire ECM	1, for entire ECM
4	Facilities and Pumping Stations Lighting Upgrades	31 sites	1, for entire ECM	1, for entire ECM
5	Parks Lighting Upgrades	29 sites	1, for entire ECM	1, for entire ECM
6	Streetlighting Upgrades	Citywide	1, for entire ECM	1, for entire ECM
7	Sports Lighting Upgrades	3 sites	3, one per site	1, for entire ECM
8	Solar Generating Facilities	2 sites	2, one per site	1, for entire ECM
9	Resiliency Microgrids	2 sites	2, one per site	1, for entire ECM
10	Electric Vehicle Charging Stations	1 site	1, for entire ECM	1, for entire ECM

EXHIBIT B

PROJECT SCHEDULE

Phase 2: A preliminary construction schedule is attached, assuming Notice to Proceed is granted on 10/30/2020. If delayed, durations shown shall be used from actual Notice to Proceed date to determine completion dates.

EXHIBIT C

PROJECT OWNER REQUIREMENTS

The Project Owner Requirements identified herein may be altered by Owner from time to time as ministerial matter.

Phase 2:

[TO BE INSERTED]

EXHIBIT D

REQUEST FOR INFORMATION FORM

[OWNER TO INSERT OWNER'S STANDARD RFI FORM]

EXHIBIT E

FORM OF CHANGE ORDER

[OWNER TO INSERT OWNER'S STANDARD CHANGE ORDER FORM]

EXHIBIT F

FORM OF APPLICATION FOR PAYMENT

[ENGIE TO INSERT STANDARD APPLICATION FOR PAYMENT FORM]

EXHIBIT G

FORM OF FINAL COMPLETION CERTIFICATE

[ENGIE TO INSERT STANDARD FINAL COMPLETION CERTIFICATION FORM]

EXHIBIT H

ESCROW AGREEMENT FOR SECURITY DEPOSIT IN LIEU OF RETENTION

ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION

This Escrow Agreement is made and entered into, as of Month and Day, Year by and between the [INSERT OWNER NAME] whose address is [INSERT ADDRESS], hereinafter called "Owner," _____, [INSERT CONTRACTOR NAME], whose address is [INSERT ADDRESS], hereinafter called "Contractor" and _____, whose address is _____, hereinafter called "Escrow Agent."

For the consideration hereinafter set forth, the Owner, Contractor, and Escrow Agent agree as follows:

(1) Pursuant to Section 22300 of the Public Contract Code of the State of California, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by Owner pursuant to the Construction Contract entered into between the Owner and Contractor for _____ in the amount of _____, dated _____, (hereinafter referred to as the "Contract"). Alternatively, on written request of the Contractor, the Owner shall make payments of the retention earnings directly to the Escrow Agent. When Contractor deposits the securities as a substitute for Contract earnings, the Escrow Agency shall notify the Owner within ten (10) days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Contract between the Owner and Contractor. Securities shall be held in the name of the Owner, and shall designate the Contractor as the beneficial owner.

(2) The Owner shall make progress payments to the Contractor for those funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that the Escrow Agent holds securities in the form and amount specified above.

(3) When the Owner makes payment of retentions earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the Contractor until such time as the escrow created under this Agreement is terminated. The Contractor may direct the investment of the payments into securities. All terms and conditions of this Agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the Owner pays the Escrow Agent directly.

(4) Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account and all expenses of the Owner. These expenses and payment terms shall be determined by the Owner, Contractor, and Escrow Agent.

(5) The interest earned on the securities or the money market accounts held in Escrow and all interest earned on that interest shall be for the sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to the Owner.

(6) Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from the Owner to the Escrow Agent that Owner consents to the withdrawal of the amount sought to be withdrawn by Contractor.

(7) The Owner shall have a right to draw upon the securities in the event of default by the Contractor. Upon seven days' written notice to the Escrow Agent from the Owner of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the Owner.

(8) Upon receipt of written notifications from the Owner certifying that the Contract is final and complete, and that the Contractor has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Contractor all securities and interest on deposit less Escrow fees and charges of the Escrow Account. The Escrow shall be closed immediately upon disbursement of all monies and securities on deposit and payments of fees and charges.

(9) Escrow Agent shall rely on the written notification from the Owner and the Contractor pursuant to Sections (5) to (8), inclusive, of this Agreement and the Owner and Contractor shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest as set forth above.

(10) The names of the persons who are authorized to give written notice or to receive written notice on behalf of the Owner and on behalf of Contractor in connection with the foregoing, and exemplars of their respective signatures are as set forth on the following page.

On behalf of Owner:
[INSERT OWNER NAME]

On behalf of Contractor:
[INSERT CONTRACTOR NAME]

Title

Title

Name

Name

Signature

Signature

On behalf of Escrow Agent:
[INSERT ESCROW AGENT NAME]

Title

Name

Signature

Title

Name

Signature

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

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the date first set forth above.

Owner:
[INSERT OWNER NAME]

Contractor:
[INSERT CONTRACTOR NAME]

Title

Title

Name

Name

Signature

Signature

Escrow Agent:
[INSERT ESCROW AGENT NAME]

Title

Name

Signature

EXHIBIT I

WAIVER AND RELEASE FORMS

[OWNER TO INSERT OWNER'S REQUIRED WAIVER AND RELEASE FORMS]

EXHIBIT J

CERTIFICATION REGARDING CLAIM

The Contractor shall make a certification at the time of submission of a Claim, substantially in the form below. Contractor understands and agrees that any Claim submitted without this certification does not meet the terms of the Contract Documents, that Owner, or Owner’s representatives, may reject the Claim on that basis and that unless Contractor properly and timely files the Claim with the certification, Contractor cannot further pursue the Claim in any forum. A condition precedent will not have been satisfied.

The Certification Regarding Claim accompanying every Claim submitted by Contractor shall be in the following format on Contractor’s letterhead:

I, _____, BEING THE DULY AUTHORIZED
_____ (OFFICER) OF _____
(CONTRACTOR), DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA AND DO PERSONALLY CERTIFY AND ATTEST THAT: I HAVE THOROUGHLY REVIEWED THE ATTACHED CLAIM FOR ADDITIONAL COMPENSATION AND/OR EXTENSION OF TIME, AND KNOW ITS CONTENTS, AND DO HEREBY CERTIFY THAT SAID CLAIM IS MADE IN GOOD FAITH; THE SUPPORTING DATA INCLUDED WITH SAID CLAIM IS TRUTHFUL AND ACCURATE; THAT THE AMOUNT REQUESTED ACCURATELY REFLECTS THE CONTRACT ADJUSTMENT FOR WHICH THE CONTRACTOR BELIEVES THE OWNER IS LIABLE; AND, FURTHER, THAT I AM FAMILIAR WITH CALIFORNIA PENAL CODE SECTION 72 AND CALIFORNIA GOVERNMENT CODE SECTION 12650-12655, *ET SEQ.*, PERTAINING TO FALSE CLAIMS, AND FURTHER KNOW AND UNDERSTAND THAT SUBMISSION OR CERTIFICATION OF A FALSE CLAIM MAY LEAD TO FINES, IMPRISONMENT AND/OR OTHER SEVERE LEGAL CONSEQUENCES.

[INSERT CONTRACTOR NAME]

By: _____

Its: _____

Dated: _____

Notary Acknowledgment

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

STATE OF CALIFORNIA
 COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

 Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- .. Individual
- .. Corporate Officer

 Title(s)

- .. Partner(s) .. Limited
- .. General

- .. Attorney-In-Fact
- .. Trustee(s)
- .. Guardian/Conservator
- .. Other:

Signer is representing:
 Name Of Person(s) Or Entity(ies)

 Title or Type of Document

 Number of Pages

 Date of Document

 Signer(s) Other Than Named Above

EXHIBIT K

PAYMENT AND PERFORMANCE BOND FORMS

[PAYMENT AND PERFORMANCE BONDS INSERTED BEHIND THIS PAGE]

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the City of Milpitas, (hereinafter referred to as "City") has awarded to _____, (hereinafter referred to as the "Contractor") an agreement for **Contract No.** _____, (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required by said Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of said Contract Documents.

NOW, THEREFORE, we, _____, the undersigned Contractor and _____ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the City in the sum of _____ DOLLARS, (\$ _____), said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one (1) year guarantee of all materials and workmanship; and shall indemnify and save harmless the City, its officials, officers, employees, and authorized volunteers, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefore, there shall be included costs and reasonable expenses and fees including reasonable attorney's fees, incurred by City in enforcing such obligation.

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above obligation shall hold good for a period of one (1) year after the acceptance of the work by City, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the 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 Contractor remains. Nothing herein shall limit the City's rights or the Contractor or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure Section 337.15.

Whenever Contractor shall be, and is declared by the City to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at the City's option:

1. Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or
2. Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest

responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and the City, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.

3. Permit the City to complete the Project in any manner consistent with California law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that the City may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor.

Surety shall not utilize Contractor in completing the Project nor shall Surety accept a bid from Contractor for completion of the Project if the City, when declaring the Contractor in default, notifies Surety of the City's objection to Contractor's further participation in the completion of the Project.

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

By their signatures hereunder, Surety and Contractor hereby confirm under penalty of perjury that surety is an admitted surety insurer authorized to do business in the State of California.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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

(Corporate Seal)

Contractor/ Principal

By _____

Title _____

(Corporate Seal)

Surety

By _____

Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title _____

The rate of premium on this bond is _____ per thousand. The total amount of premium charges is \$_____.

(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety)

(Name and Address of Agent or Representative for service of process in California, if different from above)

(Telephone number of Surety and Agent or Representative for service of process in California)

Notary Acknowledgment

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

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- .. Individual
- .. Corporate Officer

Title(s)

- .. Partner(s) .. Limited
- .. General

.. Attorney-In-Fact

.. Trustee(s)

.. Guardian/Conservator

.. Other:

Signer is representing:

Name Of Person(s) Or Entity(ies)

Title or Type of Document

Number of Pages

Date of Document

Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for Contractor/Principal.

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COUNTY OF _____

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- .. Guardian/Conservator
- .. Other:

Date of Document

Signer is representing:
Name Of Person(s) Or Entity(ies)

Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for the Attorney-in-Fact. The Power-of Attorney to local representatives of the bonding company must also be attached.

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS That

WHEREAS, the City of Milpitas (hereinafter designated as the "City"), by action taken or a resolution passed _____, 20____, has awarded to _____ hereinafter designated as the "Principal," a contract for the work described as follows: **Contract No.** _____ (the "Project"); and

WHEREAS, said Principal is required to furnish a bond in connection with said contract; providing that if said Principal or any of its Subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and its Subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

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

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Civil Code Section 9100, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Revenue and Taxation Code Section 18663, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified, and also, in case suit is brought upon this bond, all litigation expenses incurred by the City in such suit, including reasonable attorneys' fees, court costs, expert witness fees and investigation expenses.

This bond shall inure to the benefit of any of the persons named in Civil Code Section 9100 so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or City and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant

is a person described in Civil Code Section 9100, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned, including but not limited to the provisions of sections 2819 and 2845 of the California Civil Code.

By their signatures hereunder, Surety and Principal hereby confirm under penalty of perjury that surety is an admitted surety insurer authorized to do business in the State of California.

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

(Corporate Seal)

Contractor/ Principal

By _____

Title _____

(Corporate Seal)

Surety

By _____
Attorney-in-Fact

(Attach Attorney-in-Fact Certificate)

Title _____

Notary Acknowledgment

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STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory

evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- .. Individual
- .. Corporate Officer

Title(s)

Title or Type of Document

- .. Partner(s) .. Limited
- .. General

Number of Pages

- .. Attorney-In-Fact
- .. Trustee(s)
- .. Guardian/Conservator
- .. Other:

Date of Document

Signer is representing:
Name Of Person(s) Or Entity(ies)

Signer(s) Other Than Named Above

NOTE: This acknowledgment is to be completed for Contractor/Principal.

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STATE OF CALIFORNIA
COUNTY OF _____

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evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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- Individual
- Corporate Officer

Title(s)

- Partner(s) Limited
- General

- Attorney-In-Fact
- Trustee(s)
- Guardian/Conservator
- Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

Title or Type of Document

Number of Pages

Date of Document

Signer(s) Other Than Named Above

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EXHIBIT L

STANDARDS OF OCCUPANCY AND CONTROL

The following standards are a guideline used to evaluate the energy conservation measures in this program. It is understood that existing and installed equipment may not allow for exact times and temperatures to be met, but Contractor will attempt to meet the below standards.

Facility	Occupancy/Operation Schedule	HVAC Schedule	Heating Temperature Setpoints	Cooling Temperature Setpoints
City of Milpitas Public Works, Police Department and Corp Yard	24/7 (Police Department) 8 AM – 5 PM (Monday-Friday, Public Works and Corp Yard)	6 AM – 5 PM (For specific units being replaced)	67°F – 68°F	70°F – 71°F
City of Milpitas Sports Center	6 AM – 9 PM (Monday-Thursday) 6 AM – 5 PM (Friday) 6 AM – 1 PM (Saturday)	6 AM – 9 PM (Monday-Friday) 6 AM – 1 PM (Saturday)	65°F – 76°F	67°F – 78°F
City of Milpitas City Hall	8 AM – 5 PM (Monday-Friday) 24/7 (IT & Elevator)	24/7 (IT & Elevator)	67°F	69°F
City of Milpitas Community Center	8 AM – 6 PM (Monday-Thursday) 8 AM – 5 PM (Friday)	8 AM – 6 PM (Monday-Thursday) 8 AM – 5 PM (Friday)	70°F – 71°F	70°F – 73°F
City of Milpitas Senior Center	8:30 AM – 4:30 PM (Monday-Friday)	8 AM – 6 PM (Monday-Thursday) 8 AM – 5 PM (Friday)	70°F – 71°F	70°F – 73°F
City of Milpitas Fire Station #1	24/7	Varies by occupancy	68°F – 70°F	70°F – 73°F
City of Milpitas Fire Station #3	8 AM – 5 PM (Monday-Friday) Varies, not always occupied	Varies by occupancy	69°F	73°F
City of Milpitas Fire Station #4	8 AM – 5 PM (Monday-Friday) Varies, not always occupied	Varies by occupancy	69°F	73°F
City of Milpitas Parks	6 AM – 10 PM Lights on from Dusk to 10 PM	Not Applicable		
City of Milpitas Pumping Stations	As needed, up to 24/7	Not Applicable		
City of Milpitas Streetlights	Dusk - Dawn	Not Applicable		

EXHIBIT M

SCOPE OF MONITORING INSTALLATION

Overview of DAS Network Installation and Equipment Requirements

Contractor will provide a revenue-grade billing, data acquisition system (DAS). This will provide readily available access to various internal and external information collected on the distributive generation (i.e., solar PV) plants.

Contractor DAS Monitoring Installation:

- Supply and install hardware specific to the DAS system.
- Supply and install, terminate, label, and test all Data Point of Connection (DPOC) communication cabling from each DAS node to the predetermined and respective DPOC(s); in accordance with [Customers] specifications.
- Test and verify generating system(s) network connectivity.
 - a. TCP/IP internal addressing and verification
- Supply, install, and configure a Modbus based digital Net Energy Meter (NEM).
- Connect the data portion of digital NEM(s) to their respective DPOC(s).
- Supply, install, and configure a Modbus based digital Net Generation Output Meter (NGOM).
- Perform the physical installation, labeling, testing and certification testing of each data circuit from the digital NEM(s) to their respective DPOC(s).
- Provide basic system training to designated Owner/Facility maintenance staff.

EXHIBIT N

M&V SERVICES

EQUIPMENT AND FACILITIES COVERED

Contractor will perform measurement and verification services (“M&V Services”) as set forth in this Exhibit N with respect to Owner’s property at the following Project Locations:

Site	Location
Facilities	
City Hall	455 East Calaveras Blvd., Milpitas, CA
Public Works Corp Yard and Vehicle Shop Police Department	1265 North Milpitas Blvd., Milpitas, CA
Community Center	457 East Calaveras Blvd., Milpitas, CA
Senior Center	40 North Milpitas Blvd., Milpitas, CA
Sports Center Complex	1325 East Calaveras Blvd., Milpitas, CA
Library Parking Garage	160 N Main St., Milpitas, CA
Fire Station #1 Main Fire Admin Fire Training Center	777 South Main St., Milpitas, CA
Fire Station #3	45 Midwick Drive, Milpitas, CA
Fire Station #4	775 Barber Lane, Milpitas, CA
Pumping Stations	
Jurgens Storm Pump Station	345 Jurgens Drive, Milpitas, CA
Spence Creek Storm Pump Station	11 Butler Street, Milpitas, CA
Penitencia Storm Pump Station	944 La Honda Drive, Milpitas, CA
Milpitas Materials Storm Pump Station	1125 N. Milpitas Blvd, Milpitas, CA
Abbott Storm Pump Station	1225 N. Abbott, Milpitas, CA
California Circle Storm Pump Station	1735 California Circle, Milpitas, CA
Berryessa Storm Pump Station	731 Folsom Circle, Milpitas, CA
Murphy Ranch Storm Pump Station	801 Murphy Ranch Road, Milpitas, CA
Bellew Storm Pump Station	481 Murphy Ranch Road, Milpitas, CA
Oak Creek Storm Pump Station	1521 McCarthy Blvd, Milpitas, CA
PD Sump Storm Pump Station	1275 N. Milpitas Blvd, Milpitas, CA
Wrigley Ford Storm Pump Station	75 Marylinn Drive, Milpitas, CA
Manor Storm Pump Station	349 Marylinn Drive, Milpitas, CA
McCarthy Storm Pump Station	1001 N. McCarthy Blvd, Milpitas, CA
Main Sewer Pump Station	1425 N. McCarthy Blvd, Milpitas, CA
Venus Way Sewer Pump Station	1085 Venus Way, Milpitas, CA
Gibraltar Turnout (2 adjacent) + G Reservoir	641 Gibraltar Court, Milpitas, CA
Ayer Reservoirs	1429 E. Calaveras Blvd, Milpitas, CA
Tularcitos Pump Station	1200 Tularcitos Drive, Milpitas, CA
Country Club Station	1437 Country Club Drive, Milpitas, CA
Minnis Tank	Launch Site Road, Milpitas, CA
Pinewood Well	227 Lonetree Court, Milpitas, CA
Sunnyhills Turnout	405 Washington Dr, Milpitas, CA
Calaveras Turnout	584 E. Calaveras Dr, Milpitas, CA
Main Street Turnout	534 Hammond Way, Milpitas, CA
Parks	
Augustine Memorial Park	Cortex and Coelho off Escuela, Milpitas, CA
Ben Rogers Park	Grand Teton at Sequoia, Milpitas, CA
Calle Oriente Mini-Park	Calle Oriente off North Park Victoria, Milpitas, CA
Cardoza Park	Kennedy Drive at North Park Victoria, Milpitas, CA

Cerano Park	SanDisk and Murphy Ranch, Milpitas, CA
Creighton Park	Olympic west of South park Victoria, Milpitas, CA
Dixon Landing Park	Dixon Landing and Milmont, Milpitas, CA
Foothill Park	Roswell Drive at Roswell Court, Milpitas, CA
Gill Memorial Park	Paseo Refugio and Santa Rita, Milpitas, CA
Hall Memorial Park	LaHonda and Coyote, Milpitas, CA
Hidden Lake Park	N. Milpitas Blvd between Escuela Pkwy and Jacklin Rd, Milpitas, CA
Higuera Adobe Park	Wessex off N Park Victoria, Milpitas, CA
Hillcrest Park	Fieldcrest off Crescent, Milpitas, CA
Murphy Park	Yellowstone east of S. Park Victoria, Milpitas, CA
Pinewood Park	Lonetree and Starlite Drive, Milpitas, CA
Sandalwood Park	Escuela Pkwy and Russell, Milpitas, CA
Selwyn Park	Selwyn Drive off Dempsey Rd, Milpitas, CA
Sinnott Park	Clear Lake and Tahoe, Milpitas, CA
Starlite Park	Rudyard and Abbott Ave., Milpitas, CA
Strickroth Park	Martil and Gemma off east Tramway, Milpitas, CA
Jones Memorial Park	Jacklin at Hillview, Milpitas, CA
Robert E. Browne Park	Yellowstone east of S. Park Victoria, Milpitas, CA
Dog Park at Ed Levin	3100 Calaveras Rd, Milpitas, Milpitas, CA
Pecot Park	Dixon Landing, west of Conway, Milpitas, CA
Parc Metro East Park	Parc Metro, Curtis, east of main St, Milpitas, CA
Parc Metro Central Park	Parc Metro, Curtis, east of main St, Milpitas, CA
Parc Metro West Park	Parc Metro, Curtis, east of main St, Milpitas, CA
Alviso Adobe	Calaveras, east of Piedmont, Milpitas, CA
Tom Evatt Park	Abel St and Machado St, Milpitas, CA
Hetch Hetchy Linear Park	Hetch Hetchy Trail, Milpitas, CA
John McDermott Park	Alvarez Court, off Abel St, Milpitas, CA
O'Toole Elms Park	Abel St, north of Curtis St, Milpitas, CA
Calaveras Ridge Park	Calaveras Ridge Drive, Milpitas, CA
Bob McGuire Park	Garden St, between S. Milpitas Blvd and Piper Drive, Milpitas, CA
Augustus Rathbone Park	Expedition Lane and Jubilee Drive, Milpitas, CA
McCandless Park	1700 block McCandless Drive, Milpitas, CA

I. Definitions:

Capitalized terms used in this Exhibit N and not defined in the Contract, have the meanings set forth below:

“**Accumulated Savings**” means, as of any date of determination, the cumulative total of Excess Savings.

“**Actual Energy Rate**” means, for any Measurement Period, utility rates calculated by Contractor using actual utility billing information supplied by Owner for that Measurement Period.

“**Assessment Work**” means work required to assess the effect on EC Savings for any significant changes to the Facilities (including, but not limited to, building additions, new buildings, and new or changed HVAC equipment).

“**Base Energy Rate**” means the dollars per energy unit for each building and/or each ECM, set forth in this Exhibit N, Section (III), and used by Contractor to calculate the EC Savings.

“**Baseline**” means the energy use established by Contractor from time to time for each building in the Facilities, taking into consideration Energy Use Factors for such buildings.

“**EC Savings**” means the savings in units of dollars (\$) calculated by Contractor in the manner set forth in this Exhibit N, Section (III), achieved through the reduction in consumption or demand through implementation of the Work.

“**Energy Rate Factors**” means factors identified by Contractor which may affect utility rates from the local utility companies.

“**Energy Savings Report**” is defined in this Exhibit N, Section (II)(D).

“**Energy Savings Term**” means the period beginning on the first day of the Construction Period and ending on the earlier of: (i) the day immediately preceding the fifth (5th) anniversary of the M&V Commencement Date; (ii) the termination of the Contract; or (iii) the termination by Owner of the M&V Services in accordance with this Exhibit N, Section (II)(G).

“**Energy Unit Savings**” means the savings in units of energy, power, water, etc., calculated by Contractor in the manner set forth in this Exhibit N, Section (III), achieved through the reduction in consumption or demand through implementation of the Work.

“**Energy Use Factors**” means factors identified by Contractor which may affect the Baselines or energy use for the Facilities, including but not limited to: hours and levels of occupancy; adjustments in labor force; building use and operational procedures; temperature, humidification, and ventilation levels; installed lighting and scheduled use; building construction and size; general level of repair and efficiency of heating and air conditioning equipment and other energy-using equipment; and amount of heating and air conditioning and other energy-using equipment.

“**Energy Use Savings**” means, for any Measurement Period, those savings, having units of dollars (\$), achieved for such Measurement Period through reductions in energy use, energy demand, water use, and the use of other commodities.

“**Excess Savings**” means the excess of EC Savings over Guaranteed Savings, calculated in the manner set forth in this Exhibit N, Section (II)(I)(iv).

“**Guarantee Payment**” means, for any Measurement Period, either: (i) a cash payment by Contractor to Owner in an amount equal to the Guarantee Shortfall for that Measurement Period pursuant to this Exhibit N, Section (II)(A)(ii); or (ii) additional energy services or energy saving retrofits requested by Owner with an agreed value equal to the Guarantee Shortfall for that Measurement Period pursuant to this Exhibit N, Section (II)(A)(iii).

“**Guarantee Shortfall**” means an amount calculated in accordance with this Exhibit N, Section (II)(I)(v).

“**Guaranteed Savings**” means, for any Measurement Period, the dollar amount set forth below for such Measurement Period, as the same may be adjusted from time to time by Contractor for changes in Energy Rate Factors, Energy Use Factors and consequential revisions to the relevant Baseline:

Measurement Period	Guaranteed Savings
1	\$1,508,673
2	\$1,576,170
3	\$1,646,688
4	\$1,720,365

“**IPMVP**” means the International Performance Measurement and Verification Protocol prepared by Efficiency Valuation Organization.

“**Projected Energy Savings**” means those Energy Unit Savings, which Contractor anticipates will be realized from the installation and continued operation of the Work, as set forth in this Exhibit N, Section (III).

“**Savings Guarantee**” is defined in this Exhibit N, Section (II)(A)(i).

II. Terms and Conditions

A. Guaranteed Savings.

- i. Savings Guarantee. Upon the terms and subject to the conditions set forth herein, Contractor warrants that Owner will realize total EC Savings during the Energy Savings Term of not less than the total Guaranteed Savings (the “Savings Guarantee”), as the same may be adjusted from time to time for changes in Energy Rate Factors, Energy Use Factors and consequential revisions to the relevant Baseline.
- ii. Guarantee Payment. For any Measurement Period in which there is a Guarantee Shortfall, Contractor will pay to Owner, within thirty (30) calendar days after the acceptance by Owner of the Energy Savings Report for such Measurement Period, the Guarantee Payment for that Measurement Period.
- iii. Services or Retrofits in Lieu of Guarantee Payment. If in the judgment of Owner, Owner would benefit from additional energy services or energy saving retrofits, Owner and Contractor may mutually agree that Contractor will provide such services or retrofits in lieu of the Guarantee Payment for such Measurement Period. For the purposes of this Contract, such services or retrofits will have a deemed value equal to the Guarantee Shortfall for that Measurement Period.
- iv. Excess Savings. For any Measurement Period in which there are Excess Savings, Owner will repay to Contractor, to the extent of such Excess Savings, any Guarantee Payments previously paid by Contractor to Owner and not previously repaid to Contractor by Owner, and the Excess Savings for such Measurement Period will be reduced by the amount of such repayment. If Contractor has provided services or retrofits in lieu of the Guarantee Payment for a prior Measurement Period, such that the Guarantee Payment for such Measurement Period cannot be repaid by Owner, then in lieu of such repayment Excess Savings will be increased by the deemed value of such services or retrofits.
- v. Excusable Events. If Contractor is delayed in, or prevented from, accurately calculating the actual EC Savings for any day of any Measurement Period by reason of any Excusable Event, such circumstance will not constitute a default, and Contractor will be excused from performing the M&V Services while such event is continuing. During such event, Projected Energy Savings for the month(s) in which such event is continuing will be used in lieu of actual data; *provided* that if three (3) or more years of post M&V Commencement Date data are available for such month(s), the historical average of such data for such month(s) will be used in lieu of Projected Energy Savings.

vi. *Not Used.*

B. Changes in Energy Use Factors.

- i. Adjustments to Baselines. Owner will notify Contractor in writing within ten (10) Business Days of any change in any Energy Use Factor. In addition, data collected by Contractor during or before the Energy Savings Term may indicate a change in the energy use pattern at the Facilities or any portion thereof and require a change to one or more Baselines. Contractor will determine the effect that any such change will have on EC Savings and present to Owner a written analysis of the effects of such changes. Contractor will also make corresponding revisions to the Baselines and/or EC Savings that it deems appropriate in its reasonable discretion.
- ii. Adjustments to Guaranteed Savings. If a change in any Energy Rate Factor or Energy Use Factor results in a reduction of EC Savings, then the Guaranteed Savings for the corresponding Measurement Period(s) will be decreased by the same amount. Contractor will notify Owner, in writing, of all such changes.
- iii. Changes to Facilities. Owner or Contractor may from time to time propose to make changes to the Facilities for the express purpose of increasing EC Savings or addressing events beyond its control. It is agreed that these changes will only be made with the written consent of both Parties, which will not be unreasonably withheld. The Baseline will not be adjusted to reflect any changes agreed to under this Exhibit N, Section (II)(B)(iii).
- iv. Baseline Adjustment. If Contractor proposes changes to the Facilities that would not unreasonably interfere with the conduct of Owner's business or cause Owner to incur additional costs, and Owner does not consent to the changes, then Contractor will adjust the Baselines upward by the amount of savings projected from the changes.
- v. Projected Energy Savings. During the Energy Savings Term, when the ultimate effect of the Work on EC Savings cannot be accurately determined due to pending construction or changes to the Scope of Work, Projected Energy Savings for the Facilities will be used until the effect of the changes can be determined by Contractor
- vi. Assessment Work. Contractor has the right to charge Owner for Assessment Work, which will be billed at current Contractor engineering rates and will be paid by Owner within thirty (30) calendar days after receiving Contractor's invoice. Before initiating Assessment Work, Contractor will notify Owner in writing of the intent and estimated cost associated with the Assessment Work. Owner will, within forty-five (45) calendar days, give Contractor written permission to proceed or, alternatively at no charge to Contractor, to stipulate that the Projected Energy Savings for the portion of the Facility in question be used for the purpose of meeting the Savings Guarantee for such Measurement Period and thereafter. If Contractor does not receive written notice within forty-five (45) calendar days, the Projected Energy Savings for the portion of the Facility in question will be used until such time as Owner approves the Assessment Work.
- vii. Changes in Energy Use Factors. If Owner fails to notify Contractor of changes in Energy Use Factors or fails to supply Contractor in a timely manner with information that is requested by Contractor for the calculation of EC Savings, the Energy Unit Savings for the relevant Measurement Period will be deemed equal to the corresponding Projected Energy Savings for such period. If information for the relevant Measurement Period is supplied at a later date, the Energy Unit Savings will

be modified only if and to the extent that the calculated savings for such period exceed the Projected Energy Savings for such period.

- viii. Change Order – Savings Effect. Contractor will calculate the energy impact of any Change Orders.
- ix. Changes in Savings Calculations. Any changes made by Contractor to the savings calculations will be presented to Owner in advance. Owner will have thirty (30) calendar days to challenge or question the changes in writing.
- x. Inspection of Facilities. Owner agrees that Contractor will have the right, with prior notice, to inspect the Facilities to determine if Owner has consistently complied with its obligations as set forth above. If any inspection discloses that Owner has failed, on or prior to the date of such inspection, to be in compliance with any of its obligations, then the Guaranteed Savings will be assumed to have been achieved for the portion of the Energy Savings Term during which such failure will have existed.
- xi. Interference. Owner may not cause, and will take all commercially reasonable steps to prevent any third party from causing, any overshadowing, shading or other interference with the solar insolation that falls on the Generating Facility. Upon discovering, or otherwise becoming aware of, any actual or potential overshadowing, shading or other interference with insolation, Owner will promptly notify Contractor. If an unforeseeable overshadowing or shading condition not caused by Contractor or its subcontractors exists and continues for five (5) Business Days or more, Owner agrees that the Guaranteed Savings for such Generating Facility will be reduced based upon such shading condition, and Contractor may present Owner with a proposed reduction to the Guaranteed Savings reflecting such overshadowing, shading or other interference.

C. Owner Maintenance. Beginning at Beneficial Use or Substantial Completion for any portion of the Work, Owner will maintain such portion of the Work and upon Final Completion will maintain the Project, in accordance with the maintenance schedules and procedures recommended by Contractor and by the manufacturers of the relevant equipment, such maintenance to include maintaining all landscaping (including tree trimming) in and around the Generating Facilities.

D. Energy Savings Report. Annually during the Energy Savings Term, Contractor will submit to Owner an energy savings report containing a precise calculation of the EC Savings during the applicable Measurement Period (an “Energy Savings Report”). Contractor will use its best efforts to submit such Energy Savings Report within ninety (90) calendar days after receipt of all needed information for a Measurement Period, unless additional information is needed to accurately calculate the EC Savings, in which case Owner will be notified of such a situation within the ninety (90) calendar-day period.

E. On-Site Measurements. Owner irrevocably grants to Contractor the right, during the Energy Savings Term, to monitor EC Savings and energy management performance by conducting on-site measurements, including, but not limited to, reading meters and installing and observing on-site monitoring equipment. Contractor will not exercise such right in a manner that unreasonably interferes with the business of Owner as conducted at the Facilities as of the date hereof. Owner will cooperate fully with the exercise of such right by Contractor pursuant to this Exhibit N, Section (II)(E). Owner will further cooperate with Contractor’s performance of the M&V Services by providing utility information, changes in Energy Use Factors, and/or additional information as reasonably requested by Contractor

F. *Not Used.*

G. Termination of Guaranteed Savings. If (i) Owner notifies Contractor in writing of its intent to terminate the M&V Services, (ii) the Contract is terminated by Contractor for default by Owner or by Owner for any reason permitted by the Contract, (iii) Contractor is no longer the provider of the Maintenance Services set forth in Exhibit O, or (iv) Owner fails to maintain the Project in accordance with this Exhibit N, Section (II)(C), or is in default of any of its other obligations under this Exhibit N, the obligation of Contractor to prepare and deliver the Energy Savings Report and to make a Guarantee Payment will also be terminated. If such termination occurs on a date other than the last day of a Measurement Period, Contractor will have no obligation to make a Guarantee Payment or prepare and deliver an Energy Savings Report for such Measurement Period.

H. *Not Used.*

I. Calculations.

- i. Calculation of Accumulated Savings. Accumulated Savings will be increased, for any Measurement Period, by the amount of Excess Savings during such Measurement Period, and will be decreased, for any Measurement Period, by the *difference*, to the extent positive, between (i) the Guaranteed Savings for such Measurement Period *minus* (ii) the EC Savings for such Measurement Period. For the avoidance of doubt, Accumulated Savings will not be reduced below zero.
- ii. Calculation of EC Savings. EC Savings for any Measurement Period will be equal to, for such Measurement Period, the Energy Use Savings, in each case as adjusted for changes in Energy Use Factors during such Measurement Period. EC Savings achieved during the Construction Period will be included in the EC Savings for the first Measurement Period.
- iii. Calculation of Energy Use Savings. Energy Use Savings will be calculated by Contractor as the *product* of (i) the Energy Unit Savings *multiplied by* (ii) the greater of (a) the applicable Base Energy Rate or (b) the applicable Actual Energy Rate.
- iv. Calculation of Excess Savings. From and after the M&V Commencement Date, Excess Savings will be calculated by Contractor as the *difference*, to the extent positive, between (i) the EC Savings for the relevant Measurement Period *minus* (ii) the Guaranteed Savings for such Measurement Period. During the Construction Period, Excess Savings will be calculated by Contractor in the manner set forth in this Exhibit N, Section (III). For the avoidance of doubt, Excess Savings will not be reduced below zero.
- v. Calculation of Guarantee Shortfall. The Guarantee Shortfall, for any Measurement Period, will be calculated by Contractor as the *difference*, to the extent positive, between (i) the Guaranteed Savings for such Measurement Period *minus* (ii) the sum of (a) EC Savings for such Measurement Period plus (b) Accumulated Savings then outstanding.

III. Methodologies and Calculations

The following details the methodologies and calculations to be used in determining the Energy Unit Savings under this Contract.

Table E-1: Measurement and Verification Methods

ECM	ECM Description	M&V Method	
		Electric Usage	Water Usage
1	Facilities Water Fixture Retrofits	N/A	Stipulated
2	Water Meter Upgrades	N/A	Option A
3	SCADA & Remote Communication, Pumping, and Automated Water Treatment	Stipulated	N/A
4	Facilities and Pumping Station Lighting Upgrades	Option A	N/A
5	Parks Lighting Upgrades	Stipulated	N/A
6	Streetlighting Upgrades	Stipulated	N/A
7	Sports Lighting Upgrades	Stipulated	N/A
8	Solar Generating Facilities	Option B	N/A

1. M&V Option A: This option allows for the energy savings to be predicted, measured, and agreed upon between Owner and Contractor. One-time measurements and stipulated parameters are used to quantify savings that are stipulated for the term of the Contract.
 - a. Contractor will supply a one-time report to Owner detailing the measurements and calculation of savings. If the calculated savings fall short of those expected, Contractor will have the opportunity to remedy the short fall and re-measure and calculate the results. Such work will be done at Contractor’s expense and will not be unreasonably denied by Owner, as long as such work does not interfere with Owner’s use of the Facilities. These calculated savings will be defined as Energy Unit Savings and will be agreed to occur each Measurement Period. During the Construction Period, the Energy Unit Savings will be calculated by adding the savings measured for the whole months between Substantial Completion or Beneficial Use of the ECM and the M&V Commencement Date.
 - b. Scope of Work:

ECM-4 – Facilities and Pumping Station Lighting Upgrades

- i. The reduction in units of electric demand (kW) from the installation of the lighting ECMs is to be measured directly using a calibrated true-RMS watt meter or stipulated based on the following parameters. Existing and to-be-installed fixture types will be grouped project-wide, based on the type of fixture (i.e., type of lamp, number of lamps and ballast type) and the assumed wattage. All lamps without ballasts (incandescent), along with exit signs and exterior fixtures, will be stipulated at their manufacturer’s rated wattage. Groups of fixtures with ballasts will be measured in the following manner.
 - a. For groups with 1,000 or more fixtures, ten (10) or more instantaneous measurements of single fixtures or circuits containing only one type of fixture will be taken. The average wattage per fixture will be calculated and be the measured wattage for that fixture type.
 - b. For groups with 500 or more fixtures but fewer than 1,000, seven (7) or more instantaneous measurements of single fixtures or circuits containing only one type of fixture will be taken. The average wattage per fixture will be calculated and be the measured wattage for that fixture type.
 - c. For groups with 100 or more fixtures but fewer than 500, four (4) or more instantaneous measurements of single fixtures or circuits containing only one

type of fixture will be taken. The average wattage per fixture will be calculated and be the measured wattage for that fixture type.

- d. For groups with 99 or fewer fixtures or where measurements are not physically possible, the measured wattage will be stipulated for that group to equal the wattage defined in *Exhibit R*, showing the existing fixture codes, quantities, and manufacturer’s rated wattage for these type fixtures.
- ii. Assumptions: The annual unit consumption savings (kWh) for each retrofit will be calculated by multiplying the demand savings as calculated above by the Occupied Annual Hours, where the Occupied Annual Hours have been agreed upon and stipulated to by the City and are presented in *Table E-2* below. The Energy Unit Savings (kWh) will be the sum of the calculated annual unit consumption savings for each retrofit.

Table E-2: Annual Lighting Hours by Room Type – Stipulated

Location	Area Type	Annual Hours
Fire Stations	Electrical/Mechanical/Inactive Storage	360
	Single Restroom	520
	Training Room	520
	Kitchen	728
	Active Storage	1,040
	Bunk / Locker / Open Restroom	1,460
	Open Office	1,560
	Offices	3,120
	Hall / Lobby / Exterior	3,640
Pumping Stations	Electrical/Mechanical/Pump/Storage	364
	Active Storage / Pump Labs	1,560
	Locker / Restroom	2,600
	Offices / Hallway	3,120
	Exterior Attached	4,368
	Wet Well	8,760
City Hall	Storage/Custodian	520
	Electrical/Mechanical/Telecom	1,040
	Restroom	1,560
	Council Chamber	1,560
	Office Space	2,600
	Hall / Lobby	3,120
	Exterior Attached	5,096
Community Center	Electrical/Mechanical/Storage	520
	Kitchen	2,080
	Restroom	2,080
	Office Space	2,600
	Hall / Lobby	3,120
	All Exterior	5,096
Sports Complex	Electrical/Mechanical/Pump	520

	Storage/Custodian	1,040
	Locker / Restroom	2,080
	Office Space	2,600
	Hallway / Lobby / Corridor	3,120
	Exterior Attached / Pool Area	4,368
Library	Exterior	4,368
	Parking Garage	8,760
	Electrical/Mechanical	520
Public Works, Corp Yard	Electrical/Mechanical/Storage	1,040
	Locker / Restroom	1,560
	Offices	2,600
	Open Office	3,120
	Warehouse / Service Bays	3,640
	Exterior Attached	4,368
	Exterior	8,760
Police Department	All Areas	8,760
Senior Center	Electrical/Mechanical/Storage	520
	Restroom	2,080
	Classroom / Office	2,600
	Hallway / Lobby / Corridor	3,120
	Community Room	3,120
	Exercise Space	3,120
	Exterior Attached	4,368
* 15% reduction in the hours shown above will be calculated for spaces with existing or retrofit occupancy sensors.		

iii. Post-retrofit measurements will be performed one time, after the retrofit is complete. Post-retrofit ECM performance is assumed to be consistent for the duration of the Energy Savings Term.

iv. EC Savings achieved from the lighting ECMs are calculated by the following equation:

$$\text{EC Savings} = \text{Energy Unit Savings} \times \text{Base Energy Rate}$$

Table E-3: Lighting Annual Savings by Site (ECM-4)

Location/ECM	Projected Annual Savings (kWh)
Public Works/Police Dept, City Hall, Senior Center, Community Center, Sports Center, Library, Parking Garage	938,471
FS #1, FS #3, FS #4	69,781
Pumping Stations	72,229
Total	1,080,481

ECM-2 – Water Meter Upgrades

i. Baseline Period:

Pre-Replacement Meter Accuracy

In order to determine the additional revenue the Owner will realize from a water meter replacement project, Contractor will perform one-time accuracy tests of existing water meters (PRE) and one-time accuracy tests of the new water meters (POST). The overall average accuracy for each size and type of meter tested will be shown in the following table. The middle column of the table lists the current accuracy applied to the revenue model.

Table E-4: Water Meter Accuracy by Meter Size

	Meter Size	ENGIE Qty of Replacement Meters	Current (PRE) Accuracy applied to Revenue Model	Average (PRE) Measured Accuracy Applied	Average (POST) Measured Accuracy Applied
Small	5/8"	12,295	90.0%		
	3/4"	544	90.0%		
	1"	1,281	90.0%		
	1 1/2"	535	90.0%		
	2"	738	90.0%		
Large	3"	110	98.0%		
	4"	60	98.0%		
	6"	15	98.0%		
	8"	12	98.0%		
	10"	0	N/A		
	Totals	15,590			

ii. Pre and Post-Installation Period:

Pre and Post-Replacement Meter Accuracy

The table below outlines the quantity of meters that will be tested PRE (Existing Meters) and POST (New Meters) of the M&V program. The quantity of meters to be tested is based on the quantity of meters that will be replaced, but existing meter performance is expected to vary over a wider range so more measurements are planned for the Pre-Retrofit meters. In general, 0.75% percent of the new meters will be tested while roughly 1.75% of existing meters will be tested. For meters larger than four inches, a larger percentage of meters will be tested, with a minimum of one meter per size and meter type tested, unless the Owner is unable to provide a meter to test.

Table E-5: Water Meter Test Plan by Meter Size

	Meter Size	Existing Quantity of Meters	ENGIE Qty of Replacement Meters	Approximate Qty of Meters Tested (PRE-Retrofit)	Approximate Percentage of Meters Tested	Approximate Qty of Meters Tested POST-Retrofit	Approximate Percentage of Meters Tested
Small	5/8"	13,055	12,295	216	1.75%	92	0.75%
	3/4"	577	544	10	1.80%	4	0.74%

	1"	1,408	1,281	20	1.56%	9	0.70%
	1 1/2"	556	535	9	1.68%	4	0.75%
	2"	805	738	12	1.62%	5	0.68%
Large	3"	179	110	3	2.72%	1	0.9%
	4"	126	60	2	3.33%	1	1.67%
	6"	47	15	2	13.3%	1	6.67%
	8"	86	12	2	16.67%	1	8.33%
	10"	4	0	0	N/A		
Totals	16,843	15,590	275			118	

Meters will be tested according to AWWA test standards consistent with the testing of meters prior to implementation of the replacement program.

Replacement (new) meters will be shipped to a certified testing facility for bench testing prior to installation. Existing meters will be removed from service during retrofit and shipped to the same certified testing facility for bench testing prior to disposal.

iii. Calculations and Adjustments:

Positive displacement and compound meters are typically tested at low, intermediate and high flows. Turbine meters are tested at high flow and low flow rates. The overall accuracy of the existing meters will be calculated based on AWWA guidelines using weighting factors of 15%, 70% and 15% applied to accuracy tests at low, intermediate and high flow rates, respectively for positive displacement meters. For compound meters, each of the three individual accuracy tests will be weighted equally (33.3%) to determine the overall accuracy. The weighting factors applied to the turbine meter test results are 15% and 85% for low and high flow rate tests, respectively.

The measured accuracy of existing meters and the measured accuracy of new meters will be plugged into the revenue model spreadsheet where the accuracy rates are multiplied by the applicable consumption rate. The consumption rate is stipulated as defined in the Revenue Model and outlined in the methodology for determining additional revenue from the water meter replacement program.

Within the Revenue Model, the additional consumption is multiplied by the escalated water rates provided by Owner, to determine the increase in water and sewer revenues. This increase in water and sewer revenues will be considered EC Savings.

Table E-6: Water Meter Revenue Model Summary

	Meter Size	Estimated Baseline Consumption (CCF)	Projected Added Consumption (CCF)	Additional Revenue
Small	5/8"	302,092	33,566	\$225,226
	3/4"	12,978	1,442	\$9,676
	1"	74,388	8,265	\$55,460
	1 1/2"	92,865	10,318	\$69,236

	2"	311,344	34,594	\$232,124
Large	3"	122,112	2,492	\$16,722
	4"	222,030	4,531	\$30,405
	6"	123,540	2,521	\$16,917
	8"	190,630	3,890	\$26,105
	10"	0	0	\$0
	TOTAL	1,451,979	101,620	\$681,871

2. M&V Option B: Energy savings performance of Scope of Work are measured and verified at the end-use site. Option B techniques are designed for projects where long-term continuous measurement of performance is desired and warranted. Under Option B, while some parameter may be stipulated or measured once then stipulated, some individual loads are continuously monitored to determine performance; and this measured performance is compared with an equipment-use Baseline to determine the Energy Unit Savings.
 - a. Contractor will supply a one-time report to Owner detailing any initial measurements taken to establish usage Baselines or other parameters. Ongoing post-retrofit measurements will be compared to the Baselines, and the quantified Energy Unit Savings will be calculated and presented in ongoing reports. During the Construction Period, the Energy Unit Savings will be calculated by adding the savings measured for the whole months between Substantial Completion or Beneficial Use of the EC Measure and the M&V Commencement Date.
 - b. Scope of Work
 - i. No baseline measurements are necessary because pre-retrofit PV production is zero. Kilowatt-hours produced by the PV system will be measured using automated metering. Measured interval production kilowatt-hours will be compared against production shown on the monthly utility bills and any differences will be reconciled. Projected kWh production is shown in *Table E-7* below and is projected to degrade by 0.5% per year.

Table E-7: First Year Solar PV Production (ECM-8)

Location/ECM	Projected Annual Production (kWh)
Community Center	116,292
Senior Center	202,470
Total	318,762

- ii. Assumptions: Once Work is Substantially Complete, these savings will be measured and verified monthly for the Energy Savings Term.
 - iii. Baselines and Projected Savings: EC Savings will be determined by multiplying the Energy Unit Savings by the applicable Base Energy Rate. EC Savings will be calculated and presented in on-going reports.
3. Stipulated Savings: When the cost, complexity, or uncertainty of savings measurements are high as compared to the projected savings, Owner and Contractor may agree to stipulate the projected Energy Unit Savings as being achieved, without any measurements being taken.

- a. For the Stipulated Option, the Energy Unit Savings presented below will be agreed to occur each Measurement Period. During the Construction Period, the Energy Unit Savings will be calculated by adding the savings projected for the whole months between Substantial Completion or Beneficial Use of the EC Measure and the M&V Commencement Date.

Table E-8: Stipulated Annual Savings

ECM	Location	Projected Annual Electric Savings (kWh)	Projected Annual Water Savings (CCF)
1	City-Wide	-	3,285
3	City-Wide	798,638	-
5	Parks	143,746	-
6	City-Wide	1,682,791	-
7	Cardoza Baseball Field	40,870	-
7	Cardoza Softball Field	6,223	-
Total		2,672,268	3,285

4. Base Energy Rates: EC Savings will be calculated using the Base Energy Rates or Actual Energy Rates for that meter, whichever results in greater EC Savings. Actual Energy Rates will be calculated at the end of each Measurement Period using utility billing information for that Measurement Period and using the same methodology as was employed to determine the base energy rate in the Recommendations.

The Base Energy Rates listed here are to be increased each Measurement Period on a cumulative basis by four and one-half percent (4.5%) beginning on the first anniversary of the M&V Commencement Date and continuing on the first day of each Measurement Period thereafter.

Table E-9: Base Energy Rates

ECM	Location	Electricity Rate (\$/kWh)	Water Rate (\$/CCF)
1	City-Wide	-	9.05
2	City-Wide	-	6.71
3	City-Wide	0.174	-
4	Public Works/Police Dept, City Hall, Senior Center, Community Center, Sports Center, Library, Parking Garage	0.209	-
4	FS #1, FS #3, FS #4	0.239	-
4	Pumping Stations	0.205	-
5	Parks	0.252	-
6	City-Wide	0.183	-
7	Cardoza Baseball Field	0.233	-
7	Cardoza Softball Field	0.245	-
8	Community Center	0.245	-

8	Senior Center	0.231	-
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EXHIBIT O

MAINTENANCE SERVICES

EQUIPMENT AND FACILITIES COVERED

Contractor will perform preventive maintenance services (“Maintenance Services”) as set forth in this Exhibit O with respect to Generating Facilities being constructed on the Owner’s property at the following Project Locations:

Site Name	Site Address	City	County	State	Zip Code
Senior Center	40 N. Milpitas Blvd	Milpitas	Santa Clara	CA	95035
Community Center	457 E. Calaveras Blvd	Milpitas	Santa Clara	CA	95035

Capitalized terms used in this Exhibit O and not defined in the Contract, have the meanings set forth below:

I. Definitions

“**Annual Maintenance Fee**” means a fee payable annually in advance by the Owner to Contractor, in consideration of the provision of up to ten (10) years of Maintenance Services. The Annual Maintenance Fee for the first five (5) Measurement Periods has already been included in the contract amount.

Payment Schedule:

Measurement Period	O&M Services	Monitoring Services	Annual Maintenance Fee
1	-	-	-
2	-	-	-
3	-	-	-
4	-	-	-
5	-	-	-
6	\$19,838	\$4,402	\$24,240
7	\$20,419	\$4,534	\$24,953
8	\$21,018	\$4,670	\$25,688
9	\$21,634	\$4,810	\$26,444
10	\$22,269	\$4,954	\$27,223

II. Term

So long as the Owner pays to Contractor the Annual Maintenance Fee, Contractor will provide the Maintenance Services, as described herein, up to ten (10) years from the M&V Commencement Date on an annualized basis. At the end of this term, the Owner may:

- a. Enter into another agreement with Contractor to perform Maintenance Services
- b. Enter into an agreement with another service provider
- c. Self-perform preventive maintenance

III. Preventive Maintenance and Monitoring Services Provided

Contractor will provide the following Maintenance Services during the term:

1. Solar Generating Facilities

- (a) **Inspection:** Inspect PV modules, combiner boxes, inverters, isolation transformers, and PV service roof penetrations and support structure on an annual basis.
- (b) **Testing:** Perform voltage testing, amperage testing, and infrared scans of inverters, combiner boxes, disconnects and switchgear on an annual basis.
- (c) **Monitoring:** Monitor system performance on a daily basis.
 - (i) System performance is evaluated by comparing actual production data and actual local weather data to the production values predicted by PVsyst modeling software. These evaluations are performed monthly; greater-than-predicted degradations may indicate the need for further inspection and possible recommendation for panel washing.
 - (ii) Reporting: A web portal will be provided for users to view and download solar production data. A monthly email report showing: production for the month, production year to date, and monthly percent of expected production.
- (d) **Cleaning:**
 - (i) Remove dust, dirt, and debris from outside cabinets of combiner boxes, inverters, transformers, and disconnect switches on an annual basis.
 - (ii) Wash PV modules and remove accumulated dust and debris on an annual basis.

2. EV-Charging Stations

Location:

Site Name	Site Address	City	County	State	Zip Code
Senior Center	40 N. Milpitas Blvd	Milpitas	Santa Clara	CA	95035

- (a) **Inspection:**
 - Check outside unit for any damage
 - Check casing of charge
 - Check cable plug charger
 - Fully extend and test retractor
 - Check Led ring
 - Open and check internal components of charger
 - Check clamps to hold components to dinrails
 - Check CCID for rust caused for condensation
 - Check connection of power supply to terminal block
 - Check connections to PCB
- (b) **Testing:** Measure Power Quality, Voltage, Amperage on Electrical Vehicle Charging station on an annual basis.

3. Battery Energy Storage

Locations:

Site Name	Site Address	City	County	State	Zip Code
Senior Center	40 N. Milpitas Blvd	Milpitas	Santa Clara	CA	95035
Community Center	457 E. Calaveras Blvd	Milpitas	Santa Clara	CA	95035

Component	Task	Frequency
Cabinets	<p>Inspect the outside of the enclosure. Clean if needed.</p> <p>Verify safety grounds on the outside of unit are undamaged and terminated properly.</p> <p>Apply touchup paint to any exposed metal.</p> <p>Inspect and clean outside air inlet grill located on the bottom of the unit.</p>	Annually
HVAC	<p>Remove outside cover and vacuum the condenser coil.</p> <p>Vacuum evaporator coil from inside of unit.</p> <p>Inspect drain line, electrical connections, rotate fans manually without vibration, etc.</p> <p>Verify that the unit is clear of alarms.</p>	Bi-annually
Blower	<p>Clean the outside air inlet grill located on the bottom of the unit.</p> <p>Inspect the blower while unit is operational to verify adequate flow.</p> <p>Remove access cover on inside of unit and clean/change the filter.</p>	Annually
Fire Suppression	<p>Inspect the aerosol cartridges for signs of damage.</p> <p>Verify that the unit is healthy, fault free and that the battery status is good by inspecting the LEDs on controller unit.</p> <p>Inspect the red "Protect wire" sensing wire for signs of damage. This wire is routed on the back side of the battery rack for heat detection.</p> <p>Replace the AAA Lithium 1.5v batteries.</p>	Annually
	<p>The fire suppression system may need to be serviced by qualified service provider. NFPA 2001 provides a suggested schedule and tasks. Consult local code administrator for requirements.</p>	Annually pending local codes
AUX Control	<p>Perform a pull test on all control wiring.</p> <p>Test the EPO function. Record results.</p> <p>Measure and record the 120 VAC control power and all DC power supplies.</p> <p>Verify that the power meter is communicating and performing properly. Record the AC voltages.</p> <p>Run the unit in a charge mode for 15 minutes at full capacity.</p> <p>Open power meter utility and take/save a snapshot of the voltage harmonic distortion. Perform database extraction. Review the temp data and save data for future comparisons.</p>	Annually
	<p>Verify that all high-power connections are torqued properly.</p>	End of year 1, 3, 6 & 9

	Run the unit in a charge mode for 15 minutes at full capacity. Open power meter utility and take/save a snapshot of the voltage harmonic distortion. Perform database extraction. Review the temp data and save data for future comparisons.	Annually
	Verify that all high-power connections are torqued properly.	End of year 1, 3, 6 & 9
UPS	Conduct UPS self-test. Record the test results of the UPS (on-line and on-battery). Verify the UPS is clear of alarms and faults.	Annually
PCS	Inspect the PCS. Clean as needed.	Annually
Batteries	Inspect, clean, and vacuum the battery rack as needed. Inspect the battery BMS enclosures for signs of arcing or degradation.	Annually
	Verify that each battery connection is torqued properly.	End of year 1, 3, 6 & 9

IV. Repair Services

a. If a Generating Facility is damaged and requires safe-off, repair, demolition and/or reconstruction, the Owner must contact the Contractor PV Operations & Maintenance Manager. In the event of damage, any component of the Generating Facility installed by Contractor can be repaired or reconstructed by Contractor at the Owner' request. The Owner must submit a request for quotation to the Contractor PV Operations & Maintenance Manager. Contractor will inspect the damage and provide a written quotation and complete scope of work to the Owner to restore the Generating Facility to normal operational condition. Before proceeding with repairs, Contractor and the Owner must execute a work order, on Contractor's form, for the agreed scope of work and quotation amount. Repair work is done on a time and materials basis. Standard Business Hours are M-F, 7am to 5pm. Non-business Hours & Saturdays Equals 1.5x Rates. Sundays & Holidays Equals 2.0x Rates.

Labor Category		Straight Time
Hourly Rate – PV Electrical Journeyman Technician ¹	\$/hr.	County Labor Rate
Hourly Rate – PV Electrical Apprentice Technician ¹	\$/hr.	County Labor Rate
Hourly Rate – Engineering ²	\$/hr.	\$ 170.00
Hourly Rate – Administrative ²	\$/hr.	\$ 65.00
Service call-out - Daily minimum fee	\$	\$ 550.00
Mileage	\$	IRS Rate
Material mark-up %	%	14.00
Lift rental fee	\$	Current Market Price

¹Trade Hourly rate will be adjusted based on the current year of the local prevailing wage determination plus Burden, requirement for either travel or subsistence and lodging, and markup for services being requested.

²*Escalated according to an inflation rate to the year in which service will occur.*

V. Warranty Services

The Contractor PV Operations & Maintenance Manager will also be the Owner' point of contact for all issues related to the Contractor Warranty set forth in of the Contract. The Owner should refer to the Contract for services provided by Contractor to the Owner in relation to manufacturer's warranties. The terms and conditions of the relevant manufacturer's warranties can be found in the operation and maintenance manuals delivered to the Owner at Final Completion.

VII. Services and Equipment to Be Covered by the Owner

Contractor's obligations under this Exhibit O are expressly conditioned upon Owner providing and being responsible for the following, without cost to Contractor:

- a. Making the Generating Facilities described herein available to Contractor as of the Contract Effective Date.
- b. Operating and maintaining security systems associated with the Generating Facilities.
- c. Maintaining all landscaping in and around Generating Facilities including tree trimming.
- d. Allowing Contractor and its personnel access as necessary to the Generating Facilities, and any related areas that may be reasonably necessary for performance of the Maintenance Services, including reasonable work, parking, and equipment staging areas.
- e. Allowing Contractor and its personnel to access electrical power and other utilities then existing at the Generating Facilities as necessary for Contractor to satisfy its obligations under the Contract.
- f. Remediating, pursuant to Applicable Law, any known Hazardous Substances encountered by Contractor during the performance of the Maintenance Services which Hazardous Substances were not deposited by Contractor, including any backfill with clean soil as may be reasonably required.
- g. Insuring the Generating Facilities against loss due to acts of God and the public enemy; flood, earthquake, tornado, storm, fire; civil disobedience, sabotage, and vandalism.

Contractor will have no obligation to provide the Maintenance Services to the extent such provision of Maintenance Services is materially adversely affected by the Owner failure to satisfy the conditions set forth in this Exhibit O.

EXHIBIT P

RESILIENCY SERVICES

EQUIPMENT AND FACILITIES COVERED

Contractor will perform Resiliency Services (“Resiliency Services”) as set forth in this Exhibit P with respect to the microgrid facilities being constructed on the Owner’s property at the following Project Locations:

Site Name	Site Address	City	County	State	Zip Code
Senior Center	40 N. Milpitas Blvd	Milpitas	Santa Clara	CA	95035
Community Center	457 E. Calaveras Blvd	Milpitas	Santa Clara	CA	95035

I. Term

Contractor will provide the Resiliency Services, as described herein, up to five (5) years from the M&V Commencement Date on an annualized basis. At the end of this term, the Owner may:

1. Enter into another agreement with Contractor to perform Resiliency Services
2. Enter into an agreement with another service provider
3. Self-perform services

II. Scope of Work

Contractor will provide the following Resiliency Services during the term:

- (a) Event Related Services
 - i) Owner and Contractor will communicate via email as soon as either party becomes aware that a pre-planned utility power outage (i.e. Public Safety Shutoff Events) is Scheduled. The non-initiating party will promptly respond to the initiating party in confirmation of receipt of the email notification.
 - ii) Contractor will notify Owner upon utility power outage commencement.
 - iii) Provide digital signage management for Owner supplied display
 - a. Alert building occupants of power event status (Planned, Active, Completed)
 - b. Building occupant tips for extending resilient power coverage.
 - iv) Contractor will notify Owner upon utility power outage conclusion.
 - v) Post-event review of resilient system performance with Owner
 - a. Assess system run-time performance
 - b. Contractor will calculate the emissions benefit of having renewable based microgrid vs only diesel back-up
 - c. Recommendations for extending resilient coverage if more time is needed
 - vi) Assist with implementing lessons learned from review
- b) Routine Services
 - i) Hold and manage backup generator agreement.
 - ii) Review BESS and PV maintenance to ensure systems are available when needed.
 - iii) Perform one annual simulated resiliency event readiness test coordinated with Owner (after hours).
 - a. Review readiness test with Owner.

- iv) Perform quarterly review of electric load creep and control system scheduling changes.
 - a. Report results to Owner with any revisions of coverage estimate.
- v) Provide generator runtime data to Owner to support AQMD permitting.

III. Services and Equipment to Be Covered by the Owner

Contractor's obligations under this Exhibit P are expressly conditioned upon Owner providing and being responsible for the following, without cost to Contractor:

- a. Making the Generating Facilities described herein available to Contractor as of the Contract Effective Date.
- b. Operating and maintaining security systems associated with the Generating Facilities.
- c. Maintaining Stationary Source Permit with the local AQMD.
- d. Allowing Contractor and its personnel access as necessary to the Generating Facilities, and any related areas that may be reasonably necessary for performance of the Resiliency Services, including reasonable work, parking, and equipment staging areas.
- e. Allowing Contractor and its personnel to access electrical power and other utilities then existing at the Generating Facilities as necessary for Contractor to satisfy its obligations under the Contract.
- f. Remediating, pursuant to Applicable Law, any known Hazardous Substances encountered by Contractor during the performance of the Resiliency Services which Hazardous Substances were not deposited by Contractor, including any backfill with clean soil as may be reasonably required.
- g. Insuring the Generating Facilities against loss due to acts of God and the public enemy; flood, earthquake, tornado, storm, fire; civil disobedience, sabotage, and vandalism.

Contractor will have no obligation to provide the Resiliency Services to the extent such provision of Resiliency Services is materially adversely affected by the Owner failure to satisfy the conditions set forth in this Exhibit P.

EXHIBIT Q

WATER FIXTURE RETROFITS DETAILED SCOPE OF WORK

Attached.

EXHIBIT R

FACILITIES AND PUMPING STATIONS LIGHTING DETAILED SCOPE OF WORK

Attached.

EXHIBIT S

PARKS LIGHTING DETAILED SCOPE OF WORK

Attached.

EXHIBIT T

SCOPE OF IMPACT SERVICES

From the Contract Effective Date through June 2024, Contractor will provide the following community impact services at City of Milpitas:

I. Professional Services Provided

Living Laboratories: Data points from Contractor-installed photovoltaic panels are input into resident-facing dashboards for real world application:

- Living Laboratory data can be viewed by any City of Milpitas resident or employee with internet access
- Living Laboratory will be available to Owner for three (3) years
- Data from the following sites will be available:
 - Senior Center
 - Community Center

CivicSpark Fellow

- 11-month posting to begin Fall 2020
- Owner to contract directly with CivicSpark for non-financial Fellowship Agreement
- Contractor to provide community outreach materials to Fellow
- Contractor to provide one (1) one-hour per month phone call to check in with and support Fellow
- Contractor to work with Owner to develop Fellow's scope of work, and offer support over the 11-month program
- Fellowship position is contingent upon selection of City of Milpitas by CivicSpark as fellow placement location

Online Sustainability Portal Support: Contractor will work with Owner to integrate the Living Laboratory solar data, the work of the Civic Spark Fellow and other City sustainability initiatives into a Sustainability Page on the City of Milpitas Website.

- Up to 100 hours of support from Contractor in emails, meetings, content creation etc. for the sustainability page

Earth Day Celebration: Contractor will participate in the 2021 City of Milpitas Earth Day Celebration through hosting a booth and sharing project details with the community. Contractor will also support:

- Creative development and printing of a City of Milpitas Sustainability Timeline Poster
- Giveaways and interactive element at Contractor booth

Community Sustainability Event: Partnering with City of Milpitas Public Works Department, Contractor will support the development, planning, and execution of a community sustainability

engagement event, such as a cycling tour of City infrastructure and sustainability initiatives, to be led by Public Works Department.

- Support for up to two (2) events, totaling 150 participants
- Development of event logistics and marketing
- High quality giveaways for participants

Social Media Engagement Strategy: Contractor will support the development of a social media engagement strategy for the City of Milpitas:

- Up to 150 hours of emails, meetings, research, content creation, strategy development and writing from Contractor Communications staff

Award Application Support: Contractor will support the sourcing of and application process for relevant awards to recognize both the Contractor energy project as well as broader sustainability programs in the City of Milpitas. This support will include:

- Conduct or contract for grant search services
- Up to sixty (60) hours of meetings and writing services for grant applications
- Related grant application fees will be covered by Contractor