



Energy Services Contract
District and ENGIE Services U.S.

DIR Project Registration # _____
ENGIE Services Project #: CN-001306
ENGIE Services Contract # R 3611

ENERGY SERVICES CONTRACT

DRAFT DATED 28 September 2023

This **ENERGY SERVICES CONTRACT** (this "Contract") is made and entered into as of [●] (the "Contract Effective Date") by and between **ENGIE Services U.S. Inc.**, a Delaware corporation, with California State Contractor's License Number 995037 ("ENGIE Services U.S."), and **Mission Springs Water District, a County Water District**, ("District") and together with ENGIE Services U.S. the "Parties" and each of District and ENGIE Services U.S. a "Party".

CONTRACT RECITALS

WHEREAS, District owns and/or operates certain public facilities specifically described in Attachment A (the "Facilities") and District wishes to reduce the Facilities' energy consumption and costs and improve the Facilities' energy quality and reliability and make process improvements; and

WHEREAS, ENGIE Services U.S. is a full-service energy services company with the technical capabilities to provide services to District including identifying supply-side and/or demand-side energy conservation measures ("ECMs"), engineering, procurement, construction management, installation, construction and training; and

WHEREAS, ENGIE Services U.S. has identified potential energy and operational savings opportunities at District's Facilities and estimated program costs to implement the ECMs and presented an overall potential energy cost and consumption savings for implementing the ECMs; and

WHEREAS, pursuant to California Government Code §4217.12, District held a regularly scheduled public hearing on [●], of which two weeks advance public notice was given regarding this Contract and its subject matter, and

WHEREAS, District has determined that the anticipated cost to District to implement the ECMs will be less than the anticipated cost to District for thermal, electrical, and other energy, together with anticipated operational, maintenance and other costs, that would have been consumed by District in the absence of the ECMs in compliance with California Government Code §§4217.10 through 4217.18; and

WHEREAS, District has determined that entering into this energy services contract to implement the ECMs is in the best interests of District and that California Government Code §4217.10 *et seq.* allows District to enter into this Contract; and

WHEREAS, by adoption of Resolution No. [●] at the above-referenced meeting, District approved this Contract and authorized its execution.

NOW, THEREFORE, District and ENGIE Services U.S. hereby agree as follows:

ARTICLE 1. DEFINITIONS

For purposes of this Contract and its Attachments, defined terms will have the following meanings:

"**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 or Professional Services are 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.

"**Act**" is defined in ARTICLE 14.

"**Affiliate**" means any Person that directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the Person specified. For purposes of this definition, control of a Person means the power, direct or indirect, to direct or cause the direction of the management and policies of such Person whether by contract or otherwise; ownership of fifty percent (50%) or more of the voting securities of another Person creates a rebuttable presumption that such Person controls such other Person.

"**Applicable Law**" means any statute, law, treaty, building code, rule, regulation, ordinance, code, enactment, injunction, writ, order, decision, authorization, judgment, decree, protocol, procedure or other legal or regulatory

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determination or restriction by a court or Governmental Authority of competent jurisdiction, as may be in effect at the time the Work or Professional Services are undertaken.

“**Applicable Permits**” means all permits, approvals, inspections and certifications required to be issued by any Governmental Authority in connection with the Professional Services or the building, installation and start-up of the Work as of the Contract Effective Date.

“**Application for Payment**” means a monthly progress payment as described in [Section 8.01](#) or an invoice for materials stored off-site as described in [Section 8.02](#).

“**Arbitral Panel**” is defined in [Section 19.04\(ii\)](#).

“**Arbitration Rules**” is defined in [Section 19.04\(ii\)](#).

“**Attachment**” means the following attachments to this Contract, each of which is an “Attachment:”

| | |
|--------------|--|
| Attachment A | District’s Facilities and Existing Equipment |
| Attachment B | Standards of Occupancy and Control |
| Attachment C | Scope of Work |
| Attachment D | Scope of Monitoring Installation |
| Attachment E | M&V Services |
| Attachment F | Maintenance Services |

“**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 [Attachment C](#).

“**Business Day**” means any calendar day other than a Saturday, a Sunday or a calendar day on which banking institutions in San Francisco, California, are authorized or obligated by federal law or executive order to be closed.

“**CEQA**” means the California Environmental Quality Act, codified at California Public Resource Code § 21000 *et seq.*, and the applicable state and local guidelines promulgated thereunder.

“**Certificate of Beneficial Use**” means the certificate, issued by ENGIE Services U.S. to District and subcontractor(s), which identifies when District took Beneficial Use of the Work or any portion thereof. A Certificate of Beneficial Use may be executed for an individual subcontract, a specific building, a portion of the Work, or the entire Work.

“**Certificate of Final Completion**” means the certificate issued by ENGIE Services U.S. to District, in accordance with [Section 6.03](#). A Certificate of Final Completion may be executed for an individual subcontract, a specific building, a portion of the Work, or the entire Work.

“**Certificate of Substantial Completion**” means the certificate issued by ENGIE Services U.S. to District, in accordance with [Section 6.02](#). A Certificate of Substantial Completion may be executed for an individual subcontract, a specific building, a portion of the Work, or the entire Work.

“**Change**” means any addition to, deletion from, suspension of, or other modification to the quality, function, or intent of the Work or Professional Services.

“**Change in Law**” means any of the following events or circumstances occurring after the Contract 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, but including any change in law imposing new or additional tariffs or import duties).

“**Change Order**” means a written document, signed by both ENGIE Services U.S. and District, authorizing ENGIE Services U.S. to perform a Change. The Change Order modifies the Scope of Work and should identify: (i) the applicable Change; (ii) any additional compensation to be paid to ENGIE Services U.S. to perform such Change; and (iii) any extension of time to complete the Project.

“**Construction**” means any and all Work to be performed that involves construction, alteration, repair, installation or removal of equipment, addition to, subtraction from, improving, moving, wrecking or demolishing any building, parking facility, excavation, or other structure or improvement, or any part thereof.

“**Construction Documents**” means the final designs, drawings, specifications and submittals that are used for Construction, and any Change Orders affecting those documents, that describe the technical requirements for the installation of all the materials and equipment pursuant to this Contract.

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“**Construction Period**” means the period beginning with the first day of the month in which material or equipment is first installed at the Facilities and continuing until the M&V Commencement Date.

“**Contract**” is defined in the Preamble, and includes all Attachments hereto (all of which are incorporated herein by this reference), as well as all Change Orders, amendments, restatements, supplements and other modifications hereto.

“**Contract Amount**” means ~~Nineteen-Seventeen~~ Million ~~Three-Eight~~ Hundred Seventeen Thousand Fifty-Seven Dollars (~~\$17,817,05719,317,057.00~~), which is inclusive of the mobilization payment, as set forth in Section 8.01, but exclusive of any fees for Professional Services.

“**Contract Bonds**” is defined in Section 12.02.

“**Contract Effective Date**” is defined in the Preamble.

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

“**Dispute**” is defined in Section 19.02.

“**District**” is defined in the Preamble.

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

“**DOE Guidelines**” is defined in Section 13.01.

“**ECM**” is defined in the Recitals.

“**Energy Delivery Point**” means, for each Generating Facility, the point at which Utility meter energy is being delivered, as designated in the Interconnection Agreement.

“**Energy Usage Data**” is defined in Section 2.05.

“**ENGIE Services U.S.**” is defined in the Preamble.

“**ENGIE Services U.S. Warranty**” is defined in Section 9.01.

“**Event of Default**” is defined in ARTICLE 16.

“**Excusable Event**” means an act, event, occurrence, condition or cause beyond the control of ENGIE Services U.S., including, but not limited to, the following: (i) any act or failure to act of, or other Delay caused by any District Person; (ii) the failure to obtain, or delay in obtaining, any Interconnection Agreement, Applicable Permit, or approval of a Governmental Authority (including due to failure to make timely inspection), or Delays caused by Changes and/or modifications to the Scope of Work required by a Governmental Authority, other than a failure caused by the action or inaction of ENGIE Services U.S.; (iii) changes in the design, scope or schedule of the Work required by any Governmental Authority or District Person; (iv) undisclosed or unforeseen conditions encountered at the Project Location, including discovery or existence of Hazardous Substances; (v) the failure to obtain, or delay in obtaining, approval of any Governmental Authority for design and installation of any portion of the Work, including any further or subsequent approval required with respect to any Change, other than a failure caused by the action or inaction of ENGIE Services U.S.; (vi) information provided to ENGIE Services U.S. by any District Person or Utility is later found to be inaccurate or incomplete; (vii) any Change in Law; (viii) Delay caused by pending arbitration; (ix) acts of God; (x) acts of the public enemy or terrorist acts; (xi) relocation or construction of transmission facilities or the shutdown of such facilities for the purpose of necessary repairs; (xii) work by Utility; (xiii) flood, earthquake, tornado, storm, fire, explosions, lightning, landslide or similar cataclysmic occurrence; (xiv) sabotage, vandalism, riots or civil disobedience; (xv) labor disputes or strikes; (xvi) labor or material shortages; delay in manufacturing and deliveries of equipment; supply chain disruptions; material price increases that equal or exceed twenty percent (20%) in a six (6) month period; (xvii) Abnormally Severe Weather Conditions; (xviii) 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 Facility and/or other reliable calibrated and appropriate weather station representative of such Facility; (xix) requirement by Utility that any Generating Facility discontinue operation; (xx) any action by a Governmental Authority that prevents or inhibits the Parties from carrying out their respective obligations under this Contract (including an unstayed order of a court or administrative agency having the effect of subjecting the sales of energy output to federal or state regulation of prices and/or services); (xxi) any Utility power outage at a Facility; or (xxii) regional epidemic or global pandemic.

“**Facilities**” is defined in the Recitals.

“**Final Completion**” means the stage in the progress of the Work at which the Construction Work as identified in the Scope of Work, or a designated portion thereof, has been completed and commissioned, including completion of all

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Punch List items, completion of all required training, and delivery to District of the final documentation (as-built drawings, operation and maintenance manuals, warranty documentation and final submittals).

"Generating Facility" means each of the photovoltaic, solar powered generating facilities located at the sites listed in Attachment A, and includes all associated photovoltaic panels, mounting assemblies, inverters, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wires and other equipment that may be necessary to connect the Generating Facility to the applicable Energy Delivery Point.

"Governmental Authority" means any federal, state, regional, town, county, city, municipal or local government agency, department or regulatory body having jurisdiction under Applicable Law over the matter in question.

"Greenhouse Gas" is defined in Section 13.01.

"Hazardous Substances" means (i) any hazardous, toxic, or dangerous wastes, substances, chemicals, constituents, contaminants, pollutants, and materials and any other carcinogenic, liquids, corrosive, ignitable, radioactive, reactive, toxic, or otherwise hazardous substances or mixtures (whether solids, liquids, gases) now or at any time subject to regulation, control, remediation, or otherwise addressed under Applicable Laws; (ii) any "hazardous substance" as defined by the Resource, Conservation and Recovery Act of 1976 (42 U.S.C. §6901 *et seq.*), as amended, and regulations promulgated thereunder; (iii) any "hazardous, toxic or dangerous waste, substance or material" specifically defined as such in 42 U.S.C. §9601 *et seq.*, as amended and regulations promulgated thereunder; and (iv) any hazardous, toxic or dangerous waste, substance, or material as defined in any so-called "superfund" or "superlien" law.

"Incentive Funds" is defined in Section 8.06.

"Installation" means the setting up, construction, and placement of any equipment or materials in the manner it will be operated, in accordance with the Scope of Work and in accordance with all Applicable Laws.

"Instruments of Service" is defined in Section 10.02.

"Interconnection Agreement" means the Interconnection Agreement to be entered into between District and the Utility with respect to the Generating Facilities.

"Interconnection Facilities" is defined in Section 18.02.

"Interest" means interest calculated at the lesser of (i) the prime rate plus two percent (2%) or (ii) the maximum rate permitted by Applicable Law. The "prime rate" will be the "Prime Rate" of interest per annum for domestic banks as published in The Wall Street Journal in the "Money Rates" section at the time interest is assessed.

"Losses" is defined in Section 11.01.

"M&V Commencement Date" means the first day of the month immediately following the later of (i) ENGIE Services U.S.'s receipt of the fully signed Certificate of Final Completion, and (ii) ENGIE Services U.S.'s receipt of the full Contract Amount.

"M&V Services" (if any) are defined in Attachment E.

"Maintenance Services" (if any) are defined in Attachment E.

"Measurement Period" means each one-year period following the M&V Commencement Date.

"NEC" means the National Electric Code.

"Notice to Proceed" is defined in Section 2.04.

"Party" and **"Parties"** are defined in the Preamble.

"Person" means any natural person, corporation, general partnership, limited partnership, limited liability company, proprietorship, other business organization, trust, union, association or Governmental Authority.

"Professional Services" means professional services (such as Maintenance Services and M&V Services, if any) provided by ENGIE Services U.S. to District under this Contract.

"Project" means the entirety of Work to be performed by ENGIE Services U.S. pursuant to the Scope of Work, and any Change Orders.

"Project Location" means the area or areas where the Project materials and equipment and any other energy related equipment, as described in the Scope of Work, are installed, and the general area where the Work is performed.

"Punch List" means, with respect to any portion of the Work, a list of minor corrective items which need to be completed or corrected in order to complete such portion of the Work, but do not impair District's ability to beneficially operate and utilize such portion of the Work.

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"Retained Items" is defined in Section 10.02.

"Retention" is defined in Section 8.03.

"Schedule of Values" is defined in Section 8.01.

"Scope of Work" means the Work set forth in Attachments C and D, as modified by any Change Order.

"Substantial Completion" means the stage in the progress of the Work at which the Work, or a designated portion thereof, is sufficiently complete, in conformance with the Scope of Work, the Construction Documents and any Change Orders, so that District can take Beneficial Use thereof.

"Surety" means the surety supplying the Contract Bonds, which must be an "admitted surety insurer," as defined by California Code of Civil Procedure §995.120, authorized to do business in the State of California, and reasonably satisfactory to District.

"Utility" is defined in Section 18.02.

"Work" means the Work to be done by ENGIE Services U.S. pursuant to the Scope of Work, subject to any Change Orders.

ARTICLE 2. TERM; PERFORMANCE OF THE WORK

Section 2.01 Contract Term. The term of this Contract commences on the Contract Effective Date and ends on the last day on which Professional Services are provided, unless terminated earlier as provided in this Contract.

Section 2.02 Performance of Work. The Work and Professional Services to be performed hereunder will be provided in accordance with the terms of this Contract and the applicable standard of care. ENGIE Services U.S. will perform its obligations under this Contract (i) using the degree of skill and care that is required by current, good and sound professional procedures and practices, and (ii) in conformance with (x) generally accepted professional standards prevailing at the time the Work is performed, (y) the covenants, terms and conditions of this Contract, and (z) applicable laws, codes, rules and regulations, including, without limitation, the applicable provisions of the California Building Code. ENGIE Services U.S. represents and warrants that it is fully experienced in projects of the nature and scope of the Work and Professional Services, and that it is properly qualified, licensed and equipped to supply and perform the Work and Professional Services. The Work completed herein will be subject to District's general right of inspection and supervision to secure the satisfactory completion thereof in accordance with this Contract.

Section 2.03 Scope of Work.

- (a) The Scope of Work may not exceed that set forth in Attachments C and D, except pursuant to a Change Order.
- (b) The Professional Services may not exceed those set forth in Attachments E, F and G, except pursuant to a Change Order.
- (c) MSWD maintains ownership of all renewable energy and environmental benefits, other than those detailed in the RES-BCT tariff.

Section 2.04 Notice to Proceed. Within ten (10) days after District has closed the financing referenced in Section 2.07, District will issue to ENGIE Services U.S. a written Notice to Proceed ("Notice to Proceed"). ENGIE Services U.S. will begin Work within thirty (30) calendar days after ENGIE Services U.S.'s receipt of the Notice to Proceed. If District fails to issue the Notice to Proceed within twenty (20) calendar days after the financing has closed, ENGIE Services U.S. will be entitled to an equitable extension of time as a result of such delay.

Section 2.05 Project Schedule. After receipt of the Notice to Proceed, ENGIE Services U.S. will develop, with approval of District, a master project schedule ("Schedule") using Microsoft Project®, which will demonstrate Substantial Completion no later than April 13, 2026. ENGIE Services U.S. shall cause the approved Schedule signed by ENGIE Services U.S. and District representatives to be attached to this Contract. The Schedule shall be contractually binding on ENGIE Services U.S. and shall be deemed incorporated herein by this reference. ENGIE Services U.S. will establish a weekly construction meeting at which time the Work of the previous week will be reviewed and a two-week look ahead will be coordinated. The project Schedule will be updated monthly. However, the completion date for Work approved by District shall not be changed except as otherwise provided in this Contract.

Section 2.06 District's Energy and Operational Records and Data. If ENGIE Services U.S. requests, District will provide to ENGIE Services U.S., within thirty (30) calendar days after such request, District's Energy Usage Data for the twelve (12) months preceding the Contract Effective Date, and will make commercially reasonable efforts to provide the Energy Usage Data for the thirty-six (36) months preceding the Contract Effective Date. "Energy Usage Data" means all of District's records and complete data concerning energy usage, energy-related maintenance, and other related costs for the Facilities, and including, without limitation, utility records; occupancy information; descriptions of any past, present or anticipated changes in a building's structure or its heating, cooling, lighting or other systems or energy requirements; descriptions of all energy consuming or saving equipment used in the Facilities; applicable building drawings,

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specifications, existing AutoCAD files, operation and maintenance manuals, and as-builts; bills and records relating to operation and maintenance of systems and equipment within the Facilities, and a description of operation and management procedures currently utilized. District agrees that ENGIE Services U.S. may rely on the foregoing data as being accurate in all respects. If ENGIE Services U.S. requests, District will also provide to ENGIE Services U.S., within thirty (30) calendar days after such request, any prior energy audits of the Facilities, and copies of District's financial statements and records related to energy usage and operational costs for said time period at the Facilities, and will authorize its agents and employees to provide and freely discuss such records and to make themselves available for consultations and discussions with authorized representatives, employees, subcontractors, and agents of ENGIE Services U.S.

Section 2.07 Finance Contingency. It is acknowledged and agreed by the Parties that the continued existence of this Contract is expressly contingent upon District closing financing that will allow it to make the payments to ENGIE Services U.S. required by this Contract. District will have thirty (30) calendar days after the Contract Effective Date to close such financing. If the financing is not closed within this time, for any reason, either Party may by written notice to the other Party declare this Contract to be null and void; and the Contract will be null and void as of the other Party's receipt of this notice; *provided* that District may not declare this Contract to be null and void after it has issued the Notice to Proceed. It is acknowledged and agreed that ENGIE Services U.S. will have no obligation to commence performance of the Work unless and until the financing has been closed.

Section 2.08 Proof of Financial Arrangements. Prior to the commencement of the Work, District will provide ENGIE Services U.S. proof that financial arrangements have been made to fulfill District's obligations under this Contract. District's requirement to furnish such proof to ENGIE Services U.S. is a condition precedent to commencement of the Work. After commencement of the Work, ENGIE Services U.S. may request such proof if (i) District fails to make payments to ENGIE Services U.S. of undisputed amounts in appropriately submitted invoices as this Contract requires; (ii) a Change in the Work materially changes the Contract Amount; or (iii) ENGIE Services U.S. has other reasonable concerns regarding District's ability to fulfill its payment obligations under this Contract when due. District 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. After District furnishes any such proof, District will not materially vary such financial arrangements without prior notification of ENGIE Services U.S. If District fails to provide ENGIE Services U.S. with such proof within ten (10) business days of receiving a demand from ENGIE Services U.S., ENGIE Services U.S. will be entitled to suspend its performance under this Contract until such proof is received.

ARTICLE 3. PROJECT IMPLEMENTATION - GENERAL

Section 3.01 Registrations, Permits and Approvals.

- (a) Prior to issuing the Notice to Proceed, District must register the Project with the California Department of Industrial Relations, using Form PWC-100.
- (b) ENGIE Services U.S. is responsible for obtaining (but not paying for) all Applicable Permits and approvals required under this Contract. District will cooperate fully with and assist ENGIE Services U.S. in obtaining Applicable Permits and approvals.
- (c) District is responsible for paying for all permit fees (including expedited plan check fees), inspections, and certifications costs, including any additional work that may be required by the Authority(ies) Having Jurisdiction as part of the permitting process upon timely receipt of notification by ENGIE Services U.S..
- (d) District is responsible for hiring and paying for all inspectors, site testing (including geotechnical observations) and laboratory testing.
- (e) Except as specifically set forth in the Scope of Work for Well 33, District is responsible for paying for all utility interconnection(s) costs, including any additional work that may be required by the Utility(ies) as part of the Interconnection Agreement(s).
- (f) District is responsible for obtaining and paying for any annual operating permits and approvals or exemptions required by CEQA, as applicable.

Section 3.02 Coordination. District will be responsible for coordinating the activities of ENGIE Services U.S. and ENGIE Services U.S.'s subcontractors and suppliers with those of District Persons.

Section 3.03 Project Meetings/Status Updates. During the course of the Work and in addition to regularly scheduled weekly meetings, ENGIE Services U.S. will periodically meet with District to report on the general status and progress of the Work. ENGIE Services U.S. may (but is not required to) make food and beverage items of nominal value available to District and District's employees and agents at such meetings, which if offered will be deemed part of the Scope of Work and included in the Contract Amount.

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Section 3.04 Project Location Access. District hereby grants to ENGIE Services U.S., without cost to ENGIE Services U.S., all rights of ingress and egress at the Project Location, necessary for ENGIE Services U.S. to perform the Work and provide all services contemplated by this Contract. ENGIE Services U.S. will provide twenty-four-hour advance notice to District for access to any District Facilities. All persons entering the Project Location, including District and its employees and agents, must follow ENGIE Services U.S.'s safety procedures. ENGIE Services U.S. may (but is not required to) make transportation available to District and District's employees and agents between and within Project Locations, which if offered will be deemed part of the Scope of Work and included in the Contract Amount.

Section 3.05 Consents; Cooperation. Whenever a Party's consent, approval, satisfaction, or determination will be required or permitted under this Contract, and this Contract does not expressly state that the Party may act in its sole discretion, such consent, approval, satisfaction, or determination will not be unreasonably withheld, qualified, conditioned, or delayed, whether or not such a "reasonableness" standard is expressly stated in this Contract. Whenever a Party's cooperation is required for the other Party to carry out its obligations hereunder, each Party agrees that it will act in good faith and reasonably in so cooperating with the other Party or its designated representatives or assignees or subcontractors. Each Party will furnish decisions, information, and approvals required by this Contract in a timely manner so as not to delay the other Party's performance under this Contract.

Section 3.06 Independent Contractor. The Parties hereto agree that ENGIE Services U.S., and any agents and employees of ENGIE Services U.S., its subcontractors and/or consultants, is acting in an independent capacity in the performance of this Contract, and not as a public official, officer, employee, consultant, or agent of District for purposes of conflict of interest laws or any other Applicable Law.

ARTICLE 4. FINAL DESIGN PHASE – CONSTRUCTION DOCUMENTS / EQUIPMENT PROCUREMENT

Section 4.01 General Provisions.

- (a) After receipt of the Notice to Proceed, ENGIE Services U.S. will proceed with the preparation of any necessary designs, drawings, and specifications related to the Scope of Work.
- (b) ENGIE Services U.S.'s design must meet all of the minimum requirements included in the Scope of Work, Attachment C.
- (c) After completion of the design phase and approval of the final plans and specifications by District, ENGIE Services U.S. will order the equipment identified in the Scope of Work, and any other necessary materials and supplies in order to meet the project schedule.
- (d) District will designate a single-point representative with whom ENGIE Services U.S. may consult on a reasonable, regular basis and who is authorized to act on District's behalf with respect to the Project design. District's representative will render decisions in a timely manner with regard to any documents submitted by ENGIE Services U.S. and to other requests made by ENGIE Services U.S. in order to avoid delay in the orderly and sequential progress of ENGIE Services U.S.'s design services.
- (e) Within ten (20) Business Days after ENGIE Services U.S.'s request, District will, upon request and subject to existing availability:
 - (i) furnish all surveys or other information in District's possession that describe the physical characteristics, legal limitations, and utility locations in and around the Project Location;
 - (ii) disclose any prior environmental review documentation and all information in its possession concerning subsurface conditions, including without limitation the existence of any known Hazardous Substances, in or around the general area of the Project Location;
 - (iii) supply ENGIE Services U.S. with all relevant information in District's possession, including any as-built drawings and photographs, of prior construction undertaken at the Project Location;
 - (iv) obtain any and all easements, zoning variances, planning approvals, including any resolution of any environmental impact issues, and any other legal authorization regarding utilization of the Project Location for the execution of the Work; and
 - (v) obtain any and all title reports for those Project Locations reasonably requested by ENGIE Services U.S. for a recognized purpose.
- (f) All information furnished pursuant to this Section 4.01 will be supplied at District's expense, and ENGIE Services U.S. will be entitled to rely upon the accuracy and completeness of all information provided. If ENGIE Services U.S. is adversely affected by any failure to provide, or delay in providing, the information specified in Section 4.01(e), ENGIE Services U.S. will be entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount provided that it provides written notice to District within ten business days of the failure or delay along with supporting information and the term of the delay.

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- (g) If any information disclosed under this Section 4.01 gives rise to a Change to the Work or an Excusable Event, ENGIE Services U.S. will notify District in writing within ten business days. The Parties will meet and confer with respect to those Changes, and ENGIE Services U.S. will be entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount. If the Parties, however, are unable to agree on whether District's disclosed information gives rise to a Change to the Work or an Excusable Event, those disputes are to be resolved in accordance with ARTICLE 19.
- (h) ENGIE Services U.S. contemplates that it will not encounter any Hazardous Substances at the Project Location, except as has been disclosed as a pre-existing condition by District prior to the Contract Effective Date. However, any disclosure of Hazardous Substances that will affect the performance of the Work after the Contract Effective Date may constitute a valid basis for a Change Order provided that it provides written notice to District within ten business days of discovery of the Hazardous Substances along with supporting information and the proposed equitable adjustment in the Contract Amount and the term of the delay.

Section 4.02 Review of Construction Documents. ENGIE Services U.S. will prepare and submit all drawings and specifications to District for review and approval. District will review the documents and provide any comments in writing to ENGIE Services U.S. within ten (10) Business Days after receipt of the documents. ENGIE Services U.S. will incorporate appropriate District comments into the applicable drawings and specifications. If District fails to provide written comments within the ten (10) Business Day period, or such longer time as the Parties may mutually agree due to exigent circumstances, District will be deemed to have no comments regarding the documents.

Section 4.03 Permits. The respective obligations of the Parties in obtaining inspections and permits are as specified in Section 3.01. District will agree to any nonmaterial changes to the designs, drawings, and specifications required by any Governmental Authority. The Contract Amount must be increased by any additional cost incurred by ENGIE Services U.S. due to a Change required by a Governmental Authority and the time required to complete the Work must be increased by the number of additional days required to complete the Work because of a Change imposed by a Governmental Authority.

Section 4.04 Changes During Final Design Phase. If during the design phase any District Person requests Changes and/or modifications to the Work and/or an Excusable Event occurs, ENGIE Services U.S. will be entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount. Valid bases for additional compensation and/or time extension are limited to : (i) any authorized District Person requests changes and/or modifications to the Project Scope of Work during the Project design phase; (ii) any District Person causes delays during ENGIE Services U.S.'s design work; (iii) the discovery of subsurface or other site conditions that were not reasonably anticipated or disclosed as of the Contract Effective Date; (iv) the discovery of Hazardous Substances at or impacting the Project Location; (v) changes to the Scope of Work required to obtain Applicable Permits not reasonably foreseeable by ENGIE; (vi) damage to any equipment or other Work installed by ENGIE Services U.S. caused by the act or omission of any District Person; (vii) changes and/or modifications to Scope of Work ordered by any Governmental Authority and not reasonably foreseeable by ENGIE; and (viii) any other condition that could not reasonably have been anticipated by ENGIE Services U.S., that modifies and/or changes the Scope of Work.

ARTICLE 5. CONSTRUCTION PHASE

Section 5.01 General Provisions. Upon securing the requisite Applicable Permits pursuant to Section 3.01, and completion of Construction Documents, ENGIE Services U.S. will commence the construction of the Project in accordance with the Construction Documents. The construction will be performed in accordance with all Applicable Laws and Applicable Permits, by ENGIE Services U.S. and/or one or more licensed subcontractors qualified to perform the Work.

Section 5.02 ENGIE Services U.S.'s Responsibilities during Construction Phase.

- (a) As an independent contractor to District, ENGIE Services U.S. will provide, or cause to be provided by its subcontractor(s), all labor, materials, equipment, tools, transportation, and other facilities and services necessary for the proper execution, construction, and completion of the Work. ENGIE Services U.S. will purchase in advance all necessary materials and supplies for the construction of the Project in order to assure the prompt and timely delivery of the completed Work pursuant to the project schedule. ENGIE Services U.S. will also be responsible for all means, methods, techniques, sequences, and procedures required by the Construction Documents.
- (b) ENGIE Services U.S. will not interrupt the operations of the District without prior written approval. ENGIE Services U.S. will make commercially reasonable efforts to coordinate construction activities and perform the Work to minimize disruption to District's operations at the Project Location. ENGIE Services U.S. will provide at least fifteen (15) calendar days' written notice to District of any planned power outages that will be necessary for the construction. ENGIE Services U.S. will cooperate with District in scheduling such outages, and District agrees to provide its reasonable approval of any scheduled outage.

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- (c) ENGIE Services U.S. will initiate and maintain a safety program in connection with its Construction of the Project. ENGIE Services U.S. will take reasonable precautions for the safety of, and will provide reasonable protection to prevent damage, injury, or loss to: (i) employees of ENGIE Services U.S. and subcontractors performing Work under this Contract; (ii) ENGIE Services U.S.'s property and other materials to be incorporated into the Project, under the care, custody, and control of ENGIE Services U.S. or its subcontractors; and (iii) other property at or adjacent to the Project Location not designated for removal, relocation, or replacement during the course of construction. ENGIE Services U.S. will not be responsible for District's employees' safety unless ENGIE Services U.S.'s negligence in the performance of its Work is the proximate cause of the employee's injury.
- (d) ENGIE Services U.S. will inform District of estimated needs for a temporary staging area for ENGIE Services U.S., or its subcontractors, to use during the construction phase to store and assemble equipment for completion of the Work, if needed at least 30 calendar days in advance of use.
- (e) ENGIE Services U.S. will inform District in writing, with 10 business days' notice, of the need for reasonable access to the Project Location to perform the Work, including access to perform Work on Saturdays, Sundays, legal holidays, and non-regular working hours
- (f) ENGIE Services U.S. will provide at least 10 business days' notice in writing to District of scheduled test(s) of installed equipment, if any, and District and/or its designees will have the right to be present at any or all such tests conducted by ENGIE Services U.S., any subcontractor, and/or manufacturers of the equipment.
- (g) ENGIE Services U.S., will request in writing, with at least 10 business days' notice, the District's participation in the job inspection walk-through with ENGIE Services U.S. to determine Substantial Completion or Beneficial Use of major equipment, and will sign the Certificate(s) of Substantial Completion, as well as the final walk-through of the Project, and will coordinate with District to schedule training sessions for District staff.
- (h) Pursuant to California Labor Code §6705, if the Work is a public work involving an estimated expenditure in excess of \$25,000 and includes the excavation of any trench or trenches five (5) feet or more in depth, ENGIE Services U.S. will, in advance of excavation, submit to District and/or a registered civil or structural engineer, employed by District, to whom authority to accept has been delegated, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches, which provisions will be no less effective than the current and applicable CAL-OSHA Construction Safety Orders. No excavation of such trench or trenches may be commenced until this detailed plan has been accepted by District or by the person to whom authority to accept has been delegated by District. Pursuant to California Labor Code §6705, nothing in this [Section 5.02\(h\)](#) imposes tort liability on District or any of its employees.
- (i) Pursuant to California Public Contract Code §7104, if the Work is a public work involving digging trenches or other excavations that extend deeper than four (4) feet below the surface of the ground:
 - (i) ENGIE Services U.S. will promptly, and before the following conditions are disturbed, notify District, in writing, of any:
 - 1) Material that ENGIE Services U.S. believes may be material that is hazardous waste, as defined in California Health and Safety Code §25117, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law;
 - 2) Subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to ENGIE Services U.S. before the Contract Effective Date;
 - 3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract.
 - (ii) District will 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 ENGIE Services U.S.'s cost of, or the time required for, performance of any part of the Work will issue a Change Order under the procedures described in this Contract.
 - (iii) If a dispute arises between District and ENGIE Services U.S., whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in ENGIE Services U.S.'s cost of, or time required for, performance of any part of the Work, ENGIE Services U.S. will not be excused from any scheduled completion date provided for by this Contract but will proceed with all Work to be performed under this Contract. ENGIE Services U.S. will retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the Parties.

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- (iv) If it is determined that physical conditions at the site are not materially different from those indicated or that no change in terms of the Contract Documents is justified, the District will notify ENGIE Services U.S. in writing stating reasons ENGIE Services U.S. will not be entitled to an adjustment in the contract amount or scheduled completion date. Such reasons may include any of the following:
- 1) ENGIE Services U.S. knew of the existence of the conditions at the time ENGIE Services U.S. negotiated the contract.
 - 2) ENGIE Services U.S. reasonably should have known of the existence of the conditions as a result of having compiled with the requirements of the Contract Documents.
 - 3) ENGIE Services U.S. was required to give written notice of differing site conditions under the Contract and failed to do so within the time required and such failure had a material impact on the progress or cost to complete the work..

Section 5.03 District's Responsibilities during Construction Phase.

- (a) District will designate a single-point representative authorized to act on District's behalf with respect to Project construction and/or equipment installation. District may from time to time change the designated representative and will provide written notice to ENGIE Services U.S. of such change. Any independent review of the construction will be undertaken at District's sole expense, and will be performed in a timely manner so as to not unreasonably delay the orderly progress of ENGIE Services U.S.'s Work.
- (b) District will provide a temporary staging area for ENGIE Services U.S., or its subcontractors, to use during the construction phase to store and assemble equipment for completion of the Work, if needed. District 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. District will provide access to the Facilities, including parking permits and identification tags, for ENGIE Services U.S. and subcontractors to perform the Work during regular business hours, or such other reasonable hours as may be requested by ENGIE Services U.S. and acceptable to District. District will also either provide a set or sets of keys to ENGIE Services U.S. and its subcontractors (signed out per District policy) or provide a readily available security escort to unlock and lock doors. District will not unreasonably restrict ENGIE Services U.S.'s access to Facilities to make emergency repairs or corrections as ENGIE Services U.S. may determine are needed.
- (c) District will maintain the portion of the Project Location that is not directly affected by ENGIE Services U.S.'s Work. District will keep the designated Project Location and staging area for the Project free of obstructions, waste, and materials within the control of District.
- (d) District 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.
- (e) District will prepare the Project Location for construction, including, but not limited to, clearance of all above and below ground obstructions, such as vegetation, buildings, appurtenances, and utilities. Subsurface conditions and obstacles (buried pipe, utilities, etc.) that are not otherwise previously and accurately documented by District and such documentation made available to ENGIE Services U.S. are the responsibility of District. If ENGIE Services U.S. encounters such unforeseen conditions in the performance of the Work, ENGIE Services U.S. may be entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount as provided in this Contract.
- (f) District will remove any Hazardous Substances either known to District prior to the commencement of the Work or encountered by ENGIE Services U.S. during the construction of the Project, if necessary in order for the Work to progress safely, that were not knowingly released or brought to the site by ENGIE Services U.S. ENGIE Services U.S. will respond to the discovery of Hazardous Substances at or around the Project Location during the course of ENGIE Services U.S.'s construction in accordance with Section 5.06.
- (g) District will coordinate the Work to be performed by ENGIE Services U.S. with its own operations and with any other construction project that is ongoing at or around the Project Location, with the exception that ENGIE Services U.S. will coordinate the Interconnection Facilities work, if any, which will be performed by the local utility.
- (h) District will, and will cause District Persons to, allow ENGIE Services U.S. and its subcontractors access to and reasonable use of necessary quantities of District's water and other utilities, including electrical power, as needed for the construction of the Work, at no cost to ENGIE Services U.S.
- (i) District will, and will cause District Persons to, provide ENGIE Services U.S. and/or its subcontractors with reasonable access to the Project Location to perform the Work, including without limitation and at no extra cost

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to ENGIE Services U.S., access to perform Work on Saturdays, Sundays, legal holidays, and non-regular working hours.

- (j) District will also do the following:
- (i) Attend the regularly scheduled progress meetings. Participate as needed regarding scheduling of the Work.
 - (ii) When requested by ENGIE Services U.S., participate in the job inspection walk-through with ENGIE Services U.S. to determine Substantial Completion or Beneficial Use of major equipment, and will sign the Certificate(s) of Substantial Completion.
 - (iii) Perform a final walk-through of the Project and, upon receipt of the operation and maintenance manuals and as-built drawings, sign the Certificate of Final Completion for the related Work.
 - (iv) Upon the completion of the entire Scope of Work listed in Attachment C, including training, if any, and submission of close-out documents, sign a Certificate of Final Completion for the entire Project.

Section 5.04 Changes.

- (a) Change Orders Generally. Any and all changes and/or modifications to the Scope of Work must be authorized by a written Change Order executed by authorized representatives of ENGIE Services U.S. and District. Change Orders not so written and executed shall not be binding on District and no compensation shall be due on account of the same. The Change Order shall state the change and/or modification to the Scope of Work, any additional compensation to be paid, and any applicable extension of time. ENGIE Services U.S. may, at its election, suspend performance of that portion of the Work affected by any proposed Change until a written Change Order with respect to the Changed or modified Work has been signed by both District and ENGIE Services U.S. ENGIE Services U.S. will use its reasonable efforts to continue other portions of the Work not affected or impacted by such proposed Change until such time as the applicable Change Order is resolved. In addition, if any District Person requests a proposal from ENGIE Services U.S. for a Change and District subsequently elects to not proceed with such Change, District agrees that a Change Order will be issued to reimburse ENGIE Services U.S. for any costs reasonably incurred for estimating services, design services, and/or preparation of the proposal requested by such District Person.
- (b) Change Orders Requiring Additional Compensation. If during construction any authorized District Person requests changes and/or modifications to the Work, and/or there are Excusable Events, District will pay the extra costs caused by such modifications and/or changes and/or Excusable Event and ENGIE Services U.S. will be entitled to additional compensation for the following reasons, limited to (i) any authorized District Person requests changes and/or modifications to the Scope of Work during the construction phase of the Project; (ii) any District Person causes delays during ENGIE Services U.S.'s construction work; (iii) discovery of subsurface or other site conditions that were not reasonably anticipated or disclosed prior to the commencement of the Work; (iv) discovery of Hazardous Substances at or impacting the Project Location; (v) changes and/or modifications to the Scope of Work that were not reasonably foreseeable by ENGIE Services U.S. required to obtain required permits and approvals as required by any Governmental Authority; (vi) damage to any equipment or other Work installed by ENGIE Services U.S. caused by the act or omission of any District Person; (vii) changes and/or modifications to Scope of Work ordered by any Governmental Authority that were not reasonably foreseeable by ENGIE Services U.S.; and (viii) any other condition that would not reasonably have been anticipated by ENGIE Services U.S., that modifies and/or changes the Scope of Work .
- (c) Change Orders Requiring Additional Time. If during construction any District Person requests changes and/or modifications to the Scope of Work and/or an Excusable Event occurs, the Parties agree that an equitable extension of time to complete the Work may be necessary. Prior to any extension of time, ENGIE Services U.S. will use commercially reasonable efforts to make up such delays, including authorizing overtime payments; *provided* that District has issued a Change Order authorizing any such overtime payment and has specifically agreed to pay all costs, including administrative charges and expenses, associated therewith.
- (d) Method for Adjustment. An increase or decrease in the Contract Amount and/or time resulting from a Change in the Work and/or Excusable Event must be determined by the following method:
- (i) ENGIE Services U.S.'s costs of subcontractor costs, materials and labor calculated on a basis and format agreed upon by District and ENGIE Services U.S. plus a fee of fifteen percent (15%).
- (e) Disagreements. If there is a disagreement between District and ENGIE Services U.S. as to whether ENGIE Services U.S. is entitled to an equitable extension of time and/or an equitable adjustment in the Contract Amount, those disputes are to be resolved in accordance with the provisions of ARTICLE 19. Pending the resolution of any such dispute, ENGIE Services U.S. may suspend Work.

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Section 5.05 Minor Changes to Scope of Work. ENGIE Services U.S. has the authority to make minor changes that do not change the total Contract Amount and are consistent with the intent of the Construction Documents, without prior notice to District. ENGIE Services U.S. will either promptly inform District, in writing, of any minor changes made during the implementation of the Project, or make available to District at the site a set of as-built drawings that will be kept current to show those minor changes.

Section 5.06 Hazardous Substances.

- (a) ENGIE Services U.S. will promptly provide written notice to District if ENGIE Services U.S. observes any Hazardous Substance, as defined herein, at or around the Facilities during the course of construction or installation of any equipment which have not been addressed as part of the Scope of Work. ENGIE Services U.S. will have no obligation to investigate the Facilities for the presence of Hazardous Substances prior to commencement of the Work unless otherwise specified in the Scope of Work. District will be solely responsible for investigating Hazardous Substances and determining the appropriate removal and remediation measures with respect to the Hazardous Substances. District will comply with all Applicable Laws with respect to the identification, removal and proper disposal of any Hazardous Substances known or discovered at or around the Facilities, and in such connection will execute all generator manifests with respect thereto. ENGIE Services U.S. will comply with all Applicable Laws in connection with the use, handling, and disposal of any Hazardous Substances in the performance of its Work. In connection with the foregoing, District will provide ENGIE Services U.S., within ten (10) Business Days after the Contract Effective Date, a written statement that represents and warrants (i) whether or not, to its knowledge, there are Hazardous Substances either on or within the walls, ceiling or other structural components, or otherwise located in the Project Location, including, but not limited to, asbestos-containing materials; (ii) whether or not, to its knowledge, conditions or situations exist at the Facilities which are subject to special precautions or equipment required by federal, state, or local health or safety regulations; and (iii) whether or not, to its knowledge, there are unsafe working conditions at the Facilities.
- (b) District will indemnify, defend, and hold ENGIE Services U.S. harmless from and against any and all Losses that in any way result from, or arise under, such District owned or generated Hazardous Substances, except for liabilities to the extent due to the negligence or willful misconduct of ENGIE Services U.S., or its subcontractors, agents or representatives, in the handling, disturbance or release of Hazardous Substances. This indemnification will survive any termination of this Contract.

Section 5.07 Pre-Existing Conditions. Certain pre-existing conditions may be present within the Facilities that (i) are non-compliant with applicable codes, (ii) may become non-compliant with applicable codes upon completion of ENGIE Services U.S.'s Work, (iii) may cause ENGIE Services U.S.'s completed Work to be non-compliant with applicable codes, (iv) may prevent District from realizing the full benefits of ENGIE Services U.S.'s Work, (v) may present a safety or equipment hazard, or (vi) are otherwise outside the scope of ENGIE Services U.S.'s Work. Regardless of whether or not such conditions may have been readily identifiable prior to the commencement of Work, ENGIE Services U.S. 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.

ARTICLE 6. PROJECT COMPLETION

Section 6.01 Occupancy or Use of Work. District may take occupancy or use of any completed or partially completed portion of the Work at any stage, whether or not such portion is Substantially Complete, *provided* that such occupancy or use is authorized by Governmental Authority and, *provided further*, that District assumes responsibility for the security of, insurance coverage for, maintenance, utilities for, and damage to or destruction of such portion of the Work. If Substantial Completion of a portion of the Construction Work is not yet achieved, occupancy or use of such portion of the Work will not commence until District's insurance company has consented to such occupancy or use. When occupancy or use of a portion of the Work occurs before Substantial Completion of such portion, District and ENGIE Services U.S. will accept in writing the responsibilities assigned to each of them for title to materials and equipment, payments and Retention with respect to such portion.

Section 6.02 Substantial Completion. When ENGIE Services U.S. considers the Work, or any portion thereof, to be Substantially Complete, ENGIE Services U.S. will supply to District a written Certificate of Substantial Completion with respect to such portion of the Work, including a Punch List of items and the time for their completion or correction. District will within ten (10) Business Days of receipt of the Certificate of Substantial Completion, review such portion of the Work for the sole purpose of determining that it is Substantially Complete. If the authorized District staff agree that Substantial Completion has been achieved consistent with Contract provisions, the District will sign and return the Certificate of Substantial Completion to ENGIE Services U.S. acknowledging and agreeing: (i) that such portion of the Work is Substantially Complete; (ii) the date of such Substantial Completion; (iii) that from the date of Substantial Completion District will assume responsibility for the security of, insurance coverage for, maintenance, utilities for, and damage to or destruction of such portion of the Work. District agrees that approval of a Certificate of Substantial Completion will not be unreasonably withheld, delayed or conditioned.

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Section 6.03 Final Completion. When ENGIE Services U.S. considers the entirety of the Work to be Finally Complete, ENGIE Services U.S. will notify District that the Work is fully complete and ready for final inspection. District will inspect the Work to verify the status of Final Completion within ten (10) Business Days after its receipt of ENGIE Services U.S.'s certification that the Work is complete. When District agrees that the Work is fully completed, ENGIE Services U.S. will issue a Certificate of Final Completion, which District must sign. District agrees that its signing of the Certificate of Final Completion will not be unreasonably withheld, delayed or conditioned. At that time, District will pay ENGIE Services U.S. any remaining Contract Amount due and any outstanding Retention being withheld by District, in accordance with Section 8.03. District may give ENGIE Services U.S. written notice of acceptance of the Work and will promptly record a notice of completion or notice of acceptance in the office of the county recorder in accordance with California Civil Code §9204.

Section 6.04 Transfer of Title; Risk of Loss. Title to, and warranties for, all or a portion of the Project equipment, supplies and other components of the Construction Work will pass to District upon the earlier of (i) the date payment for such Project equipment, supplies or components is made by District or (ii) the date any such items are incorporated into the Project Location. ENGIE Services U.S. 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 District will in no way affect District's and ENGIE Services U.S.'s rights and obligations as set forth in other provisions of this Contract. Except as provided in this Section 6.04, after the date of Substantial Completion, ENGIE Services U.S. will have no further obligations or liabilities to District arising out of or relating to this Contract, except for the obligation to complete any Punch List items, the obligation to perform any warranty service under Section 9.01, and obligations which, pursuant to their terms, survive the termination of this Contract.

ARTICLE 7. SUBCONTRACTORS

Section 7.01 Authority to Subcontract. ENGIE Services U.S. may delegate its duties and performance under this Contract, and has the right to enter into agreements with any appropriately licensed subcontractors and other qualified service or material providers as ENGIE Services U.S. may select in its discretion to perform the Work and who are approved by District. ENGIE Services U.S. will not be required to enter into any subcontracts with parties whom ENGIE Services U.S. has not selected or subcontractors whom ENGIE Services U.S. has objection to using.

Section 7.02 Prompt Payment of Subcontractors. ENGIE Services U.S. will promptly pay, when due, all amounts payable for labor and materials furnished in the performance of this Contract and will use commercially reasonable efforts, including providing stop notice release bonds, if necessary, to prevent any lien or other claim under any provision of Applicable Law from arising against any District property, against ENGIE Services U.S.'s rights to payments hereunder, or against District.

Section 7.03 Relationship. Nothing in this Contract constitutes or will be deemed to constitute a contractual relationship between any of ENGIE Services U.S.'s subcontractors and District, or any obligation on the part of District to pay any sums to any of ENGIE Services U.S.'s subcontractors.

Section 7.04 Prevailing Wages. To the extent required by California Labor Code §1771 or other Applicable Law, all employees of ENGIE Services U.S. and ENGIE Services U.S.'s subcontractors performing Work at the Project Location will be paid the per diem prevailing wages for the employee's job classification in the locality in which the Work is performed. In accordance with California Labor Code §§1773 and 1773.2, District will obtain from the Director of Industrial Relations 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 the Work at the Project Location, and will cause copies of such determinations to be kept on file at its principal office and posted at each Project Location. District will promptly notify ENGIE Services U.S. of any changes to any such prevailing wage determination. If a portion of the Work is subject to the federal Davis-Bacon Act and/or related acts, ENGIE Services U.S. will ensure that its subcontracts for such portion of the Work require the use of the labor classifications identified in the applicable federal wage determination for certified payroll records, and that all employees of ENGIE Services U.S. and ENGIE Services U.S.'s subcontractors performing such portion of the Work be paid the higher of the California or federal prevailing wage rates with respect to such portion of the Work. ENGIE Services U.S. will indemnify, defend and hold harmless District from and against any claims, Demands, suits, actions or liabilities of District resulting from any actual or alleged failure of ENGIE to comply with the prevailing wage laws as aforesaid.

ARTICLE 8. PAYMENTS

Section 8.01 Monthly Progress Payments. Promptly after the Contract Effective Date, ENGIE Services U.S. will invoice District for a mobilization payment in the amount of twenty percent (20%) of the Contract Amount. These amounts must be paid to ENGIE Services U.S. within thirty (30) calendar days after District's receipt of an invoice for those amounts along with a schedule of values and line item estimates of the use of the mobilization payment. In addition, as the Work progresses, ENGIE Services U.S. will submit to District its applications for monthly payments based on the progress made on the Project through the date on which ENGIE Services U.S. submits such Application for Payment and a reconciled schedule of values. Within twenty-one (21) calendar days from the Contract Effective Date, ENGIE Services U.S. will prepare and submit to District a schedule of values apportioned to the various divisions or

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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 Amount. All Applications for Payment will be in accordance with the Schedule of Values.

Section 8.02 Materials Stored Off-Site. In addition to the monthly progress payments specified in Section 8.01, ENGIE Services U.S. may invoice District for materials purchased in advance and not stored at the Project Location, provided that ENGIE Services U.S. has received prior approval from the District for such off-site storage costs. Each such Application for Payment will be accompanied by proof of off-site material purchases, evidence of the date that the materials have been delivered to a warehouse reasonably acceptable to District and evidence of appropriate insurance coverage for loss or damage to the materials. ENGIE Services U.S. will furnish to District written consent from the Surety approving the advance payment for materials stored off site. District will pre-pay one hundred percent (100%) of ENGIE Services U.S.'s Application for Payment for the materials delivered, less Retention as indicated in Section 8.03. ENGIE Services U.S. will protect stored materials from damage. Damaged materials, even though paid for, will not be incorporated into the Work and District will be credited for the value of such paid-for damaged materials that are not incorporated into the Work.

Section 8.03 Retention. District, or its designee, must approve and pay each Application for Payment, less a retention amount ("Retention") of five percent (5%) in accordance with California Public Contract Code §7201, within thirty (30) calendar days after its receipt of the Application for Payment; *provided, however*, that there is to be no Retention with respect to the mobilization payment. A failure to approve and pay a valid Application for Payment in a timely manner is a material default by District under this Contract. District may, but is not required to, make progress payments in full without Retention at any time after fifty percent (50%) of the Work has been completed, as permitted pursuant to California Public Contract Code §9203. Upon Substantial Completion, the Retention must be reduced to two percent (2%) of the Contract Amount, and ENGIE Services U.S. may invoice and District will pay this amount. District will pay ENGIE Services U.S. the remaining three percent (3%) Retention amount upon achieving Final Completion. In lieu of Retention being held by District, ENGIE Services U.S. may request that securities it provides be substituted or Retention be held in an escrow account pursuant to California Public Contract Code §22300.

Section 8.04 Final Payment. The final Application for Payment may be submitted after Final Completion. Final lien waivers will be provided with final invoice. The final payment amount must also include payment to ENGIE Services U.S. for any remaining Retention withheld by District.

Section 8.05 Disputed Invoices/Late Payments. District may in good faith dispute any Application for Payment, or part thereof, within fifteen (15) calendar days after the date the Application for Payment was received by District. If District disputes all or a portion of any Application for Payment, District will pay the undisputed portion when due and provide ENGIE Services U.S. a written notice and explanation of the basis for the dispute and the amount of the Application for Payment being withheld related to the dispute no later than the due date. If any amount disputed by District is finally determined to be due to ENGIE Services U.S., either by agreement between the Parties or as a result of dispute resolution pursuant to ARTICLE 19 below, it will be paid to ENGIE Services U.S. within ten (10) Business Days after such final determination, plus Interest from the date billed or claimed until such amount is paid.

Section 8.06 Rebate Programs. ENGIE Services U.S. will assist District in the preparation and submission to the applicable agencies of applications and documentation necessary for the following energy efficiency rebate, incentive, and/or loan program(s) during and after the completion of Construction: Inflation Reduction Act of 2022. ENGIE Services U.S. makes no guarantee that District 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; ENGIE Services U.S. expressly disclaims any liability for District's failure to receive any portion of the Incentive Funds, and District acknowledges and agrees that ENGIE Services U.S. 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 Amount of this Contract or the payment timeline associated with payment of the Contract Amount.

ARTICLE 9. WARRANTY / LIMITATION OF LIABILITY

EXCEPT FOR THE WARRANTIES PROVIDED IN THIS ARTICLE 9, ENGIE SERVICES U.S. MAKES NO WARRANTIES IN CONNECTION WITH THE WORK PROVIDED UNDER THIS CONTRACT, WHETHER EXPRESS OR IMPLIED IN LAW, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY IMPLIED WARRANTIES AGAINST INTELLECTUAL PROPERTY INFRINGEMENT. District WILL HAVE NO REMEDIES AGAINST EITHER ENGIE SERVICES U.S. OR ANY ENGIE SERVICES U.S. SUBCONTRACTOR OR VENDOR FOR ANY DEFECTIVE MATERIALS OR EQUIPMENT INSTALLED, EXCEPT FOR THE REPAIR OR REPLACEMENT OF SUCH MATERIALS OR EQUIPMENT IN ACCORDANCE WITH THE WARRANTIES INDICATED BELOW. SPECIFICALLY, NEITHER ENGIE SERVICES U.S., NOR ENGIE SERVICES U.S.'s SUBCONTRACTORS OR VENDORS, NOR DISTRICT WILL BE LIABLE TO THE OTHER FOR LOSS OF PROFITS OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY.

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Section 9.01 ENGIE Services U.S. warrants to District that material and equipment furnished under this Contract will be of good quality and new, unless otherwise specifically required or permitted by this Contract. ENGIE Services U.S. further warrants that its workmanship provided hereunder, including its subcontractors' workmanship, will be free of material defects for a period of one (1) year from the date of Substantial Completion as indicated on the executed Certificate of Substantial Completion, or the date of Beneficial Use as indicated on the executed Certificate of Beneficial Use ("ENGIE Services U.S. Warranty"). Notwithstanding the preceding sentence, the date the ENGIE Services U.S. Warranty commences with respect to a specific piece or pieces of equipment may be further defined in Attachment C.

Section 9.02 Equipment and material warranties that exceed the ENGIE Services U.S. Warranty period will be provided directly by the equipment and/or material manufacturers and such warranties will be assigned directly to District, after the one (1) year period. During the ENGIE Services U.S. Warranty period, ENGIE Services U.S. will be District's agent in working with the equipment and material manufacturers in resolving any equipment or material warranty issues. If any material defects are discovered within the ENGIE Services U.S. Warranty period, ENGIE Services U.S., or ENGIE Services U.S.'s subcontractors, will correct its defects, and/or ENGIE Services U.S. will work with the equipment or material manufacturer as District's agent to facilitate the manufacturer's correction of the equipment or material defect. Such warranty services will be performed in a timely manner and at the reasonable convenience of District. If a warranty issue arises on any equipment or material installed after the ENGIE Services U.S. Warranty period, and the equipment or material has a warranty period that exceeds one (1) year, District will contact the manufacturer directly to resolve such warranty issues and District acknowledges that the manufacturer will have sole responsibility for such issues.

Section 9.03 The warranties in this ARTICLE 9 expressly exclude any remedy for damage or defect caused by improper or inadequate maintenance of the installed equipment by service providers other than ENGIE Services U.S. or its subcontractors, corrosion, erosion, deterioration, abuse, modifications or repairs not performed by an authorized ENGIE Services U.S. subcontractor, improper use or operation, or normal wear and tear under normal usage. ENGIE Services U.S. shall not be responsible for the cost of correcting a breach of warranty or defect to the extent that the manufacturer of the equipment that is the subject of a warranty hereunder does not honor its equipment warranty as a result of its termination of operations, insolvency, liquidation, bankruptcy or similar occurrence. Unless otherwise specified, all warranties hereunder, including without limitation those for defects, whether latent or patent, in design, engineering, or construction, will terminate one (1) year from the date of Substantial Completion or Beneficial Use; and thereafter, ENGIE Services U.S. will have no liability for breach of any warranty or for any latent or patent defect of any kind pursuant to California Code of Civil Procedure §§337.1 and 337.15.

Section 9.04 District and ENGIE Services U.S. have discussed the risks and rewards associated with this Project, as well as the Contract Amount to be paid to ENGIE Services U.S. for performance of the Work. District and ENGIE Services U.S. agree to allocate certain of the risks so that, to the fullest extent permitted by Applicable Law, ENGIE Services U.S.'s and District's total aggregate liability to the other and all third parties is limited to the Contract Amount for any and all injuries, damages, claims, losses, expenses, or claim expenses (including attorney's fees) arising out of this Contract from any cause or causes. Such causes include, but are not limited to, negligence, errors, omissions, strict liability, breach of contract, or breach of warranty. For the avoidance of doubt, the aggregate liability does not include payment for the Project.

ARTICLE 10. OWNERSHIP OF CERTAIN PROPERTY AND EXISTING EQUIPMENT

Section 10.01 Ownership of Certain Proprietary Property Rights.

- (a) Ownership: Except as expressly provided in this Contract, District will not acquire, by virtue of this Contract, 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. ENGIE Services U.S. 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.
- (b) License: Solely in connection with the Facilities, ENGIE Services U.S. grants to District a limited, perpetual, royalty-free, non-transferrable license for any ENGIE Services U.S. intellectual property rights necessary for District to operate, maintain, and repair any modifications or additions to Facilities, or equipment delivered, as a part of the Work.

Section 10.02 Ownership and Use of Contract Documents/Instruments of Service. All Contract Documents provided by ENGIE Services U.S. to District under this Contract will be owned by District; provided however, that ENGIE Services U.S. shall retain ownership of any intellectual property contained therein, 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 District by ENGIE Services U.S. under this Contract will remain ENGIE Services U.S.'s property and may be used by District only for the Work. ENGIE Services U.S. will be deemed the author and owner of such Instruments of Service and will retain all common law, statutory and other reserved rights, including

Commented [A1]: What does this mean? Does it mean that payments already made to Engie are not included as a liability payment?

Commented [A2R1]: Added per District's redline. The maximum exposure of either party is approx.. \$19M for negligence, errors, etc. Payment of the Contract Amount is not included in that.

Commented [A3R1]: Engie is responsible to build the project for approx.. \$18M. The District is responsible to pay approx.. \$18M for the project. In the event there is a claim, injury, damages, etc., each parties' liability to the other is limited to approx.. \$18M.

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~~copyrights. The Contract Documents Instruments of Service may be used by District or any District Person for future additions or alterations to the Project or for other projects at the sole risk of District. Any such use of the Contract Documents Instruments of Service will be at District's sole risk and without liability to ENGIE Services U.S. If District uses the Instruments of Service for implementation purposes, including additions to or completion of the Project, without the written permission of ENGIE Services U.S., District agrees to waive and release, and indemnify and hold harmless, ENGIE Services U.S., its subcontractors, and their directors, employees, subcontractors, and agents from any and all Losses associated with or resulting from such use~~

Section 10.03 Ownership of any Existing Equipment. Ownership of any equipment and materials presently existing at the Facilities on the Contract Effective Date will remain the property of District even if such equipment or materials are replaced or their operation made unnecessary by work performed by ENGIE Services U.S. If applicable, ENGIE Services U.S. will advise District in writing of all equipment and materials that will be replaced at the Facilities and District will, within five (5) Business Days of ENGIE Services U.S.'s notice, designate in writing to ENGIE Services U.S. which replaced equipment and materials should not be disposed of off-site by ENGIE Services U.S. (the "Retained Items"). District will be responsible for and designate the location and storage for the Retained Items. ENGIE Services U.S. will be responsible for the disposal of replaced equipment and materials, except for the Retained Items. ENGIE Services U.S. will use commercially reasonable efforts to remove the Retained Items in such a manner as to avoid damage thereto, or if it is unreasonable to avoid damage altogether, to minimize the damage done. ENGIE Services U.S. will not be responsible for the removal and/or disposal of any Hazardous Substances except as required by the Scope of Work.

ARTICLE 11. INDEMNIFICATION / LIMITATION ON LIABILITY

Section 11.01 Indemnification. To the fullest extent permitted by Applicable Laws, each Party will indemnify, hold harmless, release and defend the other Party, its officers, employees, and agents 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 ("Losses") that may be asserted by any person or entity, to the extent arising out of that Party's performance or activities hereunder, including the performance or activities of other persons employed or utilized by that Party in the performance of this Contract, excepting liabilities to the extent due to the negligence or willful misconduct of the indemnified party. This indemnification obligation will continue to bind the Parties after the termination of this Contract.

Section 11.02 Waiver of Consequential Damages and Limitation of Liability. The liability of a defaulting Party will be limited to direct, actual damages. Neither Party shall be liable to the other Party 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..

ARTICLE 12. INSURANCE / BONDS

Section 12.01 ENGIE Services U.S. Insurance. ENGIE Services U.S. will maintain, or cause to be maintained, for the duration of this Contract, the insurance coverage outlined in (a) through (f) below, and all such other insurance as required by Applicable Law. Evidence of coverage will be provided to District via an insurance certificate.

(a) Workers' Compensation/Employers Liability for states in which ENGIE Services U.S. is not a qualified self-insured. Limits as follows:

- * Workers' Compensation: Statutory
- * Employers Liability: Bodily Injury by accident \$1,000,000 each accident
Bodily Injury by disease \$1,000,000 each employee
Bodily Injury by disease \$1,000,000 policy limit

(b) Commercial General Liability insurance with limits of:

- * \$2,000,000 each occurrence for Bodily Injury and Property Damage
- * \$4,000,000 General Aggregate - other than Products/Completed Operations
- * \$2,000,000 Products/Completed Operations Aggregate
- * \$2,000,000 Personal and Advertising Injury
- * \$ 100,000 Damage to premises rented to ENGIE Services U.S.

Coverage to be written on an occurrence form. Coverage to be at least as broad as ISO form CG 0001 (04/13) or its equivalent forms, without endorsements that limit the policy terms with respect to:
(1) provisions for severability of interest or (2) explosion, collapse, underground hazard.

(c) Auto Liability insurance for owned, hired and non-owned vehicles with limits of \$1,000,000 per accident. Coverage to be written on an occurrence form.

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(d) Professional Liability insurance with limits of:

- * \$2,000,000 per occurrence
- * \$2,000,000 aggregate

Coverage to be written on a claims-made form.

(e) Umbrella/Excess Liability Insurance. Limits as follows:

- * \$1,000,000 each occurrence
- * \$1,000,000 aggregate

Coverage terms and limits to apply excess of the per occurrence and/or aggregate limits provided for Commercial General Liability and Professional Liability written on a claims made form. Coverage terms and limits also to apply in excess of those required for Employers Liability and Auto Liability written on an occurrence form.

(f) Policy Endorsements.

- * The insurance provided for Workers' Compensation and Employers' Liability above will contain waivers of subrogation rights against District, but only to the extent of the indemnity obligations contained in this Contract.
- * The insurance provided for Commercial General Liability and Auto Liability above will:
 - (i) include District as an additional insured with respect to Work performed under this Contract, but only to the extent of the indemnity obligations contained in this Contract, and
 - (ii) provide that the insurance is primary coverage with respect to all insureds, but only to the extent of the indemnity obligations contained in this Contract.

Section 12.02 District's Insurance. District will maintain, or cause to be maintained, for the duration of this Contract, the insurance coverage outlined below, and all such other insurance as required by Applicable Law. Evidence of coverage will be provided to ENGIE Services U.S. via an insurance certificate.

(a) Commercial General Liability insurance, written on an occurrence form, with limits of:

- * \$2,000,000 each occurrence for Bodily Injury and Property Damage; and
- * \$4,000,000 General Aggregate

COURSE OF CONSTRUCTION INSURANCE RECOMENDED

(b) The insurance provided for above will contain waivers of subrogation rights against ENGIE Services U.S., will include ENGIE Services U.S. as an additional insured, and will provide that the insurance is primary coverage with respect to all insureds.

Section 12.03 Waivers of Subrogation. The Parties waive all rights against each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this ARTICLE 12 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance. The Parties and their respective property damage insurers also waive all rights of subrogation against the other Party, its directors, officers, agents and employees. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

Section 12.04 Performance and Payment Bonds. Prior to commencing Work under this Contract, ENGIE Services U.S. will furnish a performance bond, in an amount equal to one hundred percent (100%) of the Contract Amount, and a payment bond to guarantee payment of all claims for labor and materials furnished, in an amount equal to one hundred percent (100%) of the Contract Amount (collectively, the "Contract Bonds"). The Contract Bonds shall comply with the requirements under the California Public Contracts Code and be maintained in full force and effect until Final Completion with a one year warranty period upon Final Completion; provided that upon the achievement of Substantial Completion, the value of the Contract Bonds shall be reduced to the value of the Retainage being withheld by District. The Contract Bonds are not being furnished to cover the performance of any Professional Services, including any energy guaranty or guaranteed savings under this Contract, nor to cover any equipment and/or material manufacturer's warranty or other third-party warranty being assigned to District. District agrees that upon Final Completion and expiration of the ENGIE Services U.S. Warranty period set forth in Article 9 herein, the Contract Bonds shall be returned to ENGIE Services U.S., and all obligations arising thereunder are terminated and the surety company that issued the bond is forever discharged from any and all liabilities of whatever nature arising in connection with the Contract Bonds.

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ARTICLE 13. DOE GUIDELINES; ENERGY POLICY ACT

Section 13.01 As authorized by §1605(b) of the Energy Policy Act of 1992 (Pub. L. No. 102-486) the U.S. Department of Energy has issued, and may issue in the future, guidelines for the voluntary reporting of Greenhouse Gas emissions ("DOE Guidelines"). "Greenhouse Gases" means those gases and other particles as defined in the DOE Guidelines.

ARTICLE 14. MUNICIPAL ADVISOR

Section 14.01 THE PARTIES ACKNOWLEDGE AND AGREE THAT ENGIE SERVICES U.S. IS NOT A MUNICIPAL ADVISOR AND CANNOT GIVE ADVICE TO DISTRICT WITH RESPECT TO MUNICIPAL SECURITIES OR MUNICIPAL FINANCIAL PRODUCTS ABSENT DISTRICT BEING REPRESENTED BY, AND RELYING UPON THE ADVICE OF, AN INDEPENDENT REGISTERED MUNICIPAL ADVISOR. ENGIE SERVICES U.S. IS NOT SUBJECT TO A FIDUCIARY DUTY WITH REGARD TO DISTRICT OR THE PROVISION OF INFORMATION TO DISTRICT. DISTRICT WILL CONSULT WITH AN INDEPENDENT REGISTERED MUNICIPAL ADVISOR ABOUT THE FINANCING OPTION APPROPRIATE FOR DISTRICT'S SITUATION.

ARTICLE 15. TRADE SECRETS

If any materials or information provided by ENGIE Services U.S. to District under this Contract are designated by ENGIE Services U.S. 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 five (5) calendar days) after receipt of such request, District will notify ENGIE Services U.S. of such request and advise ENGIE Services U.S. whether District believes that there is a reasonable possibility that the materials may not be exempt from disclosure. Within ten (10) calendar days after a third party's request for disclosure of materials under the Act, ENGIE Services U.S. will (i) authorize District to release the documents or information sought; or (ii) if ENGIE Services U.S. reasonably believes that the information is exempt from disclosure, advise District not to release the materials.

ARTICLE 16. EVENTS OF DEFAULT

Section 16.01 Events of Default by ENGIE Services U.S. Each of the following events or conditions will constitute an "Event of Default" by ENGIE Services U.S.:

- (i) any substantial failure by ENGIE Services U.S. to perform or comply with this Contract, including a material breach of any covenant contained herein, and such failure continues for thirty (30) calendar days after notice to ENGIE Services U.S. demanding that such failure to perform be cured; *provided that* (y) such failure to perform will not be deemed a default hereunder if it is excused by a provision of this Contract, and (z) if such cure cannot be effected in thirty (30) calendar days, ENGIE Services U.S. will be deemed to have cured the default upon the commencement of a cure within thirty (30) calendar days and diligent subsequent completion thereof; or
- (ii) any representation or warranty furnished by ENGIE Services U.S. in this Contract which was false or misleading in any material respect when made or becomes false or misleading during the term of this Contract.

Section 16.02 Events of Default by District. Each of the following events or conditions will constitute an "Event of Default" by District:

- (i) any substantial failure by District to perform or comply with this Contract, including a material breach of any covenant contained herein, and such failure continues for thirty (30) calendar days after notice to District demanding that such failure to perform be cured; *provided that* (y) such failure to perform will not be deemed a default hereunder if it is excused by a provision of this Contract; and (z) if such cure cannot be effected in thirty (30) calendar days, District will be deemed to have cured the default upon the commencement of a cure within thirty (30) calendar days and diligent subsequent completion thereof; or
- (ii) any representation or warranty furnished by District in this Contract which was false or misleading in any material respect when made; or
- (iii) any failure by District to pay any amount to ENGIE Services U.S. which is not paid within ten (10) calendar days after written notice from ENGIE Services U.S. that the amount is past due.

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ARTICLE 17. REMEDIES UPON DEFAULT

Section 17.01 Termination for Cause. If there is an Event of Default by either Party under this Contract, unless such Event of Default has been cured within the applicable time periods for a cure set forth in ARTICLE 16, the non-defaulting Party may terminate this Contract by providing three (3) Business Days' written notice to the defaulting Party in the case of a monetary default and ten (10) Business Days' written notice to the defaulting Party in the case of a non-monetary default. Upon termination of this Contract, each Party will promptly return to the other all papers, materials, and property of the other held by such Party in connection with this Contract. Each Party will also assist the other in the orderly termination of this Contract and the transfer of all aspects hereof, tangible and intangible, as may be necessary for the orderly, non-disrupted business continuation of each Party. If this Contract is so terminated, ENGIE Services U.S. will be entitled to payment for Work satisfactorily performed, earned profit and overhead, and costs incurred in accordance with this Contract up to the date of termination.

Section 17.02 Remedies Upon Default by ENGIE Services U.S. If an Event of Default by ENGIE Services U.S. occurs, District will be entitled to obtain any available legal or equitable remedies through arbitration proceedings instituted pursuant to ARTICLE 19, including, without limitation, terminating this Contract, or recovering amounts due and unpaid by ENGIE Services U.S. and/or damages, which will include District's reasonable, actual, direct out-of-pocket losses incurred by reason of such Event of Default 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 the Event of Default and not made, including interest on any sums due, and losses and costs incurred as a result of terminating this Contract and all costs and expenses reasonably incurred in exercising the foregoing remedies.

Section 17.03 Remedies upon Default by District. If an Event of Default by District occurs, ENGIE Services U.S. will be entitled to obtain any available legal or equitable remedies through arbitration proceedings instituted pursuant to ARTICLE 19 including, without limitation, terminating this Contract or recovering amounts due and unpaid by District, and/or damages which will include ENGIE Services U.S.'s reasonable, actual, direct out-of-pocket losses incurred by reason of such Event of Default 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 the Event of Default and not made, including Interest on any sums due, and losses and costs incurred as a result of terminating this Contract and all costs and expenses reasonably incurred in exercising the foregoing remedies.

ARTICLE 18. CONDITIONS BEYOND CONTROL OF THE PARTIES

Section 18.01 Excusable Events. If any Party is delayed in, or prevented from, performing or carrying out its obligations under this Contract by reason of any Excusable Event, such circumstance will not constitute an Event of Default, and such Party will be excused from performance hereunder and will not be liable to the other Party for or on account of any loss, damage, injury or expense resulting from, or arising out of, such delay or prevention. Notwithstanding the foregoing, no Party will be excused from any payment obligations under this Contract as a result of an Excusable Event.

Section 18.02 Utility Work. District expressly understands and agrees that Excusable Events may occur due to Interconnection Facilities work that may need to be performed by the local electric utility ("Utility") in order for ENGIE Services U.S. to fully implement the Project. "Interconnection Facilities" means any distribution or transmission lines and other facilities that may be required to connect equipment supplied under this Contract to an electrical distribution/transmission system owned and maintained by the Utility. Any Interconnection Facilities work that may be required will be performed by the Utility under the Interconnection Agreement.

ARTICLE 19. GOVERNING LAW AND RESOLUTION OF DISPUTES

Section 19.01 Governing Law. This Contract is governed by and must be interpreted under the laws of the State where the Work is performed, without regard to the jurisdiction's choice of law rules.

Section 19.02 Initial Dispute Resolution. If a dispute arises out of or relates to this Contract, the transaction contemplated by this Contract, or the breach of this Contract (a "Dispute"), either Party may initiate the dispute resolution process set forth in this ARTICLE 19 by giving notice to the other Party. The Parties will endeavor to settle the Dispute as follows:

- (i) *Field Representatives' Meeting*: Within fifteen (15) Business Days after notice of the Dispute, ENGIE Services U.S.'s senior project management personnel will meet with District's project representative in a good faith attempt to resolve the Dispute.
- (ii) *Management Representatives' Meeting*: If ENGIE Services U.S.'s and District's project representatives fail to meet, or if they are unable to resolve the Dispute, senior executives for ENGIE Services U.S. and for District, 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 that may lead to a dispute. If the senior executives of ENGIE Services U.S. and District are unable

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to resolve a Dispute or if a senior management conference is not held within the time provided herein, either Party may submit the Dispute to mediation in accordance with [Section 19.03](#).

Section 19.03 Mediation. If the Dispute is not settled pursuant to [Section 19.02](#), the Parties will endeavor to settle the Dispute by mediation under the Commercial Mediation Procedures of JAMS. Mediation is a condition precedent to arbitration or the institution of legal or equitable proceedings by either Party. Once one Party files a request for mediation with the other Party and with the JAMS, the Parties agree to conclude the mediation within sixty (60) calendar days after filing the request. Either Party may terminate the mediation at any time after the first session, but the decision to terminate must be delivered in person by the Party's representative to the other Party's representative and the mediator. If the Dispute is not resolved by mediation within sixty (60) calendar days after the date of filing of the request for mediation, then the exclusive means to resolve the Dispute is final and binding arbitration, as described in [Section 19.04](#). Either Party may initiate arbitration proceedings by notice to the other Party and JAMS.

Section 19.04 Arbitration Proceedings. The following provisions apply to all arbitration proceedings pursuant to this **ARTICLE 19**:

- (i) The place of arbitration will be the JAMS office closest to where the Work was performed.
- (ii) One arbitrator (or three arbitrators if the monetary value of the Dispute is more than \$2,000,000) (the "Arbitral Panel") will conduct the arbitral proceedings in accordance with the [Commercial Arbitration Rules and Mediation Procedures \(Excluding the Procedures for Large, Complex Commercial Disputes\)](#) of JAMS currently in effect ("Arbitration Rules"). To the extent of any conflicts between the Arbitration Rules and the provisions of this Contract, the provisions of this Contract prevail.
- (iii) The Parties will submit true copies of all documents considered relevant with their respective statement of claim or defense, and any counterclaim or reply. In the discretion of the Arbitral Panel, the production of additional documents that are relevant and material to the determination of the Dispute may be required.
- (iv) The Arbitral Panel does not have the power to award, and may not award, any punitive, indirect or consequential damages (however denominated). All arbitration fees and costs are to be shared equally by the parties, regardless of which Party prevails. Each Party will pay its own costs of legal representation and witness expenses.
- (v) The award must be in the form of a reasoned award.
- (vi) The Dispute will be resolved as quickly as possible. The Arbitral Panel will endeavor to issue the arbitration award within six (6) months after the date on which the arbitration proceedings were commenced.
- (vii) The award will be final and binding and subject to confirmation and enforcement proceedings in any court of competent jurisdiction.

Section 19.05 Multiparty Proceeding. Either Party may join third parties whose joinder would facilitate complete resolution of the Dispute and matters arising from the resolution of the Dispute.

Section 19.06 Lien Rights. Nothing in this **ARTICLE 19** limits any rights or remedies not expressly waived by ENGIE Services U.S. that ENGIE Services U.S. may have under any stop notice laws.

ARTICLE 20. REPRESENTATIONS AND WARRANTIES

Section 20.01 Each Party warrants and represents to the other that:

- (i) it has all requisite power and authority to enter into this Contract, to perform its obligations hereunder and to consummate the transactions contemplated hereby;
- (ii) the execution, delivery, and performance of this Contract have been duly authorized by its governing body, or are in accordance with its organizational documents, and this Contract has been duly executed and delivered for it by the signatories so authorized, and constitutes its legal, valid, and binding obligation;
- (iii) the execution, delivery, and performance of this Contract will not breach or violate, or constitute a default under, its organizational documents or any contract, lease or instrument to which it is a party or by which it or its properties may be bound or affected; and
- (iv) it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any Applicable Laws, awards or permits which would materially and adversely affect its ability to perform hereunder.

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ARTICLE 21. LIQUIDATED DAMAGES

Failure to complete the Work by the time for Substantial Completion, as such may be extended by Change Order (including for delays by third parties outside of ENGIE's control and unforeseen conditions), shall subject ENGIE Services U.S. to liquidated damages in the amount of One Thousand Dollars (\$1,000.00) per day for each day of delay. Such liquidated damages shall be District's sole remedy for the failure of ENGIE Services U.S. to achieve Substantial Completion in the time for Substantial Completion.

The actual occurrence of damages and the actual amount of the damages which District would suffer if the Work were not completed by the required Time for Substantial Completion are dependent upon many circumstances and conditions which could prevail in various combinations and, from the nature of the case, it is impracticable and extremely difficult to fix the actual damages. Accordingly, the Parties agree that the amount set forth herein shall be presumed to be the amount of damages which District shall directly incur as a result of each calendar day by which completion of the Work is delayed beyond the Substantial Completion Date as adjusted by Change Orders.

ARTICLE 22. NOTICE

Any notice required or permitted hereunder will be deemed sufficient if given in writing and delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, or delivered to a nationally recognized express mail service, charges prepaid, receipt obtained, to the address shown below or to such other persons or addresses as are specified by similar notice.

TO ENGIE SERVICES U.S.: ENGIE Services U.S. Inc.
35 North Lake Street, Suite 900
Pasadena, CA 91101
Tel: Jeff Woldhuis
Attention: Senior Project Manager, Project Manager

With a COPY TO: Legal Department
ENGIE Services U.S. Inc.
35 North Lake Street, Suite 900
Pasadena, CA 91101
Tel: 626-377-4948
Attention: Contract Administrator

TO District: District
Street Address
City, State, Zip
Tel:
Attention:

With a COPY TO: Office of _____

Street Address
City, State, Zip
Tel:
Attention:

ARTICLE 23. CONSTRUCTION OF CONTRACT

This Contract is the result of arms-length negotiations between two sophisticated parties and ambiguities or uncertainties in it will not be construed for or against either Party, but will be construed in a manner that most accurately reflects the intent of the Parties as of the Contract Effective Date. Each of the Parties acknowledges and agrees that neither Party has provided the other with any legal, accounting, regulatory, financial, or tax advice with respect to any of the transactions contemplated hereby, and each Party has consulted its own legal, accounting, regulatory, financial and tax advisors to the extent it has deemed appropriate.

ARTICLE 24. CHOICE OF LAW

THE INTERPRETATION, VALIDITY AND ENFORCEMENT OF THIS CONTRACT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA.

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ARTICLE 25. BINDING EFFECT

Except as otherwise provided herein, the terms and provisions of this Contract will apply to, be binding upon, and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and permitted assigns.

ARTICLE 26. NO WAIVER

The failure of ENGIE Services U.S. or District to insist upon the strict performance of this Contract will not constitute or be construed as a waiver or relinquishment of either Party's right to thereafter enforce the same in accordance with this Contract in the event of a continuing or subsequent default on the part of ENGIE Services U.S. or District.

ARTICLE 27. SEVERABILITY

If any clause or provision of this Contract or any part thereof becomes or is declared by a court of competent jurisdiction invalid, illegal, void, or unenforceable, this Contract will continue in full force and effect without said provisions; *provided that no such severability will be effective if it materially changes the benefits or obligations of either Party hereunder.*

ARTICLE 28. HEADINGS

Headings and subtitles used throughout this Contract are for the purpose of convenience only, and no heading or subtitle will modify or be used to interpret the text of any section.

ARTICLE 29. COUNTERPARTS; INTEGRATION

This Contract may be executed in counterparts (and by different Parties hereto in different counterparts), each of which will constitute an original, but all of which when taken together will constitute a single contract. This Contract constitutes the entire contract among the Parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. This Contract cannot be amended, modified, or terminated except by a written instrument, executed by both Parties hereto. Delivery of an executed counterpart of a signature page of this Contract by email will be effective as delivery of a manually executed counterpart of this Contract.

[the Parties' signatures appear on the following page]

**Energy Services Contract
District and ENGIE Services U.S.**

IN WITNESS WHEREOF, and intending to be legally bound, the Parties hereto subscribe their names to this Contract by their duly authorized officers as of the Contract Effective Date.

ENGIE SERVICES U.S.:

ENGIE Services U.S. Inc.

DISTRICT:

Mission Springs Water District

By: _____
Name:
Title:

By: _____
Name:
Title:

DRAFT

ATTACHMENT A
FACILITIES

(a) The following District Facilities are included under the Scope of Work as listed below:

| Facility | Address | Square Feet |
|--|---|-------------|
| Horton Waste Water Treatment Plant | 14601 Verbena Dr. Desert Hot Springs, CA 92240 | 42,325 |
| Nancy Wright Regional Water Reclamation Facility | 19011 Little Morongo Desert Hot Springs, CA 92240 | 49,955 |
| Well 24 | 65100-1/2 Pierson Blvd Desert Hot Springs, CA 92240 | 17,031 |
| Well 27 | 64261 Dillon Rd. Desert Hot Springs, CA 92240 | 54,586 |
| Well 29 | 65700 Ironwood Dr. Desert Hot Springs, CA 92240 | 43,751 |
| Well 32 & Booster Station | 16075 Little Morongo Rd. Desert Hot Springs, CA 92240 | 66,183 |
| Well 33 (RES-BCT) | 19011 Little Morongo Desert Hot Springs, CA 92240 | 186,906 |

DRAFT

ATTACHMENT B
STANDARDS OF OCCUPANCY and CONTROL
Not Applicable

ATTACHMENT C

SCOPE OF WORK

California State Contractor's License Number 995037
California Public Works Contractor Registration Number 100001498

Energy Conservation Measures to Be Implemented

| ECM # | Description |
|-------|---------------------------|
| RE-01 | Photovoltaic (PV) Systems |

RE-01 PHOTOVOLTAIC (PV) SYSTEMS

1. Scope Summary

1.1. The table below lists the sites, system size (kW DC), and structure type for the PV systems.

| Site | kW _{DC} | Structure Type |
|--|------------------|----------------|
| Horton Waste Water Treatment Plant | 388.8 | Ground Mount |
| Nancy Wright Regional Water Reclamation Facility | 388.8 | Ground Mount |
| Well 24 | 174.96 | Ground Mount |
| Well 27 | 349.92 | Ground Mount |
| Well 29 | 204.12 | Ground Mount |
| Well 32 & Booster Station | 427.68 | Ground Mount |
| Well 33 (RES-BCT) | 2,232.4 | Ground Mount |

2. General Scope of Work

- 2.1. ENGIE Services U.S. will be working in operating water pumping and wastewater treatment facilities, and will need to coordinate activities with the District's Operation Manager.
- 2.2. ENGIE Services U.S. has reviewed existing drawings and has completed site visits necessary for the design. No allowance will be made for any additional costs incurred by ENGIE Services U.S. due to the failure by ENGIE Services U.S. to properly understand the ~~drawings provided by District site conditions.~~
- 2.3. Provide all materials and equipment (modules, inverters, subpanels, metering, hardware, racking systems) necessary to install the ground mount solar PV systems.
- 2.4. Provide engineering services to prepare and submit design drawings, calculations, and submittals to District for approval and to local Utility for interconnection permits.
 - 2.4.1. Under the District's right as a County Water Agency to self-permit projects, designs are assumed to be exempt from City review and permitting costs.
 - 2.4.2. Interconnection fees may be required by Southern California Edison to upgrade existing transformer(s) to support the solar PV systems and upgraded medium voltage service. Interconnection Facilities upgrade allowances have not been allocated, except as described below.
 - 2.4.3. Projects are assumed to be deemed wholly exempt from the requirements of the California Environmental Quality Act (CEQA).
- 2.5. Provide geotechnical evaluations necessary to identify design load parameters around ground mount piles.
- 2.6. The District will approve all ENGIE Services U.S.'s direct subcontractors within five (5) business day of request, such approval not to be unreasonably withheld. All subcontractors shall hold appropriate licenses ~~and be approved by the equipment manufacturer to complete the installation.~~
- 2.7. Provide necessary project management and construction management for a full and complete installation.
- 2.8. Provide and install PV modules and all necessary mounting hardware for each system. Panels shall be Tier 1 manufacturer, such as Canadian Solar or equal.
- 2.9. Provide and install inverters and necessary electrical equipment and conduits to connect to the existing electrical switchgear or meter unless otherwise specified in site specific scope.
 - 2.9.1. Inverters shall be Chint Power Systems, or equal.
 - 2.9.2. The DC to AC power ratio shall be no greater than 1.205.
- 2.10. Provide and install ground mount racking systems. The structure design will include a post embedment depth of 8'-0" and assumes no de-watering, benching, shoring, or casing. Post embedment depth is assumed to be no more than 8'-0"; if the geotechnical report assessment requires additional depth, it will require a Change Order.
 - 2.10.1. Ground mount assemblies will be designed as a fixed tilt system with a 15-25° degree tilt angle, as determined during final engineering.
 - 2.10.2. Leading edge height of module to grade clearance will be a minimum of 1'-6".
 - 2.10.3. Inverters will be post mounted.

**Energy Services Contract
District and ENGIE Services U.S.**

- 2.10.4. All structural hardware to be hot-dipped galvanized.
 - 2.10.5. PV modules to be mounted on galvanized steel purlins per approved drawings.
 - 2.11. Perform underground utility survey to locate existing utilities that are in the path of horizontal boring, vertical boring or trenching. Unknown utilities that cannot be identified on as-built drawings or via underground locating methods will be treated as unforeseen site conditions.
 - 2.12. Provide Best Management Practices (BMPs) to minimize erosion, drainage, and non-stormwater discharges through project completion.
 - 2.13. Clear, grub, and grade sites to the extent required for Solar PV system installation.
 - 2.14. Generated spoils from earthwork will be spread into the footprint of the array.
 - 2.15. Provide and install new net generation output meter (NGOM) to monitor the PV production.
 - 2.16. Provide and install electrical conduits for communication wiring from the string inverters to the new Data Acquisition System (DAS). The DAS shall be Obvius Acquisuite, or equal.
 - 2.17. Provide and install one (1) 2" conduit at each project site for future District use for security cameras.
 - 2.18. DAS to be connected to the internet via cellular modem. Online access to PV production data to be provided to District with login.
 - 2.19. Start-up, test, and commission the solar systems in accordance with design plan and applicable industry standards.
 - 2.20. Secure the project location and provide traffic redirection during rigging operations, and during the move-in and move-out of large equipment.
 - 2.21. Preliminary layouts are subject to change upon completion of final engineering.
 - 2.22. Submittals – Pre-construction
 - 2.22.1. 30% design drawings will be submitted for review by the District. 30% drawings shall include system layout, single line diagrams, equipment data sheets, inverter locations, mounting structure preliminary design.
 - 2.22.2. 80% design drawings that for final District review.
 - 2.22.3. Copies of final permits if required.
 - 2.22.4. Fire jurisdiction approval.
 - 2.23. Submittals – Post-construction
 - 2.23.1. Hard copies and electronic copies of all as-built drawings, operations and maintenance manuals, final permits, testing procedure data sheets, panel and inverter data sheets, utility permission to operate (PTO), etc.
 - 2.23.2. Final, unconditional lien releases from all subcontractors.
 - 2.23.3. All testing and commissioning of completed systems shall be completed with a minimum solar irradiance of 500 watts per square meter, and shall include the following at a minimum:
 - 2.23.3.1. Current and voltage of each string.
 - 2.23.3.2. Current and voltage of all/any combiner boxes
 - 2.23.3.3. Output of each inverter.
 - 2.23.3.4. IR photos of all inverters and electric panels.
 - 2.24. Any materials, equipment, or workmanship that is found defective, based on acceptance tests or for any other reason, shall be reported to the District's Operation Manager. Defective material, equipment, workmanship shall be replaced or repaired.
 - 2.25. Construction of the PV system shall not adversely affect site drainage.
 - 2.26. Electrical enclosures for Horton Waste Water Treatment Plant and Nancy Wright Regional Water Reclamation Facility will be NEMA 4X; the electrical enclosures for the remaining sites will be NEMA 3R and the materials will be appropriate for the environment. A copper ground bus will be provided and will have the capacity of a minimum of 10 grounding conductors. The boxes shall have provisions for locking with standard pad-locks.
 - 2.27. ~~All conductors shall be copper, with a minimum conductivity of 98%. Wire shall be Class B stranded.~~ All wires shall be labelled from the inverter strings to the panel.
 - 2.28. Waste shall be recycled when possible and disposed of offsite.
 - 2.29. ENGIE Services U.S. shall coordinate all work through the District Operations Manager. Shutdowns require 10 working days notice. The District will have the right to reasonably delay, change, or notify any shutdown at any time, at no additional cost to the District, when risk of such a shutdown with interfere with the operation of the facilities. Any such delays or changes will result in a Change Order for additional time and any resulting increase in costs.
 - 2.30. Final completion shall be upon PV system operation for 15 days without interruption.
3. **Site Specific Scope**
- 3.1. **Horton Waste Water Treatment Plant – 388.8 kW_{DC}**
 - 3.1.1. Install 388.8 kW_{DC} Solar Photovoltaic (PV) ground mount system.
 - 3.1.2. Clear and grade site to the extent required for Solar PV system installation. Array structures will follow existing grade.
 - 3.1.3. Provide and install electrical conduits and power wiring from the string inverters to the new electrical panelboard.
 - 3.1.4. Tie in new electrical panelboard into the existing electrical switchboard.

Commented [A4]: As discussed on 9/26.

Preliminary Layout



3.2. Nancy Wright Regional Water Reclamation Facility – 388.8 kW_{DC}

- 3.2.1. Install 388.8 kWDC Solar Photovoltaic (PV) ground mount system.
- 3.2.2. Clear and grub site to the extent required for Solar PV system installation. Array structures will follow existing grade.
- 3.2.3. Provide and install electrical conduits and power wiring from the string inverters to the new electrical panelboard.
- 3.2.4. Tie in new electrical panelboard into the New Regional Plant new electrical switchboard procured and installed by District. Conduit lengths are assumed to be no more than 1,100'-0"; if the new switchboard location requires additional distance, it will require a change order.
- 3.2.5. Provide and install 6'-0" high chain link perimeter fence with 1'-0" of 3-strand bard wire. Fence to include 20'-0" wide double drive vehicle access gate. Fencing shall have a minimum clearance from the array of 12'.

Preliminary Layout



3.3. Well 24 – 174.96 kW_{DC}

- 3.3.1. Install 174.96 kW_{DC} Solar Photovoltaic (PV) ground mount system.
- 3.3.2. Grade and level pile to the extent required for Solar PV system installation.
- 3.3.3. Provide and install electrical conduits and power wiring from the string inverters to the new electrical panelboard.
- 3.3.4. Tie in new electrical panelboard into the existing electrical switchboard.
- 3.3.5. Provide 20'-0" wide fire access road from street to Solar PV array. Access road will be excavated to a depth of 4".
- 3.3.6. Provide and install 6'-0" high chain link perimeter fence with 1'-0" of 3-strand bard wire. Fence to include 20'-0" wide double drive vehicle access gate. Fencing shall have a minimum clearance from the array of 12'.

Preliminary Layout



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District and ENGIE Services U.S.

3.4. Well 27 – 349.92 kW_{DC}

- 3.4.1. Install 349.92 kW_{DC} Solar Photovoltaic (PV) ground mount system.
- 3.4.2. Clear, grub, and grade site to the extent required for Solar PV system installation.
- 3.4.3. Provide and install electrical conduits and power wiring from the string inverters to the new electrical panelboard.
- 3.4.4. Tie in new electrical panelboard into the existing electrical switchboard.

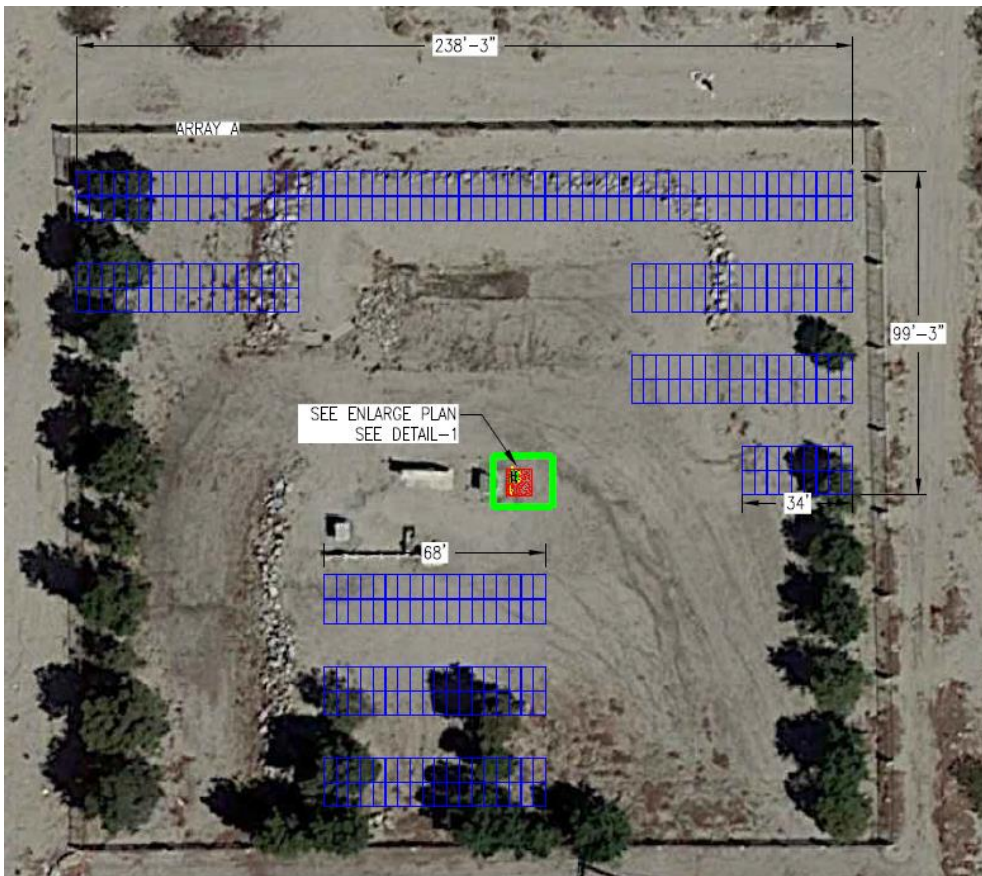
Preliminary Layout



3.5. Well 29 – 204.12 kW_{DC}

- 3.5.1. Install 204.12 kW_{DC} Solar Photovoltaic (PV) ground mount system.
- 3.5.2. Clear, grub, and grade site to the extent required for Solar PV system installation. Includes relocation of rip rap slope protection as required.
- 3.5.3. Remove ten (10) trees in the areas which solar PV arrays will be located.
- 3.5.4. Provide and install electrical conduits and power wiring from the string inverters to the new electrical panelboard.
- 3.5.5. Tie in new electrical panelboard into the existing electrical switchboard.

Preliminary Layout



**Energy Services Contract
District and ENGIE Services U.S.**

3.6. Well 32 – 427.68 kW_{DC}

- 3.6.1. Install 427.68 kW_{DC} Solar Photovoltaic (PV) ground mount system.
- 3.6.2. Clear sites to the extent required for Solar PV system installation. Array structures will follow existing grade.
- 3.6.3. Provide and install electrical conduits and power wiring from the string inverters to the new electrical panelboard.
- 3.6.4. Tie in new electrical panelboard into the existing electrical switchboard.

Preliminary Layout

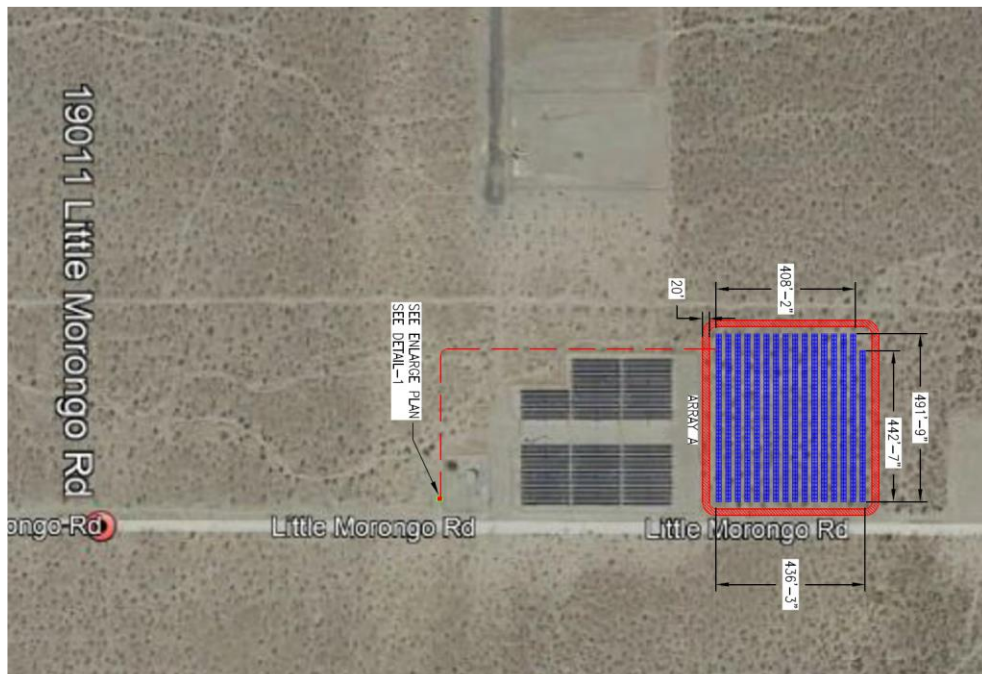


**Energy Services Contract
District and ENGIE Services U.S.**

3.7. Well 33 (RES-BCT) – 2,232.4 kW_{DC}

- 3.7.1. Install 2,232.4 kW_{DC} Solar Photovoltaic (PV) ground mount system.
- 3.7.2. Coordinate with Utility to request new medium voltage service to site. Interconnection Facilities upgrade allowance of Two Hundred Thousand Dollars (\$200,000.00) has been allocated for Utility to upgrade the existing electrical service at Well 33. This is an estimated number based on ENGIE Services U.S.'s experience. If the final amount from Utility exceeds Two Hundred Thousand Dollars (\$200,000.00), ENGIE Services U.S. will issue a Change Order to District for the additional Utility amount. If the final amount from Utility is less than Two Hundred Thousand Dollars (\$200,000.00), the difference will be credited to the District.
- 3.7.3. Clear and grub sites to the extent required for Solar PV system installation. Array structures will follow existing grade.
- 3.7.4. Provide and install electrical conduits and power wiring from the string inverters to the new electrical panelboards.
- 3.7.5. Furnish and install 480V-12,470 V step up transformers.
- 3.7.6. Tie in new electrical panelboards into the new electrical switchboard. Medium voltage conduit lengths from the new arrays to the new electrical switchboard are assumed to be no more than 1,050'-0"; if the new switchboard location requires additional distance, it will require a Change Order.
- 3.7.7. Tie in existing Solar PV load into the new electrical switchboard. Submit any necessary drawings and specs to District for coordination on existing Solar PV system warranties or maintenance plans in place.
- 3.7.8. Provide and install 6'-0" high chain link perimeter fence with 1'-0" of 3-strand bard wire. Fence to include 20'-0" wide double drive vehicle access gate. Fencing shall have a minimum clearance from the array of 12'.

Preliminary Layout



4. General Project Exclusions and Clarifications:

- 4.1. District will be responsible for hiring and paying all inspectors, including any special inspectors.

**Energy Services Contract
District and ENGIE Services U.S.**

- 4.2. District will be responsible for paying for inspections and any required Building, Mechanical, and Electrical Permits.
 - 4.3. ADA and Fire Life Safety work is excluded.
 - 4.4. ENGIE Services U.S. 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 caused by the District.
 - 4.5. Temporary utilities are to be provided by District at no cost to ENGIE Services U.S. (including, without limitation, trailer power, phone lines, and construction power), as available.
 - 4.6. Removal and disposal of Hazardous Substances, including asbestos containing materials, to be by District (except as noted above). If ENGIE Services U.S. encounters material suspected to be hazardous, ENGIE Services U.S. will notify District representative and stop further work in the area until the material is removed.
 - 4.7. ENGIE Services U.S. will require the assistance of District 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.
 - 4.8. No allowance has been made for structural upgrades to existing structures.
 - 4.9. No allowance has been made for screening of new or existing equipment.
 - 4.10. ENGIE Services U.S. standard construction means and methods will be used.
 - 4.11. District will provide access to the Facilities, laydown areas at the work sites, and a reasonable number of parking spaces for ENGIE Services U.S. and ENGIE Services U.S.'s subcontractor vehicles in parking lots at the Sites.
 - 4.12. Work will be performed during normal work hours; no overtime hours are included in the Contract Amount. The lighting retrofit Work will be performed so as not to unreasonably interfere with the building schedule.
 - 4.13. Shutdowns will be scheduled at times of low facility operation as reasonably determined by the District; provided that the shutdown is scheduled within two (2) weeks of the time provided on the most recent Project Schedule.
 - 4.14. The Scope of Work assumes that, unless specifically identified otherwise, all existing systems are functioning properly and are up to current codes. ENGIE Services U.S. 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.
 - 4.15. 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, ENGIE Services U.S. will immediately notify District representative.
 - 4.16. No allowance has been made for underground obstructions or unsuitable soil conditions encountered during trenching or other excavation.
 - 4.17. 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.
 - 4.18. Painting, unless specified, is excluded.
 - 4.19. With respect to Projects with new equipment connecting to the Facility's existing electrical distribution system, ENGIE Services U.S. 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. District 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.
- 5. ENGIE Services U.S. Beneficial Use and Warranty criteria for specific pieces of equipment:**
- 5.1. All materials and workmanship warranties are for 1-year, unless specified otherwise below.
 - 5.1.1. SOLAR PV SYSTEMS – The ENGIE Services U.S. 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. Solar modules will be provided with a 25-year manufacturer warranty. Solar inverters will be provided with a 20-year manufacturer warranty.

6. Scopes of Work to receive Substantial and Final Completion:

| ECM | Scope of Work | Location | Total Qty of SC | Total Qty of FC |
|-------|---------------------------------|-----------|-----------------|-----------------|
| RE-01 | Solar Photovoltaic (PV) Systems | (7) Sites | 7 | 7 |

ATTACHMENT D

MONITORING INSTALLATION SCOPE OF WORK

Overview of DAS Network Installation and Equipment Requirements

ENGIE Services U.S. 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.

ENGIE Services U.S. 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 District's specifications.
- Test and verify District/Facility network connectivity.
 - a. TCP/IP internal addressing and verification
- Supply, install, and configure a Modbus based digital Net Generation Output Meter (NGOM).
- Provide basic system training to designated District/Facility maintenance staff.
- DAS access will be included for the term of the maintenance agreement and will be transferred to the District upon termination of the maintenance agreement.
- The District shall have access to all data via the DAS web portal.

ATTACHMENT E
M&V SERVICES

EQUIPMENT AND FACILITIES COVERED

ENGIE Services U.S. will perform measurement and verification services ("M&V Services") as set forth in this Attachment E with respect to District's property at the locations as shown in Attachment A.

I. Definitions:

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

"Average Energy Production" means, with respect to any number of consecutive True-Up Terms, the arithmetic mean of the Energy Production for such number of True-Up Terms.

"Base Energy Rate" means the dollars per energy unit for each Generating Facility, set forth in this Attachment E, Section (III), and used by ENGIE Services U.S. to calculate the EC Savings.

"EC Savings" means the savings in units of dollars (\$) calculated by ENGIE Services U.S. in the manner set forth in this Attachment E, Section (III), achieved through the reduction in consumption or demand through implementation of the Work.

"Energy Savings Report" means an annual report prepared by ENGIE Services U.S. containing a precise calculation of the EC Savings during the applicable Measurement Period. The Energy Savings Report shall be submitted to Customer within ninety (90) days after each Measurement Period.

"Energy Savings Term" means the period beginning on the first day of the M&V Commencement Date and ending on the earlier of: (i) the day immediately preceding the twentieth (20th) anniversary of the M&V Commencement Date; (ii) the termination of the Contract; or (iii) the termination by District of the M&V Services in accordance with this Attachment E, Section (II)(E).

"Energy Production" means the solar PV generation in units of energy, calculated by ENGIE Services U.S. in the manner set forth in this Attachment, Section (III), achieved through the implementation of the Work.

"Energy Production Factors" means factors identified by ENGIE Services U.S. which may affect the Energy Production of the Generating Facilities, for example: quality, quantity, and timeliness of maintenance and repairs to the Generating Facilities or building electrical distribution system; material reduction in energy consumption at a Project Location which significantly limits the Generating Facilities ability to offset Project Location electricity consumption; non-operation or shutdown of the Generating Facilities by the Customer or a third party other than ENGIE Services U.S.; damage to the Generating Facilities not caused by ENGIE Services U.S.; and any reduction in annual solar irradiation at a nearby NOAA weather station of more than 10% below the 30 year average.

"Guarantee Payment" means, for any True-Up Term, either: (i) a cash payment by ENGIE Services U.S. to District in an amount equal to the Guarantee Shortfall for that True-Up Term pursuant to this Attachment E, Section (II)(A)(ii); or (ii) additional energy services or energy saving retrofits requested by District with an agreed value equal to the Guarantee Shortfall for that True-Up Term pursuant to this Attachment E, Section (II)(A)(iii).

"Guarantee Shortfall" means an amount calculated in accordance with this Attachment E, Section (II)(F).

"Guaranteed Savings" means, for any True-Up Term, the dollar amount set forth in Column 10 of *Table E-1* below for such True-Up Term, as the same may be adjusted from time to time by ENGIE Services U.S. for changes in Energy Production Factors:

**Energy Services Contract
District and ENGIE Services U.S.**

Table E-1: Guaranteed Savings

| Measurement Period | Horton WWTP | Nancy Wright Regional WRF | Well 24 | Well 27 | Well 29 | Well 32 & Booster Station | Well 33 - RESBCT | True-Up Term | Guaranteed Savings |
|--------------------|-------------|---------------------------|-----------|-----------|-----------|---------------------------|------------------|--------------|--------------------|
| 1 | \$89,648 | \$89,648 | \$58,597 | \$106,394 | \$41,173 | \$87,575 | \$285,907 | 1st True-Up | \$4,808,355 |
| 2 | \$94,544 | \$94,544 | \$61,797 | \$112,195 | \$43,428 | \$92,347 | \$301,212 | | |
| 3 | \$99,742 | \$99,742 | \$65,182 | \$118,317 | \$45,803 | \$97,370 | \$499,887 | | |
| 4 | \$105,168 | \$105,168 | \$68,750 | \$124,818 | \$48,297 | \$102,714 | \$527,133 | | |
| 5 | \$110,959 | \$110,959 | \$72,498 | \$131,629 | \$50,943 | \$108,299 | \$555,968 | | |
| 6 | \$116,968 | \$116,968 | \$76,453 | \$138,870 | \$53,739 | \$114,271 | \$586,364 | 2nd True-Up | \$6,714,428 |
| 7 | \$123,401 | \$123,401 | \$80,643 | \$146,473 | \$56,682 | \$120,474 | \$618,668 | | |
| 8 | \$130,182 | \$130,182 | \$85,064 | \$154,430 | \$59,770 | \$127,126 | \$652,480 | | |
| 9 | \$137,235 | \$137,235 | \$89,712 | \$162,922 | \$63,035 | \$134,072 | \$688,141 | | |
| 10 | \$144,762 | \$144,762 | \$94,614 | \$171,816 | \$66,510 | \$141,381 | \$725,622 | | |
| 11 | \$152,688 | \$152,688 | \$99,795 | \$181,229 | \$70,121 | \$149,119 | \$765,619 | 3rd True-Up | \$8,763,607 |
| 12 | \$161,072 | \$161,072 | \$105,252 | \$191,152 | \$73,969 | \$157,279 | \$807,368 | | |
| 13 | \$169,841 | \$169,841 | \$111,008 | \$201,577 | \$78,017 | \$165,853 | \$851,560 | | |
| 14 | \$179,122 | \$179,122 | \$117,090 | \$212,615 | \$82,296 | \$174,978 | \$898,154 | | |
| 15 | \$188,973 | \$188,973 | \$123,491 | \$224,257 | \$86,801 | \$184,503 | \$947,112 | | |
| 16 | \$199,253 | \$199,253 | \$130,236 | \$236,493 | \$91,529 | \$194,632 | \$999,104 | 4th True-Up | \$11,436,841 |
| 17 | \$210,152 | \$210,152 | \$137,349 | \$249,432 | \$96,543 | \$205,285 | \$1,053,726 | | |
| 18 | \$221,661 | \$221,661 | \$144,880 | \$263,062 | \$101,838 | \$216,454 | \$1,111,288 | | |
| 19 | \$233,834 | \$233,834 | \$152,795 | \$277,489 | \$107,378 | \$228,339 | \$1,172,089 | | |
| 20 | \$246,596 | \$246,596 | \$161,145 | \$292,641 | \$113,256 | \$240,789 | \$1,236,077 | | |

"Measurement Period" means each one-year period following the M&V Commencement Date.
"Projected Energy Production" means the Energy Production, which ENGIE Services U.S. anticipates will be realized from the installation and continued operation of the Work, as set forth in this Attachment E, Section (III).

"Savings Guarantee" is defined in this Attachment E, Section (II)(A)(i).

"True-Up Term" means each 60-month period beginning on the M&V Commencement Date.

II. Terms and Conditions

A. Guaranteed Savings.

- i. **Savings Guarantee.** Upon the terms and subject to the conditions set forth herein, ENGIE Services U.S. warrants that District 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 Production Factors.
- ii. **Guarantee Payment.** For any True-Up Term in which there is a Guarantee Shortfall, ENGIE Services U.S. will pay to District, within thirty (30) calendar days after the acceptance by District of the Energy Savings Report for such True-Up Term, the Guarantee Payment for that True-Up Term.
- iii. **Services or Retrofits in Lieu of Guarantee Payment.** If in the judgment of District, District would benefit from additional energy services or energy saving retrofits, District and ENGIE Services U.S. may mutually agree that ENGIE Services U.S. will provide such services or retrofits in lieu of the Guarantee Payment for such True-Up Term. For the purposes of this Contract, such services or retrofits will have a deemed value equal to the Guarantee Shortfall for that True-Up Term.
- iv. **Excusable Events.** If ENGIE Services U.S. 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 ENGIE Services U.S. will be excused from performing the M&V Services while such event is continuing. During such event, Projected Energy Production 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 Production.
- v. **Average Energy Production.** For any True-Up Term beginning with second (2nd), ENGIE Services U.S. has the right to calculate the Average Energy Production which has occurred over all previous True-Up Terms. The Average Energy Production will be applied to all subsequent True-Up Terms to determine the Energy Production for each remaining True-Up Term. After applying such Average Energy Production for each subsequent True-Up Term and calculating the resulting EC Savings, if such calculated EC Savings for any future True-Up Term is greater than the Guaranteed Savings for that True-Up Term, then the Savings Guarantee will have been met for that True-Up Term. If such calculated EC Savings for any future True-Up

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Term is less than the Guaranteed Savings for that True-Up Term, then a Guarantee Shortfall is calculated to exist for a future True-Up Term. ENGIE Services U.S. may, in its sole discretion, pay to District, not later than the ninetieth (90th) day of such future True-Up Term, the net present value of the Guarantee Shortfall for any or all of such future True-Up Term(s). Net present value will be determined using a discount rate of ten percent (10%).

B. Changes in Energy Production Factors.

- i. Adjustments to Guaranteed Savings. If a change in any Energy Production Factor results in a reduction of Energy Production, then the Guaranteed Savings for the corresponding True-Up Term(s) will be decreased by the same amount. ENGIE Services U.S. will notify District, in writing, of all such changes.
- ii. Projected Energy Production. During the Energy Production Term, when the ultimate effect of the Work on Energy Production cannot be accurately determined due to pending construction or changes to the Scope of Work, Projected Energy Production for the Generating Facilities will be used until the effect of the changes can be determined by ENGIE Services U.S.
- iii. Change Order – Savings Effect. ENGIE Services U.S. will calculate the energy impact of any Change Orders.
- iv. Inspection of Facilities. District agrees that ENGIE Services U.S. will have the right, with prior notice, to inspect the Facilities to determine if District has consistently complied with its obligations as set forth above. If any inspection discloses that District 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.
- v. Interference. District 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, District will promptly notify ENGIE Services U.S. If an unforeseeable overshadowing or shading condition not caused by ENGIE Services U.S. or its subcontractors exists and continues for five (5) Business Days or more, District agrees that the Guaranteed Savings for such Generating Facility will be reduced based upon such shading condition, and ENGIE Services U.S. may present District with a proposed reduction to the Guaranteed Savings reflecting such overshadowing, shading or other interference.

C. District Maintenance. Beginning at Beneficial Use or Substantial Completion for any portion of the Work, District 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 ENGIE Services U.S. and by the manufacturers of the relevant equipment, such maintenance to include maintaining all landscaping (including tree trimming) in and around the Generating Facilities. District is also responsible for managing the benefitting accounts designated to receive generation credits in regard to the Utility's RES-BCT tariff to ensure that generation is credited at the preferred rate.

D. Energy Savings Report. Annually during the first five (5) Measurement Periods of the Energy Production Term, ENGIE Services U.S. will submit to District an energy production report containing a precise calculation of the EC Savings during the applicable Measurement Period (an "Energy Production Report"). ENGIE Services U.S. will use its best efforts to submit such Energy Production 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 District will be notified of such a situation within the ninety (90) calendar-day period.

E. Termination of Guaranteed Savings. If (i) District notifies ENGIE Services U.S. in writing of its intent to terminate the M&V Services, (ii) the Contract is terminated by ENGIE Services U.S. for default by District or by District for any reason permitted by the Contract, (iii) ENGIE Services U.S. is no longer the provider of the Maintenance Services set forth in Attachment E, or (iv) District fails to maintain the Project in accordance with this Attachment E, Section (II)(C), or is in default of any of its other obligations under this Attachment E, the obligation of ENGIE Services U.S. to prepare and deliver the Energy Production 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 True-Up Term, ENGIE Services U.S. will have no obligation to make a Guarantee Payment or prepare and deliver an Energy Production Report for such True-Up Term.

F. Calculation of Guarantee Shortfall. The Guarantee Shortfall, for any True-Up Term, will be calculated by ENGIE Services U.S. as the *difference*, to the extent positive, between (i) the Guaranteed Savings for such True-Up Term *minus* the sum of EC Savings for such True-Up Term.

III. Methodologies and Calculations

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

1. Energy Production

a. Kilowatt-hours produced by the PV systems will be measured using automated metering. Projected energy production is shown in *Table E-2* below and is assumed to degrade by 0.5% per year.

b. EC Savings will be calculated by multiplying the Energy Production by the applicable Base Energy Rate. EC Savings will be calculated and presented in Energy Savings Reports.

Table E-2: First Year Solar PV Production

| Location | Projected Annual Production (kWh) |
|---------------------------|-----------------------------------|
| Horton WWTP | 716,041 |
| Nancy Wright Regional WRF | 716,041 |
| Well 24 | 316,230 |
| Well 27 | 642,865 |
| Well 29 | 363,715 |
| Well 32 & Booster Station | 758,878 |
| Well 33 (RES-BCT) | 3,822,287 |
| Total | 7,336,057 |

2. Base Energy Rates: EC Savings will be calculated using the Base Energy Rates for each Project Location and Measurement Period, and shall be stipulated as shown in *Table E-3* below.

Table E-3: Base Energy Rates

| Measurement Period | Horton WWTP (\$/kWh) | Nancy Wright Regional WRF (\$/kWh) | Well 24 (\$/kWh) | Well 27 (\$/kWh) | Well 29 (\$/kWh) | Well 32 & Booster Station (\$/kWh) | Well 33 - RESBCT (\$/kWh) |
|--------------------|----------------------|------------------------------------|------------------|------------------|------------------|------------------------------------|---------------------------|
| 1 | 0.1252 | 0.1252 | 0.1853 | 0.1655 | 0.1132 | 0.1154 | 0.0748 |
| 2 | 0.1327 | 0.1327 | 0.1964 | 0.1754 | 0.1200 | 0.1223 | 0.0792 |
| 3 | 0.1407 | 0.1407 | 0.2082 | 0.1859 | 0.1272 | 0.1296 | 0.1321 |
| 4 | 0.1491 | 0.1491 | 0.2207 | 0.1971 | 0.1348 | 0.1374 | 0.1400 |
| 5 | 0.1581 | 0.1581 | 0.2339 | 0.2089 | 0.1429 | 0.1456 | 0.1484 |
| 6 | 0.1675 | 0.1675 | 0.2479 | 0.2215 | 0.1515 | 0.1544 | 0.1573 |
| 7 | 0.1776 | 0.1776 | 0.2628 | 0.2348 | 0.1606 | 0.1636 | 0.1668 |
| 8 | 0.1883 | 0.1883 | 0.2786 | 0.2488 | 0.1702 | 0.1735 | 0.1768 |
| 9 | 0.1995 | 0.1995 | 0.2953 | 0.2638 | 0.1804 | 0.1839 | 0.1874 |
| 10 | 0.2115 | 0.2115 | 0.3130 | 0.2796 | 0.1913 | 0.1949 | 0.1986 |
| 11 | 0.2242 | 0.2242 | 0.3318 | 0.2964 | 0.2027 | 0.2066 | 0.2106 |
| 12 | 0.2377 | 0.2377 | 0.3517 | 0.3142 | 0.2149 | 0.2190 | 0.2232 |
| 13 | 0.2519 | 0.2519 | 0.3728 | 0.3330 | 0.2278 | 0.2321 | 0.2366 |
| 14 | 0.2670 | 0.2670 | 0.3952 | 0.3530 | 0.2415 | 0.2461 | 0.2508 |

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| | | | | | | | |
|----|--------|--------|--------|--------|--------|--------|--------|
| 15 | 0.2831 | 0.2831 | 0.4189 | 0.3742 | 0.2560 | 0.2608 | 0.2658 |
| 16 | 0.3000 | 0.3000 | 0.4440 | 0.3966 | 0.2713 | 0.2765 | 0.2818 |
| 17 | 0.3180 | 0.3180 | 0.4706 | 0.4204 | 0.2876 | 0.2931 | 0.2987 |
| 18 | 0.3371 | 0.3371 | 0.4989 | 0.4456 | 0.3049 | 0.3106 | 0.3166 |
| 19 | 0.3574 | 0.3574 | 0.5288 | 0.4724 | 0.3231 | 0.3293 | 0.3356 |
| 20 | 0.3788 | 0.3788 | 0.5605 | 0.5007 | 0.3425 | 0.3490 | 0.3557 |

ATTACHMENT F
MAINTENANCE SERVICES

EQUIPMENT AND FACILITIES COVERED

ENGIE Services U.S. will perform preventive maintenance services ("Maintenance Services") as set forth in this Attachment F with respect to Generating Facilities being constructed on District's property at the following Project Locations:

| Site Name | Site Address | City | State | Zip Code |
|--------------------|-------------------------|--------------------|-------|----------|
| HORTON WWTP | 14601 Verbena Dr | Desert Hot Springs | CA | 92240 |
| NEW REGIONAL PLANT | 19011 Little Morongo Rd | Desert Hot Springs | CA | 92240 |
| WELL 24 | 65100-1/2 Pierson Blvd | Desert Hot Springs | CA | 92240 |
| WELL 27 | 64261 Dillon Rd | Desert Hot Springs | CA | 92240 |
| WELL 29 | 65700 Ironwood Dr | Desert Hot Springs | CA | 92240 |
| WELL 32 | 16075 Little Morongo Rd | Desert Hot Springs | CA | 92240 |
| WELL 33 | 19011 Little Morongo Rd | Desert Hot Springs | CA | 92240 |

Capitalized terms used in this Attachment F 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 District to ENGIE Services U.S., in consideration of the provision of up to twenty (20) years of Maintenance Services. The Annual Maintenance Fee for the first Measurement Period will be Fifty-Eight Thousand One Hundred Seventeen Dollars (\$58,117.00). The Annual Maintenance Fee will be increased annually thereafter at the rate of three percent (3%) per annum for the first twenty (20) Measurement Periods, each increase to be effective on the first day of the corresponding Measurement Period. The Annual Maintenance Fee for each Measurement Period after the twentieth (20th) Measurement Period will be negotiated in good faith by the Parties, not later than ninety (90) days prior to the end of the preceding Measurement Period, on the basis of then-prevailing market rates for, e.g., labor and equipment.

II. Term

So long as District pays to ENGIE Services U.S. the Annual Maintenance Fee, ENGIE Services U.S. will provide the Maintenance Services, as described herein, up to twenty (20) years from the M&V Commencement Date on an annualized basis. At the end of this term, District may:

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

III. Annual Maintenance Fee; Reporting

The Annual Maintenance Fee for the first Measurement Period will be invoiced by ENGIE Services U.S. to District in a lump sum on the M&V Commencement Date. All subsequent Annual Maintenance Fees will be invoiced by ENGIE Services U.S. on the first day of the corresponding Measurement Period. District, or its designee, will pay ENGIE Services U.S. such Annual Maintenance Fee, without any retention amount withheld, within thirty (30) calendar days after its receipt of the corresponding invoice. Any failure to timely pay an undisputed Annual Maintenance Fee in accordance with this Attachment F will be a material default by District, and ENGIE Services U.S., in addition to any other legal, contractual and equitable remedies available to it, will have no obligation thereafter to provide Maintenance Services.

Any undisputed amount not paid when due will, from and after the due date, bear Interest. Accrued and unpaid Interest on past due amounts (including Interest on past due Interest) will be due and payable upon demand.

The Annual Maintenance Fee is not refundable for any reason.

Upon completion of any maintenance or repair work, ENGIE Services U.S. will update service logs detailing the work performed, location and any notes relevant to safe and efficient operations. These service logs will be compiled and submitted to District on a quarterly basis.

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If ENGIE Services U.S. is no longer the provider of Maintenance Services, District's new provider will maintain similar service logs. ENGIE Services U.S. will have reasonable access to inspect service logs to determine that adequate Maintenance Services are being performed.

IV. Preventive Maintenance Services Provided

ENGIE Services U.S. will provide the following Maintenance Services during the term:

- a. Inspection: Inspect PV modules, combiner boxes, inverters, isolation transformers, and PV service 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.
- 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 per manufacturer guidelines, using deionized water, on an annual basis, or as conditions require in order to maintain system productivity, at ENGIE Services U.S.'s sole discretion.
- d. Annual Maintenance Report: Provide an annual report on the existing condition of each PV system, including: photos of the arrays, panels, electrical boxes, etc.; IR photos of all electrical connections in the interconnection panels, inverts, subpanels, etc.; excel files with I-V measurements in a tabular form;
- e. ENGIE Services U.S. will respond to District to identify operation and maintenance issues within three working days. This includes items such as System Offline, Inverters offline, ground faults, problems that would result in the loss of 10% output or more.

V. Repair Services

If a Generating Facility is damaged and requires safe-off, repair, demolition and/or reconstruction, or otherwise requires repairs outside of warranty, District must contact the ENGIE Services U.S. PV Operations & Maintenance Manager promptly. In the event of damage, any component of the Generating Facility installed by ENGIE Services U.S. can be repaired or reconstructed by ENGIE Services U.S. at District's request. ENGIE Services U.S. will inspect the damage and provide a written quotation and complete scope of work to District to restore the Generating Facility to normal operational condition. Before proceeding with repairs, ENGIE Services U.S. and District must execute a work order, on ENGIE Services U.S.'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 % | % | 15.00 |
| 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.

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

VI. Warranty Services

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The ENGIE Services U.S. PV Operations & Maintenance Manager will be District's point of contact for all issues related to the ENGIE Services U.S. Warranty set forth in Section 9.01 of the Contract. District should refer to Section 9.02 of the Contract for services provided by ENGIE Services U.S. to District 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 District at Final Completion.

VII. Services and Equipment to Be Covered by District

ENGIE Services U.S.'s obligations under this Attachment F are expressly conditioned upon District's payment of the Annual Maintenance Fee and providing and being responsible for the following, without cost to ENGIE Services U.S.:

- a. Making the Generating Facilities described herein available to ENGIE Services U.S. as of the Contract Effective Date.
- b. Operating and maintaining security systems associated with the Generating Facilities.
- c. Managing the benefitting accounts designated to receive generation credits in regard to the Utility's RES-BCT tariff to ensure that generation is credited at the preferred rate.]
- d. Maintaining all landscaping in and around Generating Facilities including tree trimming.
- e. Allowing ENGIE Services U.S. 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.
- f. Allowing ENGIE Services U.S. and its personnel to access electrical power and other utilities then existing at the Generating Facilities as necessary for ENGIE Services U.S. to satisfy its obligations under the Contract.
- g. Remediating, pursuant to Applicable Law, any known Hazardous Substances encountered by ENGIE Services U.S. during the performance of the Maintenance Services which Hazardous Substances were not deposited by ENGIE Services U.S., including any backfill with clean soil as may be reasonably required.
- h. 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.

ENGIE Services U.S. will have no obligation to provide the Maintenance Services to the extent such provision of Maintenance Services is materially adversely affected by District's failure to satisfy the conditions set forth in this Attachment F.