



RESOLUTION No. 16-177

OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA

RESOLUTION APPROVING AND AUTHORIZING THE CHAIR OF THE BOARD TO EXECUTE AN AGREEMENT WITH SUNPOWER CORPORATION, SYSTEMS TO ENGINEER, PROCURE, AND CONSTRUCT FIVE SOLAR ENERGY GENERATION PROJECTS

WHEREAS, Nevada County has followed the process provided for in California Government Code §4217 to procure the services of a qualified Energy Services Company, and through that process has selected Climatec LLC ("Climatec"); and

WHEREAS, Climatec has developed a Program comprising energy conservation measures and solar energy generation projects at various County properties; and

WHEREAS, Climatec has recommended that the County procure the services of Sunpower Corporation, Systems (SunPower) to implement the proposed solar energy generation projects; and

WHEREAS, SunPower has developed proposals for five solar energy generation projects, as follows:

Eric Rood Administration Center Solar Photovoltaic Facility
950 Maidu Avenue
Nevada City, California

Wayne Brown Correctional Facility Solar Photovoltaic Facility
925 Maidu Avenue
Nevada City, California

Carl F. Bryan II Juvenile Hall Solar Photovoltaic Facility
15434 Highway 49
Nevada City, California

Lake of the Pines Wastewater Treatment Plant Solar Photovoltaic Facility
10984 Riata Way
Auburn, California

Highway 49 Ranch Property Solar Photovoltaic Facility
16782 Highway 49
Nevada City, California

and,

WHEREAS, the cost of the Energy Conservation and Solar Energy Generation Program of which the implementation of said solar generation facilities is a part is less than the anticipated savings to the County for the energy projected to be used in the facilities benefitting from the Program over their useful life.

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Board of Supervisors approves and authorizes the Chair of the Board to execute, in substantially the form attached hereto, that Agreement entitled "Agreement 2—Solar Installation Agreement" between the County of Nevada and SunPower Corporation, Systems which provides for SunPower to engineer, procure, and construct five solar energy generation projects at a total cost of \$9,699,154, with provision for contingency of \$700,000, for a total cost not to exceed \$10,399,154.


PASSED AND ADOPTED by the Board of Supervisors of the County of Nevada at a regular meeting of said Board, held on the 26th day of April, 2016, by the following vote of said Board:

Ayes: Supervisors Nathan H. Beason, Edward Scofield, Dan Miller,
Hank Weston and Richard Anderson.
Noes: None.
Absent: None.
Abstain: None.

ATTEST:

JULIE PATTERSON HUNTER
Clerk of the Board of Supervisors

By: 


Dan Miller, Chair

4/26/2016 cc: IGS*
AC*(hold)

8/11/2016 cc: IGS*
AC*(release)
SPCS

Agreement "2"
Solar Installation Agreement

ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

Dated as of April 26, 2016

By and between

COUNTY OF NEVADA

And

SUNPOWER CORPORATION, SYSTEMS

This Engineering, Procurement and Construction Agreement (this "Agreement") is entered into this 26th day of April, 2016 (the "Effective Date") by and between SunPower Corporation, Systems, a Delaware corporation having its principal place of business at 1414 Harbour Way South, Richmond, CA, 94804 ("Installer"), and the County of Nevada, a political subdivision of the State of California having its principal place of business at 950 Maidu Avenue, Nevada City, CA 95959 ("Customer"). In the event of a conflict between the terms and conditions of this Agreement and the terms and conditions of its Exhibit A, Scope of Work, the terms and conditions of this Agreement shall control.

1. CONTRACT INTERPRETATION.

1.1 Definitions.

"Acceptance of the Work" means the date on which the Nevada County Board of Supervisors adopts a duly authorized Resolution accepting the Work as complete.

"Agreement" has the meaning given to such term in the preamble hereto.

"Agreement Documents" has the meaning set forth in Section 1.3 (*Agreement Documents*).

"Applicable Law" means any applicable federal, state or local act, law, statute, ordinance, code, rule, regulation, Permit, order, judgment, consent or approval of any Governmental Authority.

"Authorized Representative" means, for each party, for Installer, Robert Hensley, or a substitute as notified by Installer, and, for the Customer its Facilities Program Manager or a substitute as notified by Customer.

"Business Day" means any day other than a Saturday, Sunday or a legal holiday in the State in which the System is being built. In the event a time period set forth in this Agreement or the Scope of Work expires on a Day that is not a Business Day, such period shall be deemed to expire on the next Business Day thereafter.

"Change Order" has the meaning set forth in Section 2.8(a) (*Change Orders*).

"Climatec LLC" means Climatec LLC, its officers, directors, employees and agents.

"Close-out Documents" has the meaning set forth in Section 4.1(b) (*Punch List*).

"Commencement Date" means the date on which Installer commences performance of the Work on the Site.

"Contract Price" has the meaning set forth in Section 5.1 (*Contract Price*).

"Customer" has the meaning given to such term in the preamble hereto, including but not limited to all officers, employees, agents, and representatives thereof.

"Customer Indemnified Parties" has the meaning set forth in Section 7.1(a) (*Indemnification by Installer*).

"Customer Permits" means those Permits designated as Customer Permits in the Scope of Work.

"Day" means a period of 24 consecutive hours from 12:00 midnight (Pacific time), and shall include Saturdays, Sundays and all holidays except that in the event a time period set forth in this Agreement

or the Scope of Work expires on a Day that is not a Business Day, such period shall be deemed to expire on the next Business Day thereafter.

“Design Submittal” means (i) mechanical and electrical drawings, (ii) product description information, (iii) detailed project schedule, (iv) permit package and related documents and (v) any other documents submitted in connection with the applicable System.

“Disclosing Party” has the meaning set forth in Article 11 (*Confidentiality and Publicity*).

“Effective Date” means the date set forth in the preamble hereto.

“Energy Display” has the meaning set forth in Appendix 2 attached to the Work Authorization.

“Exclusion” means any task, responsibility or duty which this Agreement expressly states is not the obligation of Installer to perform.

“Final Completion” with respect to a System has the meaning as set forth in Section 5.2.

“Final Completion Date” has the meaning set forth in Section 4.2 (*Final Completion*).

“Final Completion Notice” means the notice that shall be issued by Installer upon Acceptance by Customer’s Board of Supervisors of Final Completion.

“Force Majeure Event” means any event or circumstance beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure Event. Without limiting the meaning of the preceding sentence, the following events constitute Force Majeure Events to the extent that they render a Party unable to comply totally or partially with its obligations under this Agreement: strikes, fires, floods, hurricanes, typhoons, winds in excess of 90 mph, volcanoes, earthquakes, tornados, vandalism, terrorism, war, and acts or omissions of any Governmental Authority after the Effective Date (including the adoption or change in any rule or regulation or environmental constraints lawfully imposed by such Governmental Authority), but only if such actions or omissions prevent or delay performance. Economic hardship (except to the extent caused by a Force Majeure Event) is explicitly excluded as a Force Majeure Event and is solely the responsibility of the affected Party.

“Governmental Authority” means any federal, state, local or other governmental, regulatory or judicial agency, authority, public utility, or other entity having legal jurisdiction over the Site or a System.

“Hazardous Material” means all pollutants, contaminants and chemicals and any other carcinogenic, ignitable, corrosive, reactive, toxic or otherwise hazardous substances (and materials and substances containing or contained by the foregoing) subject to regulation, control or remediation under Applicable Law.

“Host” has the meaning set forth in Section 12.1 (*Acknowledgment and Consent of Host*).

“Industry-Wide Disruption” has the meaning set forth in Section 2.14(c) (*Force Majeure Events*).

“Insolvency Event” with respect to a Person means such Person becomes insolvent, or institutes or has instituted against it a case under Title 11 of the United States Code, is unable to pay its debts as they mature or makes a general assignment for the benefit of its creditors, or if a receiver is appointed for the benefit of its creditors, or if a receiver is appointed on account of insolvency.

“Installer” has the meaning set forth in the preamble hereto including but not limited to all officers, employees, agents, representatives, contractors, subcontractors, entities, affiliates, parent entities thereof.

“Installer Indemnified Parties” has the meaning set forth in Section 7.2 (*Indemnification by Customer*).

“Installer Permits” means those Permits designated as Installer Permits in the Scope of Work.

“Interconnection Agreement” means an agreement between Customer and any utility for the interconnection of any System to the electrical grid.

“Interconnection Equipment” means all standard interconnection-related equipment on Customer side of the main service meter, including panel circuit breakers, utility lockable disconnect switches, NGO metering, conduit and wiring and, if necessary, replacement of the local utility provider’s revenue meter for net-metering purposes.

“Interconnection Point” means the point where the System is interconnected to Customer’s electrical equipment.

“Material Breach” means a default in one Party’s obligations hereunder that substantially undermines the economic value of this Agreement to the other Party.

“NDA” has the meaning set forth in Article 11 (*Confidentiality and Publicity*).

“Notice” means any written notice required or permitted to be given by one Party to the other Party under this Agreement.

“Parties” means Customer and Installer collectively, and each of them may be referred to as a “Party.”

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

“Person” means any individual, corporation, partnership, company, joint venture, association, trust, unincorporated organization or Governmental Authority.

“Progress Payment” has the meaning set forth in Section 5.2 (*Payments of the Contract Price*).

“Project Completion” has the meaning set forth in Section 4.2(b).

“Project Schedule” means the schedule for the performance of the Work by Installer, set forth in the Scope of Work.

“Punch List” has the meaning set forth in Section 4.19(b) (*Punch List*).

“Rebate Program” means any rebate or other incentive program in effect as of the Effective Date and offered with respect to any System by any public utility or Governmental Authority.

“Receiving Party” has the meaning set forth in Article 11 (*Confidentiality and Publicity*).

“Schedule of Values” means the schedule of values set forth in the Scope of Work.

“Scope of Work” means the scope of Work agreed upon by Customer and Installer and attached as Exhibit A, which comprises the layout, specifications, description, Work, materials, Project Schedule, Permits, Contract Price and all other information necessary to define the System and the Work with respect thereto.

“Site” means any of the sites for installation of the Systems, as specified in the Scope of Work.

“Specifications” means the specifications with respect to the System, as set forth in the Scope of Work and, once accepted, as provided in the applicable Design Submittal.

“Subcontractor” means any Person retained, directly or indirectly, by Installer in each case as an independent contractor to perform services to Installer in discharge of a portion of the Work, excluding Suppliers.

“Substantial Completion” has the meaning as set forth in Section 4.1 (“Substantial Completion”).

“Substantial Completion Date” has the meaning set forth in Section 4.1(a) (*Substantial Completion Notice*).

“Substantial Completion Notice” means that notice provided by Installer certifying that the System has achieved Substantial Completion.

“Suppliers” means a Person of any tier of supply that supplies equipment or materials and is not supplying services to Installer at the Site in discharge of a portion of the Work.

“System” or “Systems” means a solar photovoltaic system or solar photovoltaic systems identified in the Scope of Work.

“System Performance Test” means the tests conducted with respect to System performance in accordance with Exhibit G.

“Tenant” has the meaning set forth in Section 12.2 (*Acknowledgment and Consent of Tenant*).

“Unforeseen Site Conditions” has the meaning set forth in Section 2.13 (*Unforeseen Site Conditions*).

“Work” has the meaning set forth in Section 2.1.a (*Work*).

“Work Product” has the meaning set forth in Section 12.13 (*Ownership of Designs; Final Drawings/Manuals*).

“Warranty” means the warranties provided in Exhibit B.

1.2 Rules of interpretation. Unless the context requires otherwise: (a) the singular includes the plural and vice versa; (b) the word “including” mean “including, without limitation”; (c) references to “Sections” or “Exhibits” are to sections and exhibits to this Agreement; (d) the words “herein”, “hereof” and “hereunder” refer to this Agreement as a whole and not to any particular section or subsection of this Agreement; (e) references to this Agreement include a reference to all exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time by mutual written consent of the parties. Headings used in this Agreement are for ease of reference only and must not be taken into account in the interpretation or construction of the provisions of this Agreement.

1.3 Agreement Documents. The “Agreement Documents” consist of the following documents:

- a. All written modifications, amendments and change orders to this Agreement as may be mutually agreed to by the parties hereto;
- b. this Agreement;
- c. all Exhibits attached hereto; and
- d. the Design Submittal to be prepared by Installer pursuant to Section 2.3, as approved by Customer and applicable Government Authorities.

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- 1.4 **Conflicting Provisions.** In the event of any conflict or inconsistency between any of the Agreement Documents, the document appearing higher in the list of Agreement Documents set forth in Section 1.3 (where applicable) will prevail and be given priority. Subject to the foregoing, the several documents and instruments forming part of this Agreement are to be taken as mutually explanatory of one another and in the case of ambiguities or discrepancies within or between such parts the same will be explained and interpreted, if possible, in a manner which gives effect to each part and which avoids or minimizes conflicts among such parts. No oral representations or other agreements have been made by the Parties except as specifically stated in the Agreement Documents.

2. **THE WORK.**

2.1 **Scope of Work.**

- a. Installer shall provide, on a turnkey basis, all professional design and engineering services, equipment procurement, supervision, labor, materials, equipment, tools, construction equipment and machinery, utilities, transportation, and procurement of Installer Permits for the System (subject to the limitations set forth herein and the Scope of Work) in conformity with the Scope of Work (the “Work”), and other facilities, items and services, in each case to the extent necessary to complete the Work in accordance with the Specifications.
- b. Installer shall have sole control over the engineering, design and construction means, methods, techniques, sequences, and procedures and for coordination of all portions of the Work unless otherwise provided herein. Installer and its Subcontractors will perform all Work efficiently and with the requisite expertise, skill, competence, resources and care to satisfy the requirements of the Contract Documents and all Applicable Law in effect at the time the Work is performed.

- 2.2 **Safety and Protection.** While performing the Work at the Site, Installer will comply with the safety, access and operational restrictions established by Customer. The Parties hereto agree to notify each other immediately upon becoming aware of any alleged violation of the Occupational Safety and Health Act (OSHA) relating in any way to the Project or Project site. Installer shall be responsible for correcting any such violations and for paying any resulting fine(s), including any fines imposed upon Customer, except where those violations are the result of existing conditions at the Customer Site(s). Notwithstanding the foregoing, Installer shall not be liable to the extent such fine, violation, or penalty due to conduct by Customer. Installer shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. Installer shall take all reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

- a. All employees on the work and other persons and organizations who may be affected thereby;
- b. All the work and materials and equipment to be incorporated therein, whether in storage on or off the site; and
- c. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and underground facilities not designated for removal, relocation or replacement in the course of construction.

- 2.3 **Design.** Installer shall perform engineering and design services, using qualified architects, engineers and other professionals selected by Installer, in each case as are necessary to prepare the Design Submittal. Each Design Submittal shall be submitted to Customer for approval, which shall not be unreasonably withheld. Customer shall review and provide its written approval of any Design Submittal in accordance with the Project Schedule, but in no event later than ten Days from receipt by Customer of the Design Submittal. If Customer fails to provide approval, objections and/or comments within such [ten Day] period, the Design Submittal may, at Installer’s option, be deemed approved by

Customer. Installer shall incorporate or respond to Customer's comments in conformity with the Project Schedule or as appropriate under the circumstances. Once the design has been approved or deemed approved by Customer, any additional Customer requested changes to the design or materials to be incorporated into the System will be handled as a Change Order and subject to modifications to Contract Price and Project Schedule as appropriate.

- a. Installer will maintain a current, complete set of drawings approved by required governmental entities and specifications at the Site and shall provide Customer with a complete copy of the same; and
- b. All design services performed by Installer and its Subcontractors will be performed in accordance with the standard of care and skill generally accepted for the design of solar power generation facilities in the state where the Site is located during the relevant period of time. Any professional services to be performed as part of the Work for which Applicable Law requires a license or registration will be performed by duly licensed or registered personnel.
- c. No review of, or comments on, any information provided to Customer by Installer or any subcontractor, and no failure by Customer to review or comment on any such information, shall be deemed to be an Acceptance of the Work or any portion thereof by Customer, nor to cause a transfer of responsibility for such information to Customer. Failure of Customer or its representatives to discover errors or omissions in information that it has reviewed, or to inform Installer that Subcontractors or others are not in compliance with the information, or to direct or enforce procedures for complying with such information, shall not relieve Installer from its sole responsibility to perform and complete the Work in accordance with the Contract Documents.

2.4 **Project Schedule.** With respect to each System, Installer shall perform its obligations under this Agreement in a diligent and expeditious manner and use its commercially reasonable efforts to perform the Work in conformity with the Project Schedule that is incorporated in the Scope of Work attached hereto as Exhibit A.

Installer will start work to be performed under this Agreement within fifteen (15) days after Installer is instructed in writing by Customer to proceed with the work. Said work shall be diligently prosecuted to completion. All Work related to Sites 1 through 4 shall be satisfactorily completed so as to ensure that Sites 1 through 4 will be connected to PG&E and generating electricity for Customer on or before December 31, 2016. Work on all Sites shall be completed and ready for Acceptance of the Work within fifteen (15) calendar months from the date of the mailing of the Notice to Proceed. Such dates may be extended for good cause by mutual agreement of Installer's and Customer's Authorized Representatives. When any period of time is referred to in the contract documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

2.5 **Progress Meetings.** Installer shall coordinate with Customer to schedule progress meetings at least every two weeks following the Commencement Date or otherwise as agreed between the Parties. Installer is responsible for notifying the appropriate design professionals, construction forces and Subcontractors represented at these meetings by individuals with authority to make commitments and to act for the concerns represented. The purpose of these meetings shall be primarily to review the progress and eliminate construction and material problems. Installer shall assume full responsibility to act for and commit any Subcontractor.

- a. Installer shall be prepared to indicate the proposed Work schedule for the period immediately following the meeting date and shall provide an updated Project Schedule.

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- b. Installer and its subcontractors shall bring complete, current information to each meeting. Any questions not resolved during the meetings will be acted upon expeditiously by the individuals concerned.
 - c. Any conclusions reached in the discussion at a meeting will be expressly for clarification and coordination of the Work and will in no way modify, alter or otherwise affect the terms of the Agreement.
 - d. Installer will deliver minutes of each progress meeting to Customer's Authorized Representative within seven Days thereafter.

2.6 **Compliance.** Installer shall cause the Work to be performed in compliance with Applicable Law and any design and engineering or other professional services to be performed pursuant to this Agreement and the Scope of Work, which under Applicable Law must be performed by licensed personnel, shall be performed by licensed personnel in compliance with Applicable Law.

2.7 **Rebate Program/Tax Credits.**

- a. Installer shall provide reasonable assistance and cooperation to Customer in the preparation and submittal of any and all applications or other documentation necessary for Customer to participate in any Rebate Program. Installer shall attend all site verification visits conducted by the applicable public utility or Governmental Authority and shall assist Customer in satisfying the requirements of the Rebate Program. Installer's obligations under this Section shall expire on the first anniversary of Substantial Completion of the System unless this Agreement is terminated earlier in accordance with the terms hereof.
- b. The Parties acknowledge and agree that any rebates or incentives payable under any Rebate Program or any tax credits associated with the ownership of the System will be paid directly to, or shall be retained by, Customer. Installer makes no representation or warranty as to the amount or availability of any Rebate Program or tax credit or incentive or any other incentives or credits available or perceived or believed to be available from any utility, Governmental Authority or any other Person, and assumes no responsibility or liability in connection therewith. Customer shall be solely responsible for determining the availability of any Rebate Program and negotiating the payment of any such rebates with the applicable public utility or Governmental Authority.

2.8 **Change Orders.**

- a. **Generally.** Each Party may, upon Notice to the other Party, request a change to the Specifications, the Work or any System by issuing a written order (the "Change Order") which shall include: (i) a reference to this Agreement, (ii) the change to the Work and (iii) the effects (if any) of the Change Order on the Project Schedule and Contract Price. All change order requests will be coordinated with Customer's Authorized Representative.
- b. **Change Order Costs and Pricing.**
 - i. If a Change Order contemplates a change in Contract Price, but no change in the size (in MW) of the System, such changes shall be calculated as follows: (A) labor and materials costs of Installer shall be billed at cost, with a fifteen percent (15%) markup to cover administration, overhead and profit; (B) Subcontractor costs of Installer shall be billed at cost, with a ten percent (10%) markup to cover administration, overhead and profit; and (C) any additional performance or payment bond costs shall be billed at cost and not subject to markup.

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- ii. If a Change Order contemplates a change in Contract Price due to an increase in size (in MW) of the System, the Contract Price shall be proposed by Installer and agreed to by the Parties in accordance with this Section 2.8 (*Change Orders*).
- c. **Installer Requested Change Order.** Installer shall be entitled to a Change Order only upon the occurrence of any of the following:
- i. any or all of the Work is delayed or suspended by Customer, for five business days or longer per incident, or an aggregate period of more than 30 days, or if accelerated by Customer;
 - ii. any material breach by Customer of the terms and conditions of this Agreement or the failure by Customer to perform its obligations hereunder, provided that Customer has been given notice of any alleged material breach and at last ten business days to cure said breach;
 - iii. a material and unforeseeable change in Applicable Law occurring after the Effective Date that affects Installer's performance hereunder and the Scope of Work;
 - iv. the occurrence of a Force Majeure Event;
 - v. any delays in obtaining Customer Permits or Installer Permits in excess of the times allotted for such Permit in the Scope of Work; provided that Installer or Customer, as applicable, has (A) reasonably complied with all filing and application requirements and deadlines of the relevant Governmental Authority and all submittals are technically accurate and complete; (B) used commercially reasonable efforts to obtain such Permit, including, but not limited to, coordinating and cooperating with the relevant Governmental Authority; and (C) such delay is not in any way caused by or contributed to by Installer;
 - vi. Work required or expenses or costs incurred as a result of or in connection with the discovery of Unforeseen Site Conditions; and
 - vii. any material change to the Specifications, the Work or the System requested by Customer's Authorized Representative.
- d. **Procedure.** If Installer is entitled to a Change Order pursuant to clause (c) above, Installer shall submit such Change Order to Customer's Authorized Representative. Within five Business Days after receipt of a Change Order, Customer shall either (i) execute and deliver such Change Order as provided by Installer or (ii) request that certain amendments or modifications be made to such Change Order. If Customer does not respond to such Change Order within such five Business Day period, Work related to the Change Order will not be performed pending agreement on the scope of the Change Order and Installer shall be provided with an adjustment to the Project Schedule to the extent Installer has been delayed in its performance of the Work as a result of such delay in response, unless the response is delayed because the Change Order request is incomplete or fails to comply with the requirements of this Section. If Customer timely requests amendments or modifications to the Change Order, the Parties shall negotiate in good faith and shall promptly agree on and execute an amended Change Order; provided however that any Change Orders that would cause the cumulative total of all Change Orders to exceed \$700,000 require approval by the Nevada County Board of Supervisors pursuant to a written amendment to this Agreement.
- e. All executed or deemed executed Change Orders are hereby incorporated by reference into this Agreement and the Scope of Work. Except as set out in Section 2.8(f) herein, Installer

shall not be eligible for payment for any costs for delays attributable to good faith negotiation regarding a Change Order.

- f. **Equitable Adjustment.** If the Parties cannot agree on the cost or any other term or condition of a Change Order, and Customer proposes a bona fide and commercially reasonable adjustment in price, Installer shall, without prejudice to any of Installer's rights arising out of this Agreement, nevertheless perform such Change Order and shall submit a payment application reflecting the undisputed portion of the cost of such Change Order. The Parties shall negotiate in good faith such equitable adjustment claim; provided, that Installer shall not be eligible to an equitable adjustment in the Contract Price or schedule to the extent that the reason for the Change Order for which Installer requests an equitable adjustment is due to Installer's errors or omissions or breach of this Agreement. For any delays of 21 calendar days or longer attributable to the Board's review and approval of any Change Order, Installer shall be entitled to both equitable cost and schedule relief. All approved Change Orders are hereby incorporated by reference into this Agreement and the Scope of Work.
- g. **Emergencies.** In any emergency affecting the safety of persons or property, Installer will take reasonable steps to prevent threatened damage, injury or loss. Installer will notify the Customer of the emergency as soon as practicable and in any event within 48 hours after Installer becomes aware of the emergency. The notice to Customer will describe the emergency in detail, including a reasonable estimation of its expected duration and impact, if any, on the performance of Installer's obligations hereunder. Any change in the Contract Price or the Project Schedule on account of the emergency work will be determined as provided in this Section 2.8 (*Change Orders*).

2.9 **Labor and Employment**

- a. **Worker's Compensation Certification.** Installer certifies that it is aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and shall comply with such provisions before commencing the performance of the work of this contract.
- b. **Prevailing Wage Rates.** In accordance with the provisions of Section 1770 and 1773 of the Labor Code, the Customer has determined that prevailing wage rates are applicable to the work to be done. Installer shall post a copy of the wage rates on the job site. Customer is required to provide notice to the Department of Industrial Relations of any public work contract subject to prevailing wages within five (5) days of award.

The general prevailing wage rates determined by the Director of Industrial Relations (DIR), for the county or counties in which the work is to be done, are available from the California Department of Industrial Relations' Internet website at <http://www.wdol.gov>. These wage rates are not included in the proposal and contract for the project. Changes, if any, to the general prevailing wage rates will be available at the same location.

In accordance with Section 1771.1 of the Labor Code, a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal subject to the requirements of Section 4014 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in Chapter 1 of Part 7 of the Labor Code, unless currently registered and qualified to perform public work pursuant to Section 1725.5.

Installer and all subcontractors must comply with the requirements of Labor Code Section 1771.1(a) pertaining to registration of contractors pursuant to Section 1725.5. Registration and all related requirements of those sections must be maintained throughout the performance of the Agreement. The DIR has launched an online application to assist public works contractors

in meeting these requirements at
<https://efiling.dir.ca.gov/PWCR/ActionServlet?action=displayPWCRegistrationForm>

Pursuant to California Labor Code Section 1775, Installer shall forfeit Fifty Dollars (\$50.00) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates for such work or craft, and said amounts shall be distributed pursuant to the requirements of said Section 1775. Any employee whose type of work is not covered by any of the classified wage rates shall be paid not less than the rate of wage listed for the classification which most nearly corresponds to the type of work to be performed.

- c. **Collective Bargaining Agreements.** Pursuant to California Labor Code Section 1773.8, Installer shall pay travel and subsistence payments to all workers needed to execute the work as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with Section 1773.8 of the Labor Code.
- d. **Payroll Records.** This Agreement is subject to compliance monitoring and enforcement by the DIR. Installer and each subcontractor must furnish certified payroll records to the Labor Commissioner at least monthly.

Installer shall be responsible for keeping accurate payroll records as required by California Labor Code Section 1776. Installer is aware that a penalty of twenty-five dollars (\$25.00) per day or portion thereof for each worker may be assessed for noncompliance with said section. Installer shall forward to Customer a certified copy of each payroll record within ten days after close of each payroll period. Such certification shall include a statement that payroll is correct and complete and complies with prevailing wage requirements.

If by the 15th of the month, Installer has not submitted satisfactory payrolls for all work performed during the monthly period ending on or before the 1st of that month, Customer will retain an amount equal to 5 percent of the estimated value of the work performed during the month from the next monthly estimate, except that such retention shall not exceed \$10,000. Retentions for failure to submit satisfactory payrolls shall be additional to all other retentions provided for in the Agreement. The retention for failure to submit payrolls for any monthly period will be released for payment on the monthly estimate for partial payments next following the date that all the satisfactory payrolls for which the retention was made are submitted.

Installer and each subcontractor shall preserve their payroll records for a period of three years from the date of completion of the Agreement.

- e. **Limitations on Hours Worked.** Eight hours constitutes a day's work and workers shall be limited to working 8 hours during any one calendar day and 40 hours during any one calendar week. Installer and all subcontractors shall keep an accurate record of hours worked by each worker for each calendar day and each calendar week which record shall be available for inspection during business hours. Installer shall, pursuant to California Labor Code Section 1813, forfeit twenty-five dollars (\$25) for each day for each worker where such worker is required or permitted to work more than 8 hours in any one day and 40 hours in any one week in violation of the provisions of the Labor Code. No overtime shall be authorized unless prior written approval of Customer is obtained permitting such overtime. If such overtime work is authorized by Customer, Installer shall compensate each worker required to work overtime at the rate of one and one-half (1-1/2) times the basic rate of pay. All costs for overtime inspection, except those occurring as a result of overtime and shift work established as a regular procedure, shall be paid by Installer. Overtime inspection shall include inspection required during holidays, Saturdays, Sundays, and any weekday between the hours of 5:00 p.m. and 7:00 a.m. Such costs will include but will not necessarily be limited to engineering, inspection, general supervision and other overhead expenses which are directly chargeable to

the overtime work. All such charges shall be deducted by Customer from payments due the Installer.

- f. **Employment of Apprentice Labor.** Reference is hereby made to Section 1777.5 of the Labor Code of the State of California, which regulations shall govern the employment of apprentices on the work.
- g. **Preference for Resident Labor.** In the employment of labor for doing the work, Installer shall give preference to qualified persons residing within the general area of the work.
- h. **Incompetent Workers.** If at any time any worker employed by Installer or any of the subcontractors shall be declared by Customer, consistent with prudent industry standards and practices, to be incompetent or unfaithful in executing the work, Installer, on receiving written notice, shall forthwith initiate appropriate action to dismiss such person.
- i. **Labor Class Substitutions.** If Installer substitutes a labor classification or provides a new classification which results in a reduction in the contract price, Customer's execution of a change order evidencing said reduction in price shall in no way be construed, either express or implied, as consent to the use of said labor classification in the performance of any work on the project.

2.10 Work Site Supervision; Safety; Maintenance of Site.

- a. Installer will coordinate all work and communications with Customer's Authorized Representative.
- b. Installer shall supervise and direct all Work performed hereunder, and shall be solely responsible for and have exclusive control over the means, methods, techniques, sequences and procedures employed. Installer shall ensure that all persons performing work hereunder are skilled in the tasks assigned to them.
- c. Installer will undertake adequate security measures at all times during the term of this Agreement to prevent vandalism, theft and danger to the Site and personnel working at the Site. Installer will coordinate and supervise ingress and egress from the Site and shall perform Work so as to minimize disruption of Customer's ordinary business operations. Installer will at all times conduct its operations in a manner so as to minimize the risk of loss, theft or damage to the Site and the System, including, where appropriate, by installing temporary construction fencing on the Site.
- d. Installer shall keep each Site reasonably free of materials and accumulation of waste caused by the Work or weather conditions to permit Installer to perform its construction services efficiently, safely and without interfering with the use of adjacent portions of the Site or adjacent properties. Upon Substantial Completion of a System, Installer shall remove from the Site all waste, tools and equipment introduced to the Site by Installer (other than tools and equipment required for completion of the Punch List). Upon completion of the Punch List, Installer shall remove all remaining waste, tools and equipment from the Site and deliver the Site to Customer in good condition and repair, and in substantially the same condition as it was prior to commencement of the Work.

- 2.11 Delay.** If Installer's performance hereunder is delayed by any event or circumstance described in clause (c) of Section 2.8 (*Change Orders*), to the extent not attributable to the Installer, Installer shall not be deemed in breach of this Agreement and shall be entitled to a Change Order in accordance with Section 2.8 (*Change Orders*). Installer shall use reasonable diligence to avoid or minimize the cause of such delay and shall, as soon as practicable, notify Customer thereof.

2.12 **Installer Responsibility.** Any and all damages primarily caused by Installer's negligence or operations shall be repaired, replaced or reimbursed by Installer at no charge to Customer. Repairs and replacements shall be commenced within five (5) days of the incident that causes such damages to occur, unless Customer requests or agrees to an extension or another timeframe, and shall be diligently completed by Installer. Installer must immediately report each such incident to Customer's Authorized Representative. Damage to Customer's property observed by Installer, whether or not resulting from Installer's operations or negligence, shall be promptly reported by Installer to Customer. Customer may, at its option, approve and/or dictate the actions that are in Customer's best interest to respond to such damages.

2.13 **Hazardous Materials.** Installer shall have no responsibility for detection, abatement, remediation, removal or disposal of any Hazardous Material, except Hazardous Materials introduced onto the Site by Installer, its employees, subcontractors, agents, or other parties acting on behalf of Installer. In the event that Installer becomes aware of the presence of, or exposure of persons to, any Hazardous Material at the Site, Installer shall inform Customer by Notice immediately and shall immediately take all reasonable actions necessary to protect employees, subcontractors, agents or other parties acting on behalf of Installer from said Hazardous Materials. Installer shall promptly remove, abate, remediate and dispose of any Hazardous Materials introduced onto the Site by Installer, its employees, subcontractors, agents, or other parties acting on behalf of Installer. Installer shall not be entitled to request a Change Order in accordance with Section 2.8 (*Change Orders*) as a result of any delays or additional costs caused by the introduction or exposure of Hazardous Materials to the Site by Installer, its employees, subcontractors, agents or other parties acting on behalf of Installer.

a. Notwithstanding anything to the contrary herein, Installer shall not be responsible for, and Customer shall bear full responsibility and remediation costs relating to any Hazardous Materials uncovered, removed or disturbed by Installer on the Site resulting from Installer's performance of the Work hereunder. In addition, Customer hereby specifically agrees to indemnify, defend and hold Installer, its present and future direct or indirect parents, subsidiaries, affiliates, divisions, and their respective directors, officers, employees, shareholders, agents, representatives, successors and assigns harmless from and against any and all losses, liabilities, claims, demands, damages, causes of action, fines, penalties, costs and expenses (including, but not limited to, all reasonable consulting, engineering, attorneys' or other professional fees), that they may incur or suffer by reason of: (a) the existence, uncovering or unveiling, or any release by Customer of, a Hazardous Material on or from the Site; (b) any enforcement or compliance proceeding commenced by or in the name of any Governmental Authority because of an alleged, threatened or actual violation of any Applicable Law by Customer or because of the presence on the Site of Hazardous Materials not specifically introduced onto the Site by Installer; and (c) any action reasonably necessary to abate, remediate or prevent a violation or threatened violation of any Applicable Law by Customer.

b. Notwithstanding anything to the contrary herein, Customer shall not be responsible for, and Installer shall bear full responsibility and remediation costs relating to any Hazardous Materials introduced to the Site by Installer or its Subcontractors. In addition, Installer hereby specifically agrees to indemnify, defend and hold Customer, its present and future direct or indirect parents, subsidiaries, affiliates, divisions, and their respective directors, officers, employees, shareholders, agents, representatives, successors and assigns harmless from and against any and all losses, liabilities, claims, demands, damages, causes of action, fines, penalties, costs and expenses (including, but not limited to, all reasonable consulting, engineering, attorneys' or other professional fees), that they may incur or suffer by reason of: (a) the introduction by Installer of a Hazardous Material to the Site; (b) any enforcement or compliance proceeding commenced by or in the name of any Governmental Authority because of an alleged, threatened or actual violation of any Applicable Law by Installer or because of the presence of Hazardous Materials introduced onto the Site by Installer; and (c) any action reasonably necessary to abate, remediate or prevent a violation or threatened violation of any Applicable Law by Installer in connection with such introduction.

2.14 **Unforeseen Site Conditions.** Within 5 Business Days, Installer will notify Customer in writing of (a) subsurface or latent physical conditions at the Site differing materially from those indicated in the Contract Documents and the documents listed on Exhibit F or (b) previously unknown physical conditions at the Site of an unusual nature or differing materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this Agreement; provided, however, that such conditions were not known by Installer and would not have been known or discovered by Installer through a reasonable and diligent investigation of existing site conditions (collectively, “Unforeseen Site Conditions”).

2.15 **Force Majeure Events.** A Party claiming a Force Majeure Event shall be excused from the performance of its obligations under this Agreement to the extent that such Party is prevented from performing such obligations by reason of the occurrence of the Force Majeure Event, provided that a Party claiming a Force Majeure Event exercises reasonable efforts to minimize and mitigate the effects of any delay caused by said Force Majeure Event. Installer shall be entitled to a reasonable adjustment of the Contract Price and/or Project Schedule caused by a Force Majeure Event properly notified to Customer by Installer pursuant to clause (a) below. Any adjustment of the Contract Price and/or the Project Schedule pursuant to this Section 2.14 (*Force Majeure Events*) shall be documented by a written Change Order to this Agreement.

- a. A Party claiming a Force Majeure Event shall notify the other Party in writing as soon as practicable, but in any event not later than two business days after becoming aware of the impact of the Force Majeure Event or of the occurrence and nature of the Force Majeure Event, including any delay or anticipated delay in performance of this Agreement due to the Force Majeure Event.
- b. The Contract Price and the Project Schedule will be adjusted to compensate Installer for the effects of any change to Applicable Law which requires Installer to make material changes to the Construction Documents or Installer’s execution of the Work as a result of said changes in Applicable Law.
- c. If Installer is delayed at any time in the commencement or progress of the Work due to a material delay in the delivery of, or unavailability of, essential materials or labor as a result of a significant Industry-Wide Disruption beyond the control of and without the fault of Installer or its Subcontractors which is experienced certain markets providing essential materials and equipment during the performance of the Work and such economic fluctuation or disruption adversely impacts the availability and delivery timeframes of essential materials or equipment (such event an “Industry-Wide Disruption”), Installer will be entitled to a reasonable extension of the Project Schedule based on delays proven to be directly attributable to such delay. Customer and Installer will undertake reasonable steps to mitigate the effect of such delays. Notwithstanding any other provision to the contrary, Installer and Customer will not be liable to each other for any expenses, losses or damages arising from a delay, or unavailability of, essential materials or labor to the Project as a result of an Industry-Wide Disruption.

2.16 **Subcontractors.**

- a. Installer may subcontract portions of the Work in accordance with the terms hereof. Installer shall be fully responsible to Customer for all acts and omissions of the subcontractors, suppliers and other persons and organizations performing or furnishing any of the work under a direct or indirect contract with Installer just as Installer is responsible for Installer’s own acts and omissions. Nothing in the contract documents shall create any contractual relationship between Customer and any such subcontractor, supplier or other person or organization, nor shall it create any obligation on the part of Customer to pay or to see to the payment of any moneys due any such subcontractor, supplier or other person or organization except as may otherwise be required by laws and regulations. Customer may furnish to any subcontractor or other person or organization, to the extent practical, evidence of amounts paid the Installer on account of specific work done.

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- b. Installer will coordinate the activities of all of Installer's Subcontractors so as to minimize disruption to, and not unreasonably interfere with, Customer's normal business operations at the Site. If Customer performs other work at the Site with separate contractors under Customer's control, Installer agrees to reasonably cooperate and coordinate its activities with those separate contractors so that the System can be completed in an orderly and coordinated manner without unreasonable disruption. Neither Installer nor its Subcontractors shall block or unreasonably interfere with access to any Property or building on which the Work is being performed.
 - c. Installer shall provide a list of potential Subcontractors and Customer must, within 7 days receipt thereof, provide written notice as to any potential subcontract that Installer may not engage. In the event Customer fails to object to any potential Subcontractor within the 7 day period described above, Customer is deemed to have approved or permitted the assignment or subcontracting of portions of Work (to the extent deemed appropriate by Installer) to such Subcontractor. No acceptance by Customer of any such subcontractor, supplier, or other person or organization shall constitute a waiver of any right of Customer to reject defective work. With respect to any personnel engaged by any Subcontractor to perform works at certain Project sites as may be designated by Customer, Installer shall cause such Subcontractors to provide a list of all personnel to enter into such designated sites to Customer. County shall, within three business days, provide notification regarding any individual that may not enter into a designated Project site.
 - d. All subcontracts shall contain provisions permitting the assignment thereof to Customer in the event Customer is required to undertake the Work in the event of termination by Cause by Customer of this Agreement. Installer shall pay each subcontractor a just share of any insurance moneys received by Installer on account of losses under policies issued pursuant to this Contract.
 - e. Unless otherwise agreed in writing by the Customer's Risk Manager, Installer shall cause and require each transferee, subcontractor and assignee to comply with the insurance provisions set forth herein, in the same amounts and subject to the same terms as are required of Installer under this Agreement. Said insurance shall include all upstream parties (including the Installer and the Customer) as additional insureds using a Blanket Additional Insured Endorsement (ISO form number CG 20 38 04 13) or coverage at least as broad. Installer shall verify that all subcontractors provide a policy endorsement in compliance with this subparagraph and shall provide a copy of the same to Customer at least ten (10) working days prior to commencement of any work by subcontractor. Failure of Customer to so cause and require such compliance by each transferee, subcontractor and assignee, or to timely provide Customer with a copy of the required policy endorsement, shall constitute a Material Breach of this agreement, and, in addition to any other remedy available at law or otherwise, shall serve as a basis upon which Customer may elect to suspend payments hereunder, or terminate this Agreement, or both.

3. COMMISSIONING.

- 3.1 **System Performance Tests.** Installer may begin System Performance Tests at any time after the System components are substantially complete and the System can be operated safely and without voiding the manufacturer's warranty. The System Performance Tests shall be performed in accordance with the procedures set forth in Exhibit G. Installer shall notify Customer at least 48 hours prior to commencing the System Performance Tests and shall advise Customer of any potential disruptions that may occur to Customer's normal business operations as a result of said System Performance Tests.
- 3.2 **Commissioning Data.** Installer shall compile, determine and submit to Customer a Notice setting forth the raw data and results of the System Performance Tests within 72 hours after completion of said Tests.

4. COMPLETION AND ACCEPTANCE OF THE WORK.

4.1 Substantial Completion

- a. **Substantial Completion Notice.** If Installer has achieved Substantial Completion with respect to a System, Installer shall deliver to Customer's Authorized Representative a Substantial Completion Notice stating that such System has achieved Substantial Completion, accompanied by a Punch List as described in Section 4.1.b. Customer shall inspect all Work in connection with such System within ten Business Days from receipt of such Notice and either:
- i. deliver to Installer the Substantial Completion Notice and Punch List countersigned by a duly authorized officer of Customer confirming that Installer has substantially completed the relevant Work; or
 - ii. notify Installer that the relevant Work has not been substantially completed, stating in detail the reasons therefor.

If Customer fails to inspect the Work and notify Installer that the relevant Work has not been completed within such ten Business Days or if Customer delivers the countersigned Substantial Completion Notice, the Work shall be deemed by Customer as substantially completed as of the date Installer first delivered such Notice ("Substantial Completion Date"). If Customer timely notifies Installer that the relevant Work has not been substantially completed, Installer shall take action to substantially complete the relevant Work within ten Business Days and shall deliver to Customer another Substantial Completion Notice and Punch List. This procedure shall be repeated until the relevant Work shall have been confirmed or deemed by Customer to be substantially completed.

- b. **Punch List.** Upon achieving Substantial Completion with respect to a System, Installer shall provide Customer's Authorized Representative with a list of items still outstanding which are necessary to complete the System in accordance with the Specification (each a "Punch List"). The Punch List shall include a schedule of values assigned to each item on the Punch List and shall also attach or incorporate by reference an agreed list of Documents to be provided to Customer by Installer prior to Final Completion ("Close-out Documents"). Within ten Business Days after receipt of a proposed Punch List, Customer shall either (a) approve the Punch List; or (b) request that certain amendments or modifications be made to the Punch List. If Customer does not request any amendments or modifications to the Punch List provided by Installer within such ten Business Day period, Customer shall be deemed to have accepted, executed and delivered such Punch List and Customer hereby expressly agrees to be bound therewith. If Customer timely requests amendments or modifications to the Punch List, the Parties shall negotiate in good faith and shall promptly agree on and execute an amended Punch List. The Parties' agreement on the Punch List shall be a pre-requisite to the relevant System achieving Substantial Completion. The Punch List items shall be completed in a mutually agreed time period not to exceed one month after Substantial Completion of the applicable System. If Installer fails to complete the Punch List items on or before the expiration of the one month period (or such longer or shorter period as may be agreed upon by the Parties in writing), Customer may complete such remaining Punch List items on its own and charge Installer for the reasonable costs of performing such Work.

4.2 Final Completion.

Final Completion of a System shall occur when the System Performance Tests for the System have been completed, the Punch List items, where applicable, are completed to the reasonable satisfaction of Customer, and Installer has provided to Customer a System Completion Notice and the Close-out Documents. Installer shall promptly issue a System Completion Notice upon Installer's determination that Installer has achieved Final Completion with respect to a System. Customer shall inspect all Work within ten Business Days from receipt of such Notice and either:

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- a. Within 60 days after receipt of the System Completion Notice, schedule the System Acceptance for action by Customer's Board of Supervisors and upon such action deliver to Installer the System Completion Notice countersigned by a duly authorized officer of Customer confirming that Installer has completed the relevant Work; or
 - b. Notify Installer that the relevant Work has not been completed, stating in detail the reasons therefor. Installer shall take action to complete the relevant Work within ten Business Days and shall deliver to Customer another System Completion Notice. This procedure shall be repeated until the relevant Work shall have been confirmed by Customer as complete.

System Completion constitutes "completion" for purposes of PCC Section 7107.

- 4.3 **Energy Display.** Installer shall coordinate the installation of the Energy Display by the provider thereof in accordance with the terms provided in Appendix 2 to the Work Authorization.

5. CONTRACT PRICE; PAYMENTS.

- 5.1 **Contract Price.** The Contract Price with respect to a System (the "Contract Price") shall be stated in Exhibit A, Scope of Work. The Contract Price may be adjusted by Change Orders or as otherwise provided herein.
- 5.2 **Payments of the Contract Price.** Installer shall invoice Customer and Customer shall pay the Contract Price to Installer in monthly installments (each a "Progress Payment") for the portion of the Work performed during the previous month, which, in the case of each Progress Payment, shall be calculated by multiplying (a) the portion of Work completed by Installer during such month *times* (b) the percentage of Contract Price allocated to such Work in the Schedule of Values *times* (c) the Contract Price.
- 5.3 **Retention.** Payment of any retention for the completed project will not be due until at least 35 days after the Customer records the Notice of Project Completion, or no later than 60 days after completion of the Project as defined in PCC Sec. 7107, whichever occurs first. Payment may be made earlier if the Customer receives from each and every subcontractor and supplier an 'Unconditional Waiver and Release Upon Final Payment' in the form prescribed by Civil Code Section 3262(d). Upon receipt of Final Payment, Installer shall execute, in the form agreeable to Customer, an Unconditional Waiver and Release Upon Final Payment.
- 5.4 **Invoices.** For each Progress Payment due hereunder, Installer shall submit to Customer an invoice together with reasonable documentation setting forth the nature and portion of Work completed by Installer and such other documentation as may be necessary to support such invoice, and signed unconditional lien waivers received from Subcontractors and a signed conditional lien waiver from Installer for the Work included in the invoice and signed unconditional lien waivers from Installer for the Work included in the invoice submitted for the immediately preceding Progress Payment and for which payment was received by Installer. Each lien waiver will be consistent with the applicable form, if any, required by the law of the state where the Work is performed. Submission of an invoice shall constitute a warrant by Installer that the portion of the Work subject to such invoice has been performed in accordance with the Contract Documents. Customer shall pay each invoice within 30 Days from the date of such invoice.
- 5.5 **Final Payment.** Installer will deliver to Customer an invoice for final payment for a System when Final Completion of a System has been achieved in accordance with Section 4.2 (*Final Completion*). Customer shall make final payment within 30 Days from the date of such invoice.
- 5.6 **Disputed Invoices.** If Customer disputes any invoice or any portion thereof, Customer shall give Installer Notice of such dispute within 7 Days after receipt of such invoice. Upon receipt by Installer of a timely dispute Notice, Installer shall re-submit the portions of such invoice which are not in dispute, and the Parties shall meet and attempt to resolve such dispute amicably. Customer shall pay the re-submitted invoice, which contains only undisputed items, in accordance with the payment terms set out

in this Agreement. Upon resolution of any disputed amount, the agreed-upon amount shall be paid within 15 Days after resolution of the dispute. Any dispute not resolved amicably hereunder may be submitted to arbitration in accordance with the terms of Section 12.11 (*Disputes*). Customer shall not be deemed to be in default of this Agreement by reason of withholding payment with respect to any portion of an invoice disputed in good faith; provided, that if such dispute is resolved in Installer's favor, Customer shall pay interest on such unpaid amounts dating back to the original due date set forth in the applicable invoice. Any payment not received on or before the due date for such payment, shall bear interest at the rate of 7% simple interest per annum, commencing on the first Day after such payment is due and continuing until paid.

5.7 **Payment to Subcontractors and Suppliers.** Installer shall promptly pay its relevant Subcontractor and Suppliers amounts due with respect to any Work reflected in the Invoice. With respect to Work paid for by Customer, Installer shall be responsible to keep the Site clear and free from all liens placed on the Site by any Subcontractor or Supplier or Installer, and to defend, discharge or bond any such liens as soon as reasonably practicable.

5.8 **Title.** Title to the System components shall pass to Customer during the course of construction, including the photovoltaic modules, materials, and equipment, subject in each case to the extent payment thereof shall have been made by Customer in accordance with this Agreement and the Scope of Work. Notwithstanding this section, all warranties related to System components shall not commence until Final Project Completion and Acceptance by Customer, and Installer shall maintain Builder's Risk insurance covering all work-in-progress and completed work until Customer has accepted the Project as Complete.

5.9 **Risk of Loss.** From the Effective date and until the System Completion Date, Installer assumes risk of loss and full responsibility for the cost of replacing or repairing any damage to such System and all materials, equipment, supplies and maintenance equipment (including temporary materials, equipment and supplies) that are purchased by Installer for permanent installation in or for use during construction of such System, regardless of whether Customer has title thereto under this Agreement. Customer shall bear the risk of loss and full responsibility in respect of a System from and after the Final Completion Date and Acceptance of the Work. Notwithstanding the foregoing: Customer shall bear the risk of loss and full responsibility for the cost of replacing or repairing any damage to such System and all materials, equipment, supplies and maintenance equipment (including temporary materials, equipment and supplies) that are purchased by Installer or Customer for permanent installation in or for use during construction of such System to the extent caused by the negligent, grossly negligent or willful acts of Customer or its agents, employees or representatives.

5.10 Reserved.

6. TERM.

6.1 **Generally.** This Agreement shall commence on the Effective Date and shall continue until Project Completion. Termination or expiration of this Agreement shall not relieve the Parties from their respective obligations that survive in accordance with this Agreement, including obligations under the applicable Warranties and any Indemnification, hold-harmless, and Insurance provisions.

6.2 **Termination for Cause by Customer.** Customer shall be entitled to terminate this Agreement by written notice to Installer stating that it is a notice of termination pursuant to this Section 6.2, upon the occurrence of any of the following circumstances:

- a. An Insolvency Event occurs with respect to Installer; or
- b. Installer Materially Breaches this Agreement and does not take action to cure such breach within 15 Business Days after Notice thereof; provided, that if the relevant Material Breach cannot reasonably be cured within the time period set forth above, such 15 Business Day

period shall be extended as may reasonably be required so long as Installer continues to exercise its good faith reasonable efforts to cure such breach; or

- c. A representation made by Installer in or pursuant to this Agreement is proven to have been false or misleading in any material respect as of the date on which it was made.

6.3 Consequences of Termination for Cause by Customer. Upon termination of this Agreement for cause by Customer under Section 6.2 (*Termination for Cause by Customer*) above:

- a. Customer may instruct Installer to immediately discontinue all or any part of the Work, and Installer shall thereupon discontinue the Work or such parts thereof;
- b. Customer shall pay Installer the outstanding portion of the Contract Price due for all Work performed in accordance with the terms of this Agreement, and equipment supplied by Installer which is usable by Customer as of the date that the Notice of Termination is given, up to and including the effective date of termination;
- c. Installer shall turn over to Customer all equipment and other materials paid for by Customer and shall immediately remove all other materials, supplies, waste and equipment at Installer's cost in accordance with prudent industry standards;
- d. Customer may continue and complete the Work or any part thereof, by contract or otherwise and, upon Customer's written request Installer shall deliver and assign to Customer, and Customer may at its discretion assume, any and all subcontracts, supply agreements and purchase orders entered into by Installer in order to undertake the Work, provided that such subcontracts, supply agreements and purchase orders are (i) assignable by their terms; and (ii) necessary to complete the Work; and
- e. Installer shall be liable to Customer for the difference between the outstanding balance of the Contract Price and Customer's actual, reasonable and documented cost to complete the System in accordance with the Specifications.

6.4 Termination for Cause by Installer. Installer shall be entitled to terminate this Agreement by written notice to Customer stating that it is a notice of termination pursuant to this Section 6.4, upon the occurrence of any of the following circumstances:

- a. Customer fails to pay any amount of the Contract Price owing under this Agreement that remains outstanding for a period of 60 days or more, provided Installer notifies Customer of said past due amount and provides Customer a reasonable opportunity to pay the outstanding amount due; or
- b. an Insolvency Event occurs with respect to Customer; or
- c. Customer Materially Breaches this Agreement and does not take action to cure such breach within 15 Business Days after Notice thereof; provided, that if the relevant Material Breach cannot reasonably be cured within the time period set forth above, such 15 Business Day period shall be extended as may reasonably be required so long as Customer continues to exercise its good faith reasonable efforts to cure such breach; or
- d. a representation made by Customer in or pursuant to this Agreement is proven to have been false or misleading in any material respect as of the date on which it was made.

6.5 Rights and Remedies.

- a. Installer's and Customer's rights to terminate the Agreement pursuant to Section 6.4 (*Termination for Cause by Installer*) or Section 6.2 (*Termination for Cause by Customer*) are in addition

to, and without derogation from, any other rights and remedies Installer and Customer may have against each other under this Agreement or any Applicable Law, and Installer expressly reserve all such rights and remedies they may have against each other, whether in contract, tort or otherwise.

- b. Notwithstanding the preceding Section 6.4 (*Termination for Cause by Installer*), if (i) Customer fails to pay any amount payable to Installer after it becomes due and payable to Installer under this Agreement or (ii) an Insolvency Event occurs with respect to Customer, then Installer may pursue any of the following rights and remedies:
 - i. Upon 14 calendar days' written Notice to Customer, suspend all Work until any such default is cured; and
 - ii. Upon sixty (60) Days written Notice to Customer, terminate this Agreement and recover from Customer (i) all amounts due from Customer for services provided and materials purchased through the date of termination, (ii) all costs of winding down the System, removing materials and supplies from the Site and terminating Subcontractors and any material purchase orders, and (iii) any other rights or remedies available to Installer at law, in equity or under this Agreement.

6.6 Termination for Non-Approvals

This Agreement is expressly conditioned on:

- a. Customer's ability to obtain CREBS subsidized, private placement bond financing on such terms and conditions that are acceptable to the Nevada County Board of Supervisors, in its sole discretion; and,
- b. Final Planning approvals, including the completion of all appeals to the Board of Supervisors and any related litigation, of all Use Permits deemed necessary by Customer to perform the Work on all Sites as contemplated by this Agreement.
- c. This Agreement may be immediately terminated by Customer without cause should Customer, on or before June 30, 2016, fail to obtain financing or final Planning approvals as provided in subsections 6.6 (a) and 6.6 (b). If the Agreement is terminated pursuant to this Section 6.6, Customer and Installer shall have no obligation whatsoever to fulfill the terms and conditions of this Agreement and no payments whatsoever shall be due or payable to Installer under this Agreement or otherwise, and Installer shall not be entitled to damages of any kind, or any other remedy arising out of, or otherwise related to, the termination of this Agreement. The parties hereto may, by mutual agreement, extend the deadline to obtain financing or final Planning approvals as provided above by up to 30 days with the written mutual consent of both parties.
- d. Customer shall issue written notice to proceed (the "Notice to Proceed") when the conditions in this Section 6.6(a) and (b) are fully met and achieved. Prior to the Customer's provision of this Notice to Proceed, Customer shall have no obligation to perform any portion or part of the Work.

7. INDEMNITY.

- 7.1 Indemnification by Installer. Installer shall indemnify, defend and hold harmless Customer, Customer's employees, agents, authorized representatives, and subsidiary agencies and instrumentalities (including any political subdivision thereof) (collectively the "Customer Indemnified Parties") from and against all claims, damages, losses and expenses (including attorneys fees, arbitral and litigation costs and charges from expert witnesses and consultants retained as a result thereof) to the extent that such claims, damages, losses, and expenses are alleged, asserted, or brought by any third party ("Third Party

Claims”) including Third Party Claims alleging direct, indirect or consequential damages arising out of or resulting from: (a) any negligent or intentional act or omission of Installer or any person or entity directly or indirectly engaged by Installer in the performance of the Work; (b) breach of this Agreement; and (c) Installer’s failure to comply with any applicable law, rule, or regulation. Notwithstanding any provision to the contrary, in no event shall Installer be liable or required to indemnify Customer or any other party to the extent any claim, damage, loss, or expense is caused by Customer, any person or entity employed or engaged by Customer (except for Installer or any person or entity directly or indirectly engaged by Installer in the performance of the Work). In the event that any Third Party Claim alleges or asserts the acts of Installer or any person or entity engaged directly or indirectly by Installer to complete any portion of the Work, form the basis for such Third Party Claim, Installer shall immediately indemnify and hold harmless Customer. In the event that, upon final adjudication or at the promulgation of an arbitral award, Customer, or another party for which Installer is not liable hereunder, is found to be liable (in whole or in part) for such claim, loss, or damage, then Customer shall bear proportionate liability for such claim, loss, or damage including, without limitation, the proportionate reimbursement to Installer of Installer’s damages less any of Installer’s attorney’s fees, costs of defense, and court costs.

After receiving notice from Customer that a claim or mechanic’s lien has been filed, Installer will immediately take the steps necessary to discharge such claim or lien and provide proof that such claim or lien has been removed or resolved within thirty days after Customer provides notice of the same.

- 7.2 **Liability of Installer to Customer for Customer’s damages.** Installer shall be liable to Customer for Customer’s damages primarily caused by Installer’s negligent or intentional acts or omissions. Installer shall repair or replace any such damages caused by Installer at no charge to Customer. Repairs and replacements shall be commenced within five (5) days of the incident that causes such damages to occur, unless Customer requests or agrees to an extension or another timeframe, and shall be diligently completed by Installer. Installer must immediately report each such incident to Customer’s Authorized Representative. Damage to Customer’s property observed by Installer, whether or not resulting from Installer’s operations or negligence, shall be promptly reported by Installer to Customer. Customer may, to the extent commercially reasonable, at its option, approve or otherwise direct the process of repair or replacement in accordance with Customer’s best interest.
- 7.3 **Indemnification by Customer.** Customer shall defend, indemnify and hold harmless Installer, its officers, directors, employees and agents (“Installer Indemnified Parties”) from and against any claims, demands, damages, losses, fees, expenses, liabilities and penalties (including reasonable attorneys’ and expert witnesses’ fees), arising out of or relating to Customer’s performance or nonperformance under this Agreement, but only to the extent caused by the negligent or other wrongful acts or omissions of Customer, its separate contractors, or any Person for whose acts or omissions Customer may be liable, regardless of whether any such claim, damage, loss or expense is caused in part by Installer.
- 7.4 **LIMITATION OF LIABILITY. IN NO EVENT WILL INSTALLER BE LIABLE TO CUSTOMER OR CUSTOMER INDEMNIFIED PARTY UNDER THIS AGREEMENT OR OTHERWISE FOR INDIRECT, CONSEQUENTIAL, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT. IN ADDITION, WHETHER ANY ACTION OR CLAIM IS BASED ON WARRANTY, CONTRACT, AND TORT OR OTHERWISE, UNDER NO CIRCUMSTANCES SHALL INSTALLER’S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER TO INSTALLER UNDER THIS AGREEMENT; PROVIDED THAT (I) SUCH LIMITATION SHALL NOT APPLY TO ANY OBLIGATION OF INSTALLER TO INDEMNIFY CUSTOMER IN ACCORDANCE WITH PARAGRAPH 7.1 ABOVE AND (II) SUCH LIMITATION SHALL NOT ACT TO REDUCE THE AMOUNT OF PROCEEDS RECOVERABLE UNDER ANY AND ALL INSURANCE POLICIES OTHERWISE AVAILABLE TO CUSTOMER.**

8. INSURANCE.

- 8.1 **Customer's Insurance.** Customer represents that it is a self-insured Government agency. Limits of liability will be a minimum of \$1,000,000 per occurrence/\$2,000,000 annual aggregate. Coverage will include Products Completed Operations, Personal/Advertising Injury, and medical expense a minimum of \$10,000. Customer shall provide Installer a certificate of insurance evidencing the insurance required in this Section upon request.
- 8.2 **Installer's Insurance.** All policies of insurance required by this Agreement shall remain in full force and effect throughout the life of this Agreement. The insurance shall have a provision that 30 days advance written notice will be given to Customer before any termination or change in coverage protection, or reduction in coverage limits (except 10 days notice for non-payment of premium).

Failure to provide and maintain the insurance policies, endorsements, or certificates of insurance required by this Section shall constitute a material breach of this Agreement.

Liability insurance shall be payable on a "per occurrence" basis unless the Customer specifically consents to "claims made" coverage. If Customer does consent to "claims made" coverage, and if Installer changes insurance carriers during the term of the Agreement, or during any extensions, then the following provisions shall apply:

- a. The retroactive date shall be on or before the date of the Agreement or the beginning of the Agreement performance by the Installer.
- b. Insurance must be maintained and evidence of insurance must be provided for at least two (2) years after completion of the Agreement.
- c. If coverage is cancelled or non-renewed, and not replaced with another claims made policy form with a retroactive date prior to the Agreement effective date, Installer shall purchase extended reporting coverage for a minimum of one (1) year after completion of the Agreement.

Liability insurance, including commercial general liability insurance, builders' risk insurance and automobile liability insurance, shall name the Customer and its officers, agents, employees and volunteers as additionally insured, and in the event of insured loss the Installer's and the Subcontractor's liability insurance shall apply as primary insurance, and any other insurance maintained by the Customer shall be excess only and not contributing with Installer's insurances. The additional insured endorsement shall be evidenced by form CG 20 10 11 85 or equivalent, including ongoing operations and completed operations subject to approval by the Customer's Risk Manager. Installer's blanket additional insured endorsement is acceptable. Each policy required hereunder, except the Professional Liability policy, shall include a waiver of subrogation in favor of Customer and its officers, agents, employees and volunteers.

At all times, the Installer shall maintain policies issued by companies with an Best's Rating of A-, VII or higher, according to the current A.M. Best's Key Rating Guide, or shall be issued by companies approved by the Customer's Risk Manager. In the event the Best's Rating falls below the rating required by this Section, then Installer shall promptly secure policies which do comply with this Section.

Installer shall maintain the following required insurance policies and shall provide Customer a certificate of insurance evidencing the insurance required in this Section 8.2 prior to execution of this Agreement. Installer shall require that subcontractors maintain the same insurance provisions required in this Section 8.2.

- a. Installer shall provide proof of broad form coverage for Commercial General Liability insurance with a limit of not less than one million dollars (\$1,000,000) per occurrence and

general aggregate liability of two million dollars (\$2,000,000). Coverage will include Products Completed Operations, Contractual Liability, Property Damage, and Personal Injury.

- b. Installer shall provide Umbrella-Liability of five million dollars (\$5,000,000) per occurrence and five million dollars (\$5,000,000) aggregate.
- c. Installer shall provide proof of coverage for Personal, Business Rated, or Commercial Auto Liability Insurance for each vehicle used, including non-owned and hired automobiles. The coverage shall be combined single limit and shall include death, bodily injury, property damage, and uninsured and underinsured coverage, in an amount of no less than one million dollars (\$1,000,000).
- d. Installer shall provide Worker's Compensation Insurance as required by law and Employer's Liability with a limit of not less than one million dollars (\$1,000,000) each accident, one million (\$1,000,000) each employee, and one million (\$1,000,000) policy limit. Installer hereby certifies that it is aware of the California Labor Code Section 3700, et seq, requirement that every employer be insured before commencing work, and that every contractor require this insurance as to all of its subcontractors before they commence work.
- e. Installer shall provide Installation or Builders' Risk Insurance for coverage of the Systems and all materials from the time delivered to the Site for their full replacement cost value on an all risk or special cause of loss form from the Commencement Date through the Final Completion Date and Acceptance of the Work. Insurance shall be in a form and include deductible levels typically found in the insurance market for similar solar projects.
- f. Installer shall promptly provide proof of coverage for Professional Liability Insurance, or an "errors and omissions" policy, in an amount not less than \$2,000,000 per claim and \$2,000,000 aggregate, with tail coverage of no less than five (5) years.

If Installer fails to secure and maintain the required insurance, Customer shall have the right (without any obligation to do so, however) to secure the same in the name and for the account of Installer, in which event Installer shall pay the reasonable cost thereof (or Customer may deduct the same from amounts otherwise due Installer hereunder) and Installer shall furnish upon demand all information that may be required in connection therewith.

9. **BONDS.** All bonds required under this Agreement shall be issued by a corporation duly licensed to transact surety business in California. The bond must be executed by proper corporate signatories, and adequate proof of their authority to act and bind the surety must be provided to the Customer.

Required Bonds

A Faithful Performance Bond is required in order to ensure completion of the Project, per this Agreement, in the amount of 100% of the Agreement price for the period beginning at the Effective Date through Acceptance of the Work.

A Payment Bond. Installer shall provide a Payment Bond in the amount of 100% of the Agreement Price to ensure proper payment to all persons so entitled because of supplying materials and labor. The Payment Bond shall remain in effect until the expiration of 35 days after recording of the Notice of Completion.

10. **REPRESENTATIONS AND WARRANTIES.** Each Party hereby represents and warrants to the other party as follows:

- 10.1 **Organization and Qualification.** It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organizations and has the lawful power to engage in the business it presently conducts and contemplates conducting.

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- 10.2 **Power and Authority.** It has the power to make and carry out this Agreement and to perform its obligations hereunder and under the Scope of Work and all such actions have been duly authorized by all necessary proceedings on its part.
- 10.3 **No Conflict.** To the knowledge of the Parties, the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of its certificate of incorporation or by-laws or any Applicable Law or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected.
- 10.4 **Validity and Binding Effect.** This Agreement has been, or will be at the time executed or deemed executed, duly and validly executed and delivered by it and constitutes its legal, valid and binding obligation, enforceable in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity.

11. CUSTOMER'S RESPONSIBILITIES.

11.1 **Access to Site.** On the Commencement Date of any System and for so long as any Work (including any Work related to the Warranty) is provided by Installer hereunder, Customer shall enable Installer or any of its Subcontractors or agents to gain free, unobstructed, access to the Site for the purpose of performing the Work hereunder and shall keep the Site free and clear from any encumbrances, obstructions or Hazardous Materials introduced to the Site by Customer other than those which already exist. In addition to the foregoing, Customer shall allow Installer to have access to the Site to: (a) inspect the Site to verify conditions and to construct and install the System on the Site; (b) to access and maintain a data acquisition system ("DAS") on the System and collect data from such DAS, independent of any DAS owned by Customer; and (c) to perform (or cause to be performed) all tasks necessary or appropriate, as reasonably determined by Installer and consistent with the approved engineering and construction documents, to carry out the activities and enjoy the rights set forth in this Agreement. Customer shall ensure that Installer has reasonable access to and use of lighting, power, and water while performing Work hereunder at no cost to Installer. Customer shall be responsible for making arrangements with Host and/or Tenant, if necessary, for the provisions required by this Section.

11.2 **Furnishing of Work and Information.**

- a. Customer has provided the documentation detailed on Exhibit F to Installer for Installer's information and use, which may include, to the extent available, the following types of items:
- i. surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;
 - ii. if all or a portion of the System is to be ground-mounted, geotechnical studies describing subsurface conditions including soil borings, and other surveys describing other latent or concealed physical conditions at the Site;
 - iii. temporary and permanent easements, zoning, covenants and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the System and enable Installer to perform the Work;
 - iv. a legal description of the Site and as-built and record drawings of any existing structures at the Site; and
 - v. all environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Materials, in existence at the Site that have been conducted or performed.

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- b. Installer shall not be entitled to rely on the accuracy of the information provided by Customer pursuant to this Section and listed on Exhibit F and shall exercise reasonable care and diligence in reviewing such information. Should Installer identify material deviations in conditions which are not reflected on the documents, Installer shall notify Customer as soon as practicable.
- c. Customer represents to Installer that, to the best of Customer's knowledge, there are no restrictions on use of the Site, or any other property adjacent to or near the Site that would interfere with the performance of Installer's obligations under this Agreement. To the fullest extent allowed by law, Customer will indemnify, hold harmless, reimburse and defend Installer Indemnified Parties from, for and against any and all claims, demands, damages, losses, expenses, liabilities and penalties, including but not limited to reasonable attorneys' and expert witnesses' fees, arising out of or relating to any restriction on use of the Site due to rights held by any owners or lessees of the Site (other than Customer), or any other property adjacent to or near the Site.
- 11.3 **Customer Permits.** Unless otherwise provided in the Agreement Documents, Installer shall obtain, and pay for, all construction permits, licenses or other permits necessary to complete the Project, and shall be responsible for all governmental charges, inspection fees, utility connection charges, and sales and use taxes.
- 11.4 **Compliance with Laws and Agreements.** Customer and Installer shall comply with any express or implied obligation required at law or in equity or under any Permits, Interconnection Agreements, financing documents or other agreements or understandings to which Customer or any Customer Person are a party or under which any of them are bound that would have an effect on the this Agreement or Customer's or Installer's obligations hereunder.
- 11.5 **Cooperation.** Customer and Installer shall fully and timely cooperate with each other in the performance of all obligations under this Agreement and the Agreement Documents, including, (a) timely review and, where applicable, approve drawings, specifications, Change Order requests and other requirements of the Agreement, (b) timely negotiate and execute Interconnection Agreements and timely provide all information and consents necessary for Installer to apply for the Installer Permits and fulfill all obligations hereunder, (c) comply with the Project Schedule and (d) perform or cause to be performed any work, or pay or caused to be paid any amount, required hereunder in connection with any exclusion set forth herein.
- 11.6 **Site Preparation.** Prior to commencement of the Work, Customer shall be responsible for any necessary Site and/or roof preparation, including any roof structural assessment and correction.
- 11.7 **Data Transmission.** Where required, Installer shall cause to be installed a TCP/IP or telephone connection for data transmission and Customer shall maintain such connection throughout the applicable Warranty Term.
- 11.8 **Storage.** Customer shall provide Installer with an area for storage space located near the Site for storage of materials, tools and equipment, and other purposes.
- 11.9 **Confidentiality and Publicity.** The parties hereto acknowledge that information obtained about the other party pursuant to this Agreement may include confidential and proprietary information (hereinafter the "Confidential Information"). Each party agrees not to use Confidential information except in accordance with the terms of this Agreement or any other agreements between the parties, and not to disclose Confidential Information to any third parties without the prior written consent of the other party, except as required by law. The parties agree that the Confidential Information does not include any information which, at the time of disclosure, is generally known by the public.

All information Customer receives from Installer, whether received in connection with Installer's proposal or in connection with any services performed by Installer, will be disclosed upon receipt of a

request for disclosure pursuant to the California Public Records Act; provided, however, that if any information is set apart and clearly marked "Confidential Information" when it is provided to Customer, Customer shall give notice to Installer of any request for disclosure of such information. Installer shall then have five (5) calendar days from the date it receives such notice to file an objection to said disclosure with Customer and the requestor, stating the grounds for said objection, and to enter into an agreement with the Customer, satisfactory to Installer's Counsel, providing for the defense of, and complete indemnification and reimbursement for all costs (including plaintiff's attorney fees) incurred by Customer in any legal action to compel the disclosure of such information under the California Public Records Act. Installer shall have sole responsibility to defend any litigation arising out of any failure to release any documents or records to the requestor due to Installer's assertion that such records are not required to be disclosed.

Installer and County understand and agree that any failure by Installer to respond to the notice provided by County and/or to enter into an agreement with County, in accordance with the provisions above, shall constitute a complete waiver by Installer of any rights regarding the information designated "Confidential" by Installer, and County shall disclose such information pursuant to applicable procedures required by the Public Records Act.

12. MISCELLANEOUS

- 12.1 **Acknowledgment and Consent of Host.** If title to the Site is vested in a Person other than Customer ("Host"), Customer shall obtain from Host a fully executed Property Owner Acknowledgment and Consent substantially in the form attached hereto as Exhibit D and shall provide a copy thereof to Installer. Installer shall not be obligated to commence the Work until it has received the executed Property Owner Acknowledgment and Consent.
- 12.2 **Acknowledgment and Consent of Tenant.** If all or a portion of the Site is occupied by a person or entity other than Customer ("Tenant"), Customer shall obtain from Tenant a fully executed Tenant Acknowledgment and Consent substantially in the form attached hereto as Exhibit E and shall provide a copy thereof to Installer. Installer shall not be obligated to commence the Work until it has received the executed Tenant Acknowledgment and Consent.
- 12.3 **Notices.** All Notices required or permitted under the Agreement Documents shall be in writing and shall be deemed given: (a) when delivered in person; (b) the next Business Day after deposit with a commercial overnight delivery service for next day delivery; or (c) upon receipt if sent by United States mail, postage prepaid, registered or certified mail, return receipt requested. All Notices shall be addressed to the Authorized Representative of the recipient party at the address set forth below or other address or Authorized Representative a party may designate in writing from time to time.

SunPower Corporation, Systems:
1414 Harbour Way South
Richmond, CA 94804
Authorized Representative
Robert Hensley
Project Manager
510 439 4709
Robert.Hensley@sunpower.com

County of Nevada:
950 Maidu Avenue
Nevada City, California 95959
Authorized Representative:
Tom Coburn
Facilities Manager
530-470-2637
tom.coburn@co.nevada.ca.us

- 12.4 **Independent Contractor.** Installer shall at all times be and remain an independent contractor and not an agent of Customer for any purpose whatsoever and shall have no authority to create or assume any obligation, express or implied, in the name of or on behalf of Customer or to bind Customer in any manner whatsoever.
- 12.5 **Authorized Representatives.** Each Party shall designate one or more representatives authorized to act on behalf of the designating Party. If a Party designates more than one authorized representative, it

shall specify the nature of the communications for which each representative is authorized to act on the designating Party's behalf.

- 12.6 **Entire Agreement; Amendment.** This Agreement, including the Exhibits hereto, represents the entire and integrated agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. No Amendment, modification or waiver in respect of this Agreement will be effective unless in writing and executed by both Parties.
- 12.7 **Assignment.** Neither Party shall assign or delegate its rights or obligations under this Agreement without the written consent of the other Party. In determining whether to consent to any assignment, each Party shall be entitled to consider the experience, reputation and creditworthiness of the proposed assignee or other transferee. Notwithstanding the foregoing, (a) Customer shall be entitled, without consent of Installer, to collaterally assign its rights, obligations, title and interest in and to this Agreement (and, in particular, any rights arising in relation to any insurance policy and any other right to collect any amount from Installer) to a lender by way of security for the performance of obligations to such lender and any attempt to assign in violation of this Paragraph 12.7 shall be deemed void ab initio and shall be considered a material breach of this Agreement. The subcontracting of any part of the Work by Installer shall not be deemed an assignment of this Agreement.
- 12.8 **No Waiver.** No failure on the part of either Party to exercise or enforce any term hereof or any right hereunder shall operate as a waiver, release or relinquishment of any right or power conferred under this Agreement.
- 12.9 **Survival.** Cancellation, expiration, or earlier termination of this Agreement shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination (including, but not limited to any representations or warranties, indemnification provisions and obligations related to termination of this Agreement).
- 12.10 **Governing Law.** This Agreement with respect to each System shall be governed by, interpreted and enforced in accordance with, the laws of the State of California.
- 12.11 **Disputes.** Written notice of any Dispute must be provided to the other party, describing specific details of the dispute relating to changes in Work or claim for additional compensation, within seven (7) days of the occurrence of the condition. This notice must be provided via certified mail. For a reasonable period commencing on the day written notice of Dispute was provided, but not to exceed thirty (30) days, the parties shall in good faith attempt to resolve the Dispute. If the parties are unable to resolve the Dispute during this period, or any Party fails to fulfil obligations under this Article 12.11 (Disputes), the parties shall proceed to binding arbitration administered by the American Arbitration Association ("AAA") under the Arbitration Rules of the AAA applicable as of the date the AAA receives notice thereof. The seat and place of arbitration shall be San Francisco, California. The language of arbitration shall be English.
- 12.12 **Execution in Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.
- 12.13 **Ownership of Designs; Final Drawings/Manuals.** All drawings, specifications, calculations, data, notes and other materials and documents, including electronic data furnished by Installer to Customer under this Agreement ("Work Product") are the instruments of service of Installer and Installer will retain all common law, statutory and other reserved rights, including copyrights. Within 15 days after Final Completion of all Systems, Installer shall deliver to Customer a copy of the final record as-built drawings for all Systems and all operation and maintenance manuals with respect to the Systems. Without exception, the copies shall be the sole property of Customer. Customer may not use Installer's designs or drawings (or copies of same) for the installation of any other solar electricity generation site or facility without the express written consent of Installer, which consent may be withheld at Installer's sole discretion.

12.14 Re-Opening Provision. The parties acknowledge that Customer intends to solicit proposals for Direct Purchase Bonds to finance the Project, that Customer has not yet selected a Purchase Bank for said financing, and that this Agreement will be subject to final review and approval by the Purchase Bank selected to finance the Project. If the Purchase Bank conditions the financing of the Project on modification, revision or deletion of any term or condition of this Agreement, the parties shall re-open this Agreement for the limited purpose of re-negotiating such term or condition of the Agreement in order to satisfy such financing condition.

IN WITNESS WHEREOF, in consideration for the mutual promises set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned have executed this Agreement by their duly authorized representatives as of the date first written above.

SUNPOWER CORPORATION, SYSTEMS:


Name: _____
Title: **William Kelly**
VP, Commercial Americas
Dated: 5/27/10

Licensed in accordance with an act providing for
the registration of Contractors
License Number: 890895
Fed. Tax ID No: 20-8248962


Dept. of Industrial Relations
Registration No: 1000012065

COUNTY OF NEVADA:


Honorable Dan Miller
Chair, Board of Supervisors

Dated: 6-29-10

Attest:


Julie Patterson-Hunter
Clerk of the Board

Approved as to form:

By: 
County Counsel

EXHIBIT A
SCOPE OF WORK

1. SYSTEM LOCATION AND DESCRIPTION:

1.1 ADDRESSES:

Site 1	Eric Rood Administration Center	950 Maidu Ave, Nevada City, CA 95959
Site 2	Wayne Brown Correctional Facility	925 Maidu Ave, Nevada City, CA 95959
Site 3	Carl Bryan II Juvenile Hall	15434 CA-49, Nevada City, CA 95959
Site 4	Lake of the Pines WWTP	10984 Riata Way, Auburn, CA 95602
Site 5	Ranch Property	16782 CA-49, Nevada City, CA 95959

1.2 SYSTEM SIZE, PRODUCT AND BASIC DESCRIPTION:

Site Description and System Array are provided on Appendix 1 to this Scope of Work.

2. CONTRACT PRICE:

2.1	Photovoltaic System/Installed	\$9,699,154
2.2	Data Acquisition System	Included
2.3	Owner's Manual	Included
2.4	Sales Tax	Included
2.5	Contract Price Per Site:	

Site	Facility	EPC Price (\$)
1	Eric Rood Administration Center	\$2,053,699
2	Wayne Brown Correctional Facility	\$1,369,133
3	Carl Bryan II Juvenile Hall	\$397,695
4	Lake of the Pines WWTP	\$1,445,606
5	Ranch Property	\$4,433,021
	Total Contract Price	\$9,699,154

3. SCHEDULE OF VALUES:

3.1 Payment for each project Sites 1 through 5 will subject to following schedule. The parties acknowledge that this payment schedule is subject to amendment, as provided in Section 12.4 (Re-Opening Provision) to meet the requirements of the Purchase Bank selected by Customer for financing of the Project.

Work Description	% of Contract Price
Issuance of NTP	10%
Securing of Building Permits	10%
Delivery of solar modules to Site or secure warehouse (Part of Construction Phase)	35%
Delivery of inverters to Site or secure warehouse (Part of Construction Phase)	20%

Work Description	% of Contract Price
Substantial Completion (Part of Construction Phase)	20%
Final Completion and Acceptance	5%
	100%

4. PROJECT SCHEDULE:

Site Specific Project Construction Schedules are presented in Appendix 3 of this Exhibit A

5. SCOPE OF WORK:

5.1 LABOR

Overtime and special shift requirements

Overtime and special shift requirements **are not** included, based on schedule submitted with this proposal.

Prevailing Wages

Project is assumed to be Prevailing Wage per industrial relations requirements of each project location.

Labor Agreements

Proposal assumes Project Labor Agreement **is not** in place in this jurisdiction.

Diversity Requirements

Requirements and/or related due diligence and good faith efforts for small, small local, diversified or minority contractors **are** included in this proposal.

5.2 INDIRECT CONSTRUCTION COSTS

Taxes and fees

Taxes or fees, other than local building permit fees and sales tax, are not included.

Insurance

Proposal assumes there no Owner Controlled Insurance Program (OCIP) in place for this project.

Permits and Regulatory Fees

An allowance of \$5000 per project is included for building, fire and electrical permits and approval requirements.

CEQA Allowance: LOP WWTF: \$30,000, Ranch Property: \$30,000

Other permits/approvals are excluded including, but not limited to: CEQA, environmental control, environmental impact report, state environmental regulatory agency and legislative act compliance, undefined easements, Army Corps of engineers, wetlands, water quality, archeological, endangered species, water rights, mineral rights, redevelopment, etc.

If additional work is required, permits/approvals in support of the installation of the solar electric system, such as conditional use permits, environmental impact reports, dust control permits, etc., any associated added costs are not included.

SunPower includes durations for procuring permit and regulatory approvals in the Project Schedule as the basis of this proposal.

SunPower will not be responsible for construction delays caused by permit and approval requirements from local jurisdictions or regulatory review bodies. Any delays in procuring permits will entitle SunPower a time extension change order to the contract as a day for day extension to our plan for obtaining required permits and/or approvals, as defined above or in the proposal schedule.

Inspection Costs

Additional Inspection Allowance of \$4500 per site is included. This amount is intended to cover special inspections such as compaction tests, welding inspections, and concrete samples.

5.3 SYSTEM DESIGN & SCOPE

Array & DC Cable Run

The arrays, equipment pads, and point of interconnection will be constructed to the design and specifications as shown in proposal level layouts in the drawing provided. Conductors will be aluminum or copper according to SunPower's Electrical Engineer of Record's determination.

DC runs will be supported by and within the Array structure.

The Carport Design includes rigid conduit from underground transition to inverter/panel boards and EMT conduit with rain-tight compression fittings above inverters for any aboveground low voltage or AC circuits and PVC for all underground conduits.

DC array wiring to Inverters may be exposed on the underside of PV modules or neatly secured to PV modules and/or racking system. DC source circuits are USE-2 weather rated for exterior exposure.

Inverter / Panel boards shall be mounted on the Array structure.

DC array grounding achieved by use of SunPower proprietary grounding clip and/or rivet attachment.

EMT conduit or MC cable shall be used on rooftop array(s).

Equipment Location & Tie-In

Electrical equipment such as inverters and transformers (as required) will be installed on the ground with a standard SunPower service concrete pad, or attached to building located as shown on the proposal level layout drawings.

Coordination of shutdown is required with owner, temporary power generators are excluded. Assume to use on site generator for temporary power during shutdowns at the Jail and Juvenile Hall.

If Medium voltage transformers are required in order to step-up voltage to match point of interconnection voltage or transmit long distances, transformers shall be non-Dry-type by manufacturer of SunPower's choosing. Secondary containment is not included in this proposal.

SunPower shall design and install the solar PV systems, including installing associated equipment, such that Customer's equipment and operations are protected from damage by operation of the PV systems.

AC cable sizing is based on the assumption that the soil thermal resistivity (RHO) is less than or equal to 120°C-cm/W.

AC feeder length from Inverter to Panel Board and to equipment pad location and from equipment pad location to tie in is identified on proposal level array layout drawings. AC feeder lengths from inverter mounting location to assumed point of interconnection, and length assumptions with equipment amperage ratings are shown on proposal level single line drawing.

AC runs to be trenched, bored or run overhead as necessary from array to equipment pad and from equipment pad to tie-in.

PG&E interconnection costs are included for all sites except the Ranch Property RES-BCT site, for which an interconnection allowance of \$350,000 is included.

Shading

Removal of trees or other obstructions to install the solar arrays and system components is included in the proposal. Any trees or obstructions which cause shading to the solar arrays is included per the site layout drawings. Final system performance will be validated with an as-built shade study. Continuous tree trimming to eliminate shade is not included.

Corrosion Protection

All steel structures shall be a combination of light gauge and structural steel with galvanized finish of G90. For all other system options, metal materials are either factory-finished or non-corrosive and will not need painting for weather protection.

Landscaping

Weed abatement in and around the solar system (e.g. plant restoration or long term weed abatement) is included for the Ranch and LOP WWTF sites.

An allowance of \$7,500 is included for the Ranch Property landscape barrier.

Fencing

A 6'-0" high galvanized 9 gauge, 2" mesh chain link fence-with gate around perimeter of Helix Ground sites (LOP WWTP and Ranch Property) project sites is included plus equipment pad and exposed locations. Special provisions for privacy slats, special hardware, lock sets, small fabric, etc. are not included.

Utility Requirements

Any costs associated with unforeseen utility interconnection requirements, including but not limited to utility-owned equipment upgrades or additions, relay protection equipment external to the inverters, system impact studies, or telemetry requirements and interconnection studies are not included in this proposal.

An allowance of \$350,000 is included for a required utility upgrade for the Ranch Property site.

Facility Equipment

The existing panels are assumed to have provisions to accept cable connections on the primary side of the main service breaker except at the Ranch property, where PG&E-specified interconnection equipment is to be installed. Panel or bus bar reconfiguration and/or customer distribution equipment re-listing certification is not included. Proposal excludes Circuit Breaker Coordination Study for this project. Proposal excludes Short-Circuit Coordination Study for this project. Solar system includes all standard interconnection related equipment on the customer side of the meter, including panel circuit breakers, utility and/or visible utility lockable disconnect switches, NGO metering, conduit, and wiring. Additional customer-side protection required by the utilities in addition to that provided by the certified inverters is not included.

5.4 SITE & CONSTRUCTION CONDITIONS

Access

Proposal assumes project will be constructed in a single phase delivery method.

SunPower will be guaranteed site access to perform all work. All work to be performed during regular business hours between 7:00 am and 5:00 pm.

SunPower will have access to a staging area for delivery trucks and required equipment to lift materials as applicable, during normal business hours

SunPower will have site access for construction activities and deliveries during all hours of the week.

Existing roads will be capable of handling all required construction equipment such as drilling rigs, concrete trucks, delivery trucks, cranes, and all other equipment necessary to complete the work.

SunPower will not be responsible for any damage to existing roads, parking lots or playgrounds resulting from normal construction operations and activities.

The utility in charge will have 24/7 access to existing electric utility meters and the utility lockable disconnect locations for all electrical interconnections related to this project.

Extra time or personnel constraints due to site security beyond daily signing in by workers on a sign in sheet—i.e. badging, background checks, and tool inventory checks is included.

Use of Facilities

If a Customer-initiated power shut down has duration over 4 hours and effects normal construction operations, SunPower can rent and install a temporary generator and submit associated costs to Customer for reimbursement. Water quality shall be sufficient for use in dust control, as necessary, and be suitable for SunPower's standard concrete mix design.

Other temporary facilities will be the responsibility of SunPower.

Special handling of site materials

Testing for removal and disposal of any existing hazardous waste materials, contaminated soils, or any other unforeseen site conditions that require special handling are not included.

Site utilities and hazards

Changes resulting from utilities, right of ways, easements, and/or hazards—underground or above ground—or any undocumented building upgrades are not included.

Documented utilities and building upgrades are considered as part of this proposal if as-builts are provided to SunPower prior to contract execution in order to confirm locations of these possible hazards. Customer shall supply SunPower with a current Title Report with plotted easements, encumbrances, and right-of-ways at all project site locations.

Structural Foundations

Structure Foundation assumptions are as follows:

- Carport/ Shade Structure: Drilled Cast in place method, up to 36" round Caissons, 9' minimum height canopy, 12' deep, 3-0' above ground.
- Helix Ground Tracker: Driven Piers

If additional width, embed depth or spread footing is needed due to soil conditions, additional costs will be the responsibility of the client.

Proposal assumes that if ground water or dewatering, sub grade rocks, or other unforeseen underground structures are encountered and there is a need to slurry and re-drill or dewater site, then additional costs will be the responsibility of the client.

Roof Conditions

Sunpower will not be responsible for normal wear and tear associated with the installation of the solar system. SunPower reserves the right to inspect the roof to verify its condition. In addition, SunPower may offer recommendations to the client on modifications to the roof system to improve its serviceability. Client is responsible for any and all modifications to the roof system. Modifications of roof systems fall into three categories:

Modifications to improve roof condition / serviceability / useful life.

Modifications required by roofing manufacturer prior to installation of PV system on their roof system. (e.g. slip sheets, strapping, etc.)

Modifications required by SunPower to make the roof a suitable substrate for the installation of PV. (e.g. air seals, batten bars, etc.)

SunPower assumes the building structure will support the added live and dead loads from the photovoltaic installation (<5 PSF) and rooftop equipment, or to resist added lateral or seismic loads. Modifications to the roof system and design and construction of supports, upgrades to the building structure or platforms are not included.

All costs for additional special testing and Inspections regarding rooftop PV installations are the responsibility of the Client, and are excluded from this proposal.

Soil Conditions

Existing site soil is assumed to have the following characteristics:

- IBC or UBC Table 1804.A.2, Class 3 or equivalent Non-hazardous, sandy gravel and/or gravel
- Allowable foundation pressure greater than or equal to 2000 psf Lateral Bearing strength below grade equal to 200 (Lbs./Sq. Ft./Ft. of depth)
- Lateral sliding coefficient of friction greater than or equal to 0.35. No sub-grade rocks or rock formations
- Adequate drainage
- No seismic-related hazards (e.g. faults, liquefaction, seismically-induced settlement, lateral spreading)
- Limited expansiveness
- Low to moderate corrosiveness (PH is less than 5.5, electrical resistivity is more than 1000 OHM-cm, chloride is less than 500 ppm, sulfate is less than 2000 ppm)
- Depth to start of passive pressure is 0.5 feet.

Drainage

Special drainage requirements and/or drainage design and interconnection to customer's existing storm drain system or any other storm drain discharge system is excluded from this proposal.

Security and Lighting

Additional security systems or infrastructure **are not** included in this proposal.

Special Conditions

Architectural enhancements to the photovoltaic structures or ground and roof arrays and mounting systems are not included in this proposal.

Proposal excludes design or installation of any required additional fire hydrants or fire protection apparatuses as required by local first responders or Fire, Life/Safety professionals responsible for review and approval of the design for this project.

Wind

Site max wind speed is no more than 85 mph wind zone and site Exposure C. More severe wind conditions would require additional engineering and costs.

Weather conditions

SunPower assumes standard weather patterns and site conditions for planning the project schedule. Instances of excessive climate, weather (greater than the most adverse conditions in the last 3 years) or natural disasters may result in delays and/or unplanned costs (i.e. additional labor, shipping, storage, and logistics costs) which will be the responsibility of the client.

6. COMMISSIONING, MONITORING, OPERATIONS & MAINTENANCE

6.1 COMMISSIONING

Proposal assumes commissioning requirements for this project are for the Photovoltaic portion of the project only. Proposal does not include other building system commissioning cost not related to our work (i.e. HVAC, Plumbing, Fire Alarm, etc.).

6.2 MONITORING

SunPower SMS PV monitoring plus facility consumption monitoring systems are included in this proposal. Agreement assumes use of a dedicated data line for communication with a third party monitoring company. All other communication and low voltage infrastructure is excluded from this proposal.

APPENDIX 1
to Scope of Work

1. **SITE DESCRIPTION:**

1.1 **Eric Rood Administration Center**
469.80 kWdc of Carports

- The ERAC is the main administration center for the County of Nevada. The structure is a two story, 103,000 square foot office building that houses the main administrative offices of the County, including the Board of Supervisors, the County Executive Office, Sheriff's Office Administration, Treasurer-Tax Collector, Auditor-Controller, Clerk Recorder, Community Development Agency, and others.
- The site comprises 4.3 acres and is located within the northern edge of Nevada City, California. The site is owned by the County of Nevada. The site is addressed as 950 Maidu Ave, Nevada City. The APN Number is 05-020-23. The Site is accessed from State Hwy 49 with a second access from Cement Hill Road.
- This site is part of the Eric Rood Campus that houses the Eric Rood Administration Center, Wayne Brown Correctional Facility, Helling Library, Odyssey House, and Tobiassen Park. The site is mostly developed with facilities and parking except an area next to the Wayne Brown Correctional Facility for future expansion of the jail and a building pad in front of the campus for a future 20,000 sq. ft. building.
- The site and campus are open with public walking trails and pathways connecting downtown Nevada City with the City-owned Hirschman's Pond and park area.
- The Site's elevation is approximately 2,650 feet above mean sea level. There are annual snow falls of 2 to 12 inches.
- The site is flat with a vegetated up-slope to the north of the facility.
- The site is not located within a 100- or 500-year flood plain.
- The site is currently zoned for P SC Nevada City.

1.2 **Wayne Brown Correctional Facility**
313.20 kWdc of Carports

- The site is the County's main correctional facility. The structure is a two story, 63,000 sq. ft. facility that houses local, state and federal inmates. The site is 18.21 acres, located within the northern edges of Nevada City, California.
- The site is owned by the County of Nevada. The site is addressed as 925 Maidu Ave, Nevada City. The APN Number is 05-020-22. The site is accessed from State Hwy 49. There is a second access from Cement Hill Road.
- This site is part of the Eric Rood Campus that houses the Eric Rood Administration Center, Wayne Brown Correctional Facility, Helling Library, Odyssey House, and Tobiassen Park. The site is mostly developed with facilities and parking except an area next to the WBCF for future expansion of the jail and a building pad in the front of the campus for a future 20,000 sq. ft. building.

- The site and campus are open with public walking trails and a pathway connecting downtown Nevada City with the City owned Hirschman's Pond and park area.
- The Site's elevation is approximately 2,650 feet above mean sea level. There are annual snow falls of 2 to 12 inches.
- The site around the WBCF facility is flat with a vegetated up-slope to the north of the facility.
- The site is not located within a 100- or 500-year flood plain.
- The site is currently zoned P SC Nevada City.

1.3 Carl F. Bryan II Juvenile Hall
90.25 kWdc of Single Tilt Roof

- The Site is the County's juvenile detention facility. The structure is a two story, 25,545 sq ft facility that houses County juveniles. The Site is 10.09 acres, located in the unincorporated area of Nevada County, just outside of Nevada City, California.
- The Site is owned by the County of Nevada. The site is addressed as 15434 State Hwy 49, Nevada City. The APN Number is 05-050-15. The Site is accessed from State Hwy 49.
- The building, parking and play yard are flat and cover about 20% of the developed parcel, with the remaining vegetated land not useable for construction because of slopes.
- The Site's elevation is approximately 2,662 feet above mean sea level. There are annual snow falls of 2 to 12 inches.
- The Site is not located within a 100- or 500-year flood plain.
- The Site is currently zoned for Public use.

1.4 Lake of the Pines Wastewater Treatment Plant
365.40 kWdc of Tracker

- The site is the location of the Lake of the Pines Waste Water Treatment Plant. The area identified for the solar array is on a separate parcel from the actual plant and was previously used for the discharge of treated water from the treatment plant through an irrigation system over pasture land. It has also been used for cattle grazing.
- The site is owned by the Nevada County Sanitation District #1. The site is in the unincorporated area of Nevada County with a site address of 24062 Timber Ridge Drive, Auburn CA. The APN Number is 21-640-09. The Site access will be through the LOPWWTP off Riata Road. The site is approximately 5.39 acres.
- This Site is part of the LOPWWTP and serves the Lake of the Pines development and surrounding area.
- The treatment plant is closed off with a chain link fence and the array parcel has a barbed wire fence around it.

- The site's elevation is approximately 1,477 feet above mean sea level. This area may get a dusting of snow once or twice a year, but typically no accumulation.
- The site is flat in the array area with grazing grasslands and there are only a few trees on the Site. Outside of the array area there is an up-slope to the West. There is identified wetland in the area and a management plan for this area has been developed. The solar array is outside of this wetland.
- The Site is not located within a 100- or 500-year flood plain.
- The Site is currently zoned for P, RA-5.

1.5 Highway 49 Ranch Property
1,200.60 kWdc of Ground Fixed Tilt

- The site is located in the unincorporated area of Nevada County about 3 miles from Nevada City. The Site historically has been grazing grassland. The Site is 10.45 acres. There is a small 1,400 sq. ft. house on the Site that is used as transitional housing by the County. The house is on Nevada Irrigation District (NID) treated water and a septic system.
- The south end of the parcel is bordered by the Eden Ranch housing development; about 7 homes within the development will have a direct view of the solar array. Landscape is being installed as part of this project to help screen these residents.
- The site is owned by the County of Nevada. The site is addressed at 16782 State Hwy 49, Nevada City. The APN Number is 04-140-67. The site is accessed off of State Hwy 49.
- The site is open with no fencing. There are few trees on the site. A berm has been constructed along Hwy 49 and across the south end of the site in an effort to screen future development. There are identified wetlands on the site and a management plan has been developed to protect these lands.
- The site's elevation is approximately 2,464 feet above mean sea level. There are annual snow falls of 2 to 12 inches.
- The site around the solar array has a gentle slope to the west. Beyond solar arrays there is a drainage running north-south. Beyond the solar arrays there is an up-slope of about 15%.
- The Site is not located within a 100- or 500-year flood plain.
- The Site is currently zoned RA-3-PD

2. SYSTEM ARRAYS:

See Appendix 4 of this Exhibit B.

APPENDIX 2
to Scope of Work

SUNPOWER SOLAR ENERGY DISPLAY

SunPower Solar Energy Display Product Example



SunPower Solar Energy Display Scope of Work: Product and Service Details

The SunPower Solar Energy Display (“Energy Display”) includes and is limited to the following products and services.

HARDWARE
PC Computer - Intel Core 2 Duo 2GHz Mobil Processor, 2GB RAM, 80GB Hard Drive, Win XP Pro Ethernet port, PCI slot for wireless adapter, or similar
42” LG or similar LCD flat panel screen
LCD Wall Mount Bracket System for PC & Sign
PC Bracket to Mount PC to back of LCD
Wireless Capability – Integrated 802.11b/g wireless adaptor
SOFTWARE
Software Configuration, Content Licensing and Project Management, includes:
General – Customer logo, system information, custom accent color bar
System Overview Tab – Customer-provided photo, system information
Technology – Solar technology installed at site
Environmental Benefits Tab – Four screens included
How Solar Works Tab – Standard flash animation

SERVICE
Standard Site Survey – Includes Livewire tech onsite to inspect power, internet and mounting requirements ¹
Installation – Includes wall mount installation of LCD Screen with PC and wall bracket by Livewire ²
1 year Technical Support and Remote Monitoring provided by Livewire
3 year Hardware Warranty provided by Livewire ³
CUSTOMER RESPONSIBILITIES
Power and internet connection/cable must be ready at Site prior to installation
High-resolution photo to be supplied by Customer (sized 720 pixels wide by 540 pixels tall)
Customer to provide desired high-resolution or vector logo (max size 400 pixels wide by 60 pixels tall)
Customer to complete data template for display screen content
SHIPPING
Standard Freight Shipping to Customer Site

¹ Site preparation (electrical wiring, DSL set-up, etc) is not included.

² Installation requires power and high-speed internet set-up to be ready.

³ Three year extended component warranty from Livewire Kiosk, Inc. (the provider of the Energy System, “Livewire”).

THE ENERGY DISPLAY IS NOT INCLUDED IN THE “SYSTEM”, AS DEFINED IN THIS AGREEMENT, AND IS NOT COVERED BY THE SYSTEM WARRANTY DESCRIBED IN ATTACHMENT 2 HERETO.

Warranty & Operations and Maintenance

With each Energy Display, Livewire will provide a one year on-site service plan combined with a three year extended component warranty. At the end of this three year period, Customer has the option to renew these services directly with Livewire.

Livewire will also provide hardware, software and content licensing and one year of monitoring and technical service support. At the end of this one year period, Customer has the option to renew these services directly with Livewire.

Digital Display Support

Livewire is the primary contact for all inquiries or issues regarding your Energy Display service or hardware. Installer is not responsible for providing any troubleshooting pertaining to the Energy Display.

The troubleshooting contact for information is as follows:

Livewire Kiosk, Inc.
 160 Roosevelt Avenue, Suite #300
 York, PA 17401
 (717) 718-1241
www.livewirekiosk.com

Karla Guarino, Vice President
kguarino@livewirekiosk.com
 (303) 204-6738

CUSTOMER HEREBY ASSUMES ALL RISKS INVOLVED WITH THE POSSESSION OR USE OF THE ENERGY DISPLAY AND UNDERSTANDS AND AGREES THAT THE ENERGY DISPLAY IS PROVIDED “AS IS” WITHOUT WARRANTY BY INSTALLER, CUSTOMER WAIVES ALL EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. AS SUCH, THE ENERGY DISPLAY CANNOT BE RETURNED TO INSTALLER FOR ANY REASON, AND INSTALLER ASSUMES NO LIABILITY FOR ANY DEFECTIVE PRODUCTS.

Appendix 3
Project Schedule

Appendix 4
System Arrays

EXHIBIT B

SYSTEM WARRANTY

1. **System Information.** This Standard Warranty (this “Warranty”) applies to the System installed by Installer pursuant to this Work Authorization.
2. **SunPower System Warranty.** Installer warrants that (a) materials and equipment shall be new and unused as of the date of installation and (b) the System shall conform to the Specification on the Substantial Completion Date and shall be free from defects in materials and workmanship under normal operating conditions for a period of five years thereafter (“Warranty Term”); this Warranty shall not include any warranty statements beyond the scope of this Warranty and provided by Other Manufacturers as described in Section 3 below. Upon a breach of the Warranty during the Warranty Term, Installer will, upon Notice from Customer of a valid warranty claim, at Installer’s sole option, either repair or replace any defective parts. Installer shall have reasonable access to the Site as necessary to perform its warranty obligations under this Agreement. All costs for the removal, replacement and reinstallation of all equipment and materials necessary to gain access to defective Work shall be borne by Installer. Unless this Warranty is extended by written agreement, Customer shall pay for any repair costs incurred by Installer after the Warranty Term expires. This Warranty applies solely to the System and does not include (i) roof repair or maintenance or (ii) site work, including but not limited to, grading and landscape maintenance, if applicable.
3. **Manufacturer Warranties.** Installer assigns to Customer the applicable pass-through warranties from Installer’s manufacturers, including photovoltaic modules and inverters (“Other Manufacturers”). The Other Manufacturers shall be stated in the Design Submittal. Installer warrants that materials and equipment subject to warranties of Other Manufacturers have been installed in accordance with the requirements of those warranties. Installer makes no representation or warranty, and Customer shall seek no recourse from Installer, unless specifically provided to the contrary, regarding the warranties of Other Manufacturers that extend beyond the scope of this Warranty, including, without limitation, the power output of the photovoltaic modules.
4. **Warranty Exceptions.** This Warranty does not apply to:
 - 4.1 Damage, malfunction, or degradation of the System, including electrical output, to the extent caused by:
 - a. failure to Properly Operate or Maintain the System (as described below); or
 - b. any repair or replacement using a part or service not provided or authorized in writing by Installer; or
 - c. normal wear and tear, including expected degradation electrical output; or
 - d. environmental factors, including but not limited to corrosion, insects, animals, lightning, flooding, and winds in excess of design specifications.
 - 4.2 Damage, malfunction, or degradation of the System, including electrical output and System’s supporting structure, to the extent:
 - a. resulting from Customer or third party abuse, accident, alteration, improper use, solar infringement, negligence, vandalism, theft, or a Force Majeure Event; or
 - b. caused by unknown structural defects with the building or foundation upon which the System is located, excepting structures installed by Installer and included under this warranty scope; or
 - c. resulting from change in usage of the building or site, including neighboring surroundings, without the written approval of Installer.

4.3 For purposes of this Section, "Properly Operate and Maintain the System" shall mean that Customer, or qualified party on Customer's behalf, shall:

- a. perform all initial troubleshooting and diagnostics, including photographic evidence and reporting of inverter fault codes, when applicable, prior to submitting a warranty claim; and
- b. otherwise operate and maintain the System in full accordance with the printed manuals and instructions provided with the System to Customer; provided that, for the avoidance of doubt, should the operation and maintenance of the System be performed by or on behalf of Installer pursuant to an Operations and Maintenance Agreement providing for such services for the duration of the Warranty Term, Proper Operation and Maintenance shall be deemed satisfied for purposes of this Warranty. Resetting of any protective devices and replacement of any fuses or other consumables within the System are assumed to be included within Proper Operation and Maintenance and not included within the scope of this Warranty.

5. **Successors and Assigns.** This Warranty shall inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns (including, without limitation, any owner or tenant of the Site). No assignment by Customer shall relieve Installer of any of its obligations under this Warranty. Nothing in this Warranty, expressed or implied, is intended to confer any rights, remedies, obligations or liabilities under or by reason of this Warranty upon any Person other than the Parties.

6. **Disclaimer.** Except as expressly provided herein, Installer expressly disclaims any and all warranties of any kind, express, implied or statutory except as expressly provided herein. Neither the Agreement nor any document furnished under it, unless explicitly stated, is intended to express or imply any warranty or guarantee with regard to the performance of the System with respect to (i) electricity output, (ii) reduction in energy costs or environmental savings, (iii) financial savings or return on investment and (iv) public recognition.

EXHIBIT B-1

MODULE WARRANTY



SunPower Limited Product and Power Warranty for Commercial PV Modules

This Limited Warranty is effective for SunPower® photovoltaic modules for commercial installation with "SPR" and "COM" in the product model number and sold after January 1, 2015.

1. Limited Warranty

SunPower Corporation ("SunPower") warrants that for 25 years beginning on the Warranty Start Date¹ (the "Warranty Period"), its photovoltaic modules specified above, which may include factory integrated electronics, ("PV Module(s)"), shall be free from defects in materials and workmanship under normal application, installation, use and service conditions, and the DC power of the PV Modules will be at least 95% of the Minimum Peak Power² rating for the first 5 years, and declining by no more than 0.4% per year for the following 20 years, so the power output at the end of the final year of the 25 year warranty period will be at least 87% of the Minimum Peak Power rating.

If any PV Module fails to conform to this Limited Warranty and provided that any loss in power is determined by SunPower (in its sole discretion) not to have resulted from one of the excluded events set forth in Section 3 below, then for the Warranty Period, SunPower will repair, replace (new or refurbished) or refund the defective PV Modules as set forth herein. SunPower will make all reasonable efforts to repair or replace the PV Module with an electrically and mechanically compatible PV Module with an equal or greater power rating. If this is not commercially feasible, then SunPower will refund the purchase price of the defective PV Module as paid by the customer. The repair, replacement or refund remedy provided herein shall be the sole and exclusive remedy. Limited Warranty for any repaired or replaced PV Module shall not extend beyond the Warranty Period. In the case of a valid claim for PV Modules installed by SunPower, an affiliate of SunPower or an authorized SunPower installer, the Limited Warranty covers:

- (i) reasonable and customary transportation costs for return of the PV Modules;
- (ii) reshipment of any repaired or replaced PV Modules; and
- (iii) costs associated with installation, removal or reinstallation of the PV Modules.

2. General Conditions for Warranty Claims

- a) Warranty claims must in all events be filed within the Warranty Period.
- b) Warranty claims may only be made by, or on the behalf of (i) the original end customer, as named in the certificate of guarantee or invoice, as applicable, and (ii) any subsequent title holder of the PV Modules upon satisfactory proof of succession or transfer from the original end customer as named in the certificate of guarantee or invoice, as applicable.
- c) When PV Modules are used on a mobile platform of any type, such as a vehicle, the Warranty Period shall be limited to 12 years.
- d) In cases of PV Module replacement, any replaced PV Module shall pass into the ownership of SunPower.

3. Exclusions and Limitations

The Limited Warranty does not apply to any of the following:

- a) PV Modules subjected to: misuse, abuse, neglect or accident; alteration, improper installation, application or removal (including but not limited to installation, application or removal by any party other than SunPower, a SunPower authorized dealer or technician approved by SunPower in writing); non-observance of the applicable SunPower installation, users and/ or maintenance instructions or

¹ "Warranty Start Date" is the earlier of (i) date of array interconnection and (ii) 6 months following the date of SunPower delivery. If the delivery date cannot be verified, manufacturing date will be used in its place.

² "Minimum Peak Power" is defined as Peak Power minus peak power tolerance or the minimum rated power, as shown on the label. Peak Power is defined as the watt peak at Standard Test Conditions (1000W/m² irradiance, AM1.5, 25C, 50MS current, LACCSEFF and Voltage from NREL calibration), as described in IEC61215, measured per IEC60904, and accounting for tolerances per EN50380. SunPower modules shall, in any event, require a sweep rate of no less than 200ms to ensure an accurate power measurement. SunPower can provide a detailed testing procedure or a list of recognized testing agencies upon request.

customercare@sunpower.com | 1.800.SUNPOWER (1.800.786.7693) | sunpower.com

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non-compliance with national and local electric codes; repair or modifications by someone other than an approved service technician of SunPower; conditions exceeding the voltage, wind, or snow load specifications; power failure surges, lightning, flood, or fire; damage from persons, insects, animals, or industrial chemical exposure; glass breakage from impact or other events outside SunPower's control.

- b) Cosmetic effects stemming from normal wear and tear of PV Module materials or other cosmetic variations which do not cause power output lower than what is guaranteed by the Limited Warranty. Normal wear and tear of PV Module materials can include, but is not limited to, fading of frame color, weathering of glass coatings, and areas of discoloration around or over individual solar cells or any part of the PV Module.
- c) PV Modules installed in locations, which in SunPower's absolute judgment may be subject to direct contact with bodies of salt water.
- d) PV Modules for which the labels containing product type or serial number have been altered, removed or made illegible.
- e) PV Modules which have been moved from their original installation location without the express written approval of SunPower.
- f) PV Modules that include factory-integrated electronics where such factory-integrated electronics exhibit defects that do not materially impact power output.
- g) PV Modules which have been installed on single-family homes or semi-detached homes, including but not limited to duplexes and townhomes. For clarity, apartment and condominiums are not excluded.

SunPower shall not be held responsible or liable to the customer or any third-party arising out of any non-performance or delay in performance of any terms and conditions of sale, including this Limited Warranty, due to acts of God, war, riots, strikes, fire, flood or any other cause or circumstance beyond the reasonable control of SunPower.

4. Limitation of Warranty Scope

SUBJECT TO THE LIMITATIONS UNDER APPLICABLE LAW, THE LIMITED WARRANTY SET FORTH HEREIN IS EXPRESSLY IN LIEU OF AND EXCLUDE ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR PARTICULAR PURPOSE, USE, OR APPLICATION, AND ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF SUNPOWER, UNLESS SUCH OTHER WARRANTIES, OBLIGATIONS OR LIABILITIES ARE EXPRESSLY AGREED TO IN WRITING, SIGNED AND APPROVED BY SUNPOWER. SUNPOWER SHALL HAVE NO RESPONSIBILITY OR LIABILITY WHATSOEVER FOR DAMAGE OR INJURY TO PERSONS OR PROPERTY OR FOR OTHER LOSS OR INJURY RESULTING FROM ANY CAUSE WHATSOEVER ARISING OUT OF OR RELATED TO THE PV MODULES, INCLUDING, WITHOUT LIMITATION, ANY DEFECTS IN THE PV MODULE, OR FROM USE OR INSTALLATION. UNDER NO CIRCUMSTANCES SHALL SUNPOWER BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, HOWSOEVER CAUSED. LOSS OF USE, LOSS OF PROFITS, LOSS OF PRODUCTION, LOSS OF REVENUES ARE THEREFORE SPECIFICALLY BUT WITHOUT LIMITATION EXCLUDED. SUNPOWER'S AGGREGATE LIABILITY, IF ANY, IN DAMAGES OR OTHERWISE, SHALL NOT EXCEED THE PURCHASE PRICE PAID TO SUNPOWER BY THE CUSTOMER, FOR THE UNIT OF PRODUCT OR SERVICE FURNISHED OR TO BE FURNISHED, AS THE CASE MAY BE, WHICH GAVE RISE TO THE WARRANTY CLAIM. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OF DAMAGES SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU.

IF ANY PROVISION OF THIS LIMITED WARRANTY IS HELD UNENFORCEABLE OR ILLEGAL BY A COURT OR OTHER BODY OF COMPETENT JURISDICTION, SUCH PROVISIONS SHALL BE MODIFIED TO THE MINIMUM EXTENT REQUIRED SUCH THAT THE REST OF THIS LIMITED WARRANTY WILL CONTINUE IN FULL FORCE AND EFFECT.

5. Obtaining Warranty Performance

If you feel you have a justified claim covered by this Limited Warranty, immediately notify (a) the seller and installer of the PV Modules, or (b) any authorized SunPower installer, or (c) contact SunPower Corporation directly at the contacts shown below. Your installer, or SunPower will give advice on handling the claim, which shall include, without limitation, the provision of the warranty card, online warranty registration information, invoice, and/or evidence of the date of delivery of the PV Module, serial number and product number of affected modules, and evidence of claim. The return of any PV Modules will not be accepted unless prior written authorization has been given by SunPower.

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EXHIBIT B-2

INVERTER WARRANTY



SMA America LLC Factory Warranty

Note: this description of SMA Solar Technology America's limited factory warranty is effective on April 1, 2015 and supersedes all prior warranty descriptions.

10 Year Warranty

A ten year warranty applies to the following products:

SBXXX-US, SBXXX-US, SBXXXHF-US, SBXXXXTL-US, STPXXXXTL-US, WBXXX-US, Multigate-US, MG-XT-XX-US, SMA Connect and Disconnect units when installed with SMA inverters.

5 Year Warranty

A five year warranty applies to the following products:

STP60-US-10, MIX60 UL, SMA Inverter Manager, SIXXXU, SIXXX-US, SBXXU, SWRXXU, ST6US, SMA Cluster Controller, Smartformer for Sunny Island, Multiclust Box for Sunny Island, SMA Fuel Saver Controller, Webconnect Data Module, Sunny Beam with Bluetooth[®], Sunny WebBox, Sunny WebBox with Bluetooth[®], Sunny SensorBox, SB Combiner Boxes. A five year warranty also applies to accessories and other items sold by SMA America LLC that are related to the inverters and communications devices specified in this document. All claims in this category will require a proof of purchase receipt and date to qualify.

The SMA factory warranty provides toll-free technical support, shipping costs, and repair or replacement part costs during the warranty period. The factory warranty period begins 3 months after shipment from SMA America. Five and ten year warranty extensions can be purchased at any time during the factory warranty coverage period. The maximum total warranty coverage period is 20 years.

Warranty Conditions

If a device is determined to be defective during the SMA factory warranty period, one of the following services, as selected by SMA, will be performed at no charge:

1. Exchange the defective device with either a new or like-new device that is functionally equivalent to the device being replaced; or
2. Repair the defective device at SMA's depot facility; or
3. Refund the actual cash value, as determined by SMA, of the defective unit (after the first two years of the factory warranty and during the warranty extension period, if applicable)



In the case of an exchange, the remainder of the eligible warranty will be transferred to the replacement device, or 90 days whichever date is later.

If the warranty applies, and if SMA has a branch or service partner in the country where the device is operated, ground transportation costs are covered by SMA. If the device is operated in a country where SMA does not have a branch or service partner, SMA will ship a replacement unit to the customer's designated freight forwarder location within the USA. The customer will be responsible for shipment to the final destination and for the return of the defective unit to their USA freight forwarder location. SMA will cover ground transportation cost to and from the customer's designated freight forwarder.

The SMA factory warranty includes a Service Call Rebate for eligible installers/dealer companies as follows.

1. SBXXXX-US, SBXXXXHF-US, SBXXXXTL-US, STPXXXXTL-US, SB700U, SBXXXXU, SWRXXXXU, WBXXXX-US, STP60-US-10, MIX60 UL Inverters, SMA Inverter Manager, and SIXXXXU, SIXXXX-US Sunny Island units are eligible for a Service Call Rebate during the complete factory warranty period.
2. SB240-US inverters, Multigate-US and MG-XI-XX-US units are eligible for a Service Call Rebate during the first 2 years of the factory warranty period.
3. Other non-inverter products listed in this document are not eligible for a Service Call Rebate.

For rebate program details, please see the SMA Inverter Service Call Rebate form located at www.sma-america.com. (Please select the Service tab and Downloads)

In order to fulfill its obligations under this limited warranty, SMA America may require a copy of the purchase receipt, the warranty certificate, installation document, or evidence of the warranty extension. End-user customers are encouraged to retain such documentation. The model/serial number must be included on the documentation provided in order to determine warranty entitlement.

Warranty Transferability

The SMA factory warranty is freely assignable / transferable with written notice to SMA America. To apply for warranty transfer, please see the SMA Warranty Transfer of Ownership form located at www.sma-america.com. (Please select the Service tab and Downloads)

Exclusion of Liability

The SMA limited factory warranty does not cover failures or damages that occur due to:

- transport damage
- incorrect installation or commissioning
- failure to observe the user manual, maintenance requirements and intervals



- modifications, changes or attempted repairs
- incorrect use or inappropriate operation
- insufficient ventilation of the device
- failure to observe the applicable safety regulations,
- force majeure (e.g. lightning, overvoltage, storm, fire)
- cosmetic defects which do not directly influence energy production, or degrade form, fit, function

Additional claims due to direct or indirect damage, especially compensation claims for damages due to loss of profits, or revenue, or incurred costs arising from disassembly and mounting, are expressly excluded in the absence of a written contract agreement with SMA America.

How to get Warranty Support

SMA America products are designed and built for reliability. In the unlikely event of a failure, please contact the SMA Technical Service Line at 1-877-697-6283 where an SMA Technical Support Representative will assist you.

- Proper fault diagnosis may require a qualified Solar PV service technician to be at the SMA device location and equipped with a quality digital AC/DC voltmeter.
- The onsite service technician may be asked to take voltage measurements and provide error codes from the inverter.
- Additional information will be required such as:
 - o model number
 - o serial number
 - o job site name
 - o original date of installation
 - o PV array configuration
 - o description of any modifications that have been performed on the inverter

If the onsite repair technician is unwilling or unable to assist SMA in the fault diagnosis process, the customer may be charged an inspection fee plus shipping costs if no trouble is found when the device is tested by the SMA Service Repair Department.

Replacement Procedure and Conditions

SMA America will provide standard ground shipping. If expedited shipping is requested, the shipping costs will be billed to the customer.

SMA America does not provide new replacement equipment to distributors or installers who exchange new equipment from their stock to customers in the field at their own discretion.



Unresolved or pending financial issues between the customer and SMA America at the time of trouble call reporting will have to be resolved before material exchange can occur.

Customer-modified equipment does not qualify for the advanced replacement exchange warranty process and must be returned to the SMA depot for repair.

Unless the modification created the failure, customer-modified equipment is covered under the above described SMA warranty conditions on a repair/return basis only.

When replacing an inverter, customer is asked to safely remove any piggyback modules (i.e. RS-232 cards, RS-485 cards, etc.) from the inverter to be returned, and retain them for reinstallation by customer on the replacement equipment.

Customer or their installer is expected and requested to repack the defective equipment in the same shipping box used to ship the replacement, and manually apply the SMA provided return shipping label(s) to the box of the equipment to be returned.

If the end-user chooses to have the inverter repaired and returned, SMA America will send an empty shipping box and shipping call tag if the original packaging is not available. The returned unit will be repaired and returned to the end-user.

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www.SMA-Canada.ca

EXHIBIT C

SAFETY, SITE AND ACCESS CONDITIONS OF SITE

Not Used. See Section 2.10 of the Agreement.

EXHIBIT D

PROPERTY OWNER ACKNOWLEDGEMENT AND CONSENT

[IF NECESSARY -SEE SECTION 12.1]

This Property Owner Acknowledgement and Consent is entered in connection with that certain Engineering, Procurement and Construction Agreement by and between the SunPower Corporation, Systems ("Installer") and _____ ("Customer") of even date herewith (the "Agreement"). All terms not otherwise defined herein shall have the meaning set forth in the Agreement.

WHEREAS, _____ ("Owner") is the owner of the Site; and

WHEREAS, the Agreement provides the terms and conditions governing the Installer's installation of a photovoltaic solar electric system on the Site.

NOW THEREFORE, Owner has read the Agreement and hereby consents to the installation of a photovoltaic solar electric system on the Site on the terms and conditions described therein.

OWNER:

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT E

TENANT OWNER ACKNOWLEDGEMENT AND CONSENT

[IF NECESSARY -SEE SECTION 12.2]

This Tenant Acknowledgement and Consent is entered in connection with that certain Engineering, Procurement and Construction Agreement by and between the SunPower Corporation, Systems (“Installer”) and _____ (“Customer”) of even date herewith (the “Agreement”). All terms not otherwise defined herein shall have the meaning set forth in the Agreement.

WHEREAS, _____ (“Tenant”) is leasing the Site or a portion thereof from Customer; and

WHEREAS, the Agreement provides the terms and conditions governing the Installer’s installation of a photovoltaic solar electric system on the Site.

NOW THEREFORE, Tenant has read the Agreement and hereby consents to the installation of a photovoltaic solar electric system on the Site on the terms and conditions described therein.

TENANT:

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT F

SITE INFORMATION AND DOCUMENTATION

The following site information and documentation has been made available by Customer to Installer for review as necessary to complete the Work.

Ranch Property

- Topo Survey
- Wetland Delineation
- Wetland Management Plan
- Initial Study Mitigated Negative Declaration

LOP Waste Water Treatment Plan

- Wetland Delineation
- Topo Survey
- Wetland Management Plan
- Initial Study Mitigated Negative Declaration

EXHIBIT G
SYSTEM COMMISSIONING TESTS

Commissioning Turnover Package and Acceptance Testing

Installer's technical personnel, with the assistance of the equipment manufacturer(s) as needed, will perform a complete commissioning of the DC and AC system equipment following Installer's commissioning procedures. These commissioning procedures include the tests outlined in this Exhibit as well as other standard tests, inspections, safety and quality checks for solar photovoltaic power plants of a similar size. All testing and commissioning will be conducted in accordance with the manufacturer's specifications. The System inverters will be commissioned on site by a manufacturer's representative or qualified technician and will confirm that the inverter can be operated locally per specification and that automatic operations such as wake-up and sleep routines, power tracking and fault detection responses occur as specified.

Upon completion of each of the commissioning procedures, Installer's technician or engineer will initial the commissioning checklist or test result page to indicate that the test has been completed successfully. The results of string testing will be summarized and complete results will be provided in electronic format. Documentation from all procedures and complete test results will be submitted to Customer in paper and /or electronic format.

System Acceptance Tests

Open Circuit Voltage Test (Voc)

<u>Purpose:</u>	Open Circuit Voltage Testing provides a simple method to determine that all strings are properly connected (module and string polarity) and that all PV modules are producing an appropriate voltage level.
<u>Scope:</u>	All Strings.
<u>Party:</u>	Installer technical personnel.
<u>Equipment/Materials:</u>	<ul style="list-style-type: none"> • Rubber insulating gloves; • Fuse pullers; and • Voltage meter.
<u>Conditions:</u>	This test should be conducted under full sun $>300 \text{ W/m}^2$ and stable sky conditions.
<u>General Procedure:</u>	(Follow SunPower String Testing procedures) <ul style="list-style-type: none"> • Remove all fuses in PV string(s). • Check plane of array irradiance, minimum requirement is 300 W/m^2 and stable sky conditions. • Measure the Voc Voltage for the PV string(s) under test.
<u>Criteria:</u>	For stable sky conditions and irradiance above 300 W/m^2 , string voltages should conform within 5% of the average string voltage in the same combiner box. For irradiance less than 300 W/m^2 , test results may be used only to confirm proper string connection, and not to evaluate voltage performance.

Current Testing

<u>Purpose:</u>	This procedure verifies all connection and fuses from string to inverter.
<u>Scope:</u>	All strings.
<u>Party:</u>	Installer technical personnel..
<u>Equipment/ Materials:</u>	<ul style="list-style-type: none">• Hot Gloves; and• DC Current Meter.
<u>General Procedure:</u>	(Follow SunPower Proof of Life Current Test Procedures). String Current Test Procedure.
<u>Criteria:</u>	If current is present the test is successful.

Inverter Commission

<u>Purpose:</u>	Verify the proper operation of the inverter systems.
<u>Scope:</u>	All Inverters.
<u>Party:</u>	Installer and/or manufacturer, with Installer supervision.
<u>Schedule:</u>	At time of inverter start-up.
<u>Equipment/Materials:</u>	<ul style="list-style-type: none">• Rubber insulating gloves; and• Other equipment as required by manufacturer.
<u>Procedure:</u>	Follow all manufacturers' guidelines for inverter start-up and commissioning, including verification of safety and control features.
<u>Conditions:</u>	No special conditions apply.
<u>Criteria:</u>	The inverter and controls should operate as stated in the manufacturers' specifications.

