

CONTRACT FOR DESIGN AND CONSTRUCTION
(GOVERNMENT CODE § 4217.10 ET SEQ.)

The Success One!, William Finch Charter School, and Glenn County Office of Education Building Solar Project

THIS CONTRACT is entered into and effective [Month Day], 2016 (“Contract” or “Agreement”), by and between [Contractor Name] (“Designer/Builder”) and **Glenn County Office of Education** (“Customer”). Designer/Builder and Customer may be referred to herein individually as a “Party” or collectively as “Parties.”

RECITALS

WHEREAS, Customer owns and/or operates certain public facilities specifically described as:

- Success One!, 451 South Villa Ave., Willows CA 95988;
- William Finch Charter School, 451 S Villa Ave, Willows, CA 95988 ;
- Glenn County Office of Education Building, 311 S Villa Ave, Willows, CA 95988;

(“Facilities” or “Sites” or “Sites” or “Premises”) and Customer wants to reduce its Facilities’ energy costs and improve the Facilities’ energy quality/reliability by contracting to procure and implement certain new and upgraded energy system related equipment and materials; and

WHEREAS, Designer/Builder is a full-service energy services company with the technical capabilities to provide services to the Customer including, but not limited to, energy and energy system engineering, design, procurement, construction management, installation, construction, training, monitoring and verification, maintenance, operation, and repair; and

WHEREAS, Designer/Builder provided a comprehensive energy analysis (“CEA”) and recommended an energy plan to implement certain Energy Conservation Measures in the form of solar panels, monitoring systems, and tracking devices (“ECM's”). The CEA identified potential energy and operational savings opportunities at the identified Customer’s Facilities and identified estimated program costs to implement the recommended ECM's and presented an overall potential energy cost and consumption savings of implementing the ECM recommendations.

WHEREAS, Customer desires that Designer/Builder design, install, maintain and operate, and Designer/Builder desires to design, install, maintain and operate solar systems to be located on the Sites;

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

AGREEMENT

1. The Designer/Builder shall furnish the Services or Work described herein to the Customer for a maximum not to exceed the total price of the following amounts. Customer shall pay Designer/Builder for all Services contracted for under this Contract:

SCOPE OF WORK	COST
Capital Charges	
Solar PV Work at the Sites, including _____ (___) year production guarantee (see separate agreement (Exhibit “H”))	
Allowance – Energy Production Display Monitors at All Sites	
Capital Charges Subtotal	

Service Charges (paid annually)	
_____ (____) Year Operations and Maintenance – Per Separate Agreement (Exhibit “B”)	
TOTAL FOR CAPITAL AND SERVICE CHARGES	

(“Contract Price”). The Contract Price shall be Designer/Builder’s total compensation to perform the following services (“Services” or “Work”):

The assessment, engineering, design, procurement, construction management, installation, construction, training, monitoring, verification, maintenance, operation, and repair, of PV systems with Expected Energy Production of _____ kilowatt-hours (kWh) of energy in year one of system operation, produced through the following systems:

Site	System Type	System Size at Each Site (kWdc)	Capacity Percentage Split (if Multiple System Types)	Expected First Year Output (kWh)	EPC PRICE (\$/Watt)	First Year O&M Fee***	____-Year O&M Fees***
Success One!							
William Finch Charter School							
Glenn County Office of Education Building							
TOTAL							

All as further described in this Contract and Exhibits (“Project”).

- Work shall be completed within the time specified in **Exhibit C** (“Contract Time”) from the date specified in the Customer’s Notice(s) to Proceed, as indicated in the Schedule in **Exhibit “C,”** attached hereto and incorporated herein by this reference. Designer/Builder agrees that if the Work is not completed within the Contract Time and/or pursuant to the Project schedule, construction schedule, or project milestones developed pursuant to provisions of the Contract, including the Schedule in **Exhibit “C,”** it is understood, acknowledged, and agreed that the Customer will suffer damage which is not capable of being calculated. Pursuant to Government Code section 53069.85, Designer/Builder shall forfeit to the Customer, as fixed and liquidated damages for these incalculable damages, the sum of **One Thousand Dollars (\$1,000.00)** per MWdc per day for each and every calendar day of delay beyond the date of the “Designer/Builder Requests Permission to Operate Letter From Utility” specified in **Exhibit “C”** for each Site. *(For example, if Designer/Builder requests “Permission to operate letter(s)” for all but the _____ Site and the _____ Site, the total liquidated damages amount during that time that these two (2) sites are not operating shall be \$_____ per calendar day (\$_____ + \$_____)* These liquidated damages apply only to the Construction portion of this Contract and not to the Operations & Maintenance Agreement, as described in **Exhibit “B,”** or the Agreement for Production Guarantee, as described in **Exhibit “H.”**

3. Designer/Builder shall prepare a detailed schedule of values for all of the Work that must include quantities and prices of items aggregating the Contract Price and must subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. This schedule of values must be approved by the Customer prior to it being used as a basis for payment.
4. The Designer/Builder shall not commence the Work under this Contract until the Designer/Builder has submitted and the Customer has approved the endorsement(s) of insurance required under the Terms and Conditions and the Customer has issued a Notice(s) to Proceed. The Designer/Builder shall not commence the procurement, installation, and construction portions of the Work under this Contract until the Designer/Builder has submitted and the Customer has approved the performance bond and the payment (labor and material) bond(s) for the scope of Work indicated in each Notice(s) to Proceed.
5. The Customer is performing its compliance with the California Environmental Quality Act ("CEQA"). It is a condition precedent to the Customer's obligations under this Contract that the Customer's Governing Body approves the Project under CEQA and/or exempts the Project from CEQA, although the Customer will pay for undisputed and documented design and/or planning services rendered to date in response to Notice(s) to Proceed ("NTP") if the Customer cannot comply with CEQA. See **Exhibit "C"** for information regarding the Project's Schedule and the intended timing of the Customer's issuance of an NTP. The Parties acknowledge that Designer/Builder is not obligated to commence construction portions of the Work under an NTP unless and until the above condition precedent to the Customer's obligations have been satisfied or waived.
6. This Contract incorporates by this reference the Terms and Conditions attached hereto. The Designer/Builder, by executing this Contract, agrees to comply with all the Terms and Conditions.
7. The Contract includes only the following documents, as indicated ("Contract Documents"): TBD

<input checked="" type="checkbox"/>	Terms and Conditions to Contract	<input type="checkbox"/>	Exhibit "A" (Scope of Work)
<input type="checkbox"/>	Non-Collusion Affidavit	<input type="checkbox"/>	Exhibit "B" (Operations & Maintenance ("O&M") Agreement)
<input type="checkbox"/>	Prevailing Wage Certification	<input type="checkbox"/>	Exhibit "C" (Schedule)
<input type="checkbox"/>	Workers' Compensation Certification	<input type="checkbox"/>	Exhibit "D" (Contract Price Breakdown Payment Schedule)
<input type="checkbox"/>	Criminal Background Investigation Certification	<input type="checkbox"/>	Exhibit "E" (Schedule of Values)
<input type="checkbox"/>	Drug-Free Workplace / Tobacco-Free Environment Certification	<input type="checkbox"/>	Exhibit "F" (Customer's Rules and Regulations)
<input type="checkbox"/>	Asbestos & Other Hazardous Materials Certification	<input type="checkbox"/>	Exhibit "G" (List of Plans, Specifications and Drawings for Sites)
<input type="checkbox"/>	Lead-Product(s) Certification	<input type="checkbox"/>	Exhibit "H" (Solar Systems Production Guarantee)
<input type="checkbox"/>	Roofing Contract Financial Interest Certification	<input type="checkbox"/>	Exhibit "I" (Warranties)
<input type="checkbox"/>	Iran Contracting Act Certification	<input type="checkbox"/>	Exhibit "J" (Additional Contract Documents)
<input type="checkbox"/>	Insurance Certificates and Endorsements		
<input type="checkbox"/>	Performance Bond (Customer's Form)		
<input type="checkbox"/>	Payment Bond (Customer's Form)		
<input type="checkbox"/>	Plans (See Exhibit "G" for List of Plans and Specifications)		
<input type="checkbox"/>	Work Specifications (See Exhibit "G" for List of Plans and Specifications)		

8. **Interpretation of Contract Documents:** Questions concerning the intent, precedence, or meaning of the Contract Documents, including the Plans, Specifications and Drawings, shall be resolved by giving precedence in the following order: first, Customer-approved modifications, beginning with the most recent (if any); second, the base Contract's provisions (through Section 15); third, the Terms and Conditions to Contract; fourth, Exhibit "A"; fifth, Exhibit "J"; sixth, the Additional Contract Documents; seventh, the figured dimensions; eighth, the Large-scale drawings; and ninth, Small-scale drawings.

In the event there is an inconsistency between any of the Contract Documents, the Designer/Builder shall notify the Customer and perform the Work in accordance with the standard approved by the Customer.

9. Designer/Builder hereby acknowledges that the Division of the State Architect (“DSA”) and the Customer’s DSA Project Inspector(s) (“Inspector” or “IOR”) have authority to approve and/or stop Work if the Designer/Builder’s Work does not comply with the requirements of the Contract, Title 24 of the California Code of Regulations, and all applicable laws. The Designer/Builder shall be liable for any delay caused and extra work required by its non-compliant Work. Designer/Builder shall not be liable for delay caused solely by the Customer.
10. Inspection and acceptance of the Work shall be performed by:
 - a. The Customer’s Project Inspector with whom the Customer will contract at or prior to the Customer issuing a Notice(s) to Proceed to Designer/Builder;
 - b. The Assistant Superintendent of the Customer, and/or his/her designee.
11. Designer/Builder recognizes that the Customer may obtain the services of a construction manager for this Project. The construction manager, if any, would be authorized to give Designer/Builder Services authorizations, and issue written approvals and Notices to Proceed on behalf of Customer. The Customer reserves the right to designate a different construction manager at any time. The Customer shall provide forty-eight (48) hours notice to Designer/Builder if Customer designates a different construction manager. Any task, including, but not limited to, reviews or approvals that the Customer may perform pursuant to this Contract may be performed by the construction manager, unless that task indicates it shall be performed by the governing board of the Customer.
12. Unless otherwise indicated herein for a longer period of time, the Designer/Builder shall guarantee all labor and material used in the performance of this Contract for a period of one year from the date of the Customer’s written approval of the Work.
13. The Designer/Builder shall not contract with any subconsultants to perform architecture or engineering for the Project, without the Customer’s pre-approval, which shall not be unreasonably withheld. The following individuals are the Designer/Builder’s key personnel, none of which can be replaced unless approved by the Customer per the requirements of the provisions indicated herein:

Project Development and Team Leader	
Project Manager and Team Leader for Project Execution	
Project Management	
Project Design	
Project Design	
Project Design and Site Audit	
Electrical Engineering	
Structural Engineering	
Construction Management	
Performance Engineering	
Architect	

14. By signing this Contract, Designer/Builder certifies, under penalty of perjury, that all the information provided in the Contract is true, complete, and correct, to the best of its knowledge.

ACCEPTED AND AGREED:

Dated: _____, 20__

Glenn County Office of Education

Signature: _____

Print Name: _____

Print Title: _____

Address: _____

Telephone: _____

Facsimile: _____

E-Mail: _____

Dated: _____, 20__

[Contractor Name]

Signature: _____

Print Name: _____

Print Title: _____

Cal. Contractor License No.: _____

DIR Registration No.: _____

Structural Engineer License: _____

Architect License: _____

Address: _____

Telephone: _____

Facsimile: _____

E-Mail: _____

Notice. Any notice required or permitted to be given under this Contract shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, addressed to the above individuals. Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

Information regarding Designer/Builder:

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

<p>_____</p> <p>Employer Identification and/or Social Security Number</p> <p>NOTE: United States Code, title 26, sections 6041 and 6109 require non-corporate recipients of \$600.00 or more to furnish their taxpayer identification number to the payer. The United States Code also provides that a penalty may be imposed for failure to furnish the taxpayer identification number. In order to comply with these rules, the Customer requires your federal tax identification number or Social Security number, whichever is applicable.</p>

TERMS AND CONDITIONS TO CONTRACT

1. **NOTICE(S) TO PROCEED:** Designer/Builder shall not commence any Work at any site until it receives Notice to Proceed. The Customer reserves the right to issue multiple Notices to Proceed related to the Project, as indicated in **Exhibit "C"**, and shall utilize the attached form with that form's requirements.
2. **SITE EXAMINATION:** After the Designer/Builder has performed its Design Development services and prior to the Customer issuing a Notice to Proceed, Designer/Builder will provide a certification that states that it has examined the Site and will accept all measurements, specifications and conditions affecting the Work to be performed at the Site as set forth in the Notice to Proceed. By executing the certification, Designer/Builder will warrant that it has made all Site examination(s) that it deems necessary as to the condition of the Site, its accessibility for materials, workers and utilities, and Designer/Builder's ability to protect existing surface and subsurface improvements. No claim for allowance of time or money will be allowed as to any other undiscovered condition on the Site. Notwithstanding the aforementioned, should the Designer/Builder discover any latent or unknown conditions, which will substantively and materially affect the cost to perform the Work hereunder, Designer/Builder may request that the Customer permit Designer/Builder to increase system sizes elsewhere on site.
3. **EQUIPMENT AND LABOR:** The Designer/Builder shall furnish all tools, equipment, apparatus, facilities, transportation, labor, and material necessary to furnish the Services herein described, the Services to be performed at such times and places as directed by and subject to the approval of the authorized Customer representative indicated in the Work specifications attached hereto.
4. **SUBCONTRACTORS:** Subcontractors, if any, engaged by the Designer/Builder for any Service or Work under this Contract shall be subject to the approval of the Customer, which shall not be unreasonably withheld. Designer/Builder agrees to bind every subcontractor by the terms of the Contract as far as such terms are applicable to subcontractor's work, including, without limitation, all indemnification, insurance and warranty requirements. If Designer/Builder shall subcontract any part of this Contract, Designer/Builder shall be fully responsible to the Customer for acts and omissions of its subcontractor and of persons either directly or indirectly employed by itself. Nothing contained in the Contract shall create any contractual relations between any subcontractor and the Customer.
5. **TERMINATION / SUSPENSION:**
 - 5.1. If Designer/Builder fails to perform Designer/Builder's material duties as required by this Contract, or if Designer/Builder fails to fulfill in a timely and professional manner Designer/Builder's material obligations under this Contract, or if Designer/Builder shall violate any of the material terms or provisions of this Contract, and any such failure is not excused by the terms of this Contract, the Customer shall have the right to terminate this Contract, in whole or in part, unless such failures and violations are caused by the Customer, effective immediately upon the Customer giving fourteen (14) days written notice thereof to the Designer/Builder, during which time the Designer/Builder may attempt to correct such failures and violations to the Customer's reasonable satisfaction. In the event of a termination pursuant to this subdivision, Designer/Builder may invoice Customer for all Services performed until the notice of termination, but Customer shall have the right to withhold payment and deduct any amounts equal to the Customer's costs because of Designer/Builder's actions, errors, or omissions that caused the Customer to terminate the Designer/Builder. The Customer may, at its discretion, provide the Designer/Builder time to cure its default or breach.
 - 5.2. Customer shall have the right in its sole discretion to terminate the Contract, in whole or in part, for its own convenience. In the event of a termination for convenience, Designer/Builder may invoice Customer and Customer shall pay all undisputed invoice(s) for recoverable costs for Work performed until the date of termination, reasonable demobilization costs, and rental costs for equipment that Designer/Builder cannot mitigate with diligent efforts. In the event that Customer terminates this Contract as provided in this subsection and there are no known potential claims related to Designer/Builder's Work, Customer shall, within fourteen (14) Days after the date of termination, release the Performance and Payment Bonds, although the Surety on Performance and Payment Bonds shall remain liable as indicated herein for all Designer/Builder's Work performed until the date of termination.

- 5.3. Except as indicated in this Article, termination shall have no effect upon any of the rights and obligations of the Parties arising out of any transaction occurring prior to the effective date of such termination.
- 5.4. The Designer/Builder has the right to terminate this Contract if the Customer does not fulfill its material obligations under this Contract. Such termination shall be effective upon fifteen (15) days written notice to the Customer. Designer/Builder may invoice Customer and Customer shall pay all undisputed invoice(s) for Services performed until the Designer/Builder's notice of termination.
- 5.5. If the Customer suspends the Project for more than one hundred eighty (180) consecutive days, the Designer/Builder shall be compensated for Work performed prior to notice of that suspension. When the Project is resumed, the schedule shall be adjusted and the Designer/Builder's compensation shall be equitably adjusted to provide for expenses incurred in the resumption of the Designer/Builder's Work. If the Customer suspends the Project for more than two (2) years, the Designer/Builder may terminate this Contract by giving written notice.
6. **SAFETY AND SECURITY:** Designer/Builder is responsible for maintaining safety in the performance of this Contract. Designer/Builder shall be responsible to ascertain from the Customer the rules and regulations pertaining to safety, security, and driving on school grounds, particularly when children are present, as per **Exhibit "F."** In the event that the aforementioned rules conflict with the terms of this Contract, the terms of this Contract shall prevail.

7. CHANGE IN SCOPE OF WORK

7.1. No Changes Without Authorization

- 7.1.1. There shall be no change whatsoever in the Drawings, Specifications, or in the Work without an executed Change Order authorized by the Customer as herein provided. Customer shall not be liable for the cost of any extra work, any changes to the Contract Time, or any substitutions, changes, additions, omissions, or deviations from the Drawings and Specifications unless the Customer's governing board has authorized the same and the cost thereof has been approved in writing by Change Order. No extension of time for performance of the Work shall be allowed hereunder unless claim for such extension is made at the time changes in the Work are ordered, and such time duly adjusted in writing in the Change Order. The provisions of the Contract Documents shall apply to all such changes, additions, and omissions with the same effect as if originally embodied in the Drawings and Specifications.
- 7.1.2. Designer/Builder shall perform immediately all work that has been authorized by a fully executed Change Order. Designer/Builder shall be fully responsible for any and all delays and/or expenses caused by Designer/Builder's failure to expeditiously perform this Work.
- 7.1.3. Should any Change Order result in an increase in the Contract Price, the cost of that Change Order shall be agreed to, in writing, in advance by Designer/Builder and Customer. In the event that Designer/Builder proceeds with any change in Work without a Change Order executed by the Customer, Designer/Builder waives any claim of additional compensation or time for that additional work.
- 7.1.4. Designer/Builder understands, acknowledges, and agrees that the reason for Customer authorization is so that Customer may have an opportunity to analyze the Work and decide whether the Customer shall proceed with the Change Order or alter the Project so that a change in Work becomes unnecessary.

7.2. Change Orders

- 7.2.1. A Change Order is a written instrument prepared and issued by the Customer and the Designer/Builder and approved by the Project Inspector (if necessary) and DSA (if necessary), stating their agreement regarding all of the following:
- 7.2.1.1. A description of a change in the Work;
- 7.2.1.2. The amount of the adjustment in the Contract Price, if any; and

7.2.1.3. The extent of the adjustment in the Contract Time, if any.

7.2.2. If a Change Order is required to be approved by DSA, the Customer may call it a Construction Change Document.

7.3. Price Request

7.3.1. Definition of Price Request

A Price Request (“PR”) is a written request prepared by the Customer requesting the Designer/Builder to submit to the Customer an estimate of the effect of a proposed change in the Work on the Contract Price and the Contract Time.

7.3.2. Scope of Price Request

A Price Request shall contain adequate information, including any necessary Drawings and Specifications, to enable Designer/Builder to provide the cost breakdowns required herein. The Designer/Builder shall not be entitled to any additional compensation for preparing a response to a Price Request, whether ultimately accepted or not.

7.4. Proposed Change Order

7.4.1. Definition of Proposed Change Order

A Proposed Change Order (“PCO”) is a written request prepared by the Designer/Builder requesting that the Customer issue a Change Order based upon a proposed change to the Work. A PCO shall be submitted by the Designer/Builder to the Owner within 10 days of the event giving rise to the PCO. Designer/Builder’s failure to submit a PCO within 10 days of the event giving rise to the PCO shall be a complete waiver all rights to additional compensation or time otherwise resulting from the events giving rise to the PCO.

7.4.2. Changes in Contract Price

A PCO shall include breakdowns pursuant to the revisions herein to validate any change in Contract Price.

7.4.3. Changes in Time

A PCO shall also include any changes in time required to complete the Project. Any additional time requested shall not be the number of days to make the proposed change, but must be based upon the impact to the Construction Schedule as defined in the Contract Documents. If Designer/Builder fails to request a time extension in a PCO, then the Designer/Builder is thereafter precluded from requesting time and/or claiming a delay.

7.4.4. Unknown and/or Unforeseen Conditions

If Designer/Builder submits a PCO requesting an increase in Contract Price and/or Contract Time that is based at least partially on Designer/Builder’s assertion that Designer/Builder has encountered unknown and/or unforeseen condition(s) on the Project, then Designer/Builder shall base the PCO on provable information that demonstrates that the unknown and/or unforeseen condition(s) were actually or reasonably unknown and/or unforeseen. If not, the Customer shall deny the PCO and the Designer/Builder shall complete the Project without any increase in Contract Price and/or Contract Time based on that PCO.

7.4.5. Time to Submit PCO.

Designer/Builder shall submit its PCO within five (5) days of the date Designer/Builder discovers, or reasonably should discover, the circumstances giving rise to the proposed change order, unless additional time to submit a proposed change order is granted in writing by the Customer.

7.5. Format for Proposed Change Order

- 7.5.1.** The following “Format For Proposed Change For Subcontractor Performed Work” and “Format For Proposed Change For Designer/Builder Performed Work” shall be used as applicable by the Customer and the Designer/Builder (e.g. Change Orders, PCO’s) to communicate proposed additions and deductions to the Contract, supported by attached documentation.

[continued on next page]

FORMAT FOR PROPOSED CHANGE FOR SUBCONTRACTOR PERFORMED WORK

	<u>SUBCONTRACTOR PERFORMED WORK</u>	<i>ADD</i>	<i>DEDUCT</i>
(A)	<p><u>Labor Charge</u></p> <p>1. Hours. Attach total itemized hours.</p> <p>2. Rate. This shall be no more than the Straight-Time Total Hourly Rate as determined by the Department of Industrial Relations (“DIR”) for the applicable labor category.</p>		
(B)	<p><u>Labor Burden & Worker’s Compensation Charge</u></p> <p>1. This shall be no more than twenty percent (20%) of item (A), the Labor Charge.</p> <p>2. This shall be the total cumulative charge permitted for all Subcontractors or all labor performed by the Subcontractor or Subcontractor’s Subcontractor(s) (i.e., all “lower-tier” Subcontractor(s)).</p>		
(C)	<u>Subtotal (A+B)</u>		
(D)	<p><u>Material Charge</u></p> <p>Attach itemized quantity and unit cost plus sales tax and invoice(s) from vendor(s).</p>		
(E)	<p><u>Equipment Charge</u></p> <p>Attach invoice(s) from supplier(s).</p>		
(F)	<u>Subtotal (C+D+E)</u>		
(G)	<p><u>Subcontractor’s Overhead and Profit Charge</u></p> <p>1. This shall be no more than five percent (5%) of item (F).</p> <p>2. This shall be the total cumulative mark-up permitted for the Subcontractor and Subcontractor’s Subcontractor(s) (i.e., all “lower-tier” Subcontractor(s)).</p>		
(H)	<u>Subtotal (F+G)</u>		
(I)	<p><u>Designer/Builder’s Overhead, Profit, Bond and Insurance</u></p> <p>1. This shall be no more than five percent (5%) of Item (H).</p> <p>2. This shall be the total mark-up permitted for Designer/Builder.</p>		
(J)	<u>Subtotal (H+I)</u>		
(K)	<u>Time</u>		Days
(L)	<p><u>Designer/Builder’s Home Office Overhead</u></p> <p>This shall be no more than \$200 times the number of days of Item (K) (i.e., not to exceed \$200/day)</p>		
(M)	<u>TOTAL (J+L)</u>		

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FORMAT FOR PROPOSED CHANGE FOR CONTRACTOR PERFORMED WORK

	<u>CONTRACTOR PERFORMED WORK</u>	<i>ADD</i>	<i>DEDUCT</i>
(A)	<u>Labor Charge</u> 1. Hours. Attach total itemized hours. 2. Rate. This shall be no more than the Straight-Time Total Hourly Rate as determined by the Department of Industrial Relations (“DIR”) for the applicable labor category.		
(B)	<u>Labor Burden & Worker’s Compensation Charge</u> 1. This shall be no more than twenty percent (20%) of item (A) , the Labor Charge. 2. This shall be the total cumulative charge permitted for all labor performed by Designer/Builder.		
(C)	<u>Subtotal (A+B)</u>		
(D)	<u>Material Charge</u> Attach itemized quantity and unit cost plus sales tax and invoice(s) from vendor(s).		
(E)	<u>Equipment Charge</u> Attach invoice(s) from supplier(s).		
(F)	<u>Subtotal (C+D+E)</u>		
(G)	<u>Designer/Builder’s Overhead, Profit, Bond and Insurance</u> 1. This shall be no more than five percent (5%) of Item (F) . 2. This shall be the total mark-up permitted for Designer/Builder.		
(H)	<u>Subtotal (F+G)</u>		
(I)	<u>Time</u>	Days	
(J)	<u>Designer/Builder’s Home Office Overhead</u> This shall be no more than \$200 times the number of days of Item (I) (i.e., not to exceed \$200/day)		
(M)	<u>TOTAL (H+J)</u>		

7.5.2. All proposed cost requests by Designer/Builder for a change shall include a complete itemized breakdown with the following detail:

7.5.2.1. Labor. Labor breakdown by trade classification, wage rates, and estimated hours. Labor costs shall only include fringe benefits indicated by governing trade organizations. Wages shall not exceed current prevailing wages in the locality for performance of the changes.

7.5.2.2. The Designer/Builder's or Subcontractors' labor burden and Workers' Compensation premium shall only be charged as indicated herein. In no event shall Designer/Builder include any other charges than as indicated herein without the prior written approval of the Customer.

7.5.2.3. Material. Material quantities, and types of products, and transportation costs, if applicable.

7.5.2.4. Equipment. Equipment breakdown by make, type, size, rental rates, equipment hours and transportation costs, if applicable.

7.5.2.4.1. The equipment costs shall not exceed one hundred percent (100%) of the Association of Equipment Distributors (AED) rental rates or Caltrans rates, whichever is less. Hourly, daily, weekly, or monthly rates shall be used, whichever is lower. Hourly rates including operator shall not be used.

7.5.2.4.2. The actual time to be paid for equipment shall be the time that the equipment is in productive operation on the Work under Contract Modification. In computing the hourly rental of equipment, any time less than thirty (30) minutes shall be considered one-half (1/2) hour. No payment will be made for time while equipment is inoperative due to breakdown, or for non-workdays. In addition, the rental time shall not include the time required to move the equipment to and from the project site. No mobilization or demobilization will be allowed for equipment already on site. If such equipment is not moved by its own power, then loading and transportation costs will be paid in lieu of rental time thereof. However, neither moving time nor loading and transportation costs will be paid if the equipment is used on the Project Site in any other way than upon the work directly related to the Contract Modification.

7.5.2.4.3. Individual pieces of equipment having a replacement value of one thousand dollars (\$1,000) or less shall be considered to be small tools or small equipment, and no payment will be made since the costs of these tools and equipment is included as part of the markup for overhead and profit defined herein.

7.5.2.4.4. Payment to the Designer/Builder for the use of equipment as set forth above shall constitute full compensation to the Designer/Builder for the cost of fuel, power, oil, lubricants, supplies, small equipment, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, labor (except for equipment operators), and any and all costs to the Designer/Builder incidental to the use of the equipment.

7.5.2.4.5. Should Designer/Builder, or any of its owners, officers, directors or agents, hold any ownership interest in any company, organization, association or corporation from whom rental equipment is secured. Designer/Builder shall immediately notify Customer of such and the price set for any such rental shall be agreed upon in advance by the Designer/Builder and the Customer.

7.5.2.5. Overhead and Profit. Markup for overhead and profit, which shall be used to compensate Designer/Builder for all costs for all administration, general conditions, and supervision, including, without limitation:

7.5.2.5.1. All field, field office and home office personnel including, but not limited to, principals, project managers, superintendents, supervisory foremen, estimators, project engineers, detailers, draftsmen, schedulers, consultants, watchmen, payroll clerks, administrative assistants, labor compliance costs and secretaries.

7.5.2.5.2. All field, field office and home office expenses including, but not limited to, field trailers, parking, storage sheds, office equipment and supplies, telephone service and long distance telephone calls, fax machines, temporary utilities, sanitary facilities and services, janitorial services, small tools and equipment with a cost under \$1000 each, portable scaffolding, blocking, shores, appliances, job vehicles, security and fencing, conformance to regulatory requirements including compliance to safety regulations, safety programs and meetings, cartage, warranties, As-Built Drawings, as well as any related maintenance costs.

7.5.2.5.3. Administrative functions such as, but not limited to, reviewing, coordinating, distributing, processing, posting, recording, estimating, negotiating, expediting, engineering, drawing, detailing, revising shop drawings, carting, cleaning, protecting the work, and other incidental Work related to the change.

7.5.2.5.4. All other costs and taxes required to be paid, but not included under direct costs as defined above including, without limitation, payroll taxes, social security, etc.

7.5.2.5.5. All costs for Designer/Builder's bonds and insurance.

7.5.2.5.6. **Taxes:** Federal excise tax shall not be included. Customer will issue an exemption on request.

7.5.2.6. Justification for any adjustment in Contract Time including a schedule analysis identifying critical schedule activities delayed by the request.

7.6. Change Order Certification

7.6.1. All Change Orders and PCOs must include the following certification by the Designer/Builder:

The undersigned Designer/Builder approves the foregoing as to the changes, if any, and the Contract Price specified for each item and as to the extension of time allowed, if any, for Project Completion, and agrees to furnish all labor, materials, and service, and perform all work necessary to complete any additional work specified for the consideration stated herein. Submission of sums which have no basis in fact or which Designer/Builder knows are false are at the sole risk of Designer/Builder and may be a violation of the False Claims Act set forth under Government Code section 12650 et seq. It is understood that the changes herein to the Contract shall only be effective when approved by the governing board of the Customer.

It is expressly understood that the value of the extra Work or changes expressly includes any and all of the Designer/Builder's costs, expenses, field overhead, home office overhead, and profit, both direct and indirect, resulting from additional time required on the Project or resulting from delay to the Project. Any costs, expenses, damages, or time extensions not included are deemed waived.

7.7. Determination of Change Order Cost

7.7.1. The amount of the increase or decrease in the Contract Price from a Change Order, if any, shall be determined in one or more of the following ways as applicable to a specific situation and at the Customer's discretion:

7.7.1.1. Customer acceptance of a PCO;

7.7.1.2. By amounts contained in Designer/Builder's schedule of values, if applicable;

7.7.1.3. By agreement between Customer and Designer/Builder.

7.7.2. If the Customer has put in contingency(s) and/or allowance(s) in Exhibit "C" to the Facilities Lease, then approved Change Order(s) may be paid out of those contingency(s) and/or allowance(s), pursuant to Exhibit "C" and if agreed to by the Customer.

7.8. Deductive Change Orders

All deductive Change Order(s) must be prepared pursuant to the provisions herein. If Designer/Builder offers a proposed amount for a deductive Change Order(s), Designer/Builder shall include a minimum of five percent (5%) total overhead, profit & general conditions to be deducted with the amount of the work of the Change Order(s). If Subcontractor work is involved, Subcontractors shall also include a minimum of five percent (5%) total overhead, profit & general conditions to be deducted with the amount of its deducted work. Any deviation from this provision shall on be permitted with the Customer's prior written approval.

7.9. Construction Change Directives / Unilateral Change Orders

7.9.1. A Construction Change Directive (or Unilateral Change Order) is a written order prepared and issued by the Customer directing a change in the Work. The Customer may as provided by law, by Construction Change Directive and without invalidating the Contract, order changes in the Work consisting of additions, deletions, or other revisions. If all or a portion of the Project is being funded by funds requiring approval by the State Allocation Board (SAB), these revisions may be subject to compensation once approval of same is received and funded by the SAB, and funds are released by the Office of Public School Construction (OPSC). Any dispute as to the sum of the Construction Change Directive or timing of payment shall be resolved pursuant to the Payment and Disputes provisions herein. A Construction Change Directive is NOT a Construction Change Document (which is defined above as a Change Order that DSA must approve).

7.9.2. The Customer may issue a Construction Change Directive in the absence of agreement on the terms of a Change Order.

7.10. Discounts, Rebates, and Refunds

For purposes of determining the cost, if any, of any change, addition, or omission to the Work hereunder, all trade discounts, rebates, refunds, and all returns from the sale of surplus materials and equipment shall accrue and be credited to the Designer/Builder, and the Designer/Builder shall make provisions so that such discounts, rebates, refunds, and returns may be secured, and the amount thereof shall be allowed as a reduction of the Designer/Builder's cost in determining the actual cost of construction for purposes of any change, addition, or omission in the Work as provided herein. Such discounts and rebates generated as a result of early payments shall only be credited to the Customer, provided that the Customer provides Designer/Builder with early payment in order to secure such discounts and rebates.

7.11. Accounting Records

With respect to portions of the Work performed by Change Orders, the Designer/Builder shall keep and maintain cost-accounting records satisfactory to the Customer, which shall be available to the Customer on the same terms as any other books and records the Designer/Builder is required to maintain under the Contract Documents.

7.12. Notice Required

If the Designer/Builder is seeking an adjustment to the Contract Price, or any extension in the Contract Time for Project Completion, it shall notify the Customer pursuant to the provisions herein. No adjustment in the Contract Price or Contract Time shall be considered unless made in accordance with this subparagraph. Designer/Builder shall proceed to execute the Work even though the adjustment may not have been agreed upon. Any change in the Contract Price or extension of the Contract Time resulting from such claim shall be authorized by a Change Order.

7.13. Applicability to Subcontractors

Any requirements under this Article shall be equally applicable to Change Orders issued to Subcontractors by the Designer/Builder to the extent as required by the Contract Documents.

7.14. Alteration to Change Order Language

Designer/Builder shall not alter Change Orders or reserve time in Change Orders. Designer/Builder shall execute finalized Change Orders and proceed under the provisions herein with proper notice.

7.15. Failure of Designer/Builder to Execute Change Order

Designer/Builder shall be in default of the Contract if Designer/Builder fails to execute a Change Order when the Designer/Builder agrees with the addition and/or deletion of the Work in that Change Order.

- 8. TRENCH SHORING:** If this Contract is in excess of \$25,000 and is for the excavation of any trench deeper than five (5) feet, Designer/Builder must submit and obtain Customer acceptance, in advance of excavation, of a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If the plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer.
- 9. EXCAVATIONS OVER FOUR FEET:** If this Contract includes excavations over four (4) feet, Designer/Builder shall promptly, and before the following conditions are disturbed, notify the Customer, in writing, of any: (1) Material that the Designer/Builder believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; (2) Subsurface or latent physical conditions at the site differing from those indicated; or (3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract. The Customer shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Designer/Builder's cost of, or the time required for, performance of any part of the Work shall issue a change order under the procedures described in the Contract. In the event that a dispute arises between the Customer and the Designer/Builder whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Designer/Builder's cost of, or time required for, performance of any part of the work, the Designer/Builder shall not be excused from any scheduled completion date provided for by the contract, but shall proceed with all Work to be performed under the contract. The Designer/Builder shall retain any and all rights provided either by Contract or by law which pertain to the resolution of disputes and protests between the Parties.
- 10. LEAD-BASED PAINT:** Pursuant to the Lead-Safe Schools Protection Act (Education Code Section 32240 et seq.) and other applicable law, no lead-based paint, lead plumbing and solders, or other potential sources of lead contamination shall be utilized on this Project, and only trained and state-certified contractors, inspectors and workers shall undertake any action to abate existing risk factors for lead. Designer/Builder must execute the Lead-Based Paint Certification, if applicable.
- 11. WORKERS:** Designer/Builder shall at all times enforce strict discipline and good order among its employees and the employees of its subcontractors and shall not employ or work any unfit person or anyone not skilled in work assigned to him or her. Any person in the employ of the Designer/Builder or a subcontractor whom the Customer may deem incompetent or unfit shall be dismissed from the Site and shall not again be employed at Site without written consent from the Customer.
- 12. CORRECTION OF ERRORS:** Designer/Builder shall perform, at its own cost and expense and without reimbursement from the Customer, any work necessary to correct errors or omissions which are caused by the Designer/Builder's failure to comply with the Contract requirements and the standard of care required herein.
- 13. SUBSTITUTIONS:** No substitutions of material from those specified in the approved final design shall be made without the prior written approval of the Customer, which shall not be unreasonably withheld.
- 14. DESIGNER/BUILDER SUPERVISION:** Designer/Builder shall provide competent supervision of personnel employed on the job Site, use of equipment, and quality of workmanship.
- 15. CLEAN UP:** Debris shall be removed from the Premises by the Designer/Builder. The Site shall be in order at

all times when work is not actually being performed and shall be maintained in a reasonably clean condition.

- 16. ACCESS TO WORK:** Customer shall provide all required access to the Premises to Designer/Builder. Customer representatives shall have access to the Work wherever it is in preparation or in progress. Designer/Builder shall provide safe and proper facilities for such access.
- 17. PROTECTION OF WORK AND PROPERTY:** The Designer/Builder shall erect and properly maintain at all times, as required by conditions and progress of the Work, all necessary safeguards, signs, and barriers, for protection of workers and the public, and shall post danger signs warning against hazards created by the Work. In an emergency affecting life and safety of life or of Work or of adjoining property, Designer/Builder, without special instruction or authorization from Customer, is permitted to act at his discretion to prevent such threatened loss or injury.
- 18. OTHER CONTRACTS/CONTRACTORS:** Customer reserves the right to let other contracts, and/or to perform work with its own forces, in connection with the Project. Designer/Builder shall afford other contractors reasonable opportunity for introduction and storage of their materials and execution of their work and shall properly coordinate and connect Designer/Builder's Work with the work of other contractors. In addition to Designer/Builder's obligation to protect its own Work, Designer/Builder shall protect the work of any other contractor that Designer/Builder encounters while working on the Project. Nothing herein contained shall be interpreted as granting to Designer/Builder exclusive occupancy of the Site, the Premises, or of the Project. Designer/Builder shall not cause any unnecessary hindrance or delay to the use and/or school operation(s) of the Premises and/or to Customer or any other contractor working on the Project. If simultaneous execution of any contract or school operation is likely to cause interference with performance of Designer/Builder's Contract, Designer/Builder shall coordinate with those contractor(s), person(s), and/or entity(s) and shall notify the Customer of the resolution.
- 19. ASSIGNMENT OF CONTRACT:** The Designer/Builder shall not assign or transfer in any way any or all of its rights, burdens, duties, or obligations under this Contract without the prior written consent of the Customer. This provision shall not limit the Designer/Builder's right to subcontract portions of its Work to other entities and assign this Contract and all related contracts without the consent of the Customer (i) to direct affiliate of Designer/Builder; (ii) to an entity that is controlled by, controls, or is under common control with Designer/Builder; or (iii) pursuant to a merger, consolidation, transfer of substantially all its assets, or by operation of law. This Contract will be binding on, enforceable by, and inure to the benefit of, the Parties and their respective successors and permitted assigns. Any assignment made in contravention of this clause shall be void and unenforceable.
- 20. COMPLETION:**

 - 20.1. Walk-Through as Prerequisite to Determination of Completion.** When the Designer/Builder believes that the Work is complete except for minor corrective items, it shall so notify the Customer. Promptly thereafter, the Customer shall schedule a final walk-through of the Project by the Designer/Builder, the Customer, the Inspector and the Customer to determine whether and to what extent the Work is complete. Any erroneous claims of completion by the Designer/Builder resulting in a premature walk-through shall be at the Designer/Builder's sole cost and expense, and the Customer shall be entitled to reduce its payments to the Designer/Builder under the Contract by an amount equal to any costs incurred by the Customer due to the erroneous claims by the Designer/Builder that the Project is complete. Minor corrective (or "punch-list") items shall be identified in the final walk-through of the Project. Notwithstanding the provisions listed prior, the Customer shall accept as complete the different scope of work as each is completed, at different dates, as opposed to waiting for the entire Work to be completed prior to issuance of its Acceptance of Work.
 - 20.2. Customer's Acceptance of Work.** The Customer, in its sole discretion, may either (a) accept the Work or portion of the Work it is being asked to accept as Complete notwithstanding the need to complete minor corrective items (as distinguished from incomplete items), if such portion of the Work has otherwise been completed to the satisfaction of the Customer and the Inspector, or (b) refrain from accepting the Work or portion of the Work it is being asked to accept as complete until all punch-list items of such portion of the Work have been completed to the reasonable satisfaction of the Customer and the Inspector.
 - 20.3. Completion.** Completion of the Work or portion of the Work that the Customer is being asked to

accept, shall be the earlier of the following two events, the occurrence of which shall signify that the Work or such portion thereof is "Complete" or has reached "Completion":

20.3.1. The Customer's Board has accepted the Work or portion of the Work it is being asked to accept as complete, which acceptance shall not be unreasonably withheld, delayed or conditioned; or

20.3.2. A cessation of labor, including all work on punch-list items, on the Project or portion of the Project it is being asked to accept as complete for a continuous period of thirty (30) days.

20.4. Notice of Completion. Once the Customer has accepted the all of the Work as indicated herein, the Customer may thereafter cause a Notice of Completion to be recorded in the County Recorder's Office.

20.5. Designer/Builder's Failure to Correct Punch-List Items. If the Designer/Builder fails to complete the minor corrective items prior to the expiration of the thirty-five (35) day period immediately following recording of the Notice of Completion, the Customer shall withhold from the final payment owing to the Designer/Builder under the Contract an amount equal to 150% the estimated cost, as determined by the Customer, of each item until such time as the item is completed.

20.6. Time Is Of The Essence: Time is of the essence in the performance of and compliance with each of the provisions and conditions of this Contract.

21. BENEFICIAL USE: "Beneficial Use" shall mean (1) that the Work or relevant portion thereof is not Complete but the Designer/Builder has installed, constructed, and commissioned the major new equipment and systems included in the Work or relevant portion thereof and (2) the Customer has agreed it can and will use that Work or relevant portion thereof for its intended purpose(s).

21.1. The Customer may, at its sole discretion, have Beneficial Use of any completed or partially completed portion of the Project at any stage. Neither the Customer's making of Final Payment, nor the Beneficial Use of the Project, in whole or in part, by Customer shall constitute acceptance of the Project not in accordance with the Contract nor relieve the Designer/Builder or the Designer/Builder's Performance Bond surety from liability with respect to any warranties or responsibility for faulty or defective Work or materials, equipment and workmanship incorporated therein. Beneficial Use shall not extend the date specified for the Work to be Complete. Prior to any Beneficial Use, The Customer and the Designer/Builder shall agree in writing to the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Project, insurance, the period for correction of the Work, and the commencement of warranties required by the Contract. Any dispute as to responsibilities shall be resolved pursuant to the Disputes provisions herein, with the added provision that during the dispute process, the Customer shall have the right to Beneficial Use of any portion of the Project that it needs or desires to use. Immediately prior to partial Beneficial Use of the Project, the Customer and the Designer/Builder shall jointly inspect the area to be occupied or portion of the Project to be used in order to determine and record the condition of the Work.

21.2. Once the Customer has Beneficial Use of the Work, all benefits received as a direct result of the Work, e.g., CSI Incentive monies and solar energy output, shall be credited towards the Guaranteed Savings as described herein. The Parties may mutually agree that the date that the Generating Facilities begin producing power can be deemed the date of system start up for sake of the Performance Warranty.

22. FORCE MAJEURE CLAUSE:

22.1. The term "Force Majeure" shall mean those events caused beyond the control of the affected Party and which by the exercise of due diligence such Party could not reasonably avoid and which it has been unable to overcome, including acts of God and public enemy; fire; epidemics, landslides, volcanic activity, terrorism, strike; loss or shortage of transportation facilities; lock-out; commandeering of materials, product, plant, or facilities by the government; relocation or construction of transmission facilities or the shutdown of such facilities for the purpose of necessary repairs; work by local utility directly impacting the Project; flood; earthquake; tornado; severe storm; civil disobedience; sabotage; restraint by court order or public authority (whether valid or invalid).

22.2. Neither party shall be considered to be in default in the performance of any material obligation

hereunder during the time and to the extent that it is prevented from obtaining delivery or performing by a Force Majeure event. Neither Party shall be relieved of its obligation to perform if such failure is due to causes arising out of its own negligence or due to removable or remediable causes which it fails to remove or remedy with the exercise of all best efforts within a reasonable time period. Either Party rendered unable to fulfill any of its obligations under this Contract by reason of an event of Force Majeure shall give prompt written notice of such fact to the other Party. Notwithstanding a Force Majeure event, the party claiming such an event must provide satisfactory evidence that the event caused the delay or lack of performance and was not due to the fault or neglect of the party claiming a Force Majeure event.

- 22.3.** Designer/Builder is aware that governmental agencies and utilities, including, without limitation, the Division of the State Architect, the Department of General Services, gas companies, electrical utility companies, water Customers, and other agencies may have to approve Designer/Builder -prepared drawings or approve a proposed installation. Designer/Builder has included in the Project Schedule, time for possible review of its drawings and for reasonable delays and damages that may be caused by such agencies. Designer/Builder is not entitled to make a claim for damages or delays arising from the review of Designer/Builder's drawings or other approvals from the Division of the State Architect, the Department of General Services, gas companies, electrical utility companies, water Customers, and other agencies, unless the time of that review is drastically in excess of normal time for such a review, which the Customer shall reasonably determine.

23. INDEMNIFICATION / HOLD HARMLESS CLAUSE:

- 23.1.** To the furthest extent permitted by California law, Designer/Builder shall indemnify, defend with legal counsel reasonably acceptable to the Customer, keep and hold harmless the Customer and its consultants, the Construction Manager and its consultants, separate contractors, and their respective board members, officers, representatives, contractors, agents, and employees, in both individual and official capacities ("Indemnitees"), against all suits, claims, damages, losses, and expenses, including but not limited to attorney's fees, caused by, arising out of, resulting from, or incidental to, the performance of the Work by Designer/Builder, its Subcontractors, vendors, or suppliers, including, without limitation, any such suit, claim, damage, loss, or expense attributable to, without limitation, bodily injury, sickness, disease, death, alleged patent violation or copyright infringement, or to injury to or destruction of tangible property (including damage to the Work itself) including the loss of use resulting therefrom, except to the extent caused by the sole negligence, active negligence, or willful misconduct of the Indemnitees, and/or to any extent that would render these provisions void or unenforceable. This agreement and obligation of Designer/Builder shall not be construed to negate, abridge, or otherwise reduce any right or obligation of indemnity that would otherwise exist as to any party or person described herein. This indemnification, defense, and hold harmless obligation includes any failure or alleged failure by Designer/Builder to comply with any provision of law, any failure or alleged failure to timely and properly fulfill all of its obligations under the Contract Documents in strict accordance with their terms, and without limitation, any stop payment notice actions or liens, including liens by the California Department of Labor Standards Enforcement.
- 23.2.** Designer/Builder shall give prompt notice to the Customer in the event of any injury (including death), loss, or damage included herein. Without limitation of the provisions herein, if Designer/Builder's agreement to indemnify, defend, and hold harmless the Indemnitees as provided herein against liability for damage arising out of bodily injury to persons or damage to property caused by or resulting from the negligence of any of the Indemnitees shall to any extent be or be determined to be void or unenforceable, it is the intention of the parties that these circumstances shall not otherwise affect the validity or enforceability of Designer/Builder's agreement to indemnify, defend, and hold harmless the rest of the Indemnitees, as provided herein, and in the case of any such suits, claims, damages, losses, or expenses caused in part by the default, negligence, or act or omission of Designer/Builder, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, and in part by any of the Indemnitees, Designer/Builder shall be and remain fully liable on its agreements and obligations herein to the full extent permitted by law.
- 23.3.** In any and all claims against any of the Indemnitees by any employee of Designer/Builder, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of

them may be liable, Designer/Builder's indemnification obligation herein shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Designer/Builder or any Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

- 23.4.** The defense and indemnification obligations hereunder shall survive the Completion of Work, including the warranty/guarantee period, and/or the termination of the Agreement.

24. PAYMENT:

- 24.1.** On a monthly basis, Designer/Builder shall submit an application for payment based upon the estimated value for materials delivered or Services performed under the Contract as of the date of submission ("Application for Payment") and consistent with the information in **Exhibit "D."** Within thirty (30) days after Customer's receipt of the Application for Payment, Designer/Builder shall be paid a sum equal to ninety-five percent (95%) of the value of the Work performed (Assuming the value of the Work performed is verified by Inspector and certified by Designer/Builder) up to the last day of the previous month, less the aggregate of previous payments and amount to be withheld. The Customer may deduct from any payment an amount necessary to protect the Customer from loss because of: (1) liquidated damages which have accrued as of the date of the application for payment; (2) any sums expended by the Customer in performing any of Designer/Builder's obligations under the Contract which Designer/Builder has failed to perform or has performed inadequately; (3) defective Work not remedied; (4) stop payment notices as allowed by law; (5) reasonable doubt that the Work can be completed for the unpaid balance of the Total Contract price or by the scheduled completion date; (6) unsatisfactory prosecution of the Work by Designer/Builder; (7) unauthorized deviations from the Contract; (8) failure of the Designer/Builder to maintain or submit on a timely basis proper and sufficient documentation as required by the Contract or by Customer during the prosecution of the Work; (9) erroneous or false estimates by the Designer/Builder of the value of the Work performed; (10) any sums representing expenses, losses, or damages, as determined by the Customer, incurred by the Customer for which Designer/Builder is liable under the Contract; and (11) any other sums which the Customer is entitled to recover from Designer/Builder under the terms of the Contract or pursuant to law, including section 1727 of the California Labor Code. The failure by the Customer to deduct any of these sums from a progress payment shall not constitute a waiver of the Customer's right to such sums. The Customer shall retain five percent (5%) from all amounts owing as retention. Retention shall be paid pursuant to Public Contract Code sections 7107, 7200, 7201 and 9200, et seq. The Customer may, at its discretion, reduce the retention and/or file a partial notice of completion for one site.
- 24.2.** Payment for material stored on or off the Sites is allowed at the sole discretion of the Customer. If allowed, proof of off-site material purchases (invoices and checks and/or bills of lading) and appropriate insurance coverage will be required. The Designer/Builder shall furnish to the Customer written consent from the Surety approving the advanced payment for materials stored off site. The maximum prepayment allowed by the Customer shall be one hundred (100%) percent of the actual value of the item being considered, less retention as indicated above. The Customer shall be the sole judge of fair market value, which shall be reasonably determined. The Designer/Builder shall protect stored materials from damage. Damaged materials, even though paid for, shall not be incorporated into the Work.
- 24.3.** For its Application for Payment to be due, owing and payable, the Designer/Builder must submit an updated Project Schedule with its Application for Payment.

25. PERMITS, APPROVALS, AND LICENSES:

- 25.1.** The Designer/Builder and all of its employees, agents, and subcontractors shall secure and maintain in force, at Designer/Builder's sole cost and expense, all licenses and permits as are required by law, in connection with the furnishing of materials, supplies, or Services herein listed.
- 25.2.** Designer/Builder is responsible for obtaining on behalf of the Customer and at Designer/Builder's expense, permits and approvals (including DSA approval), required for the building, installation, and start-up of the Work hereunder which are required to complete the Project.

- 25.3.** Customer will cooperate fully with and assist Designer/Builder's obtaining all permits and approvals required under this Contract.
- 25.4.** The Customer shall be responsible for obtaining any other permits or approvals that may be required, including annual operating permits as applicable. Customer represents that there are no existing approvals or other DSA actions required from previous projects that may impact DSA's approval of Designer/Builder's design.
- 26. INDEPENDENT CONTRACTOR STATUS:** While engaged in carrying out the Services of this Contract, the Designer/Builder is an independent contractor, and not an officer, employee, agent, partner, or joint venture of the Customer. Designer/Builder shall be solely responsible for its own Worker's Compensation insurance, taxes, and other similar charges or obligations. Designer/Builder shall be liable for its own actions, including its negligence or gross negligence, and shall be liable for the acts, omissions, or errors of its agents or employees.
- 27. ANTIDISCRIMINATION:** It is the policy of the Customer that in connection with all work performed under Contracts there be no discrimination against any employee engaged in the work because of the actual or perceived race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of any person, and therefore the Designer/Builder agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment Practice Act beginning with Government Code Section 12900 and Labor Code Section 1735. In addition, the Designer/Builder agrees to require like compliance by all its subcontractor(s).
- 28. DISABLED VETERAN BUSINESS ENTERPRISES:** Section 17076.11 of the Education Code requires school districts (including county offices of education) using funds allocated pursuant to the State of California School Facility Program for the construction or modernization of a school building (SFP Funds) to have a participation of at least 3 percent, per year, of the overall dollar amount expended each year by the school Customer, for disabled veteran business enterprises (DVBE). If this Contract uses SFP Funds, Designer/Builder must submit, with its executed Contract, appropriate documentation to the Customer identifying the steps Designer/Builder has taken to solicit DVBE participation in conjunction with this Contract.
- 29. PAYMENT BOND AND PERFORMANCE BOND:**
- 29.1.** Designer/Builder shall not commence the Work until it has provided to the Customer two surety bonds issued by a California admitted surety insurer as follows:
- 29.1.1.** A Performance Bond in an amount at least equal to one hundred percent (100%) of Contract Price as security for faithful performance of this Contract.
- 29.1.2.** A Payment (Labor and Material) Bond in an amount at least equal to one hundred percent (100%) of the Contract Price as security for payment of persons performing labor and/or furnishing materials in connection with the Contract.
- 29.2.** Cost of bonds shall be included in the Bid and Contract Price. All bonds related to the Project shall be in the forms set attached hereto.
- 29.3.** Notwithstanding anything to the contrary in the Contract, the Payment (Labor and Material) Bond and the Performance Bond are not applicable to the Agreement for Production Guarantee or the Services pursuant to the O&M Agreement.
- 30. DESIGNER/BUILDER'S INSURANCE:** Designer/Builder has in force, and during the term of this Contract shall maintain in force with the minimum indicated limits, the following insurance. All policies shall contain waivers of subrogation against the Customer. All of Designer/Builder's insurance shall be with **admitted** insurance companies with an A.M. Best rating of no less than **A: VII**.
- 30.1. Commercial General Liability Insurance.** Coverage to be written on an occurrence form. Coverage to be at least as broad as ISO form CG 002 (07/98), without endorsements that limit the policy terms with respect to: (1) the definition of an Insured Contract, (2) provisions for severability of interest, (3) explosion, collapse, underground hazard:
- \$1,000,000 per occurrence for Bodily Injury and Property Damage

- \$2,000,000 General Aggregate - other than Products/Completed Operations
- \$2,000,000 Products/Completed Operations Aggregate
- \$1,000,000 Personal & Advertising Injury
- \$500,000 Fire Damage

30.2. Automobile Liability. Coverage to be written on an occurrence form. Coverage for any auto, including all owned, hired and non-owned vehicles: combined single limit of \$1,000,000;

30.3. Excess Liability Insurance. Coverage to be written on an occurrence form. Coverage terms and limits to apply excess of the per occurrence and/or aggregate limits provided for Commercial General Liability, Auto Liability and Professional Liability. Coverage terms and limits to also apply in excess of those required for Employers Liability:

- \$15,000,000 each occurrence
- \$15,000,000 aggregate

30.4. Professional Liability insurance (Errors & Omissions). Coverage to be written on an occurrence-made form:

- \$1,000,000 per occurrence
- \$2,000,000 aggregate

30.5. Workers Compensation: Statutory limits; and

30.6. Employers' Liability: \$1,000,000.

- 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

Commercial General Liability, Automobile Liability, Workers Compensation, and Employer's Liability limits may be reached through a combination of primary and umbrella/excess policies. The Designer/Builder shall provide to the Customer certificate(s) of insurance and endorsements satisfactory to the Customer. The policy(ies) shall not be cancelled without thirty (30) days written notice to the Customer prior to cancellation. Except for worker's compensation insurance and professional liability insurance, the Customer, shall be named as an additional insured on all policies. The Designer/Builder's policy(ies) shall be primary; any insurance carried by the Customer shall only be secondary and supplemental. The Designer/Builder shall not allow any subcontractor, employee, or agent to commence work on this Contract or any subcontract until the insurance required of the Designer/Builder of the subcontractor, or agent has been obtained.

31. WARRANTY/QUALITY: Unless a longer warranty is called for elsewhere in the Contract, the Designer/Builder, manufacturer, or their assigned agents shall guarantee the workmanship, product or service performed against defective workmanship, defects or failures of materials for a minimum period of one (1) year from date when Customer achieves Beneficial Use.

31.1 Equipment. Designer/Builder will procure and assign to Customer warranties from the equipment manufacturers (Manufacturer Warranty) to the extent said equipment is purchased and provided for the System. Following assignments of warranties, Customer will be responsible for any Manufacturer Warranty claims including diagnosis. Designer/Builder can provide these services under a separate O&M agreement.

31.1.1 Designer/Builder will procure the following Manufacturer Warranties:

- Inverters shall have a ten (10) year standard Manufacturer Warranty.
- PV modules shall have the following standard Manufacturer Warranties:
 - Ten (10) year material and workmanship warranty;

- Twenty-five (25) year linear power output warranty starting at ninety-seven percent (97%) and degrading to eighty percent (80%) of rated nominal power output;
- Meters shall have a one (1) year standard Manufacturer Warranty.

31.2 Roofing Requirements. The installation of solar systems of roof tops will be reviewed by the DSA for code compliance by adherence to the State Fire Marshal Solar Photovoltaic Installation Guideline. The PV equipment shall not be installed in a way that obstructs air flow into or out of building systems or equipment. Proposed roof top mounted systems may be ballasted or penetrating systems and must meet or exceed the following requirements:

- 31.2.1** Systems shall not exceed the ability of the existing structure to support the entire solar system and withstand increased wind uplift and seismic loads. The capability of the existing structure to support proposed solar systems shall be verified by Designer/Builder prior to design approval.
- 31.2.2** Roof penetrations, if part of the mounting solution, shall be kept to a minimum.
- 31.2.3** Designer/Builder shall perform all work so that existing roof warranties shall not be voided, reduced, or otherwise negatively impacted.
- 31.2.4** No work shall compromise roof drainage, cause damming or standing water or cause excessive soil build-up.
- 31.2.5** All materials and/or sealants must be chemically compatible.
- 31.2.6** Thermal movement that causes scuffing to the roof must be mitigated as part of the mounting solution.
- 31.2.7** All roof penetrations shall be waterproofed.
- 31.2.8** All roofing work shall be performed by a licensed roofing contractor who is certified by the roofing materials manufacturer for the specific materials or systems comprising each roof upon which a solar system will be installed.

32. CONFIDENTIALITY: To the extent permitted by applicable law, the Parties shall maintain the confidentiality of all information, documents, programs, procedures, and all other items that the Parties encounter during the Project and/or pursuant to the Contract. This requirement shall be ongoing and shall survive the expiration or termination of this Contract and specifically includes all student, parent, and disciplinary information.

33. CONFLICT OF INTEREST: Designer/Builder understands that its professional responsibility is solely to the Customer. Designer/Builder warrants that it and its employees and/or subcontractors presently have no interest and will not acquire any direct or indirect interest that would conflict with its performance under this Contract, including, without limitation, any direct and/or indirect interest with: (a) entity(ies) performing construction in the same discipline and in competition with any contractor on a Customer project; (b) entity(ies) connected or related to a trade union or joint labor management committee; (c) the Customer.

34. COMPLIANCE WITH LAWS: Designer/Builder shall give all notices and comply with all laws, ordinance, rules and regulations bearing on conduct of the Work as indicated or specified. If Designer/Builder observes that any of the Work required by this Contract is at variance with any such laws, ordinance, rules or regulations, Designer/Builder shall notify the Customer, in writing, and, at the sole option of the Customer, any necessary changes to the scope of the Work shall be made and this Contract shall be appropriately amended in writing, or this Contract shall be terminated effective upon Designer/Builder's receipt of a written termination notice from the Customer. If Designer/Builder performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the Customer of the violation, Designer/Builder shall bear all costs arising therefrom.

35. CUSTOMER'S RIGHT TO AUDIT: Customer retains the right to review and audit, and the reasonable right of access to Designer/Builder's and any sub-consultant's premises to review and audit the Designer/Builder's compliance with the provisions of this Contract ("Customer's Right"). The Customer's Right includes, at Customer's sole cost, the right to inspect, photocopy, and to retain copies, outside of the Designer/Builder's premises, of any and all Project-related records and other information with appropriate safeguards, if such retention is deemed necessary by the Customer in its sole discretion. The Customer shall keep this information confidential, as allowed by applicable law and return all confidential and proprietary information after the audit has been completed.

- 35.1.** The Customer's Right includes the right to examine any and all books, records, documents and any other evidence of procedures and practices that the Customer determines are necessary to discover and verify that the Designer/Builder is in compliance with all requirements of this Contract.
- 35.2.** If there is a claim for additional compensation or for Extra Services, the Customer's Right includes the right to examine books, records, documents, and any and all other evidence and accounting procedures and practices that the Customer determines are necessary to discover and verify all direct and indirect costs, of whatever nature, which are claimed to have been incurred, or anticipated to be incurred.
- 35.3.** The Designer/Builder shall maintain complete and accurate records in accordance with generally accepted accounting practices in the industry. The Designer/Builder shall make available to the Customer for review and audit, all Project-related accounting records and documents, and any other financial data. Upon Customer's request, the Designer/Builder shall submit exact duplicates of originals of all requested records to the Customer.
- 35.4.** The Designer/Builder shall include audit provisions in any and all of its subcontracts, and shall ensure that these sections are binding upon all subconsultants.
- 35.5.** The Designer/Builder shall retain all Project-related records and other information with appropriate safeguards during the Term of this Contract and for a minimum of five (5) years thereafter.

Designer/Builder shall comply with these provisions within fifteen (15) days of the Customer's written request to review and audit any or all of Designer/Builder's Project-related records and information.

36. DISPUTES: In the event of a dispute between the Parties as to performance of the Work, the interpretation of this Contract, or payment or nonpayment for work performed or not performed, the Parties shall attempt to resolve the dispute by those procedures set forth in Public Contract Code section 20104 et seq., if applicable. Pending resolution of the dispute, Designer/Builder agrees it will neither rescind the Contract nor stop the progress of the Work, but will allow determination by the court of the State of California, in the county in which the Customer's administration office is located, having competent jurisdiction of the dispute. All claims of over \$375,000, which are outside the scope of Public Contract Code section 20104, et seq., may be determined by independent arbitration if mutually agreeable, otherwise by litigation.

- 36.1.** Notice of the demand for arbitration of a dispute shall be filed in writing with the other party to the Contract.
- 36.2.** The demand for arbitration of any claim of over \$375,000 shall be made within a reasonable time after written notice of the dispute has been provided to the other party, but in no case longer than ninety (90) days after initial written notice, and the demand shall not be made later than the time of Designer/Builder submission of the request for final payment.
- 36.3.** Prior to Designer/Builder's initiation of any litigation or proceeding to recover any money damages under this Contract, Design/Builder must first comply with the claims presentation requirements set forth in California Government Code Section 900 et seq.

37. LABOR, WAGE & HOUR, APPRENTICE AND RELATED PROVISIONS:

37.1. Designer/Builder & Subcontractor DIR Registration. Designer/Builder shall comply with the registration and compliance monitoring provisions of Labor Code section 1771.4, including furnishing its CPRs to the Labor Commissioner of California and complying with any applicable enforcement by the Department of Industrial Relations. Labor Code section 1771.1(a) states the following:

"A contractor or subcontractor shall not be qualified to bid on, be listed in a

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

Designer/Builder acknowledges that, for purposes of Labor Code section 1725.5, all or some of the Work is a public work to which Labor Code section 1771 applies. Designer/Builder shall comply with Labor Code section 1725.5, including without limitation the registration requirements. Additionally, all Designer/Builder’s Subcontractors shall comply with Labor Code section 1725.5 to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of the Contract. Designer/Builder represents that all of its Subcontractors are registered pursuant to Labor Code section 1725.5. The Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Designer/Builder shall post job site notices, as prescribed by regulation. Designer/Builder shall comply with all requirements of Labor Code section 1771.4, except the requirements that are exempted by the Labor Commissioner for the Project. NOTE: Labor Code section 1773.3 requires that the Customer “provide notice to the Department of Industrial Relations of any public works contract subject to the requirements of this chapter [Labor Code division two, part seven, chapter one], within five days of the award”.

37.2. Wage Rates, Travel and Subsistence.

- 37.2.1.** Pursuant to the provisions of article 2 (commencing at section 1770), chapter 1, part 7, division 2, of the Labor Code of California, the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this public work is to be performed for each craft, classification, or type of worker needed to execute this Contract are on file at the Customer’s principal office and copies will be made available to any interested party on request. Designer/Builder shall obtain and post a copy of these wage rates at the job site.
- 37.2.2.** Holiday and overtime work, when permitted by law, shall be paid for at a rate of at least one and one-half times the above specified rate of per diem wages, unless otherwise specified. The holidays upon which those rates shall be paid need not be specified by the Customer, but shall be all holidays recognized in the applicable collective bargaining agreement. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code.
- 37.2.3.** Designer/Builder shall pay and shall cause to be paid each worker engaged in Work on the Project not less than the general prevailing rate of per diem wages determined by the Director of the Department of Industrial Relations (“DIR”) (“Director”), regardless of any contractual relationship which may be alleged to exist between Designer/Builder or any Subcontractor and such workers.
- 37.2.4.** If during the period this bid is required to remain open, the Director determines that there has been a change in any prevailing rate of per diem wages in the locality in which the Work under the Contract is to be performed, such change shall not alter the wage rates in the Notice to Bidders or the Contract subsequently awarded.
- 37.2.5.** Pursuant to Labor Code section 1775, Designer/Builder shall, as a penalty to Customer, forfeit the statutory amount, (currently not to exceed two hundred dollars (\$200) for each calendar day, or portion thereof), for each worker paid less than the prevailing rates, as determined by the Customer and/or the Director, for the work or craft in which that worker is employed for any public work done under Contract by Designer/Builder or by any Subcontractor under it.
 - 37.2.5.1.** The amount of the penalty shall not be less than forty dollars (\$40) for each calendar day,

or portion thereof, unless the failure of Designer/Builder was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of Designer/Builder.

37.2.5.2. The amount of the penalty shall not be less than eighty dollars (\$80) for each calendar day or portion thereof, if Designer/Builder has been assessed penalties within the previous three (3) years for failing to meet Designer/Builder's prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned.

37.2.5.3. The amount of the penalty may not be less than one hundred twenty dollars (\$120) for each calendar day, or portion thereof, if the Labor Commissioner determines the Designer/Builder willfully violated Labor Code section 1775.

37.2.5.4. The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by Designer/Builder.

37.2.5.5. Any worker employed to perform Work on the Project, which Work is not covered by any classification listed in the general prevailing wage rate of per diem wages determined by the Director, shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to Work to be performed by him, and such minimum wage rate shall be retroactive to time of initial employment of such person in such classification.

37.2.6. Pursuant to Labor Code section 1773.1, per diem wages are deemed to include employer payments for health and welfare, pension, vacation, travel time, subsistence pay, and apprenticeship or other training programs authorized by section 3093, and similar purposes.

37.2.7. Designer/Builder shall post at appropriate conspicuous points on the Site of Project, a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned. In addition, Designer/Builder shall post a sign-in log for all workers and visitors to the Site, a list of all subcontractors of any tier on the Site, and the required Equal Employment Opportunity poster(s).

37.3. Hours of Work. As provided in article 3 (commencing at section 1810), chapter 1, part 7, division 2, of the Labor Code, eight (8) hours of labor shall constitute a legal days work. The time of service of any worker employed at any time by Designer/Builder or by any Subcontractor on any subcontract under this Contract upon the Work or upon any part of the Work contemplated by this Contract shall be limited and restricted by Designer/Builder to eight (8) hours per day, and forty (40) hours during any one week, except as hereinafter provided. Notwithstanding the provisions hereinabove set forth, Work performed by employees of Designer/Builder in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay. Designer/Builder shall keep and shall cause each Subcontractor to keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by Designer/Builder in connection with the Work or any part of the Work contemplated by this Contract. The record shall be kept open at all reasonable hours to the inspection of Customer and to the Division of Labor Standards Enforcement of the DIR. Pursuant to Labor Code section 1813, Designer/Builder shall as a penalty to the Customer forfeit the statutory amount (believed by the Customer to be currently twenty five dollars (\$25)) for each worker employed in the execution of this Contract by Designer/Builder or by any Subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of article 3 (commencing at section 1810), chapter 1, part 7, division 2, of the Labor Code. Any Work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed without additional expense to the Customer.

37.4. Payroll Records.

37.4.1. If requested by the Customer, Designer/Builder shall provide to the Customer and shall cause each Subcontractor performing any portion of the Work to provide the Customer and an accurate and certified payroll record (“CPR(s)”), showing the name, address, social security number, work classification, straight time, and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Designer/Builder and/or each Subcontractor in connection with the Work.

37.4.2. In addition to any other requirements pursuant to Labor Code sections 1770, et seq., the CPRs enumerated hereunder shall be certified and shall be provided to the Customer on a weekly basis. The CPRs from the Designer/Builder and each Subcontractor for each week shall be provided on or before Wednesday of the week following the week covered by the CPRs. Customer shall not make any payment to Designer/Builder until:

37.4.2.1. Designer/Builder and/or its Subcontractor(s) provide CPRs acceptable to the Customer, and

37.4.2.2. The Customer is given sufficient time to review and/or audit the CPRs to determine their acceptability. Any delay in Designer/Builder and/or its Subcontractor(s) providing CPRs to the Customer in a timely manner will directly delay the Customer’s review and/or audit of the CPRs and Designer/Builder’s payment.

37.4.3. All CPRs shall be available for inspection at all reasonable hours at the principal office of Designer/Builder on the following basis:

37.4.3.1. A certified copy of an employee’s CPR shall be made available for inspection or furnished to the employee or his/her authorized representative on request.

37.4.3.2. CPRs shall be made available for inspection or furnished upon request to a representative of Customer, Division of Labor Standards Enforcement, Division of Apprenticeship Standards, and/or the Department of Industrial Relations.

37.4.3.3. CPRs shall be made available upon request by the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the Customer, Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested CPRs have not been provided pursuant to the provisions herein, the requesting party shall, prior to being provided the records reimburse the costs of preparation by Designer/Builder, Subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of Designer/Builder.

37.4.4. The form of certification for the CPRs shall be as follows:

I, _____ (Name-Print), the undersigned, am the _____
_____ (Position in business) with the authority to act for and on behalf of _____
_____ (Name of business and/or Designer/Builder), certify under penalty of perjury that the records or copies thereof submitted and consisting of _____
_____ (Description, number of pages) are the originals or true, full, and correct copies of the originals which depict the payroll record(s) of actual disbursements by way of cash, check, or whatever form to the individual or individual named, and (b) we have complied with the requirements of sections 1771, 1811, and 1815 of the Labor Code for any work performed by our employees on the Project.

Date: _____ Signature: _____

(Section 16401 of Title 8 of the California Code of Regulations)

37.4.5. Each Designer/Builder or Subcontractor shall file a certified copy of the CPRs with the entity that requested the records within ten (10) days after receipt of a written request.

- 37.4.6.** Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by Customer, Division of Apprenticeship Standards, or Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of Designer/Builder awarded Contract or performing Contract shall not be marked or obliterated.
- 37.4.7.** Designer/Builder shall inform Customer of the location of the records enumerated hereunder, including the street address, city, and county, and shall, within five (5) working days, provide a notice of change of location and address.
- 37.4.8.** In the event of noncompliance with the requirements of this section, Designer/Builder shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects Designer/Builder must comply with this section. Should noncompliance still be evident after the ten (10) day period, Designer/Builder shall, as a penalty to Customer, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of Division of Apprenticeship Standards or Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.
- 37.4.9.** It shall be the responsibility of Designer/Builder to ensure compliance with the provisions of Labor Code section 1776.

37.5. Apprentices.

- 37.5.1.** Designer/Builder acknowledges and agrees that, if this Contract involves a dollar amount greater than or a number of working days greater than that specified in Labor Code section 1777.5, then this Contract is governed by the provisions of Labor Code Section 1777.5. It shall be the responsibility of Designer/Builder to ensure compliance with this Article and with Labor Code section 1777.5 for all apprenticeship occupations.
- 37.5.2.** Apprentices of any crafts or trades may be employed and, when required by Labor Code section 1777.5, shall be employed provided they are properly registered in full compliance with the provisions of the Labor Code.
- 37.5.3.** Every such apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he/she is employed, and shall be employed only at the work of the craft or trade to which she/he is registered.
- 37.5.4.** Only apprentices, as defined in section 3077 of the Labor Code, who are in training under apprenticeship standards and written apprentice agreements under chapter 4 (commencing at section 3070), division 3, of the Labor Code, are eligible to be employed. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which he/she is training.
- 37.5.5.** Pursuant to Labor Code section 1777.5, if that section applies to this Contract as indicated above, Designer/Builder and any Subcontractors employing workers in any apprenticeable craft or trade in performing any Work under this Contract shall apply to the applicable joint apprenticeship committee for a certificate approving the Designer/Builder or Subcontractor under the applicable apprenticeship standards and fixing the ratio of apprentices to journeymen employed in performing the Work.
- 37.5.6.** Pursuant to Labor Code section 1777.5, if that section applies to this Contract as indicated above, Designer/Builder and any Subcontractor may be required to make contributions to the apprenticeship program.

- 37.5.7.** If Designer/Builder or Subcontractor willfully fails to comply with Labor Code section 1777.5, then, upon a determination of noncompliance by the Administrator of Apprenticeship, it shall:
- 37.5.7.1.** Be denied the right to bid on any subsequent project for one (1) year from the date of such determination;
 - 37.5.7.2.** Forfeit as a penalty to Customer the full amount as stated in Labor Code section 1777.7. Interpretation and enforcement of these provisions shall be in accordance with the rules and procedures of the California Apprenticeship Council and under the authority of the Chief of the Division of Apprenticeship Standards.
- 37.5.8.** Designer/Builder and all Subcontractors shall comply with Labor Code section 1777.6, which section forbids certain discriminatory practices in the employment of apprentices.
- 37.5.9.** Designer/Builder shall become fully acquainted with the law regarding apprentices prior to commencement of the Work. Special attention is directed to sections 1777.5, 1777.6, and 1777.7 of the Labor Code, and title 8, California Code of Regulations, section 200 et seq. Questions may be directed to the State Division of Apprenticeship Standards, 455 Golden Gate Avenue, San Francisco, California 94102.
- 37.5.10.** Designer/Builder shall ensure compliance with all certification requirements for all workers on the Project including, without limitation, the requirements for electrician certification in Labor Code sections 108, et seq.
- 38. ANTI-TRUST CLAIM:** Designer/Builder and its subcontractor(s) agree to assign to the Customer all rights, title, and interest in and to all causes of action they may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Contract or a subcontract. This assignment shall be made and become effective at the time the Customer tenders final payment to the Designer/Builder, without further acknowledgment by the Parties.
- 39. GOVERNING LAW:** This Contract shall be governed by and construed in accordance with the laws of the State of California with venue of any action in a County in which the Customer administration office is located.
- 40. PROVISIONS REQUIRED BY LAW DEEMED INSERTED:** Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and this Contract shall be read and enforced as though it were included therein.
- 41. BINDING CONTRACT:** This Contract shall be binding upon the Parties and upon their successors and assigns, and shall inure to the benefit of said parties and their successors and assigns.
- 42. CUSTOMER WAIVER:** Customer's waiver of any term, condition, covenant or waiver of a breach of any term, condition or covenant shall not constitute the waiver of any other term, condition or covenant or the waiver of a breach of any other term, condition or covenant.
- 43. INVALID TERM:** If any provision of this Contract is declared or determined by any court of competent jurisdiction to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining parts, terms and provisions shall not be affected thereby, and said illegal, unenforceable or invalid part, term or provision will be deemed not to be a part of this Contract.
- 44. ENTIRE CONTRACT:** This Contract sets forth the entire Contract between the Parties and fully supersedes any and all prior agreements, understanding, written or oral, between the Parties pertaining to the subject matter thereof. This Contract may be modified only by a writing upon mutual consent.
- 45. OWNERSHIP OF CERTAIN PROPRIETARY PROPERTY RIGHTS:** Customer shall not, by virtue of this Contract, acquire any interest in any formulas, patterns, devices, secret inventions or processes, copyrights, patents, other intellectual or proprietary rights, or similar items of property which are or may be used in connection with the equipment. Designer/Builder shall grant to Customer a perpetual, irrevocable royalty-free

license for any and all software or other intellectual property rights appropriate for Customer to continue to operate, maintain, and repair the equipment in a manner that will yield maximum energy production and/or energy consumption reductions.

- 46. OWNERSHIP OF ANY EXISTING EQUIPMENT:** Ownership of any equipment and materials presently existing at the Facilities at the time of execution of this Contract shall remain the property of the Customer even if it is replaced or its operation made unnecessary by work performed by Designer/Builder pursuant to this Contract. If applicable, Designer/Builder shall advise Customer in writing of all equipment and materials that will be replaced at the Facilities and Customer shall, within five (5) business days of Designer/Builder' notice, designate in writing to Designer/Builder which replaced equipment and materials that should not be disposed of off-site by Designer/Builder (the "Retained Items"). It is understood and agreed to by both Parties that Customer shall be responsible for and designate the location and storage for the Retained Items. Designer/Builder shall be responsible for the disposal of replaced equipment and materials, except for the Retained Items. Designer/Builder shall use commercially reasonable efforts to remove the Retained Items in such a manner as to avoid damage thereto, or if it is unreasonable to avoid damage altogether, to minimize the damage done.
- 47. UTILITY WORK:** Customer expressly understands and agrees that the definition "Force Majeure" above also includes any Interconnection Facilities work that may need to be performed by the local utility ("Utility") in order for Designer/Builder to fully implement the Project. "Interconnection Facilities" shall mean any distribution or transmission lines and other facilities that may be required to connect equipment supplied under this Contract to an electrical distribution/transmission system owned and maintained by the Utility. Any Interconnection Facilities work that may be required will be performed by the Utility under a separate contract between Customer and the Utility. Designer/Builder shall prepare all Interconnection Facilities documentation, and collect all Interconnection Facilities information in a time frame to ensure maximum benefit to the Customer and to comply with all requirements. Designer Builder shall also cooperate and assist the Customer in facilitating the Interconnection Facilities work.
- 48. ENERGY CREDITS:** Other than its right to payment pursuant to this Contract and its tax deduction rights as a designer pursuant to Internal Revenue Code section 179(D), Designer/Builder shall have no right, title or interest associated with or resulting from the development, construction, installation and ownership of any of the Work, and in particular of the portion of the Work related to photovoltaic solar power systems installed as a component of the Project ("Generating Facilities"). This ownership includes the production, sale, purchase or use of the energy output including, and includes without limitation:
- 48.1.** All Environmental Incentives associated in any way with the Generating Facilities. "Environmental Incentives" means all rights, credits (including tax credits), rebates, benefits, reductions, offsets and allowances and entitlements of any kind, howsoever entitled or named (including carbon credits and allowances), whether arising under federal, state or local law, international treaty, trade association membership or the like arising from the Generating Facilities or the energy produced or otherwise from the development, construction, installation or ownership of the Generating Facilities or the production, sale, purchase, consumption or use of the energy produced from the Generating Facilities. Without limiting the forgoing, "Environmental Incentives" includes green tags, renewable energy credits, tradable renewable certificates, portfolio energy credits, the right to apply for (and entitlement to receive) incentives under the California Solar Initiative or other incentive programs offered by the State of California and the right to claim federal income tax credits under Section 45 or 48 of the Code as such credits are available arising from the Environmental Attributes of the Generating Facilities or the energy produced from the Generating Facilities or the production, sale, purchase, consumption or use of the energy produced from the Generating Facilities.
- 48.2.** All rights and interests in performance based incentive payments to be made under the California Solar Initiative.
- 48.3.** All reporting rights and the exclusive rights to claim that the Customer is responsible for the delivery of the energy from the Generating Facilities.
- 48.4.** The Customer is responsible for the reductions in emissions of pollution and greenhouse gases resulting from the generation of the energy and the delivery thereof to each Energy Delivery Point.
- 48.5.** The Customer is entitled to all credits, certificates, registrations, etc., evidencing or representing any of

the foregoing.

- 48.6. Customer shall be the owner of and shall be entitled to all: (i) carbon reduction tonnes as defined under the California Action Reserve or such similar definition as enacted by the State of California or the U.S. Federal Government; and (ii) “renewable energy credits,” as such term is defined in Section 399.12(h)(2) of the California Public Utilities Code, associated with the Generating Facilities, and Designer/Builder shall take such steps as Customer shall reasonably request to confirm Customer’s ownership of such renewable energy credits.
- 48.7. Design/Builder is not responsible for compliance, certification, reporting, or other requirements associated with the sale, ownership, rights, or certifications for these energy credits, but Design/Builder will provide reasonable advice and consultation to the Customer as requested.
- 48.8. Design/Builder will use commercially reasonable efforts so that the data collection of the system will be sufficient to take advantage of the energy credit market.
- 48.9. **Rebate Programs.** On behalf of the Customer, Designer/Builder shall prepare and submit to the applicable agencies all applications and documentation necessary for all available energy production and/or energy efficiency rebate(s), incentive(s), and/or loan program(s) (“Incentive Funds”). This shall include actions necessary to ensure compliance with the the local electric utility’s net metering program and all interconnection agreements and related documents for the Customer’s participation and utilization of the benefits of that program. While Designer/Builder has extensive experience in assisting Customers with procuring Incentive Funds for school Customers, Designer/Builder does not guarantee that these Incentive Funds will be received by the Customer. Procurement, or lack thereof, of these Incentive Funds will not alter the Contract Amount of this Contract, or payment timeline associated with standard progress invoicing and payments.

49. RESPONSIBILITIES OF THE CUSTOMER

- 49.1. The Customer shall examine the documents submitted by the Designer/Builder and shall render decisions so as to avoid unreasonable delay in the process of the Designer/Builder’s Services.
- 49.2. The Customer shall verbally or in writing advise the Designer/Builder if the Customer becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Designer/Builder’s documents. Failure to provide such notice shall not relieve Designer/Builder of its responsibility therefore, if any.
- 49.3. Unless the Customer and the Designer/Builder agree that a hazardous materials consultant shall be a consultant of the Designer/Builder, the Customer shall furnish the services of a hazardous material consultant or other consultants when such services are requested in writing by Designer/Builder and deemed necessary by the Customer or are requested by the Customer. These services shall include: asbestos and lead paint survey; abatement documentation; and specifications related to said matters which are to be incorporated into bid documents prepared by Designer/Builder. If the hazardous materials consultant is furnished by the Customer and not a consultant of the Designer/Builder, the specifications shall include a note to the effect that they are included in the Designer/Builder’s bid documents for the Customer’s convenience and have not been prepared or reviewed by the Designer/Builder. The note shall also direct questions about the specifications to its preparer.
- 49.4. Customer personnel and/or its designated representatives shall coordinate with Designer/Builder as may be requested and desirable for the coordination or management of work related to the Project.
- 49.5. The Customer shall provide to the Designer/Builder all relevant information it knows it possesses regarding the Project that the Designer/Builder needs to perform its Services. The Customer shall provide this information and its decisions required under this Contract in a timely manner and to avoid unreasonable delay in the Project.

50. LIABILITY OF CUSTOMER

- 50.1. Other than as provided in this Contract, and except as prohibited by law, Customer’s financial obligations under this Contract shall be limited to the payment of the Contract Price provided in this Contract. Notwithstanding any other provision of this Contract, and except as prohibited by law, in no

event shall Customer be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Contract for the Services performed in connection with this Contract.

50.2. Customer shall not be responsible for any damage to persons or property as a result of the Designer/Builder's use, misuse or failure of any equipment used by Designer/Builder, or by its employees, even though such equipment be furnished or loaned to Designer/Builder by Customer.

51. PRODUCTION GUARANTEE. Designer/Builder hereby guarantees to Customer guaranteed energy output from each System as indicated in the attached **Exhibit "H"** (Solar Systems Production Guarantee) ("Production Guarantee" or "Performance Guarantee"). The Production Guarantee is only excused by the terms of **Exhibit "H"** and shall not be excused by a failure of equipment, a failure of maintenance, operations, or repair, or any failed performance of Designer/Builder pursuant to its obligations under the Operations & Maintenance Agreement, attached hereto as **Exhibit "B."** If Designer/Builder must exceed its obligations under the Operations & Maintenance Agreement to satisfy its obligations under the Production Guarantee, then the Designer/Builder shall take all necessary actions to satisfy the Production Guarantee, at no expense to the Customer.